

Extract from Minerals Local Plan for
Staffordshire 2015-2030 - Policy 3
(ExQ2.1.1)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

Policy 3: Safeguarding Minerals of Local and National Importance and Important Infrastructure

Safeguarding mineral resources

3.1 The following mineral resources, within the Mineral Safeguarding Areas shown on the Policies and Proposals Map, will be safeguarded against needless sterilisation by non-mineral development:

- a) Sand and gravel
- b) Limestone
- c) Cement shale
- d) Etruria Formation clays
- e) Anhydrite and gypsum
- f) Hollington Formation building stones
- g) Silica sand associated with the Rough Rock Formation
- h) Shallow coal with associated fireclays

3.2 Within a Mineral Safeguarding Area, non-mineral development except for those types of development set out in appendix 6, should not be permitted until the prospective developer has produced evidence prior to determination of the planning application to demonstrate:

- a) the existence, the quantity, the quality and the value of the underlying or adjacent mineral resource; and
- b) that proposals for non-mineral development in the vicinity of permitted mineral sites or mineral site allocations would not unduly restrict the mineral operations.

3.3 Within a Mineral Safeguarding Area, where important mineral resources do exist, except for those types of development set out in appendix 6, non-mineral development should not be permitted unless it has been demonstrated that:

- a) the non-mineral development is temporary and does not permanently sterilise the mineral; or,
- b) the material planning benefits of the non-mineral development would outweigh the material planning benefits of the underlying or adjacent mineral; or,
- c) it is not practicable or environmentally acceptable in the foreseeable future to extract the mineral.

Policy 3: Safeguarding Minerals of Local and National Importance and Important Infrastructure (continued)

3.4 Within a Mineral Safeguarding Area, where important minerals do exist and the above criteria have not been met, the non-mineral development except for those types of development set out in appendix 6, should not be permitted unless the development includes provision for the extraction of the mineral prior to the development being implemented.

Safeguarding important mineral infrastructure sites

3.5 Where there are mineral infrastructure sites used for mineral processing, handling, and transportation, except for those types of development set out in appendix 6, non-mineral development should not be permitted unless it has been demonstrated that:

- a) the non-mineral development would not unduly restrict the use of the mineral infrastructure site; or**
- b) the material planning benefits of the non-mineral development would outweigh the material planning benefits of the mineral infrastructure site; or,**
- c) the mineral infrastructure can be relocated; or**
- d) alternative capacity can be provided elsewhere.**

Reasons for the Policy

7.21 National policy requires that mineral safeguarding areas are designated which “cover known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development”⁵⁶ and also requires local planning authorities to safeguard mineral infrastructure used for processing, handling and transporting minerals.⁵⁷ In accordance with our Vision and Strategic Objective 1, Policy 3 aims to achieve an acceptable balance between non-mineral development and safeguarding Staffordshire’s important minerals and mineral infrastructure sites.

7.22 Policy 3 aims to safeguard a range of mineral resources that are considered to be of economic importance within the foreseeable future but not limited to the timeframe of the Plan and takes into account a review of mineral resources in

⁵⁶ Refer to [Annex 2: glossary of the NPPF](#)

⁵⁷ Refer to bullet point 4 of paragraph [143](#) of the NPPF.

the county produced by the British Geological Survey (BGS) in 2006⁵⁸. As explained in the BGS report, each mineral resource area is protected by a buffer zone which has been determined through consultation with the minerals industry and is used to define the MSA. MSAs are also defined where resources are found within urban areas but some types of applications will be exempt from the requirements of this policy (refer to appendix 6⁵⁹). This will reduce the number of applications that need to be referred to the Mineral Planning Authority when District Planning Authorities are assessing proposals for non-mineral development within a MSA.

7.23 Where mineral resources are affected by non-mineral development and there is a requirement for extraction of the mineral prior to non-mineral development taking place, proposals for prior extraction will be considered against the policies of this Plan. For example, mineral extraction could take place prior to or as part of construction works.

7.24 Policy 3 also aims to safeguard: mineral sites and mineral site allocations (Policy 3.2 (b)); and, mineral infrastructure sites used for mineral processing, handling, and transportation (Policy 3.5); from non-mineral development which would unduly restrict the use of those sites. To assist developers and district planning authorities in applying this policy relevant sites permitted by the County Council, together with a 250 metre consultation zone drawn around each site, will be made publically available via our internet based mapping service and the data will be shared with the district planning authorities for their use. We will also expect the district planning authorities to apply this policy to mineral infrastructure sites that they permit in their areas e.g. stand-alone concrete batching plants and coating plants.⁶⁰ In relation to the disused railway that connects with the Caudon quarries, the district local plan safeguards the route and supports the reuse for commercial purposes.⁶¹

⁵⁸ ["Provision of Geological Information and a Revision of Mineral Consultation Areas for Staffordshire County Council" \(2006\)](#) – British Geological Survey

⁵⁹ Refer to paragraph 5.2.7 of ["Mineral Safeguarding in England: good practice advice"\(2011\)](#) BGS

⁶⁰ Refer to paragraph 006 Reference ID: 27-006-20140306 of the PPG

⁶¹ Refer to Policy T2 of the [Staffordshire Moorlands Core Strategy – March 2014](#)

Applicant's Assessment of the
West Midlands Freight Strategy 2016
(ExQ2.2.8)

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APPENDIX 2

APPLICANT'S ASSESSMENT OF THE WEST MIDLANDS FREIGHT STRATEGY 2016 (EXQ2.2.8)

- 1.1 The West Midlands Freight Strategy was produced by the West Midlands Combined Authority¹ in 2016. A fair reading of the document would readily conclude that it strongly supports the development of freight infrastructure in the West Midlands, including in particular rail freight and that it acknowledges and supports the development of SRFI, including in south Staffordshire and the Black Country.
- 1.2 It is relevant to note at the outset that:
- South Staffordshire is not included within the boundaries of the Combined Authority; and
 - The Strategy contains few if any site specific proposals – in fact, the closest it gets to site specific proposals relate directly to the need to encourage SRFI development in the vicinity of the application site and RFI development in the Black Country.
- 1.3 It is relevant to draw attention to the following:
- 1.4 Paragraph 1.1.1, together with paragraph 2.1.3 identifies that the West Midlands lies at the heart of the UK and that this brings with it a recognition that freight is of particular importance to the economy of the region. The importance of logistics as a major employer in the West Midlands is identified at paragraphs 2.2.3-2.2.5.
- 1.5 However, paragraph 2.1.3 notes that the location of the West Midlands at the heart of the country and the crossroads of the transport network can create problems of congestion. As a result, a principal theme of the Strategy is to enhance accessibility for freight movements at the same time as easing problems of congestion or pollution. The introduction explains that the Strategy should provide improved access to the West Midlands by road and rail, as well as reduced congestion caused by good vehicles.
- 1.6 The Strategy sets out a Vision:
- “By 2030, the West Midlands will have safer, more reliable, sustainable and efficient freight and logistics movements to, from and within the West Midlands. We will be seen as a beacon of best practice, in which logistics supports economic growth and boosts productivity, with significantly reduced impacts on communities and the environment.” (paragraph 1.1.5)*
- 1.7 The Strategy notes the changing nature of the logistics sector including strong growth in the number of containers and the development of new SRFI to increase rail freight volumes, compared with the traditional role of the railway to carry bulk commodities, so that the increasing market is dominated by the movement of food and consumer goods (paragraph 2.2.10).
- 1.8 As a consequence, the Strategy recognises the importance of the West Midlands providing the right infrastructure for changing patterns of goods transport (paragraph 2.2.13). In this context, the Strategy recognises the importance of the WCML:

¹ <https://www.tfwm.org.uk/media/1207/west-midlands-freight-strategy.pdf>

“...more significantly, the WCML is the most important rail freight corridor in the UK. Freight trains on the WCML don’t only serve businesses in the West Midlands, they also carry long distance freight that would otherwise have to use the M6.” (paragraph 2.3.14).

1.9 Accordingly, the Strategy identifies key issues to be addressed (at paragraph 2.4.2) and these include:

- *“maximising rail freight accessibility and connectivity*
- *providing the Strategic Rail Freight Interchanges and intermodal rail freight interchange capacity to encourage freight to move by rail”*

1.10 Section 4 of the Strategy document sets out the Strategy itself and this includes a stated wish to influence and support investment in transport infrastructure which links the West Midlands to its markets in the UK and overseas. In particular, the Strategy wishes to see:

- continued development of SRFI and support for SRFI proposals in and near to the West Midlands; and
- gaps in the provision of intermodal rail freight interchanges to be addressed, particularly in the Black Country with adequate capacity on routes serving IRFI (Intermodal Rail Freight Interchanges). (paragraph 4.3.2)

1.11 Section 6 provides an Implementation Plan to give effect to the Strategy and numerous measures are set out, for instance, to strengthen the West Midlands as a strategic freight corridor. Specific measures are set out in relation to SRFI at paragraph 6.4.28 – 6.4.31. These paragraphs identify the important role and opportunities played by SRFI in supporting the economy as well as the regional supply gap of warehousing to meet projected demand. SRFI are identified as important employment centres which benefit from excellent access to national distribution centres. More SRFI are said to lead directly to more rail freight. The following approach is proposed to encourage the development of SRFI:

“Maximise the potential of existing SRFI:

Encouraging future SRFI development: we will work with the appropriate planning authorities within the wider West Midlands Region through the Duty of Cooperation and through appropriate LEPs to ensure that:

- *potential SRFI locations are identified and safeguarded; and*
- *planning and DCO applications for SRFI are encouraged and supported where relevant criteria are met and where there is real potential for rail freight use.*

This strategy acknowledges that several developers have aspirations for a SRFI in southern Staffordshire. The strategy is neutral as to a preferred location, and acknowledges that, while there is finite demand for large warehouses, any development which provides rail access to a concentration of distribution centres will maximise potential for rail freight.”

1.12 The strategy also supports the development of smaller intermodal rail freight interchanges which are characterised as ‘intermodal transfer terminals which are not located in an SRFI’. Particular support is given to the development of a “IRFI” in the Black Country which it is suggested would generate economic benefits in the region of £13 million per annum. Bescot Yard is identified as a potentially suitable location for an IRFI, rather than a SRFI.

- 1.13** The lack of potential for Bescot Yard to operate either as a SRFI or as a pure rail freight interchange is also addressed at ExQ2.2.16.
- 1.14** It is apparent, therefore, that the Freight Strategy strongly supports the principle of new SRFI development including in the vicinity of the application site. It also specifically supports DCO applications which meet relevant criteria in recognition of the significant economic and environmental benefits which SRFI development can bring.

Applicant's Response to NIC Future of
Freight Report
(ExQ2.2.10)

The West Midlands Rail Freight Interchange Order 201X

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APPENDIX 3

APPLICANT'S RESPONSE TO NIC FUTURE OF FREIGHT REPORT (EXQ2.2.10)

- 1.1 The National Infrastructure Commission's (NIC's) first two reports into the future of freight were:
- Future of Freight – Interim Report Dec 2018; and
 - Better Delivery – Final Report April 2019.
- 1.2 Both reports stressed the need for better spatial planning for modern logistics operations in order to achieve modal shift from road and to meet changing market conditions. The role of rail was set out as central to the decarbonisation of freight and rather than questioning the role of SRFIs it is supportive of the principles underlying the need for SRFIs – delivery of modern efficient logistics sites that maximise modal shift from roads.
- 1.3 The NPS sets out Government policy. The NIC is an Executive Agency of Government which provides advice. The NIC "Better Delivery" report (April 2019) does not call into question the need for SRFI nor the provisions of the NPS. The report makes no reference to the location of any SRFIs as it is not the purpose of the report to identify future development sites, but instead set out the high level aims for the future of the industry for Government to consider.
- 1.4 The NIC report notes, at page 6 para 2:
- "The Commission's central finding is that through the adoption of new technologies and **the recognition of freight's needs in the planning system**, it is possible to decarbonise road and rail freight by 2050 and manage its contribution to congestion. **Achieving this requires government** to outline clear, firm objectives, and begin working with the energy sector, freight industry and local areas **to ensure that the infrastructure required for alternative fuels and land for efficient freight operations is available when and where it is needed.**"*
- 1.5 And at page 8 para 2:
- "As the population rises, the demand for freight will grow. Over the next 30 years, the weight of goods lifted by heavy freight transport could increase by between 27 and 45 per cent. The nature of this demand will also change, with expected increases in same day delivery, more just-in-time manufacturing, and continued growth of internet shopping. Without action, greater demand risks higher emissions and increased congestion."*
- 1.6 This reference recognises the changing needs of the logistics industry which SRFIs are addressing.
- 1.7 Page 8 para 6 of the NIC report notes:
- "Modal shift to rail and water will continue to have a helpful role in managing air quality and carbon emissions from domestic freight transport while HGVs continue to use diesel. But modal shift is not capable of replacing all HGV journeys and will not be the long term solution to decarbonising road freight."*
- 1.8 This statement recognises the continuing role for rail freight in the logistics industry.
- 1.9 Page 14 para 2:

1.10 *“Recommendation 4: government should produce new planning practice guidance on freight for strategic policy making authorities. The guidance should better support these authorities in planning for efficient freight networks to service homes and businesses as part of their plan making processes. This new planning practice guidance, which should be prepared by the end of 2020, should give further detail on appropriate considerations when planning for freight, such as the need to:*

- *provide and protect sufficient land / floorspace for storage and distribution activities on the basis of population and economic need, with particular consideration for the floorspace requirements for last mile distribution and consolidation centres;*
- *support the clustering of related activities within a supply chain, minimising the distance that goods must be moved and maximising the potential for efficient operations;*
- *maximise the potential for freight trips to be made at off peak times; and*
- *accommodate deliveries and servicing activity at the point of delivery.”*

1.11 These aspirations are in line with the NN NPS and do not question the NPS.

1.12 Page 37 para 1:

“At present, the key competitive advantages of rail are its low unit costs for longer distance journeys, its inherent energy efficiency, and its low carbon intensity. Although the rapid decline of the coal market has meant a drop in total rail freight volumes, other markets such as containers have been growing. For certain bulk products – such as aggregates for construction – rail is the obvious choice. It is likely that rail freight will continue to play an important role in the UK’s freight mix, but it must make progress on decarbonisation.”

1.13 The industry is in discussion with Government on the decarbonisation of rail. The benefits of using rail over road in terms of lower levels of carbon production are already highlighted in the NN NPS as a benefit of rail freight and SRFIs.

1.14 Page 38 para 3:

“It is estimated that rail freight removes 1.7 billion kilometres of HGV mileage from the roads each year, around six per cent of HGV mileage in 2017. Reversing this would lead to more traffic and congestion. “

1.15 Page 47 para 2:

*“Moving freight transported by HGVs off the road and on to less congested networks is a possible mechanism through which to manage road congestion (known as modal shift). **Of the alternative modes emerging and currently available, it is only rail which currently offers a credible alternative for some types of road freight in terms of network coverage, and speed and cost of haulage.”***

1.16 These two statements are again supportive of the principle of SRFIs.

1.17 Page 54 para 3:

“An important part of any such guidance would be to give more direction to local authorities about how to assess the need for land and associated floorspace for distribution facilities, allowing them to strike the right balance between competing development pressures and supporting infrastructure.

Guidance for local authorities should direct them to assess the need for further space for distribution facilities based on what local businesses and communities need for efficient freight operations, now and within the next five years. Every new house built has an implication for the space required throughout supply chains. The requirement for additional logistics space as a result of new development should be properly considered in planning processes.

The Commission recognises that in some areas there is significant pressure on land supply for housing and other uses, and local authorities may find it difficult to allocate sufficient land to satisfy all development needs. Local decision making remains key. But occupier requirements for distribution space are evolving in response to land scarcity, and facilities which make better, smarter use of the available land are increasingly common.”

1.18 The Applicant considers that the NN NPS provides clear planning support for the development of SRFIs in order to address this issue.

1.19 The Group suggest that the Black Country & Southern Staffordshire Regional Logistics Site Study 2013 concluded that “the WMI site in Greenbelt was deemed an unsuitable use.” We have been unable to find this specific reference, but note the Study reiterates Government policy at para 7.2.8:

“For the avoidance of doubt a proposal for an RLS/SRFI would constitute inappropriate development if proposed within a Green Belt location and therefore there would be no presumption in favour of sustainable development. There has to exist very special circumstances to outweigh the presumption against inappropriate development in the Green Belt. “

1.20 This Study, also known to the Examination as the URS Study, is addressed by the Applicant from paragraph 5.2.24 onwards of the Planning Statement (APP-252) and in the SoCG with SSDC at paragraph 7.13 onwards (REP2-006).

1.21 The Group suggest that the West Midlands Combined Authority studies and policy “do not incorporate the WMI project”, which overlooks the statement in the WMCA Freight Strategy 2019 that (para 4.3.2):

“In particular we wish to see:

- *Continued development of Strategic Freight Interchanges (SRFI) and support for SRFI proposals in and near to the West Midlands;*
- *Gaps in the provision of Intermodal Rail Freight Interchanges (IRFI) to be addressed, particularly in the Black Country with adequate capacity on routes serving IRFI;*
- *More direct connections to be provided from the rail network to business premises.”*

1.22 Para 6.4.29:

“More SRFI directly leads to more rail freight – a fact acknowledged by Network Rail and the DfT.”

1.23 Para 6.4.30 / 1:

“Identifying a suitable approach to encouraging the development of SRFI in and near to the West Midlands will require strategic coordination between West Midlands authorities, transport stakeholders, developers, and the freight and logistics sector. Therefore, the metropolitan area is proposing the following approach to encourage the development of SRFIs:

- *Maximise the potential of existing SRFI: The SRFI located around the metropolitan should be expanded where possible and businesses encouraged to locate there within the framework set out by relevant Local Plans.*
- ***Encouraging future SRFI development:*** *We will work with the appropriate Planning Authorities within the wider West Midlands region through the Duty of Cooperation and through appropriate LEPs to ensure that:*
 - *Potential SRFI locations are identified and safeguarded; and*
 - *Planning and DCO applications for SRFI are encouraged and supported where relevant criteria are met and where there is real potential for rail freight use.”*

1.24 This strategy acknowledges that several developers have aspirations for a SRFI in southern Staffordshire. The strategy is neutral as to a preferred location, and acknowledges that, while there is finite demand for large warehouses, any development which provides rail access to a concentration of distribution centres will maximise potential for rail freight.

1.25 The Group references the Telford RFI site, which we have noted previously could co-exist alongside other SRFI, notwithstanding the lack of land for it to be developed as a SRFI, and the loading gauge constraints acknowledged by the Group (W6A from Wolverhampton and W7 from Shrewsbury, below the W8 minimum stated in the NPS (paragraph 4.85), rather than W10 gauge at WMI).

1.26 Notwithstanding the representations from the Group, the NIC reports clearly sets out the need for better spatial planning for modern logistics operations in order to achieve modal shift from road and to meet changing market conditions. The role of rail was set out as central to the decarbonisation of freight and rather than questioning the role of SRFIs it is supportive of the principles underlying the need for SRFIs – delivery of modern efficient logistics sites that maximise modal shift from roads.

Letter from Rail Freight Group to
Railway Magazine
(ExQ2.2.18)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

30 January 2019

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By email cmilner@mortons.co.uk

Dear Editor



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Right to Reply - Editorial in The Railway magazine – January 2019

In your January editorial “Genuine rail freight terminal or warehouses with seldom- used sidings” you suggest that recent applications for new rail warehousing are seeking to abuse planning law in order to get permission for their developments.

Disappointingly, the editorial is written from an anti-development perspective, with there being no attempt to provide any balance by explaining the context and need for these rail freight schemes which are currently being pursued through the Planning Act 2008.

The schemes referred to have not been proposed in a vacuum. They are a response to the Government policy set out in various documents which seeks to encourage the transfer of freight from road to rail. Specifically, in the National Policy Statement for National Networks (December 2014), the Government identified that there is a “compelling need for an expanded network of strategic rail freight interchanges (SRFIs)”. The expansion of rail freight (and consequent benefits) cannot be achieved without more terminals. The Government explains in the National Policy Statement that it is for the market to bring forward the facilities having regard to the need to transfer freight from road to rail to assist with the objective of a low carbon economy and helping to address climate change.

The importance of these objectives is the reason why SRFI are considered to be nationally significant projects and consent is required to be obtained from the Secretary of State for Transport (not the Secretary of State for Housing Communities and Local Government as incorrectly stated in the editorial). All schemes undergo extensive scrutiny from the Planning Inspectorate, under a defined and clear process which gives opportunity for objectors to raise their concerns and for them to be heard.

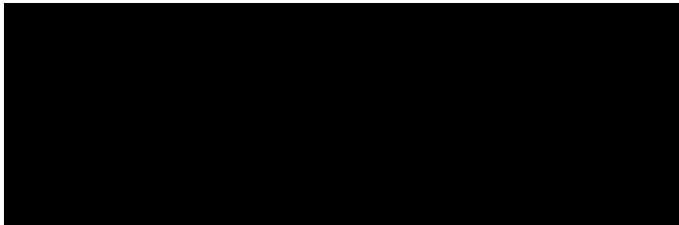
Network Rail, in its 2018 Strategic Plan, set out a longer term vision to facilitate significant rail freight growth and, in doing so, states that it plans to facilitate new strategic rail freight terminals at the locations referred to in your editorial.

Given the above context it is inappropriate for the Railway Magazine to suggest that the promotion of such schemes is simply a deliberate attempt to circumvent local planning authorities.

The reality is that, unless strategic rail freight interchanges such as these are progressed, then both existing and future warehousing (which will still be developed) will continue to be simply road served with there being no opportunity to transfer the freight from road to rail. The editorial does not address how that modal shift is to be achieved in the absence of such schemes.

Please could you make sure this letter is published in your next edition.

Yours sincerely,



Maggie Simpson
Director General

Current SRFI Proposals

(ExQ2.2.29)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

APPENDIX 5 CURRENT SRFI PROPOSALS (EXQ2.2.29)

1 Introduction

- 1.1** This note seeks to respond to ExQ2.2.29, which requests that the Applicant provides a detailed breakdown of each of the other 3 SRFI proposals which are the subject of DCO applications. This is provided in the table below. It should be noted that the Hinckley proposals are not yet the subject of a DCO application, an application is not due to be submitted until Q4 2019.
- 1.2** It should be noted that none of the SRFI DCO applications set out below have yet been approved, or indeed delivered.
- 1.3** The information provided below is taken from document published on the PINS website in support of these applications, and, in some cases, includes information based on parameters, and should not therefore be regarded as final.

	Rail Central	Hinckley National Rail Freight Interchange	Northampton Gateway	WMI
Stage	Pre-Examination (deferred)	Pre-Application	Post- Examination	Examination
Total site area	320 ha	225.57 ha	219.6 ha (main site only)	297 ha
Area of site proposed for built development and infrastructure	191 ha	Not known	144.3 ha (main site only)	195 ha
Area of site proposed for GI and other open uses	129 ha 40%	Not known	75.3 ha 34.3% (main site only)	102 ha 34.2%
Maximum area of warehouse floorspace for which consent is sought	702,097 sq m	850,000 sq m	468,000 sq m	743,200 sq m
Maximum proportion of warehousing floorspace that would have the	204,400 sq m 29%	297,519 sq m 35%	306, 580 sq m 65%	148,600 sq m 20%

potential to be rail-connected (i.e. sidings immediately adjacent to buildings)		(based on Illustrative Masterplan in Scoping Report)		
Proportion of warehouse floorspace that would be rail-served?	100%	100%	100%	100%
Number of trains per day assumed on opening and in the longer term.	4 trains initially, with up to 13 trains long term.	4 trains initially, with up to 12 trains long term.	4 trains initially, with up to 16 trains long-term.	4 trains initially, with up to 10 trains long-term.

SRFI and Rail Terminal Commitments

(ExQ2.2.30)

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APPENDIX 6

SRFI AND RAIL TERMINAL COMMITMENTS

- 1.1 Three separate tables are provided below, showing:
- SRFIs and Rail Terminals that have been **delivered / are under construction**;
 - SRFIs and Rail Terminals that have **been consented, but not implemented**; and
 - SRFIs and Rail Terminals that are **under consideration**.
- 1.2 As demonstrated in the tables below, there are no recent examples of rail terminals being delivered before the occupation of warehousing.
- 1.3 Of the projects more recently consented, but not implemented, conditions that were too onerous on the delivery of rail terminal were placed on the consents.
- 1.4 Earlier applications, which required the delivery of rail terminals before the occupation of warehousing, often benefitted from an existing rail connection to the mainline – significantly aiding the delivery of a functioning rail terminal.

2 Delivered / under construction

Scheme	Date of Decision	Pre-existing rail connection to main line?	Rail terminal required to be provided	Warehousing occupied prior to opening of rail terminal?	Current position
Hams Hall	27/01/1994	Yes (to former power station)	Prior to occupation	Unknown	Rail terminal operational, currently handles 5 trains per day
DIRFT I	28/06/1994	No	Prior to occupation	No	Rail terminal operational, DIRFT I/II currently handle 10 trains per day
Wakefield Europort	28/10/1998	No	Prior to occupation	Unknown	Rail terminal operational, currently handles 2 trains per day
Birch Coppice	23/05/2002	Yes	Prior to occupation	Unknown	Rail terminal operational, currently handles 5 trains per day
DIRFT II	20/12/2002	Yes (DIRFT I)	Prior to occupation	No	Rail terminals operational, DIRFT I/II currently handle 10 trains per day
iPort	19/08/2011	No	Initially prior to occupation but delays in achieving rail access led to amendment by agreement to allow for occupations prior to terminal being open	155,612 sq m built and occupied prior to start of rail services	155,612 sq m built and occupied, rail terminal opened February 2018, rail services started September 2018, now handles 4 trains per day
London Gateway Logistics Park	01/10/2013	No (adjacent to former sidings serving refinery)	Following occupation of 400,000 sq m of floorspace	No	98,800 sq m of floorspace occupied or under construction, port intermodal terminal opened April 2017, now handles 9 trains per day

DIRFT III	03/07/2014	Yes (DIRFT I/II)	Following occupation of 1,650,000 sq m of floorspace	48,305 sq m built and occupied prior to start of rail services Plot 1 37,545 sq m Plot 2 10,760 sq m	Site being prepared for development, existing rail terminals at DIRFT I/II remain operational, handling 10 trains per day
East Midlands Gateway	12/01/2016	No	Following occupation of 260,000 sq m of floorspace	176,700 sq m warehousing occupied / under construction. Rail terminal under construction	176,700 sq m warehousing occupied/under construction. Rail terminal under construction and due to open Autumn 2019

3 Consented, but not implemented

Scheme	Date of Decision	Pre-existing rail connection to main line?	Rail terminal required to be provided	Warehousing occupied prior to opening of rail terminal?	Current position
Alconbury	10/12/2003	No	Prior to occupation	Not implemented	Not implemented
Howbury Park (ProLogis)	20/12/2007	Yes	Prior to occupation	Not implemented	Not implemented
Radlett	14/07/2014	Historic branch line traversed site	Prior to occupation	Yet to be implemented	Not implemented

4 Under Consideration

Scheme	Date of Decision	Pre-existing rail connection to main line?	Rail terminal required to be provided	Warehousing occupied prior to opening of rail terminal?	Current position
Northampton Gateway	Proposed	No	Prior to occupation	DCO application being processed	DCO application being processed
Rail Central	Proposed	No	Prior to occupation	DCO application being processed	DCO application being processed

SRFI Consents in the Green Belt

(ExQ2.3.1)

The West Midlands Rail Freight Interchange Order 201X

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APPENDIX 7

SRFI CONSENTS IN THE GREEN BELT (EXQ2.3.1)

1 Purpose of note

1.1 This note seeks to respond to ExQ2.3.1 (i), which requests that the Applicant provides copies of the relevant Decision Letters and Inspectors' Reports in respect of sites (a) and (b) and of the relevant Committee Report and Decision Notice in respect of site (c) such that, in each case, the ExA is able to understand the following matters:

- The overall size of the application site and the split between hard development (rail and road infrastructure and buildings) and GI/other open uses.
- What planning conditions or other controls (for example through a S106 agreement or undertaking) were imposed in those decisions as to the volume of warehousing or other floorspace that might be completed and occupied prior to the associated rail connection and intermodal terminal being completed and available for use?
- What conditions/controls were imposed by the decision maker as to any obligation to maintain and keep the rail facilities available for use following their completion?

1.2 Sites (a), (b), and (c) are set out below:

(a) Radlett- permission granted by SoS in July 2014;

(b) Howbury Park- permission granted by SoS in September 2007;

(c) iPort, Doncaster- permission granted by Doncaster Council in August 2011.

2 Requested documentation

2.1 The requested documentation is available at the following appendices to this note:

- Annex A – Radlett Decision Letter (2014)
- Annex B – Radlett Inspectors Report (2014)
- Annex C – Howbury Park Decision Letter (2009)
- Annex D – Howbury Park Inspectors Report (2007)
- Annex E – Howbury Park S106 (Non-Highway Obligations) (2007)
- Annex F – iPort Decision Notice (2011)
- Annex G – iPort Committee Report
- Annex H – iPort 2016 NMA Decision Notice (2016)

2.2 Available details of the size of each of the sites and the split between hard development and GI/open uses is summarised in the table at 4.1 provided further below for convenience.

3 Applicant's Consideration of the Applications

- 3.1 All three of the consents referred to were granted consent under the TCPA and all three were required to demonstrate very special circumstances on account of their Green Belt location.
- 3.2 Of these three SRFI consents, Radlett is the most recent. The proposals were strongly opposed by the LPA and local opposition groups.
- 3.3 At Radlett the Secretary of State agreed with the Inspector that:
- a) the proposals would be inappropriate development in the green belt and that, in addition, the scheme would contribute to urban sprawl;
 - b) there was a recognised need for an SRFI (para 53 of the decision letter and set out in para 13.111 of the Inspector’s report); and
 - c) that there was a lack of more appropriate alternative locations (para 53 of the decision letter and para 13.119 of the Inspector’s report)
 - d) that there were local benefits of the proposals for a country park and other improvements.
- 3.4 The Secretary of State considered that these considerations, taken together, clearly outweighed the harm to the Green Belt and other identified harms, including harm in relation to landscape and ecology, and that the need for and benefits of the proposals amounted to very special circumstances. (paragraph 53 of the decision letter).
- 3.5 The Alternative Sites Assessment was said to be flawed in an earlier appeal on the Radlett site but in the 2009 inquiry the appellants were able to demonstrate to the Inspector and the Secretary of State that there was a lack of alternative sites. This is summarised in paragraph 45 of the decision letter below:
- “45. The Secretary of State agrees with the Inspector’s analysis at IR13.112 – 13.115. He agrees with the Inspector that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate 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.” (IR13.114)*
- 3.6 The only SRFI of the three to have been developed out is the iPort scheme in Rossington, Doncaster. The 2009 committee report begins with a summary of the main points as follows:
- *“The applicant has carried out an extensive need and site selection exercise and the site is considered in economic terms to be an acceptable site in a regional context*
 - *The proposed development would reinforce the Borough Economic Strategy which supports the RSS in concentrating logistics development in Doncaster. The terminal will improve the competitiveness of the region and assist in the regeneration of Doncaster and Rossington*
 - *The applicant states that the development will lead to a net reduction in Heavy Goods Vehicle movements and emissions including CO2 due to the transfer of freight from road to rail which is considered to be an important benefit*
 - *The development would have significant environmental impacts on the character and appearance of this part of the Green Belt. The application puts forward substantial environmental mitigation proposals which are considered to outweigh the impacts*



West Midlands Interchange

- *The development will have an impact on the existing local and strategic highway network. The development is considered to provide an acceptable level of provision of transportation facilities to support the development*
- *It is concluded that there is an exceptional economic case to justify release land in the Green Belt for the proposed development, and that environmental and transportation impacts are acceptable*
- *It is therefore recommended that Members support the application subject to a Section 106 Obligation and the attached conditions.”*

3.7 The delivery of iPort has been slower than originally anticipated, in part due to the condition originally imposed preventing the occupation of any warehouse units ahead of the rail terminal. Applications were submitted and approved to vary that condition and subsequently the development including rail connection has proceeded and is now operational. The scheme now has 155,612 sq m built and occupied and the rail terminal opened in February 2018. Rail services started in September 2018, with 4 trains currently handled per day.

3.8 All three of the original consents required that the rail connection should be provided ahead of any warehousing on site being occupied.

3.9 To date none have delivered warehousing ahead of the rail terminal being operational, as is set out below and in the table at 4.1 at the end of this note:

- **Radlett** - Not yet implemented almost 5 years after the decision;
- **Howbury Park** – The consent granted in 2007 was allowed to lapse. The Applicant understands that this was due to the global financial crisis in 2008; and
- **iPort** –To secure investment the developers applied for and achieved consent to vary condition 22 to allow for the occupation of 155, 612 sq m of floorspace ahead of the terminal being operational.

3.10 The reasons for rail terminals not being available for use on the occupation of the first warehouse vary, but as is set out in Appendix 3 of the Applicant’s Post Hearing Submission (REP4-004), there appears to be a threshold as to how much floorspace a site may need before being able to attract wider investment and freight trains to the site. Once this threshold has been reached, evidence illustrates that the number of trains visiting a SRFI tend to grow quickly.

3.11 In the case of iPort, the flexibility afforded to the developers through the variations to the original consent, has eventually led to much needed investment through the delivery of both floorspace and the rail terminal. At iPort, condition 22 of the original consent was first varied under 13/00404/MAT to allow for the occupation of the Proposed Unit 1 on the site. As set out in the NMA letter dated 11th March 2016 the reasoning behind this related to interest from a potential occupier whose timescales would have preceded the opening of the rail link. On the basis of securing investment and jobs, and to kick-start the development of the wider site, it was agreed to vary condition 22.

3.12 Following that variation, and in the light of changing market demand, the condition was altered again to allow the first 130,000 sq m of floorspace to be occupied.

3.13 In the intervening period the developer continued to progress discussions with occupiers and with Network Rail. There was progress on site with earthworks being formed for the rail terminal area.



However, it is apparent from the committee reports that the developer was experiencing difficulties in marketing the site, since the potential first occupiers of the site saw the condition (22 as amended) as a significant hurdle to occupation, as the timescales for bringing the rail link into place were not definite at that time.

- 3.14 The most recent application for a Non Material Amendment to condition 22 was agreed by letter dated 11th March 2016, see Appendix 8.
- 3.15 The development has since proceeded, the rail terminal has been delivered and it currently operates with 4 trains a day.
- 3.16 Alconbury is another example where a consented SRFI was not progressed. The permission at Alconbury (2003) was also subject to a condition requiring the provision of the rail link before any warehousing could be occupied. The Applicant understands that the decision not to proceed with this project was in large part due to the costs associated with meeting the conditions¹.

Other DCO SRFIs

- 3.17 Of the SRFIs (other than the Proposed Development) which have gone through (or are going through) the Development Consent Order (DCO) process, the same is true, with no sites yet having delivered a rail terminal ahead of warehousing being occupied, as is set out below:
 - **Daventry International Rail Freight Terminal (DIRFT) III** site being prepared for development, (with the occupation of 1,650,000 sq ft of floorspace allowed prior to the new terminal being operational);
 - **East Midlands Gateway (EMG)** has 176,700 sq m occupied, or under construction, with the rail terminal due to open in Autumn 2019 (with the occupation of 260,000 sq m of floorspace allowed prior to the rail terminal being operational);
 - **Northampton Gateway (NG)** is currently awaiting determination. As currently drafted the DCO requires that the rail terminal is operational prior to any of the floorspace being occupied (of course, this has not yet been delivered);
 - **Rail Central** is very close to Northampton Gateway and yet to start Examination. As currently drafted the DCO requires that the rail terminal is operational prior to any of the floorspace being occupied (of course, this has not yet been delivered);
 - **Hinkley National Rail Freight Interchange (HNRFI)** is in the pre-application phase, and there is not yet any firm indication as to when the terminal is proposed to be delivered.

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4 Details sought

4.1 For ease, the information requested by the ExA is set out below:

	Radlett (2014)	Howbury Park (2007)	iPort (2011)
Application Site (ha)	419 ha	61 ha	397.4 ha
Planning References	APP/B1930/A/09/2109433 (Annex A and B)	APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457 (Annex C and C)	09/00190/OUTA (Annex F) 16/00227/MAT (Annex H)
Date of Decision	14 July 2014	20 December 2007	19 August 2011 11 March 2016 (NMA)
Split between hard development (rail, road and development zones) and GI / other open uses)	Built Development Area 172ha (41%) Country Park and Publicly Accessible Open Space 247ha (59%)	Only indicatively provided. 50.6 ha of land to the north of the Site to be passed over for the long-term protection of the land, in addition to a significant portion of the site.	The Development Site 171 ha (43%) The Access Corridor 68.3 ha (17.1%) The Countryside Area 158.1 ha (39.8%)
Details of current position	Consent not implemented to date.	Consent was not implemented and has lapsed.	155,612 sq m built and occupied, with the rail terminal opened in 5 February 2018. Rail services started in September 2018, with 4 trains currently handled per day

<p>Timing of Rail Terminal</p>	<p>Prior to the occupation of any warehousing</p>	<p>Prior to the occupation of any warehousing</p>	<p>Initially prior to occupation of any warehousing, but delays in achieving rail access led to an amendment to the planning consent to allow to occupations prior to the rail terminal being open</p> <p>(155,612 sq m)</p>
<p>Rail Terminal Condition Text</p>	<p><i>“12.1 None of the Units shall be occupied until the Midland Mainline Connection Works have been completed and until an operational rail link has been provided from such works to the relevant Unit.”</i></p> <p><i>“12.3 None of the Units shall be occupied until the Intermodal Terminal Phase 1 Works have been completed.”</i></p>	<p><i>“Section 106 U/U Non-Highway Obligations Schedule 1”</i></p> <p><i>“1.2: To provide the Rail Infrastructure with the exception of the rail sidings to the individual Rail Served Warehouse (RSW) complete and capable of use prior to the opening of the IMT and not to allow the Beneficial Occupation of any RSW until the IMT is operational.”</i></p> <p><i>“1.3 To provide the rail sidings to the individual RSW complete and capable of use prior to the Beneficial Occupation of that RSW.”</i></p>	<p><i>“22. No Unit shall be occupied until a freight line and other infrastructure required to ensure rail use linking that Unit to the existing rail freight line has been constructed and the rail link is operational unless otherwise agreed in writing by the local planning authority. The rail line and other infrastructure shall be constructed in accordance with the details to be submitted and approved in writing by the local planning authority and shall be retained for that purpose and no railway line or siding shall be removed, realigned or close to rail traffic unless otherwise agreed in writing by the LPA.”</i></p> <p>Modified 11/03/2016:</p>

			<p><i>“Only the units IP1, IP2A, IP2B and IP2D [totalling 155,612 sq m], shall be occupied until a freight line and other infrastructure required to ensure that the existing rail freight line is connected to the site and the rail link is operational, unless otherwise agreed in writing by the local planning authority. The rail line and other infrastructure shall be constructed in accordance with the details to be submitted and approved in writing by the local planning authority and shall be retained for that purpose and no railway line or siding shall be removed, realigned or close to rail traffic unless otherwise agreed in writing by the LPA.”</i></p>
<p>What conditions / controls were imposed by the decision maker as to any obligation to maintain and keep the rail facilities available for use following their completion?</p>	<p><i>“Condition 12.4 The Midland Mainline Connection Works and the rail links to each of the Units and the Intermodal Terminal once provided shall thereafter be managed and maintained such that they remain available and operational to serve the Units.”</i></p>	<p><i>“1.4 To provide the occupants of each RSW with the Lift Subsidies throughout a three year period commencing in each case with the date of occupation of the RSW concerned and finishing upon the third anniversary thereof or when the funds in the Rail Subsidy Fund from which the Lift Subsidies are to be paid</i></p>	<p><i>“.....The rail line and other infrastructure shall be constructed in accordance with the details to be submitted and approved in writing by the local planning authority and shall be retained for that purpose and no railway line or siding shall be removed,</i></p>



		<p><i>are exhausted whichever is the earlier and to provide full details of such payments to TfL and the Borough Council on a quarterly basis”</i></p> <p><i>“1.5 To provide users of the IMT with the Lift Subsidies throughout a three year period commencing with the date of commencement of the operation of the IMT and finishing upon the third anniversary thereof or when the funds in the Rail Subsidy Fund from which the Lift Subsidies are to be paid are exhausted whichever is the earlier and to provide full details of such payments to TfL and the Borough Council on a quarterly basis”</i></p> <p><i>“1.6 To provide a regular train service to an appropriate rail freight "hub" agreed with TfL and the Borough Council from time to time (following consultation with the Rail Officer and the operator of the IMT) to and from the Development being a minimum of one train per week either by providing an additional service or by arranging the diversion of an existing service for a period of three</i></p>	<p><i>realigned or close to rail traffic unless otherwise agreed in writing by the LPA.”</i></p>
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		<p><i>years from the date of commencement of operation of the IMT or when the funds in the Rail Subsidy Fund are exhausted whichever is the earlier.”</i></p> <p><i>“1.7 In the event that the total cost of meeting the obligations set out in paragraphs 1.4, 1.5 and 1.6 is less than the Rail Subsidy Fund then the balance of the Rail Subsidy Fund shall be used for other measures to promote rail usage at the Development such measures to be agreed between TfL the Borough Council the Owners and PDL (following consultation with , the Rail Officer and the operator of the IMT).”</i></p>	
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Annex A - Radlett Decision Letter (2014)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited



Department for
Communities and
Local Government

Our Ref: APP/B1930/A/09/2109433
Your Ref: 5/09/0708

Erica Mortimer
CgMS Ltd
Morley House
26 Holborn Viaduct
London
ED1A 2AT

14 July 2014

Dear Madam

**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**

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 between 24 November and 18 December 2009 into your client's appeal against a decision by St Albans City & District Council (the Council) to refuse 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.

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 of major importance having more than local significance and because it is for significant development within the Green Belt.

3. The Secretary of State issued his decision in respect of the above appeal in his letter dated 7 July 2010. That decision letter was the subject of an application to the High Court and was subsequently quashed by order of the Court dated 4 July 2011. The appeal therefore falls to be redetermined by the Secretary of State.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to the IR.

Matters arising since 7 July 2010

5. Following the quashing of his decision letter of 7 July 2010, the Secretary of State issued a letter, dated 15 September 2011, under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, to all interested parties, setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. These matters were:

- a. The views expressed by the Secretary of State in paragraph 33 of the quashed decision letter with regard to the Inspector's proposed Condition 33 - alternatives 1- 3, and the weight to be given to the planning obligation in the form submitted by the appellant and made by unilateral undertaking dated 16 January 2008.
- b. Whether or not Hertfordshire County Council is prepared to join as a party to the undertaking in the light of the Secretary of State's comments made in paragraphs 32 and 33 of the quashed decision letter; or if the parties to the undertaking wish him to consider any other amendments to the undertaking which might overcome his concerns about its enforceability.
- c. Any new matters or change in circumstances which the parties consider to be material to the Secretary of State's further consideration of this appeal.

6. On 19 October 2011, the Secretary of State circulated the responses he had received to his letter of 15 September 2011. On 29 November 2011 he circulated the responses he had received to his letter of 19 October 2011, and invited comments on the Department for Transport's updated policy guidance note on Strategic Rail Freight Interchanges, the Department for Transport's review document on logistics growth, and a joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government.

7. On 1 February 2012, the Secretary of State circulated the responses he had received to his letter of 29 November 2011 and stated that he was of the view that he was in a position to re-determine the appeal on the basis of all the evidence and representations before him.

8. Following the publication of the National Planning Policy Framework ("the Framework"), which replaced the national planning policy documents set out in its Annex 3, the Secretary of State wrote to parties on 29 March 2012 inviting comments on the relevance of the Framework to this appeal. On 18 April he circulated the responses he had received to his letter of 29 March. The Secretary of State has given careful

consideration to all of the representations received and he considers that, for the most part, the issues raised in relation to the Framework cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State wishes to make clear that he has not revisited issues which are carried forward in the Framework, and which have therefore already been addressed in the IR, unless the approach in the Framework leads him to give different weight. Notwithstanding the replacement of the majority of former national planning policy documents by the Framework, the Secretary of State considers that the main issues identified by the Inspector remain essentially the same.

9. On 19 September 2012, the Secretary of State wrote to parties inviting comments on re-opening the inquiry into the Radlett appeal and conjoining it with the planned inquiry into the proposed SRFI at Colnbrook, Slough (Appeal Reference: APP/J0350/A/12/2171967). On 12 October 2012 the Secretary of State wrote to parties and circulated copies of the responses he had received to his letter of 19 September 2012. On 14 December 2012 the Secretary of State wrote to parties stating that he had concluded that it was unnecessary for him to re-open the inquiry into the Radlett appeal and conjoin it with the planned inquiry into the Colnbrook appeal and that he was satisfied that he could determine the Radlett proposal on the basis of the evidence before him.

10. The Secretary of State wrote to you on 20 December 2012 indicating that he was minded to allow the appeal subject to the provision of a suitable planning obligation which binds all of those with an interest in the appeal site. You submitted a new planning obligation (dated 19 December 2013) on 20 December 2013 and, on 19 February 2014, the Secretary of State wrote to parties inviting comments on that obligation. On 14 March 2014, the Secretary of State circulated the responses he had received and invited comments on (i) those responses, (ii) the Planning Practice Guidance (the Guidance) published on 6 March 2014 and the cancellation of previous planning practice guidance documents, and (iii) any material changes of circumstances that have occurred since 20 December 2012. On 1 April 2014, the Secretary of State circulated the responses he had received and invited final comments on those representations.

11. Responses received following the letters referred to above and the other representations received following the close of the inquiry are listed at Annex A below. The Secretary of State has given all these representations very careful consideration in his determination of this appeal. He is satisfied that those representations which have not been circulated to interested parties do not raise any matters that would affect his decision or require him to refer back to parties on their contents for further representations prior to reaching his decision. Copies of the representations referred to are not attached to this letter. However, copies will be made available to interested parties on written request to either of the addresses at the foot of the first page of this letter.

Procedural Matters

12. 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 and the Inspector's comments at 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 proposal.

13. At the Inquiry, an application for award of costs was made by your client against St Albans City & District Council. This application was decided by the Secretary of State in his costs decision letter of 7 July 2010.

Policy considerations

14. In determining the appeal, 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.

15. In this case, the relevant parts of the development plan comprise the saved policies of 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 referred to by the Inspector at IR13.27. He is satisfied that these policies are generally consistent with the Framework.

16. Other material considerations which the Secretary of State has taken into account include: the Framework; the Guidance; the Community Infrastructure Levy (CIL) Regulations; The London Plan 2011 (as amended October 2013) including Policies 6.14 and 6.15 and the draft further alterations to the London Plan (January 2014).

17. The Secretary of State has also had regard to the Strategic Rail Authority's (SRA) *Strategic Rail Freight Interchange Policy* (published in 2004) as a material consideration. He has taken account of the Inspector's comments on the document (IR13.30 – 32) and he agrees with the Inspector that, although the SRA has ceased and some of its former responsibilities have transferred to Network Rail, the document is still a source of advice and guidance (IR13.30). The Secretary of State has also taken account of the Department for Transport's Strategic Rail Freight Interchange Policy Guidance and its Logistics Growth Review Document (both published on 29 November 2011), and the joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government on 29 November 2011.

18. He has also had regard to Slough's Core Strategy 2006-2026 (2008), the saved policies of the Slough Local Plan (2004) and the Revised Pre-submission Version of the Development Strategy for Central Bedfordshire (DSCB) (June 2013).

19. The East of England Plan (EEP) formed part of the development plan when the Inspector wrote his report. The Order revoking the Plan had been laid but had not come into force when the Secretary of State issued his letter of 20 December 2012. However the EEP was revoked on 3 January 2013 and the Secretary of State has not had regard to it in his determination of this case.

20. The South East Plan (SEP), which was a material consideration when the Inspector wrote his report and which remained in place and attracted limited weight when the Secretary of State issued his letter of 20 December 2012, was partially revoked on 25 March 2013. The Secretary of State has not had regard to it in his determination of this case.

21. The Secretary of State has taken account of the fact that the Inspector attributes little weight to the emerging St Albans City and District Core Strategy Development Plan Document which was published in 2009 (IR13.28). The Secretary of State notes that,

since the IR was written, the Council has taken a number of steps in the development of new development plan documents. However, at this stage the Council's emerging development plan is not sufficiently advanced to carry material weight.

Legal Submissions

22. In addition to the material considerations referred to above, the Secretary of State has taken account of Inspector Phillipson's report dated 4 June 2008 and the associated decision letter dated 1 October 2008. The Secretary of State has considered the Inspector's comments on the submissions made by your client, the Council and STRIFE about how the current case should be approached in view of the Secretary of State's 2008 decision on the appeal site (IR13.8 – 13.18). For the reasons given by the Inspector in those paragraphs, he agrees with the Inspector's conclusion at IR13.19 that, if there is a very good planning reason, he is able to differ from the conclusions or decision of his predecessor.

Main issues

23. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR13.20 and whether the proposal complies with the development plan and with national policy.

Green Belt

24. Having had regard to the Inspector's comments at IR13.35, the Secretary of State concludes that the appeal proposal would be inappropriate development in the Green Belt and that it is harmful as such. As the proposal amounts to inappropriate development he considers that, in the absence of very special circumstances, it would conflict with national policies and with LP policy 1 which concern the protection of the Green Belt. The Secretary of State agrees with the Inspector's further analysis at IR13.35 and concludes that the proposal would have a substantial impact on the openness of the Green Belt, that it would result in significant encroachment into the countryside, that it would contribute to urban sprawl and that it would cause some harm to the setting of St Albans. For the reasons given by the Inspector at IR13.36 – 13.39, the Secretary of State is satisfied that the proposal would not lead to the merging of neighbouring towns (IR13.38). He also agrees with the Inspector's analysis and conclusion that the aim to encourage the recycling of derelict and other urban land would not be frustrated by the proposal (IR13.40).

Other Harm

25. 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 LP (IR13.44).

26. In 2008, the former Secretary of State found that the harm to ecological matters would not be significant (IR13.45). However, for the reasons given by the Inspector (IR13.45 – 13.46), the Secretary of State shares his view that the proposal would conflict with Policy 106 of the LP (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, more weight should be attached to the harm to ecological interests (IR13.46).

27. Having taken account of the section 3.2.4 of the November 2011 Strategic Rail Freight Interchange Policy Guidance, which states that the availability of an available and economic workforce will be an important consideration and the Inspector's comments at IR13.47 – 13.48, the Secretary of State agrees with the Inspector and he too concludes that it would not 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 (IR13.48).

28. 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. Whilst he has taken account of the comments on highways matters put forward by interested parties following the close of the inquiry, including the matters raised by Anne Main MP in her letters of 5 March (and her attached letter dated 27 January 2014) and 14 April 2014 and the concern expressed in the letter dated 27 March 2014 from the Radlett Society & Green Belt Association, he does not consider that highway concerns amount to a reason for refusal in this case.

29. The Secretary of State agrees with the Inspector's analysis, as set out at IR13.59 – 13.71, with regard to the impact of noise generated by the proposed development. He has given careful consideration to the point about noise made by STRIFE in its letter of 15 April 2014 and the statement from Network Rail in its letter of 26 March 2014 that the connections to and from the Radlett terminal should be designed to be capable of 45mph operation. He observes that the question of when and how the junction will be used by trains entering and exiting the SRFI is a matter for negotiation with Network Rail and he does not consider that STRIFE's representation undermines his conclusions in relation to noise. Like the Inspector (IR13.71), he is satisfied that, with the inclusion of the three 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.

30. 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).

Other considerations

31. The Secretary of State has had regard to the Inspector's comment at IR13.34 that, as the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents. The Secretary of State observes that the Written Ministerial Statement of 29 November 2011 makes clear that there remains a need for a network of SRFIs to support growth and create employment and that it has proved extremely problematical, especially in the South East, to create appropriately located SRFIs. The SRFI Policy Guidance published on 29 November 2011 states that only one SRFI had been granted planning consent in the whole of the South East region and advises that SRFI capacity needs to be provided at a wide range of locations, particularly but not exclusively serving London and the South East. The Secretary of State has had regard to the comment made by STRIFE (letter of 4 March 2014) that the proposed SRFI at Howbury Park has not been delivered. However, he tends to the view that this only serves to reinforce the point made in the 2011 Written Ministerial Statement on Strategic Rail Freight Interchanges that, in the South East in particular, it is proving extremely problematical to develop SRFIs.

Whether the development would operate as an SRFI

32. The Secretary of State has carefully considered the Inspector's analysis and conclusions as to whether the development would operate as an SRFI including his statement (IR13.79) that Network Rail does not consider that there are any major technical obstacles to achieving a connection such as is proposed at the site (IR13.76 – 13.83). He has also taken account of the further comments on this matter submitted following the close of the inquiry, including the letters from STRIFE dated 4 March and 15 April 2014 which raise the matter of junction speed. The Secretary of State has also given careful consideration to your representation dated 28 March 2014 and the letters of 1 November 2011 and 26 March 2014 from Network Rail, and those dated 11 November 2011 and 31 March 2014 from the Department for Transport. He observes that the letter dated 31 March 2014 states that Network Rail, as both the owner and operator of the rail infrastructure and the author of a very recent Freight Market Study that seeks to identify the market demand and infrastructure needs for rail freight over the coming thirty years, may be regarded as authoritative on these matters. Having taken account of the comments made, the Secretary of State sees little reason to doubt Network Rail's view that there is no good reason why a junction at Radlett capable of 45 mile per hour operation cannot be achieved.

33. Overall, the Secretary of State sees no good reason to disagree with the Inspector's analysis or with his conclusions 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) and that he can be satisfied of the ability of the SRFI to be accessed from all the key destinations (IR13.82). He further agrees that there is no reason to doubt that the Midland Main Line will develop as a key part of the rail freight network and that the aim of Network Rail and rail regulators will be to enable freight to be carried efficiently, albeit without compromising its passenger carrying ability (IR13.83).

Alternatives

34. 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). The Secretary of State sees no reason to disagree with the Inspector's comments on the appellant's assessment of the long list sites (IR13.92 – 13.94).

35. The Secretary of State notes that, at the inquiry, the cases put forward by the Council and by STRIFE included argument in relation to London Gateway (LG) and that, in his conclusions the Inspector refers to LG at IR13.85 and IR13.88. A number of the representations submitted to the Secretary of State since his letter of 20 December 2012 have also referred to LG. In particular Anne Main MP (7 January 2014) and STRIFE (4 March and 15 April 2014) both state that the opening of the LG container port amounts to a material change in respect of this proposal. Barton Willmore in its letter of 27 March 2014, Network Rail in its letter of 26 March 2014 and you, in your representation of 28 March 2014, disagree with that view. The Secretary of State has given careful consideration to the views submitted alongside the Inspector's analysis and conclusions and he concludes that there is no good reason to consider that the opening of LG undermines the Alternative Sites Assessment or the Inspector's views on LG at IR13.85.

36. The Secretary of State has given very careful consideration to the Inspector's comments about the appellant's short listed sites (IR13.95 – 13.103). He sees no reason to disagree with the Inspector's remarks about the sites at Littlewick Green or Harlington (IR13.95 – 13.98).

37. With regard to the Upper Sundon site, the Secretary of State has taken account of the Inspector's remark that there was no suggestion by any party that Upper Sundon scored better than the appeal site and that the Inspector saw no reason to disagree with that (IR13.95). The Secretary of State observes that the 2014 version of the emerging DSCB includes policy 64 which allocates 5 hectares of land at Sundon for an intermodal rail facility and states that the Green Belt boundary follows the extent of the rail freight interchange. As the submission version of the DSCB has yet to be published, the Secretary of State considers that this limits the weight to be attributed to the document.

38. A number of representations (including those from Anne Main MP dated 27 January and 14 April 2014 and those from STRIFE dated 4 March and 15 April 2014) have pointed to the Upper Sundon site as offering a preferable alternative to Radlett. The Secretary of State observes that Network Rail, in its letter dated 26 March 2014, states that it has worked with the developers of both the Sundon and the Radlett schemes, that Sundon is a significantly smaller site than Radlett and that it does not consider that the two proposals fulfil the same purpose or act as alternatives to each other. The Secretary of State sees no reason to disagree with the view of the Department for Transport in its letter of 31 March 2014 that Network Rail, as both the owner and operator of the rail infrastructure and author of the Freight Market Study, may be regarded as authoritative on these matters and he gives the views of Network Rail full weight. In conclusion on this matter, the Secretary of State does not consider that the Sundon site can be regarded as a preferable alternative to the proposal before him.

39. The Secretary of State has had regard to the Inspector's assessment of the site identified at Colnbrook (IR13.99 – 13.103) and the fact that appeal reference: APP/J0350/A/12/2171967 was made on 5 March 2012. As indicated by the Inspector (IR13.100), the Strategic Gap designation has been brought forward in Slough's adopted Core Strategy. The Secretary of State observes that the Core Strategy states that development will only be permitted in the Strategic Gap if it is essential to be in that location. He has also had regard to the High Court judgment referred to at paragraph 3 above, in which the judge held (at paragraph 79) that the Slough Core Strategy sets an additional policy restraint beyond that which follows from the site's location in the Green Belt. In common with the Inspector (IR13.100), the Secretary of State attributes substantial weight to the Strategic Gap designation. In conclusion on this matter, the Secretary of State sees no reason to disagree with the Inspector's analysis and conclusions in respect of Colnbrook (IR13.100 – 13.103).

Other benefits

40. Having had regard to the Inspector's analysis at IR13.104, the Secretary of State shares his view that the Park Street and Frogmore bypass is a local benefit which carries a little weight. He also agrees with the Inspector's reasoning and conclusions with regard to the proposals for Areas 3 to 8 (IR13.105).

The Planning Balance including Prematurity

41. The Secretary of State agrees with the Inspector's comments at IR13.106. He has concluded (at paragraph 24 above) that the proposal would constitute inappropriate development and that further harm would arise from a substantial loss of openness,

significant encroachment into the countryside and that the development would contribute to urban sprawl. He considers that the harm arising thereby would be substantial and that, in addition, some further harm would be caused to the setting of the historic city of St Albans (IR13.106). In line with paragraph 88 of the Framework, the Secretary of State has attached substantial weight to the harm that the appeal scheme would cause to the Green Belt.

42. As set out at paragraph 25 above, the Secretary of State has concluded that the effect of the proposal on the landscape and visual impact would be moderately adverse and that it would be contrary to Policy 104 of the LP. In addition, he has found that conflict would arise in respect of LP Policy 106 and that the harm to ecological interests should be given more weight than in 2008 (paragraph 26 above).

43. In common with the Inspector (IR13.109), the Secretary of State concludes overall that harm would arise from the Green Belt considerations and also due to the impact on landscape and ecology.

44. Turning to the benefits offered by the appeal scheme, like the Inspector (IR13.110), the Secretary of State weighs in the scheme's favour the country park, the improvements to footpaths and bridleways, the provision of a bypass to Park Street and Frogmore, the predicted reduction of CO₂ emissions, and the employment benefits. The Secretary of State has had regard to the Inspector's comments at IR13.111 and, also bearing in mind his remarks at paragraph 31 above, he shares the Inspector's view that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight.

45. The Secretary of State agrees with the Inspector's analysis at IR13.112 – 13.115. He agrees with the Inspector that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate 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 (IR13.114).

46. For the reasons given by the Inspector at IR13.116 – 13.117, the Secretary of State agrees with the Inspector that there is no reason to conclude that determination of the proposal would be premature (IR13.117).

Conditions & Obligations

47. Having had regard to the proposed conditions set out at annex A of the Inspector's Report the Inspector's comments on conditions (IR12.1 – 12.19) and the parties' further representations on conditions, the Secretary of State is satisfied that proposed conditions 1-32 are reasonable and necessary, and meet the tests set out at paragraph 206 the Framework.

48. In his letter of 20 December 2013, the Secretary of State invited you to provide him with a planning obligation under section 106 of the Town and Country Planning Act 1990 which binds all those with an interest in the appeal site. On 20 December 2013 Hogan Lovells LLP submitted a Unilateral Undertaking dated 19 December 2013 and, as set out above, the Secretary of State gave parties the opportunity to comment on that document. The Secretary of State has given very careful consideration to the comments made including the concerns raised by the Council and the comments submitted on behalf of the appellant in respect of those concerns.

49. The Secretary of State takes the view that the 2013 obligation includes the same or substantially similar covenants as those within the 2009 obligation (evidence document 9/HS/INQ/11.0). Notwithstanding the provisions in the 2013 obligation that Hertfordshire County Council shall give reasonable assistance to the Council in respect of its fourth, sixth and seventh covenants, the Council has advised that it lacks expertise or power in respect of some measures in the obligation. The Secretary of State, however, sees little reason to anticipate that Hertfordshire County Council would not provide such reasonable assistance as might be required by the Council to ensure that the relevant covenants would meet their aims and indeed it would be against Hertfordshire County Council's own interests and responsibilities as highways authority not to provide that reasonable assistance. In any event, the Secretary of State takes the view that it is more likely that a developer would need to have control over all of the areas of the land which are required for the development including the land currently owned by Hertfordshire County Council in order to deliver the appeal scheme to which this decision letter relates. The Secretary of State has considered whether this is a case where there are no prospects at all of the development starting within the time limit imposed by the permission and he is satisfied that this is not such a case.

50. With regard to the points made by parties as to whether the costs set out in the 2013 obligation are adequate, as previously indicated, the Secretary of State considers them to be so.

51. In conclusion on this matter the Secretary of State considers that, as sought by his letter of 20 December 2012, the Unilateral Undertaking dated 2013 is a duly certified, signed and dated planning obligation which complies with the relevant statutory provisions of sections 106 and 106A of the Town and Country Planning Act 1990 and the CIL regulations 2010 as amended. He considers that the 2013 obligation binds that part of the land which was not bound by the 2009 obligation and that the entire site is now bound to necessary and sufficient planning obligations.

Conclusion

52. In conclusion, the Secretary of State has found that the appeal proposal would be inappropriate development in the Green Belt and that, in addition, it would cause further harm through loss of openness and significant encroachment into the countryside. In addition the scheme would contribute to urban sprawl and it would cause some harm to the setting of St Albans. The Secretary of State has attributed substantial weight to the harm that would be caused to the Green Belt. In addition he has found that harms would also arise from the scheme's adverse effects on landscape and on ecology and that the scheme conflicts with LP policies 104 and 106 in those respects.

53. The Secretary of State considers that the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East, to which he has attributed very considerable weight, and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt. He has also taken account of the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass. The Secretary of State considers that these considerations, taken together, clearly outweigh the harm to the Green Belt and the other harms he has identified including the harm in relation to landscape and ecology and amount to very special circumstances. Despite the Secretary of State's conclusion that the scheme gives rise to conflict with LP policies 104 and 106, in the light of his finding that very special circumstances exist in

this case he is satisfied that, overall the scheme is in overall accordance with the development plan.

Formal Decision

54. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for the construction of a Strategic Rail Freight Interchange 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, subject to the conditions set out at Annex B.

55. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

56. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

57. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

58. 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.

59. A copy of this letter has been sent to St Albans City and District Council and to STRIFE. Notification letters have been sent to all other parties who asked to be informed of the decision.

Christine Symes

Authorised by the Secretary of State to sign in that behalf

Post Inquiry correspondence received prior to 7 July 2010

Name	Date
S Hedges	15/05/2010
P Dixon	17/05/2010
M Aldridge	04/06/2010
R Biddlecombe	15/06/2010
J Chattaway	15/06/2010
M Mark	15/06/2010
S Beesley	15/06/2010
A Russell	16/06/2010
P Matteucci	16/06/2010
J Rice	16/06/2010
C Horton	16/06/2010
S Statt	17/06/2010
J Byrne	17/06/2010
EK Kaye	17/06/2010
P Ruckin	18/06/2010
B Greenwood	18/06/2010
B Gardner	18/06/2010
M Novitt	19/06/2010
D Tribe	19/06/2010
R Tompkins	20/06/2010
J Bacall	20/06/2010
F & K Loud	21/06/2010
R Harrington	21/06/2010
E Thurston	21/06/2010
C Mitchell	23/06/2010
MJG Lewis	25/06/2010

Post Inquiry correspondence following the Secretary of State's letter dated 15 September 2011

Name / Organisation	Date
Ian La Rivière	06/10/2011
Mr S Walkington and Mr D Parry	10/10/2011
Paul Stimpson / Head of Planning – Slough Borough Council	11/10/2011
Erica Mortimer / CgMs for Helioslough	12/10/2011
Dick Bowler / Hertfordshire County Council	13/10/2011
Tim Wellburn / Department for Transport	13/10/2011
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	14/10/2011
Simon Flisher / Barton Willmore for Goodmans	14/10/2011
St Albans City and District Council	14/10/2011

Post Inquiry correspondence following the Secretary of State's letter dated 19 October 2011

Name / Organisation	Date
Anne Main MP for St Albans	08/11/2011
Paul Stimpson / Head of Planning – Slough Borough Council	09/11/2011
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	10/11/2011
James Clappison MP for Hertsmere	10/11/2011
Simon Flisher / Barton Willmore for Goodmans	10/11/2011
St Albans City and District Council	10/11/2011
Erica Mortimer / CgMs for Helioslough	11/11/2011
Tim Wellburn / Department for Transport - enclosing one from Richard Eccles, Director of Network Planning dated 01/11/2011	11/11/2011

Post Inquiry correspondence following the Secretary of State's letter dated 29 November 2011

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	19/12/2011
Erica Mortimer / CgMs for Helioslough	20/12/2011
Mike Lovelady / St Albans City and District Council	22/12/2011
Simon Flisher / Barton Willmore for Goodmans	23/12/2011
Paul Stimpson / Head of Planning – Slough Borough Council	29/12/2011
Mr P Trevelyan / St Albans Civic Society	30/12/2011

Post Inquiry correspondence following the Secretary of State's letter dated 29 March 2012

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/03/2012
Anne Main MP for St Albans	04/04/2012
Erica Mortimer / CgMs for Helioslough	10/04/2012
Polly Harris-Gorf / Hertsmere Borough Council	11/04/2012
Simon Flisher / Barton Willmore for Goodmans	16/04/2012
James Clappison - MP for Hertsmere	16/04/2012
Mike Lovelady / St Albans City and District Council	16/04/2012

Post Inquiry correspondence following the Secretary of State's letter dated 18 April 2012

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/04/2012
Paul Stimpson / Head of Planning – Slough Borough Council	26/04/2012
Erica Mortimer / CgMs for Helioslough	26/04/2012
Mike Lovelady / St Albans City and District Council	25/04/2012

Post Inquiry correspondence following the Secretary of State's letter dated 19 September 2012

Name / Organisation	Date
Anne Main - MP for St Albans	25/09/2012
James Clappison - MP for Hertsmere	26/09/2012
Erica Mortimer / CgMs for Helioslough	27/09/2012
Simon Flisher / Barton Willmore for Goodmans	28/09/2012
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	01/10/2012

Paula Paley on behalf of Aldenham Parish Council	01/10/2012
Mr S Walkington and Mr D Parry	01/10/2012
Peter Evans / Aldenham Parish Council	01/10/2012
John Dean / Colney Heath Parish Council	01/10/2012
Mike Lovelady / St Albans City and District Council	02/10/2012
Graham Taylor / Radlett Society and GB Association	02/10/2012
Paul Stimpson / Head of Planning – Slough Borough Council	03/10/2012
Steve Baker / CPRE Hertfordshire	03/10/2012
Polly Harris-Gorf / Hertsmere Borough Council	03/10/2012

Post Inquiry correspondence following the Secretary of State's letter dated 12 October 2012

Name / Organisation	Date
Mr S Walkington and Mr D Parry	18/10/2012
Hogan Lovells - solicitors for Helioslough	18/10/2012
Hogan Lovells - solicitors for Helioslough	25/10/2012
Mike Lovelady / St Albans City and District Council	26/10/2012
Peter Evans / Aldenham Parish Council	26/10/2012
Simon Flisher / Barton Willmore for Goodmans	26/10/2012
Paul Stimpson / Head of Planning – Slough Borough Council	29/10/2012

Other post Inquiry correspondence - disclosed in the Secretary of State's letter of 20 December 2012

Name / Organisation	Date
Mr Lindemann	27/10/2011
Mr Behrman	30/10/2011
Graham Taylor / Radlett Society and Green Belt Association	14/03/2012
Anne Main - MP for St Albans	29/03/2012
Anne Main - MP for St Albans	25/04/2012
Howard Wayne / Wayne Leighton Solicitors for STRIFE Ltd	30/04/2012
Bruce Vincent	26/05/2012
Mr Behrman	30/10/2011
Anne Main - MP for St Albans	14/08/2012
N Halliwell	28/09/2012
Ann Goddard	28/09/2012
H Lewis and G McDonald	03/10/2012
James Clappison - MP for Hertsmere	15/10/2012
Anne Main - MP for St Albans	08/11/2012

Post Inquiry correspondence following the Secretary of State's letter dated 19 February 2014

Name / Organisation	Date of letter
Howard Wayne / Wayne Leighton LLP obo STRIFE	04/03/2014
James Clappison MP	05/03/2014
Anne Main MP	05/03/2014
Steve Baker / CPRE Hertfordshire	05/03/2014
David Wood / Hogan Lovells International LLP obo Helioslough Limited	05/03/2014
Mike Lovelady / St Albans City and District Council	06/03/2014

Simon Flisher / Barton Willmore obo Goodman Logistics Developments (UK) Ltd	06/03/2014
Ian M LaRivière	07/03/2014

Post Inquiry correspondence following the Secretary of State's letter dated 14 March 2014

Name / Organisation	Date of letter
Peter Evans, Aldenham Parish Council	25/03/2014
James Clappison MP	26/03/2014
Simon Flisher, Director, Barton Willmore (obo Goodman Logistics Development (UK) Ltd	27/03/2014
Graham Taylor, Chairman, Radlett Society & Green Belt Association	27/03/2014
Steve Baker, CPRE Hertfordshire	28/03/2014
Michael Gallimore, Partner, Hogan Lovells International LLP (obo Helioslough Limited)	28/03/2014
Mike Lovelady, Head of Legal Services, St Albans City & District Council	28/03/2014
Sarah Pickup, Deputy Chief Executive, Hertfordshire County Council	28/03/2014
Paul Collins, Deputy Director, Rail Strategy, Department for Transport – enclosing one from Paul McMahon, Director Freight, Network Rail dated 26/03/2014	31/03/2014

Post Inquiry correspondence following the Secretary of State's letter dated 1 April 2014

Name / Organisation	Date of letter
Michael Gallimore, Partner, Hogan Lovells International LLP (obo Helioslough Limited)	04/04/2014
Simon Flisher, Director, Barton Willmore (obo Goodman Logistics Development (UK) Ltd	08/04/2014
Mike Lovelady, Head of Legal Services, St Albans City & District Council	09/04/2014
Anne Main MP	14/04/2014
Howard Wayne, Wayne Leighton LLP obo STRIFE	15/04/2014

Other post inquiry correspondence

Name / Organisation	Date of letter
Ken Herbert	21/06/2012
Hogan Lovells – for Helioslough	31/10/2012
Anne Main MP	17/12/2012
James Clappison MP	21/12/2012
Cllr Steve Bowes-Phipps	17/12/2012
Anne Main MP	21/12/2012
Clive Glover	21/12/2012
Alan Richardson (and further follow-up letter of 18/01/2013)	21/12/2012
Kate Steiner	21/12/2012
Nic Pearce (and further follow-up letter of 18/01/2013)	21/12/2012
Tim Price (and further follow-up letter of 28/01/2013)	21/12/2012
Malcolm Mark	21/12/2012
Charles O'Carroll	22/12/2012

Debbie Baker	23/12/2012
Angela Dixon	27/12/2012
Gary Davis (and further follow-up letter of 24/01/2013)	28/12/2012
Alison Evans	30/12/2012
Anthony Holden	30/12/2012
Eric Roberts	31/12/2012
John Barker	02/01/2013
Pam and Tony Elliott	02/01/2013
Catherine Nixon	02/01/2013
Daniel Deyong	03/01/2013
Anthony Oliver	03/01/2013
Jana Marmon (and further follow-up letter of 25/01/2013)	03/01/2013
Dr Nigel Brand	03/01/2013
Daniel Deyong	04/01/2013
Ken Herbert	04/01/2013
Catherine Ashton (and further follow-up letter of 30/01/2013)	05/01/2013
Margaret & Michael Morgan	05/01/2013
Hilary Robinson (and further follow-up letter of 28/01/2013)	06/01/2013
Kim Scrivener	06/01/2013
Valerie Argue	07/01/2013
Clive Glover	08/01/2013
James Clappison MP	08/01/2013
Gary Davis	08/01/2013 & 15/01/2013
RJ & Mrs PM Coller	09/01/2013
A W Turp	09/01/2013
Jill Godwin	10/01/2013
Patricia & George Old	10/01/2013
Fiona & Richard Todd	11/01/2013
Simon Gardner	11/01/2013
Daniel Barton (and further follow-up letter of 07/02/2013)	11/01/2013
Christopher Brown	11/01/2013
Mr J Freestone	11/01/2013
Anne Main MP	11/01/2013
Jeremy Caulton	12/01/2013
Pamela Roberts	12/01/2013
Roy McNee	13/01/2013
Clive Glover	14/01/2013
Irene Cowan	14/01/2013
Bruce Vincent	15/01/2013
Mark Brattman	17/01/2013
R Clarkson	18/01/2013
Mike Lovelady, St Albans City and District Council (two letters)	18/01/2013
Mr A Turp	22/01/2013
Vicki Hopcroft	22/01/2013
Erica Mortimer, CGMS	23/01/2013
Sandra Constable	23/01/2013
Jill Singer & John Thomson	23/01/2013
Corinne & Martin Lewis	25/01/2013
Jeremy Chattaway	25/01/2013
Malcolm Mark	25/01/2013
Caroline Syson	26/01/2013
Kirtida Mehta	26/01/2013

Bruce Gardner	26/01/2013
Darren Blencowe	26/01/2013
Stuart Beesley	26/01/2013
Mark Novitt (and further follow-up e-mails of 15/02/13)	27/01/2013
Richard Biddlecombe (Napsbury Park RA)	27/01/2013
Robert Harrison	27/01/2013
Emily Bowes	27/01/2013
P Nevitt	27/01/2013
Eric Hamill	27/01/2013
Chris Clarke	27/01/2013
G R Cooper	27/01/2013
Charles Taylor	28/01/2013
Alan Russell	28/01/2013
Stanley Statt	28/01/2013
Anthony Murray	28/01/2013
Simon & Laura Mitchell	28/01/2013
Lesley Field	28/01/2013
Jonathan Richards	28/01/2013
David Johnson-Stockwell	28/01/2013
Lorraine & Paul Ruckin	28/01/2013
Paul Matteucci	28/01/2013
Fiona Loud	28/01/2013
Richard Hoult	28/01/2013
Ken D Peak	28/01/2013
Amy Burnett	29/01/2013
Dawit W. Michael Gebre-ab	29/01/2013
Jonathan Carter	29/01/2013
Jeremy Kaye	29/01/2013
Robert & Kathleen Nevitt	29/01/2013
Murray Willows	29/01/2013
Christine Bee	29/01/2013
Sarah Cox	29/01/2013
Naveed Malik	29/01/2013
Sally McKean	29/01/2013
Fiona & Frederick Tong	29/01/2013
Patsy & Les Grundon	29/01/2013
Jeremy Pepper	29/01/2013
Peter Stallwood	29/01/2013
Christine Mitchell	29/01/2013
Helen Smith	29/01/2013
Jennie Harrison	29/01/2013
Ben Greenwood	29/01/2013
Minos Michaelides	30/01/2013
Nicholas Remzi	30/01/2013
Simon Dekker	30/01/2013
Deborah Dellinger	30/01/2013
Michael Wolfson	30/01/2013
Paul Cordell	30/01/2013
Katy Patino	30/01/2013
Christopher Horton	30/01/2013
Paul & Hilary Weitzman	30/01/2013
Dr Tim Wickham	30/01/2013
Joan & Dave Dayton	31/01/2013
Linda Banks	31/01/2013

Pamela & Malcolm Mark	31/01/2013
Clive Ireland	31/01/2013
Christopher Langdon	01/02/2013
Gary Davis	02/02/2013
Trevor Fox	03/02/2013
Billy Brown	06/02/2013
Robert Webb (and follow-up e-mail of 27/02/2013)	06/02/2013
Mrs V M Wilson	06/02/2013
Peter Celiz	07/02/2013
Anne Main MP	07/02/2013
Sheena Ellwood (and follow-up letters of 03/03/2013 and 22/03/2013)	08/02/2013
Hogan Lovells for Helioslough	08/02/2013
James Clappison MP (enclosing one from constituent, Stuart Bromley)	11/02/2013
Sonia Simmons	12/02/2013
Mark Novitt	15/02/2013
Mr & Mrs Kastro	16/02/2013
Chris Bladd	17/02/2013
J Freestone	17/02/2013
Peter Mason	18/02/2013
John Scoote	18/02/2013
Christopher Langdon	18/02/2013
Neil Magrath	18/02/2013
John Sharp	19/02/2013
Patricia McKinley	19/02/2013
Kelvin Smith	20/02/2013
Sam Humphries	21/02/2013
Bren Calver	21/02/2013
Rt Hon Dominic Grieve QC MP (enclosing one from constituent, Mrs Gray-Fisk)	21/02/2013
Dave Saul	22/02/2013
Gordon Shepherd	22/02/2013
Chris Hamby	22/02/2013
James Clappison MP (enclosing one from constituent, David Lavender)	22/02/2013
James Clappison MP (enclosing one from constituent, Christopher Langdon)	22/02/2013
Michael Ormiston	23/02/2013
Susan Bellamy (and follow-up e-mail of 15/03/2013)	25/02/2013
John Wood, Hertfordshire CC	26/02/2013
John Rae	28/02/2013
Michael Gallimore, Hogan Lovells	28/02/2013
A Maskall	01/03/2013
Mr & Mrs Chown	01/03/2013
Jack Beeston	01/03/2013
Chris Thorpe	04/03/2013
Anne Main MP	04/03/2013
Miranda Gerritson	06/03/2013
Mrs Kowolik	07/03/2013
Michael Gallimore, Hogan Lovells	07/03/2013
Mr R F Collins	08/03/2013

Leslie Diamond	10/03/2013
Dr Winkler	10/03/2013
David & Meryl Burleigh	11/03/2013
Daniel Graham	11/03/2013
Mrs Anne Main MP	12/03/2013
Mike Lovelady, St Albans City and District Council	13/03/2013
Stuart Bromley	14/03/2013
Mr & Mrs LaRivière	18/03/2013
Mrs Anne Main MP encl Gary Davis	22/03/2013
Mrs Anne Main MP	27/03/2013
Michael Gallimore, Hogan Lovells	27/03/2013
Mike Lovelady, St Albans City and District Council	28/03/2013
Gary Davis	01/04/2013 & 09/04/2013
Huw Smith	06/04/2013
Mrs Anne Main MP	08/04/2013
Michael Gallimore, Hogan Lovells	15/04/2013
Mrs Barbara Price	Undated – but received on 30/04/13
Michael Gallimore, Hogan Lovells	19/04/2013
Mrs Anne Main MP (with letter from Rt Hon Simon Burns MP (DfT))	02/05/2013
James Clappison MP constituent Mrs Fiona Todd	08/05/2013
Michael Gallimore, Hogan Lovells	10/05/2013
Mrs Anne Main MP	15/05/2013
John Thomson – St Albans Civic Society	16/05/2013
Michael Gallimore, Hogan Lovells	21/05/2013
Kerry Smith	27/05/2013
Michael Gallimore, Hogan Lovells	28/05/2013
Peter Trevelyan – St Albans Civic Society	03/06/2013
Mrs Anne Main MP	06/06/2013
Mrs Anne Main MP	21/06/2013
P Trevelyan / St Albans Civic Society (to DfT)	21/06/2013
Mrs Anne Main MP	24/06/2013
Sandra Constable	24/06/2013
Martin Threadgold	27/06/2013
Gary Davis	28/06/2013
Mrs Anne Main MP	28/06/2013
Mrs Anne Main MP (enclosing one from Gary Davis)	05/07/2013
Mrs Anne Main MP (enclosing one from Ian Troughton)	05/07/2013
James Clappison MP (enclosing one from Mr Lavendar)	16/07/2013
Heather Pownall	28/07/2013
Mrs Anne Main MP	01/08/2013
Beryl Munro	07/08/2013
Mrs Anne Main MP	19/08/2013
Ken Peak – London Colney Village Concern	05/09/2013
Mrs Anne Main MP (enclosing one from Martin Blencowe)	30/09/2013

James Clappison MP (enclosing one from Heather Pownall)	03/10/2013
Mike Penning MP	22/10/2013
Mrs Anne Main MP	28/10/2013
John Wood, Hertfordshire CC	29/10/2013
John Wood, Hertfordshire CC	31/10/2013
John Wood, Hertfordshire CC	01/11/2013
Erica Mortimer, CgMs	04/11/2013
Richard Hoult	12/11/2013
Diana Tribe	25/11/2013
James Clappison MP (enclosing one from Heather Pownall)	02/12/2013
Alison Rubinson	04/12/2013
Rt Hon Peter Lilley MP (enclosing one from Sheilagh Collingwood)	05/12/2013
Andy Love	10/12/2013
Mrs Vicki Hopcroft	11/12/2013
Laura Dekker	11/12/2013
Stephen Rose	11/12/2013
Nicholas Remzi	11/12/2013
Simon Angel	11/12/2013
Mark Castle	11/12/2013
Jeremy Kaye	11/12/2013
Hugh Howard	11/12/2013
Barbara Mccabe	11/12/2013
Nick Louis	11/12/2013
Dr Tim Wickham	11/12/2013
Jane Rice	11/12/2013
Caroline Syson	11/12/2013
Diana Tribe	11/12/2013
Harvey Sokolsky	11/12/2013
Alan Ring	11/12/2013
Hardeep Lota	11/12/2013
Pamela & Malcolm Mark	12/12/2013
Mr Tim Becker	12/12/2013
Paul Weitzman	12/12/2013
Mrs Clovissa Horton	12/12/2013
Richard Biddlecombe	12/12/2013
Lesley Field	12/12/2013
Dr David Lee	12/12/2013
Stuart Beesley	12/12/2013
Simon Edwards	15/12/2013
Gary Davis	15/12/2013
P Nevitt	15/12/2013
Howard Wayne	16/12/2013
Sheena Ellwood	16/12/2013
Ian Christopher	16/12/2013
Cllr Stephen Bowes-Phipps	16/12/2013
Ian Lariviere	17/12/2013
Geoffrey Shalet	18/12/2013
Colin & Tricia Gibb	19/12/2013
Fiona & Richard Todd	19/12/2013
John Barker	19/12/2013

Chris Doyle	19/12/2013
Sarah Pickup, Hertfordshire CC	19/12/2013
Vicki Hopcroft	20/12/2013
David Turner	20/12/2013
Michael Gallimore, Hogan Lovells	20/12/2013
Nicola Graynoth	21/12/2013
Les and June Diamond	21/12/2013
Neil Conrad	22/12/2013
Gordon Townsend	22/12/2013
Violet LaRivière	23/12/2013
Stewart Rose	23/12/2013
Allan Lane	23/12/2013
Margaret Townsend	23/12/2013
Gary Clamp	23/12/2013
His Honour Judge Michael Kay QC	23/12/2013
Peter Moss	23/12/2013
John Stacey	23/12/2013
Dominic Mort	24/12/2013
Suzi Clarke	24/12/2013
Brian Gibbard	27/12/2013
Fiona & Richard Todd	28/12/2013
Natasha Deyong	29/12/2013
Kevin Naughton	29/12/2013
Lesley Field	30/12/2013
Catherine Davies	30/12/2013
John LaRiviere	30/12/2013
Marcus Hooper	01/01/2014
Neil Magrath	01/01/2014
Brenda & Raymond Jenkinson	02/01/2014
Gerry Walden	03/01/2014
John Garrick	03/01/2014
Jamie Goodfellow	03/01/2014
Keith Macbain	03/01/2014
Peter Tiffany	05/01/2014
Mrs Peta McKeon	05/01/2014
Carole Heselton	05/01/2014
Melvyn & Michelle Smith	06/01/2014
John Coller	06/01/2014
Stephen & Ann Rutherford	08/01/2014
L & D Cazin	08/01/2014
Christopher Langdon	08/01/2014
Andrew Bailey	08/01/2014
Amanda Dickson	09/01/2014
Ian & Sue Getley	09/01/2014
Sally Temple	13/01/2014
A Ortega	13/01/2014
Dr Robert Wareing	15/01/2014
Anthony Baker	17/01/2014
Douglas Hirst	20/01/2014
Cllr Stephen Bowes-Phipps	21/01/2014
Dr A Chalmers	22/01/2014
Anne Main MP (& enclosing one from Doug Hirst dated 17 January 2014)	27/01/2014

Siobhan Barrett	07/02/2014
David & Sharon Harris	09/02/2014
Anne Main MP (& enclosing one from Doug Hirst dated 17 January 2014)	10/02/2014
Stephen Hammond MP (enclosing one from Rt Hon Cheryl Gillan MP dated 10 January 2014, enclosing one from Peter and Vanessa Martin dated 16 December 2013)	11/02/2014
Matthew Johns	18/02/2014
Jack Easton, St Albans District Green Party	17/03/2014

CONDITIONS

COMMENCEMENT OF DEVELOPMENT

1. The development hereby permitted shall be commenced either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters to be approved, whichever is the later.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

APPROVAL OF RESERVED MATTERS

2. Application for approval of the Reserved Matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

DEVELOPMENT IN ACCORDANCE WITH KEY PARAMETERS PLAN

3. The development shall be carried out in accordance with the Key Parameters Plan and the specified paragraphs of the Development Specification Document dated March 2009 and drawing number 394503-LV-074 referred to in condition 3(f) comprising:

- (a) layout of the new buildings to the extent to which it is shown on the Key Parameters Plan together with para 4.3;
- (b) the maximum ridge height of the new buildings as specified on the Key Parameters Plan together with para 4.4;
- (c) the maximum length and width of the B8 distribution units and the administration and ancillary buildings as set out in para 4.5;
- (d) the maximum total floorspace of the new buildings applied for as specified on the Key Parameters Plan together with para 4.6;
- (e) the proposed finished site levels specified on the Key Parameters Plan together with para 4.7;
- (f) the height of earth mounds shown on drawing number 394503-LV-074 together with para 4.8;
- (g) various access and circulation routes shown on the Key Parameters Plan together with paras 4.9 and 4.10;
- (h) access to lorry and car parking/storage areas as shown on the Key Parameters Plan together with para 4.11;
- (i) proposed structure planting areas as shown on the Key Parameters Plan together with para 4.12.

Reason: This condition is necessary to ensure that the development does not materially depart from that applied for and considered in the ES.

4. **PARTIAL SIGNALISATION OF PARK STREET ROUNDABOUT**

- 4.1 None of the Units shall be occupied until the Park Street Roundabout Signalisation Works have been completed and brought into use.
- 4.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 4.3 The improvements shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

Reason: This condition is necessary to ensure that the improvements to Park Street Roundabout are completed before the units are occupied.

5. **IMPROVEMENT TO TRAFFIC SIGNALS AT LONDON COLNEY ROUNDABOUT**

- 5.1 None of the Units shall be occupied until details of the London Colney Roundabout Improvements have been submitted for approval in writing by the local planning authority.
- 5.2 The London Colney Roundabout Improvements shall be completed in accordance with the approved details before the later of:
- (a) two years of occupation of any of the Units, or
 - (b) twelve months of approval of the details of the improvements.

Reason: This condition is necessary to increase the capacity of the London Colney Roundabout

6. **PROVISION OF ACCESS WORKS AND PARK STREET BYPASS**

- 6.1 None of the Units shall be occupied until the Access Works and the Park Street Bypass Phase 1 Works have been completed and brought into use.
- 6.2 The works shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 6.3 The works shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.
- 6.4 Not more than 230,000 square metres of floor area in the Units shall be occupied until a scheme for the Park Street Bypass Phase 2 Works (which shall include a programme for the

delivery of the works) has been submitted to and approved in writing by the local planning authority.

- 6.5 The Park Street Bypass Phase 2 Works shall be completed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that the access is completed before the Units are occupied, including the Park Street Bypass with a 'temporary' connection to the A5183 at its southern end.

7. **IMPROVEMENTS TO JUNCTION 21A OF THE M25**

- 7.1 None of the Units shall be occupied until the M25 Junction 21A Improvements have been completed and brought into use.

- 7.2 The improvements shall include any revisions as required by the Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).

- 7.3 The improvements shall have:

- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
- (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 21a.

8. **IMPROVEMENTS TO JUNCTION 22 OF THE M25**

- 8.1 Not more than 130,000 square metres of floor area in the Units shall be occupied until the M25 Junction 22 Improvements have been completed and brought into use.

- 8.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).

- 8.3 The improvements shall have:

- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
- (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 22.

9. **TRAVEL AND FREIGHT MONITORING AND MANAGEMENT PLAN**

- 9.1 None of the Units shall be occupied until a Travel and Freight Monitoring and Management Plan substantially in accordance with the Draft Travel and Freight Monitoring and

Management Plan dated 18 December 2009 has been submitted to and approved in writing by the local planning authority.

- 9.2 The Travel and Freight Monitoring and Management Plan shall be submitted for approval no later than 12 months following the commencement of the Development.
- 9.3 The approved Travel and Freight Monitoring and Management Plan shall be implemented in accordance with the timetable contained therein and its requirements shall continue to be observed as long as any part of the development is occupied.

Reason: This condition is necessary to ensure that the measures proposed in the Travel Plan and Freight Management Plan to regulate movement to and from the development are carried out in the interests of (i) encouraging travel by means other than the private car and (ii) regulating the impact of HGV traffic on the surrounding network

CAR PARKING

10. Car parking spaces shall be provided at a standard of not more than 1 space per 207 square metres of floorspace for each Unit within the development

Reason: This condition is necessary to limit the amount of parking on the site in order to encourage travel by means other than the private car.

CONTROL OVER SOUTHERN ROUNDABOUT

11. None of the Units shall be occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority to ensure that only pedestrians, cyclists and authorised public transport and emergency vehicles can use the eastern limb of roundabout Y on the Highways Plan. The scheme shall specify the physical measures to be incorporated and the management arrangements for the operation of those measures. The scheme shall be submitted for approval no later than 12 months following the commencement of the Development. The approved scheme shall be provided before any of the Units are occupied and the only users of the eastern limb shall be those authorised under the approved scheme.

Reason: This condition is necessary to ensure that the southern entrance to the SRFI is not used by employee's vehicles or goods vehicles in order to limit the impact of traffic generated by the development on the local road network.

12. RAIL RELATED WORKS

- 12.1 None of the Units shall be occupied until the Midland Mainline Connection Works have been completed and until an operational rail link has been provided from such works to the relevant Unit.

- 12.2 A second track linking the reception sidings to the Midland Mainline shall be completed and become operational upon the earlier of:

(a) as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds seven per 24 hour weekday period, or

(b) 10 years following first occupation of any of the Units.

- 12.3 None of the Units shall be occupied until the Intermodal Terminal Phase 1 Works have been completed.

- 12.4 The Midland Mainline Connection Works and the rail links to each of the Units and the Intermodal Terminal once provided shall thereafter be managed and maintained such that they remain available and operational to serve the Units.
- 12.5 The Intermodal Terminal Phase 2 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds four per 24 hour weekday period.
- 12.6 The Intermodal Terminal Phase 3 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds eight per 24 hour weekday period.
- 12.7 The Intermodal Terminal shall be equally open to access by all licensed rail freight operating companies.
- 12.8 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in conditions 12.1, 12.2, 12.3, 12.5 and 12.6 until such works have been completed.

Reason: This condition is necessary to ensure that the rail facilities on the site and the connection to the main line are provided and maintained in a manner compatible with the intended use of the site as a SRFI.

13. **RAIL RELATED WORKS – GAUGE ENHANCEMENT TO THE MIDLAND MAINLINE**

- 13.1 Not more than 175,000 square metres of floor area in the Units shall be occupied until the Midland Mainline Gauge Enhancement Works have been completed such that the W10 gauge enhancement has been provided either:
 - (a) from the development to Acton Yard, West London Junction and Willesden Junction (Acton Branch), or
 - (b) from the development to Junction Road Junction.
- 13.2 If Network Rail confirms in writing to the local planning authority before occupation of 175,000 square metres of floorspace within the Units that both sets of the works set out at condition 13.1 are required to be completed to meet the anticipated demand for train paths to the development, not more than 230,000 square metres of floorspace within the Units shall be occupied until a programme for such works has been approved in writing by the local planning authority. The works shall be completed in accordance with that programme.
- 13.3 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in condition 13.1 until such works have been completed.
- 13.4 There shall be submitted to the Council written notice of the anticipated date of occupation of 175,000 sq metres of floorspace within the Units, such notice to be served at least 6 months prior to such anticipated date of occupation.

Reason: This condition is necessary to ensure that the rail gauge enhancement works are completed in a timely fashion

CONSTRUCTION METHOD STATEMENT

14. The Development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a construction method statement. The construction method statement shall include:
- (a) details of the methods to be used to control dust, noise, vibration and other emissions from the site;
 - (b) details of all temporary buildings and compound areas including arrangements for their removal following completion of construction;
 - (c) details of areas to be used for the storage of plant and construction materials and waste;
 - (d) details of temporary lighting arrangements;
 - (e) hours of construction work.
 - (f) measures to ensure that construction vehicles do not deposit mud on the public highway.
 - (g) a scheme for the routing of construction vehicles accessing the site including measures to be taken by way of penalties if construction vehicles do not observe the identified routes.
 - (h) details of the construction earthworks methodology.

The construction of the development shall be carried out in accordance with the approved construction method statement.

Reason: This condition is necessary in the interest of controlling the construction works and limiting the impact of construction on surrounding residents.

15. LANDSCAPING

- 15.1 The details to be submitted for approval under condition 2 in relation to landscaping for Areas 1 and 2 shall include:
- (a) a topographical survey of the Country Park within Area 1 and Area 2 comprising an updated version of drawing number 394503/LV/041 showing landform, water features, boundary structures, land uses, access roads and footpaths.
 - (b) proposed ground modelling, re-profiling and mounding with proposed contours to be at a maximum of 1 metre levels;
 - (c) a survey of existing trees and hedges (including ground levels at the base of all trees) in the Country Park within Area 1 and Area 2, the survey to show details of all trees and hedges to be removed and those to be retained and a scheme for the protection of retained trees during the construction of the development on Area 1 and Area 2. The

survey and the tree protection measures shall be in accordance with BS 5837 (2005) unless otherwise agreed in writing with the local planning authority;

- (d) the comprehensive treatment of planting and seeding areas including plans and sections at a scale of not less than 1:1250;
- (e) all boundary treatment, retaining walls and security fencing including materials to be used, typical elevations and heights;
- (f) acoustic fencing including materials to be used, typical elevations and heights and details of acoustic performance;
- (g) hard landscape works including access roads, parking areas, signage, seating, litter bins and picnic areas;
- (h) all existing, diverted (whether temporary or permanent) and proposed rights of way including footpaths, bridleways and cycleways and their proposed surfacing treatment and details of enclosures, gates and stiles;
- (i) works to Hedges Farm to provide the Country Park Visitor/Interpretation Centre;
- (j) a programme of implementation and a management plan.

15.2 The landscaping programme shall be implemented as approved and the landscaping shall be maintained in accordance with the approved management plan.

Reason: This condition is necessary to guide the submission of landscaping details required as part of the reserved matters application and to ensure that the landscaping in Areas 1 and 2 is carried out and appropriately maintained.

POLLUTION CONTROL

16. Where any Unit or other facility in the development has oil fuel storage or chemical tanks serving such Unit, the relevant Unit shall not be occupied until a pollution control strategy in relation to such tanks has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the relevant approved strategy.

Reason: This condition is necessary to reduce the risk of any oil or chemicals stored on site polluting the environment.

17. DRAINAGE

17.1 The development shall not be commenced on Area 1 and Area 2 until a detailed scheme of drainage for Area 1 and Area 2 has been submitted to and approved in writing by the local planning authority. Such scheme shall include:

- (a) the provision of sustainable urban drainage systems to control the run-off from the development;
- (b) the provision of storm water balancing swales and other storage facilities; and

- (c) details of the design of the drainage infrastructure to illustrate the discharge rates will be less than existing levels.

The development shall be carried out in accordance with the approved scheme.

- 17.2 The development shall not be commenced on Areas 3 - 8 respectively until it has been confirmed in writing to the local planning authority whether development on the relevant Area includes the provision of foul and surface water drainage. If such drainage is to be provided on any of Areas 3 - 8 the development shall not be commenced on the relevant Area until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such drainage and its effect on groundwater. Foul and surface water drainage on the relevant Area shall be constructed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that drainage of the developed areas of the site does not increase run-off into local watercourses.

18. **PILING**

Piling or the construction of any other foundations using penetrative measures shall not take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such measures and their effect on groundwater. Piling or the construction of any other foundations using penetrative measures shall only take place in accordance with such approved scheme.

Reason: the site is in a sensitive location with respect to the potential contamination of groundwater. The construction of piles or other types of foundation could provide a potential pathway for contamination at the surface to migrate into the underlying major aquifer and Source Protection Zone.

AREA 2 PONDS

19. The development on Area 1 shall not be commenced until details of the provision (including the timing, monitoring and aftercare of the new ponds to be located in Area 2 have been submitted to and approved in writing by the local planning authority. The ponds shall be constructed in accordance with the approved details. None of the Units shall be occupied until the ponds on Area 2 have been constructed.

Reason: This condition is necessary to ensure that ponds are provided on Area 2 to provide appropriate habitat for newts and invertebrates.

TRANSLOCATION OF ACID GRASSLAND

20. The development shall not be commenced on the land forming part of Area 1 shown on EPR Map 11 until a mitigation strategy for the translocation of acid grassland from Area 1 to Area 2 (including timing, monitoring and aftercare) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.

Reason: This condition is necessary to ensure that appropriate provision is made to mitigate for the loss of acid grassland on Area 1.

PROTECTED SPECIES

21. The development shall not be commenced until an up to date survey has been submitted to the local planning authority showing the location of any protected species (being reptiles and nesting birds protected under the Wildlife and Countryside Act 1981 (as amended)) within

Areas 1 or 2. Thereafter development shall not be commenced on any land forming part of Area 1 or 2 and identified by the survey as a location for a protected species, until a mitigation strategy for such species has been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved strategy.

Reason: This condition is necessary to ensure that any protected species on the site are identified and that appropriate steps are taken to avoid harm to them.

BADGERS

22. Not more than 6 months prior to the development being commenced on Area 1 or Area 2 the developer shall carry out a badger survey on the relevant Area and shall submit the results of such survey to the local planning authority. If appropriate the survey shall include a mitigation strategy for approval in writing by the local planning authority. Development shall be carried out only in accordance with the approved mitigation strategy.

Reason: This condition is necessary to ensure that any Badgers on the site at the time development is due to commence are identified and appropriate measures taken to mitigate the effects of the development on them.

ARCHAEOLOGY

23. The development shall not be commenced within Areas 1, 2, 3 or 4 or the part of Area 6 shown on drawing CgMs Radlett/01 dated 13 December 2007 until a written scheme of archaeological work and protection in relation to the relevant Area has been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the preservation in situ or, where that is not possible, the full excavation of remains considered to be of local or greater significance. The development shall be carried out in accordance with the scheme subject to any amendments approved in writing by the local planning authority. All remains preserved in situ shall be preserved in accordance with the scheme.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the recording or preservation of any archaeological remains that may be found on those areas of the site not previously disturbed by quarrying.

24. CONTAMINATION

- 24.1 The development shall not be commenced on any Area until the following components of a scheme to deal with the risks associated with contamination of the relevant Area has been submitted to and approved in writing by the local planning authority:

- (a) A preliminary risk assessment which has identified:
- (i) all previous uses
 - (ii) potential contaminants associated with those uses
 - (iii) a conceptual model of the site indicating sources, pathways and receptors
 - (iv) potentially unacceptable risks arising from contamination at the site.
- (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

- (c) The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

24.2 Any changes to the approved remediation strategy and the longer-term monitoring require the express consent of the local planning authority. The remediation strategy and longer-term monitoring shall be implemented as approved.

24.3 The development shall not be commenced on any Area until a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation on the relevant Area has been submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.

24.4 If during development of the relevant Area contamination not previously identified is found to be present at the site then no further development shall be carried out on that Area until the developer has submitted to and obtained written approval from the local planning authority for an amendment to the approved remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To ensure that an appropriate remediation strategy is undertaken as part of the development

25. **NOISE**

25.1 The development shall not be commenced on Areas 1 and 2 until a scheme has been submitted to and approved in writing by the local planning authority which specifies the details of the provisions to be made for the control of noise emanating from these Areas during the operation of the development. The development shall be operated in accordance with the approved scheme.

25.2 The level of noise emitted from the site shall not exceed 50dB LAeq, 8hr between 2300 and 0700 the following day as measured at 1 metre from the facade of any residential property. The measurement shall be made in accordance with British Standard 74451:2003.

25.3 The level of noise emitted from the site shall not exceed 60 dB LAFmax as measured at 1 metre from the façade of any residential premises between 23.00 and 07.00, every day.

Reason: This condition is necessary in the interests of preventing significant noise disturbance to residents living around the site.

EXTERNAL LOUDSPEAKERS

26. No external loudspeaker systems shall be installed on any Area.

Reason: This condition is necessary in the interests of preventing residents living around the site being disturbed by (intermittent) noise from any external loudspeakers that may be installed on the site.

REFUSE

27. The development shall not be commenced on any Area until details of the facilities for the storage of refuse on that Area have been submitted to and approved in writing by the local planning authority. The approved details shall thereafter be implemented and retained.

Reason: This condition is necessary to ensure that proper provision is made for the storage of refuse on the site.

RENEWABLE ENERGY

28. Construction of the Units within Area 1 shall not be commenced until a report has been submitted to the local planning authority setting out the measures to be taken such that the predicted CO2 emissions of the development will be reduced by a target of 10% through the use of on-site renewable energy equipment and until such measures have been approved in writing by the local planning authority. The development shall be carried out incorporating such approved measures.

Reason: This condition is necessary in the interests of sustainable development and to comply with the requirements of RSS14.

LIGHTING

29. No Unit shall be occupied until a detailed external lighting scheme for Areas 1 and 2 has been submitted to and approved in writing by the local planning authority. No external lighting other than that approved shall be provided on Areas 1 and 2.

Reason: This condition is necessary to ensure that the design and installation of external lights on the site pays due regard to the need to protect the amenities of local residents and the environment.

CYCLE STORAGE

30. None of the Units shall be occupied until details of the cycle storage for employees of the Unit has been submitted to and approved in writing by the local planning authority. The approved cycle storage shall be provided and thereafter retained.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the storage of cycles on the site.

31. **COUNTRY PARK**

- 31.1 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Countryside Management Plan. The Countryside Management Plan shall include landscaping details for Areas 3 to 8 submitted for approval under Condition 2 above and shall be substantially in accordance with the following documents:

- (a) Countryside Management Plan – Overall Objectives and Design Principles dated 19 December 2007 and drawing numbers 394503-LV-042, 394503-LV-044, 394503-LV-046, 394503-LV-048, 394503-LV-050, 394503-LV-052, 394503-LV-054, 394503-LV-056, 394503-P-057 and 394503-LV-018 and EPR Maps 2, 3 rev A, 4, 5, 6, 7, 8, 9 and 10 Rev A; and
- (b) Countryside Management Plan – Objectives and Specific Measures for Areas 1 – 8, dated 19 December 2007.

- 31.2 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Landscape Management Plan substantially in accordance with the Draft Landscape Management Plan prepared by Capita Lovejoy in December 2008.
- 31.3 The approved Countryside Management Plan and the approved Landscape Management Plan shall be implemented and their requirements shall thereafter continue to be observed.
- 31.4 The Countryside Management Plan when submitted under condition 31.1 shall define the landscaping and countryside access works and the public access and the sport and recreation facilities referred to in condition 32.1 and the works to create waterbodies and related facilities for bird habitat referred to in condition 32.2. It shall also set out measures to protect the areas of ecological interest within the Country Park pending the completion of the Country Park.

Reason: This condition is necessary to ensure that details of the Country Park are settled at an early stage.

32. DELIVERY OF COUNTRY PARK

- 32.1 The landscaping and countryside access works in those parts of Areas 1 and 2 proposed for use as a Country Park and in Areas 3, 4 and 5 and in the southern part of Area 6 and the provision of public access and the sport and recreation facilities in Area 5 shall be completed prior to occupation of any of the Units. These works shall include the restoration of Hedges Farm as a working farm and as a Country Park Visitor/Interpretation Centre as approved under condition 15.1(i) above.
- 32.2 The works to create waterbodies and related facilities for bird habitat on Areas 5 and 8 shall be completed within twelve months following occupation of any of the Units.
- 32.3 The Country Park works on Areas 7 and 8 shall be completed no later than the occupation of 290,000 square metres of floor area in the Units.
- 32.4 The Country Park measures on the northern part of Area 6 shall be completed by the later of:
- (a) 12 months following completion of the restoration of Area 6 in accordance with the planning permission dated 27 March 2007 reference 5/1811-04(CM112) (and any variation thereof); or
 - (b) occupation of more than 290,000 square metres of floor area in the Units.

Reason: This condition is necessary to ensure timely delivery of the Country Park.

DEFINITIONS

"Access Works"	The creation of the new vehicular access to serve Area 1 from the A414 including the at grade signalised roundabout linking the A414 to the Park Street bypass
"Area"	The relevant area within Areas 1 – 8
"Area 1"	The area marked Area 1 shown edged red on drawing number 394503-LV-018
"Area 2"	The area marked Area 2 shown edged red on drawing number 394503-LV-018
"Area 3"	The area marked Area 3 shown edged red on drawing number 394503-LV-018
"Area 4"	The area marked Area 4 shown edged red on drawing number 394503-LV-018
"Area 5"	The area marked Area 5 shown edged red on drawing number 394503-LV-018
"Area 6"	The area marked Area 6 shown edged red on drawing number 394503-LV-018
"Area 7"	The area marked Area 7 shown edged red on drawing number 394503-LV-018
"Area 8"	The area marked Area 8 shown edged red on drawing number 394503-LV-018
"Country Park"	The country park to be provided on part of Area 1 and part of Area 2 shown coloured green on drawing number 394503-LV-077 and the Key Parameters Plan and on Areas 3-8
"Countryside Management Plan"	A plan setting out details of the long term management and maintenance of the Country Park
"Highways Plan"	Plan 6035/37A dated December 2007
"Intermodal Terminal Phase 1 Works"	The first phase of the on-site rail works comprising the construction of three reception sidings and two intermodal terminal sidings and associated works to facilitate its operation as an intermodal terminal including security, hardstanding and lighting substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
"Intermodal Terminal Phase 2 Works"	The second phase of on-site rail works comprising the construction of two additional intermodal terminal sidings and new temporary hardstanding substantially in accordance

with the principles of drawing number IM/Radlett/01 dated 19 December 2007

"Intermodal Terminal Phase 3 Works"	The third phase of on-site rail works comprising the construction of two additional intermodal terminal sidings with the extension of the track to the reception sidings substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
"Intermodal Terminal"	The intermodal terminal forming part of the development
"Key Parameters Plan"	Plan 394503-DSD-002a dated December 2008
"Landscape Management Plan"	A plan setting out details of the long term management and maintenance of the landscape areas within the Country Park
"London Colney Roundabout Improvements"	Improvements to the existing traffic signal controller at the London Colney Roundabout by the installation of the MOVA signal control system and other works to improve safety and capacity of the roundabout
"M25 Junction 21A Improvements"	Improvements to M25 Junction 21A as shown in principle on drawing number 11012495/PHL/01 Rev C
"M25 Junction 22 Improvements"	Improvements to M25 Junction 22 as shown in principle on drawing numbers 2495/SK/003 Rev A and 2495/SK/004 Rev A
"Midland Main Line"	The railway running from Bedford to St Pancras
"Midland Main Line Connection Works"	The formation of a southerly connection from the Midland Main Line northbound and southbound slow lines to the new branch line (including necessary signalling works) to serve Area 1
"Midland Main Line Gauge Enhancement Works"	<p>The gauge enhancement to the Midland Main Line to W9 and W10 loading gauge on the following routes;</p> <ul style="list-style-type: none">(a) the development to Brent Curve Junction, and(b) either;<ul style="list-style-type: none">(i) Brent Curve to Acton Wells Junction; or(ii) Brent Curve to Junction Road Junction (at Tufnell Road)

"Park Street Bypass Phase 1 Works"

The provision of the Park Street Bypass from the A414 between points A and C on the Highways Plan

"Park Street Bypass Phase 2 Works"

The provision of:

- (a) a modification to the existing bridge over the M25; or
- (b) a new bridge over the M25 as shown in principle on Drawing 14297/BR/AIP/ST01/001-Rev A linking Area 1 with the A5183 by connecting roundabout Y and point D on the Highways Plan

"Park Street Roundabout Signalisation Works"

Improvements to the Park Street Roundabout as shown in principle on drawing no. 2495/SK/001 Rev A

"Reserved Matters"

Details of:

- (a) layout except as already approved for layout of the new buildings;
- (b) scale except as already approved for the maximum total floorspace of the new buildings and the maximum height, width and length of the new buildings;
- (c) appearance of the new buildings;
- (d) access except as already approved for rail, lorry and car access;
- (e) landscaping except as already approved for the location of the structure planting and earth mounds on Areas 1 and 2

"Unit"

Each of the respective warehouse units within Area 1 to be constructed as part of the development

Annex B - Radlett Inspector's Report (2014)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited



Department for
Communities and
Local Government

Our Ref: APP/B1930/A/09/2109433
Your Ref: 5/09/0708

Erica Mortimer
CgMS Ltd
Morley House
26 Holborn Viaduct
London
ED1A 2AT

14 July 2014

Dear Madam

**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**

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 between 24 November and 18 December 2009 into your client's appeal against a decision by St Albans City & District Council (the Council) to refuse 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.

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 of major importance having more than local significance and because it is for significant development within the Green Belt.

3. The Secretary of State issued his decision in respect of the above appeal in his letter dated 7 July 2010. That decision letter was the subject of an application to the High Court and was subsequently quashed by order of the Court dated 4 July 2011. The appeal therefore falls to be redetermined by the Secretary of State.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to the IR.

Matters arising since 7 July 2010

5. Following the quashing of his decision letter of 7 July 2010, the Secretary of State issued a letter, dated 15 September 2011, under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, to all interested parties, setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. These matters were:

- a. The views expressed by the Secretary of State in paragraph 33 of the quashed decision letter with regard to the Inspector's proposed Condition 33 - alternatives 1- 3, and the weight to be given to the planning obligation in the form submitted by the appellant and made by unilateral undertaking dated 16 January 2008.
- b. Whether or not Hertfordshire County Council is prepared to join as a party to the undertaking in the light of the Secretary of State's comments made in paragraphs 32 and 33 of the quashed decision letter; or if the parties to the undertaking wish him to consider any other amendments to the undertaking which might overcome his concerns about its enforceability.
- c. Any new matters or change in circumstances which the parties consider to be material to the Secretary of State's further consideration of this appeal.

6. On 19 October 2011, the Secretary of State circulated the responses he had received to his letter of 15 September 2011. On 29 November 2011 he circulated the responses he had received to his letter of 19 October 2011, and invited comments on the Department for Transport's updated policy guidance note on Strategic Rail Freight Interchanges, the Department for Transport's review document on logistics growth, and a joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government.

7. On 1 February 2012, the Secretary of State circulated the responses he had received to his letter of 29 November 2011 and stated that he was of the view that he was in a position to re-determine the appeal on the basis of all the evidence and representations before him.

8. Following the publication of the National Planning Policy Framework ("the Framework"), which replaced the national planning policy documents set out in its Annex 3, the Secretary of State wrote to parties on 29 March 2012 inviting comments on the relevance of the Framework to this appeal. On 18 April he circulated the responses he had received to his letter of 29 March. The Secretary of State has given careful

consideration to all of the representations received and he considers that, for the most part, the issues raised in relation to the Framework cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State wishes to make clear that he has not revisited issues which are carried forward in the Framework, and which have therefore already been addressed in the IR, unless the approach in the Framework leads him to give different weight. Notwithstanding the replacement of the majority of former national planning policy documents by the Framework, the Secretary of State considers that the main issues identified by the Inspector remain essentially the same.

9. On 19 September 2012, the Secretary of State wrote to parties inviting comments on re-opening the inquiry into the Radlett appeal and conjoining it with the planned inquiry into the proposed SRFI at Colnbrook, Slough (Appeal Reference: APP/J0350/A/12/2171967). On 12 October 2012 the Secretary of State wrote to parties and circulated copies of the responses he had received to his letter of 19 September 2012. On 14 December 2012 the Secretary of State wrote to parties stating that he had concluded that it was unnecessary for him to re-open the inquiry into the Radlett appeal and conjoin it with the planned inquiry into the Colnbrook appeal and that he was satisfied that he could determine the Radlett proposal on the basis of the evidence before him.

10. The Secretary of State wrote to you on 20 December 2012 indicating that he was minded to allow the appeal subject to the provision of a suitable planning obligation which binds all of those with an interest in the appeal site. You submitted a new planning obligation (dated 19 December 2013) on 20 December 2013 and, on 19 February 2014, the Secretary of State wrote to parties inviting comments on that obligation. On 14 March 2014, the Secretary of State circulated the responses he had received and invited comments on (i) those responses, (ii) the Planning Practice Guidance (the Guidance) published on 6 March 2014 and the cancellation of previous planning practice guidance documents, and (iii) any material changes of circumstances that have occurred since 20 December 2012. On 1 April 2014, the Secretary of State circulated the responses he had received and invited final comments on those representations.

11. Responses received following the letters referred to above and the other representations received following the close of the inquiry are listed at Annex A below. The Secretary of State has given all these representations very careful consideration in his determination of this appeal. He is satisfied that those representations which have not been circulated to interested parties do not raise any matters that would affect his decision or require him to refer back to parties on their contents for further representations prior to reaching his decision. Copies of the representations referred to are not attached to this letter. However, copies will be made available to interested parties on written request to either of the addresses at the foot of the first page of this letter.

Procedural Matters

12. 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 and the Inspector's comments at 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 proposal.

13. At the Inquiry, an application for award of costs was made by your client against St Albans City & District Council. This application was decided by the Secretary of State in his costs decision letter of 7 July 2010.

Policy considerations

14. In determining the appeal, 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.

15. In this case, the relevant parts of the development plan comprise the saved policies of 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 referred to by the Inspector at IR13.27. He is satisfied that these policies are generally consistent with the Framework.

16. Other material considerations which the Secretary of State has taken into account include: the Framework; the Guidance; the Community Infrastructure Levy (CIL) Regulations; The London Plan 2011 (as amended October 2013) including Policies 6.14 and 6.15 and the draft further alterations to the London Plan (January 2014).

17. The Secretary of State has also had regard to the Strategic Rail Authority's (SRA) *Strategic Rail Freight Interchange Policy* (published in 2004) as a material consideration. He has taken account of the Inspector's comments on the document (IR13.30 – 32) and he agrees with the Inspector that, although the SRA has ceased and some of its former responsibilities have transferred to Network Rail, the document is still a source of advice and guidance (IR13.30). The Secretary of State has also taken account of the Department for Transport's Strategic Rail Freight Interchange Policy Guidance and its Logistics Growth Review Document (both published on 29 November 2011), and the joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government on 29 November 2011.

18. He has also had regard to Slough's Core Strategy 2006-2026 (2008), the saved policies of the Slough Local Plan (2004) and the Revised Pre-submission Version of the Development Strategy for Central Bedfordshire (DSCB) (June 2013).

19. The East of England Plan (EEP) formed part of the development plan when the Inspector wrote his report. The Order revoking the Plan had been laid but had not come into force when the Secretary of State issued his letter of 20 December 2012. However the EEP was revoked on 3 January 2013 and the Secretary of State has not had regard to it in his determination of this case.

20. The South East Plan (SEP), which was a material consideration when the Inspector wrote his report and which remained in place and attracted limited weight when the Secretary of State issued his letter of 20 December 2012, was partially revoked on 25 March 2013. The Secretary of State has not had regard to it in his determination of this case.

21. The Secretary of State has taken account of the fact that the Inspector attributes little weight to the emerging St Albans City and District Core Strategy Development Plan Document which was published in 2009 (IR13.28). The Secretary of State notes that,

since the IR was written, the Council has taken a number of steps in the development of new development plan documents. However, at this stage the Council's emerging development plan is not sufficiently advanced to carry material weight.

Legal Submissions

22. In addition to the material considerations referred to above, the Secretary of State has taken account of Inspector Phillipson's report dated 4 June 2008 and the associated decision letter dated 1 October 2008. The Secretary of State has considered the Inspector's comments on the submissions made by your client, the Council and STRIFE about how the current case should be approached in view of the Secretary of State's 2008 decision on the appeal site (IR13.8 – 13.18). For the reasons given by the Inspector in those paragraphs, he agrees with the Inspector's conclusion at IR13.19 that, if there is a very good planning reason, he is able to differ from the conclusions or decision of his predecessor.

Main issues

23. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR13.20 and whether the proposal complies with the development plan and with national policy.

Green Belt

24. Having had regard to the Inspector's comments at IR13.35, the Secretary of State concludes that the appeal proposal would be inappropriate development in the Green Belt and that it is harmful as such. As the proposal amounts to inappropriate development he considers that, in the absence of very special circumstances, it would conflict with national policies and with LP policy 1 which concern the protection of the Green Belt. The Secretary of State agrees with the Inspector's further analysis at IR13.35 and concludes that the proposal would have a substantial impact on the openness of the Green Belt, that it would result in significant encroachment into the countryside, that it would contribute to urban sprawl and that it would cause some harm to the setting of St Albans. For the reasons given by the Inspector at IR13.36 – 13.39, the Secretary of State is satisfied that the proposal would not lead to the merging of neighbouring towns (IR13.38). He also agrees with the Inspector's analysis and conclusion that the aim to encourage the recycling of derelict and other urban land would not be frustrated by the proposal (IR13.40).

Other Harm

25. 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 LP (IR13.44).

26. In 2008, the former Secretary of State found that the harm to ecological matters would not be significant (IR13.45). However, for the reasons given by the Inspector (IR13.45 – 13.46), the Secretary of State shares his view that the proposal would conflict with Policy 106 of the LP (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, more weight should be attached to the harm to ecological interests (IR13.46).

27. Having taken account of the section 3.2.4 of the November 2011 Strategic Rail Freight Interchange Policy Guidance, which states that the availability of an available and economic workforce will be an important consideration and the Inspector's comments at IR13.47 – 13.48, the Secretary of State agrees with the Inspector and he too concludes that it would not 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 (IR13.48).

28. 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. Whilst he has taken account of the comments on highways matters put forward by interested parties following the close of the inquiry, including the matters raised by Anne Main MP in her letters of 5 March (and her attached letter dated 27 January 2014) and 14 April 2014 and the concern expressed in the letter dated 27 March 2014 from the Radlett Society & Green Belt Association, he does not consider that highway concerns amount to a reason for refusal in this case.

29. The Secretary of State agrees with the Inspector's analysis, as set out at IR13.59 – 13.71, with regard to the impact of noise generated by the proposed development. He has given careful consideration to the point about noise made by STRIFE in its letter of 15 April 2014 and the statement from Network Rail in its letter of 26 March 2014 that the connections to and from the Radlett terminal should be designed to be capable of 45mph operation. He observes that the question of when and how the junction will be used by trains entering and exiting the SRFI is a matter for negotiation with Network Rail and he does not consider that STRIFE's representation undermines his conclusions in relation to noise. Like the Inspector (IR13.71), he is satisfied that, with the inclusion of the three 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.

30. 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).

Other considerations

31. The Secretary of State has had regard to the Inspector's comment at IR13.34 that, as the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents. The Secretary of State observes that the Written Ministerial Statement of 29 November 2011 makes clear that there remains a need for a network of SRFIs to support growth and create employment and that it has proved extremely problematical, especially in the South East, to create appropriately located SRFIs. The SRFI Policy Guidance published on 29 November 2011 states that only one SRFI had been granted planning consent in the whole of the South East region and advises that SRFI capacity needs to be provided at a wide range of locations, particularly but not exclusively serving London and the South East. The Secretary of State has had regard to the comment made by STRIFE (letter of 4 March 2014) that the proposed SRFI at Howbury Park has not been delivered. However, he tends to the view that this only serves to reinforce the point made in the 2011 Written Ministerial Statement on Strategic Rail Freight Interchanges that, in the South East in particular, it is proving extremely problematical to develop SRFIs.

Whether the development would operate as an SRFI

32. The Secretary of State has carefully considered the Inspector's analysis and conclusions as to whether the development would operate as an SRFI including his statement (IR13.79) that Network Rail does not consider that there are any major technical obstacles to achieving a connection such as is proposed at the site (IR13.76 – 13.83). He has also taken account of the further comments on this matter submitted following the close of the inquiry, including the letters from STRIFE dated 4 March and 15 April 2014 which raise the matter of junction speed. The Secretary of State has also given careful consideration to your representation dated 28 March 2014 and the letters of 1 November 2011 and 26 March 2014 from Network Rail, and those dated 11 November 2011 and 31 March 2014 from the Department for Transport. He observes that the letter dated 31 March 2014 states that Network Rail, as both the owner and operator of the rail infrastructure and the author of a very recent Freight Market Study that seeks to identify the market demand and infrastructure needs for rail freight over the coming thirty years, may be regarded as authoritative on these matters. Having taken account of the comments made, the Secretary of State sees little reason to doubt Network Rail's view that there is no good reason why a junction at Radlett capable of 45 mile per hour operation cannot be achieved.

33. Overall, the Secretary of State sees no good reason to disagree with the Inspector's analysis or with his conclusions 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) and that he can be satisfied of the ability of the SRFI to be accessed from all the key destinations (IR13.82). He further agrees that there is no reason to doubt that the Midland Main Line will develop as a key part of the rail freight network and that the aim of Network Rail and rail regulators will be to enable freight to be carried efficiently, albeit without compromising its passenger carrying ability (IR13.83).

Alternatives

34. 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). The Secretary of State sees no reason to disagree with the Inspector's comments on the appellant's assessment of the long list sites (IR13.92 – 13.94).

35. The Secretary of State notes that, at the inquiry, the cases put forward by the Council and by STRIFE included argument in relation to London Gateway (LG) and that, in his conclusions the Inspector refers to LG at IR13.85 and IR13.88. A number of the representations submitted to the Secretary of State since his letter of 20 December 2012 have also referred to LG. In particular Anne Main MP (7 January 2014) and STRIFE (4 March and 15 April 2014) both state that the opening of the LG container port amounts to a material change in respect of this proposal. Barton Willmore in its letter of 27 March 2014, Network Rail in its letter of 26 March 2014 and you, in your representation of 28 March 2014, disagree with that view. The Secretary of State has given careful consideration to the views submitted alongside the Inspector's analysis and conclusions and he concludes that there is no good reason to consider that the opening of LG undermines the Alternative Sites Assessment or the Inspector's views on LG at IR13.85.

36. The Secretary of State has given very careful consideration to the Inspector's comments about the appellant's short listed sites (IR13.95 – 13.103). He sees no reason to disagree with the Inspector's remarks about the sites at Littlewick Green or Harlington (IR13.95 – 13.98).

37. With regard to the Upper Sundon site, the Secretary of State has taken account of the Inspector's remark that there was no suggestion by any party that Upper Sundon scored better than the appeal site and that the Inspector saw no reason to disagree with that (IR13.95). The Secretary of State observes that the 2014 version of the emerging DSCB includes policy 64 which allocates 5 hectares of land at Sundon for an intermodal rail facility and states that the Green Belt boundary follows the extent of the rail freight interchange. As the submission version of the DSCB has yet to be published, the Secretary of State considers that this limits the weight to be attributed to the document.

38. A number of representations (including those from Anne Main MP dated 27 January and 14 April 2014 and those from STRIFE dated 4 March and 15 April 2014) have pointed to the Upper Sundon site as offering a preferable alternative to Radlett. The Secretary of State observes that Network Rail, in its letter dated 26 March 2014, states that it has worked with the developers of both the Sundon and the Radlett schemes, that Sundon is a significantly smaller site than Radlett and that it does not consider that the two proposals fulfil the same purpose or act as alternatives to each other. The Secretary of State sees no reason to disagree with the view of the Department for Transport in its letter of 31 March 2014 that Network Rail, as both the owner and operator of the rail infrastructure and author of the Freight Market Study, may be regarded as authoritative on these matters and he gives the views of Network Rail full weight. In conclusion on this matter, the Secretary of State does not consider that the Sundon site can be regarded as a preferable alternative to the proposal before him.

39. The Secretary of State has had regard to the Inspector's assessment of the site identified at Colnbrook (IR13.99 – 13.103) and the fact that appeal reference: APP/J0350/A/12/2171967 was made on 5 March 2012. As indicated by the Inspector (IR13.100), the Strategic Gap designation has been brought forward in Slough's adopted Core Strategy. The Secretary of State observes that the Core Strategy states that development will only be permitted in the Strategic Gap if it is essential to be in that location. He has also had regard to the High Court judgment referred to at paragraph 3 above, in which the judge held (at paragraph 79) that the Slough Core Strategy sets an additional policy restraint beyond that which follows from the site's location in the Green Belt. In common with the Inspector (IR13.100), the Secretary of State attributes substantial weight to the Strategic Gap designation. In conclusion on this matter, the Secretary of State sees no reason to disagree with the Inspector's analysis and conclusions in respect of Colnbrook (IR13.100 – 13.103).

Other benefits

40. Having had regard to the Inspector's analysis at IR13.104, the Secretary of State shares his view that the Park Street and Frogmore bypass is a local benefit which carries a little weight. He also agrees with the Inspector's reasoning and conclusions with regard to the proposals for Areas 3 to 8 (IR13.105).

The Planning Balance including Prematurity

41. The Secretary of State agrees with the Inspector's comments at IR13.106. He has concluded (at paragraph 24 above) that the proposal would constitute inappropriate development and that further harm would arise from a substantial loss of openness,

significant encroachment into the countryside and that the development would contribute to urban sprawl. He considers that the harm arising thereby would be substantial and that, in addition, some further harm would be caused to the setting of the historic city of St Albans (IR13.106). In line with paragraph 88 of the Framework, the Secretary of State has attached substantial weight to the harm that the appeal scheme would cause to the Green Belt.

42. As set out at paragraph 25 above, the Secretary of State has concluded that the effect of the proposal on the landscape and visual impact would be moderately adverse and that it would be contrary to Policy 104 of the LP. In addition, he has found that conflict would arise in respect of LP Policy 106 and that the harm to ecological interests should be given more weight than in 2008 (paragraph 26 above).

43. In common with the Inspector (IR13.109), the Secretary of State concludes overall that harm would arise from the Green Belt considerations and also due to the impact on landscape and ecology.

44. Turning to the benefits offered by the appeal scheme, like the Inspector (IR13.110), the Secretary of State weighs in the scheme's favour the country park, the improvements to footpaths and bridleways, the provision of a bypass to Park Street and Frogmore, the predicted reduction of CO₂ emissions, and the employment benefits. The Secretary of State has had regard to the Inspector's comments at IR13.111 and, also bearing in mind his remarks at paragraph 31 above, he shares the Inspector's view that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight.

45. The Secretary of State agrees with the Inspector's analysis at IR13.112 – 13.115. He agrees with the Inspector that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate 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 (IR13.114).

46. For the reasons given by the Inspector at IR13.116 – 13.117, the Secretary of State agrees with the Inspector that there is no reason to conclude that determination of the proposal would be premature (IR13.117).

Conditions & Obligations

47. Having had regard to the proposed conditions set out at annex A of the Inspector's Report the Inspector's comments on conditions (IR12.1 – 12.19) and the parties' further representations on conditions, the Secretary of State is satisfied that proposed conditions 1-32 are reasonable and necessary, and meet the tests set out at paragraph 206 the Framework.

48. In his letter of 20 December 2013, the Secretary of State invited you to provide him with a planning obligation under section 106 of the Town and Country Planning Act 1990 which binds all those with an interest in the appeal site. On 20 December 2013 Hogan Lovells LLP submitted a Unilateral Undertaking dated 19 December 2013 and, as set out above, the Secretary of State gave parties the opportunity to comment on that document. The Secretary of State has given very careful consideration to the comments made including the concerns raised by the Council and the comments submitted on behalf of the appellant in respect of those concerns.

49. The Secretary of State takes the view that the 2013 obligation includes the same or substantially similar covenants as those within the 2009 obligation (evidence document 9/HS/INQ/11.0). Notwithstanding the provisions in the 2013 obligation that Hertfordshire County Council shall give reasonable assistance to the Council in respect of its fourth, sixth and seventh covenants, the Council has advised that it lacks expertise or power in respect of some measures in the obligation. The Secretary of State, however, sees little reason to anticipate that Hertfordshire County Council would not provide such reasonable assistance as might be required by the Council to ensure that the relevant covenants would meet their aims and indeed it would be against Hertfordshire County Council's own interests and responsibilities as highways authority not to provide that reasonable assistance. In any event, the Secretary of State takes the view that it is more likely that a developer would need to have control over all of the areas of the land which are required for the development including the land currently owned by Hertfordshire County Council in order to deliver the appeal scheme to which this decision letter relates. The Secretary of State has considered whether this is a case where there are no prospects at all of the development starting within the time limit imposed by the permission and he is satisfied that this is not such a case.

50. With regard to the points made by parties as to whether the costs set out in the 2013 obligation are adequate, as previously indicated, the Secretary of State considers them to be so.

51. In conclusion on this matter the Secretary of State considers that, as sought by his letter of 20 December 2012, the Unilateral Undertaking dated 2013 is a duly certified, signed and dated planning obligation which complies with the relevant statutory provisions of sections 106 and 106A of the Town and Country Planning Act 1990 and the CIL regulations 2010 as amended. He considers that the 2013 obligation binds that part of the land which was not bound by the 2009 obligation and that the entire site is now bound to necessary and sufficient planning obligations.

Conclusion

52. In conclusion, the Secretary of State has found that the appeal proposal would be inappropriate development in the Green Belt and that, in addition, it would cause further harm through loss of openness and significant encroachment into the countryside. In addition the scheme would contribute to urban sprawl and it would cause some harm to the setting of St Albans. The Secretary of State has attributed substantial weight to the harm that would be caused to the Green Belt. In addition he has found that harms would also arise from the scheme's adverse effects on landscape and on ecology and that the scheme conflicts with LP policies 104 and 106 in those respects.

53. The Secretary of State considers that the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East, to which he has attributed very considerable weight, and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt. He has also taken account of the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass. The Secretary of State considers that these considerations, taken together, clearly outweigh the harm to the Green Belt and the other harms he has identified including the harm in relation to landscape and ecology and amount to very special circumstances. Despite the Secretary of State's conclusion that the scheme gives rise to conflict with LP policies 104 and 106, in the light of his finding that very special circumstances exist in

this case he is satisfied that, overall the scheme is in overall accordance with the development plan.

Formal Decision

54. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for the construction of a Strategic Rail Freight Interchange 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, subject to the conditions set out at Annex B.

55. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

56. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

57. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

58. 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.

59. A copy of this letter has been sent to St Albans City and District Council and to STRIFE. Notification letters have been sent to all other parties who asked to be informed of the decision.

Christine Symes

Authorised by the Secretary of State to sign in that behalf

Post Inquiry correspondence received prior to 7 July 2010

Name	Date
S Hedges	15/05/2010
P Dixon	17/05/2010
M Aldridge	04/06/2010
R Biddlecombe	15/06/2010
J Chattaway	15/06/2010
M Mark	15/06/2010
S Beesley	15/06/2010
A Russell	16/06/2010
P Matteucci	16/06/2010
J Rice	16/06/2010
C Horton	16/06/2010
S Statt	17/06/2010
J Byrne	17/06/2010
EK Kaye	17/06/2010
P Ruckin	18/06/2010
B Greenwood	18/06/2010
B Gardner	18/06/2010
M Novitt	19/06/2010
D Tribe	19/06/2010
R Tompkins	20/06/2010
J Bacall	20/06/2010
F & K Loud	21/06/2010
R Harrington	21/06/2010
E Thurston	21/06/2010
C Mitchell	23/06/2010
MJG Lewis	25/06/2010

Post Inquiry correspondence following the Secretary of State's letter dated 15 September 2011

Name / Organisation	Date
Ian La Rivière	06/10/2011
Mr S Walkington and Mr D Parry	10/10/2011
Paul Stimpson / Head of Planning – Slough Borough Council	11/10/2011
Erica Mortimer / CgMs for Helioslough	12/10/2011
Dick Bowler / Hertfordshire County Council	13/10/2011
Tim Wellburn / Department for Transport	13/10/2011
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	14/10/2011
Simon Flisher / Barton Willmore for Goodmans	14/10/2011
St Albans City and District Council	14/10/2011

Post Inquiry correspondence following the Secretary of State's letter dated 19 October 2011

Name / Organisation	Date
Anne Main MP for St Albans	08/11/2011
Paul Stimpson / Head of Planning – Slough Borough Council	09/11/2011
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	10/11/2011
James Clappison MP for Hertsmere	10/11/2011
Simon Flisher / Barton Willmore for Goodmans	10/11/2011
St Albans City and District Council	10/11/2011
Erica Mortimer / CgMs for Helioslough	11/11/2011
Tim Wellburn / Department for Transport - enclosing one from Richard Eccles, Director of Network Planning dated 01/11/2011	11/11/2011

Post Inquiry correspondence following the Secretary of State's letter dated 29 November 2011

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	19/12/2011
Erica Mortimer / CgMs for Helioslough	20/12/2011
Mike Lovelady / St Albans City and District Council	22/12/2011
Simon Flisher / Barton Willmore for Goodmans	23/12/2011
Paul Stimpson / Head of Planning – Slough Borough Council	29/12/2011
Mr P Trevelyan / St Albans Civic Society	30/12/2011

Post Inquiry correspondence following the Secretary of State's letter dated 29 March 2012

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/03/2012
Anne Main MP for St Albans	04/04/2012
Erica Mortimer / CgMs for Helioslough	10/04/2012
Polly Harris-Gorf / Hertsmere Borough Council	11/04/2012
Simon Flisher / Barton Willmore for Goodmans	16/04/2012
James Clappison - MP for Hertsmere	16/04/2012
Mike Lovelady / St Albans City and District Council	16/04/2012

Post Inquiry correspondence following the Secretary of State's letter dated 18 April 2012

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/04/2012
Paul Stimpson / Head of Planning – Slough Borough Council	26/04/2012
Erica Mortimer / CgMs for Helioslough	26/04/2012
Mike Lovelady / St Albans City and District Council	25/04/2012

Post Inquiry correspondence following the Secretary of State's letter dated 19 September 2012

Name / Organisation	Date
Anne Main - MP for St Albans	25/09/2012
James Clappison - MP for Hertsmere	26/09/2012
Erica Mortimer / CgMs for Helioslough	27/09/2012
Simon Flisher / Barton Willmore for Goodmans	28/09/2012
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	01/10/2012

Paula Paley on behalf of Aldenham Parish Council	01/10/2012
Mr S Walkington and Mr D Parry	01/10/2012
Peter Evans / Aldenham Parish Council	01/10/2012
John Dean / Colney Heath Parish Council	01/10/2012
Mike Lovelady / St Albans City and District Council	02/10/2012
Graham Taylor / Radlett Society and GB Association	02/10/2012
Paul Stimpson / Head of Planning – Slough Borough Council	03/10/2012
Steve Baker / CPRE Hertfordshire	03/10/2012
Polly Harris-Gorf / Hertsmeire Borough Council	03/10/2012

Post Inquiry correspondence following the Secretary of State's letter dated 12 October 2012

Name / Organisation	Date
Mr S Walkington and Mr D Parry	18/10/2012
Hogan Lovells - solicitors for Helioslough	18/10/2012
Hogan Lovells - solicitors for Helioslough	25/10/2012
Mike Lovelady / St Albans City and District Council	26/10/2012
Peter Evans / Aldenham Parish Council	26/10/2012
Simon Flisher / Barton Willmore for Goodmans	26/10/2012
Paul Stimpson / Head of Planning – Slough Borough Council	29/10/2012

Other post Inquiry correspondence - disclosed in the Secretary of State's letter of 20 December 2012

Name / Organisation	Date
Mr Lindemann	27/10/2011
Mr Behrman	30/10/2011
Graham Taylor / Radlett Society and Green Belt Association	14/03/2012
Anne Main - MP for St Albans	29/03/2012
Anne Main - MP for St Albans	25/04/2012
Howard Wayne / Wayne Leighton Solicitors for STRIFE Ltd	30/04/2012
Bruce Vincent	26/05/2012
Mr Behrman	30/10/2011
Anne Main - MP for St Albans	14/08/2012
N Halliwell	28/09/2012
Ann Goddard	28/09/2012
H Lewis and G McDonald	03/10/2012
James Clappison - MP for Hertsmeire	15/10/2012
Anne Main - MP for St Albans	08/11/2012

Post Inquiry correspondence following the Secretary of State's letter dated 19 February 2014

Name / Organisation	Date of letter
Howard Wayne / Wayne Leighton LLP obo STRIFE	04/03/2014
James Clappison MP	05/03/2014
Anne Main MP	05/03/2014
Steve Baker / CPRE Hertfordshire	05/03/2014
David Wood / Hogan Lovells International LLP obo Helioslough Limited	05/03/2014
Mike Lovelady / St Albans City and District Council	06/03/2014

Simon Flisher / Barton Willmore obo Goodman Logistics Developments (UK) Ltd	06/03/2014
Ian M LaRivière	07/03/2014

Post Inquiry correspondence following the Secretary of State's letter dated 14 March 2014

Name / Organisation	Date of letter
Peter Evans, Aldenham Parish Council	25/03/2014
James Clappison MP	26/03/2014
Simon Flisher, Director, Barton Willmore (obo Goodman Logistics Development (UK) Ltd	27/03/2014
Graham Taylor, Chairman, Radlett Society & Green Belt Association	27/03/2014
Steve Baker, CPRE Hertfordshire	28/03/2014
Michael Gallimore, Partner, Hogan Lovells International LLP (obo Helioslough Limited)	28/03/2014
Mike Lovelady, Head of Legal Services, St Albans City & District Council	28/03/2014
Sarah Pickup, Deputy Chief Executive, Hertfordshire County Council	28/03/2014
Paul Collins, Deputy Director, Rail Strategy, Department for Transport – enclosing one from Paul McMahon, Director Freight, Network Rail dated 26/03/2014	31/03/2014

Post Inquiry correspondence following the Secretary of State's letter dated 1 April 2014

Name / Organisation	Date of letter
Michael Gallimore, Partner, Hogan Lovells International LLP (obo Helioslough Limited)	04/04/2014
Simon Flisher, Director, Barton Willmore (obo Goodman Logistics Development (UK) Ltd	08/04/2014
Mike Lovelady, Head of Legal Services, St Albans City & District Council	09/04/2014
Anne Main MP	14/04/2014
Howard Wayne, Wayne Leighton LLP obo STRIFE	15/04/2014

Other post inquiry correspondence

Name / Organisation	Date of letter
Ken Herbert	21/06/2012
Hogan Lovells – for Helioslough	31/10/2012
Anne Main MP	17/12/2012
James Clappison MP	21/12/2012
Cllr Steve Bowes-Phipps	17/12/2012
Anne Main MP	21/12/2012
Clive Glover	21/12/2012
Alan Richardson (and further follow-up letter of 18/01/2013)	21/12/2012
Kate Steiner	21/12/2012
Nic Pearce (and further follow-up letter of 18/01/2013)	21/12/2012
Tim Price (and further follow-up letter of 28/01/2013)	21/12/2012
Malcolm Mark	21/12/2012
Charles O'Carroll	22/12/2012

Debbie Baker	23/12/2012
Angela Dixon	27/12/2012
Gary Davis (and further follow-up letter of 24/01/2013)	28/12/2012
Alison Evans	30/12/2012
Anthony Holden	30/12/2012
Eric Roberts	31/12/2012
John Barker	02/01/2013
Pam and Tony Elliott	02/01/2013
Catherine Nixon	02/01/2013
Daniel Deyong	03/01/2013
Anthony Oliver	03/01/2013
Jana Marmon (and further follow-up letter of 25/01/2013)	03/01/2013
Dr Nigel Brand	03/01/2013
Daniel Deyong	04/01/2013
Ken Herbert	04/01/2013
Catherine Ashton (and further follow-up letter of 30/01/2013)	05/01/2013
Margaret & Michael Morgan	05/01/2013
Hilary Robinson (and further follow-up letter of 28/01/2013)	06/01/2013
Kim Scrivener	06/01/2013
Valerie Argue	07/01/2013
Clive Glover	08/01/2013
James Clappison MP	08/01/2013
Gary Davis	08/01/2013 & 15/01/2013
RJ & Mrs PM Coller	09/01/2013
A W Turp	09/01/2013
Jill Godwin	10/01/2013
Patricia & George Old	10/01/2013
Fiona & Richard Todd	11/01/2013
Simon Gardner	11/01/2013
Daniel Barton (and further follow-up letter of 07/02/2013)	11/01/2013
Christopher Brown	11/01/2013
Mr J Freestone	11/01/2013
Anne Main MP	11/01/2013
Jeremy Caulton	12/01/2013
Pamela Roberts	12/01/2013
Roy McNee	13/01/2013
Clive Glover	14/01/2013
Irene Cowan	14/01/2013
Bruce Vincent	15/01/2013
Mark Brattman	17/01/2013
R Clarkson	18/01/2013
Mike Lovelady, St Albans City and District Council (two letters)	18/01/2013
Mr A Turp	22/01/2013
Vicki Hopcroft	22/01/2013
Erica Mortimer, CGMS	23/01/2013
Sandra Constable	23/01/2013
Jill Singer & John Thomson	23/01/2013
Corinne & Martin Lewis	25/01/2013
Jeremy Chattaway	25/01/2013
Malcolm Mark	25/01/2013
Caroline Syson	26/01/2013
Kirtida Mehta	26/01/2013

Bruce Gardner	26/01/2013
Darren Blencowe	26/01/2013
Stuart Beesley	26/01/2013
Mark Novitt (and further follow-up e-mails of 15/02/13)	27/01/2013
Richard Biddlecombe (Napsbury Park RA)	27/01/2013
Robert Harrison	27/01/2013
Emily Bowes	27/01/2013
P Nevitt	27/01/2013
Eric Hamill	27/01/2013
Chris Clarke	27/01/2013
G R Cooper	27/01/2013
Charles Taylor	28/01/2013
Alan Russell	28/01/2013
Stanley Statt	28/01/2013
Anthony Murray	28/01/2013
Simon & Laura Mitchell	28/01/2013
Lesley Field	28/01/2013
Jonathan Richards	28/01/2013
David Johnson-Stockwell	28/01/2013
Lorraine & Paul Ruckin	28/01/2013
Paul Matteucci	28/01/2013
Fiona Loud	28/01/2013
Richard Hoult	28/01/2013
Ken D Peak	28/01/2013
Amy Burnett	29/01/2013
Dawit W. Michael Gebre-ab	29/01/2013
Jonathan Carter	29/01/2013
Jeremy Kaye	29/01/2013
Robert & Kathleen Nevitt	29/01/2013
Murray Willows	29/01/2013
Christine Bee	29/01/2013
Sarah Cox	29/01/2013
Naveed Malik	29/01/2013
Sally McKean	29/01/2013
Fiona & Frederick Tong	29/01/2013
Patsy & Les Grundon	29/01/2013
Jeremy Pepper	29/01/2013
Peter Stallwood	29/01/2013
Christine Mitchell	29/01/2013
Helen Smith	29/01/2013
Jennie Harrison	29/01/2013
Ben Greenwood	29/01/2013
Minos Michaelides	30/01/2013
Nicholas Remzi	30/01/2013
Simon Dekker	30/01/2013
Deborah Dellinger	30/01/2013
Michael Wolfson	30/01/2013
Paul Cordell	30/01/2013
Katy Patino	30/01/2013
Christopher Horton	30/01/2013
Paul & Hilary Weitzman	30/01/2013
Dr Tim Wickham	30/01/2013
Joan & Dave Dayton	31/01/2013
Linda Banks	31/01/2013

Pamela & Malcolm Mark	31/01/2013
Clive Ireland	31/01/2013
Christopher Langdon	01/02/2013
Gary Davis	02/02/2013
Trevor Fox	03/02/2013
Billy Brown	06/02/2013
Robert Webb (and follow-up e-mail of 27/02/2013)	06/02/2013
Mrs V M Wilson	06/02/2013
Peter Celiz	07/02/2013
Anne Main MP	07/02/2013
Sheena Ellwood (and follow-up letters of 03/03/2013 and 22/03/2013)	08/02/2013
Hogan Lovells for Helioslough	08/02/2013
James Clappison MP (enclosing one from constituent, Stuart Bromley)	11/02/2013
Sonia Simmons	12/02/2013
Mark Novitt	15/02/2013
Mr & Mrs Kastro	16/02/2013
Chris Bladd	17/02/2013
J Freestone	17/02/2013
Peter Mason	18/02/2013
John Scoote	18/02/2013
Christopher Langdon	18/02/2013
Neil Magrath	18/02/2013
John Sharp	19/02/2013
Patricia McKinley	19/02/2013
Kelvin Smith	20/02/2013
Sam Humphries	21/02/2013
Bren Calver	21/02/2013
Rt Hon Dominic Grieve QC MP (enclosing one from constituent, Mrs Gray-Fisk)	21/02/2013
Dave Saul	22/02/2013
Gordon Shepherd	22/02/2013
Chris Hamby	22/02/2013
James Clappison MP (enclosing one from constituent, David Lavender)	22/02/2013
James Clappison MP (enclosing one from constituent, Christopher Langdon)	22/02/2013
Michael Ormiston	23/02/2013
Susan Bellamy (and follow-up e-mail of 15/03/2013)	25/02/2013
John Wood, Hertfordshire CC	26/02/2013
John Rae	28/02/2013
Michael Gallimore, Hogan Lovells	28/02/2013
A Maskall	01/03/2013
Mr & Mrs Chown	01/03/2013
Jack Beeston	01/03/2013
Chris Thorpe	04/03/2013
Anne Main MP	04/03/2013
Miranda Gerritson	06/03/2013
Mrs Kowolik	07/03/2013
Michael Gallimore, Hogan Lovells	07/03/2013
Mr R F Collins	08/03/2013

Leslie Diamond	10/03/2013
Dr Winkler	10/03/2013
David & Meryl Burleigh	11/03/2013
Daniel Graham	11/03/2013
Mrs Anne Main MP	12/03/2013
Mike Lovelady, St Albans City and District Council	13/03/2013
Stuart Bromley	14/03/2013
Mr & Mrs LaRivière	18/03/2013
Mrs Anne Main MP encl Gary Davis	22/03/2013
Mrs Anne Main MP	27/03/2013
Michael Gallimore, Hogan Lovells	27/03/2013
Mike Lovelady, St Albans City and District Council	28/03/2013
Gary Davis	01/04/2013 & 09/04/2013
Huw Smith	06/04/2013
Mrs Anne Main MP	08/04/2013
Michael Gallimore, Hogan Lovells	15/04/2013
Mrs Barbara Price	Undated – but received on 30/04/13
Michael Gallimore, Hogan Lovells	19/04/2013
Mrs Anne Main MP (with letter from Rt Hon Simon Burns MP (DfT))	02/05/2013
James Clappison MP constituent Mrs Fiona Todd	08/05/2013
Michael Gallimore, Hogan Lovells	10/05/2013
Mrs Anne Main MP	15/05/2013
John Thomson – St Albans Civic Society	16/05/2013
Michael Gallimore, Hogan Lovells	21/05/2013
Kerry Smith	27/05/2013
Michael Gallimore, Hogan Lovells	28/05/2013
Peter Trevelyan – St Albans Civic Society	03/06/2013
Mrs Anne Main MP	06/06/2013
Mrs Anne Main MP	21/06/2013
P Trevelyan / St Albans Civic Society (to DfT)	21/06/2013
Mrs Anne Main MP	24/06/2013
Sandra Constable	24/06/2013
Martin Threadgold	27/06/2013
Gary Davis	28/06/2013
Mrs Anne Main MP	28/06/2013
Mrs Anne Main MP (enclosing one from Gary Davis)	05/07/2013
Mrs Anne Main MP (enclosing one from Ian Troughton)	05/07/2013
James Clappison MP (enclosing one from Mr Lavendar)	16/07/2013
Heather Pownall	28/07/2013
Mrs Anne Main MP	01/08/2013
Beryl Munro	07/08/2013
Mrs Anne Main MP	19/08/2013
Ken Peak – London Colney Village Concern	05/09/2013
Mrs Anne Main MP (enclosing one from Martin Blencowe)	30/09/2013

James Clappison MP (enclosing one from Heather Pownall)	03/10/2013
Mike Penning MP	22/10/2013
Mrs Anne Main MP	28/10/2013
John Wood, Hertfordshire CC	29/10/2013
John Wood, Hertfordshire CC	31/10/2013
John Wood, Hertfordshire CC	01/11/2013
Erica Mortimer, CgMs	04/11/2013
Richard Hoult	12/11/2013
Diana Tribe	25/11/2013
James Clappison MP (enclosing one from Heather Pownall)	02/12/2013
Alison Rubinson	04/12/2013
Rt Hon Peter Lilley MP (enclosing one from Sheilagh Collingwood)	05/12/2013
Andy Love	10/12/2013
Mrs Vicki Hopcroft	11/12/2013
Laura Dekker	11/12/2013
Stephen Rose	11/12/2013
Nicholas Remzi	11/12/2013
Simon Angel	11/12/2013
Mark Castle	11/12/2013
Jeremy Kaye	11/12/2013
Hugh Howard	11/12/2013
Barbara Mccabe	11/12/2013
Nick Louis	11/12/2013
Dr Tim Wickham	11/12/2013
Jane Rice	11/12/2013
Caroline Syson	11/12/2013
Diana Tribe	11/12/2013
Harvey Sokolsky	11/12/2013
Alan Ring	11/12/2013
Hardeep Lota	11/12/2013
Pamela & Malcolm Mark	12/12/2013
Mr Tim Becker	12/12/2013
Paul Weitzman	12/12/2013
Mrs Clovissa Horton	12/12/2013
Richard Biddlecombe	12/12/2013
Lesley Field	12/12/2013
Dr David Lee	12/12/2013
Stuart Beesley	12/12/2013
Simon Edwards	15/12/2013
Gary Davis	15/12/2013
P Nevitt	15/12/2013
Howard Wayne	16/12/2013
Sheena Ellwood	16/12/2013
Ian Christopher	16/12/2013
Cllr Stephen Bowes-Phipps	16/12/2013
Ian Lariviere	17/12/2013
Geoffrey Shalet	18/12/2013
Colin & Tricia Gibb	19/12/2013
Fiona & Richard Todd	19/12/2013
John Barker	19/12/2013

Chris Doyle	19/12/2013
Sarah Pickup, Hertfordshire CC	19/12/2013
Vicki Hopcroft	20/12/2013
David Turner	20/12/2013
Michael Gallimore, Hogan Lovells	20/12/2013
Nicola Graynoth	21/12/2013
Les and June Diamond	21/12/2013
Neil Conrad	22/12/2013
Gordon Townsend	22/12/2013
Violet LaRivière	23/12/2013
Stewart Rose	23/12/2013
Allan Lane	23/12/2013
Margaret Townsend	23/12/2013
Gary Clamp	23/12/2013
His Honour Judge Michael Kay QC	23/12/2013
Peter Moss	23/12/2013
John Stacey	23/12/2013
Dominic Mort	24/12/2013
Suzi Clarke	24/12/2013
Brian Gibbard	27/12/2013
Fiona & Richard Todd	28/12/2013
Natasha Deyong	29/12/2013
Kevin Naughton	29/12/2013
Lesley Field	30/12/2013
Catherine Davies	30/12/2013
John LaRiviere	30/12/2013
Marcus Hooper	01/01/2014
Neil Magrath	01/01/2014
Brenda & Raymond Jenkinson	02/01/2014
Gerry Walden	03/01/2014
John Garrick	03/01/2014
Jamie Goodfellow	03/01/2014
Keith Macbain	03/01/2014
Peter Tiffany	05/01/2014
Mrs Peta McKeon	05/01/2014
Carole Heselton	05/01/2014
Melvyn & Michelle Smith	06/01/2014
John Coller	06/01/2014
Stephen & Ann Rutherford	08/01/2014
L & D Cazin	08/01/2014
Christopher Langdon	08/01/2014
Andrew Bailey	08/01/2014
Amanda Dickson	09/01/2014
Ian & Sue Getley	09/01/2014
Sally Temple	13/01/2014
A Ortega	13/01/2014
Dr Robert Wareing	15/01/2014
Anthony Baker	17/01/2014
Douglas Hirst	20/01/2014
Cllr Stephen Bowes-Phipps	21/01/2014
Dr A Chalmers	22/01/2014
Anne Main MP (& enclosing one from Doug Hirst dated 17 January 2014)	27/01/2014

Siobhan Barrett	07/02/2014
David & Sharon Harris	09/02/2014
Anne Main MP (& enclosing one from Doug Hirst dated 17 January 2014)	10/02/2014
Stephen Hammond MP (enclosing one from Rt Hon Cheryl Gillan MP dated 10 January 2014, enclosing one from Peter and Vanessa Martin dated 16 December 2013)	11/02/2014
Matthew Johns	18/02/2014
Jack Easton, St Albans District Green Party	17/03/2014

CONDITIONS

COMMENCEMENT OF DEVELOPMENT

1. The development hereby permitted shall be commenced either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters to be approved, whichever is the later.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

APPROVAL OF RESERVED MATTERS

2. Application for approval of the Reserved Matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

DEVELOPMENT IN ACCORDANCE WITH KEY PARAMETERS PLAN

3. The development shall be carried out in accordance with the Key Parameters Plan and the specified paragraphs of the Development Specification Document dated March 2009 and drawing number 394503-LV-074 referred to in condition 3(f) comprising:

- (a) layout of the new buildings to the extent to which it is shown on the Key Parameters Plan together with para 4.3;
- (b) the maximum ridge height of the new buildings as specified on the Key Parameters Plan together with para 4.4;
- (c) the maximum length and width of the B8 distribution units and the administration and ancillary buildings as set out in para 4.5;
- (d) the maximum total floorspace of the new buildings applied for as specified on the Key Parameters Plan together with para 4.6;
- (e) the proposed finished site levels specified on the Key Parameters Plan together with para 4.7;
- (f) the height of earth mounds shown on drawing number 394503-LV-074 together with para 4.8;
- (g) various access and circulation routes shown on the Key Parameters Plan together with paras 4.9 and 4.10;
- (h) access to lorry and car parking/storage areas as shown on the Key Parameters Plan together with para 4.11;
- (i) proposed structure planting areas as shown on the Key Parameters Plan together with para 4.12.

Reason: This condition is necessary to ensure that the development does not materially depart from that applied for and considered in the ES.

4. PARTIAL SIGNALISATION OF PARK STREET ROUNDABOUT

- 4.1 None of the Units shall be occupied until the Park Street Roundabout Signalisation Works have been completed and brought into use.
- 4.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 4.3 The improvements shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

Reason: This condition is necessary to ensure that the improvements to Park Street Roundabout are completed before the units are occupied.

5. IMPROVEMENT TO TRAFFIC SIGNALS AT LONDON COLNEY ROUNDABOUT

- 5.1 None of the Units shall be occupied until details of the London Colney Roundabout Improvements have been submitted for approval in writing by the local planning authority.
- 5.2 The London Colney Roundabout Improvements shall be completed in accordance with the approved details before the later of:
- (a) two years of occupation of any of the Units, or
 - (b) twelve months of approval of the details of the improvements.

Reason: This condition is necessary to increase the capacity of the London Colney Roundabout

6. PROVISION OF ACCESS WORKS AND PARK STREET BYPASS

- 6.1 None of the Units shall be occupied until the Access Works and the Park Street Bypass Phase 1 Works have been completed and brought into use.
- 6.2 The works shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 6.3 The works shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.
- 6.4 Not more than 230,000 square metres of floor area in the Units shall be occupied until a scheme for the Park Street Bypass Phase 2 Works (which shall include a programme for the

delivery of the works) has been submitted to and approved in writing by the local planning authority.

- 6.5 The Park Street Bypass Phase 2 Works shall be completed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that the access is completed before the Units are occupied, including the Park Street Bypass with a 'temporary' connection to the A5183 at its southern end.

7. **IMPROVEMENTS TO JUNCTION 21A OF THE M25**

- 7.1 None of the Units shall be occupied until the M25 Junction 21A Improvements have been completed and brought into use.

- 7.2 The improvements shall include any revisions as required by the Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).

- 7.3 The improvements shall have:

- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
- (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 21a.

8. **IMPROVEMENTS TO JUNCTION 22 OF THE M25**

- 8.1 Not more than 130,000 square metres of floor area in the Units shall be occupied until the M25 Junction 22 Improvements have been completed and brought into use.

- 8.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).

- 8.3 The improvements shall have:

- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
- (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 22.

9. **TRAVEL AND FREIGHT MONITORING AND MANAGEMENT PLAN**

- 9.1 None of the Units shall be occupied until a Travel and Freight Monitoring and Management Plan substantially in accordance with the Draft Travel and Freight Monitoring and

Management Plan dated 18 December 2009 has been submitted to and approved in writing by the local planning authority.

- 9.2 The Travel and Freight Monitoring and Management Plan shall be submitted for approval no later than 12 months following the commencement of the Development.
- 9.3 The approved Travel and Freight Monitoring and Management Plan shall be implemented in accordance with the timetable contained therein and its requirements shall continue to be observed as long as any part of the development is occupied.

Reason: This condition is necessary to ensure that the measures proposed in the Travel Plan and Freight Management Plan to regulate movement to and from the development are carried out in the interests of (i) encouraging travel by means other than the private car and (ii) regulating the impact of HGV traffic on the surrounding network

CAR PARKING

10. Car parking spaces shall be provided at a standard of not more than 1 space per 207 square metres of floorspace for each Unit within the development

Reason: This condition is necessary to limit the amount of parking on the site in order to encourage travel by means other than the private car.

CONTROL OVER SOUTHERN ROUNDABOUT

11. None of the Units shall be occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority to ensure that only pedestrians, cyclists and authorised public transport and emergency vehicles can use the eastern limb of roundabout Y on the Highways Plan. The scheme shall specify the physical measures to be incorporated and the management arrangements for the operation of those measures. The scheme shall be submitted for approval no later than 12 months following the commencement of the Development. The approved scheme shall be provided before any of the Units are occupied and the only users of the eastern limb shall be those authorised under the approved scheme.

Reason: This condition is necessary to ensure that the southern entrance to the SRFI is not used by employee's vehicles or goods vehicles in order to limit the impact of traffic generated by the development on the local road network.

12. RAIL RELATED WORKS

- 12.1 None of the Units shall be occupied until the Midland Mainline Connection Works have been completed and until an operational rail link has been provided from such works to the relevant Unit.

- 12.2 A second track linking the reception sidings to the Midland Mainline shall be completed and become operational upon the earlier of:

(a) as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds seven per 24 hour weekday period, or

(b) 10 years following first occupation of any of the Units.

- 12.3 None of the Units shall be occupied until the Intermodal Terminal Phase 1 Works have been completed.

- 12.4 The Midland Mainline Connection Works and the rail links to each of the Units and the Intermodal Terminal once provided shall thereafter be managed and maintained such that they remain available and operational to serve the Units.
- 12.5 The Intermodal Terminal Phase 2 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds four per 24 hour weekday period.
- 12.6 The Intermodal Terminal Phase 3 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds eight per 24 hour weekday period.
- 12.7 The Intermodal Terminal shall be equally open to access by all licensed rail freight operating companies.
- 12.8 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in conditions 12.1, 12.2, 12.3, 12.5 and 12.6 until such works have been completed.

Reason: This condition is necessary to ensure that the rail facilities on the site and the connection to the main line are provided and maintained in a manner compatible with the intended use of the site as a SRFI.

13. **RAIL RELATED WORKS – GAUGE ENHANCEMENT TO THE MIDLAND MAINLINE**

- 13.1 Not more than 175,000 square metres of floor area in the Units shall be occupied until the Midland Mainline Gauge Enhancement Works have been completed such that the W10 gauge enhancement has been provided either:
 - (a) from the development to Acton Yard, West London Junction and Willesden Junction (Acton Branch), or
 - (b) from the development to Junction Road Junction.
- 13.2 If Network Rail confirms in writing to the local planning authority before occupation of 175,000 square metres of floorspace within the Units that both sets of the works set out at condition 13.1 are required to be completed to meet the anticipated demand for train paths to the development, not more than 230,000 square metres of floorspace within the Units shall be occupied until a programme for such works has been approved in writing by the local planning authority. The works shall be completed in accordance with that programme.
- 13.3 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in condition 13.1 until such works have been completed.
- 13.4 There shall be submitted to the Council written notice of the anticipated date of occupation of 175,000 sq metres of floorspace within the Units, such notice to be served at least 6 months prior to such anticipated date of occupation.

Reason: This condition is necessary to ensure that the rail gauge enhancement works are completed in a timely fashion

CONSTRUCTION METHOD STATEMENT

14. The Development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a construction method statement. The construction method statement shall include:
- (a) details of the methods to be used to control dust, noise, vibration and other emissions from the site;
 - (b) details of all temporary buildings and compound areas including arrangements for their removal following completion of construction;
 - (c) details of areas to be used for the storage of plant and construction materials and waste;
 - (d) details of temporary lighting arrangements;
 - (e) hours of construction work.
 - (f) measures to ensure that construction vehicles do not deposit mud on the public highway.
 - (g) a scheme for the routing of construction vehicles accessing the site including measures to be taken by way of penalties if construction vehicles do not observe the identified routes.
 - (h) details of the construction earthworks methodology.

The construction of the development shall be carried out in accordance with the approved construction method statement.

Reason: This condition is necessary in the interest of controlling the construction works and limiting the impact of construction on surrounding residents.

15. LANDSCAPING

- 15.1 The details to be submitted for approval under condition 2 in relation to landscaping for Areas 1 and 2 shall include:
- (a) a topographical survey of the Country Park within Area 1 and Area 2 comprising an updated version of drawing number 394503/LV/041 showing landform, water features, boundary structures, land uses, access roads and footpaths.
 - (b) proposed ground modelling, re-profiling and mounding with proposed contours to be at a maximum of 1 metre levels;
 - (c) a survey of existing trees and hedges (including ground levels at the base of all trees) in the Country Park within Area 1 and Area 2, the survey to show details of all trees and hedges to be removed and those to be retained and a scheme for the protection of retained trees during the construction of the development on Area 1 and Area 2. The

survey and the tree protection measures shall be in accordance with BS 5837 (2005) unless otherwise agreed in writing with the local planning authority;

- (d) the comprehensive treatment of planting and seeding areas including plans and sections at a scale of not less than 1:1250;
- (e) all boundary treatment, retaining walls and security fencing including materials to be used, typical elevations and heights;
- (f) acoustic fencing including materials to be used, typical elevations and heights and details of acoustic performance;
- (g) hard landscape works including access roads, parking areas, signage, seating, litter bins and picnic areas;
- (h) all existing, diverted (whether temporary or permanent) and proposed rights of way including footpaths, bridleways and cycleways and their proposed surfacing treatment and details of enclosures, gates and stiles;
- (i) works to Hedges Farm to provide the Country Park Visitor/Interpretation Centre;
- (j) a programme of implementation and a management plan.

15.2 The landscaping programme shall be implemented as approved and the landscaping shall be maintained in accordance with the approved management plan.

Reason: This condition is necessary to guide the submission of landscaping details required as part of the reserved matters application and to ensure that the landscaping in Areas 1 and 2 is carried out and appropriately maintained.

POLLUTION CONTROL

16. Where any Unit or other facility in the development has oil fuel storage or chemical tanks serving such Unit, the relevant Unit shall not be occupied until a pollution control strategy in relation to such tanks has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the relevant approved strategy.

Reason: This condition is necessary to reduce the risk of any oil or chemicals stored on site polluting the environment.

17. DRAINAGE

17.1 The development shall not be commenced on Area 1 and Area 2 until a detailed scheme of drainage for Area 1 and Area 2 has been submitted to and approved in writing by the local planning authority. Such scheme shall include:

- (a) the provision of sustainable urban drainage systems to control the run-off from the development;
- (b) the provision of storm water balancing swales and other storage facilities; and

- (c) details of the design of the drainage infrastructure to illustrate the discharge rates will be less than existing levels.

The development shall be carried out in accordance with the approved scheme.

- 17.2 The development shall not be commenced on Areas 3 - 8 respectively until it has been confirmed in writing to the local planning authority whether development on the relevant Area includes the provision of foul and surface water drainage. If such drainage is to be provided on any of Areas 3 - 8 the development shall not be commenced on the relevant Area until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such drainage and its effect on groundwater. Foul and surface water drainage on the relevant Area shall be constructed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that drainage of the developed areas of the site does not increase run-off into local watercourses.

18. **PILING**

Piling or the construction of any other foundations using penetrative measures shall not take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such measures and their effect on groundwater. Piling or the construction of any other foundations using penetrative measures shall only take place in accordance with such approved scheme.

Reason: the site is in a sensitive location with respect to the potential contamination of groundwater. The construction of piles or other types of foundation could provide a potential pathway for contamination at the surface to migrate into the underlying major aquifer and Source Protection Zone.

AREA 2 PONDS

19. The development on Area 1 shall not be commenced until details of the provision (including the timing, monitoring and aftercare of the new ponds to be located in Area 2 have been submitted to and approved in writing by the local planning authority. The ponds shall be constructed in accordance with the approved details. None of the Units shall be occupied until the ponds on Area 2 have been constructed.

Reason: This condition is necessary to ensure that ponds are provided on Area 2 to provide appropriate habitat for newts and invertebrates.

TRANSLOCATION OF ACID GRASSLAND

20. The development shall not be commenced on the land forming part of Area 1 shown on EPR Map 11 until a mitigation strategy for the translocation of acid grassland from Area 1 to Area 2 (including timing, monitoring and aftercare) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.

Reason: This condition is necessary to ensure that appropriate provision is made to mitigate for the loss of acid grassland on Area 1.

PROTECTED SPECIES

21. The development shall not be commenced until an up to date survey has been submitted to the local planning authority showing the location of any protected species (being reptiles and nesting birds protected under the Wildlife and Countryside Act 1981 (as amended)) within

Areas 1 or 2. Thereafter development shall not be commenced on any land forming part of Area 1 or 2 and identified by the survey as a location for a protected species, until a mitigation strategy for such species has been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved strategy.

Reason: This condition is necessary to ensure that any protected species on the site are identified and that appropriate steps are taken to avoid harm to them.

BADGERS

22. Not more than 6 months prior to the development being commenced on Area 1 or Area 2 the developer shall carry out a badger survey on the relevant Area and shall submit the results of such survey to the local planning authority. If appropriate the survey shall include a mitigation strategy for approval in writing by the local planning authority. Development shall be carried out only in accordance with the approved mitigation strategy.

Reason: This condition is necessary to ensure that any Badgers on the site at the time development is due to commence are identified and appropriate measures taken to mitigate the effects of the development on them.

ARCHAEOLOGY

23. The development shall not be commenced within Areas 1, 2, 3 or 4 or the part of Area 6 shown on drawing CgMs Radlett/01 dated 13 December 2007 until a written scheme of archaeological work and protection in relation to the relevant Area has been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the preservation in situ or, where that is not possible, the full excavation of remains considered to be of local or greater significance. The development shall be carried out in accordance with the scheme subject to any amendments approved in writing by the local planning authority. All remains preserved in situ shall be preserved in accordance with the scheme.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the recording or preservation of any archaeological remains that may be found on those areas of the site not previously disturbed by quarrying.

24. CONTAMINATION

- 24.1 The development shall not be commenced on any Area until the following components of a scheme to deal with the risks associated with contamination of the relevant Area has been submitted to and approved in writing by the local planning authority:

- (a) A preliminary risk assessment which has identified:
 - (i) all previous uses
 - (ii) potential contaminants associated with those uses
 - (iii) a conceptual model of the site indicating sources, pathways and receptors
 - (iv) potentially unacceptable risks arising from contamination at the site.
- (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

- (c) The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

24.2 Any changes to the approved remediation strategy and the longer-term monitoring require the express consent of the local planning authority. The remediation strategy and longer-term monitoring shall be implemented as approved.

24.3 The development shall not be commenced on any Area until a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation on the relevant Area has been submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.

24.4 If during development of the relevant Area contamination not previously identified is found to be present at the site then no further development shall be carried out on that Area until the developer has submitted to and obtained written approval from the local planning authority for an amendment to the approved remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To ensure that an appropriate remediation strategy is undertaken as part of the development

25. **NOISE**

25.1 The development shall not be commenced on Areas 1 and 2 until a scheme has been submitted to and approved in writing by the local planning authority which specifies the details of the provisions to be made for the control of noise emanating from these Areas during the operation of the development. The development shall be operated in accordance with the approved scheme.

25.2 The level of noise emitted from the site shall not exceed 50dB LAeq, 8hr between 2300 and 0700 the following day as measured at 1 metre from the facade of any residential property. The measurement shall be made in accordance with British Standard 74451:2003.

25.3 The level of noise emitted from the site shall not exceed 60 dB LAFmax as measured at 1 metre from the façade of any residential premises between 23.00 and 07.00, every day.

Reason: This condition is necessary in the interests of preventing significant noise disturbance to residents living around the site.

EXTERNAL LOUDSPEAKERS

26. No external loudspeaker systems shall be installed on any Area.

Reason: This condition is necessary in the interests of preventing residents living around the site being disturbed by (intermittent) noise from any external loudspeakers that may be installed on the site.

REFUSE

27. The development shall not be commenced on any Area until details of the facilities for the storage of refuse on that Area have been submitted to and approved in writing by the local planning authority. The approved details shall thereafter be implemented and retained.

Reason: This condition is necessary to ensure that proper provision is made for the storage of refuse on the site.

RENEWABLE ENERGY

28. Construction of the Units within Area 1 shall not be commenced until a report has been submitted to the local planning authority setting out the measures to be taken such that the predicted CO2 emissions of the development will be reduced by a target of 10% through the use of on-site renewable energy equipment and until such measures have been approved in writing by the local planning authority. The development shall be carried out incorporating such approved measures.

Reason: This condition is necessary in the interests of sustainable development and to comply with the requirements of RSS14.

LIGHTING

29. No Unit shall be occupied until a detailed external lighting scheme for Areas 1 and 2 has been submitted to and approved in writing by the local planning authority. No external lighting other than that approved shall be provided on Areas 1 and 2.

Reason: This condition is necessary to ensure that the design and installation of external lights on the site pays due regard to the need to protect the amenities of local residents and the environment.

CYCLE STORAGE

30. None of the Units shall be occupied until details of the cycle storage for employees of the Unit has been submitted to and approved in writing by the local planning authority. The approved cycle storage shall be provided and thereafter retained.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the storage of cycles on the site.

31. **COUNTRY PARK**

- 31.1 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Countryside Management Plan. The Countryside Management Plan shall include landscaping details for Areas 3 to 8 submitted for approval under Condition 2 above and shall be substantially in accordance with the following documents:

- (a) Countryside Management Plan – Overall Objectives and Design Principles dated 19 December 2007 and drawing numbers 394503-LV-042, 394503-LV-044, 394503-LV-046, 394503-LV-048, 394503-LV-050, 394503-LV-052, 394503-LV-054, 394503-LV-056, 394503-P-057 and 394503-LV-018 and EPR Maps 2, 3 rev A, 4, 5, 6, 7, 8, 9 and 10 Rev A; and
- (b) Countryside Management Plan – Objectives and Specific Measures for Areas 1 – 8, dated 19 December 2007.

31.2 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Landscape Management Plan substantially in accordance with the Draft Landscape Management Plan prepared by Capita Lovejoy in December 2008.

31.3 The approved Countryside Management Plan and the approved Landscape Management Plan shall be implemented and their requirements shall thereafter continue to be observed.

31.4 The Countryside Management Plan when submitted under condition 31.1 shall define the landscaping and countryside access works and the public access and the sport and recreation facilities referred to in condition 32.1 and the works to create waterbodies and related facilities for bird habitat referred to in condition 32.2. It shall also set out measures to protect the areas of ecological interest within the Country Park pending the completion of the Country Park.

Reason: This condition is necessary to ensure that details of the Country Park are settled at an early stage.

32. DELIVERY OF COUNTRY PARK

32.1 The landscaping and countryside access works in those parts of Areas 1 and 2 proposed for use as a Country Park and in Areas 3, 4 and 5 and in the southern part of Area 6 and the provision of public access and the sport and recreation facilities in Area 5 shall be completed prior to occupation of any of the Units. These works shall include the restoration of Hedges Farm as a working farm and as a Country Park Visitor/Interpretation Centre as approved under condition 15.1(i) above.

32.2 The works to create waterbodies and related facilities for bird habitat on Areas 5 and 8 shall be completed within twelve months following occupation of any of the Units.

32.3 The Country Park works on Areas 7 and 8 shall be completed no later than the occupation of 290,000 square metres of floor area in the Units.

32.4 The Country Park measures on the northern part of Area 6 shall be completed by the later of:

- (a) 12 months following completion of the restoration of Area 6 in accordance with the planning permission dated 27 March 2007 reference 5/1811-04(CM112) (and any variation thereof); or
- (b) occupation of more than 290,000 square metres of floor area in the Units.

Reason: This condition is necessary to ensure timely delivery of the Country Park.

DEFINITIONS

"Access Works"	The creation of the new vehicular access to serve Area 1 from the A414 including the at grade signalised roundabout linking the A414 to the Park Street bypass
"Area"	The relevant area within Areas 1 – 8
"Area 1"	The area marked Area 1 shown edged red on drawing number 394503-LV-018
"Area 2"	The area marked Area 2 shown edged red on drawing number 394503-LV-018
"Area 3"	The area marked Area 3 shown edged red on drawing number 394503-LV-018
"Area 4"	The area marked Area 4 shown edged red on drawing number 394503-LV-018
"Area 5"	The area marked Area 5 shown edged red on drawing number 394503-LV-018
"Area 6"	The area marked Area 6 shown edged red on drawing number 394503-LV-018
"Area 7"	The area marked Area 7 shown edged red on drawing number 394503-LV-018
"Area 8"	The area marked Area 8 shown edged red on drawing number 394503-LV-018
"Country Park"	The country park to be provided on part of Area 1 and part of Area 2 shown coloured green on drawing number 394503-LV-077 and the Key Parameters Plan and on Areas 3-8
"Countryside Management Plan"	A plan setting out details of the long term management and maintenance of the Country Park
"Highways Plan"	Plan 6035/37A dated December 2007
"Intermodal Terminal Phase 1 Works"	The first phase of the on-site rail works comprising the construction of three reception sidings and two intermodal terminal sidings and associated works to facilitate its operation as an intermodal terminal including security, hardstanding and lighting substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
"Intermodal Terminal Phase 2 Works"	The second phase of on-site rail works comprising the construction of two additional intermodal terminal sidings and new temporary hardstanding substantially in accordance

with the principles of drawing number IM/Radlett/01 dated 19 December 2007

"Intermodal Terminal Phase 3 Works"	The third phase of on-site rail works comprising the construction of two additional intermodal terminal sidings with the extension of the track to the reception sidings substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
"Intermodal Terminal"	The intermodal terminal forming part of the development
"Key Parameters Plan"	Plan 394503-DSD-002a dated December 2008
"Landscape Management Plan"	A plan setting out details of the long term management and maintenance of the landscape areas within the Country Park
"London Colney Roundabout Improvements"	Improvements to the existing traffic signal controller at the London Colney Roundabout by the installation of the MOVA signal control system and other works to improve safety and capacity of the roundabout
"M25 Junction 21A Improvements"	Improvements to M25 Junction 21A as shown in principle on drawing number 11012495/PHL/01 Rev C
"M25 Junction 22 Improvements"	Improvements to M25 Junction 22 as shown in principle on drawing numbers 2495/SK/003 Rev A and 2495/SK/004 Rev A
"Midland Main Line"	The railway running from Bedford to St Pancras
"Midland Main Line Connection Works"	The formation of a southerly connection from the Midland Main Line northbound and southbound slow lines to the new branch line (including necessary signalling works) to serve Area 1
"Midland Main Line Gauge Enhancement Works"	<p>The gauge enhancement to the Midland Main Line to W9 and W10 loading gauge on the following routes;</p> <ul style="list-style-type: none">(a) the development to Brent Curve Junction, and(b) either;<ul style="list-style-type: none">(i) Brent Curve to Acton Wells Junction; or(ii) Brent Curve to Junction Road Junction (at Tufnell Road)

"Park Street Bypass Phase 1 Works"

The provision of the Park Street Bypass from the A414 between points A and C on the Highways Plan

"Park Street Bypass Phase 2 Works"

The provision of:

- (a) a modification to the existing bridge over the M25; or
- (b) a new bridge over the M25 as shown in principle on Drawing 14297/BR/AIP/ST01/001-Rev A linking Area 1 with the A5183 by connecting roundabout Y and point D on the Highways Plan

"Park Street Roundabout Signalisation Works"

Improvements to the Park Street Roundabout as shown in principle on drawing no. 2495/SK/001 Rev A

"Reserved Matters"

Details of:

- (a) layout except as already approved for layout of the new buildings;
- (b) scale except as already approved for the maximum total floorspace of the new buildings and the maximum height, width and length of the new buildings;
- (c) appearance of the new buildings;
- (d) access except as already approved for rail, lorry and car access;
- (e) landscaping except as already approved for the location of the structure planting and earth mounds on Areas 1 and 2

"Unit"

Each of the respective warehouse units within Area 1 to be constructed as part of the development

20 December 2012

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 Madam,

**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**

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 between 24 November and 18 December 2009 into your client's appeal against a decision by St Albans City & District Council to refuse 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.
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 of major importance having more than local significance and because it is for significant development within the Green Belt.

Christine Symes, Decision Officer
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3. The Secretary of State issued his decision in respect of the above appeal in his letter dated 7 July 2010. That decision letter was the subject of an application to the High Court and was subsequently quashed by order of the Court dated 4 July 2011. The appeal therefore falls to be redetermined by the Secretary of State.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and is minded to agree with his recommendation subject to the provision of a suitable planning obligation which binds all of those with an interest in the appeal site. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to the IR.

Matters arising since 7 July 2010

5. Following the quashing of his decision letter of 7 July 2010, the Secretary of State issued a letter, dated 15 September 2011, under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, to all interested parties, setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. These matters were:
 - a. The views expressed by the Secretary of State in paragraph 33 of the quashed decision letter with regard to the Inspector's proposed Condition 33 - alternatives 1- 3, and the weight to be given to the planning obligation in the form submitted by the appellant and made by unilateral undertaking dated 16 January 2008.
 - b. Whether or not Hertfordshire County Council is prepared to join as a party to the undertaking in the light of the Secretary of State's comments made in paragraphs 32 and 33 of the quashed decision letter; or if the parties to the undertaking wish him to consider any other amendments to the undertaking which might overcome his concerns about its enforceability.
 - c. Any new matters or change in circumstances which the parties consider to be material to the Secretary of State's further consideration of this appeal.
6. On 19 October 2011, the Secretary of State circulated the responses he had received to his letter of 15 September 2011. On 29 November 2011 he circulated the responses he had received to his letter of 19 October 2011, and invited comments on the Department for Transport's updated policy guidance note on Strategic Rail Freight Interchanges, the Department for Transport's review document on logistics growth, and a joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretaries of State for Transport and Communities and Local Government.
7. On 1 February 2012, the Secretary of State circulated the responses he had received to his letter of 29 November 2011 and stated that he was of the view

that he was in a position to re-determine the appeal on the basis of all the evidence and representations before him.

8. Following the publication of the National Planning Policy Framework (“the Framework”), the Secretary of State wrote to parties on 29 March 2012 inviting comments on the relevance of the Framework to this appeal. On 18 April 2012 he circulated the responses he had received to his letter of 29 March 2012. The Secretary of State observes that the Framework replaces the national planning policy documents set out in its Annex 3. The Secretary of State has carefully considered all of these representations in his determination of this appeal. He considers that for the most part, the issues raised in relation to the Framework cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State wishes to make clear that he has not revisited issues which are carried forward in the Framework, and which have therefore already been addressed in the IR, unless the approach in the Framework leads him to give different weight. Notwithstanding that the majority of former national planning guidance has been replaced by the Framework, the Secretary of State considers that the main issues identified by the Inspector remain essentially the same.
9. On 19 September 2012, the Secretary of State wrote to parties inviting comments on re-opening the inquiry into the Radlett appeal and conjoining it with the planned inquiry into the proposed SRFI at Colnbrook, Slough (Appeal Reference: APP/J0350/A/12/2171967). On 12 October 2012 the Secretary of State wrote to parties and circulated copies of the responses he had received to his letter of 19 September 2012. On 14 December 2012 the Secretary of State wrote to parties stating that he had concluded that it was unnecessary for him to re-open the inquiry into the Radlett appeal and conjoin it with the planned inquiry into the Colnbrook appeal and that he was satisfied that he could determine the Radlett proposal on the basis of the evidence before him.
10. Responses received following these letters and the other representations received following the close of the inquiry are listed at Annex A below. The Secretary of State has given all these representations very careful consideration in his determination of this appeal. He is satisfied that those representations which have not been circulated to interested parties do not raise any matters that would affect his decision or require him to refer back to parties on their contents for further representations prior to reaching his decision. Copies of the representations referred to are not attached to this letter. However, copies will be made available to interested parties on written request to either of the addresses at the foot of the first page of this letter.

Procedural Matters

11. 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 and the Inspector’s comments at 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 proposal.

12. At the Inquiry, an application for award of costs was made by your client against St Albans City & District Council. This application was decided by the Secretary of State in his costs decision letter of 7 July 2010.

Policy considerations

13. In determining the appeal, 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.
14. In this case, the relevant parts of the development plan comprise the East of England Plan (EEP) and saved policies of 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 referred to by the Inspector at IR13.21-23, 13.27 and 5.5.
15. With respect to the EEP, the Order revoking the Plan was laid on 11 December 2012 and will come into force on 3 January 2013. The Secretary of State has had regard to the laying of the Order and the stage that it has reached in the Parliamentary process. He considers that whilst the EEP remains part of the development plan until revoked, in view of the general policy support for the provision of SRFIs in other policy documents (IR13.111 and paragraph 28 below) he does not consider that the laying of the Order raises any matters that would affect his decision or require a reference back to parties.
16. Other material considerations which the Secretary of State has taken into account include: the Framework; Technical Guidance to the Framework; The Planning System: General Principles; Circular 11/95: *The Use of Conditions in Planning Permission*; the *Community Infrastructure Levy (CIL) Regulations* 2010 as amended; the Written Ministerial Statement by Baroness Hanham CBE – Abolition of Regional Strategies (25 July 2012). He has also taken into account relevant policy in both The London Plan 2011 (including Policies 6.14 and 6.15) and the South East Plan (including policy T13, to which the Inspector refers at IR13.24 - 25). The Secretary of State observes that the South East Plan remains in place pending the outcome of the SEA process, which is in train. The Secretary of State has therefore attributed limited weight to the proposed plan to revoke the SEP.
17. The Secretary of State has also had regard to the Strategic Rail Authority's (SRA) *Strategic Rail Freight Interchange Policy* (published in 1994) as a material consideration. He has taken account of the Inspector's comments on the document (IR13.30 – 32) and he agrees with the Inspector that, although the SRA has ceased and some of its former responsibilities have transferred to Network Rail, the document is still a source of advice and guidance (IR13.30). The Secretary of State has also taken account of the Department for Transport's Strategic Rail Freight Interchange Policy Guidance and its Logistics Growth Review Document (both published on 29 November 2011), and the joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government on 29 November 2011. He has also had regard to

Slough's Core Strategy 2006-2026 (2008) and the saved policies of the Slough Local Plan (2004).

18. The Secretary of State has taken account of the fact that the Inspector attributes little weight to the emerging St Albans City and District Core Strategy (IR13.28). He has also taken account of the fact that the Council has yet to consult on its pre-submission Strategic Local Plan, and he attributes little weight to the draft document.

Legal Submissions

19. In addition to the material considerations referred to above, the Secretary of State has taken account of Inspector Phillipson's report dated 4 June 2008 and the associated decision letter dated 1 October 2008. The Secretary of State has considered the Inspector's comments on the submissions made by your client, the Council and STRIFE about how the current case should be approached in view of the Secretary of State's 2008 decision on the appeal site (IR13.8 – 13.18). For the reasons given by the Inspector in those paragraphs, he agrees with the Inspector's conclusion at IR13.19 that, if there is a very good planning reason, he is able to differ from the conclusions or decision of his predecessor.

Main issues

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

Green Belt

21. Having had regard to the Inspector's comments at IR13.35, the Secretary of State concludes that the appeal proposal would be inappropriate development in the Green Belt and that it is harmful as such. As the proposal amounts to inappropriate development he considers that, in the absence of *very special circumstances*, it would conflict with national and local policies which seek to protect the Green Belt. The Secretary of State agrees with the Inspector's further analysis at IR13.35 and concludes that the proposal would have a substantial impact on the openness of the Green Belt, that it would result in significant encroachment into the countryside, that it would contribute to urban sprawl and that it would cause some harm to the setting of St Albans. For the reasons given by the Inspector at IR13.36 – 13.39, the Secretary of State is satisfied 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

22. 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 LP (IR13.44).

23. In 2008, the former Secretary of State found that the harm to ecological matters would not be significant (IR13.45). However, for the reasons given by the Inspector (IR13.45 – 13.46), the Secretary of State shares his view that the proposal would conflict with Policy 106 of the LP (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, more weight should be attached to the harm to ecological interests (IR13.46).
24. Having taken account of the Inspector's comments at IR13.47 – 13.48 and section 3.2.4 of the November 2011 Strategic Rail Freight Interchange Policy Guidance, which states that the availability of an available and economic workforce will be an important consideration, the Secretary of State 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.
25. 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. Whilst he has taken account of the comments on highway matters put forward by interested parties following the close of the inquiry, he does not consider that the matters raised should lead him to different conclusions. Overall, 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).
26. 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. Like the Inspector, 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).
27. 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).

Other considerations

28. The Secretary of State has had regard to the Inspector's comment at IR13.34 that, as the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents. The Secretary of State observes that the Written Ministerial Statement of 29 November 2011 makes clear that there remains a need for a network of SRFIs to support growth and create employment and that it has proved extremely problematical, especially in the South East, to create appropriately located SRFIs. The SRFI Policy Guidance published on 29 November 2011 states that only one SRFI had been granted planning consent in the whole of the South East region and advises that SRFI capacity needs to be provided at a wide range of locations, particularly but not exclusively serving London and the South East.

Whether the development would operate as an SRFI

29. The Secretary of State has carefully considered the Inspector's analysis and conclusions as to whether the development would operate as an SRFI (IR13.76 – 13.83). He has also taken account of the further comments on this matter submitted following the close of the inquiry, including the letter of 1 November 2011 from Network Rail. Overall, he sees no reason to disagree with the Inspector's analysis or with his conclusions 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) and that he can be satisfied of the ability of the SRFI to be accessed from all the key destinations (IR13.82). He further agrees that there is no reason to doubt that the Midland Main Line will develop as a key part of the rail freight network and that the aim of Network Rail and rail regulators will be to enable freight to be carried efficiently, albeit without compromising its passenger carrying ability (IR13.83).

Alternatives

30. 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). The Secretary of State sees no reason to disagree with the Inspector's comments on the appellant's assessment of the long list sites (IR13.92 – 13.94).
31. The Secretary of State has given very careful consideration to the Inspector's comments about the appellant's short listed sites (IR13.95 – 13.103). He has also taken account of the draft Development Strategy for Central Bedfordshire (DSCB), to which Anne Main MP referred in her letter of 8 November 2012. However, as the DSCB is at an early stage and may yet change he attributes little weight to it. The Secretary of State agrees with the Inspector that there was no suggestion by any party that Upper Sundon scored better than the appeal site (IR13.95). He observes that although some of the representations listed at Annex A refer to the Upper Sundon location, little substantive evidence has been put to him to indicate that this site offers a potentially preferable alternative to the appeal site. Like the Inspector, and for the reasons he gives (IR13.95), the Secretary of State does not consider that Littlewick Green performs overall markedly better than Radlett. With regard to the Harlington site, the Secretary of State agrees with the Inspector's analysis (IR13.96 – 13.98) and with his conclusion that Harlington is not a preferred alternative location, were a single RFI required within the north west sector.
32. 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 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 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.

Other benefits

33. Having had regard to the Inspector's analysis at IR13.104, the Secretary of State is satisfied that the Park Street and Frogmore bypass would provide local benefits. He also agrees with the Inspector's reasoning and conclusions with regard to the proposals for Areas 3 to 8 (IR13.105).

The Planning Balance including Prematurity

34. The Secretary of State agrees with the Inspector's comments at IR13.106. He has concluded (at paragraph 21 above) that the proposal would constitute inappropriate development and that further harm would arise from a substantial loss of openness, significant encroachment into the countryside and that the development would contribute to urban sprawl. He considers that the harm arising thereby would be substantial and that, in addition, some further harm would be caused to the setting of the historic city of St Albans (IR13.106). In line with paragraph 88 of the Framework, the Secretary of State has attached substantial weight to the harm that the appeal scheme would cause to the Green Belt.

35. As set out at paragraph 22 above, the Secretary of State has concluded that the effect of the proposal on the landscape and visual impact would be moderately adverse and that it would be contrary to Policy 104 of the LP. In addition, he has found that conflict would arise in respect of LP Policy 106 and that the harm to ecological interests should be given more weight than in 2008 (paragraph 23 above).

36. In common with the Inspector (IR13.109), the Secretary of State concludes overall that harm would arise from the Green Belt considerations and also due to the impact on landscape and ecology.

37. Turning to the benefits offered by the appeal scheme, like the Inspector (IR13.110), the Secretary of State weighs in the scheme's favour the country park, the improvements to footpaths and bridleways, the provision of a bypass to Park Street and Frogmore, the predicted reduction of CO₂ emissions, and the employment benefits. The Secretary of State has had regard to the Inspector's comments at IR13.111 and, also bearing in mind his remarks at paragraph 28 above, he shares the Inspector's view that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight.

38. The Secretary of State agrees with the Inspector's analysis at IR13.112 – 13.115. He agrees with the Inspector that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate 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 (IR13.114).

39. For the reasons given by the Inspector at IR13.116 – 13.117, the Secretary of State agrees with the Inspector that there is no reason to conclude that determination of the proposal would be premature (IR13.117).

Conditions & Obligations

40. The Secretary of State has had regard to the proposed conditions set out at annex A of the Inspector's Report and to the planning obligation (document 9/HS/INQ/11.0). He has also taken account of the Inspector's comments (IR12.1 – 12.26), the parties' further representations on conditions and on the obligation, Circular 11/95 and the CIL Regulations 2010 as amended. With the exception of proposed condition 33, which is considered further below, the Secretary of State is satisfied that the conditions are reasonable and necessary, and meet the tests of Circular 11/95.
41. The Secretary of State considers that the provisions in the undertaking are relevant and necessary to the proposed development and comply with the statutory tests in the CIL Regulations. However, he observes that the covenants only bind those parts of the appeal site owned by the signatories to the undertaking, and that the majority of Area 1 is in the ownership of Hertfordshire County Council, which has declined to enter into the undertaking in respect of its land (IR12.20). He considers that the County's interest would also need to be bound if the obligation is to be enforceable.
42. The Secretary of State has given very careful consideration to the Inspector's analysis at IR12.21 – 12.24 and to the representations made on this matter following the close of the inquiry. However, he does not agree with the Inspector or your client that either variant 1 or variant 2 of proposed condition 33 would be an appropriate means of dealing with this deficiency. This is because he considers that either of these variants would be contrary to paragraph 13 of Circular 11/95. For the reason given by the Inspector (IR12.25), the Secretary of State shares his view that alternative 3 would be unlawful.

Overall Conclusions

43. In conclusion, the Secretary of State has found that the appeal proposal would be inappropriate development in the Green Belt and that, in addition, it would cause further harm through loss of openness and significant encroachment into the countryside. In addition the scheme would contribute to urban sprawl and it would cause some harm to the setting of St Albans. The Secretary of State has attributed substantial weight to the harm that would be caused to the Green Belt. In addition he has found that harms would also arise from the scheme's adverse effects on landscape and on ecology and that the scheme conflicts with LP policies 104 and 106 in those respects.
44. The Secretary of State considers that the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East, to which he has attributed very considerable weight, and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt. He has also taken account of the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass. He considers that

these considerations, taken together, outweigh the harm to the Green Belt and the other harms he has identified including the conflicts with the development plan and that they amount to very special circumstances. The Secretary of State has considered whether the scheme would comply with the NPPF. In the light of his conclusions above, he is satisfied that the scheme would give rise to no adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

45. Given these conclusions, the Secretary of State is minded to approve your client's proposal. However, for the reasons given at paragraphs 41 - 42 above, he proposes to defer his final decision on the appeal. In view of his concerns, he wishes to invite your client to provide him with a planning obligation under section 106 of the Town and Country Planning Act 1990 which binds all those with an interest in the appeal site. The Secretary of State considers it preferable for the planning obligation to be made by agreement with the Council. Nevertheless, he is prepared to consider a planning obligation given by unilateral undertaking. The Secretary of State wishes to draw your client's attention to the fact that a duly certified, signed and dated planning obligation must comply with the relevant statutory provisions of sections 106 and 106A of the Town and Country Planning Act 1990 and the CIL regulations 2010 as amended.

46. The Secretary of State proposes to allow until 28 February 2013 for the submission of a suitable planning obligation. He then intends to proceed to final decision as soon as possible. It should be noted that he does not regard this letter as an invitation to any party to seek to reopen any of the other issues in it.

47. A copy of this letter has been sent to St Albans District Council and to STRIFE. Notification letters have been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Christine Symes
Authorised by the Secretary of State
to sign in that behalf

Post Inquiry correspondence received prior to 7 July 2010

Name	Date
S Hedges	15/05/2010
P Dixon	17/05/2010
M Aldridge	04/06/2010
R Biddlecombe	15/06/2010
J Chattaway	15/06/2010
M Mark	15/06/2010
S Beesley	15/06/2010
A Russell	16/06/2010
P Matteucci	16/06/2010
J Rice	16/06/2010
C Horton	16/06/2010
S Statt	17/06/2010
J Byrne	17/06/2010
EK Kaye	17/06/2010
P Ruckin	18/06/2010
B Greenwood	18/06/2010
B Gardner	18/06/2010
M Novitt	19/06/2010
D Tribe	19/06/2010
R Tompkins	20/06/2010
J Bacall	20/06/2010
F & K Loud	21/06/2010
R Harrington	21/06/2010
E Thurston	21/06/2010
C Mitchell	23/06/2010
MJG Lewis	25/06/2010

Post Inquiry correspondence following the Secretary of State's letter dated 15 September 2011

Name / Organisation	Date
Ian La Riviere	06/10/2011
Mr S Walkington and Mr D Parry	10/10/2011
Paul Stimpson / Head of Planning – Slough Borough Council	11/10/2011
Erica Mortimer / CgMs for Helioslough	12/10/2011
Dick Bowler / Hertfordshire County Council	13/10/2011
Tim Wellburn / Department for Transport	13/10/2011
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	14/10/2011
Simon Flisher / Barton Willmore for Goodmans	14/10/2011
St Albans City and District Council	14/10/2011

Post Inquiry correspondence following the Secretary of State's letter dated 19 October 2011

Name / Organisation	Date
Anne Main MP for St Albans	08/11/2011
Paul Stimpson / Head of Planning – Slough Borough Council	09/11/2011
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	10/11/2011
James Clappison MP for Hertsmere	10/11/2011
Simon Flisher / Barton Willmore for Goodmans	10/11/2011
St Albans City and District Council	10/11/2011
Erica Mortimer / CgMs for Helioslough	11/11/2011
Tim Wellburn / Department for Transport	11/11/2011

Post Inquiry correspondence following the Secretary of State's letter dated 29 November 2011

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	19/12/2011
Erica Mortimer / CgMs for Helioslough	20/12/2011
Mike Lovelady / St Albans City and District Council	22/12/2011
Simon Flisher / Barton Willmore for Goodmans	23/12/2011
Paul Stimpson / Head of Planning – Slough Borough Council	29/12/2011
Mr P Trevelyan / St Albans Civic Society	30/12/2011

Post Inquiry correspondence following the Secretary of State's letter dated 29 March 2012

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/03/2012
Anne Main MP for St Albans	04/04/2012
Erica Mortimer / CgMs for Helioslough	10/04/2012
Polly Harris-Gorf / Hertsmere Borough Council	11/04/2012
Simon Flisher / Barton Willmore for Goodmans	16/04/2012
James Clappison - MP for Hertsmere	16/04/2012
Mike Lovelady / St Albans City and District Council	16/04/2012

Post Inquiry correspondence following the Secretary of State's letter dated 18 April 2012

Name / Organisation	Date
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/04/2012
Paul Stimpson / Head of Planning – Slough Borough Council	26/04/2012
Erica Mortimer / CgMs for Helioslough	26/04/2012
Mike Lovelady / St Albans City and District Council	25/04/2012

Post Inquiry correspondence following the Secretary of State's letter dated 19 September 2012

Name / Organisation	Date
Anne Main - MP for St Albans	25/09/2012
James Clappison - MP for Hertsmere	26/09/2012
Erica Mortimer / CgMs for Helioslough	27/09/2012
Simon Flisher / Barton Willmore for Goodmans	28/09/2012
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	01/10/2012
Paula Paley on behalf of Aldenham Parish Council	01/10/2012
Mr S Walkington and Mr D Parry	01/10/2012
Peter Evans / Aldenham Parish Council	01/10/2012
John Dean / Colney Heath Parish Council	01/10/2012
Mike Lovelady / St Albans City and District Council	02/10/2012
Graham Taylor / Radlett Society and GB Association	02/10/2012
Paul Stimpson / Head of Planning – Slough Borough Council	03/10/2012
Steve Baker / CPRE Hertfordshire	03/10/2012
Polly Harris-Gorf / Hertsmere Borough Council	03/10/2012

Post Inquiry correspondence following the Secretary of State's letter dated 12 October 2012

Name / Organisation	Date
Mr S Walkington and Mr D Parry	18/10/2012
Hogan Lovells - solicitors for Helioslough	18/10/2012
Hogan Lovells - solicitors for Helioslough	25/10/2012
Mike Lovelady / St Albans City and District Council	26/10/2012
Peter Evans / Aldenham Parish Council	26/10/2012
Simon Flisher / Barton Willmore for Goodmans	26/10/2012
Paul Stimpson / Head of Planning – Slough Borough Council	29/10/2012

Other post Inquiry correspondence

Name / Organisation	Date
Mr Lindemann	27/10/2011
Mr Behrman	30/10/2011
Graham Taylor / Radlett Society and Green Belt Association	14/03/2012
Anne Main - MP for St Albans	29/03/2012
Anne Main - MP for St Albans	25/04/2012
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/04/2012
Bruce Vincent	26/05/2012
Mr Behrman	30/10/2011
Anne Main - MP for St Albans	14/08/2012
N Halliwell	28/09/2012
Ann Goddard	28/09/2012
H Lewis and G McDonald	03/10/2012
James Clappison - MP for Hertsmere	15/10/2012
Anne Main - MP for St Albans	08/11/2012

CONDITIONS

Definitions of the terms used in the conditions can be found at the end.

COMMENCEMENT OF DEVELOPMENT

1. The development hereby permitted shall be commenced either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters to be approved, whichever is the later.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

APPROVAL OF RESERVED MATTERS

2. Application for approval of the Reserved Matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

DEVELOPMENT IN ACCORDANCE WITH KEY PARAMETERS PLAN

3. The development shall be carried out in accordance with the Key Parameters Plan and the specified paragraphs of the Development Specification Document dated March 2009 and drawing number 394503-LV-074 referred to in condition 3(f) comprising:
 - (a) layout of the new buildings to the extent to which it is shown on the Key Parameters Plan together with para 4.3;
 - (b) the maximum ridge height of the new buildings as specified on the Key Parameters Plan together with para 4.4;
 - (c) the maximum length and width of the B8 distribution units and the administration and ancillary buildings as set out in para 4.5;
 - (d) the maximum total floorspace of the new buildings applied for as specified on the Key Parameters Plan together with para 4.6;
 - (e) the proposed finished site levels specified on the Key Parameters Plan together with para 4.7;
 - (f) the height of earth mounds shown on drawing number 394503-LV-074 together with para 4.8;

- (g) various access and circulation routes shown on the Key Parameters Plan together with paras 4.9 and 4.10;
- (h) access to lorry and car parking/storage areas as shown on the Key Parameters Plan together with para 4.11;
- (i) proposed structure planting areas as shown on the Key Parameters Plan together with para 4.12.

Reason: This condition is necessary to ensure that the development does not materially depart from that applied for and considered in the ES.

4. PARTIAL SIGNALISATION OF PARK STREET ROUNDABOUT

- 4.1 None of the Units shall be occupied until the Park Street Roundabout Signalisation Works have been completed and brought into use.
- 4.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 4.3 The improvements shall have:
 - (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

Reason: This condition is necessary to ensure that the improvements to Park Street Roundabout are completed before the units are occupied.

5. IMPROVEMENT TO TRAFFIC SIGNALS AT LONDON COLNEY ROUNDABOUT

- 5.1 None of the Units shall be occupied until details of the London Colney Roundabout Improvements have been submitted for approval in writing by the local planning authority.
- 5.2 The London Colney Roundabout Improvements shall be completed in accordance with the approved details before the later of:
 - (a) two years of occupation of any of the Units, or
 - (b) twelve months of approval of the details of the improvements.

Reason: This condition is necessary to increase the capacity of the London Colney Roundabout

6. PROVISION OF ACCESS WORKS AND PARK STREET BYPASS

- 6.1 None of the Units shall be occupied until the Access Works and the Park Street Bypass Phase 1 Works have been completed and brought into use.
- 6.2 The works shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 6.3 The works shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.
- 6.4 Not more than 230,000 square metres of floor area in the Units shall be occupied until a scheme for the Park Street Bypass Phase 2 Works (which shall include a programme for the delivery of the works) has been submitted to and approved in writing by the local planning authority.
- 6.5 The Park Street Bypass Phase 2 Works shall be completed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that the access is completed before the Units are occupied, including the Park Street Bypass with a 'temporary' connection to the A5183 at its southern end.

7. IMPROVEMENTS TO JUNCTION 21A OF THE M25

- 7.1 None of the Units shall be occupied until the M25 Junction 21A Improvements have been completed and brought into use.
- 7.2 The improvements shall include any revisions as required by the Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).
- 7.3 The improvements shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 21a.

8. IMPROVEMENTS TO JUNCTION 22 OF THE M25

- 8.1 Not more than 130,000 square metres of floor area in the Units shall be occupied until the M25 Junction 22 Improvements have been completed and brought into use.
- 8.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).
- 8.3 The improvements shall have:
 - (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 22.

9. TRAVEL AND FREIGHT MONITORING AND MANAGEMENT PLAN

- 9.1 None of the Units shall be occupied until a Travel and Freight Monitoring and Management Plan substantially in accordance with the Draft Travel and Freight Monitoring and Management Plan dated 18 December 2009 has been submitted to and approved in writing by the local planning authority.
- 9.2 The Travel and Freight Monitoring and Management Plan shall be submitted for approval no later than 12 months following the commencement of the Development.
- 9.3 The approved Travel and Freight Monitoring and Management Plan shall be implemented in accordance with the timetable contained therein and its requirements shall continue to be observed as long as any part of the development is occupied.

Reason: This condition is necessary to ensure that the measures proposed in the Travel Plan and Freight Management Plan to regulate movement to and from the development are carried out in the interests of (i) encouraging travel by means other than the private car and (ii) regulating the impact of HGV traffic on the surrounding network

CAR PARKING

10. Car parking spaces shall be provided at a standard of not more than 1 space per 207 square metres of floorspace for each Unit within the development

Reason: This condition is necessary to limit the amount of parking on the site in order to encourage travel by means other than the private car.

CONTROL OVER SOUTHERN ROUNDABOUT

11. None of the Units shall be occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority to ensure that only pedestrians, cyclists and authorised public transport and emergency vehicles can use the eastern limb of roundabout Y on the Highways Plan. The scheme shall specify the physical measures to be incorporated and the management arrangements for the operation of those measures. The scheme shall be submitted for approval no later than 12 months following the commencement of the Development. The approved scheme shall be provided before any of the Units are occupied and the only users of the eastern limb shall be those authorised under the approved scheme.

Reason: This condition is necessary to ensure that the southern entrance to the SRFI is not used by employee's vehicles or goods vehicles in order to limit the impact of traffic generated by the development on the local road network.

12. RAIL RELATED WORKS

- 12.1 None of the Units shall be occupied until the Midland Mainline Connection Works have been completed and until an operational rail link has been provided from such works to the relevant Unit.
- 12.2 A second track linking the reception sidings to the Midland Mainline shall be completed and become operational upon the earlier of:
 - (a) as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds seven per 24 hour weekday period, or
 - (b) 10 years following first occupation of any of the Units.
- 12.3 None of the Units shall be occupied until the Intermodal Terminal Phase 1 Works have been completed.
- 12.4 The Midland Mainline Connection Works and the rail links to each of the Units and the Intermodal Terminal once provided shall thereafter be managed and maintained such that they remain available and operational to serve the Units.
- 12.5 The Intermodal Terminal Phase 2 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds four per 24 hour weekday period.
- 12.6 The Intermodal Terminal Phase 3 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds eight per 24 hour weekday period.

- 12.7 The Intermodal Terminal shall be equally open to access by all licensed rail freight operating companies.
- 12.8 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in conditions 12.1, 12.2, 12.3, 12.5 and 12.6 until such works have been completed.

Reason: This condition is necessary to ensure that the rail facilities on the site and the connection to the main line are provided and maintained in a manner compatible with the intended use of the site as a SRFI.

13. RAIL RELATED WORKS – GAUGE ENHANCEMENT TO THE MIDLAND MAINLINE

- 13.1 Not more than 175,000 square metres of floor area in the Units shall be occupied until the Midland Mainline Gauge Enhancement Works have been completed such that the W10 gauge enhancement has been provided either:
- (a) from the development to Acton Yard, West London Junction and Willesden Junction (Acton Branch), or
 - (b) from the development to Junction Road Junction.
- 13.2 If Network Rail confirms in writing to the local planning authority before occupation of 175,000 square metres of floorspace within the Units that both sets of the works set out at condition 13.1 are required to be completed to meet the anticipated demand for train paths to the development, not more than 230,000 square metres of floorspace within the Units shall be occupied until a programme for such works has been approved in writing by the local planning authority. The works shall be completed in accordance with that programme.
- 13.3 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in condition 13.1 until such works have been completed.
- 13.4 There shall be submitted to the Council written notice of the anticipated date of occupation of 175,000 sq metres of floorspace within the Units, such notice to be served at least 6 months prior to such anticipated date of occupation.

Reason: This condition is necessary to ensure that the rail gauge enhancement works are completed in a timely fashion

CONSTRUCTION METHOD STATEMENT

14. The Development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a construction method statement. The construction method statement shall include:
- (a) details of the methods to be used to control dust, noise, vibration and other emissions from the site;
 - (b) details of all temporary buildings and compound areas including arrangements for their removal following completion of construction;
 - (c) details of areas to be used for the storage of plant and construction materials and waste;
 - (d) details of temporary lighting arrangements;
 - (e) hours of construction work.
 - (f) measures to ensure that construction vehicles do not deposit mud on the public highway.
 - (g) a scheme for the routing of construction vehicles accessing the site including measures to be taken by way of penalties if construction vehicles do not observe the identified routes.
 - (h) details of the construction earthworks methodology.

The construction of the development shall be carried out in accordance with the approved construction method statement.

Reason: This condition is necessary in the interest of controlling the construction works and limiting the impact of construction on surrounding residents.

15. LANDSCAPING

- 15.1 The details to be submitted for approval under condition 2 in relation to landscaping for Areas 1 and 2 shall include:
- (a) a topographical survey of the Country Park within Area 1 and Area 2 comprising an updated version of drawing number 394503/LV/041 showing landform, water features, boundary structures, land uses, access roads and footpaths.
 - (b) proposed ground modelling, re-profiling and mounding with proposed contours to be at a maximum of 1 metre levels;
 - (c) a survey of existing trees and hedges (including ground levels at the base of all trees) in the Country Park within Area 1 and Area 2, the survey to show details of all trees and hedges to be removed and those

to be retained and a scheme for the protection of retained trees during the construction of the development on Area 1 and Area 2. The survey and the tree protection measures shall be in accordance with BS 5837 (2005) unless otherwise agreed in writing with the local planning authority;

- (d) the comprehensive treatment of planting and seeding areas including plans and sections at a scale of not less than 1:1250;
 - (e) all boundary treatment, retaining walls and security fencing including materials to be used, typical elevations and heights;
 - (f) acoustic fencing including materials to be used, typical elevations and heights and details of acoustic performance;
 - (g) hard landscape works including access roads, parking areas, signage, seating, litter bins and picnic areas;
 - (h) all existing, diverted (whether temporary or permanent) and proposed rights of way including footpaths, bridleways and cycleways and their proposed surfacing treatment and details of enclosures, gates and stiles;
 - (i) works to Hedges Farm to provide the Country Park Visitor/ Interpretation Centre;
 - (j) a programme of implementation and a management plan.
- 15.2 The landscaping programme shall be implemented as approved and the landscaping shall be maintained in accordance with the approved management plan.

Reason: This condition is necessary to guide the submission of landscaping details required as part of the reserved matters application and to ensure that the landscaping in Areas 1 and 2 is carried out and appropriately maintained.

POLLUTION CONTROL

16. Where any Unit or other facility in the development has oil fuel storage or chemical tanks serving such Unit, the relevant Unit shall not be occupied until a pollution control strategy in relation to such tanks has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the relevant approved strategy.

Reason: This condition is necessary to reduce the risk of any oil or chemicals stored on site polluting the environment.

17. DRAINAGE

17.1 The development shall not be commenced on Area 1 and Area 2 until a detailed scheme of drainage for Area 1 and Area 2 has been submitted to and approved in writing by the local planning authority. Such scheme shall include:

- (a) the provision of sustainable urban drainage systems to control the run-off from the development;
- (b) the provision of storm water balancing swales and other storage facilities; and
- (c) details of the design of the drainage infrastructure to illustrate the discharge rates will be less than existing levels.

The development shall be carried out in accordance with the approved scheme.

17.2 The development shall not be commenced on Areas 3 - 8 respectively until it has been confirmed in writing to the local planning authority whether development on the relevant Area includes the provision of foul and surface water drainage. If such drainage is to be provided on any of Areas 3 - 8 the development shall not be commenced on the relevant Area until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such drainage and its effect on groundwater. Foul and surface water drainage on the relevant Area shall be constructed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that drainage of the developed areas of the site does not increase run-off into local watercourses.

18. PILING

Piling or the construction of any other foundations using penetrative measures shall not take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such measures and their effect on groundwater. Piling or the construction of any other foundations using penetrative measures shall only take place in accordance with such approved scheme.

Reason: the site is in a sensitive location with respect to the potential contamination of groundwater. The construction of piles or other types of foundation could provide a potential pathway for contamination at the surface to migrate into the underlying major aquifer and Source Protection Zone.

AREA 2 PONDS

19. The development on Area 1 shall not be commenced until details of the provision (including the timing, monitoring and aftercare of the new ponds to be located in Area 2 have been submitted to and approved in writing by the local planning authority. The ponds shall be constructed in accordance with

the approved details. None of the Units shall be occupied until the ponds on Area 2 have been constructed.

Reason: This condition is necessary to ensure that ponds are provided on Area 2 to provide appropriate habitat for newts and invertebrates.

TRANSLOCATION OF ACID GRASSLAND

20. The development shall not be commenced on the land forming part of Area 1 shown on EPR Map 11 until a mitigation strategy for the translocation of acid grassland from Area 1 to Area 2 (including timing, monitoring and aftercare) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.

Reason: This condition is necessary to ensure that appropriate provision is made to mitigate for the loss of acid grassland on Area 1.

PROTECTED SPECIES

21. The development shall not be commenced until an up to date survey has been submitted to the local planning authority showing the location of any protected species (being reptiles and nesting birds protected under the Wildlife and Countryside Act 1981 (as amended)) within Areas 1 or 2. Thereafter development shall not be commenced on any land forming part of Area 1 or 2 and identified by the survey as a location for a protected species, until a mitigation strategy for such species has been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved strategy.

Reason: This condition is necessary to ensure that any protected species on the site are identified and that appropriate steps are taken to avoid harm to them.

BADGERS

22. Not more than 6 months prior to the development being commenced on Area 1 or Area 2 the developer shall carry out a badger survey on the relevant Area and shall submit the results of such survey to the local planning authority. If appropriate the survey shall include a mitigation strategy for approval in writing by the local planning authority. Development shall be carried out only in accordance with the approved mitigation strategy.

Reason: This condition is necessary to ensure that any Badgers on the site at the time development is due to commence are identified and appropriate measures taken to mitigate the effects of the development on them.

ARCHAEOLOGY

23. The development shall not be commenced within Areas 1, 2, 3 or 4 or the part of Area 6 shown on drawing CgMs Radlett/01 dated 13 December 2007 until

a written scheme of archaeological work and protection in relation to the relevant Area has been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the preservation in situ or, where that is not possible, the full excavation of remains considered to be of local or greater significance. The development shall be carried out in accordance with the scheme subject to any amendments approved in writing by the local planning authority. All remains preserved in situ shall be preserved in accordance with the scheme.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the recording or preservation of any archaeological remains that may be found on those areas of the site not previously disturbed by quarrying.

24. **CONTAMINATION**

24.1 The development shall not be commenced on any Area until the following components of a scheme to deal with the risks associated with contamination of the relevant Area has been submitted to and approved in writing by the local planning authority:

- (a) A preliminary risk assessment which has identified:
 - (i) all previous uses
 - (ii) potential contaminants associated with those uses
 - (iii) a conceptual model of the site indicating sources, pathways and receptors
 - (iv) potentially unacceptable risks arising from contamination at the site.
- (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- (c) The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

24.2 Any changes to the approved remediation strategy and the longer-term monitoring require the express consent of the local planning authority. The remediation strategy and longer-term monitoring shall be implemented as approved.

- 24.3 The development shall not be commenced on any Area until a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation on the relevant Area has been submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.
- 24.4 If during development of the relevant Area contamination not previously identified is found to be present at the site then no further development shall be carried out on that Area until the developer has submitted to and obtained written approval from the local planning authority for an amendment to the approved remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To ensure that an appropriate remediation strategy is undertaken as part of the development

25. **NOISE**

- 25.1 The development shall not be commenced on Areas 1 and 2 until a scheme has been submitted to and approved in writing by the local planning authority which specifies the details of the provisions to be made for the control of noise emanating from these Areas during the operation of the development. The development shall be operated in accordance with the approved scheme.
- 25.2 The level of noise emitted from the site shall not exceed 50dB LAeq, 8hr between 2300 and 0700 the following day as measured at 1 metre from the façade of any residential property. The measurement shall be made in accordance with British Standard 74451:2003.
- 25.3 The level of noise emitted from the site shall not exceed 60 dB LAFmax as measured at 1 metre from the façade of any residential premises between 23.00 and 07.00, every day.

Reason: This condition is necessary in the interests of preventing significant noise disturbance to residents living around the site.

EXTERNAL LOUDSPEAKERS

26. No external loudspeaker systems shall be installed on any Area.

Reason: This condition is necessary in the interests of preventing residents living around the site being disturbed by (intermittent) noise from any external loudspeakers that may be installed on the site.

REFUSE

27. The development shall not be commenced on any Area until details of the facilities for the storage of refuse on that Area have been submitted to and approved in writing by the local planning authority. The approved details shall thereafter be implemented and retained.

Reason: This condition is necessary to ensure that proper provision is made for the storage of refuse on the site.

RENEWABLE ENERGY

28. Construction of the Units within Area 1 shall not be commenced until a report has been submitted to the local planning authority setting out the measures to be taken such that the predicted CO2 emissions of the development will be reduced by a target of 10% through the use of on-site renewable energy equipment and until such measures have been approved in writing by the local planning authority. The development shall be carried out incorporating such approved measures.

Reason: This condition is necessary in the interests of sustainable development and to comply with the requirements of RSS14.

LIGHTING

29. No Unit shall be occupied until a detailed external lighting scheme for Areas 1 and 2 has been submitted to and approved in writing by the local planning authority. No external lighting other than that approved shall be provided on Areas 1 and 2.

Reason: This condition is necessary to ensure that the design and installation of external lights on the site pays due regard to the need to protect the amenities of local residents and the environment.

CYCLE STORAGE

30. None of the Units shall be occupied until details of the cycle storage for employees of the Unit has been submitted to and approved in writing by the local planning authority. The approved cycle storage shall be provided and thereafter retained.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the storage of cycles on the site.

31. COUNTRY PARK

- 31.1 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Countryside Management Plan. The Countryside Management Plan shall include

landscaping details for Areas 3 to 8 submitted for approval under Condition 2 above and shall be substantially in accordance with the following documents:

- (a) Countryside Management Plan – Overall Objectives and Design Principles dated 19 December 2007 and drawing numbers 394503-LV-042, 394503-LV-044, 394503-LV-046, 394503-LV-048, 394503-LV-050, 394503-LV-052, 394503-LV-054, 394503-LV-056, 394503-P-057 and 394503-LV-018 and EPR Maps 2, 3 rev A, 4, 5, 6, 7, 8, 9 and 10 Rev A; and
- (b) Countryside Management Plan – Objectives and Specific Measures for Areas 1 – 8, dated 19 December 2007.

- 31.2 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Landscape Management Plan substantially in accordance with the Draft Landscape Management Plan prepared by Capita Lovejoy in December 2008.
- 31.3 The approved Countryside Management Plan and the approved Landscape Management Plan shall be implemented and their requirements shall thereafter continue to be observed.
- 31.4 The Countryside Management Plan when submitted under condition 31.1 shall define the landscaping and countryside access works and the public access and the sport and recreation facilities referred to in condition 32.1 and the works to create waterbodies and related facilities for bird habitat referred to in condition 32.2. It shall also set out measures to protect the areas of ecological interest within the Country Park pending the completion of the Country Park.

Reason: This condition is necessary to ensure that details of the Country Park are settled at an early stage.

32. DELIVERY OF COUNTRY PARK

- 32.1 The landscaping and countryside access works in those parts of Areas 1 and 2 proposed for use as a Country Park and in Areas 3, 4 and 5 and in the southern part of Area 6 and the provision of public access and the sport and recreation facilities in Area 5 shall be completed prior to occupation of any of the Units. These works shall include the restoration of Hedges Farm as a working farm and as a Country Park Visitor/Interpretation Centre as approved under condition 15.1(i) above.
- 32.2 The works to create waterbodies and related facilities for bird habitat on Areas 5 and 8 shall be completed within twelve months following occupation of any of the Units.
- 32.3 The Country Park works on Areas 7 and 8 shall be completed no later than the occupation of 290,000 square metres of floor area in the Units.

32.4 The Country Park measures on the northern part of Area 6 shall be completed by the later of:

- (a) 12 months following completion of the restoration of Area 6 in accordance with the planning permission dated 27 March 2007 reference 5/1811-04(CM112) (and any variation thereof); or
- (b) occupation of more than 290,000 square metres of floor area in the Units.

Reason: This condition is necessary to ensure timely delivery of the Country Park.

DEFINITIONS

"Access Works"	The creation of the new vehicular access to serve Area 1 from the A414 including the at grade signalised roundabout linking the A414 to the Park Street bypass
"Area"	The relevant area within Areas 1 – 8
"Area 1"	The area marked Area 1 shown edged red on drawing number 394503-LV-018
"Area 2"	The area marked Area 2 shown edged red on drawing number 394503-LV-018
"Area 3"	The area marked Area 3 shown edged red on drawing number 394503-LV-018
"Area 4"	The area marked Area 4 shown edged red on drawing number 394503-LV-018
"Area 5"	The area marked Area 5 shown edged red on drawing number 394503-LV-018
"Area 6"	The area marked Area 6 shown edged red on drawing number 394503-LV-018
"Area 7"	The area marked Area 7 shown edged red on drawing number 394503-LV-018
"Area 8"	The area marked Area 8 shown edged red on drawing number 394503-LV-018
"Country Park"	The country park to be provided on part of Area 1 and part of Area 2 shown coloured green on drawing number 394503-LV-077 and the Key Parameters Plan and on Areas 3-8
"Countryside Management Plan"	A plan setting out details of the long term management and maintenance of the Country Park
"Highways Plan"	Plan 6035/37A dated December 2007
"Intermodal Terminal Phase"	The first phase of the on-site rail works comprising the construction of three reception sidings and two

1 Works"	intermodal terminal sidings and associated works to facilitate its operation as an intermodal terminal including security, hardstanding and lighting substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
"Intermodal Terminal Phase 2 Works"	The second phase of on-site rail works comprising the construction of two additional intermodal terminal sidings and new temporary hardstanding substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
"Intermodal Terminal Phase 3 Works"	The third phase of on-site rail works comprising the construction of two additional intermodal terminal sidings with the extension of the track to the reception sidings substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
"Intermodal Terminal"	The intermodal terminal forming part of the development
"Key Parameters Plan"	Plan 394503-DSD-002a dated December 2008
"Landscape Management Plan"	A plan setting out details of the long term management and maintenance of the landscape areas within the Country Park
"London Colney Roundabout Improvements"	Improvements to the existing traffic signal controller at the London Colney Roundabout by the installation of the MOVA signal control system and other works to improve safety and capacity of the roundabout
"M25 Junction 21A Improvements"	Improvements to M25 Junction 21A as shown in principle on drawing number 11012495/PHL/01 Rev C
"M25 Junction 22 Improvements"	Improvements to M25 Junction 22 as shown in principle on drawing numbers 2495/SK/003 Rev A and 2495/SK/004 Rev A
"Midland Main Line"	The railway running from Bedford to St Pancras
"Midland Main Line"	The formation of a southerly connection from the Midland Main Line northbound and southbound slow lines to the new branch line (including necessary

Connection Works	signalling works) to serve Area 1
"Midland Main Line Gauge Enhancement Works"	<p>The gauge enhancement to the Midland Main Line to W9 and W10 loading gauge on the following routes;</p> <ul style="list-style-type: none"> (a) the development to Brent Curve Junction, and (b) either; <ul style="list-style-type: none"> (i) Brent Curve to Acton Wells Junction; or (ii) Brent Curve to Junction Road Junction (at Tufnell Road)
"Park Street Bypass Phase 1 Works"	The provision of the Park Street Bypass from the A414 between points A and C on the Highways Plan
"Park Street Bypass Phase 2 Works"	<p>The provision of:</p> <ul style="list-style-type: none"> (c) a modification to the existing bridge over the M25; or (d) a new bridge over the M25 as shown in principle on Drawing 14297/BR/AIP/ST01/001-Rev A linking Area 1 with the A5183 by connecting roundabout Y and point D on the Highways Plan
"Park Street Roundabout Signalisation Works"	Improvements to the Park Street Roundabout as shown in principle on drawing no. 2495/SK/001 Rev A
"Reserved Matters"	<p>Details of:</p> <ul style="list-style-type: none"> (a) layout except as already approved for layout of the new buildings; (b) scale except as already approved for the maximum total floorspace of the new buildings and the maximum height, width and length of the new buildings; (c) appearance of the new buildings;

- (d) access except as already approved for rail, lorry and car access;
- (e) landscaping except as already approved for the location of the structure planting and earth mounds on Areas 1 and 2

"Unit"

Each of the respective warehouse units within Area 1 to be constructed as part of the development



Report to the Secretary of State for Communities and Local Government

by A Mead BSc (Hons) MRTPI MIQ
an Inspector appointed by the Secretary of State
for Communities and Local Government

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Date: 19 March 2010

**Land in and around former aerodrome, North Orbital Road, Upper Colne
Valley, St Albans**

St Albans District Council

Town and Country Planning Act 1990

Section 78 Appeal by Helioslough Ltd

Proposed Strategic Rail Freight Interchange

Inquiry held between 24 November – 18 December 2009

Site in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, St Albans, Hertfordshire

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

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

Site in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Helioslough Ltd against the decision of St Albans City & District Council.
- The application Ref 5/09/0708, dated 9 April 2009, was refused by notice dated 21 July 2009.
- The development proposed is the construction of a Strategic Rail Freight Interchange 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.

Summary of Recommendation: The appeal be allowed subject to conditions.

1. Introduction and Procedural Matters

1.1 The inquiry opened on 24 November 2009 and sat for 15 days before closing on 18 December. The appeal site and its surroundings were inspected on 21 December accompanied by representatives of the appellant, St Albans District Council and STRIFE. I visited the surroundings of the appeal site before, during and after the inquiry, visited the locations of sites which were suggested as possible alternatives for a Strategic Rail Freight Interchange (SRFI) at Slough, Wokingham and near Luton and I also observed another SRFI at DIRFT. The other visits were carried out unaccompanied, with the exception of Harlington, near Luton, where representatives of the appellants, the Council and a local landowner were present.

1.2 At the inquiry, an application for an award of costs was made by Helioslough Ltd against St Albans District Council. This application is the subject of a separate Report.

1.3 The appeal was recovered by the Secretary of State for his decision by a Direction dated 29 July 2009. The reason given for the Direction was that (i) the appeal involves proposals for development of major importance having more than local significance and (ii) the appeal relates to proposals of major significance within the Green Belt.

1.4 On 1 October 2008, following a public inquiry which closed on 20 December 2007, the then Secretary of State issued a decision to dismiss an appeal against the decision of the St Albans City and District Council to refuse outline planning permission for construction of an SRFI on the site of the current appeal. The proposal which was made then is the same as has been submitted for the current appeal. The appeal site is also the same now as before.

1.5 A Statement of Common Ground (SoCG) between the appellant and Council was submitted dated 30 September 2009. The SoCG stated that the descriptions of the appeal site, the planning history and the development proposal are the same as those agreed for the SoCG submitted in October 2007 for the previous inquiry. I

have also adopted, or adapted where appropriate, some of the previous Inspector's report which deals with the basic background information, including planning policies.

1.6 The application was submitted in outline with design and external appearance reserved for future consideration. Matters relating to means of access, siting and landscaping were submitted for consideration as part of the application, but only to the extent that they were described within the Development Specification Document.

1.7 Section 2 describes the appeal site and its surroundings. This is followed by sections describing the planning history, the current proposal, planning policies, agreed facts, the gist of the cases for the parties who appeared at the inquiry, the main points within the written representations about the appeal, possible planning conditions, my conclusions and finally, my recommendation.

1.8 Conditions which are recommended in the event that the appeal is allowed are listed in Annex A. Appearances at the inquiry are listed at the end of the report together with inquiry documents. A list of abbreviations used in the report is also attached.

2. The Appeal Site and Surroundings

2.1 The following paragraphs are extracted from the description of the appeal site contained in the report of the previous inquiry. Nothing that I observed or has been given in evidence leads me to conclude that the description is anything other than an accurate summary. Therefore it is repeated.

2.2 "The appeal site covers eight separate parcels of land (Areas 1 to 8) with a total area of some 419ha. All areas fall entirely within the City and District of St Albans.

2.3 The SRFI would be located on Area 1, which has an area of 146ha. This is bounded by the A414 to the north, the Midland Main Line (MML) to the east and the M25 to the south. The settlements of Park Street and Frogmore lie to the west. The major part of Area 1 was once an airfield (Radlett Aerodrome), but this use was discontinued many years ago, following which gravel was progressively extracted from the site. This gravel extraction ceased in turn a few years ago and the majority of the site has now been restored to agricultural grassland. Groups of trees have been planted on some of the boundaries, fences erected and hedges planted. The site also contains two significant water bodies.

2.4 Land within Area 1 to the north of the former gravel extraction area comprises mainly farmland, with some woodland, particularly to the south of bridleway 51 which runs from Bury Dell, north-eastwards past Hedges Farm to the A414. Hedges Farm is a working farm with a range of buildings and a butcher's shop. Land farmed from the holding includes the agricultural land within Area 1, part of Area 2 and the whole of Areas 3 and 4.

2.5 Area 2, with an area of 26ha, lies immediately to the east of the MML. A new railway line is proposed through this area, with a bridge under the MML, to link the proposed rail sidings on the site to the public railway network. Parts of Area 2 have previously been worked for minerals.

2.6 Area 3 (29ha) lies to the north-west of Area 1 on the south side of the A414. It comprises farmland, used mainly for grazing cattle and sheep. The river Ver runs through this parcel of land, and some of the ground to the side of the river is low lying and wet. The route of the Ver Colne Valley Walk passes through the area running northwards from Bury Dell across the farmland and river to a bridge under the A414.

2.7 North of the A414 the Ver Colne Valley Walk continues northwards through the southern section of Area 4 up to Sopwell Manor Hotel which is situated on Cottonmill Lane. A secondary footpath (FP Nos 48 and 49) runs approximately north-west to south-east across the farmland, linking the housing areas at the southern end of St Albans to the Ver Colne Valley Walk and onwards to the A414.

2.8 Further sections of Area 4 lie to the north of Cottonmill Lane and to the south of the lane, east of the hotel grounds. The former parcel of land which lies to either side of the river Ver was once grazing land. The latter is open farmland. Currently there is no public access to or across either of these areas.

2.9 Area 5 (91ha) is a former gravel extraction area. It is varied in character with a significant area of woodland on either side of the river Ver and several attractive water bodies on its eastern side, close to Frogmore. Elsewhere the standard of restoration has been variable and much of the area to the south of the track linking Hyde Lane to How Wood and to the west of the Ver Colne Valley Walk is undulating and tussocky with encroaching scrub. A small geological SSSI is in the area. Two further footpaths cross the main body of the area to the south of the track, but the area is largely open and several informal paths also run through it. The western boundary of the site follows the single track Watford to St Albans Abbey branch railway line. The southern boundary follows the M25. A pedestrian footbridge carries the Ver Colne Valley Walk over the M25.

2.10 Area 6 (16ha) lies to the south of Area 5 on the opposite side of the M25. It is divided into two by Smug Oak Lane. The northern section comprises a poorly restored former gravel pit, mainly now used for grazing horses. The southern section comprises open farmland. There are two public footpaths through the northern section, but currently no public access to the area south of Smug Oak Lane.

2.11 Area 7 (27ha) lies immediately to the north of the M25. It too was a former gravel extraction area, but it has been fully restored and is now used for agriculture. The landform is domed to either side of the track which runs through it from south-west to north-east. There is no public access to the area.

2.12 Area 8 (32ha) comprises a poorly restored area of former gravel workings lying between the M25 and London Colney to the east of Shenley Lane. The main body of the site is undulating, tussocky and disused, but the ground is more level and appears to be of better quality nearer to the northern boundary. Footpath 15 crosses the area as does the Watling Chase Trail. A further footpath (No 23) skirts the northern boundary. The area is, however, criss-crossed with other paths."

2.13 The centre of the main development area, Area 1 is some 3.5km from the centre of St Albans. It is wholly within the Metropolitan Green Belt. It is bounded to the south by the M25 motorway and to the east by the four-track Midland Main Line (MML) which passes the main body of the site on embankment. The A414 dual

carriageway passes the site to the north. To the west, the A5183 runs from the M10/A405/A414/A5183 (Park Street) Roundabout through the settlements of Park Street and Frogmore before crossing over the M25 and continuing south to Radlett and Elstree. Development in Park Street and Frogmore between the road and the site is mainly residential, but there is a significant group of industrial and office buildings between the A5183 and the western site boundary (Curo Park). A further, much larger, group of warehouses and industrial buildings lies opposite the site on the south side of the M25 (Ventura Park) in the triangle of land between the M25, the MML and the A5183.

2.14 To the east of the MML opposite Area 1 there is open farmland, to the east of which is the former Napsbury Hospital, now redeveloped for housing in a parkland setting. The former hospital site is a designated conservation area. A further conservation area – Park Street and Frogmore – covers the core of the settlements, including the area around Bury Dell.

2.15 The major roads in the area comprise the M25, M10 and M1 motorways. The A405 dual carriageway links the M25 (Junction 21a) to the M10, A414 and A5183 at Park Street Roundabout. To the south of the M25, the A405 links to the M1 at Junction 6. Northwards from the Park Street Roundabout, the A5183 provides a link into St Albans. The A414 dual carriageway runs from Park Street Roundabout eastwards past the development site to the London Colney Roundabout. From here the A1081 dual carriageway links down to the M25 at Junction 22 and the A414 continues to the A1(M). A local link leads into London Colney.

2.16 Secondary roads include the B556 Harper Lane, which connects the A5183 to the M25 at Junction 22 and carries much of the HGV traffic from Ventura Park. Other local roads link Park Street and Frogmore to the A405 via How Wood and Bricket Wood.

2.17 The closest train station to the site is Park Street, on the Watford to St Albans Abbey branch line. On the MML, the nearest station is St Albans.

2.18 A description of the landscape in the area can be found in the Environmental Statement.

3. Planning History

3.1 The material planning history is the same as for the previous inquiry with the addition of the consequent decision.

3.2 The proposed development site, Area 1, was used as a grass aerodrome in the 1930s by Handley Page Civil Aircraft. That use was extended in 1939 and it became a major centre for the production of bombers during WW2. Post 1945, the site was used for the production of air liners and the runways were then upgraded to concrete for air shows held on it in 1947 and 1948. Handley Page subsequently used the site for aircraft research, production and test flying, requiring further extension of the runways in 1952. The company went into liquidation in 1969 and ceased to exist in 1970.

3.3 The aerodrome was subsequently redeveloped, with hanger areas to the west and south converted and redeveloped for commercial uses including warehousing and

distribution at what are now the industrial estates at Frogmore and Colney Street. The construction of the M25 between 1975 and 1986 severed the Colney Street estate from the remainder of the aerodrome. Permission was granted in 1978, 1985 and 1990 for the use of most of the runway area for sand and gravel extraction, with the remainder left as open land. Mineral extraction ceased in 1997 and the site has been subject to a restoration programme which is nearing completion.

3.4 During the 1970s and 1980s, applications for temporary change of use of part of the Radlett aerodrome site were approved for development such as one day model aircraft competitions, police dog trials, ACU motor cycle races and bus and vehicle rallies.

3.5 On 1 October 2008, the decision by the Secretary of State was issued following the inquiry at the end of 2007 into the refused application for an SRFI on the appeal site. The Secretary of State agreed with the Inspector that the main issues were those he set out in his report, which can be characterised as harm to the Green Belt; other harm (landscape and visual impact, nature conservation, residential amenities, local highways and other rights of way and on passenger services between St Albans and London St Pancras); prematurity; and the very special circumstances, including the policy support for SRFIs, the various benefits claimed for the appeal site and whether alternative sites for an SRFI elsewhere are available elsewhere which could meet the need which it is argued the appeal site could deliver.

3.6 The conclusions of the Secretary of State on the various issues are summarised as follows:

Harm to the Green Belt

3.7 The Secretary of State stated that the proposal would constitute inappropriate development in the Green Belt and would therefore be in conflict with national and local policy. PPG2 and Development Plan policies required the appellant to demonstrate that harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by very special circumstances that would justify granting planning permission.

3.8 Whilst the impact on the landscape of the proposal would be mitigated to some degree by the mounding and planting proposed, the proposal would have a substantial impact on the openness of the Green Belt and harm on this account could not be mitigated. The proposal would result in significant encroachment into the countryside, and would contribute to urban sprawl. The proposal would not lead to St Albans merging with Radlett, or Park Street and Frogmore merging with either Napsbury or London Colney.

3.9 With regard to the impact which the proposal would have on the setting and special character of St Albans as a historic town, the Secretary of State commented that there would be some harm to the setting of the city. The Secretary of State considered whether the proposals would also be harmful to the Green Belt purpose of assisting urban regeneration. However, in view of her decision in this case, it was not necessary for her to reach any overall conclusion on this.

Other Harm

3.10 The Secretary of State agreed with the parties that the current landscape value of Areas 1 and 2 should be categorised as “*high*” and that, at year 15, the proposed development would have a “*significant adverse*” landscape impact on Area 1. She stated that the impact in landscape terms on Area 2, whilst marginally adverse overall, would not be significant. In terms of visual impact, the mitigation proposed in the form of bunding and planting on Area 1 would be extensive and, particularly from some viewpoints, would appear artificial and intrusive. Whilst she noted that the scale of the proposed landscaping and associated planting was not criticised by the Council, the scale, bulk and nature of the development proposed on Area 1 would result in significant visual impact from some quarters; that passengers in passing trains on the Midland Main Line would have a clear view of the warehouses and their associated service yards; and that the upper parts of the warehouses would also remain open to view from some higher vantage points.

3.11 The Secretary of State observed that the landscaping proposed on Areas 3 to 8 would be beneficial. However, she considered that the works proposed for Areas 3 to 8 would do practically nothing to ameliorate the impact of the built development on Areas 1 and 2; rather the areas are for the most part discrete ‘stand alone’ areas with little or no visual connection to Areas 1 and 2. Overall, the degree of improvement to the landscape in Areas 3 to 8 would not be such as to offset the harm to the landscape caused by the proposed development on Area 1, and concluded that the overall impact on the entire site would be moderately adverse. The proposal was therefore in conflict with development plan policies for the protection of the landscape.

3.12 The impact of the proposed development on the Park Street and Frogmore Conservation Area would be positively beneficial, and the character and appearance of the Napsbury Conservation Area would be preserved. Any harm to the underlying ecological interest would not be significant.

3.13 The Secretary of State agreed with the Inspector’s assessment on noise matters and took account of the fact that the expert witnesses who appeared at the inquiry were agreed that increases in traffic noise affecting those living next to the railway line or those living near main roads would not be significant. She considered the appellant’s proposed condition 22 to be reasonable, and accepted that noise generated by activity on the site during the night would not be unacceptable, albeit that it would be readily perceptible to residents living in quieter areas about the site. Overall, she accepted that noise from the development would not bring the proposal into conflict with the development plan. Lighting on the site would not result in unacceptable sky glow or materially detract from the character or amenity of nearby residents living in Napsbury Park and stated that no conflict with the development plan would arise in these respects. In addition, air quality concerns should not constrain the development.

3.14 The Secretary of State attached weight to assurances from Network Rail and to their commitment to adopt best operating practices to regulate freight train access onto busy main lines. She was reasonably assured that freight trains running to and from the proposed SRFI would not materially prejudice the ability of the Midland Main Line to reliably carry passengers, or to accommodate the predicted growth in passenger numbers. On the issue of disruption from engineering works, the Secretary of State had regard to the view of Network Rail about effecting the main line connection and the gauge enhancement works, and to their general commitment

to working with all stakeholders to minimise the impact of possessions. Whilst some disruption to passenger services due to engineering works would be inevitable it would not be unusually severe. There was no reason to suppose that sufficient paths could not be made available to serve the terminal during the inter-peak hours and overnight.

3.15 With regard to highways, the Secretary of State had regard to the fact that the Highways Agency withdrew their remaining objection to the proposal, subject to a condition about the Park Street Roundabout being imposed on any permission granted. She also had regard to the fact that the Council agreed that improvements to the London Colney roundabout could be dealt with by condition.

3.16 The Secretary of State accepted that very limited weight should be attached to both the County and District Councils' concerns about the design of the Park Street roundabout and she considered that concerns regarding the proposed roundabout on the A414 could be overcome when detailed designs were submitted for approval and she therefore afforded the matter very limited weight. She also accepted that fears that the development would increase traffic congestion and rat-running were generally not supported by the evidence, and that there would be minimal risk that HGVs travelling to and from the site would use unsuitable roads. She concluded that the increase to traffic on the A5183 in peak hours was an issue to which limited weight should be attached. In addition, the harm to existing footpaths and bridleways would be outweighed by the appellant's proposals for improvements.

3.17 The Secretary of State did not consider it would be reasonable to refuse planning permission for the development on account of sustainability concerns relating to the workforce's likely pattern of travel to work.

3.18 The Secretary of State considered whether the proposals were premature in the absence of a region-wide study to establish the most suitable locations for SRFIs to serve London and the South East. However, she concluded that a refusal of planning permission for the appeal proposal on prematurity grounds would lead to a substantial delay in providing further SRFIs to serve London and the South East, contrary to the Government's declared aim of increasing the proportion of freight moved by rail. The Secretary of State did not agree with the Councils' prematurity argument.

Other considerations

3.19 On the proposed Park Street and Frogmore bypass, the Secretary of State accepted that traffic travelling through Park Street and Frogmore on the A5183 would be reduced, that the proposal's effect on the conservation area would be positive, and that it would bring about some improvement in the living conditions of residents living in houses fronting or close to the A5183. She afforded this benefit a little weight.

3.20 The Secretary of State accepted that the proposals for Areas 3 to 8 would not deliver a 'country park' in the sense that the term is generally understood. However, she concluded that the proposals would be beneficial to the countryside and saw no reason why the appellant's proposal should not be beneficial overall and add to the existing biodiversity interests present on the site. The proposals for Areas 3 to 8

would accord with the development plan and with the objectives of the Watling Chase Community Forest Plan.

3.21 The Secretary of State stated that the impact of the warehouses was a matter that should be taken into account in determining that appeal. However, she accepted that there was no reason per se to criticise the proposal on account of its size. Furthermore, she saw no reason why the proposed SRFI would become an essentially road-based operation or otherwise fail to operate as an SRFI.

3.22 The Secretary of State concluded that the former Strategic Rail Authority's (SRA) SRFI Policy gave no indication as to where the three or four SRFIs required to serve London and the South East should be located, and that there was no evidence to support the appellant's assertion that the SRA specifically identified Radlett as one of the those locations.

3.23 The Secretary of State considered that, given the site's Green Belt location, whether or not the need which the proposal sought to meet could be met in a non-Green Belt location, or in a less harmful Green Belt location, was a material consideration in that case and that, in the circumstances of this case, it was sensible and pragmatic to restrict the search for alternative sites to an SRFI at Radlett to broadly the north west sector studied by the appellant. However, the Secretary of State concluded that the Alternative Sites Assessment submitted by the appellants was materially flawed, its results were wholly unconvincing and little reliance should be placed upon the report as it stood.

The Green Belt balance

3.24 On the overall Green Belt balancing exercise, the Secretary of State concluded that the proposal would constitute inappropriate development in the Green Belt, and she attached substantial weight to this harm. She also identified that it would further harm the Green Belt because it would cause a substantial loss of openness, significant encroachment into the countryside and it would contribute to urban sprawl. She considered that the harm from loss of openness, encroachment and urban sprawl would be substantial. She also considered that limited weight should be attached to the harm she identified to the setting of the historic city.

3.25 In terms of landscape impacts, the Secretary of State concluded that, on the main SRFI site (Area 1) significant adverse impacts would result, but that the new rail line through Area 2 would have only a marginal adverse impact. The Secretary of State also concluded that, whilst the proposal's impact on Areas 3 to 8 would be beneficial, the degree of improvement to the landscape in these areas would not offset the harm to the landscape overall and the overall impact on the entire site would be moderately adverse. The Secretary of State attached limited weight to concerns about highways.

3.26 Having considered the harm which the development would cause, the Secretary of State went on to consider whether the appellant had demonstrated that there were other considerations which would clearly outweigh these harms.

3.27 The Secretary of State considered that there were a number of benefits with the proposal, including the appellant's proposals for the country park areas, improvements to footpaths and bridleways, and the provision of a bypass to Park

Street and Frogmore. She also attached some weight to the predicted reduction in CO₂ emissions identified in the Environmental Statement. Notwithstanding the uncertainty as to the number of workers at the SRFI who would live close to the site, the Secretary of State afforded some weight to the benefits which would be generated by employment at the site, and accepted that it would not be reasonable to refuse planning permission for the development on account of sustainability concerns relating to the workforce's likely pattern of travel to work.

3.28 The Secretary of State considered that the need for SRFIs to serve London and the South East was a material consideration of very considerable weight and, had the appellant demonstrated that there were no other alternative sites for the proposal, this would almost certainly have led her to conclude that this consideration, together with the other benefits referred to above, were capable of outweighing the harm to the Green Belt and the other harm which she identified in that case. However, she considered the appellant's Alternative Sites Assessment to be materially flawed and its results to be wholly unconvincing. She considered this failing to be critical. In view of this, she concluded that the appellant had not shown that the need for the proposal or the benefits referred to above constituted other considerations which clearly outweighed the harm to the Green Belt and other harm which that development would cause, and that very special circumstances to justify the development had not been demonstrated.

Overall conclusions of the Secretary of State

3.29 Consequently, the overall conclusions of the Secretary of State were that the proposal did not comply with the development plan as it was inappropriate development in the Green Belt, and that it would also cause substantial further harm to the Green Belt. She also identified limited harm from conflicts with the development plan in relation to landscape and visual impact and highways, but considered these would be insufficient on their own to justify refusing planning permission. The Secretary of State was not satisfied that the appellant had demonstrated that no other sites would come forward to meet the need for further SRFIs to serve London and the South East, and she was unable to conclude that the harm to the Green Belt would be outweighed by the need to develop an SRFI at Radlett and that this was therefore a consideration amounting to very special circumstances. Having balanced the benefits of the proposal against the harm to the Green Belt, she also concluded the benefits of the proposal taken either individually or cumulatively would not clearly outweigh the harm to the Green Belt and did not constitute very special circumstances.

3.30 The Secretary of State therefore concluded that there were no material considerations of sufficient weight which required her to determine the application other than in accordance with the development plan. She then dismissed the appeal.

4. The Proposal

4.1 The current development proposals are set out in the SoCG for the appeal and are the same as for the previous appeal as described in the earlier SoCG which was agreed in October 2007. Therefore, the description which follows is based on the development proposal as summarised in the report of the previous Inspector from the previous inquiry. Details are included in the Development Specification Document.

4.2 The application was submitted in outline with details of siting, means of access and landscaping to be considered as part of the application *“to the extent that [these matters] are defined and described in the Development Specification”* (CD/1.3, para 1.5). Application plans comprise a “red line” Location Plan (Drg 3945-DSD-001) (CD/1.2) and a Key Parameters Plan (Drg 3945-DSD-002A - bound into CD/1.3). All other plans submitted with the application, including the Landscape Masterplan (Drg 3945-DSD-003 – also bound into CD/1.3) are illustrative.

4.3 The application site comprises eight separate parcels of land (Areas 1 to 8) with a total area of some 419ha (CD/1.2). The main body of the strategic rail freight interchange (SRFI) would be on Area 1 together with the connecting roadways. Area 2 would accommodate the rail link between the site and the Midland Main Line (MML). Areas 3 to 8 would generally remain in agricultural/woodland use, with improved public access and some areas given over to more formal recreational uses.

4.4 The Development Specification Document gives the area of built development proposed on Area 1 as 331,665m². The Landscape Masterplan shows this as being laid out in five warehouses ranging in size from 44,592m² to 111,480m² together with ancillary vehicle maintenance units and a recycling centre (CD/1.3, para 3.3). All the proposed warehousing would be accommodated on a development platform with a finished ground level between 73.0 and 74.0m AOD. The maximum building height would be 20m above this finished ground level. Landscape mounds surrounding the development would generally rise to around 80m AOD, with significantly higher sections to the north of the site (see Key Parameters Plan).

4.5 The main access to the SRFI for heavy goods vehicles (HGVs), other goods vehicles and cars would be via a short section of dual carriageway which it is proposed to construct between the A414 and a roundabout at the site entrance. At its northern end this would link into the A414 at a new signalised roundabout constructed approximately 1km east of the Park Street Roundabout. The road between the site entrance roundabout and the A414 would be open to the public and would continue southwards between the development and Park Street/Frogmore to link into the existing A5183 where it crosses the M25 – the ‘Park Street and Frogmore Bypass’. A secondary vehicular access to the site would be provided near the southern end of this link, but use of this would be restricted to works buses, cyclists, pedestrians and emergency vehicles.

4.6 Rail access into the site would initially be via a new single track connection which would join the Midland Main Line (MML) just to the north of the M25 crossing. This would descend gently through Area 2 before looping under the MML into the site (see Key Parameters Plan). Within the site, the schematic rail layout shows it linking to new reception sidings located between the four southern warehouses, from which trains would be moved into and out of further loading/unloading sidings located adjacent to each unit or into sidings serving the proposed intermodal terminal. Whilst the connection between the MML and the site would initially be single track, it is proposed to lay it on a double track formation a condition provides for a second track linking the reception sidings to the MML to be completed as soon as practicable after the average number of trains exceeds seven per day, or no later than ten years after the first unit is occupied in any event.

4.7 At the northern end of Area 1 a small area of land, including Hedges Farm, would be retained in agricultural use, with structural planting alongside the A414 and the MML (see Key Parameters Plan). Land in Area 2 not used for the rail link would be landscaped and used to provide mitigation for the area of acid and neutral grassland lost to the development in Area 1, and ponds for invertebrates, reptiles and Great Crested Newts displaced from Area 1. The existing trees growing close to the eastern boundary would be retained.

4.8 As to Areas 3 to 8, all details of what is proposed in these areas are reserved. Notwithstanding this, illustrative plans show the landscaping proposals and ecological proposals for each area, together with proposed changes to the network of public footpaths and bridleways. A series of works designed to enhance the ecological value of the meadows and other grassland and the river corridor are proposed in Area 3, together with two new areas of screen planting adjacent to the A414 and the allotments at the southern end of the site. The Ver Colne Valley Walk would be retained on its existing route, with new footpaths provided on higher ground away from the river. A short section of bridleway is also proposed connecting through to the diverted bridleway 51 in Area 1.

4.9 In Area 4 (South) the proposals provide for ecological enhancement of the river corridor and several new areas of woodland planting. New footpaths are also proposed on either side of the river, with some new circular routes. To the north of Cottonmill Lane a new bridleway through the area is proposed, together with a new footpath, carried over the wetter areas on a boardwalk. Ecological works proposed include enhancement of the watercourse for wildlife, thinning of tree and scrub cover and restoration of meadow grazing areas with management for nature conservation. The field to the east of the hotel on the south side of Cottonmill Lane would be opened for public access with a circular footpath and tree planting around grazed grassland.

4.10 The objectives for Area 5 are to provide appropriate management of the open land on the western section of the area, with formal public recreation on the eastern section. The woodland between these two sections would remain with management to improve its diversity and open up the canopy over the existing water bodies. It is anticipated that scrub would be thinned and cleared to open up sight lines for birds and controlled grazing introduced to manage the grassland. Harrowed areas of bare ground would be provided for ground nesting birds and existing water bodies managed to enhance their ecological value. Trees would be planted alongside the M25 and the present route of footpath 33. Subject to the results of the site investigation, a new footpath or bridleway would be created around the southern and eastern boundaries of the site and footpath 33 closed seasonally to reduce disturbance to birds during the nesting season. The smaller area of open ground to the east of the river corridor would be developed with new sport and recreation facilities. More modest works would be carried out to the existing water bodies to improve their diversity and value for fish and other wildlife.

4.11 A landscaping, restoration and aftercare scheme has been approved for the section of Area 6 lying between the M25 and Smug Oak Lane and it is intended that this will be implemented as approved. On the section of Area 6 lying to the south of the lane, woodland would be planted and the grassland grazed to promote its botanical interest. A new circular footpath walk would be formed, possibly linked

through to the Ver Colne Valley Walk which runs close to the eastern boundary of this site.

4.12 Area 7 would be managed primarily as support grazing land for the other areas of the country park where grazing is aimed at enhancing the ecological diversity and interest of the land. Woodlands would be planted around the main grassland areas and along the boundary abutting the M25. Currently there is no public access to the area and no footpaths or bridleways are proposed through it.

4.13 The proposals for Area 8 include new sport and recreation facilities on the eastern section, between the Watling Chase Trail and the London Colney retail park. To the west of the trail, hedges would be removed to improve the area's openness and the grassland would be managed by grazing with cattle and sheep to improve its value for birds. New water bodies would be formed near the northern boundary, with adjoining areas of harrowed land to provide nesting opportunities for Lapwings and new screen planting alongside the existing footpath in order to reduce disturbance to birds. The areas closest to the southern boundary and the M25 would be mounded in part, with woodland planting. Footpath 15, which currently crosses the site diagonally would be seasonally diverted over part of its length in order to reduce disturbance to birds using the area.

4.14 Off-site works proposed include partial signalisation and other works to the Park Street Roundabout and improvements to the traffic signals and other works to increase capacity at London Colney Roundabout. The new road through the site would act as a bypass to Park Street and Frogmore. For most of its length, this road would run within Area 1. However, the tie in to the existing A5183 at the southern end of the bypass would be outside the site limits on highway land. On the railway, it is proposed that clearances on the MML to the south of the site should be enhanced to accommodate W10 gauge rolling stock.

4.15 Further off-site works secured through the S106 Undertaking include (i) traffic management measures, traffic calming measures and environmental improvements in Park Street, (ii) improvements to Park Street Station and (iii) measures to improve the service on the Watford to St Albans Abbey branch line. Funds would also be provided to implement the imposition of HGV restrictions on Harper Lane and the A5183 to the south of the site and a rail subsidy fund would be set up to be applied to measures to promote rail usage.

4.16 As to footpaths, bridleways and cycleways, a series of new routes and improvements would be provided in Areas 3, 4, 5, 6 and 8 as summarised above. In addition, a new bridleway is proposed passing around the edge of Areas 1 and 2, and connecting Hedges Farm to existing rights of way to the south-west of London Colney. Bridleway 51, which links Bury Dell to the A414 and currently passes through Area 1, would be diverted through and around the proposed landscape areas. In addition to this, funds would be provided through the S106 Undertaking to enable the County Council to improve and enhance the footpath, bridleway and cycleway network in the area surrounding the site.

4.17 With regard to phasing, the agreed conditions require the improvements to the Park Street Roundabout, and the Park Street Bypass Phase 1 Works (including construction of the main access into the site) to all be completed before any of the units are occupied. None of the units shall be occupied until a travel plan and freight

management plan has been submitted to and approved in writing by the local planning authority. The London Colney Roundabout improvements shall be completed no later than two years after the first unit is occupied.

4.18 As to the rail works, the rail link to the relevant unit shall be completed and the first phase of the intermodal terminal completed before any unit is occupied. Thereafter it defines triggers for completion of a second track linking the site to the MML (see para 4.6 above), and for completion of phases 2 and 3 of the intermodal terminal. No more than 175,000m² of floor area shall be occupied until such time as the gauge enhancement works have been completed.

4.19 All landscaping and countryside access works in Areas 3, 4, 5 and the southern part of Area 6 shall be completed prior to occupation of any units, together with the sport and recreation facilities proposed in Area 5. Similarly, works to create the water bodies and related facilities for bird habitat on Areas 5 and 8 are required to be completed prior to the first spring following occupation of any of the units. The remaining works are required to be completed no later than the occupation of 290,000m² of floor area in the units.

5. Planning Policy

5.1 The planning policy context was agreed in the SoCG. The development plan comprises (a) the Regional Spatial Strategy (RSS) for the East of England – The East of England Plan; (b) the Hertfordshire Structure Plan Review 1991 – 2011 adopted 1998; (c) the City and District of St Albans Local Plan Review adopted 1994; (d) the Hertfordshire Minerals Local Plan Review 2002 – 2016, adopted 2007; and (e) the Hertfordshire Waste Local Plan 1995 – 2005 adopted 1999.

RSS 14

5.2 Since the previous appeal, the RSS was published in May 2008, superseding the former Regional Planning Guidance for East Anglia (RPG6 2000) together with relevant sections of the former guidance for the South East and Thames Gateway (RPGs 9, 9A and 3P/9B).

5.3 Policies include SS1 sustainable development, SS2 Overall Spatial Strategy, SS7 Green Belt, SS8 The Urban Fringe, E1 Job Growth, E2 Provision of Land for Employment, E3 Provision of Strategic Employment Sites, T1 Regional Transport Strategy, T10 Freight Movement, ENV1 Green Infrastructure, ENV2 Landscape Conservation, ENV3 Biodiversity and Earth Heritage, ENV4 Agriculture, Land and Soils, ENV5 Woodland, ENV6 The Historic Environment, ENG1 Carbon Dioxide Emissions and Energy Performance, ETG6 Transport Infrastructure, HG3..... and LA1 London Arc.

Hertfordshire Structure Plan Review 1991 – 2011

5.4 In 2007, the Secretary of State directed that only certain of the Structure Plan policies would continue in force after 27 September 2007. Since then the supporting document to the East of England Plan sets out which previously saved policies are replaced by RSS14. The only remaining saved policies are 3, 15, 24, 35 and 52. None of these are relevant to the appeal.

St Albans District Local Plan Review 1994

5.5 Policies saved by the direction of the Secretary of State in 2007 comprise – Policy 1 Green Belt, Policy 2 Settlement Pattern, Policy 34 Highways Considerations in Development Control, Policy 35 Highway Improvements in Association with Development, Policy 39 Parking Standards, General Requirements, Policy 44 Business Use, Industrial and Storage and Distribution Parking Standards, Policy 69 General Design and Layout, Policy 73 Article 4 Directions, Policy 74 Landscape and Tree Preservation, Policy 80 Floodlighting, Policy 84A Drainage Infrastructure, Policy 85 Development in Conservation Areas, Policy 91 Location of Leisure Facilities, Policy 96 Medium Intensity Leisure Uses in the Green Belt, Policy 97 Existing Footpaths, Bridleways and Cycleways, Policy 102 Loss of Agricultural Land, Policy 106 Nature Conservation, Policy 111 Archaeological Sites where planning permission may be subject to recording condition, Policy 143 Land Use proposals in the Upper Colne Valley and Policy 143A Watling Chase Community Forest.

5.6 Other parts of the Development Plan to which no policy reference was made were the Hertfordshire Minerals Local Plan Review (2007) and the Hertfordshire Waste Local Plan (1999).

5.7 Other policy documents include the *St Albans City and District Core Strategy Development Plan Document* for which a consultation document has been published; the *Watling Chase Forest Plan Review (2001)*; *The South East Plan (May 2008)* which contains Policy T13 Intermodal Interchanges; the *London Plan Consolidated with Alterations since 2004 (February 2008)* which includes Policies 3C.25 Freight Strategy, Policy 3C.20 Strategic Rail Freight Interchange and the Strategic Rail Authority *Strategic Rail Freight Interchange Policy 2004*.

National Planning Policy Guidance

5.8 Relevant guidance is contained in PPS1, PPG2, PPG4 (superseded by PPS4 after the close of the inquiry) PPS7, PPS9, PPS11, PPG13, PPG15, PPG16, PPG17, PPS23, PPG24 and PPS25.

6. Other Agreed Facts

6.1 Network Rail submitted a Statement of Agreed Facts for the inquiry dated 23 October 2009. These were facts agreed between the appellants and Network Rail. Key points within the documents include:

- MML passes the site as a four track electrified main line with 2 “fast” lines and 2 “slow” lines.
- As it passes the site from 13 December 2009, there will be 495 booked passenger trains on an average weekday and 44 freight trains.
- Based on 0900 hrs 1600 hrs, Network Rail finds that of the two freight paths per hour in each direction provisionally allocated to existing freight customers, not all are currently used.
- 50% of the up direction paths are used, with capacity in the afternoon.
- 73% of the down direction paths are used, with capacity in the morning.
- Further capacity is available at night.
- Network Rail can offer no guarantees at this time that these paths will be available in the future as they are open to all licensed freight operators and all

paths required for the interchange will need to be bid for and are subject to the standard industry-wide timetable planning process.

- The route between Bedford and Acton Wells Junction is currently constrained to W7 loading gauge for through traffic.
- The route between Cricklewood and Carlton Road Junction is currently constrained to W6 loading gauge.
- The DfT SFN proposals identify the MML as a core trunk route.
- The Government's Rail White Paper 2007 included the aspiration to double passenger and freight traffic on the national rail network. In response, the draft MML RUS, SFN and ERUS include various proposals to enhance the capacity of the MML in order to accommodate additional freight and passenger traffic.
- Network Rail does not consider there to be any major technical obstacles to achieving a connection such as is proposed with the main line.
- The SRFI is limited by proposed planning condition to develop only half of the floorspace on site until W10 gauge enhancement is delivered into London. Network Rail does not consider there to be any major technical obstacles to achieving such enhancement works.
- Network Rail is committed to seek the least time intrusive possession for any engineering works required by the SRFI and would seek synergies with the Thameslink programme and other ongoing maintenance, renewals and enhancement works where possible.
- The SRFI has currently completed stage 1 of Network Rail's GRIP (Guide to Railway Invest Projects) process and is in GRIP stage 2, pre-feasibility. Subject to consent, the Development Services Agreement would then proceed through GRIP stages 3 and 4.

7. The Case for Helioslough Ltd

The Earlier Decision by the Secretary of State

The Core of the Decision

7.1 An identical application submitted in 2006 was refused by the Council on fourteen grounds in 2007. The appeal was dismissed by the Secretary of State ("the SoS") on the single issue of the robustness of the alternative sites assessment, the SoS not being satisfied that there was adequate evidence that there were no sites which could provide an SRFI with less harm to the Green Belt ("GB") in the north west sector ("NW Sector") of the M25: see Decision Letter ("DL") paras 42 and 58.

7.2 None of the other matters raised by the Council warranted refusal. The need for Strategic Rail Freight Interchanges ("SRFIs") was considered to be "almost certainly" sufficient to outweigh all the harm to the GB and the totality of the harm identified by the Inspector and the SoS on the full range of other issues. Neither the Inspector nor the SoS doubted that the site could appropriately operate as an SRFI in rail, road access or residential amenity terms without causing unacceptable harm including to the landscape or ecology. Given the way the Council now puts its case, the finding that the site could and would operate as an SRFI is key.

7.3 The only conclusion which can be drawn from the DL is that the SoS has decided that this site is capable of appropriately operating as an SRFI without

causing unacceptable impacts and the only remaining issue is whether there is another site which can so operate either outside the GB or with less harm to the GB.

The Status of that Decision

7.4 The SoS has to make a fresh decision on this fresh application (as STRiFE contends). However, that does not mean that the Inspector or the SoS should re-make judgements already made; or reconsider issues where there has been no MCC. The DL should be the starting point for the decision making here¹.

7.5 The SoS has given a very clear steer to Helioslough (“HS”) as to what HS is required to address in order to secure a permission. The reasons given should “enable disappointed developers to assess their prospects of obtaining some alternative development permission”: per Lord Brown in *South Bucks DC v. Porter (No.2)* [2004] 1 WLR 1953 at [36] or, by analogy and in the context of this case, should enable disappointed developers to know what they need to do to overcome the problems identified with their proposals. The SoS here has told HS what it needs to do in order to secure a planning permission. It would be plainly unfair, inconsistent and unreasonable for the SoS to subsequently move the goalposts.

7.6 This basic proposition applies both to consistency in treatment of different people and to consistency in treatment of the same person at different times: see *R (oao Kings Cross Railway Lands Group) v. Camden LBC* [2007] EWHC 1515 (Admin):

“I accept the submission of Mr Hobson Q.C., on behalf of the Claimant, that the weight to be attached in any particular case to the desirability of consistency and decision making, and hence the weight to be attached to the [earlier] resolution was a matter for the Committee to decide in November 2006. However, given the desirability of in principle (to put it no higher) of consistency in decision making by local planning authorities, Mr Hobson rightly accepted that in practice the Committee in November 2006 would have to have a “good planning reason” for changing its mind. That is simply a reflection of the practical realities. If a local planning authority which has decided only eight months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable”.

7.7 That is the position HS adopts here². See also PPS1: paras 7 and 8 which emphasise the need for consistency. On the facts here, there are no (never mind no very good) planning reasons for the SoS to revisit matters already grappled with in detail at the last inquiry (as explained below).

7.8 The DL is plainly a consideration of very considerable weight³: first, the previous decision was a decision of the SoS and not a decision of another Inspector. The significance of this point appears lost on the Council and STRiFE. The SoS

¹ Correctly accepted by STRiFE in Opening at para 10

² See HS’s “Position Statement for the Pre-Inquiry Meeting” – section 2

³ See *North Wiltshire v. Secretary of State* [1992] JPL 955 and the cases referred to in the Encyclopedia at para P70.38.

recovered the last appeal because of its significance; and made careful conclusions on each issue raised. It is entirely inappropriate for the parties to go behind those conclusions without any MCC and, with respect, it would be inappropriate for the Inspector now to question or revisit the merits of the earlier conclusions of the SoS; and second, the 2007 Inquiry sat for 26 days in front of a very experienced Inspector with detailed cross-examination in respect of all the reasons for refusal delving into "minute detail"⁴ on many matters. A comprehensive record of the evidence and the Inspector's conclusions is set out in the Inspector's Report ("IR"). In the above circumstances, it is plain that (absent MCCs) the conclusions of the previous Inspector would have to be accorded very significant weight by themselves. That weight is substantially enhanced by the fact that the conclusions were endorsed by the SoS in the DL.

7.9 The Inspector was therefore correct in identifying that his primary concern was the alternative site work and whether there had been any material change of circumstances ("MCC") in respect of other matters since the DL. The Appellant has approached this case throughout in that way. The criticisms of it so doing in the Closing Speeches of the other parties are misplaced and if the Inspector and the SoS proceeds in the way the appellant contends there will be no error of law.

7.10 In making the decision, the SoS is legally entitled to come to a different conclusion on aspects of the case or on the overall balance from the conclusions previously reached but absent any MCC there could be no rational reason for him to do so and such an approach would be plainly inconsistent with the SoS's policy as set out in B29 of circular 3/2009 which is only consistent with it being considered unreasonable to revisit issues previously determined in the absence of MCCs.

7.11 It is said that new evidence, better evidence, a different witness or a different planning judgment⁵ on matters already grappled with can be used to justify revisiting earlier conclusions. That is simply unsustainable on the facts here⁶. The SoS has reached a conclusion after considering a report of the previous Inspector written after a full inquiry at which each party can be expected to have put their best possible case. It is fanciful to suggest that absent a MCC different conclusions would, on the facts here, be reached. Thus whilst the legal position on a new application is not in doubt, the decision making in this case cannot ignore the context summarised above. Given the history here, it would be entirely inappropriate for the SoS to revisit conclusions already reached when all parties had full opportunity at the last inquiry to set out their evidence.

7.12 The above approach does not mean the Council is prevented from calling whatever evidence it considers appropriate – and the Inspector made this clear at the PIM and in the PIM Note⁷. The Council has not been prevented from calling any evidence it so wishes. However, its choices as to which evidence to call would necessarily have been influenced by, in particular, para B29 of Circular 3/2009⁸.

⁴ EIC of RT (8th Dec)

⁵ Put in various ways by SADC and STRIFE in XX of RT.

⁶ Although note that RT accepted this in XX

⁷ See Pre-Inquiry Meeting Notes para 6 page 1.

⁸ HS is dismayed by the repeated correspondence and the assertions in the Council's closings which continue to imply that the Council has been prevented from calling evidence by reason of HS's approach and the Inspector's approach at the PIM. This is a thinly veiled attempt to create possible grounds for future challenge. The Inspector is invited to record and grapple with this issue in his

The approach of the parties to the previous decision

7.13 HS accepts the conclusions of the SoS (even where it disagrees with those conclusions). It is not seeking a second bite of the cherry. The appellant has considered under each issue whether there have been any MCCs which could affect the conclusions on that issue. Where there have been any MCCs those have been grappled with transparently. It has been shown that there are no MCC adverse to any of the conclusions reached by the SoS in the DL.

7.14 The approach of the Council's witnesses is not to start afresh and look at the proposals without regard to the SoS's DL but expressly to adopt the conclusions of the SoS when those conclusions are favourable to the Council's position and to explicitly assert that those conclusions should stand because there has been no MCC but, fundamentally, to reject and effectively ignore those conclusions with which it disagrees⁹. This is patently inappropriate.

The application proposals

The onsite proposals

7.15 The proposals are "identical"¹⁰ to those considered at the 2007 Inquiry and summarised at IR3.3 and following. The application site covers about 400ha. Areas 1 ("the SRFI") and 2 ("the rail link") cover 172 ha. The buildings, hard-standing areas and roads comprise about 50% of these areas¹¹ – the remainder being used for landscaping, bunds and open drainage channels appropriately managed to maximise its ecological and natural interest. The maximum height parameter for the warehouses in the ES is 20m¹². The remainder of the application site (areas 3 – 8) comprises about 60% of the total site area and would be utilised as the Country Park ("the CP"). The CP includes Hedges Farm ("the Farm"). The Farm buildings will be retained and $\frac{3}{4}$ of its grazing land will be retained¹³.

7.16 Nothing has changed since the 2007 Inquiry in relation to the CP or the Farm and on those matters the Inspector, after hearing full argument including from STRIFE¹⁴, reached clear conclusions¹⁵ with which the SoS agreed¹⁶.

report. The position is plain – the Council has not been prevented from calling any evidence it wished as the Inspector's PIM note makes plain. However, HS has been clear from the outset that if the Council insist on covering old ground then para B29 of the Costs Circular may be triggered. That is no more than a statement of fact. HS is under an obligation to warn SADC of any intention to apply for costs – for that to be thrown back at HS as an inappropriate costs threat is bizarre.

⁹ See e.g. JH proof para 5.35 p22

¹⁰ EiC of RT (8th Dec: 10.05)

¹¹ And thus about 20% of the total site area

¹² That does not mean that the warehouses will be built to that height – but the approach adopted is to assess the maximum height of the warehouses for ES parameter purposes

¹³ See ES part 3 chapter 12 – 12.72, and 12.82

¹⁴ IR8.15 – 8.26

¹⁵ See IR16.39 (p163) IR 16.145 – 7 (p192)

¹⁶ DL46

7.17 The Council does not substantively challenge the conclusions of the SoS in respect of the CP or the Farm and there is now no subsisting reason for refusal in respect of these matters¹⁷.

7.18 The evidence of STRIFE¹⁸ in respect of these matters is based on an incorrect understanding of the proposals (i.e. the agricultural use will disappear¹⁹) and ignores the conclusions of the SoS referred to above²⁰. STRIFE raises exactly the same points as previously raised²¹ and rejected by the SoS.

7.19 The SoS should confirm IR16.201:

"... Helioslough's proposals for the country park areas would accord with the development plan and the objective of the Watling Chase Community Forest Plan [16.177]. The proposals for these areas would, to my mind, clearly benefit local residents, albeit that the areas of land involved are not contiguous and access to some areas would be restricted [16.146]."

Main Access Arrangements

7.20 There has been repeated mis-statements and misunderstanding of the access arrangements. Those mis-statements/misunderstandings have given rise to significant public concern which on a correct understanding of that which is proposed is misplaced.

7.21 Fundamentally, all HGVs will be routed along the link road to the A414 roundabout and thence east or west to the Park Street or London Colney Roundabouts on the strategic road network. They will not be on the A5183²², the bypass or the alleged rat runs. Direct access is then to the M25 east and west – J22 and J21A respectively - and to the M1 (N) via junction 8 (M10) and M1(S) via junction 6²³. There have been no changes in the access arrangements since the 2007 Inquiry or the means by which those access arrangements are to be enforced: see e.g. IR16.84–85 – conclusions all accepted by the SoS (DL35).

Off-Site Works

7.22 The improvements to the A414, the Park Street Roundabout and the London Colney Roundabout are not contentious²⁴ and will ensure that, as agreed with the HA

¹⁷ The reason for refusal in respect of certainty of delivery not having been pursued.

¹⁸ And some third party representations

¹⁹ Mr Wallace's concern – contrary to his assumption, farming and the farm buildings will survive

²⁰ Claims such as the CP being "contrived and plastic": EIC of Mr Wallace

²¹ See IR8.97 - 99

²² Robust arrangements will be in place to ensure that HGVs do not use the A5183 to the south: see DL1.5 and see s.106

²³ The issue raised on J6 M1 by STRIFE (Ann Morton – STRIFE 9/05) and other third parties was raised at the last inquiry, is well known to the HA and the LHA but has not been raised by HA or LHA at either inquiry and was not a concern of the Inspector at the last inquiry despite being raised: IR14.26. The Inspector did not have concerns on this Junction – see IR16.85. There is plainly a long running local concern with J6. That concern does not arise from and is not related to the proposals. The approach in the Transport Assessment is clear – see p32 table 7.8 - and none of the statutory authorities have required the further disaggregation of flows.

²⁴ Compare the position of LHA at the last inquiry – which was rejected by the Inspector

and as not contested by HCC, existing levels of congestion will not be materially affected by the proposed development²⁵.

7.23 The “long awaited”²⁶ bypass is plainly a substantial benefit of the proposals taking traffic off Park Street with significant environmental benefits in terms of disturbance, general amenity, noise and air quality - benefits which third party objectors ignored in their presentations.

7.24 Works to J21A and J22 have been addressed through co-operative working with the HA and are now agreed. As a result the proposals will not have a material adverse impact on the strategic highway network. There are no highway safety concerns raised by either HCC or the HA²⁷.

Green Belt

Summary

7.25 The SRFI constitutes inappropriate development in the GB and will cause substantial harm to the GB and to the purposes of including land in the GB. It will not result in the merging of towns. All the GB harm was properly taken into account by the SoS following a full debate at the last inquiry. There has been no MCC which would warrant a different approach.

Inappropriate Development and GB Harm

7.26 HS accepts, of course, that the development is “inappropriate development” in the GB. The policy harm to the GB is to be accorded substantial weight: DL19. The development will cause substantial harm to the GB and to purposes of including land in the GB: see IR16.1; IR16.5 - 16.9; 16.11 and 16.12²⁸ and DL19 - 20²⁹. HS accepts the conclusions of the Inspector and SoS³⁰. The GB issues were the subject of very detailed evidence and submissions at the last Inquiry for obvious reasons. Nothing has changed to warrant a revisiting of those conclusions.

7.27 It is plain that the SoS took into account the scale of the development and the scale of its impact on the GB in reaching the conclusion in DL19 – 20. Again nothing has changed in terms of the scale of development to warrant a different approach or a different test now³¹. It is plain that the Inspector³² and the SoS was fully conversant with the prime importance of protecting the GB in coming to the conclusions set out in the DL (especially DL58 and DL59).

Merging of Towns

²⁵ We grapple with third party concerns on the impact on the road network and congestion below

²⁶ Anne Main MP's position historically

²⁷ 9/CD/7.2

²⁸ Which largely reflect the case as put to the Inspector on GB harm by the Council and STRIFE – see e.g. IR7.11 and IR8.15.

²⁹ In which the SoS adopts much of the case put by the Council and STRIFE

³⁰ In respect of landscape harm, this is addressed elsewhere but again HS accept the conclusions of the IR and SoS as to this harm.

³¹ “very, very special circumstances” has no warrant in policy terms.

³² See e.g. this being the first main issue identified in IR16.3 p154

7.28 The Council (and STRIFE) seek to revisit the SoS's conclusions on the merging of towns without there having been any MCC. They say the Inspector's and SoS's conclusions are wrong. That issue was the subject of detailed debate³³ on the last occasion and the conclusions on it (IR16.10 and IR16.175) were adopted by the SoS (DL21).

7.29 There is no MCC in respect of the merging of towns either looking E/W (Park Street/London Colney) or N/S (St Albans/Radlett):

(a) in respect of E/W issue, the refurbishment/development at Napsbury Park was largely complete at the last inquiry and Hanbury Place was consented and under construction. Both were taken into account by the Inspector and thus the SoS;

(b) the only "change" in respect of the N/S merging of towns is the redevelopment of previously existing units on Ventura Park. It is impossible to describe that change as a material change on this issue.

7.30 STRIFE is therefore driven to seek to persuade the SoS to take a different approach by reference to an Inspector's decision on a different non – GB site where strategic gap ("SG") policies applied³⁴. It is not understood on what basis conclusions reached on a different site elsewhere with a different policy framework can be relied on to put a gloss on the PPG2 merging of town's purpose.

Level of Harm

7.31 The Council and STRIFE appear to contend that the harm to the GB and to the GB purposes is greater than that found by the Inspector and the SoS on the last occasion. It is not explained what conclusion of the Inspector or the SoS is understated and it is difficult to see how greater harm could be identified.

"Very Special Circumstances"

7.32 It is appropriate to address this shortly at this stage. This issue will also be dealt with at the end of these Submissions.

7.33 In terms of the GB balancing exercise and very special circumstances ("VSC") the SoS adopted a standard approach in the DL. The SoS identified GB harm (DL19 – 23); assessed other harm (DL24 – 40); looked at alternative sites (DL41 - 44) and benefits (DL45 – 46). Having grappled with other matters and conditions and obligations the SoS pulled this all together in the GB balancing exercise: DL53. The harm (GB and other) is assessed (DL53 – 55), the benefits considered including need (DL56- 58) and then finds that no VSC because of the failure to demonstrate no alternative sites: DL58 and 59.

7.34 In respect of this balancing exercise:

(a) there has been no adverse³⁵ MCC in respect of the need: see below;

³³ See e.g. para 8.22 for the way STRIFE put the case

³⁴ JH appendix 26 - Hartland Park, Ively Road, Farnborough and STRIFE 9/01(a) paras 435 - 7

³⁵ In the sense of adverse to the grant of permission

(b) there has been no MCC in respect of the harm side of the equation – see below; and

(c) there has been no MCC in respect of the benefits of the proposals addressed in DL57. HS does not go over the benefits which are not in dispute at this inquiry.

7.35 Following that assessment, the SoS concluded (DL58) as follows:

“The [SoS] considers that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight and, had the appellant demonstrated that there were no other alternative sites for the proposal, this would almost certainly have led her to conclude that this consideration, together with the other benefits she has referred to above were capable of outweighing the harm to the [GB] and the other harm which she has identified in this case.” (emphasis added)³⁶

7.36 There is nothing which has occurred materially to impact upon this conclusion. This case is therefore properly about the alternative site assessment; and not about the myriad of other issues which the Council continues to seek to raise. In respect of the alternative site assessment the approach adopted should respect the conclusions reached in respect of the Radlett site and with regard to the approach to alternative sites in the DL and not seek to revisit/re-open them under the guise of the alternative site assessment process.

Other Harm

7.37 Harm claimed to the rail network is addressed under “Would Radlett operate as an SRFI?” below.

(1) Highways Issues

7.38 The SoS’s conclusions are at DL34 – 35. At the last inquiry, the HA withdrew its objections and the concerns of HCC on physical infrastructure were rejected. Concerns on traffic congestion and rat-running were rejected and limited weight was attached to increased (non-HGV) flows on the A5183. On this application there were originally 2 reasons for refusal – the first concerning Highway Agency (“HA”) issues and the second (RFR14 added at the last moment) related to there being insufficient information to determine if there had been any MCC in respect of the local highway network³⁷. Those reasons for refusal are not pursued and no authority with concerns for the highway network is claiming there is a sustainable highway objection. We grapple with the concerns of STRIFE and others at the end of this section.

The Highway Agency

³⁶ This paragraph can only be read as saying that the SoS would have granted planning permission if she had been satisfied on the alternative site assessment.

³⁷ “Insufficient information has been submitted by the applicant to enable the Local Highway Authority

7.39 Following detailed, co-operative working with HA, all issues relating to the strategic road network have been satisfactorily addressed³⁸. The Inspector and the SoS placed considerable weight on the fact that the HA objection was resolved on the last occasion: see IR16.72 and DL34 – 35. The same approach should be adopted here. The approach in the transport assessment (“TA”)³⁹ has been approved by the HA including the trip generation.

7.40 Appropriate works will be carried out to J21A and J22 and combined with the comprehensive (and even more robust than last time) Freight Monitoring and Management Plan (“FMMP”) there will be no material impact on the strategic highway network. The FMMP contains means of limiting the number of HGVs accessing and leaving the site in the peak hours⁴⁰. The work with the HA does not take into account the net benefit of removing HGVs from the strategic road network by encouraging rail freight. HS relies on the agreed statement with the HA and the FMMP in support of its case that no significant impacts will be caused to the highway network by this development.

Hertfordshire County Council – the Local Highway Authority

7.41 HCC objected on highway grounds last time including on trip generation issues⁴¹. Its concerns were comprehensively grappled with and addressed: see IR7.144 – 7.175 and IR16.74 – 16.80.

7.42 In the light of those conclusions and the lack of any MCC since, HCC felt unable to support the reason for refusal on highways grounds: CD3.12. Thus despite considerable pressure on HCC to maintain its objection, Mr Humby has taken a correct approach – entirely consistent with the overall approach HS asks the SoS to take in this case (namely starting from the decision of the SoS and then assessing whether there have been any MCCs). It is plain from the work of Mr Findlay and the agreement of HCC/HA that there are no MCCs in highway terms.

STRIFE and third parties

7.43 STRIFE maintains its objections on highway grounds. Those objections proceed on the assumption that congestion will be worse as a result of the increased flows. There is simply no evidence for that assumption which is inconsistent with the conclusions of the Inspector⁴² adopted by the SoS at DL35; the TA and the position of the HA.

7.44 A recurring theme is adverse impact on residential amenity. That point (especially coming from the residents of the Park Street area) reflects a failure to understand the impact of the bypass. HGVs will not be on Park Street but on the bypass. Employees will not access via Park Street. The environmental improvements will bring significant benefits to the Park Street area. Air quality, noise and residential

³⁸ 9/CD/7.2

³⁹ The TA is in exactly the same form as at the last occasion it having been agreed with the HA that it represents a worst case and that updating to 2019 would show a better position than looking to 2016 given that the increase in traffic previously predicted has not in fact occurred. This does not appear to be contentious.

⁴⁰ The very hours when the congestion concerns arise.

⁴¹ IR7.162 and resolved in IR16.74

⁴² IR16.81 - “congestion would be no worse with the development than without” accepted by the SoS

amenity concerns in respect of increased HGV flows here are misplaced and are not pursued by the authorities with responsibility for these issues.

7.45 HGV flows will increase on the A414 and thence to the motorway network via the A405 and A1081. However, those roads are suitable roads for HGV flows being dual carriageway, without direct accesses onto houses and currently carry heavy flows. The works to the roundabouts will ensure that congestion on these roads will be improved. There is no significant impact in highway terms through these flows and road traffic noise is not (we understand) raised as an issue. Fears from residents of Napsbury Lane close to the A414 are misplaced.

7.46 Light vehicle flows on the A5183 further south will increase. That was fully recognised and taken into account in IR16.86 – 7 with which the SoS agreed. There is “minimal risk”⁴³ of HGVs using this or other unsuitable routes: see the combination of the TROs and the routing strategy required under the conditions.

7.47 Rat-running is addressed in detail in the IR⁴⁴. It appears that the core concern is that when the motorways are blocked for whatever reason, ensuing gridlock on the A414 and A405 will mean HGVs will travel along unsuitable routes: see Ann Morton appendix 2⁴⁵. This matter was addressed at the last inquiry: IR16.83 with which the SoS agreed. The more measured of the evidence from objectors recognises that total gridlock in both directions does not occur⁴⁶ and that the gridlock events are with vehicles moving albeit slowly and are rare.

7.48 There is no evidential basis to depart from the Inspector’s conclusion that: “It also seems to me that complete closure of all routes to the SRFI is unlikely, given that the new roundabout on the A414 leading to the SRFI would be located between the Park Street Roundabout (with direct access to the M10 and access via the A405 to the M25 and M1) and the London Colney Roundabout (with access via the A1081 to the M25 and via the A414 to the A1(M).” (IR16.83). Mr Findlay has provided a note on what would happen in the event of gridlock which should provide some additional reassurance in this regard⁴⁷. In short all these concerns have been raised and comprehensively grappled with by the Inspector and the SoS.

7.49 There has been no MCC. Butterfly World is hardly material: see the HCC consideration of the position in the committee report (CD3.12).

Trip Generation

7.50 A new point is raised in relation to trip generation. It is said that the trip generation may be understated because of: (1) the volume of the warehouses; and (2) the claimed fact that RDCs have higher throughput than NDCs. HS relies on 9/HS/4.6 in response to these new points.

⁴³ DL35

⁴⁴ IR16.81 – 16.84

⁴⁵ STRIFE 9/05 A2

⁴⁶ And the assertions from some to the contrary are not credible

⁴⁷ 9/HS/4.5

7.51 The volume point presupposes that the surveys underlying the trip generation were based on 12m high warehouses. They were not⁴⁸. At DIRFT some of the warehouses in operation in 2004 (the time of the survey) were 20m. The material produced by STRIFE shows in the area covered by it that about 43% of the floorspace was 18m high.

7.52 The trip generation has been set out in the TA for in excess of three years. The issue now raised has not been raised by anyone (through the process for this inquiry or the whole of the last) until provision of Mr Parry and Mr Brown's evidence in this case. It is supported by no evidence on any correlation between height/volume and HGV movements. It is to be noted that this point has not been taken or relied on previously here, or at any other inquiry. Nor is it referred to in any guidance or any methodology. TRICS does not disaggregate warehouses by volume. Mr Findlay explains why there are a large number of factors which could affect HGV movements making disaggregation by reference to a single issue impossible: para 1.4.4 – 5. Volume is not considered to be a significant parameter in any guidance or surveys.

7.53 HCC raised concerns on trip generation at the last inquiry: see IR7.161 – 3. After full consideration of these issues at the inquiry, HCC's concerns were not accepted: see IR16.74. It is plain that trip generation has been carefully considered previously by the HA (see the TA itself) and HCC. Neither has adopted the point now raised. The volume case proceeds on the assumption that all the warehouses will be built to 20m height. The 20m is a maximum parameter for the purposes of the ES. It does not follow that all or any warehouses will be built to this height. The TA has adopted a standard methodology enshrined in DfT Guidance: see 9/HS/4.6.

7.54 Even if the trip generation estimates were wrong, the FMMP operates to regulate HGV movements in those peak hours where congestion is an issue. Thus, even if the HGV trip generation could theoretically be higher than that predicted by reason of the points now raised, measures would have to be taken to ensure the targets were not exceeded: see FMMP table 7 and table 8. The volume issue was put as "a concern" – an issue to be thought about. It was not stated by the objectors to be correct but was a matter which should be looked into. The point amounts to little more than an assertion by people who, with respect, have no expertise in highway analysis, trip generation or the operation of warehouses.

7.55 The inspector can confidently report that:

(a) the TA is exactly the same as that presented with the last application. Nothing adverse to the application has changed;

(b) the trip generation (9/CD2.6 page 29) has been robustly tested by the HA and HCC – including through HCC's concerns at the last Inquiry which were not accepted. The HA has just reconfirmed acceptance of the trip generation. HCC does not attempt to revisit trip generation;

(c) the trip generation is based on surveys⁴⁹ at appropriately comparable locations including at DIRFT which includes warehouses of 20m. In respect of Magna Park, it is clear that the trip rates there are higher than those from

⁴⁸ 9/HS/4.9

⁴⁹ The detail has been provided in 9/HS/4.6

comparable distribution centres for Sainsbury's and Tesco's⁵⁰ so the suggestion that food retailers generate more trips than other warehouses does not appear to be justified on the evidence;

(d) there is no evidence of a correlation between volume and trip generation and this new point has not been taken by any highway expert at any stage anywhere;

(e) even if the point has any force, the FMMP will restrict HGVs in peak hours.

7.56 The claim that RDC's generate more HGVs than NDCs is backed by no evidence and is based on Mr Garrett's assertion at KIG. The assertion is simply not accepted (and we understand is in issue at that inquiry).

Conclusion on highway issues

7.57 The SoS should conclude that no significant harm is caused by reason of the impact of these proposals on the highway network (whether local or strategic). There is no reason to revisit the substantial benefits provided by the bypass and other mitigating works to which now should be added the net benefit of the works to J21A and J22 in terms of their operations and the enhanced FMMP.

7.58 In terms of traffic noise, no evidence is presented to call into question the conclusions of the IR and the SoS (following the Noise agreed facts at the last inquiry) that increases in traffic noise would not be significant: DL30 and IR16.43 and 16.180.

(2) Landscape and Visual Impact

7.59 In short, this issue was considered in detail at the last inquiry (HS case: IR6.18 – 6.33; SADC IR7.25 - 7.44) and detailed conclusions reached: IR16.13 – 16.22 with which the SoS agreed: DL 24 – 27. In respect of area 1 the conclusion is that the landscape impacts would be significant adverse. There is no higher category of landscape harm. That conclusion (along with the other landscape and visual impacts) has been carried forward into the balancing exercise at DL58 and DL59.

7.60 HS accepts the conclusions of the SoS on landscape and visual impact issues. The Council seeks to revisit them but largely only to confirm the conclusions already reached. There has been no MCC. The matters Mr Billingsley relies on as justifying revisiting the conclusions of the SoS are plainly not material for the reasons put in cross examination and covered in the rebuttal from Mr Kelly⁵¹.

(3) Conservation Areas

7.61 There is no reason for refusal in respect of Conservation Areas. The conclusions of the SoS at DL28 stand and far from showing any harm (as claimed by some third party witnesses) demonstrate "positively beneficial" impacts.

(4) Footpaths

⁵⁰ See 9/HS/4.6 para 1.3.3 (see technical report 2 p6 section 6 and tables 3 and 4

⁵¹ 9/HS/5.3.

7.62 The reason for refusal in respect of this is not pursued. There is no MCC in respect of the implications for the footpath network and no reasons to revisit the conclusions of the SoS at DL36- 37. Witnesses for STRIFE and third parties misunderstood the proposals and therefore seriously overstated the impacts on the footpath network.

(5) Noise

7.63 This issue was the subject of considerable debate at the last inquiry: for the case of HS see IR6.64 – 6.75; for SADC see IR7.58 - 7.90 and for STRIFE: IR8.28 – 8.52.

Rail Noise

7.64 In respect of rail noise, the Inspector accepted the conclusions of the noise experts in the statement of common ground that rail noise was “unlikely to constitute a significant impact” (IR16.42). That conclusion was adopted by the SoS (DL30). Nothing has changed to justify revisiting that issue.

7.65 In respect of the rail flange noise issue raised by Mr O’Keefe, there is no reason to consider this will be an issue⁵²: (1) the radii are not tight enough to induce flange squeal; and (2) even if there was a problem it could be easily addressed.

Operational Noise

7.66 The Inspector having considered the competing arguments for the different approaches promoted by the parties concluded that the approach recommended by SADC should be adopted: IR16.50⁵³ even though it is plain that this was a finely balanced decision. So the attempt to re-run arguments on the correct methodology, the tonal correction and table 7.1 are misplaced. On all those matters, the ultimate conclusions of the Inspector and SoS were in accord with the cases put by the Council and STRIFE⁵⁴.

7.67 However and fundamentally, even after having considered that the approach of SADC was correct, the Inspector concluded that:

“This... is not the end of the matter, as the night time rating levels assessed by Dr Hawkes which led to this conclusion are 60 and 61dB (LPA 3.1 table 7.1⁵⁵). These levels were derived from the modelled noise levels, taken from the ES and Mr Sharp’s evidence to which Dr Hawkes added a 5dB tonal correction. This would be the normal way of proceeding. However, in this case the conclusion is questionable as the base (modelled) noise levels underpinning it (55db and 56dB⁵⁶) are themselves well above the level

⁵² 9/HS/6.3 para 3.1 – 3.9

⁵³ Mr O’Keefe’s proof to this inquiry wrongly proceeded on the basis that HS’s recommended approach in section 6 of the IR had been adopted by the SoS. In fact the issues with which he raises were ultimately adopted by the SoS.

⁵⁴ See for example Mr O’Keefe accepting that the core of his case was that BS4142 with a tonal correction should be made (para 2 of his proof)

⁵⁵ The same table as put in by STRIFE at this inquiry

⁵⁶ Namely the predicted noise levels without the tonal correction

specified in the noise condition proposed by Helioslough (50db at night measured 1m from any residential facade....) It follows from this that, if the base noise level is reduced to the level stipulated by the condition, the differences reduce as does the impact assessed using the BS4142 methodology”.

7.68 The core issue for the Inspector was whether the noise level proposed in the condition was acceptable and could be complied with. In both respects the clear answer was yes [IR16.53 - 16.55] conclusions with which the SoS agreed [DL30].

7.69 In summary therefore, the Inspector and SoS concluded that:

- (a) BS4142 should be used (IR16.46);
- (b) On balance (IR16.48/49) a tonal correction should be applied;
- (c) Using Dr Hawkes’ table 7.1, the maximum predicted noise environment with the tonal correction was 60/61dB (IR16.50/16.51);
- (d) These rating noise levels equate to measured noise levels of 55 /56 dB (IR16.51);
- (e) The condition required these levels to in fact be significantly lower at 50db;
- (f) Thus the question was whether the conditioned level would lead “to an unacceptable impact” (IR16.52) and whether it could be achieved;
- (g) In the assessment, the equivalent internal noise was slightly higher than the WHO guideline (IR16.53) but lower than the existing noise level “at many locations around the appeal site” and the condition level was 5db lower than the 55dB limit which the Council argued should be used (see how the Council put their case at IR7.63);
- (h) With the noise condition in place, whilst operational noise from the site would be readily perceptible at the quieter locations, the impact would be “marginal”: IR7.90 in BS4142 terms (adopted by the Inspector at IR16.54⁵⁷)

7.70 Given (h) above, and the clear terms of the Council’s case on the last occasion as summarised in IR7.90, the detailed submissions from the Council on noise can be seen to be misplaced. It was the Council and its expert’s positive case that with a noise condition set at 50db the scope for noise complaints was “marginal”. That conclusion was adopted. There is no new evidence from Mr Stephenson which requires that issue to be grappled with afresh.

7.71 It is surprising that the Council has not drawn attention to IR16.48 in which the characteristics of the noise are specifically addressed in the context of the road traffic noise. It should be noted that the Inspector expressly acknowledged the “clangs” in concluding that the tonal correction should apply and concluded it was prudent to remember that this conclusion is essentially a conservative move which would tend

⁵⁷ The reference to “7.70” in IR16.54 must be a typographical error with the correct reference being to IR7.90.

to overestimate the noise impact of the development: IR16.49. The very point raised in Closing has already been directly faced and taken into account in the approach adopted. As we have already noted, the Inspector then went on to consider the effect of the condition in the context of BS4142 but that was having carefully considered the tonal component. The Council's case ignores the carefully structured approach of the Inspector.

7.72 Absent a MCC, there is no reason to revisit those conclusions. However, that is what Mr O'Keefe and Mr Stephenson attempt to do. It is respectfully submitted that their arguments (and those in closing for the Council) fail to understand the logic of the Inspector and the conclusion which he has reached that it is the achievability of the noise condition which makes the noise environment acceptable and on that he was satisfied from Mr Sharp's evidence that the noise condition would be capable of being achieved. The proposed condition at this inquiry is exactly the same as that which the Inspector was grappling at the last inquiry.

Noise: Material Changes in Circumstances

7.73 There has been no MCC for the reasons given by Mr Sharps⁵⁸ and put to Mr Stephenson and Mr O'Keefe in cross examination.

7.74 WHO guidelines: 9/HS/6.1 para 4.14. In short, WHO has not radically revised its night guideline values downwards. The 1999 WHO guidelines were set in different terms to those of 2009. However, even if the criteria were the same, the 1999 WHO guideline value of 45dB applicable at the facade of a dwelling on a given night is not materially different to the 2009 WHO guidance value of 40dB applicable in free-field averaged over many nights. The appropriate correction would be 3db making the difference 1999 to 2009 being at most 2dB.

7.75 Further, the averaging of values over many nights as required by the 2009 guidelines is also significant. The references made by the Council to the relevance of the L_{Amax} levels is simply not consistent with the 2009 WHO guidance upon which they rely. That Guidance states (Stephenson appx 6) at p XVIII of the Executive Summary that the earlier references to correlation of sleep disturbance with an L_{Amax} value have been overtaken by new research which takes account of the sound pressure level and the number of events. The new guidance adopts a yearly average approach.

7.76 The only conclusion is that if the 2009 guidelines (or the draft 2006 guidelines) had been employed at the last inquiry, this would not have affected the way noise was assessed or the conditioned noise limit.

7.77 Revision of BS5228 9/HS/6.1 para 4.21. This document is a code of practice (COP) referenced in PPG24 in the context of other controls available to control construction noise using the COPA approach. Mr Stephenson accepted that the approach identified in PPG24 is a recognised and appropriate approach. Construction noise can be appropriately controlled under the Control of Pollution Act (COPA) as agreed between the noise experts at the last inquiry.

⁵⁸ 9/HS/6.1 – section 4 and 5.

7.78 *New Development*: Mr O'Keefe claimed that new development at Hanbury Place constituted a MCC. This is wrong. This development was known about at the time and the noise environment at that location was taken into account in the noise assessments and by the Inspector.

7.79 *Witness Expertise*: It is plain that Mr O'Keefe is not and does not claim to be an expert in environmental noise issues. The fact that he did not understand what an LA90 was, and that he thought it represented the peak noise which is not exceeded for 90% of the time, rather than the noise troughs which are exceeded for 90% of the time puts the rest of his "technical" evidence into context.

7.80 It is not understood why a new/different expert has been appointed by the Council and HS is sceptical as to the reasons for this change. It is clear that having dropped Dr Hawkes the Council moved to Mr Stigwood (whose views are plainly extreme and not supported by any other witness – see the way the WHO change is described in the report to committee). The Council then moved to Mr Stephenson. Mr Stephenson clearly did not agree with Mr Stigwood but then set about constructing a new case, which is inconsistent with the Council's earlier case, at odds with the Inspector and the SoS's conclusions and not supportable by reference to the guidance he appeared to rely on.

Conclusion on Noise

7.81 There is no reason to revisit the conclusions of the SoS on Noise. There is no error in the Inspector's approach on the last occasion, the condition is the same and there has been no MCC.

(6) Air Quality

7.82 The reason for refusal on this has not been pursued. The issue was grappled with at the last inquiry (and see DL31). The remaining concerns of local residents are based on their misconceptions as to the highway proposals and in particular the assumption of HGV flows on Park Street. In that respect of course the position will improve as a result of the bypass rather than deteriorate.

(7) Ecology

7.83 HS is justifiably seriously aggrieved by the way this issue has evolved. All the matters now raised by the Council, STRIFE and third parties⁵⁹ were raised and addressed in detail by the Inspector at the last inquiry (IR16.25 – 16.40) in conclusions with which the SoS agreed at DL29. No objection was or is raised by Natural England.

7.84 In respect of the grassland, the Inspector proceeded on the basis that the grasslands met the criteria for designation as a county resource: IR16.27 (even though it was secondary in nature and of relatively low botanical interest). There has been no MCC in respect of its quality and none is claimed. The designation adds nothing. Appropriate conditions (imposed on the last occasion and promoted by HS here) will ensure successful translocation.

⁵⁹ E.g. the Barn owls raised by Mr Parry

7.85 In respect of birds, the only change is the designation. None of the data has changed and, contrary to the criteria for designation, no new studies have been undertaken. The Council's recent submission⁶⁰ shows that it still does not understand that the deficiency in approach is related to the criteria it has established not other criteria used elsewhere for other purposes.

7.86 The Council does not pursue the reason for refusal relating to delivery of the Country Park and the implications of non-delivery. Appropriate mechanisms are in place to secure delivery.

(8) Sustainability

7.87 In relation to this issue the Inspector and the SoS carefully considered it and concluded that whilst proximity to workforce is one of the key factors listed by the former SRA and that the appeal site performed poorly against this criteria this was not a critical factor in as much as the site would be able to function as an SRFI providing workers were available who could travel to the site: DL38. The SoS went on to conclude that only a small proportion of workers would live locally was a disadvantage in terms of the relative sustainability of the travel to work pattern. However she agreed with the Inspector that how workers would travel to the site would be regulated by the provisions of the draft travel plan and she did not consider that it would be reasonable to refuse planning permission on account of the likely pattern of travel to work. There has been no MCC and the conditions and the travel plan are the same.

(9) Prematurity

7.88 This issue was addressed at the last inquiry in the context of the planning policy position at that stage⁶¹. The evolution of that planning policy context since has been considered above.

Region Wide Study

7.89 The Council's case at the last inquiry was based on the absence of a region wide study to establish the most suitable locations for SRFIs to serve London and the South East (IR16.110 – 16.111). Whilst that could theoretically have been the basis for a prematurity argument, the Inspector's reasoning for rejecting the argument was, in summary, that the lack of commitment to or a timetable for such a study (IR16.112 – 113) and the fact that there was no means by which the results would be binding (IR16.112) meant that the inevitable result would be: "substantial delay in providing further SRFIs to serve London and the South East. Such an outcome would inevitably lead to a substantial delay in providing further SRFIs to serve London and the South East. Such an outcome would be contrary to the Government's declared aim of increasing the proportion of freight moved by rail and the emerging regional policy...."

7.90 This is a complete answer to the "what's the rush, why can't we wait" approach of various witnesses.

⁶⁰ 9/LPA/3.5

⁶¹ IR16.111

7.91 In respect of the regional study, the basic position remains exactly the same. There is no evidence of any progress whatsoever of such a study now two years later. The “intent” of SEEDA⁶² and EERA⁶³ in this regard envisaging a joint study is just the same as it was two years ago and there has been no progress. There is no reasonable prospect of a joint study being likely to be undertaken and its findings accepted as binding on the various authorities affected within a reasonable timeframe: see IR16.110.

7.92 The position appears to be now taken that the local authorities cannot make progress until there has been progress on the NPS⁶⁴. We grapple with the NPS and prematurity below.

7.93 The position is plain and overwhelming. The plan led system is simply not delivering allocations for SRFIs and, whilst giving strategic support for SRFIs, has proved itself incapable of providing site specific direction binding on LAs. This is why there has been not a single m² of SRFI allocated in any policy document since 2001⁶⁵. This puts the whole approach of the Council to the developers into context. The Council states that “developers are incapable of objectively assessing appropriate sites”. In the absence of allocations, the only means by which SRFIs are to be delivered is by developers promoting applications and those applications being tested at public inquiry (as here). What more can be done?

The Core Strategy

7.94 The new point (not raised in RfR⁶⁶ or in any document prior to the proofs) is that the application is premature to the CS. This argument was rejected at the last inquiry and should robustly be rejected again. The CS is not significantly further forward in the statutory process than at the last inquiry – in respect of which see IR16.110. The CS is hardly likely to allocate the site for an SRFI and nor is there any indication of a policy framework which would be in any respect more restrictive of development in this location than was present under the Local Plan.

The NPS

7.95 The Government advice on prematurity does not extend to NPSs⁶⁷. An NPS draft will be produced sometime next year. The planning system is not “on hold” pending the NPS and there is no guidance to that effect. Further, it is simply misconceived (and another sign of desperation) to contend that the Government considers that it is appropriate to wait on the production of NPSs before making decisions. The guidance from the DCLG is directly contrary to such a proposition⁶⁸ and there would be no logic for the SoS imposing on himself an obligation to

⁶² JH appendix p119 – that letter was before the last inquiry – 5th December 2007 – and there has been no progress since.

⁶³ See JH Appx p65 letter from EERA dated 5th October 2009 – does not show any progress

⁶⁴ See e.g. JH page 120

⁶⁵ Even now the only emerging document in the whole of the wider South East supportive of any SRFI is in Sundon (Luton). That emerging policy does not envisage Sundon being one of the 3 – 4.

⁶⁶ And of course since then the timescale for the CS has slipped again.

⁶⁷ XX of Hargreaves.

⁶⁸ See RT rebuttal appendix 1 para 15 - 18 – the whole thrust of which is that decisions should not be held up by the NPSs. There are no proposals to amend the development plan (either RSS or LDF) which will materially impact on the SRFI issue.

determine applications within three months pending the NPS whilst saying "I may still reject the application which I am committed to determining in 3 months on NPS prematurity grounds".

7.96 There is no indication that the NPS will be site specific (indeed all the indications are to the contrary). It is important to note that as a matter of law unless the NPS is subject to site specific strategic environmental assessment, the NPS cannot be site specific. There is no indication that this work has been or is being done and of course the parties here would have known if that level of detailed analysis was being undertaken within Government because they would necessarily have been involved in the iterative and inclusive process required under the Directive.

Howbury Park (HP) and London Gateway (LGW)

7.97 Plainly, there is no warrant in Government policy for a prematurity argument (or a "wait and see" argument) in respect of development at HP or LGW. Waiting and seeing what happens at HP is a recipe for very substantial further delay in meeting the need which has been recognised in policy since 2001⁶⁹ and is simply inconsistent with the 3 – 4 policy aspiration. There is no evidence of the commencement of development at LGW and it is a port related development. It was considered by the Inspector at the 2007 Inquiry, it is not one of the 3 – 4 and is plainly in the wrong location.

Conclusion on Prematurity

7.98 This RfR is misconceived. There is no relevant MCC since 2007. The matters raised are either not capable of giving rise to a "prematurity" ground under Government policy; or are simply a re-run of arguments on which the conclusions of the Inspector and the SoS are clear and where there have been no MCCs since.

(10) Overall conclusion on other Harm

7.99 The overall conclusion on other harm is that there has been no MCC adverse to the proposals and a number of MCC's beneficial to them.

E: Would the Development operate as an SRFI?

7.100 In this section we consider whether the development will operate as an SRFI (and in so doing assess whether there will be harm to passenger services). This is in response to the repeated claim that this development will operate as a Trojan horse for road based warehousing (raised and rejected last time see IR16.150 and IR16.157)

7.101 We do not consider "need"/"demand" in this section but in the "Policy and Need" section below. We consider only:

(a) Conditions and s.106;

(b) Pathing issues;

⁶⁹ See RT EIC – up to 10 years from now before one knows whether HP is meeting the need.

- (c) Gauging issues including engineering works;
- (d) The enhanced status of the MML; and
- (e) Miscellaneous Issues.

Introductory Comments

7.102 Before the detail it is worth pausing to put the objections into context:

- (a) Railtrack had identified this site for an SRFI prior to any involvement from HS or any private sector operator. This is not a private developer led identification of a site⁷⁰;
- (b) prior to HS becoming involved, the 2004 Midland Mainline RUS identified the SRFI at Radlett⁷¹. There was no suggestion that gauging or pathing constraints made it unsuitable;
- (c) finding a site which can operate as an SRFI without causing unacceptable residential amenity, highway, landscape, or ecological impacts is a very difficult task. As the SoS concluded on the last occasion, this has been achieved here;
- (d) Network Rail as the guardian of the network support the proposals. That support is given in the context of Thameslink and not despite it;
- (e) all stakeholders (with the exception of FCC – considered below - and the Council) recognise the need for SRFIs in the south east and none identify issues with this location;
- (f) DBS through Mr Smith⁷² with all its accumulated expertise as the biggest rail distributor in Europe and well aware of the concerns of the Council, FCC and STRIFE, does not share those concerns and considers that this site is “ideally suited” to serve London and the South East. Here as nowhere else in the south east, an operator of the intermodal facility has been identified and heads of terms agreed. It is inconceivable that DBS would have gone to the trouble of agreeing heads of terms and appearing at this Inquiry unless it was satisfied that a commercially viable intermodal facility will be established here. It has significant in-house expertise and whilst it does not pretend to have undertaken a detailed 2015 timetabling exercise, it sees no reason why pathing or gauging issues cause a problem here.
- (g) the conditions and s.106 obligation proposed (and accepted by the Inspector last time: IR 16.151 - 153) provide a robust framework which

⁷⁰ 9/CD/7.4 para 2.13. This is highly material given the way the Council impugns the ability of the private sector to identify suitable sites objectively.

⁷¹ 9/HS/2.5 para 6.18

⁷² Highly respected in this field, often giving advice to select committees, representing the freight industry at the highest levels and awarded an MBE for services to rail freight

ensures that the rail infrastructure is provided in tandem with the warehousing with pump priming funds available to encourage occupiers to use rail freight.

The condition and the s.106

7.103 The conditions ensure that:

- (a) A rail – link to each warehouse is completed and connected to the main line before that warehouse is occupied;
- (b) A second track to the main line will be provided as soon as the average number of trains to the site exceeds seven per day or after ten years in any event;
- (c) phase 1 of the inter-modal terminal will be provided (at very substantial expense) before any warehouse is occupied;
- (d) the rail works are managed and maintained so as to always be available to serve the warehouses; and
- (e) only 175,000m² may be occupied until the gauge clearance works are provided.

7.104 In addition, of course, the conditions/s.106 are structured so that no works at all can commence until all the land is bound (see below) and the s.106 contains provision for the £3m subsidy. This suite of conditions will require very substantial upfront investment in rail infrastructure at the time the development is built. That structure was sufficient to satisfy the Inspector and the SoS on the last occasion: see IR16.154 and DL 48.

7.105 In addition, of course, the HGV levels in the FMMP provide a powerful new incentive to the developer to maximise the use of rail freight. And of course having DBS on board provides significant further assurance above that available to the SoS on the last occasion.

7.106 The SoS can be entirely confident that the necessary rail infrastructure to allow rail freight to operate effectively from here will be in place. As the Inspector concluded on the last occasion, there is sensibly nothing further that can or need be done to ensure the SRFI actually operates as such and:

"...the policy on SRFIs seeks to facilitate the development of a network of Interchanges, which, in turn, is seen as facilitating the transport of goods by rail (CD6.1 pp3 and 4⁷³). At the outset SRFIs are expected to accommodate both rail and non-rail served businesses, with an expectation of increasing the proportion of rail servicing over time (ibid para 4.5)."

7.107 The further conditions suggested by the Council and STRIFE:

- (a) go far further than the SoS considered it appropriate/necessary to go on the last occasion;

⁷³ Now 9/CD/6.1

(b) are far more rigorous than those imposed at HP;

(c) are plainly designed to frustrate the development coming forward even if the SoS concludes that permission should be granted. They are correctly referred to as commercially wrecking conditions; and

(d) more importantly, they are simply unnecessary on a correct understanding of the scale of investment in rail infrastructure, the structure of the conditions and the self-evident and increasing demand for rail linked warehousing.

Pathing

7.108 The pathing issue was addressed by the Inspector under the heading “Effect on Passenger Services” [IR16.63]. The way the Council and STRIFE put their case is that the pathing requirements for freight trains into the site are inconsistent with passenger services in the future. HS’s case is that there is no reason to doubt that adequate paths can be provided and very significant reassurance that they can be.

The process of timetabling

7.109 The system for allocating paths is necessarily complex and subject to careful regulation under other legislation. TOCs or FOCs wishing to operate services have to apply for paths through one of two routes:

- (a) Spot bids – not relevant here; and
- (b) Through the Part D Network Code Process.

7.110 Part D encompasses a two year timetabling plan cycle in which all users ask for the paths they require. Detailed work is then undertaken by NR to accommodate as many of those requests as possible. Issues are grappled with through well understood co-operative processes designed to maximise the use of the infrastructure⁷⁴ consistent with NR’s licence conditions.

7.111 The process for 2015 would normally start in 2013 although of course the preliminary work for Thameslink has already started. To have any feel for what a timetable will look like and how the use of the infrastructure can be maximised one needs:

- (a) knowledge of all passenger and freight services operating in 2015 in terms of the operator, the speed, their origin and destination and for passenger services where they stop en route; and
- (b) the rules of the route appropriate to the services being envisaged, the rolling stock, the signalling then in place and the mix of users of the line⁷⁵.

7.112 The information is not available in sufficient detail yet to allow this exercise to be carried out. It would thus be impossible for the guarantees the Council and

⁷⁴ All agreed by Mr Clancey in XX

⁷⁵ All agreed by Mr Clancey in XX

STRIFE require to be provided. The consequence is that on their approach no SRFI could ever be consented and that necessarily the SoS was wrong to grant consent at HP.

The Position at the Last Inquiry

7.113 The impact on the MML was the subject of intense debate at the last inquiry including in a proof from Mr Thorne which traversed many of the same issues now raised by Mr Wilson: see IR16.182 – 184 – in respect of availability of train paths. The Inspector concluded:

“Network Rail did not attend the Inquiry, but there is no doubt that they fully support the proposal. As the guardians of the railway network, I take the view that their opinions should be given weight. Accordingly, whilst inevitably there can be no guarantee that sufficient train paths would be available to serve the proposed SRFI, my view is that the [SoS] can nonetheless be reasonably assured that sufficient paths could be made available outside the peak hours to properly service the facility if built” (Inspector’s underlining).

7.114 The position of NR was supported by work prior to the previous inquiry by Atkins Rail on behalf of HS (who looked at whether trains could access the site using RailSys) and Interfleet work was presented to the Inquiry. The Thameslink programme was known about and taken into account at the last Inquiry although (as now) the “final pattern for this service has not yet been established”⁷⁶. That remains the position⁷⁷.

7.115 The Inspector rightly highlighted that:

(a) The most intense use associated with TL is during the peaks when “freight trains do not generally run”: IR16.64⁷⁸;

(b) NR were “more than alive to the [TL] situation”

(c) The off peak paths “currently available for freight trains per hour [in each direction] would not be reduced by future timetable changes⁷⁹ (cf. para IR15.7); and

(d) “critically they could see no reason why [HS’s] anticipated requirement for 12 intermodal freight paths to the site should not be met.”

7.116 There has been no material change in respect of any of those matters.

Network Rail’s position

⁷⁶ IR16.64

⁷⁷ 9/CD/5.5 page 69

⁷⁸ It is no part of HS’s case that it will be able to use peak hour paths.

⁷⁹ IR16.65 – confirmed by Mr Clancey in XX.

7.117 NR is (along with the ORR) the guardian of the rail network⁸⁰. As we are repeatedly reminded, it has been entrusted with huge sums of public money to deliver Thameslink and it is inconceivable that it would act in a way which would jeopardise the benefits to be gleaned from that investment: see also NR SOAF para 2.14: “[NR] will not compromise its current customers track access rights or wider operational responsibilities including key safety and performance targets”. This is fundamental when considering the Council’s pathing case.

7.118 NR’s internal processes (as explained orally by Mr Gallop) mean that its position is carefully considered before it supports proposals which impact on the rail network. It would not have entered into the BSA if it considered these proposals were incompatible with its obligations in respect of the rail network (see NR SOAF para 2.21). It does not (compare the position of the Council) require the proposals to be worked up to higher levels of GRIP at this stage or before it can support the proposals (para 2.22 and para 2.15). Nor would it have signed the NR SOAF or expressed its support for these proposals. As NG noted “NR does not just rubber stamp applications”. It should be noted here that the GRIP process is an internal NR process geared to NR’s requirements. It is not a part of the planning system.

7.119 The Inspector should conclude that the NR SOAF is a carefully considered document. The answers to further questions raised with NR have elicited careful and complete responses (and no party raised any further questions). The position of NR should be accorded very significant weight.

7.120 In terms of pathing, after having concerns repeatedly raised with it including through now a total of about 79 questions⁸¹, it raises no concerns: see NR SOAF para 2.3 – although of course (as at the last inquiry) it can offer no guarantees. Plainly if NR had any concerns there has been ample opportunity for it to say so. The degree of engagement by NR here has “been far more than in some other cases”⁸²:

The Extent of the Pathing Issue

7.121 It is clear that there are adequate paths on the MML and no party appears to contend to the contrary: see NR SOAF para 2.3⁸³. In stark contrast to the position at the last inquiry there is no issue on capacity on cross London routes. It therefore appears that the extent of the pathing issue is now limited to the ability to gain access to the terminal across the up slow line. On this we submit the evidence is now clear notwithstanding the attempts of some to obfuscate.

⁸⁰ As accepted by many stakeholders – in the letters in appendix A to Mr Hirst’s evidence. They all look to NR and the ORR to protect and develop the rail network – see e.g. EMT letter at appendix A1.2.

⁸¹ The Inspector’s refusal of Ann Main’s request for a witness summons was entirely correct. We invite the Inspector to record the request and the reasons for its rejection in the Report. In short, Ms Main did not claim that there was any further information or document she required but the whole tenure of her submission was that NR should attend for cross examination. That is not the purpose of the witness summons procedure which should, in any event, only be used as a last resort.

⁸² NG in evidence in chief. He referred to Rossington where all that was sought was confirmation from NR that Rossington was capable of accessing the busy ECML there.

⁸³ And the percentage figures there set out are by reference to “booked” paths. Even with Mr Clancey’s update to the schedule of actually used paths, it is plain that many of the booked paths are not in fact used. On a timetable review, a “use it or lose it” approach applies to freight paths: confirmed by Clancey in XX.

7.122 Mr Wilson proceeded on the basis of a series of assumptions which Mr Smith's evidence has demonstrated were wholly inappropriate ranging from the number of FCC trains running on the slow line through to the performance characteristics of the trains, the dwell times at stations, the headways, the signalling arrangements and the physical infrastructure. We have noted that those matters were not progressed in cross examination when Mr Smith identified them. The SoS therefore has the unchallenged considered views of one of the most experienced rail freight experts in the country to support the view that Mr Wilson's assumptions are wrong and the conclusions therefore simply inappropriate and it seems self-serving from the point of view of the Council's case.

7.123 As to the number of FCC trains on the slow line, Mr Wilson's assumption was 10⁸⁴ and although there has been a quite brazen attempt to move away from Mr Clancey's evidence it is clear that FCC's view is that there will be a maximum of 8 on the slow line past the site. We note that FCC committed itself in July 2009 to 6 on the slow line past the site a figure which was not corrected in Mr Morgan's evidence and which Mr Clancey confirmed was what FCC was planning towards. The combination of the inappropriate assumptions and the use of the wrong number of trains leaves Mr Wilson's evidence devoid of any credibility⁸⁵.

7.124 The SoS now has advice from a variety of sources [that include: (1) Interfleet acknowledged experts in the field⁸⁶; (2) DBS - independent and experienced freight operators with their own in-house expertise and rail planners; (3) NR as guardians of the network with of course considerable knowledge and expertise; (4) Mr Gallop - an independent and experienced rail consultant] all reaching a clear and uniform conclusion that there will not be any difficulty in accessing the terminal twice in each non-peak hour during the day with necessarily the conclusion that overnight further paths would be available. Even Mr Clancey does not now claim to the contrary⁸⁷

7.125 There is, in the circumstances, no basis for the assertion that the terminal would be unable to operate as an SRFI on 24/7 basis. The most heavily weighted factor in the Council's evidence is found to be predicated on a wholly false premises and a fundamental plank of its case fails.

⁸⁴ This was based on the draft RUS p69. From that it was assumed that 12 off peak FCC trains would be passing the site in total (compare the 10 in Mr Morgan's letter of July and in the KO2 document (STRIFE/9/10/01) which Mr Clancey confirmed was what FCC was planning to deliver) even though the RUS is in draft and the services are said to be "indicative".

⁸⁵ Mr Wilson is the only person involved who perceives a problem. His pathing analysis is wrongly based on 10 not a maximum of 8 trains on the slow lines; assumes that freight trains would have to stop before arriving at the junction rather than being on a path which allows continuous running into the site; and assumes that any start of a freight train leaving the site other than on green is impermissible. On all these matters he is wrong and significantly out of step with all the other experts on this matter.

⁸⁶ Who identified paths in the current timetable even when adding in additional TL trains. Of course, the current timetable has not been worked up to accommodate additional TL trains and services to the SRFI. The fact that paths can be found in the current timetable should provide very significant additional comfort given the additional scope through the timetabling process to maximise efficient utilisation.

⁸⁷ Mr Clancey raised a concern that access could not be "guaranteed". However as he fairly admitted his concern was derived from Mr Wilson's evidence and his pathing paper and as Mr Clancey accepted that document was wrongly based on 10 FCC trains on the slow lines each way per hour in the interpeak.

*Gauge pending enhancement**

7.126 In order for an SRFI to operate as such it must be capable of being accessed by wagons carrying containers from around the UK and from the deep – sea ports and the Channel Tunnel.

7.127 Radlett is capable of being so accessed now (and, with the gauge enhancement works envisaged in the s.106, will in the future become even more easily accessible to the larger containers on standard wagons). On the last occasion the SoS accepted occupation of no less than 175,000m² before any gauge enhancement works were necessary. On the current gauge intermodal trains can access the site without any enhancement works. DBS has no concerns about operating the intermodal facility on the current gauge pending gauge enhancement works and regularly runs services on the lower loading wagons that would be used here pending gauge enhancement.

7.128 There is no reason to suppose that, pending gauge enhancements, services will be uneconomic and will require subsidy and it was telling that there was no cross examination of Mr Smith on this issue which lies at the heart of the Council's case. There is no reason why profitable, unsubsidised services cannot be operated from this site prior to the gauge enhancement works.

7.129 At the last inquiry, based on Laser Rail work, it was assumed that the MML was W7 gauge. Mr Thorne did not claim that on that W7 basis the current gauge caused substantial difficulties. HS was positively criticised by the Council for using gauge constraints to reject alternative sites. We now know that the MML is in fact W8 to Cricklewood⁸⁸. The current position is materially better than that assumed at the last inquiry.

7.130 In respect of the cross London routes, para 2.6 of the Statement of Agreed Facts with Network Rail⁸⁹ ("NR SOAF") is clear and no questions have been raised on it. On the route to Acton Wells Junction, whilst further detailed gauging work is required, "preliminary gauging assessment indicates that scope may exist to carry [9 foot 6 inch] containers carried on FAA wagons⁹⁰. This would provide for FAA (not the low loaders) to carry the largest containers to the Channel Tunnel and Southampton – wagons which DBS currently use on a significant number of routes. In respect of Felixstowe, the low loaders (KTA) could gain direct access through Carlton Road junction.

7.131 It can thus be seen that even now and even on current assessment the gauge allows for access to all routes. Para 2.8 of NR SOAF is important:

"Subject to further gauging analysis by Network Rail, it is possible that other combinations of inter-modal wagons and containers can operate on the MML in line with relevant Railway Group standards."

7.132 DBS has run trains on routes which are identified as too low a gauge but which in fact can accommodate their trains. Mr Smith explained the process used by

⁸⁸ 9/HS/3.2 - Network Rail Route Plan Midland & Continental.

⁸⁹ 9/CD/7.4

⁹⁰ If correct this is a further material improvement on the position assumed at the last Inquiry.

NR. NR is in the process of looking more closely at what a line can practically take rather than what gauge it is theoretically identified as accommodating.

7.133 Detailed work on current gauge will of course be undertaken as part of the process of working up rail access proposals for the SRFI (prior to gauge enhancement). Even if it demonstrates no enhanced accessibility, the position is plain – freight trains can access the SRFI from all the key destinations.

Engineering Work

7.134 The engineering requirements for gauge enhancement have been grappled with by the Inspector at IR16.66 - 67 and nobody claims any MCC in this regard.

"[NR] does not consider there to be any major technical obstacles to achieving [W10] enhancement works⁹¹".

7.135 As Mr Gallop pointed out the works to deliver Thameslink create a significant window of opportunity for these engineering works to be carried out in existing possessions: see also NR SOAF para 2.20. In any event, NR has a good record of planning such possessions: see Mr Hirst Appendix A1.2 letter from EMT. It is to be noted that, of course, these works will be inevitable anyway if the MML is to fulfil its new role as part of the Strategic Freight Network ("SFN").

MML as a core freight route

7.136 At the last inquiry much was made of the MML not being a core freight route. In that regard, of course, there is a significant MCC in favour of the proposals with the MML being identified as a part of the SFN. This is backed up by RUS and proposed electrification. There is also the opportunity to clear the MML to continental standards (UIC) – NG para 4.17 p11.

Miscellaneous Points

7.137 The south - facing only connection was considered at the last inquiry by the Inspector [IR16.67 – 16.68] and was not criticised. The SRA policy (para 4.32) relied on by the Council to show that the lack of two way access is a material disbenefit was current at the last inquiry. The SRA policy in any event makes clear the latitude to consider other arrangements: see para 4.33. SIFE has an eastward facing connection only.

7.138 The future potential for the northward connection is a significant benefit: NR SOAF para 2.18 although it is accepted that that has not been subject to environmental assessment.

F: Need and Policy

Need for additional SRFIs to serve London and the South East

Summary

⁹¹ NR SOAF para 2.19

7.139 The SoS concluded in 2008 that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight. The need is increasing and none of the need referred to in DL58 has been met. Further developments since the last inquiry enhance rather than undermine the need case. We consider need in the NW quadrant below.

The Decision Letter

7.140 DL58 is quoted above. The Council effectively ignores it. DL58 is fundamentally inconsistent with the Council's case on need. The Government would not have the 3 – 4 policy or have adopted the position in DL58 unless it thought that need existed and should be met. The policy is reinforced by CD5.4 Annex D which is very clear and up to date.

"The Need"

7.141 The need is a need to provide the facilities which will give distributors the opportunity to transfer the primary distribution legs of their distribution chains from HGV on the motorways to rail. The whole purpose of the policy framework is to stimulate provision to provide the means for this transfer. Plainly, if there is not an appropriate network of SRFIs, industry will not be able to move to this substantially more sustainable travel by rail with all the benefits this brings: see CD5.1 Appx G last 2 paras.

Meeting the Need and progress since the DL

7.142 The core need identified in the SRA SRFI Policy March 2004 and underpinning the conclusions referred to above remains. The position is stark:

"...there still remains a significant under-provision of rail-linked floorspace in some parts of the country particularly in London, the South East and Eastern England. Further SRFI capacity is therefore needed, to ensure that rail freight services can start and finish as close to the points of consumption as possible, to minimise the final collection and delivery mileage by road".⁹²

7.143 No relevant permissions have been granted in London and the South East (since the DL) and not a single m² of SRFI capacity has been delivered to meet the 3 – 4 need since the DL. Further, far from undermining the need for a site in the NW quadrant, the permission for HP enhances the logic for making provision in that quadrant⁹³. LGW does not contribute to meeting the need but even if it was considered that it did, and even if HP were constructed there would still remain a need for at least 1 – 2 and one of those would need to be in the NW quadrant consistent with the SoS's reasoning in the DL.

The Market

⁹² See Parliamentary Under SoS's letter at 9/HS/9.1

⁹³ IR p185 16.126

7.144 It is telling that that which the Inspector predicted at IR16.156⁹⁴ is being proved correct. The further evidence since the last inquiry shows how the market is recognising the opportunities rail freight and SRFIs offer:

(a) Tesco⁹⁵: its letter reflects the comments of the Inspector at IR16.156 and shows how the major largest retailer in the UK sees the potential for rail and what is required to allow it to transfer much of its distribution to rail. Its aspirations are fully compliant with the Government's ambitions which underpin the 3 – 4. It wants to use more trains. That aspiration cannot be fulfilled unless there are appropriately located SRFIs. "To continue these significant steps in Southern England Tesco would welcome a network of rail freight interchanges in the South East, ideally located close to the M25. The North West sector (of the Home Counties) seems to represent one such good location".

(b) DBS⁹⁶: the largest rail distributor in Europe sees the potential for very substantial growth in intermodal traffic if SRFIs are provided. It is "establishing working relationships with most major retailers and with many of their largest suppliers" with a view to encouraging major transfer of freight from road to rail⁹⁷. It made an unsolicited approach to HS⁹⁸ here based on its understanding of what its customers required and how Radlett could assist in meeting those requirements "We could see a major opportunity for developing freight on rail...We are of the view it is a prime site"⁹⁹. DBS sees a need just for 2 SRFIs in the south east¹⁰⁰;

(c) The combination of the UK's largest retailer and Europe's largest operator is extremely powerful evidence of need;

(d) Mr Wilson's market research¹⁰¹ shows exactly that which the Inspector predicted at IR16.156 – the market is increasingly interested in moving to rail;

(e) Stakeholders are unanimous in recognising the need for SRFIs¹⁰² to deliver the transfer to rail: see e.g. Mr Hirst App A document 1.5 – "freight cannot use the railways without suitably located terminals for it be loaded and unloaded. Whilst there is rail freight terminal capacity in some parts of the country there is currently no rail freight interchange north of London"; and

(f) Professor McKinnon recognises the factors referred to by the Inspector.

7.145 The DfT letter records how intermodal market has grown by 50% (9/HS/9.1)¹⁰³. All the indications are of very substantial future growth if the

⁹⁴ See also approach at Howbury Park ("HP") 9/CD6.1.

⁹⁵ 9/HS/2.8

⁹⁶ Evidence of G Smith – personally a key leader in the field of rail freight and in leading the shift to rail which the government desires

⁹⁷ See 9/HS/1.3 para 7

⁹⁸ Commercial heads of terms have been agreed. That is the appropriate position to have reached at this stage. The terms are commercially sensitive for obvious reasons.

⁹⁹ EiC of G Smith

¹⁰⁰ Para 13 9/HS/3.1

¹⁰¹ BW Appendix E

¹⁰² See Hirst Appendix A: STRIFE 9/04.

¹⁰³ See also 9/HS/3.1 para 8 for a summary of the position

necessary provision is made. The Government is taking major steps to provide the physical rail infrastructure to accommodate that growth¹⁰⁴. If SRFI provision is made, the Government's sustainability agenda and business requirements can be and, the SoS can be confident, will be met. Developments in the industry (increasing in train lengths, gains in efficiency) are creating the opportunity for major growth - if SRFIs are provided¹⁰⁵.

"[the industry needs] to be able to handle containers on and off the trains quickly, efficiently and cheaply if it is to increase its market share against road and provide the associated economic and environmental benefits"

7.146 The SRFIs need to be of a critical size. The SoS found no issue on size here on the last occasion¹⁰⁶. In Annex D of the Vision "large" means something of this scale. "Size is critical":

Floorspace Cap?

7.147 The floorspace is not capped to 400,000m²:

"...this [appendix G and 400,000m²] does not in itself constitute a target or a ceiling on the level of rail-linked floorspace which might be considered desirable to support wider Government policy in promoting modal shift."¹⁰⁷

Policy

7.148 The policy position at the last inquiry is summarised at IR16.116-120 and IR16.126. At that time the Inspector concluded that there was no policy support for the sectoral approach –IR16.125 but even in that context considered the NW Quadrant approach was justified.

Overview of changes since the last Inquiry

7.149 The only claimed significant relevant change in regional policy is the adoption of the final version of T10.

7.150 The position in respect of the local plan and saved policies is unchanged from the last inquiry. The supersession of the Structure Plan does not materially alter the planning policy framework.

7.151 The Core Strategy is at an extremely early stage (as at the last inquiry: IR16.110) and can be accorded no weight.

7.152 The London Plan issues raised by the Council go nowhere. It is relevant to note that TfL in a very recent and up to date letter is fully supportive of SRFIs¹⁰⁸.

¹⁰⁴ See para 11 9/HS/3.1 para 10-11

¹⁰⁵ See para 12 9/HS/3.1 para 12

¹⁰⁶ DL47

¹⁰⁷ 9/HS/9.1

¹⁰⁸ Hirst Appendix 1.1

7.153 The policy framework at the national level remains essentially the same as at the 2007 Inquiry¹⁰⁹. There is no adverse MCC in that respect. The policy framework is, on the contrary, strengthening.

7.154 The claimed MCC is thus limited to the forthcoming network NPS.

RSS - T10¹¹⁰:

7.155 T10 provides that priority should be given to the efficient and sustainable movement of freight, maximising the proportion of freight carried by e.g. rail including that:

“provision should be made for at least one strategic rail freight interchange at locations with good access to strategic rail routes and the strategic highway network, unless more suitable locations are identified within London or the South East for all three to four interchanges required to serve the Greater South East” (emphasis added).¹¹¹

7.156 Properly understood, this is strongly supportive of an SRFI being provided in the NW Quadrant.

7.157 Para 7.25 states as follows:

“Currently, the movement of freight in the region is largely by road. To increase movements by rail... there is a need for interchange locations. The 2004 Strategic Rail Authority Strategic Rail Freight Interchange Policy identified a need for three to four strategic rail freight interchanges for the Greater South East and the 2006 Eastern Regional Planning Assessment for the Railway envisaged development of strategic sites around the M25. Given that the region includes a third of the M25 ring and that all the main rail lines from London to the North and Scotland cross the M25 within the East of England it is likely that at least one of the required strategic interchanges will need to be in the region.”

7.158 The main rail lines referred to are of course the ECML, the MML and the WCML – all of which are in the appellant’s north west sector. Those are the “strategic rail routes” referred to in the policy text itself.

7.159 Para 7.25 clearly envisages provision being made close to where these lines intersect the M25 – that is the “strategic highway network” referred to in the policy text itself. This text is precisely referring to the NW Sector. This is the very policy support for an SRFI close to the M25 in the NW region that was not explicitly in place at the last inquiry¹¹². It has “provided a clearer framework of policy support for the

¹⁰⁹ The SRA 2004 policy has been retained as guidance pending the NPS – see below.

¹¹⁰ East of England Plan CD4.1

¹¹¹ 9/HS/1.12 - in the draft policy the SRFI was to serve London and the region – not London and the Greater South East. The text has broadened and that broadening further strengthens the sectoral approach.

¹¹² See XX of RT. The references to the IR given are 16.118, 119 and 125. The very document being referred to in IR16.119 (DfT Eastern Regional Planning Assessment for the Railway) which was there described as “not a policy statement” is now expressly referred to and endorsed in the EEP and taken forward in the text in para 7.25.

NW Quadrant than in the draft at the 2007 Inquiry”¹¹³. There is no rational way of reading the policy along with the supporting text other than saying that an SRFI will be required in the NW sector and that it is likely that it would be required to be in the East of England region¹¹⁴.

7.160 The changes to T10 are materially supportive of the sectoral approach (NW Sector) and for sites close to the main lines intersection with the M25. Thus far from being an adverse material change since the last inquiry, the amendments to policy T10 materially enhance the policy case for the proposed development¹¹⁵. The imperative in T13 towards joint working is no different from the position at the last Inquiry. There has been no change to this paragraph and no progress on it. That joint working will not be binding on any LPA.

Core Strategy

7.161 This was not raised in the report to committee or the reasons for refusal but appeared for the first time in Mr Hargreaves’ proof. The Core Strategy is at such an earlier stage that it cannot be accorded any weight.

National Policy Position

7.162 There is no adverse MCC.

7.163 The DfT “Strategic Rail Freight Network – The Longer Term Vision” (“the Vision”)¹¹⁶ appendix D is a robust very recent statement of the Government’s SRFI policy. The approach there is entirely consistent with the need case promoted by HS and with the provision of a network of SRFIs in the south east located near key business markets they will serve.

7.164 As that document states:

(a) SRFIs are “a key element in reducing the cost to users of moving freight by rail and therefore are important in facilitating the transfer of freight from road to rail” – second para;

(b) “SRFI’s represent major gateways to the national rail network which allow business to move freight by rail for distances and in quantities appropriate to their operational and commercial priorities. They are therefore key features of national rail infrastructure” – third para; and thus

(c) “It is important that SRFIs are located near the key business markets they will serve, which will largely focus on major urban centres or groups of centres and key supply chain routes” – fourth para.

¹¹³ RT EIC

¹¹⁴ It is to be noted of course that the EEP says it is likely that at least one of the 3 – 4 will be in the East of England region – that is a recognition that there may need to be more than one of the 3 – 4 in that region.

¹¹⁵ There is nothing in DL9 to suggest any conclusion of the SoS to the contrary – she was rejecting the appeal because within the NW Quadrant, she was not satisfied with the alternative site work. In that context, T10 could not assist HS on the then available ASA work.

¹¹⁶ 9/CD/5.4 – September 2009

7.165 This is powerful support for SRFIs generally and for locational decisions which locate them close to key business markets and key supply chains. Radlett is located near to key business markets and key supply chains.

NPS

7.166 There is no indication that the draft NPS will change any of the basic parameters for an SRFI from those contained in the SRA policy. Those parameters are of course a reflection of the basic requirements for such facilities and, given that, it would be highly surprising if the basic parameters were to change.

7.167 Further, the DfT letter¹¹⁷ is unambiguous:

“The Department is satisfied that the guidance contained in Chapter 6 of the SRFI policy remains relevant to the need for SRFI , in terms of both number of SRFI needed in each region and the key criteria where suitable sites are likely to be located, for example 3 or 4 SRFI where the key rail and road radials intersect with the M25. The National Policy Statement will seek to build on this guidance.”

G: Alternative Sites

The Task

7.168 SRFIs necessarily and inevitably have exacting siting requirements. Sites must:

- (a) be very large, relatively level and appropriately shaped;
- (b) have the ability to connect appropriately onto the rail network on lines from which freight trains can access the key destinations – ports, the channel tunnel etc.;
- (c) have the ability to access onto suitable roads (without large numbers of HGVs being routed on unsuitable roads or through residential areas) without exacerbating congestion (a significant challenge in the south east);
- (d) be close to the population centres they will serve - so as to maximise sustainability benefits in terms of HGV km savings and to maximise the attractiveness of the use of rail for future occupiers;
- (e) be capable of being developed without causing unacceptable harm to residential amenity (noise, air quality, impact on rights of way, traffic congestion), the landscape and/or ecology;
- (f) be in locations where staff can travel to and from work without unacceptable sustainability implications; and of course
- (g) if in the GB, to cause as little harm as is possible to the purposes of the GB for a development of this size and importance.

¹¹⁷ From the Parliamentary Under Secretary of State (Wilson Appx M and 9/HS/9.1)

7.169 As the Government recognises, identifying suitable sites for SRFIs especially in London and the South East is very difficult. Given the density of development, key geographical features (topography, valleys and ridges), landscape constraints (Green Belt and AONB), ecological designations (SPAs, SSSIs), the need for such sites to be well related to both suitable rail and road infrastructure and the congested nature of the rail and road systems, finding suitable sites is extremely difficult¹¹⁸.

7.170 The SoS should be in no doubt that suitable opportunities to develop SRFIs are few and far between. This is demonstrated by:

(a) The alternative site search of both the appellant and the Council. Of a very long list of sites which meet some basic size and locational criteria, only a handful merit detailed consideration because the remainder exhibit one or more features which make them simply unsuitable for an SRFI – long list stage;

(b) The fact that even now and even in the light of the SoS's conclusions in the DL as to the need being likely to be sufficient to warrant construction of an SRFI in the GB, still only three other sites are being actively promoted: (1) Colnbrook; (2) Harlington – which can immediately be counted out because its rail access is to the fast lines; and (3) Upper Sundon which is being promoted through the LDF for a much smaller facility and which it is not suggested will be one of the 3 – 4 serving London and the South East. The lack of actual proposals and of developer interest is telling. Identifying sites which can work in operational, locational and environmental terms is very difficult even before one considers impact on GB purposes.

7.171 If the task was not so difficult DBS would not have been here.

7.172 This highlights the lack of credibility of BW's (diminishing) shortlist of now we believe 13 sites¹¹⁹.

(2) The Purpose of an Alternative Site Assessment

7.173 The purpose of the ASA is to assess whether there is a site which can appropriately operate as an SRFI whilst causing less harm to the Green Belt. In assessing whether it can appropriately operate as an SRFI there is a need to look at other harm – noise impacts, landscape and visual impacts¹²⁰ and other harm

7.174 It is not to find the best site in rail operational terms for an SRFI.

7.175 The core issue for the alternative site assessment is "whether or not the need which the proposal seeks to meet could be met in a non-Green Belt location, or in a less harmful Green Belt location, is a material consideration in this case": see DL42 and IR16.121.

¹¹⁸ 9/CD/5.4 Annex D

¹¹⁹ 9/HS/1.13

¹²⁰ XX of RT (9.50a, 9th Dec)

7.176 That question has been answered by the appellant. It has not been addressed by the Council in SDG Appx I – there being no comparative assessment of whether an alternative site causes less harm to the GB or GB purposes.

(3) The Correct Starting Point

7.177 The correct starting point is the SoS's DL. That is clear and unambiguous that the Radlett site is in all respects including rail an appropriate site for an SRFI. SDG ignore this fundamental starting point, score Radlett "nil" on rail grounds and seek to demonstrate that the other sites are better in rail terms. That is with respect an entirely misconceived approach.

(4) The Degree of Knowledge

7.178 It is plain that the appellant has undertaken a huge amount of work and has a huge amount of detailed site specific knowledge which it has brought to its task. More than 500 miles on footpaths have been walked exploring the sites. He has an intimate knowledge of that which he has assessing.

7.179 That means that he has able to bring practical commonsense to the analysis, for example:

(a) The issue of topography and whether a new 5km rail connection can sensibly be considered through the 60m ridges of the AONB;

(b) Availability of land – employment land and housing allocations; and

(c) The approach of taking forward the best site in any given location for further analysis and not taking forward all "duplicate" sites.

7.180 His is a practical examination in the real world of sites which could meet the need.

7.181 The contrast with the approach of SADC is stark. Both in criticising the appellant's work, and in their own ASA, SDG have adopted a theoretical rather than a real world exercise. This has led them to require consideration of, for example, (1) areas separated from any rail infrastructure by 60m ridges in the AONB; (2) sites at Wokingham which are covered by a strategic housing allocation; (3) the possibility of redeveloping employment sites¹²¹; (4) duplicate sites when it is obvious and plain that there is a better site in the same location which is being carried forward to the short list – see e.g. sites 14 – 18 (considered below).

(6) The Appellant's Approach

(a) The Methodology

¹²¹ Even though any such redevelopment would require relocation of hundreds of businesses (no doubt into the GB given the employment land supply constraints close to the M25), for a development which would accommodate dramatically lower numbers of jobs; and would be prohibitively expensive.

7.182 The appellant recognised that, in the light of the SoS's conclusions it was necessary to completely revisit the alternative site approach.

7.183 Using the methodology in the Howbury Park ("HP") alternative site assessment ("HP ASA") as its starting point¹²², CgMS prepared a methodology which suitably modified the HP ASA to meet the concerns of the previous inspector (eg: using 5km from railway as opposed to 2km at HP) - a methodology subsequently adopted, peer reviewed and endorsed by Doncaster Council at Rossington.

7.184 That methodology was provided to the Council in good time¹²³ for comment to ensure that the co-operative and transparent working which are so important in such an exercise were built into the process from the start. No response was received despite the fact that SDG were appointed precisely for the purposes of commenting on that methodology¹²⁴.

7.185 The methodology was applied in the Appellant's Alternative Site Assessment ("ASA")¹²⁵ which was provided as part of the Application 8 months ago.

7.186 The SoS is asked to note that those opposed to this development have had a very considerable time to:

- (a) Raise factual questions on the ASA;
- (b) Seek information on factual matters which underpin the ASA;
- (c) Ask questions about the judgments which have been raised and to challenge those judgements; and
- (d) request sensitivity tests.

7.187 It is further relevant to note that the appellant has responded fully and comprehensively and convincingly to all questions and requests when they have been raised.

7.188 The criticisms in XX of RT in respect of not producing the full documentation are misconceived. He has provided all the more detailed material requested expeditiously and had other matters been raised with him at the appropriate time he would have similarly responded. The core point here is that when SDG raise issues with any degree of clarity and particularity these are comprehensively responded to and SDG then accepts the answers or raises other more detailed questions.

7.189 The SoS can be entirely satisfied that the appellant would have been able to provide all the necessary documentation to demonstrate the correctness of their

¹²² Approved by the Inspector and the SoS in HP – it is wrong to infer that the study was not the subject of detailed scrutiny. The Savilles work in 2004 was subject to detailed assessment by Bexley and the GLA and NLP prepared a further report. That shows the sort of analysis one would expect – the fact that it was not subject to minute dissection at the inquiry was precisely because it had passed muster through the process referred to above.

¹²³ 9/HS/1.11 – 16th February 2009

¹²⁴ See letter of instruction of SDG. – 9/LPA/6.12

¹²⁵ Technical Report 6 – CD2.8 – and where there were departures from the methodology these were specifically and carefully highlighted - see e.g. Denham Aerodrome.

assessment had questions been raised at the appropriate time rather than in trying to trip RT up in XX¹²⁶. The correct approach is not to seek to trip up the ASA but to provide evidence to the Inspector/SoS which will assist them in considering this nationally important issue.

(b) The ASA: The Initial Site Search and the Long List

NW Sector: Summary

7.190 The Inspector and the SoS reached clear conclusions on the appropriateness of the NW Sector approach¹²⁷. The permission for HP reinforced that conclusion¹²⁸. The Council's case on lack of market evidence of a NW Market is substantially the same as at the last inquiry. There has been no MCC. King Sturge ("KS") and Lambert Smith Hampton ("LSH") provide additional support for the NW sector approach. The NW sectoral approach is further strengthened by the EEP policy T10 and para 7.25 as explained above which can only be read as supportive of the NW Quadrant approach.

7.191 It is for those reasons that the ASA was limited to the NW Quadrant. In the circumstances described above, it is plainly not open to the SoS to now reverse the position and require a wider search.

7.192 A sensitivity test (in response to the SDG Report) extending the area to the M3 has not revealed any available sites¹²⁹.

North West Sector - support for NW Sector approach

7.193 The market need and demand case generally is addressed above including Tesco and others support for sites in the NW quadrant.

7.194 Professor McKinnon does not advance the SDG position any further but rather reinforces the HS approach acknowledging that much locational decision making remains fairly intuitive¹³⁰. The idealised depot requirement in regions used by Professor McKinnon does not bear any close examination alongside the practical decision making processes used by the real world as evidenced by Mr Gallop's evidence with regard to Marks & Spencers and others¹³¹.

7.195 In the real world, if you are going to have: (1) a network; and (2) 3 – 4 around London it makes clear, sustainable sense to provide the facilities in a range of locations well related to the major transport corridors. That approach is recognised as we have indicated in the EEP policy T10, was adopted by the Inspector and the SoS on the last occasion and is recognised by Tesco and DBS as well as being supported by many of the stakeholders, the market survey¹³² and the market evidence obtainable from the LSH report¹³³.

¹²⁶ MR in XX of RT said he would be "tripping you up later on" - which is symptomatic of the Council's overall approach.

¹²⁷ IR 16.123 – 127 and DL42

¹²⁸ IR16.126

¹²⁹ The Wokingham sites are the subject of a strategic housing allocation

¹³⁰ BW appendix D para 1.4

¹³¹ 9/HS/2.4 appx A

¹³² BW appx E and the critique of that by Mr Gallop in 9/HS/2.4

¹³³ BW appx F

7.196 The LSH report, which Mr Wilson had not properly analysed or understood, clearly supports the existence of different market areas as between even, for example, the north and north west of London and west London (Heathrow/Park Royal). The LSH report is referred to and relied upon by KS in their analysis of the extent to which Radlett would compete with either Sundon or Colnbrook: an analysis which is supported by the LSH report and not gainsaid by any market evidence produced by the Council¹³⁴.

7.197 The Council's approach that HS has to demonstrate that the SRFI will exclusively serve the NW Quadrant is misconceived, contrary to the approach of the Inspector and the SoS and not supported by any market evidence from a suitably qualified agent. The reality is, of course, just as the previous Inspector identified and as Mr Gallop demonstrates commercial organisations recognise it will be convenient and sustainable to serve a very large area such as London from a variety of locations well related to different parts of that area. Which parts of the area are served by a facility located in the NW quadrant will necessarily depend on the company concerned, the nature of its business and the facilities which it operates or serves in that area. The fact that some of those facilities may be outside of the NW Quadrant to some degree does not rob the sectoral approach of either its essential good sense and market reality or its sustainability. It is plain that occupiers of any SRFI will choose locations which reflect the centre of gravity of their operations and they will locate in such a way that best enables them commercially to meet their distribution needs. Hence the good sense of the requirement for 3 – 4 in London and the South East.

7.198 The Council's approach driven by the obsession with regional facilities only occurring once in a region is apt to produce unsustainable results by forcing distribution patterns which would result in locations in west London being serviced by facilities in east London something which is inherently undesirable both commercially and in sustainability terms. It is an approach however which enables us to see that the Council's approach is driven more by semantics than by a proper consideration of real world or real sustainability considerations. Such an approach is particularly inappropriate in the massively populated tri – region (London, South East and East of England) where there is already considerable traffic congestion and where all the railway lines are heavily used.

7.199 The consequence of the Council's approach of seeking to locate the facilities in one general location would mean that existing heavily used infrastructure would not be able to bear the additional burden.

7.200 The Council suggested that the area of search should be extended to the M3. This has been done as part of a sensitivity test. The evidence now clearly demonstrates the absence of any alternative site in the Wokingham area. The continued pursuit of this issue is bizarre. Even if the access, distance from London and strategic gap issues could be overcome, area 3 (through which all road infrastructure would have to pass in order to link areas 1 and 2 to the A329) is the subject of a strategic housing allocation, precipitated by the South East Plan and far advanced through the statutory processes¹³⁵. SDG is then left in the absurd position

¹³⁴ 9/CD2.8 TR6 appendix 10

¹³⁵ 9/HS/1.13 paras 18 - 19

of suggesting a site allocated to meet strategic housing requirements could be released for an SRFI. That is simply untenable in the context of the pressing housing needs of the south east.

The Other Parameters for the Long List

7.201 Within the NW Sector the following parameters were used to identify the long list:

(a) Minimum site area;

(b) Proximity to rail infrastructure - 5km;

(c) Proximity to road infrastructure – 5km from a motorway junction or A road;

7.202 The only issue on these appears to be the proximity to rail infrastructure. A sensitivity test has been run looking at disused lines and removing the 5km limit.

7.203 In respect of the disused lines, as with so many of the points taken, an answer has been provided¹³⁶ and no further point appears to be taken.

7.204 The pursuit of the 5km point in respect of any of the remaining sites demonstrates graphically the difference between the appellant's approach and the SDG approach. The SDG approach - not informed by examination of contoured maps¹³⁷ and physical inspection, insist on considering sites which involve traversing two ridges each some 50m higher than the adjacent valley floors over distances of up to 10km in areas which have been designated as GB extensions and where the detailed boundaries are in the process of being settled through the North Herts Core Strategy¹³⁸.

7.205 We have provided a response in relation to each of the sites which arises with regard to these criteria but having regard to the stark difference in approach illustrated above, we do not in closing address each of them.

Summary on Long List

7.206 Even at this late stage and after now two inquiries, no additional site for the long list is identified. The SoS can have complete confidence in the appellant's long list - and the XX of Mr Tilley on this merely demonstrated the thorough and practically rooted approach which Mr Tilley has adopted contributing materially to the robustness of the conclusions reached.

7.207 As soon as the appellant was notified of the details of SDG's criticisms of the ASA with the very late release of the SDG Report, a comprehensive response was provided (9/HS/1.5) addressing all relevant issues to which no response was received and which illicited no further questions or requests for additional information

¹³⁶ 9/HS/1.5 page 5/6

¹³⁷ Indeed inexplicably the plans relied upon by SDG do not have contours

¹³⁸ 9/HS/1.13 paras 12 - 15

and even in Mr Wilson's proof of evidence appears to have been largely ignored in pursuit of an approach which was quite clearly unconnected with reality.

ASA – Long List to Short List

7.208 The criteria to assess the long listed sites were:

- (a) Topography;
- (b) Rail connection;
- (c) Road access; and
- (d) Availability.

7.209 As expressly stated, sites within the AONB or SSSI were excluded. Duplicates within the same general location were excluded.

7.210 At this stage of course the aim is to identify sites that have potential to operate as an SRFI. In that context there is no point in considering a range of detailed issues such as noise and visual impact in relation to sites which may simply not be suitable for the proposed use.

Topography

7.211 Eventually SDG requested further information as to how this had been applied. Now, in the light of that information, the rejection of no site on topography grounds is criticised. The remaining criticisms of this criteria therefore lead nowhere. In any event those criticisms are unreal: to create a level plateau where there are significant topography constraints would require such massive engineering works and consequential landscape impacts as to be wholly unacceptable and unsustainable.

Rail Connection

7.212 The appellant considered whether there were major engineering problems¹³⁹. The use of that phrase is criticised but that language is clearly analogous to the language used by SDG¹⁴⁰. All sites excluded on this ground are now agreed. Denham is considered below.

Road Access

7.213 There is considerable overlap here with the duplication issue below. As with so many aspects of the appellant's report (in contrast with the SDG approach) the approach of the appellant has involved practical, on site consideration by specialist consultants to consider the road access constraints¹⁴¹.

¹³⁹ 9/CD/2.8 TR6 para 7.14

¹⁴⁰ See its assessment: BW Appendix I para 3.7 and 3.8 for example.

¹⁴¹ 9/HS/1.5 para 42

7.214 With regard to site 6, the basis of its exclusion is explicit in para 7.21¹⁴² since it involves building an entirely new road which when built does not avoid the difficulties inherent in the use of the A4 which itself is substandard. The exclusion is in any event merited by the inclusion of SIFE/Colnbrook. Mr Tilley has explained why these road issues are not capable of being simplified to a points system. They involve a number of judgements and a single score obscures rather than illuminates the detail. Far better, as with so many judgement in the planning field to set out the reasons for the judgements reached. SDG express disagreement with the conclusions reached but do not explain why the judgements which are clearly set out and open to examination are, or may be, wrong. In such circumstances it is not sufficient to say "we disagree".

Availability

7.215 There are no issues on sites removed solely on this ground. However, the approach of Mr Wilson is again highly surprising criticising the criteria as if housing sites or existing employment areas should have been considered. A reality check shows the nonsense of this approach: see Mr Tilley's evidence in chief and cross examination pointing out the very real practical difficulties in areas such as Slough in releasing employment land of a sufficient scale – replacing hundreds of companies and many thousands of employees with a much less dense employment use¹⁴³. The suggestion that housing allocations should have been considered deserves no further comment¹⁴⁴.

7.216 Once again, Mr Wilson's approach in its lack of reality fails to grapple with the important principles which emerge from PPG13 and PPS3 and the very real distinctions drawn between the approach to freight and warehousing development on the one hand and housing and other employment uses on the other.

AONB/SSSI

7.217 The Council's case appears to rely on the proposition that because development might be permitted in an AONB in the circumstances identified in PPS7 sites within the AONB should not have been excluded. That approach is not supported by reference to either any decision of the SoS, other alternative site assessment or other planning policy and ignores the requirement within PPS7 to be satisfied that there is no non-AONB site available. It should be noted that AONBs are designated on the basis of landscape considerations designed to protect areas of very high quality from precisely this type and scale of development. We are not aware of anything other than relatively small scale development ever having been permitted in an AONB (other than minerals). The position is entirely to the contrary in the GB where both the earlier decision at Radlett and the decision at HP demonstrate that although the SoS wishes to consider the availability of alternative sites the considerations which bear on acceptability of such a proposal in the GB have led to positive conclusions – a process which is on going on an even larger scale at

¹⁴² 9/CD2.8 TR6

¹⁴³ Slough Industrial estate – 400 companies, 17000 jobs. If these companies and staff were displaced where would alternative accommodation be provided? In the circumstances of the south east and the shortage of employment land there would have to be a new employment allocation in the GB.

¹⁴⁴ 9/HS/1.5 para 31 and 32

Doncaster/Rossington. In any event most of the AONB is in the GB and is affected by the topographical constraints identified above.

7.218 In respect of SSSI, Site 65 was the only site excluded on this basis but it is subject to other very significant constraints not least access from the Abbey Line¹⁴⁵.

Duplicate Sites

7.219 Once again the SDG approach loses touch with reality. In effect it requires that a series of sites all in the same general location should be subject to short list assessment in circumstances where it is neither sensible nor practicable to do so bearing in mind the overall purpose of the exercise.

7.220 The reasons for the exclusions of duplicate sites have been set out and although SDG expressed disagreement that disagreement is not reasoned by reference to the circumstances of the sites and as such can be accorded no weight.

7.221 A good example of this approach is the treatment of sites 14 – 18. Site 15 has been taken forward on the basis that it provides a right side of the railway connection and is closest to the road link and there are no other distinguishing features which would make it appropriate to select one of the other sites. In short, for reasons which are patent, the best site has been assessed once again respecting the overall purpose of the exercise.

7.222 In respect of Denham aerodrome (30) CgMS is criticised for not applying the criteria rigidly. The decision made on (30) fully vindicates the judgement driven methodology. The site could not be dismissed wholly on road access grounds under the methodology¹⁴⁶. However TR6 table 3 clearly sets out the reservations about road access and sets out that the final decision to exclude was based on a number of contributing issues which taken together would make it wholly unsuitable for an SRFI. That reasoning is now bolstered by the further information provided¹⁴⁷ which demonstrates the serious rail connection problems with that site.

7.223 With regard to the duplicate sites excluded, we note that as with so many other points this has no practical outworking with regard to a site or sites being taken forward by SDG for further consideration.

Short List

7.224 There were five sites included in the short list:

- (a) Radlett
- (b) Colnbrook
- (c) Upper Sundon
- (d) Harlington

¹⁴⁵ 9/HS/1.13 para 10

¹⁴⁶ 9/CD2.8/TR6 para 7.16 – 7.21

¹⁴⁷ 9/HS/1.9 para 35 - 36

(e) Littlewick Green.

7.225 We do not propose to rehearse all of the evidence advanced with regard to the short listed sites but consider particularly Colnbrook and Harlington upon which emphasis has been placed by objectors.

7.226 *Harlington*: The site is reviewed at 9/CD2.8 TR6 (8.127 – 8.160) to which reference should be made. The promoter has not seen fit to attend this inquiry. CgMS's assessment was on the explicit basis that access could only be affected from the slow lines to the east involving a grade separated rail junction with the main line. That plainly cannot be delivered for availability reasons and so the promoters are forced to advance an access to the fast lines, the practicality of which is rejected even by Mr Wilson.

7.227 The assertions in the latest representations¹⁴⁸ have no support from SDG, NR or any TOCs and are simply assertions¹⁴⁹ based on circumstances related to other locations which have no site specific relevance.

7.228 As to the landscape difficulties which are not addressed satisfactorily by the promoter's response we have provided a clear view as to why landscape considerations remain as originally assessed in TR6¹⁵⁰. "There would be an adverse impact on the setting of the Harlington Conservation Area and the AONB, there are views to the site from the higher ground (180m AOD) within the AONB to the south east."

7.229 *Colnbrook*: The SDG enthusiasm for Colnbrook is clearly rooted in a fundamental misunderstanding of the policy position in relation to this site. SDG have apparently relied on and endorsed the policy analysis set out by Barton Willmore in Mr Wilson's Appx K which amongst other glaring errors, asserts that the strategic gap ("SG") policy is "historic"¹⁵¹.

7.230 The policy position in respect of the SG can be summarised as follows:

(a) There is an up to date (December 2008) adopted core strategy which identifies not only that the site is in the GB but that it is also part of a SG;

(b) The SG policy and its continued application was explicitly considered in detail by the inspector in the light of PPS7 and endorsed as to its ongoing appropriateness without any intervention from the SoS as a consequence of conflict with national guidance;

(c) The SG is the subject of a saved policy from the Slough Local Plan which has been saved in accordance with the DCLG policy approach set out in the Protocol¹⁵² ;

¹⁴⁸ 9/CBwG/1.2

¹⁴⁹ 9/HS/1.15

¹⁵⁰ 9/HS/1.15

¹⁵¹ Para 3.42

¹⁵² 9/HS/1.7

(d) The SG and its function is highly locationally specific as shown by the relatively tight geographical extent¹⁵³ and has been considered in the context of the earlier application on this site with the conclusion of the SoS (Decision Letter August 2002¹⁵⁴) that:

"...seen from elevated viewpoints east of the M25 the function of the open land to the west in helping to demarcate and separate London from Slough was clear to the Inspector (IR13.114). The Secretary of State agrees with the Inspector that the effects of the LIFE development would be very considerable" (para 12).

7.231 The Inspector's conclusions had specific regard to the policies protecting the GB and the SG between Slough and London (IR13.368) which have just been replicated in the core strategy.

7.232 Further, contrary to the position at Radlett, there are in addition a suite of development plan policies ranging from a regional policy to further saved local plan polices and the Core Strategy which highlight the significance including at a regional level of the Colne Valley Park ("CVP"). The regional policy WCBV5 (SEP) effectively converts into policy the objectives of the CVP which are substantially driven by landscape considerations: see CD4.2 p246. The Core Strategy Core Policy 2 and the saved local plan policy CG1 have the same objectives in protecting this important area from development in the absence of evidence that it is "essential to be in that location"¹⁵⁵.

7.233 There are thus two additional very substantial up to date development plan policy hurdles which have to be surmounted by any development proposed in this location. Earlier attempts to surmount such hurdles have proved unsuccessful for reasons which are clear from the Inspector's report and SoS Decision. There is no reasonable basis for supposing that those policy impediments could be overcome by any new proposal when there is an available alternative site not subject to such additional layers of policy protection and which at the same time explicitly offers landscape benefits the existence of which has been previously endorsed – namely Radlett and the country parks contribution to the Watling Chase Community Forest. Given that policy context, the SoS cannot rationally conclude that the Colnbrook site could meet the need in a less harmful way: DL42.

7.234 In the light of submissions made by objectors, we have considered whether or not the evidence would support the conclusion that Colnbrook could perform in a materially better way as an SRFI. In the light of the unchallenged evidence from Mr Smith such a suggestion is clearly groundless particularly since all trains accessing Colnbrook will have to access from the east and contend with sections of the GWML which carry 26 trains per hour in each direction (12 per hour on the slow line). The claimed gauge advantages are illusory having regard to the limitation to W8 to the east via Feltham and the view taken by NR with regard to Radlett set out at para 2.6 NR SOAF (9/CD7.4). Mr Wilson's suggested advantages with regard to access to

¹⁵³ See 9/HS/5.3 Mr Kelly's rebuttal.

¹⁵⁴ 9/HS/1.6

¹⁵⁵ 9/HS/5.3 appendix 5 page 23

ports are not only undone by the considerations referred to above but also by the analysis of distances which has been undertaken¹⁵⁶ and not challenged.

7.235 Upper Sundon: in the light of the fact that one of the world's largest developers of logistics facilities has taken the considered view that Upper Sundon is not a competing facility to Radlett because it is not being promoted as one of the 3/4 SRFI for London and the South East we make no further submissions and to the extent necessary rely on the information contained in the ASA. We note that nobody else is suggesting it scores better than Radlett.

7.236 Littlewick Green: the conclusion that Littlewick Green would perform materially worse than Radlett in terms of suitability or availability is, we submit, unassailable for the reasons identified in the ASA and not the subject of cross examination.

SDG Approach Appendix 1

7.237 The first point to be made here is that this work has been undertaken in a secret way notwithstanding the encouragement in the PINS guidance for co-operative working between LPAs and Appellants. In the context of the importance of this issue to the SoS's earlier DL it is wholly unacceptable for the Council to have first revealed that it had undertaken such a piece of work over a period of many months at the point of disclosure of its evidence. The practical consequences of that approach have been that there has been no opportunity for the Appellants to have any input to the methodology adopted or its application on the facts and the Appellants have had very limited opportunity to examine the methodology used or its application.

7.238 Notwithstanding that limited opportunity it is however apparent that the methodology and its application have shortcomings which are fatal to its credibility as an exercise to identify genuine alternatives to Radlett. Among other problems it suffers from the deficiencies of adopting a methodology which is numerically driven and which for example aggregates scores where the factors concerned are a combination of soluble constraints and absolutely accept/reject decisions¹⁵⁷. The use of aggregate overall scores across groups of factors is not recommended.

The Criteria

7.239 The North West Sector – the approach adopted does not respect the Inspector's and SoS's conclusions as to the appropriate search area now bolstered by T10.

7.240 Not an SRFI: It reaches a conclusion that Radlett cannot operate as an SRFI solely on the basis of Mr Wilson's analysis related to rail access considerations (which are wrong for the reasons already addressed) and fails to reflect or to take into account the SoS's and Inspector's conclusions on this very issue.

7.241 The Process: the process was contributed to by expert attendees at a workshop (Messrs Hargreaves, Billingsley and Wilson among them) who have made it clear that in respect of the Radlett site they did not accept the Inspector's and SoS's

¹⁵⁶ 9/HS/1.8 para 18

¹⁵⁷ 9/HS/1.4 appendix 4

conclusions from the previous inquiry – so that all judgments with regard to Radlett in the comparative exercise would be tainted by that approach. Further because they have not grappled with the real issue left outstanding from the DL, they have not asked themselves the right question.

7.242 The Fit with Primary Freight flows: far from concentrating on comparative GB harm which would of course have favoured Radlett over Colnbrook, the approach adopted utilises criteria which fundamentally misunderstand the purpose of the policy which undergirds the provision of 3 – 4 SRFI. Among the criteria used is “fit with primary freight flows”¹⁵⁸. The criteria used has excluded primary road freight flows and has not considered the fit with them further and is entirely focussed therefore on existing rail freight flows with the key variable being the journey time required rather than the distance because of rail specific delays. Points were awarded on the basis of primary freight flow connections particularly rail freight. Such an approach ignores important parts of the SRA guidance¹⁵⁹ which makes clear that SRFI will normally accommodate rail and non-rail served businesses at the outset and this mixed nature is essential for the longer term development of rail freight. Accordingly accommodation of only existing commercial rail users would fail to present the opportunity and encouragement for wider business conversion to rail and therefore the adoption of the criteria operates not to fulfil but to defeat the policy objective. That the Appellant’s view of this aspect is correct is supported by the clear guidance within the SRA document¹⁶⁰. It is quite inexplicable that the approach taken by SDG should have been adopted in the light of the guidance and in particular appendix F and its identification of the road freight flows by reference to HGV traffic density - albeit in that instance omitting domestic road freight.

7.243 If SDG had not been so committed to ignoring the Inspector’s and SoS’s conclusions on the last occasion, they would have noted that the Inspector had expressly referred to the need for SRFIs at the outset to accommodate both rail and non-rail served businesses¹⁶¹.

7.244 As Mr Smith has pointed out¹⁶² there are no flows on the MML at present because there are no terminals. The consequence of SDG’s approach is that despite the Inspector’s and SoS’s firm conclusion as to the appropriateness of Radlett as a location for SRFI in the SDG assessment on this criterion Radlett scores very poorly¹⁶³.

7.245 Planning policy and environmental considerations including Green Belt: The extent to which sites conflicted with GB purposes should have been at the heart of the assessment. Instead, GB is scored only as a pass or fail simply on whether a site is in or outside the GB and then that score contributes less than 1/8th of the score under criterion 8 (which considers a range of factors covering such widely divergent matters as GB and AONB and local footpaths and local biodiversity treating them all in the exercise as of equal value). The GB contribution is then further diluted by the

¹⁵⁸ BW Appx I para 2.13

¹⁵⁹ 9/CD/5.1

¹⁶⁰ 9/CD/5.1 paras 4.17, 4.20, 4.21, 4.25, 7.8

¹⁶¹ IR16.154

¹⁶² 9/HS/3.4 para 3.1

¹⁶³ Appendix I table 3.9 p34

fact that the planning policy and other environmental issues contribute just 16% to the exercise. We deal separately with the sensitivity test.

7.246 The scoring system which is awarding a score out of 8 oddly involves consideration of 9 factors. In addition, as is plain from appendix I4, the planning policy and other consideration scores have involved significant errors as identified with Mr Billingsley in XX and subsequently.

7.247 We have not had the time or opportunity to examine the approach with regard to each site but instance the following as examples of an approach which is fundamentally misconceived and produces a flawed and inevitably therefore biased result:

(a) the failure to properly identify the policy framework for Colnbrook has already been identified. Bizarrely however with regard to its planning status and land use designation Colnbrook scores positively apparently ignoring its GB and SG status, and relying on the fact that a very small part of the site is in employment use whereas the part proposed for the SRFI is covered by the very restrictive policies referred to. There are in addition difficulties in reconciling the planning policy assessment tables in appendix I4 with table 3.10 since table 3.10 has the criterion as "national landscape" and the appendix simply "landscape designation". The conflict produces, at Colnbrook, the result that a site which is subject to SG and CVP designations is not apparently reflected in the criteria;

(b) the approach at Radlett involved the erroneous attribution of a landscape designation which related to a policy in the Council's local plan which had not been saved and the failure to acknowledge that the site was included in an area for landscape improvement to which the proposal would materially contribute;

(c) the net effect of this is to inflate Colnbrook's score and deflate Radlett's when on a correct basis the respective position of the sites would have been reversed.

(d) We have also considered by way of example only, the so called Barking & Dagenham site which, it transpires, is substantially within Havering. This site is outside the NW quadrant. In respect of this site new information has been provided¹⁶⁴ but it does nothing to overcome the fundamental deficiencies in the exercise undertaken because it fails to identify that the correct site is subject to up to date Core Strategy and development control policies which identify it as a strategic location (Beam Reach Business Park) which is prioritised for advanced manufacturing uses and other modern industries in the B1b, c and B2 use classes which provide a similar quality and intensity of employment and DC9 to the same effect¹⁶⁵. Notwithstanding those policies in the assessment undertaken the site receives a positive score for its planning status – a score which is fundamentally inconsistent with the use of the site for an SRFI.

¹⁶⁴ 9/LPA/1.6

¹⁶⁵ 9/HS/1.14

7.248 Rail Connection: This is a heavily weighted factor: 20%. The objective of the alternative sites exercise, Mr Wilson agreed, was not to see if there was a better rail connection site available but whether there was a non-GB or a less harmful GB location. The scoring system adopted in appendix I produces the result for Radlett of a "0" on the basis of the factors set out at para 3.8. It is quite clear that those factors have been shaped to reflect Mr Wilson's view with regard to rail issues and Radlett so that with regard to gauge conclusions are reached as to a criteria quite inconsistent with the Inspector's and SoS's views on the last occasion¹⁶⁶.

7.249 Other criteria related to significant deviation from main freight routes, unused freight capacity or difficulties in pathing were likewise inconsistent with earlier findings with regard to the suitability of the location for an SRFI¹⁶⁷

7.250 Proximity to commercial customers this is a very important consideration: see the most up to date policy statement in the Longer Term Vision – appendix D – the Policy Statement – "it is important that SRFIs are located near the key business markets they will serve") which has been downgraded in the scoring system because of the approach adopted of ignoring the NW Quadrant and so treating all the sites as effectively equal because of their proximity to parts of London.

7.251 Road Access: with respect to road access the approach is weighted to consider distance as more important than the suitability of roads: the split is 75/25, with the result that the national policy approach in PPG13 is effectively bypassed. This is a good example of the inability of a scoring methodology to produce a credible or useful answer in relation to proposals of this kind. The contrast with the appellant's approach with an open and clear professional judgment taking into account the PPG13 factors and careful analysis of the site specifics could not be more stark.

Conclusions

7.252 The overall effect of these and the other shortcomings identified in XX with each of the Council's witnesses who contributed to this exercise is alternative site assessment which is of no practical value in identifying whether there are suitable alternative sites and which is in any event fundamentally flawed as to its methodology and the application of that methodology.

7.253 It seems clear from the re-examination of Mr Wilson that the Council hopes that the manifest inadequacies of its alternative sites assessment might be rescued by the so-called sensitivity test set out at the end of Mr Wilson's Appendix I.

7.254 The sensitivity test proceeds on the basis that it is accepted that the method undertaken to determine the relative significant of the chosen criteria despite the presence of experts from a number of disciplines could be open to criticism of lacking objectivity: see para 4.6 of Appendix I. That criticism has already been made good and is supported by Mr Wilson's answers in cross examination. However the sensitivity test proceeds on the basis that in order to disprove the suggestion the

¹⁶⁶ With conditions allowing 175,000 sq m before the necessity for any gauge improvements. Such a conclusion is inconsistent with the view that the gauge clearance at Radlett was inadequate to support a substantial quantum of SRFI development.

¹⁶⁷ IR16.70

sensitivity test has been undertaken. In carrying out the sensitivity test it said that a high significance has been applied to criteria against which the appeal site scores well, namely road access, proximity to commercial customers and 24/7 operation, whilst other criteria have had their significance reduced accordingly see the sensitivity test revised weighting criteria set out at table 4.4.

7.255 From the revised criteria the following should be noted:

(i) The deficiencies with regard to the criteria identified noted in cross examination of Mr Wilson remain. Thus the road access criteria still contains the same deficiencies that it does not address the matters which undergird the advice in PPG13 with regard to avoiding congested central areas and sensitive uses such as housing and focuses by way of only 25% of the value of the criteria on simply the class of road being used. Mr Tilley's evidence addresses that deficiency;

(ii) The proximity to commercial customers' criteria carries the ongoing difficulty that it does not respect the Secretary of State's decision with regard to the use of the north west quadrant and the ability of sites to access that market area;

(iii) The freight flows criteria contains the very obvious deficiencies identified by Mr Wilson in cross examination that it relates to rail freight flows and so acts against the objectives of the SRA policy (CD5.1);

(iv) The planning policy and other environmental considerations criteria carries with it the deficiencies identified in cross examination, particularly with regard to the performance of sites relative to green belt purposes;

(v) The landscape and visual impact criteria again carry with them the deficiencies identified with Mr Billingsley in particular as to the approach with regard to landscape policy designations.

7.256 At least as significant as the difficulties with the criteria and their definition are the significant problems that arise because of the deficiencies in the assessment. The cross examination of both Mr Billingsley and Mr Hargreaves exposed the shortcomings of the exercise with regard to both landscape and visual impact and the planning policy issues. Relying on the assessment process that has been undertaken in the way that has been described in the context of the sensitivity test does nothing to relieve the exercise of the difficulties which emerged. In the sensitivity test just the last three criterion freight flows, planning policy and other environmental and landscape and visual amount to 30% of the proportional weighting and are criterion the application of which is manifestly deficient. The sensitivity test accordingly does nothing to rescue the SDG alternatives exercise from the deficiencies identified with regard to its consideration of the appeal site. The deficiencies which have been identified in the SDG alternatives site assessment have emerged having had a very limited period of time to consider Appendix I because the preparation of it was kept secret until the evidence was disclosed. It is to be noted that the exercise is one which took a long time to undertake. Mr Billingsley's evidence demonstrates that it was being undertaken at least in June and no doubt with regard to the planning policy aspects a great deal of work was involved in looking at the policies which were applicable in respect of each of the sites. The cross examination of Mr Hargreaves

demonstrated the errors which have arisen both with regard to the appeal site in Colnbrook. There are no means of knowing the extent to which similar errors have arisen elsewhere because of the manifestly unreasonable and “cloak and dagger” approach taken by the Council with regard to the preparation of the assessment.

7.257 In these circumstances the sensitivity test, which was not considered robust enough to be put to Mr Tilley in cross examination, does nothing to rescue the SDG exercise from the deficiencies identified.

H: Conditions and Undertakings

7.258 A separate note dealing with the conditions and undertakings and the relationship between the two in respect of binding area 1 is attached and we have set our views with regard to other aspects of conditions suggested by objectors elsewhere in our submissions and in very substantial detail orally. Those matters are not repeated.

7.259 The SoS should note that in respect of both the conditions and the undertaking save where necessary to reflect any change as a consequence of the area 1 issue or as a consequence of discussion with the HA and Environment Agency, the conditions and undertaking remain in substantially the form they were in at the time of the previous decision.

7.260 Accordingly they represent a comprehensive and acceptable package which the SoS has already decided would deliver an SRFI together with the benefits identified in the evidence.

I: Conclusions

7.261 The national and strategic importance of SRFI has been made clear in an up to date statement of Government policy¹⁶⁸. The urgency which attaches to the provision of such facilities in the South East is reinforced by the growing concern related to the climate change agenda and the links between the achievement of the objectives of that agenda and continued growth in road freight.

7.262 HS fully understands the importance which the Government attaches to the preservation of the GB. It has, however, long been recognised and was recognised at the earlier inquiry (DL58) that the provision of SRFI to serve the South East and London was likely to involve the use of the GB. The ASA undertaken for the purposes of this application demonstrates beyond any reasonable doubt that that conclusion is correct and that of the sites available within an appropriately defined area, Radlett is to a significant degree, the best site to deliver the objectives identified in Government policy.

7.263 Whilst the concerns that emerge from the local community are recognised, as evident from the case presented by STRIFE, those concerns have been carefully and fully considered now on two occasions. The care and attention paid to every aspect of the application proposals and the provision at significant cost of beneficial elements such as the Bypass are testament to the Appellant’s commitment to ensure that

¹⁶⁸ 9/CD/5.4 annex D

wherever possible any impacts on the local community are relieved and appropriately mitigated.

7.264 In these circumstances the grant of planning permission subject to appropriate conditions is entirely appropriate

8. The Case for St Albans Council

8.1 The Council's submissions are divided into the following sections:

(a) Green Belt harm.

(b) Harm to other matters/other reasons for refusal including:

(i) Landscape and visual impact;

(ii) Noise;

(iii) Sustainability;

(iv) Prematurity;

(v) Ecology;

(c) Whether very special circumstances exist including:

(i) Whether the development will operate as an SRFI;

(ii) Whether alternatives to Radlett exist;

(iii) The quality and significance of other benefits, like the Country Park and by-pass;

(iv) Conditions and the unilateral undertaking.

(d) The balance of harm against very special circumstances.

The Approach to be taken in this Case

8.2 Before setting out the Council's case, the approach which should be taken towards the issues in this case is dealt with in the light of Inspector Phillipson's report and the Secretary of State's decision dated 1 October 2008 and, in particular, relevant matters of law relating to that approach.

8.3 First, there is no duty to decide a case in the same way as a previous decision¹⁶⁹.

8.4 Second, there is no principle of estoppel in planning law¹⁷⁰.

¹⁶⁹ R (*on the application of Rank*) v *East Cambridgeshire District Council* [2002] EWHC 2081, see paragraph 16.

¹⁷⁰ There is no concept of estoppel in the context of decisions on planning merits, like an appeal against a refusal of planning permission: see *Thrasyvoulou v Secretary of State for the Environment* [1990] 2 AC 273, 287, *R (Reprotech) v East Sussex County Council* [2002] UKHL 8, *Porter v Secretary of State for Transport* [1997] JPL 635, 643.

8.5 Third, while previous relevant decisions should be taken into account, an Inspector has to exercise his/her own judgment and is free to disagree with the earlier decision, although the decision must deal adequately with the earlier decision. The approach to be taken towards previous decisions has been set out in the Planning Encyclopaedia in the following way¹⁷¹:

The Court accepted that whilst relevant previous decisions were a material consideration (North Wiltshire District Council v. Secretary of State for the Environment [1992] J.P.L. 955), an inspector had to exercise his own judgment and was free to disagree with the earlier decision (Rockhold v. Secretary of State for the Environment [1986] J.P.L. 130). However, he must deal adequately with such a decision and give reasons for any material disagreement (Barnet London Borough Council v. Secretary of State for the Environment [1992] J.P.L. 540), except where the difference related to a matter of judgment and opinion where it might not always be possible for the decision-maker to give reasons for his different view, except simply to say "I disagree" (R. v. Secretary of State for the Environment, ex p. Gosport Borough Council [1992] J.P.L. 476).

8.6 Fourth, the most recent approach to the relationship between earlier and later decisions of the same body is dealt with in *Kings Cross Railway Lands Group v London Borough of Camden*¹⁷² in which the following was stated:

I accept the submission of [Counsel for] ... the Claimant, that the weight to be attached in any particular case to the desirability of consistency and decision-making, and hence the weight to be attached to the March 2006 resolution, was a matter for the Committee to decide in November 2006. However, given the desirability in principle (to put it no higher) of consistency in decision-making by local planning authorities, Mr Hobson rightly accepted that in practice the Committee in November 2006 would have to have a "good planning reason" for changing its mind. That is simply a reflection of the practical realities. If a local planning authority which has decided only eight months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable.

Mr Hobson submits, correctly, that while a material change of circumstances since an earlier decision is capable of being a good reason for a change of mind, it is not the only ground on which a local planning authority may change its mind. A change of mind may be justified even though there has been no change of circumstances whatsoever if the subsequent decision taken considers that a different weight should be given to one or more of the relevant factors, thus causing the balance to be struck against rather than in favour of granting planning permission.

¹⁷¹ At P70.38.

¹⁷² [2007] EWHC 1515, pg 4.

An example canvassed during the course of submissions was that of a local planning authority which resolved to grant planning permission for an inappropriate development in the green belt, subject to a section 106 agreement, on the basis that the very special circumstances prayed in aid by the applicant outweighed the harm to the green belt and other harm. On revisiting the matter when the section 106 agreement was finalised, that local planning authority could properly reverse its earlier decision if, on reflection, it considered the harm was not outweighed by the special circumstances. Thus, it was not necessary for the Committee in November 2006 to be satisfied that there had been any material change of circumstances since March 2006. It was entitled to conclude that, having regard to all the circumstances considered in March 2006, a different balance should be struck.

Neither the defendant nor the interested party dissented from the proposition that, as a matter of law, there did not need to have been a material change of circumstances in order to justify a different decision in November 2006. A change in circumstances was one of the more obvious reasons which might justify a change of mind by a local planning authority, but it was not the only possible reason.

8.7 From the above, the following propositions can be derived:

- (a) The decision-maker on a fresh application is considering the application as a new application.
- (b) The decision maker should reach a conclusion taking into account all relevant matters, including any previous decision of relevance.
- (c) The need to establish a "good reason" for a change of mind from an earlier decision applies where the later decision, if decided in a particular way, would be inconsistent with the previous decision.
- (d) What will amount to a "good reason" is not a closed list.
- (e) A good reason may be a change of circumstances, but need not be that.
- (f) The decision-maker may have a "good reason" to reach a different decision simply because he takes a different view from the previous decision maker or decides that the balance should be struck in a different way.
- (g) Given that a good reason may be a simple change of view, a new argument or a new piece of evidence or the compelling nature of the way the evidence is presented may also amount to a good reason.

8.8 As a result of the above, it is absolutely clear that there is no principle at all that, where there has been a previous decision which has been made favourably towards a development, consideration is limited to whether there has been a change of circumstances since it was made; such an approach would amount to an error of law. In particular, care should be taken to ensure that the decision-maker does not proceed on the basis that he should not return to a particular issue because it has already been considered at an earlier stage.

8.9 There will be no need to establish a “good reason” to depart from a previous decision if the later decision is consistent with the previous decision. In short, it is only where a decision, if made, would be inconsistent with an earlier decision that it is necessary to establish good reasons to depart from the decision. In circumstances where there has been an unfavourable previous decision, there will be no inconsistency with the later decision if that, too, is unfavourable.

8.10 If, however, there is a potential for an inconsistent later decision, then, given that a “good reason” is one which can be simply be a decision to reach a different planning judgment, it must follow that a “good reason” can be:

(a) a new argument not raised at the previous time. It cannot be said that a new argument is prevented from being raised at a later stage. To do so would be to incorporate the concept of estoppel into planning decision-making which is wrong in law¹⁷³;

(b) the provision of new and significant evidence on a particular point;

(c) a view given by an expert who is found to be compelling by the decision-maker, even if contrary to another view given by an earlier expert. The tribunal of fact, as an Inspector at an inquiry is, is in the best position to judge how compelling a particular point is – that decision-maker sees the witnesses and reaches a decision accordingly. A compelling expert witness provides a sound basis for concluding that a particular issue should be decided in a particular way, irrespective of how it may earlier have been decided.

(d) Simply, a decision that different weight should be placed on a particular factor from that decided earlier.

8.11 In the present case the application is a different application from that considered previously and needs to be considered afresh. The previous decision was not favourable to the appellant. It was a decision by the SoS to refuse permission. A later decision to refuse is not inconsistent with that decision.

8.12 As a result, it is not incumbent, as a matter of principle for the Council to establish that there is a “good reason” for departing from the previous decision. Each one of the issues should be considered afresh and account need only be taken, in the usual way, of all material factors including the views of the Inspector and the SoS at the last inquiry.

8.13 This is, of course, no different from the position taken by Mr Tilley¹⁷⁴ who accepted that the Inspector is fully entitled to take a different view in this case on each of the issues decided upon at the earlier inquiry and may do so based upon different arguments presented in this case, the same arguments presented differently or simply a change of mind.

¹⁷³ See above at footnote 2.

¹⁷⁴ See RT, XX.

8.14 In spite of these principles, the appellant has sought to pursue its case, almost entirely¹⁷⁵ on most of the principal issues, by reference to whether there has been a material change of circumstances justifying a different decision. This approach simply does not engage at all with whether there are any new arguments or new evidence which has been raised or as to whether a different view should be given. It has meant that, on certain issues, witnesses have not been called to justify the appellant's case and it has meant that numerous points raised by the Council have not been rebutted by way of evidence of any significant weight. That, as will be established in this closing, has meant that the Appellant has failed to make out its case in this appeal.

8.15 The appellant has suggested that the fact that the Council has not dissented from the conclusions of the previous Inspector in this case on certain issues is inconsistent with the approach of contending that all matters are open to argument¹⁷⁶. The same point is made where the Council has relied upon a material change of circumstances. That is an inaccurate depiction of the Council's case. The Council, first, has not queried the Inspector's and the SoS's assessment of various issues on which it did not disagree. Second, on a number of issues the Council deliberately stepped back (following its committee decision on 14 October 2009) from arguing against the Inspector's and SoS's conclusions on certain issues because of the threat of costs which had been made if the council pursued various issues without identifying a change of circumstances. While it did not (and does not) agree with the contention that costs would apply in such circumstances, the Authority nevertheless felt it was incumbent on it to limit its costs exposure as a result of the points made in the pre-inquiry meeting and restricted itself on certain issues accordingly. That was a perfectly reasonable approach, but it was also absolutely clear that this was done in a way which would not impinge upon the Council's ability to disagree with Inspector Phillipson and the SoS in more fundamental ways¹⁷⁷. There was clearly no inconsistency in its approach and any suggestion to the contrary fails to connect with the Council's clearly documented approach.

Harm

Harm to the Green Belt

8.16 In a case lasting some 4 weeks, a large part of which is devoted to considering the appellant's case on very special circumstances, it is easy to overlook the extraordinary nature of what is proposed. The development is massive¹⁷⁸, with 331,665 square metres of warehousing floorspace up to 20 metres high, associated infrastructure, car parking, service yards, screening bunds, rail sidings and a new road. It will replace what is restored open land of a rural nature which stands between 4 settlements, separating them and, in part, defining them and their boundaries.

¹⁷⁵ Except for its alternatives analysis

¹⁷⁶ See EC RT and XX, MR JH.

¹⁷⁷ See the officer's report 9/CD3.10 on those reasons where there was to be no change to the approach being taken.

¹⁷⁸ RT XX PS

8.17 The proposals would result in substantial harm to the Green Belt on account of the loss of openness¹⁷⁹, an impact which is fundamental and cannot on this account be mitigated¹⁸⁰. The “most important attribute” of the Green Belt is, of course, its openness¹⁸¹; this is one of the purposes which are of “paramount” importance¹⁸².

8.18 The development would undermine and contravene a number of the purposes of including land in the Green Belt; it would result in significant encroachment in the countryside¹⁸³; land which is well on its way to restoration would be developed mainly for warehousing. The proposals would contribute to urban sprawl¹⁸⁴, which is a “fundamental aim” of Green Belt policy¹⁸⁵, building out urban features in the countryside which would be fundamentally different in character to the nature and form of development found in Park Street/Frogmore, Radlett, Napsbury Park and St. Albans¹⁸⁶. It would significantly change the nature of the view towards St. Albans across the site from the MML: massive warehouses would replace open areas of countryside and the glimpses of the historic skyline of St. Albans would be lost¹⁸⁷.

8.19 As there exists numerous alternatives where an SRFI may be sited which are better than Radlett and as other SRFI’s have been granted permission¹⁸⁸, the total effect would be that the proposal would contravene the purpose of assisting urban regeneration by encouraging the recycling of derelict and other urban land¹⁸⁹.

8.20 The proposals will, contrary to the view of Inspector Phillipson, also lead to the merging of Park Street/Frogmore and Napsbury/London Colney. As both Mr Billingsley and Mr Hargreaves have made absolutely clear, there is no requirement for development to be similar to that which it will be developed near to, to give the impression that urban forms are merging together in the Green Belt and no requirement that they be similar. Nor, in order to contravene this purpose of including development in the Green Belt is there a requirement that the result will be that the development is actually enclosing wholly the open space between two separated settlements. The purpose can be contravened through the contribution that a development makes to such a closing up.

8.21 As a result, the proposed SRFI would contribute significantly to the merging of those settlements and the fact¹⁹⁰ that area 2 will remain between the SRFI and Napsbury/London Colney and Park Street/Frogmore can do nothing to ameliorate this effect. To give a sense of the degree of merging which will exist, the rail link will be visible from Napsbury at a distance of about 240 metres¹⁹¹ and the bypass will be only some 50 metres from the nearest part of Park Street.

¹⁷⁹ Inspector's Report, 9/CD/8.2, 16.7.

¹⁸⁰ Inspector's Report, 9/CD/8.2, *ibid*.

¹⁸¹ Para. 1.4, PPG2.

¹⁸² Para. 1.7, *ibid*.

¹⁸³ Inspector's Report, 9/CD/8.2, 16.8.

¹⁸⁴ Inspector's Report, 9/CD/8.2, 16.9

¹⁸⁵ PPG2, para. 1.4

¹⁸⁶ Inspector's Report, 9/CD/8.2, *ibid*.

¹⁸⁷ Inspector's Report, 9/CD/8.2, 16.11.

¹⁸⁸ That is, London Gateway and Howbury Park, which I deal with shortly.

¹⁸⁹ Inspector's Report, 9/CD/8.2, 16.12.

¹⁹⁰ See Inspector's Report, 9/CD/8.2, para. 16.10.

¹⁹¹ JH Proof, 5.38.

8.22 As will have been noted from the above, the Council has, to a considerable extent, followed the assessment of the Inspector in relation to the degree of impact on the Green Belt and has, accordingly, considered it appropriate to adopt those findings, but not wholly. It has decided that it is appropriate not to agree with Inspector Phillipson on the question of whether the development will contravene the purpose of preventing settlements from merging with one another.

8.23 The appellant criticises the Council for this, and suggests that the Council has acted inconsistently in applying Inspector Phillipson's conclusions at certain times, and at other times not. The Council has followed the Inspector's approach when it accords with its own. However, in order to give the appellant's criticisms some context, it is worth noting that the appellant has, until very late in its case, adopted a similar approach to the issue of Green Belt harm in one regard¹⁹².

Other Harm and Specific Reasons for Refusal

Landscape and Visual Impact

8.24 The Council's assessment of the landscape and visual impacts of the proposals in this case again is in similar terms to Inspector Phillipson's conclusions (as agreed by the SoS). Mr Billingsley has given considerable evidence as to why Inspector Phillipson was right to reach the conclusions he did on the landscape and visual impact case.

8.25 The landscape value of areas 1 and 2 is high¹⁹³ and the landscape impact of the proposals on area 1 and at year 15 would be "significant adverse"¹⁹⁴. The mitigation earthworks would be "artificial and intrusive". There would be "significant visual impact" from some quarters, including the Midland Mainline, from which the impact would be "significant and adverse"¹⁹⁵. The upper parts of the warehouses would remain open to view from higher vantage points, including the Shenley Ridge¹⁹⁶.

8.26 The impact of areas 1 and 2 in landscape and visual terms cannot be offset by the proposals for areas 3 - 8. This was specifically followed by Inspector Phillipson¹⁹⁷. Inspector Phillipson recognised that the promise of tree planting on Areas 3 - 8 should not be a basis for allowing unwelcome development as was identified in the Watling Chase Community Forest Plan Review¹⁹⁸. That is unsurprising since the landscape quality of areas 3 - 5 is "good" and of areas 6-8 is "ordinary".

8.27 Inspector Phillipson rejected the idea put forward by Mr Kelly (who nevertheless continued with the same approach for the purposes of the ES for this appeal¹⁹⁹) that the enhancement of areas 3 - 8 could be taken into account in mitigating these impacts. Such an approach, Inspector Phillipson considered, was "a step too far"; areas 3 - 8 were "discrete stand alone areas with little or no visual

¹⁹² See paragraph 28 below.

¹⁹³ Inspector's Report, 9/CD/8.2, para. 16.14.

¹⁹⁴ Inspector's Report, 9/CD/8.2, para. 16.14.

¹⁹⁵ Inspector's Report, 9/CD/8.2, para. 16.17.

¹⁹⁶ Inspector's Report, 9/CD/8.2, para. 16.18.

¹⁹⁷ Inspector's Report, 9/CD/8.2, para. 16.21.

¹⁹⁸ Inspector's Report, 9/CD/8.2, *ibid.*

¹⁹⁹ 4.172, Chapter 4, ES, CD/2.3.

connection to areas 1 and 2"²⁰⁰. Mr Kelly only stepped back from taking the view that areas 3 – 8 could be taken into account in dealing with landscape and visual impacts (including in relation to his views on openness) at rebuttal stage²⁰¹. So much for the appellant accepting, without question, the approach of Inspector Phillipson. Even if the approach was taken of balancing all the areas together, the overall impact was judged by Inspector Phillipson as being moderately adverse²⁰².

8.28 Mr Billingsley largely agreed with these aspects, although he has considered the matter further, and, on certain issues, has taken the view that there would be additional significant impacts; there are further impacts²⁰³ in respect of the creation of the embankments and cuttings for the rail route. He also considered the scale of the impact to be moderate adverse from viewpoints on Shenley Ridge. His evidence were measured and well-considered and should be given significant weight when compared to the case put forward by the appellant, which chose to put forward no witness to give evidence and face questions.

8.29 The importance of the impacts identified by the Council should not be underestimated and must weigh heavily in the balance against the development. Their significance is rooted in a range of policy provisions which make clear the extent of their impact:

(a) PPS7²⁰⁴, key principles requires (irrespective of any Green Belt designation) new building development to be strictly controlled and should be "in keeping and scale with its location, and sensitive to the character of the countryside".

(b) PPS1²⁰⁵ emphasises the need to protect and enhance the countryside. It is apparent that the requirement is to both preserve and enhance the countryside (at paragraphs 17, 18 and 27), not simply preserve it.

(c) The East of England Plan²⁰⁶ requires²⁰⁷ that there should be the enhancement and conservation of the natural environment and states²⁰⁸ that areas of green infrastructure should be protected and enhanced, including community forests. The aim of planning authorities should be to recognise, protect and enhance the diversity and local distinctiveness of the countryside character²⁰⁹.

(d) The Local Plan recognises the need to protect landscape within its area²¹⁰ and particularly, the Watling Chase Community Forest²¹¹.

²⁰⁰ Inspector's Report, 9/CD/8.2, para. 16.21.

²⁰¹ MK's rebuttal, para. 2.2.

²⁰² Inspector's Report, 9/CD/8.2, *ibid*.

²⁰³ See para. 3.2, JB Proof.

²⁰⁴ Para. 1

²⁰⁵ Para. 1

²⁰⁶ CD/4.1.

²⁰⁷ Para. 8.2

²⁰⁸ ENV1

²⁰⁹ ENV2

²¹⁰ Policies 69 and 74 together of CD/4.6.

²¹¹ Policy 143a.

8.30 This policy context makes all the more plain why it is that this proposal will have very significant effects. The harm will, in the light of this contravention, be all the greater.

8.31 There was much concentration by the Appellants in cross-examination on – unsurprisingly given the restricted approach it has taken in the inquiry – the changes of circumstances since the last appeal. The Council, and indeed, Mr Billingsley were not actually seeking to rely on significant changes of circumstances in support of the landscape and visual impacts case put before this inquiry as was made clear in its report of 14 October 2009²¹². Nevertheless, there are a number of changes of circumstances which enhance Inspector Phillipson’s overall conclusions that the proposals on areas 1 - 2 would have considerable adverse effects.

8.32 Mr Billingsley pointed out that the widening of the M25 has commenced, which was not a clear and detailed proposition before Inspector Phillipson²¹³. This development has the potential to contribute to the effect of the SRFI, primarily through the proposed lighting. Mr Billingsley was criticised²¹⁴ for not producing plans of this widening but he gave evidence that he had studied the M25 ES and it is notable that nothing by way of rebuttal was produced by Mr Kelly to dispute his conclusion. Mr Billingsley also noted the fact that the development of Handley Place at Park Street has now been built out so an appreciation of the actual effect of the development from houses within it can now be made. Of course, it is right that Inspector Phillipson had the plans of that development before him, but the point is that those areas are now capable of being scrutinised in their real, built form²¹⁵. Finally, Mr Billingsley was criticised for not having gone onto Area 1 until November 2009. However, the important point is that he had visited the area on several occasions since July and scrutinised the site from public viewpoints. In truth, no part of the cross-examination undermined the compelling nature of Mr Billingsley’s assessment.

8.33 The result, ultimately, is that that the development would create significant and unacceptable landscape and visual impacts.

Noise

8.34 The development will have a significant impact in noise terms on local residents.

8.35 The Council has indicated why, on the evidence it has presented, the decision previously reached on the noise issue by Inspector Phillipson should not be followed.

8.36 Mr Stephenson has established plainly why it is that there will be a significant effect particularly on parts of Napsbury and Park Street and Frogmore. This, as for the landscape and visual impact issue, was another matter on which the Appellant refused to put forward any witness whose statements and allegations in writing could be tested; very little weight should be given to what is said by Mr Sharps in writing accordingly.

²¹² CD/3.10.

²¹³ See Inspector's Report, 9/CD/8.2, pg. 172, fn 1.

²¹⁴ MK XX JB.

²¹⁵ See JB, XX, MK.

8.37 Inspector Phillipson previously accepted that the appropriate form of assessment for judging whether there would be adverse effects in noise from the site was by way of BS4142²¹⁶. He also accepted that, in judging how that BS4142 assessment should be undertaken, it was appropriate to make a 5dB correction for operational noise to reflect the fact that there would be metallic clangs arising from handling operations in the intermodal terminal²¹⁷.

8.38 The conclusions which the Council contends in this case should not be accepted are, first, that the proposed condition to control noise would be achievable²¹⁸ and, second, that it would have the effect of adequately protecting residents, even if achievable²¹⁹.

8.39 Mr Stephenson's evidence was compelling; the first issue is the extent to which the condition, even if achievable, would protect residents against adverse noise from on-site operations. The primary issues with which Mr Stephenson was concerned about were the effect of intermittent noise and L_{Amax} events.

8.40 As to the question of intermittent noise, Mr Stephenson identified, in a similar way to that identified by Inspector Phillipson, the extent to which, without any conditions, the proposals would, following BS4142, cause unacceptable impacts; the development would lead to levels of up to plus 20 dB, which would mean that complaints would be likely²²⁰.

8.41 It is only if the condition is imposed that levels would reduce. However, as Mr Stephenson pointed out, even with the condition in place, the levels would still be such as to make complaints likely²²¹. This conclusion was different to the Inspector's conclusion that, with the condition in place, complaints would reduce to "marginal" under BS4142²²².

8.42 The difference in that conclusion is to be found in the fact that Mr Stephenson applied a 5dB correction as part of the BS4142 assessment with the noise condition²²³ which was not undertaken by Mr Sharps previously²²⁴. The result is that, as Mr Stephenson has pointed out, even if the condition was achievable it would still lead to complaints being likely because of the intermittent nature of the noise levels.

8.43 The defect in the condition proposed by the appellant is that it does not control intermittent noise, as Mr Stephenson pointed out. Had the 2009 guidelines been available, this may have drawn the Inspector's attention to the need to consider the extent to which intermittent noise was capable of being dealt with by the condition²²⁵

²¹⁶ Inspector's Report, 9/CD/8.2, para. 16.46.

²¹⁷ Inspector's Report, 9/CD/8.2, para. 16.49

²¹⁸ Inspector's Report, 9/CD/8.2, para. 16.55.

²¹⁹ Inspector's Report, 9/CD/8.2, para. 16.54.

²²⁰ See also 16.50-16.51, Inspector's Report, 9/CD/8.2.

²²¹ See Table 5.2, SS Proof, LPA/4.1.

²²² Inspector's Report, 9/CD/8.2, para. 16.54.

²²³ See Table 5.2, SS proof, LPA/4.1.

²²⁴ See 9/LPA/6.9, Mr Sharps' revised table 7.1.

²²⁵ SS EC.

(Mr Stephenson was careful to point out, however, that the 2009 guidelines did not lead to a reduction in noise levels²²⁶).

8.44 It was suggested that Mr Stephenson was at fault for not having undertaken his own noise measurements; Mr Stephenson indicated clearly²²⁷ why it was that he had sufficient information to assess the likely noise levels without needing his own noise levels; that was because he was content²²⁸ with the noise levels produced by Mr Sharps.

8.45 The second defect in the condition is that it does not deal with L_{Amax} events. Mr Stephenson's evidence was clear on the point that the proposed condition would allow, potentially, 60 very loud "impact" events per night, every night, each with an L_{Amax} of around 85 dBA²²⁹. He gave evidence that, from his calculations, L_{Amax} levels of around 60dBA can be expected at properties in Napsbury²³⁰.

8.46 Inspector Phillipson did not have to deal with the question of L_{Amax} issues at the last inquiry since it was not a point pursued by the Councils at that time. It is being pursued at this inquiry, because of the patent problems that are likely to arise²³¹. Mr Stephenson's conclusions on these likely levels have not been rebutted by evidence which is capable of being tested.

8.47 There was a suggestion that Mr Stephenson was not in a position to construct his own assessment of likely impacts, because he did not know the detail of the model²³². That was not his assessment; he considered he had enough information: he was aware of the distance of properties from the sound source and was aware of the likely sound power levels (and had, in fact underestimated them when compared against Mr Sharps' analysis in the ES)²³³.

8.48 As a result of these matters, there will be complaints and adverse impacts arising from the development, even if the conditions are regarded as achievable.

8.49 Turning next to the proposed noise limit condition²³⁴. It is proposed that a condition which restricts noise levels at the façade of properties to 50dB Laeq will deal with noise. It will not; Mr Stephenson has provided considerable evidence as to why the noise level will not be achievable. First, his experience is that developers can ask for conditions which are later found to be unachievable; that meets one of Inspector Phillipson's considerations as to why the condition would be achievable²³⁵.

8.50 Second, Inspector Phillipson had relied on Mr Sharp's conclusion that his model would over-predict noise levels²³⁶. As to this, Mr Stephenson's own experience of the

²²⁶ SS, EC.

²²⁷ SS, EC.

²²⁸ XX, SS, MK

²²⁹ Para. 5.3.9, SS Proof.

²³⁰ Para. 5.3.4, SS Proof and Rebuttal, para. 6.1 et sec.

²³¹ See paras. 7.58-7.90, Inspector's Report, 9/CD/8.2.

²³² DS Rebuttal, 2.37.

²³³ SS, EC.

²³⁴ Draft condition 25.

²³⁵ Para. 16.55, Inspector's Report, 9/CD/8.2.

²³⁶ Para. 16.55, Inspector's Report, 9/CD/8.2.

model (ISO 9613), which was considerable, indicated that the model was robust²³⁷ in part on the basis of research he had undertaken on behalf of DEFRA.

8.51 Mr Stephenson also demonstrated how the reasoning presented by Mr Sharps at the last inquiry that the noise model systematically over-predicted noise levels was wrong and based on a misunderstanding of the model²³⁸. He was aware of Mr Sharps' arguments on this, because Mr Sharps told him about them at their meeting. As to this, Mr Stephenson's evidence was clear that, first, ISO 9613 does not double account for ground effects and the containment of sound within a hemisphere during propagation. Rather, it starts from spherical propagation and corrects that propagation to hemispherical propagation subsequently; as a result, the 3dB correction factor is not systematically added onto an initial correction factor; there is one single correction at the receiver²³⁹. There was no engagement by Mr Sharps with this criticism.

8.52 The second point is that Mr Sharps argued that, given that the method of measurement under the condition proposed at the last inquiry will not be under conditions favourable to sound propagation (since it will be measured applying a long-term average sound level), and ISO 9613 measures sound levels on conditions that are favourable, ISO9613 will over-predict levels as against the condition²⁴⁰. However, as Mr Stephenson has pointed out, the measurement under the condition will actually be measured under conditions favourable to noise propagation. Consequently, there will not be a favourable result under the model. Again, this point has been simply ignored.

8.53 The appellant's approach has to been to constantly reiterate that there has been thorough debate at the previous inquiry on all noise issues. However, it is notable that there has been no evidence establishing that either of these points was debated at the earlier inquiry and it was not alleged during cross-examination that they were. The points that were sought to be made in cross-examination were generalised, unspecific ones.

8.54 Finally, Mr Stephenson has indicated how²⁴¹ the ambient level will increase dramatically through this development which will lead to adverse effects. Again, the appellant has not grappled with this point.

8.55 The appellant's approach in this case has been, in fact, not to engage with the points that have been raised by Mr Stephenson at all. The position is summed up in the written statement of Mr Sharps that he has been "advised that it is not appropriate to cover that ground when clear conclusions" had been reached in the previous inquiry and adopted by the SoS²⁴². As an example of the appellant's approach, it sought to suggest that Mr Stephenson's conclusion that it was unclear how Inspector Phillipson got to the view that the noise levels would only lead to a "marginal" situation with the condition in place was explained by the fact that Mr Stephenson was not aware of "the correct version of [table 7.1] which was provided

²³⁷ Para. 5.4.10, SS Proof.

²³⁸ See para. 5.4.13, SS Proof.

²³⁹ SS, EC and 5.4.14, SS Proof.

²⁴⁰ 5.4.14-5.4.15, SS Proof and SS, EC.

²⁴¹ See Table 5.4, SS Proof

²⁴² See DS Rebuttal, para. 2.38.

to the inquiry”²⁴³. However, it will be noticed that this “corrected” table was not an agreed table at all²⁴⁴ and it did not include the 5 dB character correction which Dr Hawkes’²⁴⁵ (and Mr Stephenson’s²⁴⁶) tables did. And if Dr Hawkes’ table is referred to, it will be seen that it largely corresponds with the conclusion that complaints would be likely even with the noise condition. Had Mr Sharps engaged with the point, this point is likely to have been made clear in evidence. The approach taken by the appellant on this particular issue is also displayed by the criticism made of Mr Stephenson²⁴⁷ that he did not have details of the model by which to assess the impacts of it but it was clear²⁴⁸ that he had asked for the model from Mr Sharps and was told that the appellant was not legally obliged to give it and so he did not give it to him.

8.56 Nevertheless, as a result of its approach, the appellant has no evidence to rebut any of the following issues raised by Mr Stephenson:

- (a) The regularity of the likelihood of L_{Amax} breaches of the 1999 WHO guidelines, even though that was not a matter on which any conclusions were previously reached and which was not concluded upon at the last inquiry.
- (b) The reasons why the noise model used by Mr Sharps (ISO 9613) is robust and does not overestimate noise levels.
- (c) The reasons why Mr Stephenson is of the view that the noise condition will not be achievable and will not protect residents.
- (d) The degree to which ambient noise levels will be raised to a significant and unacceptable level as a result of the development.
- (e) The extent to which the 2009 WHO guidelines would have drawn Inspector Phillipson’s attention to the need to consider whether the proposed condition could adequately deal with impulsive noises.

8.57 The evidence presented by Mr Stephenson should, consequently, be accepted.

Construction condition

8.58 Finally, Mr Stephenson indicated why a construction condition measured under BS5228 should be employed in order to protect against amenity, as opposed to the Control of Pollution Act 1974 which protects only against nuisance. The relevant condition has been proposed in the draft presented to the inquiry.

Prematurity

8.59 There is a stronger case for prematurity in the present case than was the case in the previous appeal. The Council points to the changed circumstances from the

²⁴³ See Mr Sharps Rebuttal, para. 2.30.

²⁴⁴ See LPA/6.9.

²⁴⁵ LPA/6.9 original table 7.1 (page 21).

²⁴⁶ Table 5.2, SS Proof, LPA/4.1.

²⁴⁷ XX, SS.

²⁴⁸ RX, SS.

previous appeal in support of this part of its case (as was indicated in its report to committee on 14 October 2009²⁴⁹). Inspector Phillipson recognised that, on the basis of PPS1, there was a case for prematurity.

8.60 Inspector Phillipson recognised the exception to the general approach taken in PPS1²⁵⁰ (as Mr Tilley acknowledged²⁵¹) and considered that there could be prematurity in circumstances other than in relation to a forthcoming DPD. He stated that there could not be prematurity against either the St Albans LDF or the (then) emerging regional strategy²⁵² but carried on:

But is, as the Councils argue, refusal of planning permission on prematurity grounds nonetheless justified? With regard to this matter, there is no doubt that (i) the proposal is for significant development and (ii) it is of such a nature that only a very limited number of SRFIs (three or four) are required to serve London and the South East. Accordingly, granting permission for a SRFI at Radlett, in addition to the permission already granted for a SRFI at Howbury, would reduce the number of further SRFIs required to serve London and the South East to one or two only and hence materially prejudice the outcome of any regionally based study to determine the optimum sites for them. In this sense it could be argued that the application is premature.

8.61 Inspector Phillipson took the view, however²⁵³, that the argument only held good if there was a reasonable prospect that such a study was both likely to be undertaken and its findings accepted as binding on the various authorities within a reasonable timeframe. Here, he found, the evidence to be thin. That was because:

- (a) The East of England Plan ("EEP") did not propose a strategic assessment;
- (b) The South East Plan ("SEP") maintained a criteria-based policy which was an indication of a desire to allow developments in the interim.
- (c) The possible timetable for a study was some 5-6 years.

8.62 The position has moved on, however, since that time.

8.63 First, policy T10 of the EEP now does point to a comparative analysis being undertaken of proposed sites, albeit stopping short of a strategic interregional study. In short, if other better sites outside the EEP area are identified, there will be no support for an SRFI. It therefore is relevant that both SEERA, SEEDA, EERA and EEDA have indicated a need for an interregional assessment of the position²⁵⁴. As to the timescale for such work, the patent reason why nothing as yet has come forward is because the DfT, in its response provided in June 2008²⁵⁵ (which was not taken into account by the Secretary of State on this decision)²⁵⁶ indicated that such a study would be taken up by the NPS. In the event that it is not, then, since the DfT has

²⁴⁹ CD/3.9.

²⁵⁰ General Principles, at paragraph 17.

²⁵¹ MR XX RT.

²⁵² Para. 16.110, Inspector's Report, 9/CD/8.2.

²⁵³ Para. 16.112, Inspector's Report, 9/CD/8.2.

²⁵⁴ See the letters, EERA; JH Apps page 66, last paragraph and SEERA: Appx JH19.

²⁵⁵ JH Apps.

²⁵⁶ Agreed, RT, XX, MR.

indicated the use of joint working both in that letter and in its general guidance for DaSYSTs, the timescale has the potential to be short.

8.64 Second, the relevant NPS is due for production shortly. As Mr Tilley accepted, in the event that it is site specific and does not refer to Radlett, the permission for Radlett would be premature²⁵⁷. It is clear, in those circumstances, that, until the content of the NPS is known, permission should not be granted. The point goes further, of course, because the initial publication will be a consultation draft and, given the calls for an interregional analysis of sites from the Regional Assemblies, the potential nevertheless for a site specific list is there even if such a list is not provided in the first draft. The consequence is that, until it is known that a site specific list of sites will not be identified through the NPS, this remains an additional basis for holding the current application to be premature.

8.65 Mr Tilley has suggested that the DCLG guidance to local authorities on the NPS system²⁵⁸ indicates that there is a clear intention that proposals should not be regarded as premature to the production of an NPS. In fact, read properly, the system suggests that prematurity decisions can still be made. The guidance points out that in circumstances where no NPS is in place when an application comes before the IPC, the decision will be given over to the Secretary of State²⁵⁹; the obvious reason for that is so that, should the Secretary of State consider that it is inappropriate to allow the decision because of what may be in the NPS, he would be able to refuse it. In short, one of the purposes is to allow the Secretary of State to refuse permission because of the potential for prematurity. Mr Tilley accepted the logic of this²⁶⁰.

8.66 There is another aspect to this argument. Should there be doubt about the likelihood of this site achieving its stated promise of being an SRFI, then the degree of force behind the prematurity argument increases. At the same time, it is to be borne in mind that with the grant of Howbury and London Gateway, the degree of need is such that prematurity in the current context – the prospect of other, better sites being compromised – becomes that much more significant.

Sustainability

8.67 As was made clear in opening and on the basis of the Council's Statement of Case and the officer's report of 14 October 2009²⁶¹, the Council's sustainability objection to the proposal is based on the degree to which the proposal will offend against sustainability policy given that it will not amount to an SRFI. The objection itself is thus based on the Council's rail case and on the changes of circumstances which have occurred since the previous decision which have laid greater stress on sustainability issues.

8.68 As for the policies themselves, the following has emerged since the previous decision:

²⁵⁷ MR XX RT.

²⁵⁸ Appx 1, RT Rebuttal.

²⁵⁹ See paragraph 8 of the Guidance.

²⁶⁰ MR XX RT.

²⁶¹ CD/3.10.

- (a) The East of England Plan has laid considerable stress on the requirement to enhance sustainability²⁶²;
- (b) The Government has published:
- (i) the low carbon transport strategy²⁶³;
 - (ii) the UK renewable energy strategy²⁶⁴;
 - (iii) the UK low carbon industrial strategy.
- (c) These place greater stress on sustainable development and seek to produce significant cuts in emissions.

8.69 The importance of these documents is that still greater weight has been placed on the need to ensure that sustainable development strategies are actually workable and achieve the aims that they set out to achieve. Since this development will fail to achieve its stated aim of becoming an SRFI, it will, still more significantly than hitherto, undermine the sustainable transport policies that are so much more prevalent and pressing in their tone. In circumstances where the policy support for SRFIs is for 3-4 in London and the South-east, granting permission for one that will not achieve its purpose will be a lost opportunity of the greatest magnitude.

Ecology

8.70 The Council's case on ecology has, as has been pointed out in the report of 14 October²⁶⁵, relied on the changes in circumstances which have taken place since the last inquiry. In relation to the importance of Area 1 for birds, Inspector Phillipson was clear about its importance, particularly for over-wintering waders and breeding birds²⁶⁶. He also concluded that the proposed mitigation of the bird interest by the provision of habitat on parts of the Country Park would "not be sufficient to fully offset the likely losses"²⁶⁷; and considered that the lack of adequate mitigation "should tell against the proposal"²⁶⁸.

8.71 The ultimate conclusion of Inspector Phillipson that harm to the ecological interest (that of providing for the birds' welfare) would not be significant²⁶⁹ was based on two matters:

- (a) the absence of any ecological or other designation which would operate to protect the current habitat of interest on Area 1; and,
- (b) the uncertainties as to the restoration proposals for Area 1.

²⁶² See pages 67 – 69, JH Proof.

²⁶³ JH Appx 35.

²⁶⁴ JH Proof 9.31.

²⁶⁵ CD/3.10

²⁶⁶ Para. 16.33, Inspector's Report, 9/CD/8.2.

²⁶⁷ Para. 16.36, Inspector's Report, 9/CD/8.2.

²⁶⁸ Para 16.179, Inspector's Report, 9/CD/8.2.

²⁶⁹ Para. 16.37, Inspector's Report, 9/CD/8.2.

8.72 There are two changes of circumstances in this case which bear on these aspects and which lead to a clear conclusion that the extent of harm should be regarded as more significant than the harm found by Inspector Phillipson. It is to be remembered that the Inspector did find harm on this issue. The question is whether the extent of that harm should now be regarded as more significant: the Council says that that must be the conclusion on the basis of the following matters.

8.73 First, the lapwing has now been included on the UK Biodiversity Action Plan list. The enhanced significance of this bird should not be underestimated. Sections 40 – 41 of the Natural Environment and Rural Communities Act 2006 provide for greater protection to be given to BAP list species over and above the general duty contained in the Act to take into account the need to preserve nature conservation interests in decisions which may affect them.

8.74 While these sections of the 2006 Act were before Inspector Phillipson previously, the enhanced duty to protect this particular bird was not taken into account and, indeed, the lack of the ecological protection which accompanies its higher status was part (albeit referential to a site protection) of the Inspector's reasoning leading him to his ultimate conclusion as to the extent of the harm occasioned by the proposals.

8.75 Second, the site has now been designated as a county wildlife site, in part, for its bird interest in November 2009. The primary issue which has emerged between the ecologists on qualification is the degree to which it was right to designate the site as a county wildlife site. The Appellant's ecologist, Mr Goodwin, takes the view²⁷⁰ that the data which was relied upon – 2004 and 2005 – is too old to allow a designation to be made.

8.76 Mr Hicks has pointed out that there is no sufficient data for other years²⁷¹ and in those circumstances²⁷² such data was sufficient for the site to qualify as a county site. Mr Hicks has also explained²⁷³ why the data was sufficient for the purpose and why data more than 2 years old is nevertheless capable of sufficiently indicating an area's merit to qualify as a designated site.

8.77 It has been suggested²⁷⁴ that the site designation was self-serving. That is, frankly, a bizarre allegation, alleging (again) unprofessionalism of Council officers and (now) others, without any foundation. It is even more curious given that the panel which reaches the conclusion on whether to designate a site includes a representative from Natural England, a body which the Appellant itself prays in aid in support of its case.

8.78 As for the uncertainty apparent in relation to the restoration proposals, these remain, but they are capable of being easily reversed as Mr Hicks has indicated in his written statement; the ability to reverse the planting schemes which have been undertaken was, of course, acknowledged by Inspector Phillipson.

²⁷⁰ See TG Rebuttal, 9/HS/7.3 pges 3-4.

²⁷¹ See para. 2.9, MH Rebuttal, LPA/3.3.

²⁷² See TG Rebuttal, 9/HS/7.3, Appx 1 page 2, last paragraph.

²⁷³ See 9/LPA/3.5.

²⁷⁴ See the costs application of the appellant

8.79 As for the acid grassland issue, Inspector Phillipson considered that the proposals to translocate should not tell against the proposal, though he agreed that the translocation, if not carefully planned and executed could fail and the resource would be lost (see paragraph 16.28 of the Inspector's report).

8.80 Again, this site has now been identified as a county wildlife site and its importance has been emphasised by the small heath butterfly, which is a priority species under the UK Biodiversity Action Plan. The wildlife designation finds protection under policy ENV2 of the RSS and policy 106 of the Local Plan. A failure in the translocation will, in such circumstances, be all the more significant.

8.81 As a result of each of these matters, the degree of significance of the impacts in this case should be increased as well. The weight to be placed on this negative impact which had been identified by Inspector Phillipson should increase as well.

Very Special Circumstances

8.82 The Appellant relies on a number of matters which it says, together, amounts to very special circumstances justifying the proposal:

- (a) Whether the development will operate as an SRFI.
- (b) The lack of alternatives for the site.
- (c) The benefits of the country park.

8.83 The Appellant may suggest that the Secretary of State had reached the conclusion that, subject to providing an acceptable alternative sites assessment, very special circumstances would exist. That is wrong if such a submission is made. The Secretary of State did not actually go through the process of reaching the judgment as to where the balance would lie if there had been a satisfactory alternatives analysis; she indicated that "this would almost certainly have led her to conclude that this consideration, together with the other benefits she has referred to above were capable of outweighing the harm to the Green Belt and the other harm which she has identified in this case". The issue of the weight to be applied to the balancing process and each of the factors prayed in aid of the Appellant's case is, even on the Council's case, wholly open.

(A) Whether the Development Will Operate as an SRFI

(a) SRA and other Rail Policy

8.84 The policy support in favour of this development is limited, as Mr Tilley accepted²⁷⁵. If the development proposed does not amount to an SRFI, there is no support for it. Mr Tilley accepted that if the development did not become an SRFI because of a limited rail connection, that would be an unacceptable result²⁷⁶. It would also be unacceptable, he agreed, if the result of it not becoming an SRFI is that other, better locations would be prevented from coming forward.²⁷⁷

²⁷⁵ XX, MR, RT.

²⁷⁶ RT, XX, MR.

²⁷⁷ XX, MR, RT.

8.85 The question, of course, that this begs is when a development either will or will not be an SRFI. That is to be determined and can only be determined, by the guidance which has informed, and continues to inform Government policy²⁷⁸, namely, the SRA guidance on interchanges²⁷⁹.

8.86 This makes clear that an SRFI must be “capable now or in the future of supporting their commercial activities by rail”²⁸⁰. Mr Gallop accepted the importance of rail connection in order to create an SRFI. He acknowledged that the SRA guidance was clear that, while there should be good connections to the primary road network, “high quality links to the rail network are ... essential”²⁸¹. It also points out that the key factors in considering site allocations include: access “on rail freight routes with capacity and avoiding congestion”, including access in both directions. This is reiterated in Appendix B which indicates that the transport requirements include “rail links need high capacity and good loading gauge”²⁸².

8.87 The whole purpose of the SRFI is to enable traditionally road-based distribution operations to shift over to rail use:

[SRFI's] “should be seen not simply as locations for freight to access the railway but also sites for the accommodation of businesses capable now or in the future of supporting their commercial activities by rail”²⁸³.

8.88 Mr Gallop accepted that good rail access had to be ensured to provide a prospect of enticing road users from their habits²⁸⁴. It is, in order to do this, that it has been made clear in the policy that the shift has to be capable of being made.

8.89 The requirement that an SRFI actually does achieve what it is said that they should achieve is also indicated in the draft London Plan which is notably changing the emphasis contained in the London Plan from one of general support, to a support conditional on demonstrating, on a “robust” basis, that an overall reduction in traffic will be sufficient to justify any loss of the Green Belt. The development “must” also achieve a modal shift from road to rail²⁸⁵.

8.90 It is, put simply, insufficient for a development to be regarded as an SRFI if it is not able, through its location, to enable that shift from road to rail to occur. Such a development, while it may have the name of an SRFI, will not fulfil its purpose.

8.91 The importance, of course, of considering whether what is proposed will actually be an SRFI is that, without the Government support contained in the SRA guidance, there is simply no justification for the development. When looking at the ability of the development to operate as an SRFI, the Secretary of State must be convinced that it will operate as an SRFI. In the previous decision there was an

²⁷⁸ See the DfT, 9/HS/9.1

²⁷⁹ 9/CD5.1, as applied by the DfT, see their statement at 9/CD5.2: note that it is chapters 4, 5, 6 and 7 which are relevant, see NG, XX, MR.

²⁸⁰ Para. 4.5.

²⁸¹ Para. 4.23.

²⁸² Referred to at para. 4.6 of 9/CD/5.1.

²⁸³ Para. 4.5.

²⁸⁴ XX, MR.

²⁸⁵ See JH Apps pg. 3, policy 6.15 and written statement para. 6.46.

indication²⁸⁶ that a “reasonable assurance” (in relation to pathing, particularly) was a sufficient test by which to conclude that a particular matter had been established. Given the importance of what is proposed and the extent of the impact it will have on the Green Belt, to the extent that this test imports some relaxation of what must be established in a Green Belt very special circumstances case, it should be rejected.

(b) Summary of the Council's Position

8.92 The Council has provided clear and compelling evidence in this case that the development will not operate as an SRFI. The site is compromised fatally in being able to achieve the cross-over from road based distribution to a part rail-based operation²⁸⁷, in the following ways:

- (i) There will be no movements in or out of the site by rail between 0600 – 2200.
- (ii) It will receive no channel tunnel traffic until the gauge has been enhanced to W9.
- (iii) It is in a poor location to compete with rail from the primary deep sea ports.
- (iv) It has poor accessibility to the primary rail route for competing with the road-based domestic market, the west coast mainline (“WCML”).
- (v) It requires a rail subsidy and gauge enhancement to assist with its competitiveness which will be insufficient in the circumstances.
- (vi) Additionally, as part of the context for assessing this issue, any doubt should be resolved against the development since the need to 2015 is currently capable of being met by other developments.

(c) Pathing

8.93 Mr Wilson’s pathing analysis is absolutely clear. The 2015 Thameslink service will prevent trains from crossing into the site at any point between 0600 and 2200.

8.94 As a starting point, it is for the appellant to establish its very special circumstances for the development and thus the availability of access. It is not for the Council to have to do so. Put simply, the appellant has not, at all, made out its case. Mr Wilson’s calculations themselves have not been undermined at all. The assessment was undertaken using the Railsys modelling system (that used by Network Rail) which indicated that, on the 2015 peak off-peak timetable set out in the draft East Midland Rail Utilisation Strategy, there would be one path of 7 minutes every 30 minutes to enable trains to gain access to and from the site. Given that a train would require 8 minutes to enter the site and 12 minutes to exit it, this path would be insufficient²⁸⁸.

²⁸⁶ 16.184, Inspector's Report, 9/CD/8.2.

²⁸⁷ That is, using rail for the first leg of the distribution journey.

²⁸⁸ See paragraph 11.38, BW Proof.

8.95 The appellant has not established that there will be paths. The appellant has relied, heavily, on the views of Network Rail in this case to suggest that the development can work. Critically, however, as Mr Gallop agreed, Network Rail has not undertaken any analysis against the Thameslink 2015 service. Further, it should be noted that Network Rail's approach towards the site is more circumspect in respect of paths than it was at the last inquiry. The most that is confirmed is that there are two rail paths on the MML that pass-by the site. At the previous inquiry, Network Rail confirmed (a matter which Inspector Phillipson described as "critical") that they could see "no reason" why Helioslough's requirement for 12 intermodal paths (24 in total) could not be met²⁸⁹. Such a statement is now notably lacking in either the agreed statement²⁹⁰ or Network Rail's letter to the inquiry²⁹¹; their position is significantly more circumspect as, rightly, it should be: *"Network Rail can offer no guarantees at this time that these paths will be available in the future as they are open to all licensed freight operators and all paths required for the interchange will need to be bid for, and are subject to the standard industry-wide timetable planning process"*. It is to be remembered that Network Rail has undertaken no assessment of the degree to which there would be the potential to gain access to the site.

8.96 It seemed that the appellant was seeking to place some weight on Inspector Phillipson's conclusions on pathing in order to seek to establish that the Thameslink 2015 service had been accounted for but, from a reasonably careful reading of the Report, what the Inspector was formerly concerned with is entirely different from that now before the inquiry. The Inspector was not concerned with Thameslink in its future state. Indeed, not only was there, at that stage, no timetable for the 2015 Thameslink service²⁹² but, in fact, the evidence being given by Network Rail at the time of the last inquiry was that the off-peak service would not change, which view was adopted by the Inspector²⁹³. As a result, Inspector Phillipson was not being asked to assess the current objection in any way and no comfort can be gained by the appellant from his conclusions on this issue.

8.97 The appellant has suggested that the Thameslink 2015 timetable set out in the draft East Midlands RUS will change. It is correct that the RUS indicates that the service specification is stated to be indicative²⁹⁴, but there is no indication that it will change, let alone change positively to the appellant's favour, which would require a lessening of the specification from its current position. The likelihood of a lessening of the specification is plainly low given that the timetable in November 2008 involved a lower specification than the current draft RUS, which had two of the semi-fast off-peak services going no further than Brent Cross²⁹⁵. The intent for Thameslink is that it will be a more comprehensive service, not a lesser one. Again, this is to be seen in the context of the 2007 statement on Thameslink that there would be no change in the Network Rail offpeak. There has been a steady increase in the service requirements over time; how then can it be concluded that it will be reversed?

²⁸⁹ Paragraph 16.65, Inspector's Report, 9/CD/8.2.

²⁹⁰ 9/CD/7.4, para. 2.3.

²⁹¹ 9/HS/INQ 2.0.

²⁹² See the Interfleet Report (based on the then current 2007 timetable: 9/LPA/6.8).

²⁹³ See para.s 15.7 and 16.65, Inspector's Report, 9/CD/8.2.

²⁹⁴ See page 93, CD/5.5.

²⁹⁵ See Strife 9/10/01.

8.98 Looking at the detail of Mr Wilson's analysis, what the appellant has sought²⁹⁶ to do is to criticise and undermine the pathing analysis by floating a myriad of different factors the aim of which has been to muddy the clear message provided by Mr Wilson.

(a) it was suggested that the use of a double junction would provide more opportunity. Mr Wilson answered this in his note to the inquiry²⁹⁷.

(b) it is contended that the use of a cross-over diamond instead of a ladder design would make a difference. Mr Wilson answered this in his note.²⁹⁸

(c) it is contended that making use of entry and exit on caution would be significant. Mr Wilson answered this issue in his note²⁹⁹.

(d) it is contended that the Rules of the Plan can be altered to give greater flexibility. Mr Wilson answered this issue in his note³⁰⁰.

(e) it has been suggested that the use of the fast lines may free up capacity. Mr Wilson answered this issue in his note³⁰¹.

8.99 Mr Wilson has dealt with each of these by way of his note to the inquiry³⁰² and none of it has even been commented upon, even less rebutted, by Mr Smith or anyone else. Quite clearly, the appellant has realised the hopelessness of arguing on these points further and has ignored them.

8.100 Rather, the appellant tried to deal with the issue by putting before the inquiry a full timetable analysis produced by Interfleet³⁰³. This was introduced 3 weeks into the inquiry, in spite of Mr Wilson having raised the point in his proof. The appellant had, in short, some 7 weeks to provide this document and introduced it at a surprisingly late stage in the process. This is surprising since, throughout the inquiry, the appellant has continually contended, without foundation, that the Council has been seeking to surprise it. It is, however, an indication of the degree to which the appellant was concerned about the points raised by Mr Wilson that they sought to "trump" him in this way.

8.101 Nevertheless, the analysis was, frankly, totally worthless. First, the timetable was totally unworkable, with a semi-fast service (the 10.24 Luton semi-fast) running down another service (the 10.16 slow St. Albans service). Mr Smith suggested that this would not occur. However, given the 8 minute difference between the services at Radlett, with a 4 minute headway between services in the Rules of the Plan (considered to be not outlandish though not agreed by Mr Smith³⁰⁴, and see Mr

²⁹⁶ See XX, BW.

²⁹⁷ LPA/6.6.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² LPA/6.6

³⁰³ 9/HS/2.8.

³⁰⁴ GS, XX.

Wilson's evidence identifying 4 minute gap as the case³⁰⁵), three extra stops on the slow St Albans service³⁰⁶ and a journey time penalty per stop of 2.5 – 3 minutes (comprising 30 seconds dwell time³⁰⁷, a c. 1 minute deceleration and c. 1 minute acceleration), the timetable was, as Mr Smith accepted, unworkable on that basis³⁰⁸.

8.102 More importantly, the timetable was based on a service pattern that involved 8 trains on the slow line rather than 10. As Mr Gallop acknowledged, if the Thameslink specification as contained in the RUS is followed, then there will necessarily be 10 trains on the slow line. That is because, at present, there are 6 trains on the slow line with 2 trains which would otherwise be on the fast line being on the slow line due to the fast EMT services and, as Mr Gallop acknowledged, a reduction in such services is unlikely. Given the pressure on the fast line (again, accepted by Mr Gallop), each of the additional 4 services on the 2015 Thameslink timetable will have to go onto the slow line. The result is that, should the 2015 Thameslink timetable take effect, there will be 10 Thameslink trains on the slow line, not 8³⁰⁹.

8.103 As Mr Gallop accepted³¹⁰, should there be 10 Thameslink trains on the slow line, the Interfleet timetable, showing two 15 minute gaps, will only be able to accommodate the Thameslink trains and there would be no paths, whether into or out of the site for the freight trains. The Interfleet timetable establishes, in those circumstances, what Mr Wilson said would happen.

8.104 The only issue is whether the Thameslink specification will be reduced either through the Government's own accord or through negotiation and other means under the rail regulation processes. As a Government sponsored service of some £5.5 billions which is declared as supplying "substantial benefits to rail passengers"³¹¹, it is patently unlikely that the Government would willingly wish to see a reduction in the specification and the specification has increased over time, not decreased.

8.105 This means that the specification is likely to be reduced only if the matter is resolved through negotiation or by way of a determination through the access provisions ultimately to be adjudicated upon by the ORR. As Mr Gallop fairly acknowledged, should there be a requirement to resolve whether Radlett or Thameslink's specification should prevail, Thameslink would win. Mr Gallop did not resile from that in RX.

8.106 In short, there is simply no evidence that this issue is likely to be resolved in a way that is positive to the Appellant; all the indications are that there will not be access in the off-peak period.

8.107 Reliance was sought to be placed on the evidence of Mr Clancy that there would be 8 services on the slow line. In cross-examination it was plain that Mr Clancy was basing his view on the older specification and the letter of Mr Morgan

³⁰⁵ As well as Network Rail indicating in its answers that there would be no alteration of the Rules of the Plan with Thameslink 2015.

³⁰⁶ Hendon, Cricklewood and Kentish Town.

³⁰⁷ Regarded as not outlandish by Mr Smith.

³⁰⁸ GS, XX.

³⁰⁹ A point confirmed by Mr Wilson in his note, at LPA/6.6.

³¹⁰ XX, NG.

³¹¹ Network Rail Q 19.

within his appendices, neither of which looked at the up to date situation contained within the RUS. Strife have given their note of what Mr Clancy said and, if right, indicates that Mr Clancy was looking at the specification as it was at the time that it was written down in the November 2008 specification, not some more up to date version than has been indicated in the RUS.

8.108 As indicated previously, Inspector Phillipson's approach towards this issue – namely, that it is sufficient for there to be a "reasonable assurance" that the site would have sufficient pathing access – should not be regarded as undermining the very special circumstances test. Nevertheless, even if applied, it simply cannot be concluded that there is a "reasonable assurance" of very special circumstances. If it is right that the appellant would not be able to get access to the rail network in the off-peak, what does this mean for the development?

8.109 This is resolved, of course, by Mr Gallop who confirmed: there would be no access during the peak (7-10 am and 4 – 7 pm); the off-peak is likely to be 6-7 am and 7-10 pm; so that access would only be possible, if restricted in the off-peak, to the hours 10 pm to 6 am. In those circumstances, the development would not, he agreed, amount to an SRFI³¹². This analysis is consistent with the conclusions of Mr Geldard³¹³ who indicated that the development would fail if access could only be gained at night.

8.110 The reality is that this point is fatal to the development: it simply cannot be concluded that access would be gained, or, should the test apply, that the SoS can be "reasonably assured" that the development would have access to the rail network.

(d) Rail Market Connectivity

(i) General Matters

8.111 Radlett will not be well-located to receive freight. It may, of course, be said that other locations will have similar difficulties. That is, however, nothing to the point. The question is whether, on the basis of the circumstances presented in this case – that is, the rail promotion fund, the trigger for gauge enhancement, the type of gauge enhancement proposed or the extent of access - the proposals will have a connectivity to rail destinations and origins such that it will achieve the stated aim of SRFIs to achieve the modal shift from road to rail. If there is little confidence that it will achieve its stated aims, that will tell against it. The issue of location should not, in those circumstances be compared in isolation against other proposed locations, but weighed in the balance of each of the other restrictions when deciding whether the development will be an SRFI. Other locations may, for example, have other options available which would support, in greater ways than is offered by the appellant in this appeal, the carriage of freight by rail.

8.112 Mr Wilson has assessed the locations from which Mr Gallop has said that rail freight is assumed to arrive from and where it will go to. The Appellant says that it is unimportant from where the destinations will go, given that traffic will come to the site, if it is constructed. As Mr Wilson has pointed out, however, it is important³¹⁴ to

³¹² XX, NG.

³¹³ Appendix G, BW Proof.

³¹⁴ See his proof (LPA/2.2) at section 9.

understand the significance of the potential destinations and origins since, should the primary destinations/origins be ill-suited to service by rail from Radlett this will further hamper the success of the development.

8.113 It is to be noted, in that regard, that Inspector Phillipson's belief was that the site would operate as an SRFI, in part, because it would be receiving freight from a range of locations³¹⁵; patently, if it is not able to receive freight from one of those destinations, that will be significant. The locations from which freight will arrive and where it will go to and in what proportions was identified by Mr Gallop in the ES³¹⁶: in short, the significant elements would be from the Deep Sea ports (primarily Felixstowe and Southampton), the Channel Tunnel and the domestic intermodal market. From the identified proportions some 82% of the total freight traffic would derive from the Channel Tunnel and Deep sea ports, while only 11% would be domestic traffic.

8.114 That is patently unrealistic given that the Scenarios and Long Distance Forecasts RUS³¹⁷ identification of domestic traffic as the basis for intermodal growth (see para. 8.5.3) and the GB Model outputs produced by Mr Wilson (which have not been criticised)³¹⁸ which identified that domestic growth increased by reference to the creation of rail linked sheds and deep sea traffic was not affected at all. Mr Gallop did not disagree with these calculations³¹⁹. The significance of this is that it identifies the importance of being able to achieve a good accessibility to the domestic markets.

(ii) Domestic Access

8.115 It is, it appears, common ground (and has been accepted by Mr Gallop) that the primary route to access the domestic markets is the West Coast Mainline ("WCML"). Mr Wilson has described the problems that exist in gaining access to the WCML³²⁰. This routing takes more time than a heads-on route; it introduces a degree of uncertainty, along with greater cost and complexity. As such it cannot be described, at all, as an optimal route. This problem is compounded by the fact that, without gauge enhancement, the site will also be at a greater cost disadvantage when the subsidy runs out.

8.116 The problem of gaining access to the WCML was not specifically dealt with at the previous inquiry; the assessment was based, primarily, on the problems of, generally, crossing London, not with movements necessary to get onto the MML³²¹.

8.117 It is for that reason that the Long Distance forecasts RUS does not refer to the MML as a main route for growth³²², but, rather, the WCML and other routes. Mr Smith's suggestion that this was because the MML would feed London, which was not a long distance, ignores the fact that the main locations for freight were from the

³¹⁵ See Inspector's Report, 9/CD/8.2, para. 16.70.

³¹⁶ TR3.

³¹⁷ BW Gallop Rebuttal, 9/LPA/2.19, Appendix A, pges 83-84.

³¹⁸ Pg. 5-6, BW Gallop Rebuttal, 9/LPA/2.19.

³¹⁹ XX, MR

³²⁰ BW Proof 9/LPA2/2, para. 9.28 – 9.29.

³²¹ See Inspector's Report, 9/CD/8.2, para. 7.273 – 7.279 and 16.70.

³²² BW Rebuttal to NG, Appx A, pg 84.

North and other long distances, a point he acknowledged³²³. While he was on the steering group which was consulted on that RUS, he did not write any part of it and could not recall if there was any comment by his steering group on the relevant part of the document³²⁴.

8.118 It was in part for this reason that the appellant has concentrated on the likelihood of the MML being upgraded or having the potential to take up the stress which is likely to be experienced on other lines. However, the MML will itself, like the WCML³²⁵ be at capacity in 2020³²⁶.

8.119 As for the likelihood of upgrades being proposed on the MML, the numerous instances of proposals being made to upgrade rail facilities should be noted³²⁷, only to be either delayed very significantly or not carried into effect. Mr Gallop did not disagree with Mr Wilson's examples in his rebuttal³²⁸.

8.120 The appellant has relied heavily on the Strategic Railfreight Network strategy³²⁹ to suggest that the MML is likely to be upgraded. It is to be noted that while a number of possibilities (and that is all they are) are proposed, a key aspect will be the Routes to the North study which may discount this route entirely from further works. The dependency of the MML upgrading on this study was confirmed by Mr Gallop.

8.121 It is also to be noted there are specific examples where the apparent upgrading of the MML is considerably less than certain. In the Network Rail RUS³³⁰, in respect of electrification, the potentially unlimited benefits of electrification were noted. However, by July 2009, it was pointed out³³¹ that the Government was considering the proposals and, in the East Midlands draft RUS³³² (August 2009), the potential for electrification was still being considered.

8.122 In a similar way, it is clear from the Network Rail Business Case³³³ that there are some significant doubts about the business case for upgrading of the MML and, in looking at ways to assist with deep sea intermodal rail carriage, no schemes are considered to be relevant by the DfT³³⁴. Those points are compounded by the fact that of the schemes identified by Mr Gallop as likely to happen with the proposals, none have committed funding³³⁵; this was not rebutted by Mr Gallop.

8.123 In order to suggest that Radlett will be able to overcome the patent disadvantage that it has in encouraging traffic from the domestic market, the appellant has referred to the potential for obtaining a northbound connection to the site. This is a wholly speculative suggestion and should be given no weight in this

³²³ See GS, Xx.

³²⁴ XX, MR.

³²⁵ See Gallop Apps, Appx L.

³²⁶ See extract, para. 1.9.

³²⁷ BW Gallop Rebuttal, pg. 7.

³²⁸ XX, MR.

³²⁹ 9/CD/5.4.

³³⁰ Gallop Appx J page 76.

³³¹ See Appx K, Gallop.

³³² See pages 9-10, 9/CD/5.5.

³³³ Gallop, Appx H, pages 38, 43-44.

³³⁴ See BW Appx N, pages 71-72.

³³⁵ BW, EC.

case; Mr Gallop accepted that he was placing no weight on it. In addition, first, this connection is not proposed as part of this application. Second, there is no evidence that it is feasible. Third, there is no evidence that the appellant controls sufficient land to enable this to happen. Fourth, it was not, as Mr Tilley acknowledged, the subject of assessment in the ES³³⁶. The reason why the appellant is perhaps intent on referring to it is that they are mindful of the SRA guidance which indicates the need for a two-way connection³³⁷.

(iii) Channel Tunnel Traffic

8.124 As Mr Gallop accepted, in the absence of W9 gauge, no intermodal trains will be able to get to the site. It is, of course, as a result of this, that the appellant has now agreed to undertake gauge clearance to W9 as part of its conditions. It is said that this was offered at the time of the last inquiry. This was not identified in the statement of agreed facts with Network Rail and it was not in the conditions offered at the time of this inquiry. There was no suggestion that this was actually being offered, whatever was the belief of Mr Cleland in the letter he produced previously³³⁸. It is certainly clear that the W9 clearance is not achieved automatically through W10 gauge enhancement and W9 is not “nested” in W10.

8.125 It should also be noted that the inability to gain access from the Channel Tunnel because of the gauge restrictions was not something that had been raised before Inspector Phillipson. As a result, it is important to decide what the significance of this is. Inspector Phillipson considered that, as part of the reasoning why the development would act as an SRFI, there would be access to various destinations. As a result of the W9 gauge restriction, no intermodal service from the channel Tunnel can access the Site until gauge clearance is undertaken.

(iv) Deep Sea Intermodal

8.126 The problem with Radlett is that it is a short distance from the primary deep sea ports, particularly Felixstowe and Southampton; at distances under 120 miles or less rail is commercially not cost effective against road movements to ports³³⁹; Mr Gallop accepted that as a generality, that was so³⁴⁰. It will be recalled that, in RX, it was suggested that this contradicted what Mr Wilson said about short distance haulage domestically³⁴¹; that is an unfair depiction of his evidence which distinguishes between the economics of short haul in the context of deep sea port traffic³⁴² and domestic traffic – that is unsurprising given that different considerations apply to each. In any event, Mr Smith accepted that short haul, if not used as an intensive service (which he would not define), would be uneconomic without a rail promotion fund. His examples of movements to ports given in EC were all notably long-distance³⁴³.

³³⁶ RT, I's Qs.

³³⁷ Para. 4.32, 9/CD/5.1.

³³⁸ CB/1.9

³³⁹ Para. 9.5, BW.

³⁴⁰ NG, XX.

³⁴¹ See paragraph 9.26.

³⁴² Para. 9.5, BW Proof.

³⁴³ XX, GS, MR.

8.127 The purpose of the rail promotion subsidy³⁴⁴ is specifically to make up for the additional disadvantage that would be caused to the rail offer pending enhancement. It is to be remembered that the rail promotion subsidy is required in addition to the Government rail subsidy (REPS) which will be insufficient because it is calculated on an efficient use of the rail system, that is, by standard wagons amongst other matters.

8.128 Mr Wilson has indicated how long the subsidy would last using pocket and well wagons; on the basis of the subsidy currently provided to Felixstowe (and it is clearly stated as being so in his rebuttal³⁴⁵), it would last about 125 days; while this may be longer with fewer trains or when applying the subsidy for Southampton, it would not be significantly greater. Mr Gallop did not seek to disagree with the calculations that had been undertaken by Mr Wilson³⁴⁶. Even if other assumptions are used, it is clear that the Appellants were previously suggesting the fund would only last for 2 years³⁴⁷; once it has run out, deepsea traffic will be uneconomic.

8.129 The ability to make the rail offer more attractive must, ultimately, rest on the necessary gauge enhancement and not on a finite and limited rail promotion fund.

(e) The Cost of Gauge Enhancement

8.130 In the absence of gauge enhancement, the facility will inevitably fail to be an SRFI. It simply cannot, in the absence of a gauge greater than W8 achieve the competitiveness associated with it once the rail promotion fund has run out.

8.131 Inspector Phillipson was content that the conditions which were proposed would be fulfilled and that the further works, including gauge enhancement would be carried out³⁴⁸. That conclusion was based on the belief that it was unlikely that a development would "incur expenditure on the scale required to provide the rail facilities and then not use them" and that occupiers, who would be expected to pay for the services "would have little incentive to come to the Radlett site, as opposed to another non-rail connected facility nearby, if they did not intend to make use of the rail facilities provided". There are two points to note on this conclusion. First, the decision to upgrade would be based primarily on financial considerations (albeit informed by Government subsidies) and no evidence was provided to the inquiry as to likelihood that the costs, in the region of £30 millions, would make this viable. Mr Gallop confirmed that was the case. Second, the conclusion as to what occupiers might do was reached without any market research or the level and extent of the service charges either with or without gauge enhancement. Again, that was confirmed by Mr Gallop³⁴⁹. Inspector Phillipson's conclusion was, with respect, reached without any detailed evidence being presented on the point at all.

8.132 In the present appeal, again, the Appellant has provided no evidence to establish that the economics of the further gauge enhancement would clearly favour enhancement; nor is there any evidence that the service charges would be such as to

³⁴⁴ See the section 106 agreement.

³⁴⁵ See para 7.10, BW Rebuttal Gallop, 9/LPA2.19.

³⁴⁶ Confirmed, XX, NG.

³⁴⁷ Inspector's Report, 9/CD/8.2, para. 7.289.

³⁴⁸ Inspector's Report, 9/CD/8.2, 16.153.

³⁴⁹ XX, NG.

discourage occupation by anybody other than persons who wanted to use rail. The decision to upgrade will now, as before, be decided on economic grounds. It is to be remembered that, as drafted, the development is capable of being built out to 275,000m² if Network Rail requires gauge enhancement to W9 and W10 on both the Junction Road junction and Dudding Hill legs before further trains are allowed on the network. On this basis, the floorspace could be built out almost totally without any gauge enhancement being carried out at all.

8.133 In order to avoid the obvious potential for either of these unacceptable eventualities, the Council has put forward alternative conditions³⁵⁰ which have been wholly rejected by the appellant and described as yet another attempt to taint the Council with malpractice, as “wrecking conditions”; that is a surprising suggestion since, if the appellant is so sure that there will be gauge enhancement, the conditions ensure that they will be done. It is to be recalled that the Council’s suggestions do not require works to be done any sooner than the appellant’s conditions suggest (although the appellant did not seem to understand that); they simply require approval sooner.

(f) The Context: Current Need and Other Facilities

8.134 The merits of this proposal must be seen against the backdrop of other, recently permitted developments. It is right, of course, that Inspector Phillipson’s conclusion was that there was still a need for SRFI in spite of permission having been granted for London Gateway and Howbury Park which together provide some 1,200,000m² of rail-connected warehousing floorspace.

8.135 However that was a conclusion reached on the basis of him having limited knowledge about London Gateway³⁵¹ and being ultimately unconvinced that it was capable of being an SRFI: his “understanding” was that the proposal was “essentially for a port and associated port-related development and there is no evidence that its owners propose or intend to permit it to be used more widely”³⁵².

8.136 That understanding has been corrected in the evidence provided by Mr Wilson³⁵³ in which it is clear that London Gateway is not being regarded simply as a port development: “In addition to a major deep sea facility, London Gateway port will combine with Europe’s largest logistics park, offering 9.5 million square feet ... for distribution, manufacturing and high tech sectors. The logistics park will offer individual units in excess of one million square feet”. The Inspector also took that view because it appeared that EERA was of the view that London Gateway was a port; that is not what they have indicated in the most recent letters³⁵⁴. Mr Gallop accepted that London Gateway is capable of being an SRFI³⁵⁵ and is not restricted to port users.

8.137 It is clear, then, that matters have moved on since the analysis of Inspector Phillipson³⁵⁶. It is also to be noted that Mr Gallop acknowledged that, just as is the

³⁵⁰ Proposed condition 12.

³⁵¹ Page 191, Inspector’s Report, 9/CD/8.2.

³⁵² Ibid.

³⁵³ Appx A, pg. 2.

³⁵⁴ JH Apps. Pg. 66.

³⁵⁵ NG, XX.

³⁵⁶ See Inspector’s Report, 9/CD/8.2, pg. 191(iii).

situation in the West Midlands, London Gateway is capable of subsisting with Howbury Park, despite their close proximity³⁵⁷. It is also notable that Mr Smith pointed out that DBS would be serving London Gateway.

8.138 The further difference between the current assessment of Howbury Park and London Gateway and that which was the subject of consideration by Inspector Phillipson is that, in the present case, there is significant and compelling evidence that the distribution area of potential occupiers is such that these two sites will be capable of meeting the strategic need.

8.139 In these circumstances, where there can be nothing less than (and the Council says there should be considerably more than) clear doubts about the ability of Radlett to operate as an SRFI and in circumstances where Radlett will do such massive damage to the Green Belt, there is no especial need or urgency which should override such uncertainties.

8.140 The recent correspondence from the DfT³⁵⁸, properly understood, in fact supports this approach. The letter points out that Appendix G informed SRA policy on the number of SRFI required and that the SRA policy remains relevant. Appendix G identifies that only some 400,000 square metres was to be provided to achieve the London and the South East targets.

8.141 The letter notes that more than the predicted amount of floorspace has been provided in particular areas, but that there remains a significant under-provision in some parts, particularly London, the South-East and Eastern England; it is looking at the amount actually provided, as opposed to what has been permitted³⁵⁹.

8.142 What this does not say is that, should Howbury and London Gateway be built out, there would still be a requirement for 3-4 SRFI. Given the relevance of Appendix G of the SRA policy³⁶⁰, it follows that, should these come forward within the relevant timescale, they will take up that floorspace requirement. It is, of course, right that this level of floorspace is not a ceiling; the point, however, is that the level of need is significantly reduced. That means that, when looking at Radlett, the position has changed: it is not needed to meet the need identified to 2015 and the weight which should be attached to Radlett should be correspondingly reduced.

(g) General Support of Network Rail

8.143 The appellant prays in aid the support of Network Rail in support of Radlett. Mr Wilson, rightly, described that support as "very weak"³⁶¹.

8.144 It should be noted that their support is "in principle" only and in circumstances where the progress of Radlett through the formal approval process (the GRIP process), has only (as it was previously) passed the first stage, GRIP stage 1. There is also a Basic Services Agreement which is acknowledged by Mr Gallop as an agreement where all that is required is *prima facie* feasibility.

³⁵⁷ NG, XX.

³⁵⁸ Appx M, BW Proof 9/LPA2/2.

³⁵⁹ Agreed, NG, XX, MR.

³⁶⁰ 9/CD/5.4.

³⁶¹ BW XX MK

8.145 It is quite clear from their recent responses to the inquiry³⁶² that it is Network Rail's statutory responsibility to engage with the appellant. It is also quite clear that they are significantly less committed in their support than they were previously, particularly about the availability of paths. In the event that it became clear that the development could not gain access to the network, it is obvious that their support would not cease. Inspector Phillipson placed considerable reliance on the fact that Network Rail, as the "guardians of the UK rail network"³⁶³ were "fully supportive"³⁶⁴ of the proposal. Their "in principle" support is considerably more circumspect than it was when, in 2007, it was said there were "no concerns"³⁶⁵ about gaining access to the site from the MML. That statement has not been repeated in this inquiry.

(h) DB Schenker's Support

8.146 Considerable weight was placed by Mr Tilley³⁶⁶ on the support of DB Schenker for Radlett. An agreement has, we are told, been entered into between the Appellant and DB Schenker but, despite being sought by the Council in October 2009, it was not disclosed on the basis of commercial confidentiality. It cannot be seen, therefore, whether there is a number of trains below which DBS can walk away. It cannot be seen what, if any, is the financial investment being made by DBS.

8.147 It is, to say the least, surprising that this is commercially confidential – why, for example, can the financial elements not be blanked out? As a result of the refusal to give any information at all about the document when questioned upon it (on issues which cannot be regarded as confidential matters), the significance of the support provided by DBS must be reduced in weight.

8.148 It was also noteworthy that Mr Smith indicated that there was no particular reason why Radlett was chosen by DBS; it was very probably because DB Schenker was looking to expand.

(C) Alternatives

8.149 The appellant accepts that it is necessary to show that there is no better site than Radlett. Mr Tilley accepted that the "evidential burden"³⁶⁷ was upon the Appellant to meet the test set out by Inspector Phillipson that "unless and until a convincing case is presented showing that there is no suitable and available alternative to the appeal proposal which would meet the need for an additional SRFI to serve London and the South East, and in doing so cause less harm to the Green Belt than would be the case at Radlett planning permission for the appeal proposal should be refused".

8.150 The appellant has failed, again, to provide an adequate assessment of alternatives in this case. There are two essential bases on which this is the case:

³⁶² 9/HS/INQ 2.0.

³⁶³ Para. 16.71, Inspector's Report, 9/CD/8.2.

³⁶⁴ Para. 16.71, Inspector's Report, 9/CD/8.2.

³⁶⁵ Para 15.2, Inspector's Report, 9/CD/8.2.

³⁶⁶ EC, RT.

³⁶⁷ Para 204, Inspector's Report, 9/CD/8.2.

(a) First, it has restricted its search to the north-west sector;

(b) Second, and in any event, even if it was correct to restrict its search to the north-west sector, the assessment was wholly inadequate.

8.151 It is to be noted that each of these aspects contributed to the reason for refusal³⁶⁸.

(a) Whether the Assessment should have been restricted to the North West Sector

(i) Introductory Remarks

8.152 The decision to restrict the site search to the north-west sector is critical; Mr Tilley accepted that should the Secretary of State decide that the search should have gone beyond the north-west sector, the analysis was fatally flawed³⁶⁹.

8.153 The basis of the appellant's decision³⁷⁰ to restrict the alternatives site search was because of the Inspector's conclusion in, essentially, one paragraph of the report³⁷¹; it is worth repeating this paragraph:

To my mind, a sectoral approach to the identification of sites for SRFIs has considerable merit, notwithstanding the lack of policy support for the approach. I say this because given the size of London and the levels of traffic congestion prevalent in the region, it is, in my opinion, very questionable as to whether a SRFI located to the east of London in, say, the Thames Gateway could efficiently serve development to the west of London such as that found around Heathrow, Slough and outwards along the M4 corridor. Journey times by lorry between these areas would be significant, which would increase road haulage costs and potentially reduce the environmental advantage which rail haulage to the SRFI would confer. Indeed, when challenged on this point the Council's rail witness, Mr Thorne, conceded that it would not be sensible to serve the north west sector of London from London Gateway. Equally he agreed that a site at Alconbury would not effectively served north-west London.

8.154 As Mr Tilley agreed³⁷², this analysis was based on the lorry mileage benefits that would derive from locating an SRFI in one part of London as opposed to another and was the only significant basis for Inspector Phillipson's view of the appropriateness of the North West sector.

8.155 As Mr Tilley accepted, however, if the occupiers of SRFI warehousing distribute on a regional basis comprising London and the South East, there is no benefit in lorry mileage terms in being in one part of London as opposed to another, so long as the site is reasonably close to London³⁷³.

³⁶⁸ See the Council's SoC, para. 8.2 and R for R 4.

³⁶⁹ RT, XX, MR.

³⁷⁰ See para. 2.4 of Technical Report 6, 9/CD/2.8.

³⁷¹ Para. 16.125, Inspector's Report, 9/CD/8.2.

³⁷² XX, MR, RT.

³⁷³ XX, MR, RT.

8.156 It is clear from his analysis that the Inspector's assessment of the North West sector was, given the above, based on an assumption that the distribution area of those likely to occupy the premises would be within the North West sector. He had no evidence to that effect. There was no market-based evidence before Inspector Phillipson which informed that conclusion. Mr Tilley accepted the extent of the evidence before Inspector Phillipson which informed the Inspector's conclusions³⁷⁴; it contained no market analysis and was in very limited terms. It simply did not provide a basis for the conclusion that was reached.

8.157 It is plainly critical to understand the distribution systems of those expected to occupy the SRFI. If there is the potential for all, or a majority, of those who will be occupying the premises to distribute to locations on a regional basis comprising London and the South East, there is simply no basis for the restriction.

8.158 It seems, given the evidence of Mr Gallop, that it is likely to be argued that it is impossible to identify what distribution areas of the potential occupiers of Radlett is likely to be. If that is its case, that must be regarded as a wholly unacceptable basis for reaching the judgment the search area for an SRFI should be restricted to the North West sector.

8.159 Additionally, it is likely that there will be a concentration by the Appellant on whether there is a market within the North West sector for the SRFI. Care should be taken to discount that point in the context of the alternatives issue; it is relevant to whether there is a market for warehousing in the North West sector but it is irrelevant to whether the search for warehousing to meet the need is to be restricted to that area. Mr Tilley was clear that the demand for warehousing in a particular area would not be a reason for restricting an alternatives site search to a particular area in circumstances where it was not contended that there was no market outside that area³⁷⁵.

8.160 The point is that the alternatives assessment is to undertake a proper search as to whether other better alternatives exist for the limited SRFI need in London and the South East. If the evidence is that the SRFI are footloose because of the distribution areas that either all or the majority of potential occupiers could have, then the fact that there may be a market for warehousing in a particular area does not impact on that at all. As Mr Gallop acknowledged, acting fairly, the search should in those circumstances be widened.

(ii) The Appellant's Evidence on Distribution Areas

8.161 The evidence which was presented by the appellant to this inquiry, to the extent that it engages with the distribution area of potential occupiers at all, is either unpersuasive or indicates what the appellant alleges.

8.162 The basis of the appellant's case on this issue is set out in one section of the ES as informed by Appendix A10³⁷⁶. Technical Report 3 sets out in effect, in two sections, the entirety of its case for the restriction to the North West sector.

³⁷⁴ See JH Rebuttal evidence, pages 9 – 10.

³⁷⁵ XX, MR, RT

³⁷⁶ Technical Report 3.

8.163 The first is at 3.2.1 which is an analysis based on roads not informed by any market analysis. The second is at paragraph 3.2.2 which refers to the evidence note provided by King Sturge at Appendix 10 of Technical Report 6. The majority of that document refers to the market demand and supply of areas in the North West sector without any reference to the scale of the occupiers or their distribution areas by reference to such scale. The only part of the document which does that is contained in one paragraph of the appendix; this refers to larger users which are more 'footloose' than smaller occupiers. The "large distributors" referred to in the King Sturge report are those occupying the scale of warehousing proposed at the site (the smallest unit will be 500,000 sq ft); the example (in fact, the only example in the document) given of such occupiers was AS Watson, who moved from Croydon to Dunstable³⁷⁷; that indicates its distribution area was to the whole of London and the South East, not simply a sector of London. In RX, it was suggested that King Sturge were aware of this move; that is, of course, significant – given the context of the statement (that bigger facilities are 'footloose'), it establishes the distribution area is wider than simply sectoral.

8.164 In RX of Mr Tilley, it was suggested that the King Sturge report did more than look only at the market area; reference was made to the section of the Report which referred to the Lambert Smith Hampton report³⁷⁸ but that document simply deals, again, with market areas, not what distribution areas the occupiers are serving. There was also some concentration in RX of Mr Tilley on the rental levels of various areas in the LSH report³⁷⁹; that is no evidence, at all, of the distribution areas of the occupiers of the units. Again, the point needs to be made absolutely clear but that the relevant issue is not the market in which the buildings are to be located but the distribution area of its occupant.

8.165 Turning to other live evidence, Mr Gallop confirmed that he did not indicate anywhere in his evidence what the distribution area of potential occupiers might be³⁸⁰. While in his rebuttal he referred to the distribution area of certain food retailers, he confirmed that he was putting forward no evidence to indicate: (a) the degree of interrelationship between distribution areas of each of the distribution centres; (b) the extent to which certain centres dealt with particular lines and had distribution areas over a regional basis in that way; (c) whether there was a move to consolidating any of those distribution centres. Mr Gallop also indicated that, in terms of occupiers "the observed situation" is that there is a "mixture" and is constituted by "shades of grey, not black or white". The picture he described was of various locations having different sorts of occupiers; that suggested, perhaps for the first time, that the distribution areas could be wider than the north west sector. It cannot properly be concluded, therefore, that the SRFI will be occupied by distributors distributing to the north-west sector; in such circumstances, restriction to the north-west sector was, quite plainly, unjustified.

8.166 The only other piece of evidence provided in the Technical Reports is contained in paragraph 3.3 of Technical Report 3 which is a description of the GB freight model which does not show a breakdown by reference to London and does not establish that the market is in some way restricted to the north west sector.

³⁷⁷ See 9/LPA/6.11.

³⁷⁸ See BW's Appendix F.

³⁷⁹ Page 9-10, Appx f, BW Apps.

³⁸⁰ XX, MR

8.167 Mr Smith confirmed³⁸¹ that he was not providing any evidence on where potential occupiers of the SRFI would be distributing to, in spite of suggestions from Mr Gallop and Mr Tilley that he would; that is unsurprising given that he has no direct experience of dealing with intermodal sheds.

8.168 It appeared at one stage that Mr Smith would be providing evidence on the distribution areas of potential occupiers. The appellant relies on the evidence of DB Schenker and the distribution centres of food retailers within the London area³⁸².

8.169 In short, the appellant's evidence is entirely lacking that the units will be occupied primarily by those who will be distributing to within the north west sector. Further, as Mr Tilley accepted, the appellant has no evidence that the majority of the units will be occupied by distributors who will be distributing to within the northwest sector. In spite of this evidence, it is noticeable that within the Technical Reports to the needs case, there is no recognition that there will be delivery outside the North West sector.

(iii) The Council's Evidence

8.170 On the other hand, there is a considerable amount of evidence indicating that the North West sector is not the primary distribution area of those likely to be occupying an SRFI. It is clear, even from a cursory glance at the Council's case previously³⁸³, that the extent of evidence now relied upon is considerably greater than previously and looked, essentially, at the market basis for locating within the North West sector, rather than the distribution area of those occupying the SRFI.

8.171 Mr Gallop indicated that he would be interested if a public body had indicated what the likely distribution areas of likely occupiers of the SRFI would be. The SRA guidance indicates clearly what that distribution area will be:

(a) SRFI "operate such as to serve regional areas, they are also key components in a national and international network"³⁸⁴;

(b) "Occupiers are likely to be major logistics service companies and national and multi-national manufacturers and retailers";

(c) SRFI "will include intermodal (container) handling and also the accommodation of large-scale warehousing, processing or manufacturing facilities. Occupiers of such Strategic RFI will often include businesses which choose to locate their national and regional distribution centres at such strategic locations."

8.172 Given that the SRA felt able to identify what the distribution areas of likely occupiers would be, it is surprising that Mr Gallop did not.

³⁸¹ XX, MR, GS.

³⁸² See Gallop Rebuttal, appx A.

³⁸³ Section 7.205-212.

³⁸⁴ 4.4, CD/5.1

8.173 In terms of regional policy (T10 of the East of England Plan³⁸⁵ and T3 of the South East Plan³⁸⁶) these refer to SRFI serving London and the South East, not some sectors. In addition, T10 no longer refers to an SRFI being located in the Northern Quadrant as it did before Inspector Phillipson; that accords with the view of EERA who believe that there is no support for an SRFI to be located in this quadrant³⁸⁷. It was suggested³⁸⁸ that the description at 7.25 strengthens the North West sector; that attempt was one which ignores the fact that the previous³⁸⁹ draft indicated that an SRFI would be in the northern quadrant but now does not. The description is describing the "region" in paragraph 7.25, not the North West sector.

8.174 Professor McKinnon's assessment (whose expertise was not challenged³⁹⁰) has indicated the extent to which non-food retailers will generally have about 3 distribution centres and that food retailers have a different role³⁹¹. The most that could be said by Mr Tilley as a criticism of this analysis is that it³⁹² was "broadbrush"; not the most extreme criticism.

8.175 SDG commissioned market research to establish the extent to which distributors would be likely to occupy the SRFI. It was suggested that the number of responses was insignificant. However, there are two points to note about this criticism. First, the companies themselves were significant concerns who distribute in aggregate, millions of miles. Second, absolutely no rebuttal evidence was provided by the Appellant to establish the contrary position. The conclusions arising from research are absolutely clear: the approach of potential occupiers would be to locate a single distribution centre in the South East which would serve that area.

8.176 Mr Wilson was cross-examined on the basis of various documents which it was suggested indicated there was a sectoral approach to warehousing in London. The patent shortfall in this line of XX was that it concentrated on the sectoral approach to the location of warehousing, rather than the actual distribution areas of those likely to occupy the SRFI; in that sense, it entirely missed the point. The Lambert Smith Hampton report³⁹³ simply describes the areas of market demand, not the distribution areas of those who occupy the warehousing; the same is true of the DfT report on container freight³⁹⁴.

8.177 Finally, as a simple point to note, no other search area for an SRFI has been as localised as the appellant's³⁹⁵ which either looked at the whole of London ("KIG") or large parts of it (at Howbury).

(iv) The SDG Alternatives Assessment

³⁸⁵ 9/CD/4.1.

³⁸⁶ 9/CD/4.2.

³⁸⁷ JH Rebuttal, Appx WH11, October 09 letter.

³⁸⁸ RX RT.

³⁸⁹ HS1.12.

³⁹⁰ RT, XX, MR.

³⁹¹ See Appx D, BW Apps, para. 1.3.

³⁹² See RX RT

³⁹³ Appx F, BW Apps.

³⁹⁴ Appx N, BW Apps.

³⁹⁵ See the plan at page 84, BW Proof 9/LPA2/2.

8.178 In summary, therefore, the evidence establishes quite clearly that the search assessment should have been undertaken on a much wider basis.

8.179 Had that been done, as the SDG analysis³⁹⁶ has shown, there are many sites which are better able to provide an SRFI whilst causing less harm than Radlett. However, as Mr Tilley acknowledged³⁹⁷, the appellant, whilst it may have criticised parts of the methodology, did not suggest that any of the ultimate criticisms were wrong.

8.180 In these circumstances, there can be no real doubt that, had an assessment reflected the regional nature of the distribution occupiers who are likely to occupy the SRFI, other, better locations would have been found. The alternatives analysis is, consequently, wholly flawed.

8.181 Finally, one issue which may be raised by the appellant in support of the submission that there was no need to go beyond the North West sector, is that the Howbury Park study, on a wider search, did not find a site better than Howbury. No weight should be put on such an argument if it is made (and it should be noted that it was not put in XX), for two reasons. First, it was no part of the appellant's case that it had not verified the accuracy of the results contained in the Howbury analysis. Second, the Howbury Park analysis simply looked at alternatives as to whether they were better or worse than Howbury, not whether they were better or worse than Radlett. In those circumstances the fact that the Howbury analysis searched outside the Radlett area is not a basis for justifying the appellant's failure to undertake its own alternatives analysis.

(b) The Analysis of Alternatives in the North-West Sector

8.182 In any event, even were it to be considered that the appellant was correct to consider only the north-west sector, the analysis itself is so defective on numerous levels that it should be regarded as unfit for its purpose.

(i) The choice of methodology

8.183 The appellant took essentially the approach of following the alternatives site assessment carried out in the Howbury Park appeal³⁹⁸ on the basis, it appears, that it had been accepted in that appeal by various parties. The acceptance of that methodology does not, however, justify its use in this case. There was no specific endorsement of the analysis by Inspector Phillipson in the Radlett appeal*. No party had criticised its methodology and, consequently, Inspector Phillipson had little reason to look at it further. A very good example of his lack of scrutiny of the analysis in that case is demonstrated by the fact that Inspector Phillipson accepted a 2 km limit from a rail link as an appropriate sifting criterion; that approach was, however, rejected by Inspector Phillipson the Radlett appeal³⁹⁹. It was suggested⁴⁰⁰ that the study was looked at "quite thoroughly" in the lead up to the inquiry but

³⁹⁶ BW Appx J.

³⁹⁷ RT XX MR.

³⁹⁸ 9/CD/6.2.

* Inspector Phillipson dealt with both the Howbury Park appeal and the first Radlett appeal.

³⁹⁹ See Inspector's Report, 9/CD/8.2, pg. 186, fn 2.

⁴⁰⁰ RX RT

nothing more specific was given to how it was looked at and for what purpose. It was suggested that the approach was also consistent with that taken in KIG⁴⁰¹; there was no evidence, at all, however, to support that contention.

8.184 When each of the stages of the analysis is considered there are numerous problems with it. It is to be noted that each of these problems, on which the Council's decision was based, were pointed out to the Appellant on 25 August, some 3 months before the appeal. The continual suggestion that the Council had not indicated its concerns must be seen in the light of that fact.

(ii) The initial site search

8.185 The appellant used a number of criteria and methods in order to identify sites for the initial stage of consideration. A number of these were either unnecessarily restrictive or had the ability to remove potentially good sites. Only the primary problems are dealt with.

8.186 First, the search removed from consideration those sites which were regarded as unavailable because they were either allocated for⁴⁰² housing or amounted to existing employment land unless the remaining vacant area was greater than 40 hectares. The effect of taking such a restricted area was to quite clearly unnecessarily restrict the opportunities for finding alternative sites.

8.187 As for residential allocations, the effect of taking this restricted approach has been to exclude potential sites. The logic of the appellant's approach was flawed. Mr Tilley suggested that the sites which were allocated for housing simply could not receive planning permission for an SRFI; this was because there was a "huge pressure"⁴⁰³ for housing. It is to be noted, of course, that the appellant's basis for its current application is that there is an overriding need for SRFI which is sufficient to justify planning permission in the Green Belt. The needs are countervailing, but to simply reject potential sites on the basis of another need is plainly doing away with sites which may be appropriate alternatives⁴⁰⁴. The illogicality in rejecting such allocations is compounded by the fact that allocations of a mixed nature were considered; it is difficult to understand why a mixed use including residential can be separated from an allocation for housing and treated differently. The potential for smaller areas of housing (that is, smaller than 40 hectares) to be considered as part of a larger area for the location of an SRFI was also rejected. This issue of availability was raised by SDG in August 2009, but was not acceded to.

8.188 Reference was made to PPG13⁴⁰⁵ in reinforcing the reason for rejecting housing⁴⁰⁶. It is to be noted, however, that this was not a factor used in the assessment and was raised, in fact, in RX. In any event, it is a bad point – if PPG13 is so relevant to the issue, then mixed uses should not have been considered either, but they were.

⁴⁰¹ RX RT

⁴⁰² See para. 5.1.5 of Technical Report 6, 9/CD/2.8.

⁴⁰³ RT, EC and XX, MR.

⁴⁰⁴ CD

⁴⁰⁵ Para. 18

⁴⁰⁶ RX RT.

8.189 The approach towards employment sites was similarly restrictive. Unless sites with vacant employment allocations of 40 ha were found, existing employment sites were rejected. Mr Tilley's answer to this was that there were not many employment sites in the north-west sector and it would be impossible to bring the many interests on an employment site together to construct an SRFI. However, the example he cited of Slough Industrial Estate cannot be regarded as a fair example – he was describing a large industrial estate, not a smaller, less successful estate. The fact that Mr Tilley stated that such estates did not exist cannot be regarded as credible and, importantly, was not justified by any audit of sites that had been rejected on this basis. Mr Tilley suggested that in his response⁴⁰⁷ he had given information on industrial sites; he did not; in fact, he simply rejected SDG's criticism on this point⁴⁰⁸.

8.190 Another part of the initial search system was to exclude sites which were more than 5 kms from a railway line⁴⁰⁹ (see paragraph 5.2.3). The reason for excluding sites beyond this distance was two-fold. First, it was determined by a financial assessment of the cost and, second, it was determined by the difficulties of topography over this distance and the environmental effects of undertaking the connection⁴¹⁰. As for the financial aspect, that was, quite plainly, an impermissible criterion; such an approach had, rightly, been rejected by Inspector Phillipson when he concluded that using financial elements as a justification for the criteria was impermissible in the absence of an overall viability analysis⁴¹¹.

8.191 As to the topographical justification, no detailed analysis had been undertaken to establish that there was an unacceptable environmental effect when accessing these areas (as opposed to an engineering issue which was subsumed within the financial element). There has been a suggestion that this point was somehow raised late in the day. It was, however, a point raised in August and SDG's critique was peremptorily dismissed. The appellant has now been, through this inquiry, trying to plug the gaps on this issue.

8.192 What is notable, however, is that some of the areas which were rejected by CGMS in their response to this criticism⁴¹² (Areas 1 and 3) were not in the Green Belt⁴¹³; patently, the decision to exclude these sites had the effect of removing potentially very meritorious sites without any detailed scrutiny at all. Further information⁴¹⁴ has again been provided on these areas, detailing some of the topography. Again, the points that are made seem to be an exercise in providing detail without giving any indication of how that establishes unacceptability: there is no reference to any of the topographical descriptions producing an unfeasible connection to a rail line. Moreover, it is now suggested that a further matter of relevance to one of the areas is that it is *proposed* Green Belt, which is, to say the least, an odd ground for restricting the search, given Radlett's location.

8.193 Part of the problem with the analysis is that it is not possible to identify what CGMS used as a definition for a "site" in their analysis. Again, this was a point which

⁴⁰⁷ HS/1.5

⁴⁰⁸ Para. 31.

⁴⁰⁹ Paragraph 5.2.3, Technical Report 6, 9/CD/2.8.

⁴¹⁰ See paragraphs 2.2.1. – 2.2.3 of Technical Report 6, 9/CD/2.8.

⁴¹¹ Para. 16.30 and fn2, pg 186, Inspector's Report, 9/CD/8.2.

⁴¹² Appendix 4 of 9/HS/1.5.

⁴¹³ 9/LPA/6.10.

⁴¹⁴ See RT response to LPA/6.13

had been raised by SDG in its August 2009 report. Mr Tilley's reply to these points⁴¹⁵ did not actually describe what definition the appellant was using to identify a site. It was only in XX that Mr Tilly indicated in detail some of the criteria, including the need for the site to be "as flat as possible", "the right shape" and that the sites, from the map search which were actually taken forward were "representational" of a particular area of which there were 1000's of sites⁴¹⁶. This "representational" aspect was a site search criterion that had not been referred to before. There had, quite plainly, been an earlier, unrecorded site sifting process which had led to the removal of numerous other sites.

8.194 These aspects are critical. Even if a considerable number of the sites which the Council was concerned about in the context of the Long List analysis have now been resolved, these points remain outstanding.

8.195 The overly restricted approach can be seen in CGMS' approach to the M3 sites. SDG had pointed out to CGMS, in its critique, that an area of land between the M3 and M4 had not been considered by CGMS as part of its site search. CGMS accepted the point⁴¹⁷ and undertook a search. 3 sites were found to the south of Wokingham but these were rejected on the basis that a road connection would have to go through Wokingham⁴¹⁸. It was clear, however, that this was incorrect as it was possible to connect to the south-east of Wokingham onto the A329 and then to the A322 (which, as Mr Tilley later acknowledged, was an effective bypass to Bracknell) onto the M4 at a distance of some 27 kms to the M25.

8.196 The later response of Mr Tilley as to why these sites should remain removed⁴¹⁹ was on the basis of road issues again (which assessment did not apply, as Mr Tilley acknowledged, to the eastern most site) and the fact that the area had been included in a draft allocation to the Wokingham Core Strategy for housing. The allocation was stated to have been endorsed by an Inspector. However, inclusion in a draft allocation was not one of his criteria. In any event, this aspect was not known about at the time of the alternatives analysis. This negative approach might well be justified were it not the fact that none of these sites is in the Green Belt.

8.197 A further attempt was made to undermine these sites⁴²⁰ by referring to the lack of road access⁴²¹, but the key point is that, on the southern route referred to by Mr Tilley, it remains a high standard strategic route, well trafficked by HGVs.

(iii) The Long List Sifting

8.198 The next stage of the process, having obtained the initial list of 118 sites was to apply a series of criteria, including a rail criterion. Before dealing with these various issues, it will be said that a large number of those questionably removed sites have now been resolved so that SDG's points are academic.

⁴¹⁵ 9/HS/1.5.

⁴¹⁶ RT, XX, MR.

⁴¹⁷ Para. 25, 9/HS1.5.

⁴¹⁸ See 9/HS1.5, Appx 3.

⁴¹⁹ See 9/HS1.9, last 2 pages.

⁴²⁰ CGMS response to LPA/6.13.

⁴²¹ Para. 4.

8.199 First, the point, if made, is inaccurate. There are still numerous sites that should have been considered at the short list stage⁴²²; Mr Tilley's most recent note has not resolved the position⁴²³. Second, the point is that each of the sites whose issues have been resolved have only been resolved by additional work being undertaken by Helioslough. The initial analysis was inadequate and it is not for the Council to make good defects in the appellant's own alternatives case particularly where the point has been raised by the Council at an earlier stage. The Council provided the critique to inform the debate, but it is not incumbent on the Council to fill the gaps in the appellant's case. It is wrong as a matter of principle to place a responsibility on the Council to do so.

8.200 In any event, it should be noted that, of all of the points raised in the critique by SDG as to sites which should stay in, none of them were accepted by CGMS, not one; its approach has not actually been to engage with the points raised by SDG but to reject them.

8.201 The appellant's long list sifting analysis is then considered. The points dealt with below derive from the critique undertaking by SDG.

8.202 With regard to the rail criterion in the Technical Report⁴²⁴, the appellant's only description of those aspects that would lead to a removal are phrases like "major engineering works" or when rail links will be in a "significant cutting" or if the rail line is "heavily used". Such phrases are wholly unclear; they do not amount, at all, to applicable criteria which would ensure that a particular site is excluded on clear and identifiable bases. These points did make a difference, in spite of what Mr Tilley indicated⁴²⁵, given that Denham was rejected, in part, on this basis. It was suggested that the alternatives site analysis by SDG used similar wording, but the point was that there was a clear scoring system applied to that, not simply criteria based on words alone.

8.203 A further, inherent failing in the assessment was the choice of criteria at the short list stage which had the effect of removing sites without any consideration being given of the degree to which they had rail benefits greater than, or landscaping impacts and other impacts lesser than, Radlett.

8.204 For example, there was no consideration of landscaping or other harm at all during the long list stage in respect of any of the sites; nor was this considered in the initial identification stage which produced the first list.

8.205 In short, the effect of the assessment was to remove 113 sites without looking at any of the harm issues, in spite of the fact that this was one of the primary issues being considered by Inspector Phillipson as necessary to establish that Radlett was a better site than others. The point is that, had these been identified, a more proactive approach towards road or rail issues would have been taken because of the clear benefits in landscape/visual/harm terms a site may have had.

⁴²² See 9/LPA/6.3

⁴²³ 9/HS/1.9.

⁴²⁴ See para. 7.14, Technical Report 6, 9/CD/2.8.

⁴²⁵ RX, RT.

8.206 Similarly, rail gauge was removed as a criterion in total (although it was kept in at Howbury⁴²⁶). Of course, had it been used as a sifting criterion in the same way as it was used in Howbury (which applied W8 as the cut off), Radlett would have failed. Again, the quality of the rail connection was a matter which Inspector Phillipson considered was a necessary consideration as part of the assessment. The additional importance of this approach is that the benefits of better gauge are wholly ignored at this stage; they do not allow a site to be weighed up against Radlett.

8.207 An example of a site which should properly have got through the long list was Langley, site 6⁴²⁷. Site 6 was excluded on the road access criterion at the long list stage; the road access criterion allowed new road building, but only if it did not then go through residential areas⁴²⁸. A new road was feasible but ended up accessing the A4 which had a small section of residential area. However, what was not considered was that this access was also the access used in the LIFE scheme in respect of which no overriding issue was raised by the appeal Inspector, Mr Self (see para. 13.364⁴²⁹); it is also the access being proposed in SIFE which, of course, went through to the short list stage.

8.208 The result of that approach, which was plainly wrong and unnecessarily restrictive, is that a site which had the potential to get through to the short list stage and thus have landscape and other impacts considered as part of the balancing process was unnecessarily rejected. It was suggested that the "better site" had got through⁴³⁰, but there had been no analysis of whether it was "better" in terms of other impacts, like landscaping.

8.209 Availability was another criterion which led to unfair removals. The approach in Technical Report 6 was to remove those sites which were regarded as being unavailable; one such site was White Waltham (site 14). This was regarded as being unavailable because it was in use as an aerodrome; it was then removed on the "duplicate" basis. That is surprising to say the least. However, as Mr Tilley acknowledged, should a site do well in the alternatives analysis of the appellant, it had a much greater likelihood of becoming available. It is also to be noted that other aerodrome sites, like Denham (site 30)⁴³¹ was not removed for being unavailable.

(iv) The Mid Point Rejection

8.210 Following the long list rejection, the appellant undertook a further stage of rejection⁴³². Again, at this stage of the process at the application stage, there was no assessment of the degree of landscape and visual impact or noise impacts predicted by the use of the site as an SRFI so any comparative benefit of such sites was not considered.

8.211 There was no standard approach to this sifting stage. Some sites were rejected on the basis of being compared with other nearby sites and the best site was allowed to go through. This was the case for sites 15 – 18. Sites 16, 17 and 18

⁴²⁶ See 9/CD/6.2, para. 3.9.

⁴²⁷ See Appendix 6, Technical Report 6, 9/CD/2.8 and see RT, XX, MR.

⁴²⁸ See para. 7.18 – 7.21, Technical Report 6, 9/CD/2.8.

⁴²⁹ 9/HS1.6.

⁴³⁰ RT, RX.

⁴³¹ See Appendix 6, Site 30, Technical Report 6, 9/CD/2.8.

⁴³² Para. 7.32, Technical Report 6, 9/CD/2.8.

were removed from the short list because site 15 was better on road grounds. There was, at this stage, no other basis for the rejection. In short, no consideration was given at this stage as to how the other sites would fare against Radlett in relation to any other aspects of relevance.

8.212 Notably, it is only in Mr Tilley's further response ⁴³³ (despite the point first having been raised by SDG in August 2009) that these other sites were then tested against other matters, including Green Belt and landscape impacts. There was, as Mr Tilley acknowledged, however, no assessment of comparative landscape impacts in any detail and certainly nothing from Mr Kelly on this; in spite of the further notes that have been produced by Mr Kelly, there has been nothing more.

8.213 Further, what is noticeable is that the appellant's approach of simply comparing and contrasting these sites, in order to remove some of them from the list of assessment, prevented consideration of these sites being looked at in combination. Sites 15, 16 and 17 (as well as White Waltham) are all contiguous, lying in part on either side of the railway line (just like Areas 1 and 2 of Radlett), but they were not considered in that fashion. The result is that a combined site with greater potential benefits was not taken forward.

8.214 The Council submitted a note in order that ⁴³⁴ it could not be said that by not answering Mr Tilley's further response ⁴³⁵ it had acceded to his points on the duplicate sites points, which was the suggestion that was being made by the appellant during RX of Mr Tilley. The further response produced by Mr Tilley states that one of these sites is an irregular shape ⁴³⁶ and suggests that new points have been taken by Mr Wilson about some sites, which were not ⁴³⁷.

8.215 A different approach was taken towards Denham Aerodrome (site 30) in the sifting process; it did not ⁴³⁸ fail any of the criteria, but in spite of this, it was removed because of a combination of ½ failings. Not only is there no basis for ½ failings, but the result of removing the site has been to prevent it from being considered on a comparative basis on those matters which were not considered but which were critical for Inspector Phillipson, like landscape and visual impact; that is, the benefits that might derive from development of this site, as against any other.

8.216 Now, however, a further point is taken in respect of Denham, that of rail connection ⁴³⁹; again, there has been no detailed assessment of the degree to which the issue is capable of being overcome on engineering terms; this, again, is a cost issue and floated at the last possible stage.

8.217 Yet another approach was taken towards Tring (site 50) ⁴⁴⁰. This is a site in the AONB and was rejected entirely on the basis of that allocation, in spite of the fact that there is an allowance for nationally significant projects (which, Mr Tilley

⁴³³ 9/HS1.9, paras. 8 – 13.

⁴³⁴ LPA/6.13.

⁴³⁵ HS/1.9.

⁴³⁶ Para. 8

⁴³⁷ Paragraph 9 suggests that LPA/6.13 raised concerns about Site 50 for the first time – that is wrong as the SDG notes show.

⁴³⁸ See Table 3, Technical Report 6, 9/CD/2.8, page 32.

⁴³⁹ See 9/HS1.9.

⁴⁴⁰ Appx 6, Technical Report 6, 9/CD/2.8.

accepted, it was his case SRFI were) to be granted permission. Again, however, no consideration was given as to whether the development was capable of being more adequately accommodated than at Radlett in landscape, visual impact and other terms; it was rejected as a matter of principle. It should be remembered that the site did pass⁴⁴¹ each of the long list elements. The point was not, therefore, "academic" but had the potential to be taken forward for further consideration⁴⁴².

8.218 The effect of undertaking the midway sifting was to remove a number of sites from the potential shortlist. None could go forward to have their merits considered.

(v) The Short List Stage

8.219 The short list stage was made up of two essential aspects: operational/market considerations and sustainability considerations.

8.220 No real faith can be placed on the short list assessment. It was quite plainly subjective in respect of the market/operational considerations that were taken into account; there were no criteria for this issue that were capable of being understood and scrutinised.

8.221 There was, in contrast, a series of criteria which were applied to the sustainability analysis. Yet, even here, there was no ability to scrutinise the weight that CGMS had placed on a particular issue in order to reach a conclusion as to whether it was a reasonable assessment.

8.222 Mr Tilley's point on the purpose of this form of analysis was that it allowed a decision-maker to reach their own decision as to which was the best site. As an initial point, the assessment was not in neutral terms, allowing a decision-maker to pick and choose: a clear view as to why Radlett was better was made at each stage of the analysis. Second, if the purpose was to allow the decision-maker to choose the best site for him or herself, it is necessary for the assessment to be sufficiently clear in order to allow the decision to be made. Given the lack of clarity as to what weighting was being placed on any particular issue, the decision-maker simply could not, even were that to be the approach, reach his/her own decision. For example, it was said that "substantial weight" was given to the proximity of the site to London⁴⁴³. If it was decided that substantial weight should not be given to this issue, what then is the decision-maker to do?

8.223 No, the reality is that this was an alternatives analysis which aimed to reach a conclusion as to which site was the best, it was not simply a description of each of the sites allowing the decision-maker to make up their minds. As an example of the opacity of the assessment, Mr Tilley pointed out that no weight was given to gauge issues in the assessment – that was not apparent from anything in the documents provided by CGMS and only became so in XX.

8.224 The approach taken in the shortlist analysis is considered.

⁴⁴¹ Acknowledged by RT, RX.

⁴⁴² As was suggested in RX.

⁴⁴³ Para. 8.11, Technical Report 6, 9/CD/2.8.

8.225 First, given the fact that no scoring has been undertaken and no clear weighting placed on a particular issue, it is not possible to undertake any sensitivity testing to the analysis.

8.226 Second, there was no basis for placing “substantial weight” on the distance of a site from London. Of course, the Council’s case is that, given the likely occupation of the premises by regional distributors, the proximity to London is of little significance. However, even on the basis of the Appellant’s own case, which was limited to the north-west sector, to place such weight on proximity to London would necessarily undermine those which had passed the initial criteria for distance from the M25. There is also no logic to placing such weight on distance to London when Inspector Phillipson placed greatest weight on matters like Green Belt, landscape and other impacts; so long as a site was capable of being an SRFI (rather than being the best SRFI), the greatest weight should then have been placed on landscape and visual impacts rather than proximity to London; that was Inspector Phillipson’s point and placing what appears to be the primary weight on distance to London negated its significance. The consequence has been to favour Radlett when other sites were more favourable from the point of view of impacts⁴⁴⁴.

8.227 Third, no weight was placed on the rail criterion. It was said that this issue was treated as neutral because Radlett was regarded as being adequate by Inspector Phillipson. The general approach of putting rail in a neutral position is wholly unjustified – it is a critical factor as the SRA criteria makes plain. Mr Gallop⁴⁴⁵ accepted that a W8 gauge is better and more efficient in rail carriage terms than W7. However, Mr Gallop also accepted⁴⁴⁶, that in the alternative sites study, sites were compared in their existing rail state and not in an upgraded state. He also acknowledged that Radlett was only regarded by Inspector Phillipson as being acceptable in rail terms as a result, in part, of gauge enhancement; the premise of the acceptability of the Radlett proposals in rail terms was predicated on the upgrading. In consequence, the approach of treating rail as neutral unfairly and unjustifiably assisted Radlett in the alternatives assessment.

8.228 It was suggested⁴⁴⁷ that Inspector Phillipson thought that the proposal was acceptable up to 175,000m² without gauge enhancement; that is so, but the important point is that Radlett was being considered as a whole in terms of its floorspace when assessed at the alternatives stage, not in part; treating Radlett as a whole development as acceptable in rail terms in the alternatives assessment when it was not acceptable in such terms was quite obviously wrong and favoured Radlett against other better sites in this regard, like Colnbrook.

8.229 In order to bypass the obvious failing of the alternatives assessment, it was argued that Radlett was actually primarily W8 so as to display its comparability to Colnbrook; this was done, first, by reference to the route plan which Mr Gallop, in his own evidence⁴⁴⁸, considered to be wrong and then by Mr Smith who, by reference to the Sectional Appendix⁴⁴⁹, indicated that large parts of the MML were gauged at W7.

⁴⁴⁴ See for example, Upper Sundon, which was found to have, overall lower landscape and visual impacts in Appendix 8 of TR6, last page.

⁴⁴⁵ NG, XX.

⁴⁴⁶ XX, NG, MR

⁴⁴⁷ NG, RX

⁴⁴⁸ NG Proof, pg 32, fn 4.

⁴⁴⁹ At writing, unnumbered.

Both of these witnesses acknowledged⁴⁵⁰, however, that the Interfleet report before Inspector Phillipson was the only evidence of a detailed analysis of gauge and Mr Gallop acknowledged it showed 28 x W8 Substandard structures and 1025 x foul clearances at W8 and neither knew of anything more recent. In addition, and in any event, Mr Gallop accepted that in order to get onto the MML from the south, there had to be gauge clearance works undertaken.

8.230 The patent failing of this approach towards rail was that it failed to recognise the additional benefits which could be provided by other sites in rail terms.

8.231 Fourth, the approach that was taken towards ownership issues plainly favoured Radlett unjustifiably. The description of the other 4 sites was largely in negative terms. In Colnbrook, it was pointed out that the developer did not “appear to control” all of the required interests⁴⁵¹; in Harlington there were potential difficulties in land assembly⁴⁵². Of Littlewick Green there was no evidence of it being “promoted”⁴⁵³. In respect of Radlett, however, at the previous inquiry, it was said that the County Council had not “indicated an unwillingness”. The difference of emphasis is perfectly plain.

8.232 Fifth, the approach of the shortlist assessment systemically favoured Radlett. The approach was to consider each of the sites against Radlett, with Radlett offering the benefits that are currently offered⁴⁵⁴. Patently, given that Radlett is a mature proposal it is likely to bring forward benefits which other sites which have not yet been fully developed can offer. A site like Littlewick Green cannot compete with Radlett in these circumstances (even when considered in isolation, rather than with sites 16 and 17) even though, with further development, it could. This meant that the most that was said about Littlewick Green in the assessment is that it had the potential to provide “some benefit”⁴⁵⁵.

8.233 Sixth, the scale of development used as the basis of comparison favoured Radlett, particularly in the context of Colnbrook. The current Colnbrook development comprises a development of a considerably lesser scale than Radlett; this would lead to a reduced impact in relation to a number of different matters like noise⁴⁵⁶ as against the scale of the development which was looked at on the Colnbrook site.

8.234 In spite of the fact that CGMS knew about this lesser scale of development, they considered that it was not appropriate to test Colnbrook by way of what was actually going to happen as against some theoretical scale of development which was not proposed. That is quite obviously a wrong approach.

8.235 It has meant that there has been no landscape and visual impact assessment of this lesser scale of development even though, when considered against biodiversity and noise it did have a reduced impact. Given that the scale of the

⁴⁵⁰ XX, NG and GS.

⁴⁵¹ Para. 8.21, Technical Report 6, 9/CD/2.8.

⁴⁵² Para. 8.137-8, *ibid*.

⁴⁵³ Para. 8.58, *ibid*.

⁴⁵⁴ See paragraph 8.84, Technical Report 6, 9/CD/2.8.

⁴⁵⁵ See paragraph 8.82, Technical Report 6, 9/CD/2.8.

⁴⁵⁶ See Appx 8, Technical Report 6, last page summary, footnotes.

development is considerably less (200,000 sqm as against 300,000 sqm) it will patently make a difference – the extent of that difference can be seen clearly⁴⁵⁷.

8.236 The problem goes further. The appellant has laid considerable stress in this case on the degree to which the Colnbrook site is covered by a strategic gap designation, but the degree of harm to that gap (on the assumption it adds anything to the overall considerations), will be affected by the degree of built development. The difference that would occur with the actual proposal at Colnbrook is of clear relevance as to how it would compare to Radlett. By ignoring the actual development at Colnbrook it has plainly disadvantaged that site. The approach of Radlett might have had some logic if the development proposed at Colnbrook could not amount to an SRFI, but there is no dispute that it would. It was suggested⁴⁵⁸ that the Secretary of State⁴⁵⁹ had not criticised the scale of Radlett (and nor had the inspector). That misses the point. The “need” is for an SRFI, not of the scale of the warehousing proposed at Radlett; the point would be relevant if SIFE was not to be an SRFI, but it plainly is. In that sense, there is no difference in the “need” (relied upon by the appellants) to be met in this case.

8.237 It was suggested that the proximity of Colnbrook to Heathrow is something that would hinder it in its use as an SRFI⁴⁶⁰; evidence was being given by Mr Tilley without any expert basis on this issue (since he relied upon King Sturge for his market evidence).

8.238 Further, the appellant has made mistakes in its assessment, which, had it consulted Goodmans, would have no doubt been corrected well in advance of this inquiry, instead of by a note in the 3rd week of the inquiry⁴⁶¹. The appellant now acknowledges that there is no difficulty with access to the Colnbrook line⁴⁶² in comparison to the issues they had in the original report. The appellant accepts that the footpath severance will be only 2000m, not 5050m as previously measured and now acknowledge that the rail gauge is W8 on the Colnbrook line. Even if the last issue (only on the basis of the appellant’s flawed approach) is disregarded, it is obviously incorrect to take the view that none of these issues is relevant, but it displays the largely negative approach taken to any criticisms that have been lodged by the Council or anyone else.

8.239 Much of the appellant’s time in XX on Colnbrook was spent in seeking to establish the significance of the Strategic gap⁴⁶³. Mr Hargreaves was right in his approach towards this issue. His view⁴⁶⁴ was that the strategic gap policy did nothing to enhance the protection of the Green Belt in the vicinity of Colnbrook. This approach is supported by the fact that the assessment of harm to the gap was considered in the LIFE decision⁴⁶⁵ in relation to the substantive effect on the gap, as opposed to its designation. Reference was made to part of the report⁴⁶⁶ but this

⁴⁵⁷ HS1.8, last page, aerial photograph.

⁴⁵⁸ RX RT

⁴⁵⁹ Para. 42; and Inspector’s Report, 9/CD/8.2, 16.148.

⁴⁶⁰ RT I’s Os.

⁴⁶¹ 9/HS/1.8.

⁴⁶² Para. 25 of 9/HS/1.8 and para. 8.17 of Technical Report 6, 9/CD/2.8.

⁴⁶³ See, for example, MK XX of JH and JB.

⁴⁶⁴ EC, JH.

⁴⁶⁵ See para. 13.129 and the summary, 9/HS/1.6.

⁴⁶⁶ 13.367-8.

referred to the on-going pressure for housing as a result of the Radlett development, not the proposals themselves. In any event, as Mr Tilley accepted, the question, substantively, of the gap, is the degree to which there will be an effect on openness in this area and on this point, Mr Kelly's view was that⁴⁶⁷ in respect of "openness" both Colnbrook and Radlett would be affected to the same extent.

8.240 In any event, the gap policy contained in the Core Strategy⁴⁶⁸ is not up to date. The South East Plan requires a reconsideration of the gap policy⁴⁶⁹ which post-dated the core strategy and is very different from the former CC10b which does not specify any reconsideration; that was made clear by Mr Hargreaves⁴⁷⁰. The fact that PPS7 predated the draft core strategy does not affect this point – there is still a requirement for reconsideration.

8.241 Additionally, the appellant has referred to the Colne Valley Park. There is an air of unreality about this point. The simple fact is that the same sort of designation – the Watling Chase Community Forest – which is protected in a similar way under the East of England Plan⁴⁷¹ lies over Radlett. As Mr Hargreaves pointed out⁴⁷², it was possible to identify the same aims in the Colne Valley and Watling Chase plans. Reliance was placed⁴⁷³ on the LIFE decision⁴⁷⁴ and the degree to which there would be a conflict from inappropriate development; that is exactly the position with regard to the Watling Chase Community Forest – the Inspector considered that, while the country park would be in accord with its aims, it would not on Areas 1 and 2 and, in relation to the landscape would be ultimately harmful⁴⁷⁵.

(vi) Summary

8.242 The result, ultimately, is that very little weight can be placed on the alternatives assessment. It simply has not been shown with any degree of persuasiveness, that there is no better site than Radlett. Again, it is important to be clear that the evidential burden is upon the appellant and, in order to show very special circumstances, must establish that there is no better site than Radlett. To place weight on the alternatives assessment, it should have been shown to be clearly the best site in terms of the impacts it would cause; it has not done that.

(vii) The SDG Assessment

8.243 Further, the SDG Assessment found that 2 of the sites, Littlewick Green and Colnbrook, were better sites than Radlett. Before dealing with the analysis in more detail, it is important to note the purpose of the assessment. As Mr Hargreaves stated (and indeed as Mr Wilson pointed out⁴⁷⁶), the purpose was not to look at each of the sites identified by CGMS. It was to look at only those sites which were publicly

⁴⁶⁷ See the summaries for Colnbrook and Life in Appendix 8 of Technical Report 6, 9/CD/2.8.

⁴⁶⁸ See Kelly Rebuttal, Appx 4, HS/5.3.

⁴⁶⁹ See page 242, SE Plan, 9/CD/4.2.

⁴⁷⁰ See RX, JH.

⁴⁷¹ Policies ENV1 and 2, CD/4.1.

⁴⁷² EC.

⁴⁷³ RX RT

⁴⁷⁴ Para. 13.122

⁴⁷⁵ Inspector's Report, 9/CD/8.2, para. 16.177.

⁴⁷⁶ XX, BW and JH.

identified as potential SRFI sites; that is unsurprising given the time constraints that the Council was under to prepare for the inquiry.

8.244 It was suggested that the Council had not stated in its Statement of Case that it was undertaking an alternatives analysis. That is a patently bad point. The Council did identify that it considered that other better alternatives existed. There was no requirement to say that it was going to provide evidence, as it did, to demonstrate that; the fact that it had used a particular method was not an important part of that process. Had it said that it was undertaking a scored alternatives analysis, it would obviously⁴⁷⁷ not have disclosed that until it was finalised since it had to be sure that the results were robust. What was important to point out was that the Council believed that other, better alternatives existed and that it would be demonstrating that, which is what it did state. In any event, the point is without substance since the alternatives that were being analysed were only those, in the North West sector, that the Appellant had assessed and the remainder were outside the North West sector which the Appellant considers to be irrelevant to its case.

8.245 The SDG analysis used a scoring methodology; this had the clear advantage of being capable of scrutiny – it allowed someone to understand clearly what the Council's approach was to each site. Mr Tilley's primary criticism with the SDG approach was that it used a scoring system.

8.246 That is quite obviously an unfair criticism. First, the Inspector did not complain, at all⁴⁷⁸, about the use of a scoring system (and neither did either the Councils⁴⁷⁹ or STRIFE); the point was the means by which such scoring was undertaken that rendered the previous alternatives assessment inadequate. Similarly, the employment land review guidance relied upon by Mr Tilley⁴⁸⁰ does not reject scoring but points out that a scoring system is capable of being used⁴⁸¹.

8.247 Other points were taken on the value of the report. It was pointed out that, in respect of Radlett, the landscape and visual assessment was based on Mr Billingsley's assessment, even where it diverged from Inspector Phillipson's analysis (which was not significant as his proof demonstrates) and that the assessment of Colnbrook ignored the conclusions identified in LIFE. It is notable, first, that it was not shown, nor attempted to be established, that any changes as a result of that, would make a significant difference. In any event, the alternatives analysis was rightly considering the matter on the basis of the judgments reached by those involved in the assessment. Their judgments were readily observable, understandable and accessible. To that extent, they differ markedly from the CGMS report.

8.248 It was suggested that Mr Billingsley's assessment of landscape impacts in respect of each of the sites was flawed for not taking into account landscape policy issues (like local designations at Radlett) in spite of what the LCA Topic Paper 6 indicated, namely that it should be included⁴⁸². That, however, was a criticism which

⁴⁷⁷ See JH, ReX.

⁴⁷⁸ See paragraph 16.133-134, Inspector's Report, 9/CD/8.2.

⁴⁷⁹ That is, Hertfordshire County, Hertsmere and St Albans Councils.

⁴⁸⁰ See RT Rebuttal, Appx 3.

⁴⁸¹ RT Rebuttal, Appx 3, para. 3.41.

⁴⁸² XX, JB, 9/HS/5.2.

went nowhere because Mr Hargreaves, as part of his policy analysis for the sites, did take that into account⁴⁸³. It was also suggested that Mr Billingsley was wrong to use the LCA Topic Paper 6⁴⁸⁴ as against the GLVIA, given that it was not as evolved as the GLVIA. However, the Topic Paper actually post-dated the GLVIA (and specifically referred to it). The topic paper approach adopted by Mr Billingsley had the merit⁴⁸⁵ of being able to gauge sensitivity in a contextual sense rather than requiring consideration of a specific form of development.

8.249 It was contended that the SDG assessment was flawed because it scored equally, for example, between impacts on the Green Belt and impacts on local footpaths. That may have been right, but the effect of that approach was to enhance the scoring of Radlett against other non-Green Belt alternatives. It is difficult, in those circumstances, to understand how the criticism actually amounts to anything.

8.250 It was suggested⁴⁸⁶ that the analysis had failed to take into account the importance of SRFI being sited close to good road connections. That was a wholly unpersuasive point; first, because the analysis had laid down a considerable weighting for road connections and, second, a sensitivity test had been undertaken which had placed road as one of the most important criteria⁴⁸⁷.

8.251 The Study was criticised on the basis that the weighting to market was give 2% of the total scores⁴⁸⁸. That is entirely logical given that the sites were within the London and South East area and would thus be located within the distribution areas that distributors would serve as Mr Wilson explained⁴⁸⁹.

8.252 It was contended that the road criterion was defective because it failed to consider the quality of the route by which the roads were accessed⁴⁹⁰. First, Mr Wilson explained why it was that the quality of roads (that is, A roads) was a proxy for a reasonable route. Second, and importantly, no particular site was identified which, it was said, this criterion made a difference to its overall categorisation.

8.253 The result is that, on a clear and understandable basis, two sites within the north-west sector, come out better than Radlett. This conclusion acts to confirm that the Appellant's alternatives study, when properly assessed, is inadequate and cannot be relied upon.

(C) Country Park and Bypass

(i) Securing the Benefits Relied Upon (including other Rail funds and other mitigation matters)

8.254 The Secretary of State was clear that very little weight should be placed on the section 106 undertaking because it did not include all parties who owned the

⁴⁸³ JH, XX, MK

⁴⁸⁴ 9/HS/5.2

⁴⁸⁵ EC, JB

⁴⁸⁶ BW XX MK

⁴⁸⁷ See Appx J, BW Apps.

⁴⁸⁸ BW XX MK

⁴⁸⁹ Ibid.

⁴⁹⁰ XX, BW

sites and because a condition to enter into the section 106 was used as the mechanism for overcoming the issue.

8.255 The appellant now uses three alternative mechanisms to seek to overcome this defect⁴⁹¹. The first method is that which was used at the last inquiry and is now put forward again. This should have as little weight as when it was before the Secretary of State in 2008. The second option prevents the development of site 1 until site 2 is developed (and the unilateral undertaking prevents the development of site 2 until a unilateral undertaking is entered into).

8.256 Following the decision in *Merritt*, Circular 11/95, paras. 38-40, have been amended by the Secretary of State so that it now states: "when there are no prospects at all of the action in question being performed within the time-limit imposed by the permission negative conditions should not be imposed"⁴⁹². This is set in general terms and does not deal with specific contexts, particularly where the conditions purport to provide benefits of relevance to the very special circumstances case. In circumstances where the burden is specifically placed on the appellant to prove its case, as is the case here where the appellant has to establish very special circumstances, the burden should be on the appellant to show that there are prospects of the condition being satisfied before the time limit has expired.

8.257 The third alternative appears simply to defer the issue of the payment of money, to a later stage in many respects, and, to that extent will impermissibly require the payment of money under a condition; it is both unlawful and contrary to the Secretary of State's guidance⁴⁹³.

8.258 As a result, the matters offered up in the section 106 agreement or by way of the condition should be given very little weight.

(ii) The Significance of the Country Park and the Bypass

8.259 If weight is to be given to the provisions of the section 106, the Council recognises the merit of the Country Park and the Bypass, but the degree of benefit should not be overestimated. As Mr Billingsley has pointed out⁴⁹⁴ the proposals for areas 3 – 8 are more in the nature of upgrades to existing areas of open space and agricultural land than new benefits. In particular, area 6 has restoration proposals which would deliver access and landscape enhancements; there is a reasonable amount of public access across a number of the sites, particular areas 3, 4 and 8 and area 5; and other areas which do not have existing access (area 7) would still not have such access⁴⁹⁵.

8.260 In that regard, Inspector Phillipson acknowledged that the "areas of land that would make up the country park are not contiguous and there would be only limited visitor facilities and parking"⁴⁹⁶ and that some of new footpaths and bridleways would duplicate existing paths nearby⁴⁹⁷; he reached a similar conclusion in respect of the

⁴⁹¹ See draft condition 33.

⁴⁹² HS/INQ/4.

⁴⁹³ Circular 11/95, Annex, para. 83.

⁴⁹⁴ Para. 5.8, JB Proof.

⁴⁹⁵ See para. 5.2, JB Proof.

⁴⁹⁶ Inspector's Report, 9/CD/8.2, para. 16.146.

⁴⁹⁷ Para. 16.146, Inspector's Report, 9/CD/8.2.

ecological value of these sites which have ecological value and which are currently designated for their wildlife value⁴⁹⁸. Ultimately, while there was a benefit, he noted the restrictions.

8.261 The extent of the proposed benefits are, consequently, limited.

Conditions and the Section 106

8.262 The contamination condition⁴⁹⁹ amendments are not agreed; they should be incorporated because the condition needs to make plain that the decontamination scheme will deal with the potential pollution that is arising from the landfill area in order to accord with the Secretary of State's concerns that the condition should ensure that the development if permitted ensures that the land it covers is no longer capable of ascription as contaminated land.

8.263 The requirement for sustainable construction conditions was dealt with in the second conditions session. Mr Hargreaves has indicated in his proof the enhanced sustainability agenda⁵⁰⁰ that now exists; this will achieve that aim in part.

Assessment of the Reason for Refusal and the Green Belt Balance

8.264 The Council's reasons for refusal individually establish why it is that planning permission should be refused.

8.265 Looking, however, at the matter in the context of the Green Belt test, there will be very considerable harm caused to the Green Belt by this development, by which it will undermine a large number of the purposes of including land in the Green Belt. There will be significant landscape and visual impacts caused from a range of locations which will be incapable of being mitigated. There will be significant adverse effects on local residents because of the intermittent nature of noise arising from operations on the site and the potential for very significant L_{Amax} events. There will be harm to the sustainability agenda given that the development will not operate as an SRFI and the development will be premature against a regional wide assessment and a forthcoming national policy statement. There will be harm to significant ecological interests which will not be adequately mitigated.

8.266 It is against the harm by reason of inappropriateness and the other harm that the very special circumstances case relied upon by the Appellant must be judged. Radlett will not become an SRFI. The alternatives analysis is defective because it has failed to search outside the northwest sector and because of its inherent and ingrained flaws. The country park and the bypass are beneficial but are to be provided or controlled, in part, through a defective section 106 agreement. These circumstances cannot, in short, overcome the massive harm that will be caused.

8.267 In such circumstances, it is respectfully requested that the appeal be dismissed.

⁴⁹⁸ Para. 16.147, Inspector's Report, 9/CD/8.2.

⁴⁹⁹ Proposed condition 24.

⁵⁰⁰ See Part 1 of my Closing under Sustainability.

9. The Case for STRIFE

9.1 Opening submissions⁵⁰¹ on behalf of STRIFE stated that to permit Radlett now would raise a spectre which all should fear – a massive warehouse development in the Green Belt, permitted on the false prospectus that it can meet a need for the interchange of freight between rail and road, only for it to operate as a predominantly road to road depot, something for which no very special circumstances could be prayed in aid. The evidence at the inquiry has not altered those remarks.

9.2 Under the spotlight of scrutiny, the appeal proposal has been exposed for the “Trojan Horse” development local residents always feared: a Strategic Rail Freight Interchange for which not only can no guarantee be given that a single train will ever be permitted access, but one which, on the balance of probabilities⁵⁰², could never be so used. It is in order to prevent that outcome, and the wholesale undermining of Green Belt policy which it would entail, that STRIFE seeks a halt to this spurious rail-related proposal.

The Proper Approach

9.3 The approach to take to this repeat application is now agreed, all of it set out in opening submissions⁵⁰³ and all of it conceded by Mr Tilley in answers to cross examination. It is, however, not an approach which is merely within the Inspector’s discretion, it is an approach that is compelled by law.

9.4 STRIFE not only acknowledges but positively asserts that the Secretary of State’s decision letter⁵⁰⁴ following the previous Inquiry (and the Inspector’s Report⁵⁰⁵ with which the Secretary of State largely agreed) are plainly material considerations in the determination of this appeal: they are “the starting point” for consideration of the appeal proposals. However, they are just the starting point; not the end point. As Mr Tilley agreed, the Inspector retains full discretion to make recommendations on all of the issues to which this Inquiry gives rise, and on the balance of the evidence which is now available.

9.5 Moreover, the Inspector is not just *free* to agree or disagree with the views previously expressed; he is *obliged* in law to consider whether there is a good planning reason to agree or disagree with those prior views, and to do so upon the basis of the best and most up to date information available. That is decided law⁵⁰⁶, as more fully described in Appendix A to this closing, to which extracts from the relevant authorities have been attached.

⁵⁰¹ STRIFE 9/02

⁵⁰² The requisite standard of proof: see Tilley XX

⁵⁰³ STRIFE 9/02 §§10-12

⁵⁰⁴ 9/CD/8.1

⁵⁰⁵ 9/CD/8.2

⁵⁰⁶ See: *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591; *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P&CR 137 at 145; and *R. (Kings Cross Railway Lands Group) v. LB Camden* [2007] EWHC 1515 (Admin) at paras.18/19, 20 and 22.

9.6 As set out in the Appendix, where the Inspector is inclined to disagree with the view of the previous Inspector and/or Secretary of State, the requisite “good planning reason” can properly be sourced, of course, in an intervening material change of planning circumstances. But it can also be sourced elsewhere – in an argument put previously, but more compellingly put today; in evidence adduced which was not adduced before the last Inspector; or simply in a different view of the planning merits as a matter of judgment⁵⁰⁷. These propositions were all, rightly, accepted by Mr Tilley in cross examination.

9.7 So it is that, just as Mr Kingston QC will seek to persuade, on new arguments and new evidence, that the Secretary of State can now decide differently the issue as to whether an alternative site is able to meet such need as survives for SRFIs to serve the region of London and the South East, so STRIFE is entitled to seek to persuade, on new arguments and new evidence: that such need no longer exists; that this proposed development could not meet that need even if it does still exist; that even if this proposed development might meet such need, other sites can meet it better and from both within and without the “North West Sector”.

9.8 In short, and as stated in opening, the last decision letter is not a mantra that can simply be chanted as an answer to any of the planning arguments before this inquiry. However, and despite his agreement to the above approach in cross examination, Mr Tilley chanted that mantra continuously⁵⁰⁸, and was joined in that chorus by the written words of Mr Sharps⁵⁰⁹, all under the careful orchestration of Mr Kingston QC and Mr Forsdick. Time beyond number we either heard orally, or read in evidence, the recital – *“there have been no material changes in circumstances since the last Inquiry, thus...”*

9.9 If that would be an erroneous approach to take, it is also an erroneous approach for the appellant to have taken, and a dangerous one too - for not only is it an entreaty which, if followed, would lead into challengeable legal error, it is an approach which has acted as a self-denying evidential ordinance for the appellant itself.

The Proposed Development

9.10 The appellant’s cavalier approach to the consideration of their appeal proposal is only properly contextualised, however, when one appreciates the true extent of that which they are actually promoting. Mr Tilley commented in his evidence, without either complaint or demur, that the scale of the proposed development had been graphically illustrated in opening submissions by noting that the largest shed of the 5 proposed would be bigger than Terminal 5 at Heathrow, and the 4 other sheds

⁵⁰⁷ See: *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591; and *R. (Kings Cross Railway Lands Group) v. LB Camden* [2007] EWHC 1515 (Admin) at paras.18/19.

⁵⁰⁸ In cross examination he accepted that he had limited his planning exercise to only material changes in circumstances.

⁵⁰⁹ Regrettably, Mr Sharps was not available for cross examination. However, his approach is clear from paragraph 2.38 of his Rebuttal Proof (9/HS 6.3) in which he stated “These were all matters grappled with at the last inquiry. I have been advised that it is not appropriate to go over that ground when clear conclusions have been reached by the Inspector and adopted by the Secretary of State”. In cross examination by Mr Reed, Mr Tilley in no way distanced himself or the Appellant from that approach, merely indicating that he could not say whether Mr Sharps was relying on something said by Mr Tilley or by someone else in the Appellant’s team.

not very much smaller. Even that is not the limit of the proposal, however. Alongside those buildings, and the inappropriate Green Belt uses to which they would be put, would come all of the associated road and rail infrastructure works and movements, and the bunding necessary to shield local residents from just some of the impacts thereby occasioned.

9.11 The proposal entails even more, then, than the loss of a huge tract of Green Belt land to inappropriate development, but all manner of attendant and additional externalities and harms, including those generated by both on and off-site activities.

9.12 There would be noise and sleep disturbance caused by on-site operations and plant⁵¹⁰. There would be yet more noise and disturbance caused by road and rail movements, the former unconstrained throughout day or night (so as to add to the congestion chaos on local roads in the peak hours; the latter, on all of the available evidence, likely confined to the most noise-sensitive night hours)⁵¹¹.

9.13 There would be disruption and inconvenience to users of both rail and road: trains which are either delayed by freight movements (if any) or by the engineering works necessary to increase the loading gauge on the surrounding network in order potentially to accommodate them⁵¹²; drivers caught up in gridlocked roads, especially the A414 – already all but at capacity but nonetheless the sole proposed link between the site and the motorway network because the Highways Agency will not allow direct access to the M25⁵¹³.

9.14 And those externalities would include, of course, the impaired enjoyment of the Green Belt by local residents and visitors, ramblers and horse riders, not the least through the unavoidable damage done to the local landscape by 330,000 sq. m of built floorspace, 20 m high, and surrounded by earth bunds. The impact on the openness of that part of the Green Belt which currently separates St Albans from Radlett and London Colney from Park Street and Frogmore⁵¹⁴ would be massive.

The Green Belt

9.15 And yet that protective Green Belt designation, a designation which lies at the very heart of the proper consideration of this huge inappropriate development, is designed to prevent such harms from being occasioned. It is a protection intended not as a temporary bulwark against inappropriate development but – save in the most exceptional circumstances – a *permanent* prohibition; a protection which *must*, not may, be maintained as far as can be seen ahead⁵¹⁵.

9.16 The planning imperatives which flow inexorably from that protective designation are well known to this inquiry. They nonetheless bear repeating in closing, so fundamental are they to the decision at issue.

⁵¹⁰ The noise evidence will be reviewed below under Q4.

⁵¹¹ Tilley XX

⁵¹² Mr Clancy in chief

⁵¹³ Mr Hirst in chief

⁵¹⁴ Mr Wallace in chief

⁵¹⁵ PPG2 para 2.1

9.17 Where inappropriate development is proposed within the Green Belt, not only do the general policies aimed at controlling development in the countryside apply with full force, but an additional presumption is raised against that development so that it can never be permitted except in very special circumstances⁵¹⁶. The foundation of that presumption lies in the acknowledgement by Government that inappropriate development is, by definition, so harmful to the Green Belt that it attracts substantial weight⁵¹⁷.

9.18 As was correctly conceded by Mr Tilley under cross-examination, if that is the case with respect to any inappropriate development within the Green Belt, so much more must it be the case when the inappropriate development is on the scale here proposed. In Mr Tilley's words, the level of impact is commensurate with the scale of development; and this is an inappropriate Green Belt development on a truly gargantuan scale. It is, to the best of Mr Tilley's knowledge, the largest inappropriate Green Belt development ever proposed for the Metropolitan Green Belt in London and the Southeast; indeed he could only think of one larger proposal which has ever come forward in the entirety of the country. And this proposal is in a peculiarly sensitive location; it lies in an open gap which currently separates four settlements, and in the vicinity also of historic St Albans and its cathedral.

9.19 That being the case, this appeal proposal occasions planning harms which are similarly gargantuan. Given all of this, Mr Wallace's lay-words⁵¹⁸ describe the reality aptly – *very, very special circumstances* would need to be demonstrated for permission to be given.

9.20 It is not even contested but that this proposal offends against three of the first four purposes for which the Green Belt was established⁵¹⁹: Mr Tilley conceded that the development would amount to a sprawl of a built up area into open Green Belt land; that it would result in the encroachment of huge warehouses into the countryside; and that views of the Cathedral from the Thameslink line would be compromised, we say severely⁵²⁰.

9.21 STRIFE, however, suggests that the appeal proposals also offend against a fourth Green Belt objective⁵²¹: that they would harm both the functioning and the integrity of the gap in which the SRFI would be located – a gap which the Green Belt is designed to protect every bit as much as a Strategic Gap designation itself.

9.22 In support of that proposition, the rationale which lies behind the legal submissions already made should be noted: the importance of consistency in the decision-making process, so that a good planning reason is required to depart from previous decisions in respect of similar applications.

9.23 Given this, the Farnborough decision letter of the SoS exhibited at Mr Hargreaves' Appendix 26 assumes genuine importance so far as the issue of separation and coalescence is concerned.

⁵¹⁶ PPG2 para.3.2

⁵¹⁷ *Ibid.*

⁵¹⁸ In answer to Inspector's questioning on 1 December 2009

⁵¹⁹ *i.e.* those at PPG2, para.1.5.

⁵²⁰ Mr Wallace's oral evidence and sections 4(3)-(5) of his Proof of Evidence (STRiFE 9/01)

⁵²¹ PPG2 para.1.5

9.24 The context for the Farnborough decision letter is to be found in the Inspector's Report to the Secretary of State, the relevant extract of which STRIFE submitted to this Inquiry⁵²². The factual similarities to the instant appeal are obvious. In that case, also, the developers were seeking a significant logistics park development in a protected gap between settlements: a previously developed site within the Gap was proposed to be extended by about 2.2 hectares of additional built development.

9.25 Whilst the policy protection was there afforded by a bespoke Strategic Gap Policy rather than Green Belt, the Inspector noted at paragraph 435 of her Report that:

"The primary purpose of a Strategic Gap is to prevent the coalescence of settlements and to protect their separate identity. In fact it has a very similar purpose in this respect to a Green Belt."

9.26 The Inspector continued at paragraph 436 of her Report, and Mr Tilley agreed under cross-examination, that coalescence is a process that can occur gradually, and from development within the Gap as well as from expansion development at settlement edges.

9.27 The Inspector further went on to state at paragraph 439 of her Report as follows:

"It is not just the distances between the edges of the proposed development and the settlement boundary that are important. Indeed, as the Appellants demonstrate at its nearest points these would actually increase. Rather, it is the outward expansion of the developed site as a whole that is critical. Taking this into account, I consider that a net increase in built development of over 2 hectares around the edges of the site would result in a small but nevertheless significant diminution of the Strategic Gap. Physically it would reduce the amount of land available to form the separation function. Visually it would introduce built form onto that land thus reducing the openness in this part of the Gap. This would significantly reduce the effectiveness of the Gap in terms of its function as a tool for spatial separation, in my judgment."

9.28 The Secretary of State agreed with that judgment at paragraph 17 of his Decision Letter.

9.29 The implications are clear. If an expansion of built development on previously developed land within a Strategic Gap of just 2.2 hectares significantly reduces the effectiveness of that Gap in terms of its function as a tool of spatial separation, even though the distance between the development and surrounding settlements increases, then the new-build development of 330,000 sq.m. of B8 floorspace, in buildings 20 metres high, must have a correspondingly larger impact upon the functioning and integrity of the Green Belt planning tool which also provides for the spatial separation of affected settlements.

9.30 So it was that Mr Wallace, on behalf of STRIFE, expressed his bewilderment that this was not fully appreciated by the Inspector who last considered this proposed development at Radlett.

⁵²² STRIFE 9/01(a)

9.31 It is inconceivable that development of the scale here proposed, located as it is within a gap dividing St Albans to the north, London Colney to the east, Radlett to the south and Park Street and Frogmore to the west, does anything other than very significantly reduce the functioning and integrity of the gap which the Green Belt designation is designed to secure. The gap would be all but destroyed, both in real terms and as a matter of perception.

9.32 Rarely can there have been any proposed development which causes such significant Green Belt harm, with four of the purposes of the Green Belt offended against, and by the largest inappropriate development proposed, to the best of our knowledge, in this part of the country. And to all of that harm must be added the other harms attendant on this proposal⁵²³: noise so loud as to make complaints likely in a number of residential properties⁵²⁴, with the probability of sleep disturbance increased; and increased congestion on roads where road congestion is already acute⁵²⁵. It is only if the totality of that harm is not just outweighed, but *clearly* outweighed, by very special circumstances that the appellant will have demonstrated that this hugely damaging and inappropriate proposal might nonetheless be allowed to proceed⁵²⁶.

9.33 In STRIFE's submission that is a burden which the appellant has manifestly failed to discharge to the requisite evidential standard.

Very Special Circumstances

9.34 The only very special circumstance which the appellant prays in aid at this Inquiry is the same one which the appellant prayed unsuccessfully in aid at the last: the support within the Strategic Rail Freight Interchange Policy (March 2004)⁵²⁷ for three or four new SRFIs to serve London and the South East⁵²⁸. The appellant's argument failed on the last occasion and in STRIFE's submission it should even more emphatically fail again in the light not just of intervening changes of circumstance, but new information.

The Secretary of State's Decision Letter

9.35 In order to appreciate quite how far short of making the requisite case the appellant falls, it is vitally important to understand and interpret the last decision letter⁵²⁹ properly and, in particular, the pivotal passage at paragraph 58:

"The Secretary of State considers that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight and,

⁵²³ PPG 2, para 3.2

⁵²⁴ In relation to noise, see the careful critique of the previous Inspector's conclusions on noise by J&S Consulting Ltd (STRIFE 9/03). STRIFE also fully endorse the conclusions of Mr Stephenson for the Council on noise issues.

⁵²⁵ See in particular the evidence of the local Residents Associations (STRIFE 9/05 – 9/09) whose concerns, based as they are on longstanding and detailed knowledge of the local area, should be given substantial weight.

⁵²⁶ PPG 2, para.3.2.

⁵²⁷ 9/CD/5.1

⁵²⁸ At paras 6.9-10

⁵²⁹ 9/CD/8.1

had the appellant demonstrated that there were no other alternative sites for the proposal, this would almost certainly have led her to conclude that this consideration, together with the other benefits she has referred to above were capable of outweighing the harm to the Green Belt and the other harm which she has identified in this case."

9.36 In particular, so far as the first clause of the above passage is concerned, if there is still a need for SRFIs to serve London and the South East, noting that it is the *whole* of London and the South East which needs to be served and not any particular sector within that area, then that plainly is a material consideration to which very considerable weight should be given. However, and as Mr Tilley readily agreed, that assumption begs two preliminary question:

(1) Is there still a need to be met for SRFIs to serve London and the South East?

(2) If there is still a need, will the Radlett site properly operate as an SRFI to meet that need?

9.37 Moreover, the remaining part of the above passage from paragraph 58 of the Secretary of State's decision letter plainly begs three further preliminary questions, all of which were also agreed by Mr Tilley when he was cross examined:

(3) If there is a remaining need for SRFIs to serve London and the South East, has the appellant this time demonstrated that there are no other sites capable of meeting that need better (and we would add "especially in terms of their ability to function as an SRFI")?

(4) If there are alternative sites which could meet that need better, could they do so without occasioning the same extent of harm as occasioned at Radlett?

(5) If there are no such sites available, is the extent of the remaining need such that the harm to the Green Belt, and the other identified harms, is clearly outweighed?

9.38 However, the five questions which are agreed to arise from paragraph 58 of the last decision letter beg an even more fundamental issue - as to whether now is the time and this the place at which they should even be determined.

9.39 In particular, and as Mr Tilley again readily conceded, those questions raise strategic planning issues of national importance concerning a development which statute defines to be a nationally significant infrastructure project⁵³⁰. It was precisely to address issues of this nature, and on a national and strategic basis guided by National Policy Statements (NPSs)⁵³¹, that the Government enacted the Planning Act 2008 and established the Infrastructure Planning Commission (IPC)⁵³². This recently established regime is a material planning change in circumstance of the utmost importance, and raises a sixth question for consideration:

⁵³⁰ See: Section 14(l) of the Planning Act 2008.

⁵³¹ See: Section 5 of the Planning Act 2008.

⁵³² See: Section 1 of the Planning Act 2008.

(6) Will any decision to permit an SRFI at Radlett at this time be premature, potentially undermining the very processes which national Government has established for the consideration of infrastructure developments of national and strategic importance?

9.40 Before these questions are addressed, it is important to make three preliminary submissions arising from the quoted passage from paragraph 58 of the decision letter.

9.41 Firstly, it is to be noted that the Secretary of State was careful to say in paragraph 58 only that if there were no such sites, this would be "*capable*" of outweighing such harm. The Secretary of State's use of the word "*capable*" in that regard was entirely deliberate, and it is notably different from the Inspector's own wording at paragraph 16.202 of his Report where he said that, had he been convinced that the appellant's evidence had demonstrated that there were no other alternative sites, he "*would*" have taken the view that harm was outweighed by need.

9.42 The Secretary of State quite deliberately did not go that far, and for good reason. In particular, the balancing exercise of harm against need simply could not be undertaken on the necessary comparative basis, site against site, precisely because the appellant's alternative sites assessment was so inadequate. Accordingly, if and when that comparative balancing exercise is undertaken, it will therefore be against the backcloth that the Secretary of State has never done so.

9.43 Secondly, it is vitally important to understand the nature of the comparative balancing exercise, site against site, which is required to be undertaken by the Alternative Sites Assessment: it is the exercise inherent to the last Inspector's description of the relevant, and fundamental, issue at paragraph 16.121 of his previous Report, which – in turn – must be read in the context of the appellant's submissions on the relevant matter as reported at paragraph 6.109.

9.44 In particular, and on the assumption that there remains a need for SRFI development to serve London and the South East, the alternative sites exercise requires considering whether that need could be met either in: (1) a non-Green Belt location; or (2) on a Green Belt site which "*would, taking all matters into consideration, perform materially better than the appeal site.*"

9.45 It is beyond any sensible argument, however, that what (ii) above contemplates is not just (or even principally) the question as to whether an alternative SRFI site in the Green Belt causes *less Green Belt harm* than Radlett (by necessity, all alternative sites will be of a comparable size and identically inappropriate development in the Green Belt); rather, it plainly contemplates the question as to whether one or more of the alternative Green Belt sites performs materially better *as an SRFI* so as to be a preferred site to meet the asserted need.

9.46 One would have thought that that was an obvious and common-sense point. It can be tested very simply. If there are two Green Belt sites capable of meeting the asserted need to serve London and the South East, but one has significantly greater gauge problems over the other, and would also prejudice the delivery of the largest Government investment into passenger lines to the capital when the other would not, the less problematic site should clearly be preferred because it would "*perform*

materially better” as an SRFI so to meet the need asserted to justify the exception to Green Belt policy.

9.47 Moreover, that was precisely the case put by the Appellant on the last occasion. Mr Kingston QC’s submissions in this regard are faithfully reported by the Inspector at paragraph 6.109 of his Report:

“The issue therefore is whether the need that the appeal proposal seeks to meet could be met ... on another Green Belt site which, having regard to all of the relevant issues (including ... the ability to meet SRFI criteria ..., would perform materially better than the appeal site.”

9.48 That is why, when the appellant undertook its previous Alternative Sites Assessment, it relied heavily upon the input of Mr Gallop, the rail expert. It is also why, when the Inspector came to consider the relevant issue, he made frequent reference to the comparative benefits, or disbenefits, of the suggested alternative sites in railway terms. He did so, for example, at paragraphs 16.130, 16.132 and 16.136 of his Report.

9.49 Thirdly, however, and bizarrely, the appellant’s second Alternative Sites Assessment, tendered with a view to remedying the evident defects of the first effort, entirely ignores, indeed deliberately eschews, any comparative analysis of site against site in terms of rail accessibility. As Mr Tilley conceded under cross-examination, all of the alternative sites were identically rated, irrespective of any facility to perform better in rail terms one against the other.

9.50 That approach is plainly wrong. Indeed, it is so wrong that the entire Alternative Sites Assessment undertaken by the appellant for this second inquiry is misconceived. It is falsely founded and, in consequence, entirely incapable of providing the solid evidential foundation required to discharge the burden imposed upon them. For this reason alone, it cannot be recommended to the SoS in terms any different to the preceding recommendation at para IR16.138 of the report:

“... Helioslough’s Alternative Sites Assessment was materially flawed ... To my mind ..., the results are wholly unconvincing and little reliance should be placed on the report as it stands.”

9.51 However, when addressing the six questions to which this appeal gives rise, the above error is just the first of three reasons for placing little reliance upon the Alternative Sites Assessment. Each of them taken individually, let alone accumulatively, totally undermines the appellant’s case.

The Six Questions

(1) Is there still a need to be met for SRFIs to serve London and the South East?

9.52 As matters stand in advance of publication of the National Policy Statement on SRFIs, high level national policy support remains for three to four SRFIs to serve London and the South East. Appendix G to the 2004 Policy Document⁵³³ indicates that, up to 2015, this could be met by 400,000 sq. m of rail-related warehouses.

⁵³³ 9/CD/5.1

Whilst that may not, indeed is not, a ceiling on that which is permissible, it is nonetheless the only stated, and quantified, assessment by Government as to need.

9.53 Since the last Inquiry in respect of Radlett however, Howbury Park has been permitted. In addition, the London Gateway development is also approved. Together, they amount to well in excess of 1,000,000 sq. m of rail-related warehouses - more than 2½ times that which is needed by 2015 to serve London and the South East.

9.54 If it is determined, then, that: (1) the above developments could, on the balance of probabilities, operate as an SRFI; (2) that there is no obvious impediment to them being delivered; and (3) that, if delivered as SRFI, they would serve London and the South East, then the entire need case will, quite simply, have been transformed.

Operable as an SRFI

9.55 So far as the first issue is concerned, there is no doubt at all that Howbury Park is permitted as an SRFI and would operate as such. Neither, on the balance of the evidence, can any reasonable question mark now be raised in these regards against London Gateway. The last Inspector accepted that the site could operate as an SRFI at paragraph 16.142(iii) of his Report. Moreover, whilst he went on to state his understanding that the proposal was essentially for port-related activities, that was on information which he conceded to be limited as to whether its owners proposed to let it be used more widely. However, the evidence of Mr Wilson⁵³⁴ at paragraph 6.11 and Appendix A⁵³⁵, indicates that there will be no restrictions on occupiers of that development being port users. Accordingly, on the balance of probabilities and in the light of new information, the site will operate as an SRFI. (Indeed, its proximity to both a port and the M25 mean it also fulfils the requirements for an SRFI in the East of England, as sought in the East of England Regional Freight Strategy).

Deliverable as an SRFI

9.56 Further, and so far as the second issue is concerned, no evidence has been adduced to the effect that either Howbury Park or London Gateway might not be delivered. They must therefore, on the balance of the evidence, be assumed to be readily available to operate as SRFIs.

Serving London and the South East as an SRFI

9.57 Finally, and so far as the third issue is concerned: (1) Mr Wilson's evidence was compelling; and (2) the appellant's evidence was negligible.

9.58 Whereas Mr Wilson's evidence to the effect that Howbury Park and London Gateway would both serve the whole region as SRFIs was supported by detailed analysis of the market, of the logistics sector and of operators, the appellant did no more than chant its mantra, reciting and relying upon the Inspector's previous "pragmatic" view⁵³⁶, which was one to which he came without the benefit of Mr

⁵³⁴ 9/LPA/2.2

⁵³⁵ 9/LPA/2.3

⁵³⁶ IR16.126

Wilson's evidence. That is simply not good enough to deal with the many substantive points that Mr Wilson made, especially when, as the Inspector previously concluded, there was no policy support⁵³⁷ whatsoever that could be prayed in aid of the appellant's sectoral, sub-regional approach. Indeed, paragraph 4.4 of the 2004 SRFI Policy Document⁵³⁸ expressly acknowledges that SRFIs "operate such as to serve regional areas".

9.59 Consistent with this, and as Mr Wilson demonstrated, the distribution areas for SRFIs, and occupiers of larger warehouses within SRFIs, is on a regional basis, not a sub-regional basis. So it is that occupiers at Howbury Park would serve the whole of the London and South East region, including the North West Sector, just as would occupiers of any potential SRFI within the North West Sector itself.

9.60 The impact of this reality, demonstrated by the evidence and consistent with the 2004 Policy document, is clear. The appellant's need case has, indeed, been transformed since the last inquiry by both: (1) the recent permission for Howbury Park; and (2) our new appreciation of the way in which both Howbury Park and London Gateway will operate as SRFI's, each serving London and the South East. Capacity is already on stream to meet such need as may arise within the region for many years hence.

9.61 Moreover, the appellant's error as to the market and the region which would be served by the above SRFI developments not only impacts hugely upon its need case, it is a second fundamental flaw undermining the fresh Alternative Site Assessment. The appellant has limited its area of search to the North West Sector when to do so is unjustified by any proper analysis of the regional basis upon which SRFIs as a whole, and occupiers of very large warehouses within them, operate. That means, as we shall see when we come to address the fourth question to which this inquiry gives rise, that the appellant has looked for potential alternative sites in too small an area, thereby missing out on such obvious alternatives as Howbury Park, London Gateway and several other sites besides.

(2) *If there is still a need, will the Radlett site properly operate as an SRFI to meet that need?*

9.62 Whilst neither STRIFE nor FCC decries the ambition to put more freight on the rail network, and on the MML as part of that endeavour, they do assert that the location at Radlett as a site for an SRFI poses very profound difficulties indeed. Their position in this regard is entirely consistent with the letters appended to Mr Hirst's evidence.

Inappropriate location to serve demand

9.63 Firstly, and as Mr Wilson also comprehensively demonstrated, Radlett is inappropriately located to serve any of the anticipated demand for freight by rail. We endorse entirely the expert evidence that he gave. Quite simply, Radlett is insufficiently far from the ports to make it an economically attractive site to non-bulk carriers. It is served, as we know, by a gauge insufficient to accommodate Channel Tunnel rail freight, hence the reliance upon sub-optimal low chassis wagons. And it is

⁵³⁷ IR16.124

⁵³⁸ 9/CD/5.1

poorly positioned for rail freight movements to and from populous urban centres in the North West of the country⁵³⁹, having tortured access only to the West Coast Main Line.

Lack of any connection to the North

9.64 Secondly, the 2004 Policy document⁵⁴⁰ upon which the appellant rests its entire needs case, establishes as a necessary criterion for an SRFI rail connections in both directions. Radlett does not offer this. There is no connection proposed by this appeal to the north. Any trains seeking access from or egress to the north will have to be routed via London.

9.65 Moreover, it is wholly wrong for the appellant to seek to bury this issue by reference to schematic suggestions of a future northerly connection for which no application has been made, no feasibility or viability assessment undertaken, no indication given as to potential land take, and no assessment offered as to the impact of the possibility on the noise environment for Napsbury residents.

Lack of paths due to Thameslink Programme

9.66 Even more critically, however, the evidence now demonstrates that no trains could ever enter or leave the Radlett site other than at night. Before dealing with evidence about pathing, there are two preliminary submissions.

9.67 Firstly, and as conceded by Mr Gallop under questioning from Mr Reed, it was not until Mr Wilson's analysis for the purpose of this inquiry that anyone had ever assessed the accessibility of the Radlett site by freight against the Thameslink Programme timetable. That exercise was not undertaken at the last inquiry and all of the evidence on the issue is completely new evidence never before considered.

9.68 Secondly, no party other than Mr Wilson has ever undertaken an assessment of the accessibility of the Radlett site by freight in accordance with the *latest and most up-to-date Thameslink Programme timetable*. The only other body to have attempted a comparable exercise to Mr Wilson's was Interfleet, who were not called to give evidence or susceptible to cross-examination, and who worked only to a prior timetable, since superseded.

9.69 The context within which Mr Wilson undertook his assessment is that the MML south of Bedford is already one of the most intensively used passenger lines on the whole network, and host to the above Thameslink Programme, the greatest single investment currently being undertaken by the Government for passenger lines in the country. That Programme is of national significance and it is absolutely vital, as agreed by all parties, that it is not prejudiced. That, indeed, is why Network Rail aver that they will not allow any freight movements in or out of the proposed SRFI at Radlett which would interrupt or inconvenience those projected passenger services; and, also, as Mr Gallop correctly conceded in cross-examination by Mr Reed, is why, in a head-to-head battle between an SRFI at Radlett and the Thameslink Programme itself, the latter would prevail.

⁵³⁹ expressly referred to at page 84 of the Network Route Utilisation Strategy document at Appendix A to Mr Wilson's rebuttal of Mr Gallop's Proof of Evidence (9/LPA/2.20)

⁵⁴⁰ 9/CD/5.1

9.70 However, on the expert evidence now before the inquiry, the consequence of Network Rail's stated position will be that freight train access and egress to and from the proposed site can only be at night time. Mr Wilson's evidence in this regard is compelling. Using the industry-standard Railsys model, the same model that Network Rail would use to assess pathing and performance issues and working to the most up-to-date Thameslink Programme timetable, Mr Wilson could not identify a single path to access an SRFI at Radlett between the peaks.

9.71 Moreover, it is no answer to Mr Wilson's evidence that: (1) that trains could be timetabled to pass signals on amber; or (2) that access could be gained by crossing the intervening lines (using a diamond box junction) rather than the weaving movement described by Mr Wilson's modelling; or (3) that there are aspirational plans to electrify and gauge clear the MML; or (4) the proposed Thameslink Programme is indicative only; or (5) that the service specification put forward by Mr Clancy⁵⁴¹ shows that, in the off peak, 2 trains per hour on the Luton service stop short at Brent Cross.

9.72 So far as the first point is concerned, it is simply not right to adopt non-standard industry scheduling practices and assume timetabling that is programmed upon the basis of passing signals on amber rather than green⁵⁴².

9.73 So far as the second point is concerned, diamond box junctions are unlikely ever to be approved – they are expensive and maintenance costly⁵⁴³.

9.74 So far as the third point is concerned, unlike the Thameslink Programme (which is to be treated as committed) the proposed electrification and gauge clearance of the MML is aspirational only – for example, Appendix K to Mr Gallop's evidence clearly indicates that the electrification of the MML is still subject to further cost-benefit review.

9.75 So far as the fourth point is concerned, it is plain that the Thameslink Programme is to be treated as a commitment⁵⁴⁴, and not just a commitment but the largest Governmental rail passenger commitment that exists. Three points follow.

9.76 First to treat the Thameslink Programme as merely indicative is to undermine its obvious strategic importance massively. Second, if the Thameslink Programme is to be treated as a commitment, as Network Rail avers it must, that means for all present purposes – not just rail planning purposes, but for Town and Country Planning purposes also. Third, the nature of the Thameslink Programme which is to be so treated as a commitment in that the scheme is incorporated into the RUS baseline and contained in the Draft East Midlands RUS itself⁵⁴⁵.

9.77 The above affords, moreover, the entire answer to the fifth point. In particular, whereas the specification to which Mr Clancy spoke in chief gives 8 trains per hour passing the site on the slow lines and not the 10 which Mr Wilson assumes, Mr

⁵⁴¹ STRIFE 9/10/01

⁵⁴² Wilson and Clancy in chief

⁵⁴³ Evidence of Clancy in chief

⁵⁴⁴ East Midlands RUS Draft Sept 2009 (9/CD/5.5)

⁵⁴⁵ 9/CD/5.5 page 4

Wilson was – quite rightly – working from the *later* draft East Midlands RUS service specification which supersedes Mr Clancy's. That RUS specification is the latest and most up-to-date available. It is that specification that is to be treated as a commitment in accordance with the requirement of the Draft RUS. And that specification does envisage all 4 trains per hour of the Luton service running through, meaning a total of 10 trains per hour running on the slow lines past the site.

9.78 At that level of usage, as Mr Gallop confirmed when cross-examined by Mr Reed, the Interfleet suggested time-tabling was simply "unworkable". The site could not be accessed other than at night (between the hours of 10pm and 6am). That means it could not operate as an SRFI⁵⁴⁶. And that means both that Network Rail would not, in the end, support the proposal⁵⁴⁷ and that the Appellant's very special circumstances come to nothing.

9.79 The self-serving, foreshortened, incomplete and misleading note of Mr Clancy's evidence produced on behalf of the appellant in re-examination of Mr Gallop changes this analysis not one iota, rooted as it is in the legal requirement to decide upon the best and most up-to-date information available⁵⁴⁸, and the requirements of the Draft RUS described above.

9.80 Mr Clancy commented that if 12 trains ran off peak on the MML with only 10 passing the site it would be more difficult to gain access; the more trains off peak, the greater the difficulty of access. On being cross examined, Mr Clancy accepted that the Council's pathing note based on 10 trains instead of 8 was contrary to the assumption, but the information was based on his information at July 2009.

9.81 However, the recommendation should not be based on the July information, but upon the subsequent scheme as set out in the Draft RUS which is to be treated as a commitment. That is in no way to denigrate the evidence of Mr Clancy. His evidence was that trains could not be pathed into and out of Radlett on either the earlier July timetable or the subsequent timetable incorporated in the draft RUS (with the latter being even more difficult for obvious reasons). The Interfleet evidence⁵⁴⁹, insofar as it has any relevance, only addresses Mr Clancy's evidence as to the former timetable and not the latter.

Network Rail's position

9.82 Moreover, the appellant's reliance upon Network Rail's support for their proposed development has now been shown both to be manifestly overstated, and also to be no answer whatsoever to the Wilson analysis.

9.83 Firstly, as stated in opening⁵⁵⁰, and as has been confirmed by all of the evidence, this proposal is at a pre-feasibility stage only – GRIP Stage 2. As such, the claimed support of Network Rail is virtually meaningless for the purposes of this inquiry; their position is evidence of nothing more than their contractual duty to share information *before any of the requisite assessment as to feasibility has even*

⁵⁴⁶ Mr Gallop XX by Mr Reed

⁵⁴⁷ Mr Gallop XX by Mr Reed

⁵⁴⁸ *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591

⁵⁴⁹ 9/HS/2.8

⁵⁵⁰ STRIFE 9/02 para.25

been undertaken. No comfort can be gained from Network Rail in respect of the fundamental issues as to whether, on the balance of probabilities, paths would be available: they have, as already explained, never undertaken any detailed assessment of the site's accessibility by freight compatible with the Thameslink Programme. That is why, in terms, they offer no guarantee that any paths will be available⁵⁵¹.

9.84 Secondly, and importantly, such support as they have expressed for the Radlett proposal has only ever been stated to be "support in principle"⁵⁵². They have never stated their full, still less their unconditional, support as suggested by Mr Tilley in paragraph 9.9 of his Proof of Evidence.

9.85 Thirdly, neither has Network Rail ever expressed any preference for Radlett over any of the potential alternative sites. Their position in that regard is expressly stated at paragraph 2.1 of their letter to the last Inquiry dated 7 December 2007⁵⁵³.

Conclusion on Pathing

9.86 The consequence of the above 4 points, sourced in the expert evidence of Mr Wilson which the previous Inspector did not have the benefit of considering, is clear. The appellant has failed to discharge the evidential burden upon it to prove, on the balance of probabilities, that a single train could enter or leave its proposed SRFI other than under the cover of night.

9.87 That means that the appellant cannot demonstrate, to the requisite evidential standard, that the proposed site would even operate as an SRFI; and that means that they cannot make out their case for very special circumstances.

9.88 Of itself, this is sufficient reason to dismiss this appeal, before we even come to the crux of the appellant's case – whereby, through its second Alternative Sites Assessment, it seeks to address the reason why the last inquiry resulted in a refusal of permission for an identical development to that proposed today.

(3) Has the appellant demonstrated that there are no other sites capable of meeting the need for SRFIs to serve London and the South East?

9.89 Since this question lies at the heart of the appellant's appeal, albeit that its appeal must fail for the reasons given above, addressing the relevant issues to which it gives rise in the following order: (1) the correct lesson to learn from the appellant's flawed Alternative Sites Assessment at the last inquiry; (2) the fundamental errors undermining the second Alternative Sites Assessment; (3) the failure of the Radlett site to fulfil the criteria of an SRFI as guided by the 2004 Policy Document; and (4) the capacity of other sites to perform materially better than Radlett in rail terms.

The correct lesson from the last ASA's rejection

9.90 It is a matter of record that the appellant's argument that there were no alternative sites which would perform better as an SRFI failed upon the last occasion

⁵⁵¹ Paragraph 2.3 of the Agreed Statement of Facts

⁵⁵² 9/CB/1.8 Letter from Network Rail to last inquiry dated 7 December 2007 para.2.1

⁵⁵³ *Ibid*

it was raised. It is helpful, however, to understand precisely why that argument failed, why the Inspector concluded that their earlier Alternative Sites Assessment was so materially flawed as to be “wholly unconvincing”⁵⁵⁴.

9.91 When so concluding the Inspector referred in terms to the criticisms raised against that earlier Alternative Sites Assessment by STRIFE. Moreover, Mr Tilley volunteered in evidence that it was STRIFE’s attack against the earlier Alternative Sites Assessment (together with the attack made by Mr Reed on behalf of the Local Planning Authority) which demolished the appellant’s case and led to the earlier Inquiry holding against the proposed development.

9.92 Perusal of the relevant paragraphs of the Inspector’s Report in which the STRIFE criticisms are set out is revealing. Paragraphs 8.117 – 8.125 describe the litany of errors which were made by the appellant on the last occasion in its assessment of the alternatives. When those errors were corrected, Radlett did not even come top of the appellant’s *own* assessment of alternatives. A non-Green Belt site fared better.

9.93 It is in the light of that past fiasco that Mr Tilley presided over a completely different methodology for the assessment of alternative sites for the purposes of this Inquiry. Unlike the earlier methodology, the new methodology contains no numeric ranking of any site by reference to any of the assessment criteria. All of the judgments inherent to the exercise are reduced to prose alone.

9.94 Whilst we can all readily sympathise with Mr Tilley’s reluctance to put his head on the same block as Mr Tucker on the last occasion, that reticence should be seen for what it is.

9.95 Mr Tilley had, like Mr Gallop, been entirely willing to utilise the numeric methodology on the last occasion until their errors were exposed by interview. His reluctance to use a numeric methodology on this occasion is designed to avoid any exposure to a similar cross-examination at this Inquiry.

9.96 And yet there is nothing wrong with the numeric methodology if it is properly undertaken and provided that the numbers are justifiable. Indeed, there is very much to commend it. Yes, it does incorporate subjective judgments, but through reducing those judgments to numbers, it allows the Alternative Sites Assessment, and the judgments inherent to it, to be subject to not just scrutiny but interrogation. Those numbers are the benchmarks by which comparison between sites, and forensic investigation of those comparisons, can be undertaken.

9.97 Indeed, had the appellant not adopted its numeric approach on the last occasion, it may very well have got away with a wholly unprofessional Alternative Sites Assessment, the litany of errors lost in prose and never exposed.

The fundamental errors undermining the second ASA

9.98 The failure to use any numerical benchmarking to allow for interrogation of the Alternative Sites Assessment, or forensic scrutiny of the comparative merits of the alternatives it purports to consider, is the third critical flaw in the appellant’s new

⁵⁵⁴ IR§16.138

Alternative Sites Assessment, alongside their wholly mistaken assumption of rail neutrality between the alternatives and their unjustified restriction of the search area to the north west sector. Taken together, this triumvirate of errors renders the entire second exercise as unfit for purpose as the first.

9.99 In particular, in order for it to provide a secure basis upon which to compare the merits of any of the suggested alternative sites as potential SRFIs, the second Alternative Sites Assessment would have had to entail: (1) a search area wide enough to identify all of the alternatives capable of serving London and the South East; (2) numeric evaluation of all of the relevant selection criteria; and (3) appropriate weighting in respect of the critical matter – the capability of the site to operate as a rail-related depot, a Strategic Rail Freight Interchange. The appellant's Alternative Sites Assessment fails on all three fronts.

The failure of the Radlett site to fulfil the criteria of an SRFI as guided by the 2004 Policy Document

9.100 Paragraph 7.10 of the 2004 SRFI Policy Document states in terms that the characteristics identified in that document “must be recognised in ... assessment criteria” of SRFIs. Those characteristics are detailed and considered by Mr Hirst in his evidence⁵⁵⁵. Closing deals with the following criteria in particular: the need for high quality road access; the particular locational requirements for rail connections; the need for an economic local employment base; the need to be away from residential development; and the need to be able to expand. It is notable that Radlett signally fails to match up to any of them.

(a) High quality road access

9.101 Whilst the 2004 Policy requires a Strategic Rail Freight Interchange to be located where there are high quality links to motorways and the trunk road network, and whilst the appeal site is adjacent to the M25 to the south, direct access to the M25 has been denied by the Highways Agency on safety grounds. The consequence is that the projected 3,200 daily HGV movements will all have to be routed via the A414 in order to access the motorway network.

9.102 And yet the A414 is already heavily congested and almost at capacity. Moreover, there is overwhelming evidence that those local roads are at gridlock whenever incidents occur on the M1 and M25. Irrespective of the issue as to whether there is an independently sustainable highways reason for refusal of the proposal, the inexorable conclusion is that the appeal site does not enjoy the high quality road links which the national Policy document demands.

9.103 Moreover, if the Inspector correctly noted at the last Inquiry that traffic conditions were already poor, especially at peak periods (when HGV's generated by the proposed development would be travelling)⁵⁵⁶, that situation will get progressively worse in the future. The M1 has been widened and will attract yet more traffic. Butterfly World has been opened and will entice up a million visitors a year. Plans have been produced for a hotel and conference centre just 400 metres from Butterfly World. And the M25 widening has already started.

⁵⁵⁵ STRiFE 9/04

⁵⁵⁶ IR16.187

9.104 Furthermore, and as Mr Hirst identified, no answer has ever been given by either the appellant or a previous Inspector as to what contingency there is when gridlock is occasioned by incidents on adjacent motorways. Quite simply, in STRIFE's view there is no such contingency that could properly address the problem.

9.105 In addition, on the balance of the evidence, the highways problems attendant on this proposal may be worse than STRIFE and local residents feared, and worse than the Highways Authority contemplated. There are two interrelated reasons for this.

9.106 Firstly, it has only recently been appreciated that the sheds proposed for Radlett may be 66% higher than most of those built at DIRFT⁵⁵⁷, upon which the appellant relied in predicting the HGV movements generated by their proposal. Their trip-generation assessment was, however, based on floorspace only and took no account of height. It ignored, therefore, the potential, and obvious, implications of the increased shed capacity which might result. That is deeply disturbing, given that Mr Gallop conceded in cross examination that the appellant has no idea who will occupy those sheds or for what purpose; and when he also conceded that many occupiers – for example those trading in heavier goods – will generate more HGV movements per cubic metre storage space than others.

9.107 The evidence therefore opens up the obvious possibility, nowhere reflected in the highways evidence, of occupation of sheds at Radlett by similar users to those at DIRFT, and in similar proportions per square metre, thereby generating up to 66% more HGV movements than predicted. Indeed, the traffic analysis upon which the appellant relies is contingent upon a radically different occupation to that which is taking place at DIRFT, notwithstanding that: (1) it has purported to rely on DIRFT as the evidential basis for their calculations; and (2) it has adduced no evidence for suggesting a radically different user profile.

9.108 Secondly, the only end users specifically referred to by the appellant have been major retailers, whose occupation of the sheds can reasonably be anticipated to generate far quicker throughput, and far more HGVs, than other occupiers.

9.109 At the very least the traffic assessment is not a worst case scenario. It clearly permits the very real possibility that more HGV movements will be generated than predicted, with attendant potential implications both for congestion and for noise.

(b) Rail connections

⁵⁵⁷ STRIFE were emailed during the inquiry by the appellant indicating that in closing it intended to contend that at least one building at DIRFT was of comparable height to those proposed at Radlett. There was no indication as to why this had not been produced earlier, despite the height issue having been raised by STRIFE in opening (para.29). It would appear that the information on which the Appellant is relying may be references to DIRFT II, which was not permitted at the time of the Appellant's transport assessment. It is clear from the indicative masterplan in the Prologis brochure to DIRFT II (Appendix B to these submissions) that the majority of buildings are 12.5m high (clear internal height) and only one is 18m high. And it is clear from paragraph 3.6 of the Daventry District Council Main Development Constraints document (also at Appendix B) that building heights in DIRFT II will be limited to the height created by the skyline of those built in DIRFT I. Since it is common ground that SRFI sites require to be flat, the clear implication is that DIRFT I buildings are only 12.5m high, consistent with the third parties' position at this Inquiry. Due to time constraints since receipt of the Appellant's email, it has not been possible to research this issue further.

9.110 Likewise the 2004 Policy document goes on to make it clear that SRFIs have quite particular locational requirements in terms of rail connections. They must enable mainline access in either direction; and be accessed by rail links with both high capacity and a good loading gauge. However, there is no provision for trains to have direct access to the Radlett site in both directions, so that rail traffic will have to enter and leave the site to and from the London direction only. Moreover, the appeal proposal does not propose any northerly connection to address that gaping hole.

9.111 If that was not enough, on the balance of the expert evidence available, not only is there no guarantee that rail paths could enter and egress the site other than at night, there is no likelihood that they would be able to. The implementation of the Thameslink Programme is, quite simply, incompatible (on all available evidence) with this appeal proposal.

9.112 Furthermore, and so far as loading gauge is concerned, upon the most detailed assessment of the issue – the Laser Rail analysis (as agreed by Mr Gallop in cross-examination) - the MML is restricted to W7 only, thereby limiting the type and size of containers that could currently be carried on standard freight wagons. This is in stark contrast to the position at Colnbrook (W8) and still more so to London Gateway (W10). Moreover, whilst the appellant claims a commitment to increase the loading gauge to W10 south of Radlett, (1) it continues to highlight the use of less efficient low chassis wagons; (2) no gauge clearance works have ever been costed; and (3) there would be very considerable disruption caused to economically vital commuter routes by the considerable construction works necessary to increase the loading gauge of the MML to W10⁵⁵⁸.

(c) Local workforce

9.113 It is expressly stated in the 2004 Policy document that access to a reliable and skilled workforce, employable at economical cost, is of high importance to the location of an SRFI⁵⁵⁹. And yet, as Mr Tilley openly conceded, St Albans has low unemployment, unlike Slough. St Albans is one of the most prosperous areas in the country. Quite simply there is not a large, available workforce local to the site. The net result, as concluded by the last Inspector, would inevitably be mass in-commuting⁵⁶⁰, mostly by car, all of which is contrary to Government Policy set out in PPG13.

9.114 The irony is almost painful. The Government is promoting SRFIs in order to advance the cause of sustainability; and the appellant promotes a proposed Strategic Rail Freight Interchange in a wholly unsustainable location.

(d) Away from residential development

9.115 The 2004 Policy document states in terms that SRFI are not considered suitable adjacent to residential uses, since homes are necessarily sensitive to the impact of noise and movements. And yet the majority of Frogmore and Park Street residents live between 500-800 metres from the proposed intermodal, with 183 new

⁵⁵⁸ STRIFE 9/10 and oral evidence on 2 Dec 2009

⁵⁵⁹ Para.4.27

⁵⁶⁰ IR16.190-16.191

Park Street dwellings built since the last Inquiry, now occupied, and all within 600 metres of that intermodal. A further 500 Napsbury dwellings are within 500 metres of that intermodal. Many hundreds of homes will therefore be affected, and so much so that in several locations there are likely to be both complaints about noise and increased risk of sleep disturbance.

(e) Ability to expand

9.116 Finally, whilst the 2004 Policy document identifies the potential for expansion as a valuable characteristic of an SRFI site⁵⁶¹, the Radlett site has no such potential. This, again, is to be contrasted starkly with Colnbrook, where the smaller proposal shortly to come before the Council (itself amounting to 200,000 sq. m of SRFI floorspace) does allow for expansion to the west, as Mr Tilley agreed.

The Alternatives

9.117 If the Radlett site fails so poorly as a potential site for an SRFI (indeed it could not operate as an SRFI on the best available evidence), the same is manifestly not true for many of the alternatives. The permitted sites are dealt with first; then with the other alternatives beyond the unduly restricted North West sector of HelisloUGH's search; and then the alternatives even within that limited sector.

The permitted sites - Howbury Park and London Gateway

9.118 Two of those alternatives are already permitted – Howbury Park⁵⁶² and London Gateway, the latter already gauge-cleared to W10. As we have seen, both can properly operate as SRFI and both would serve the relevant region of London and the South East. They more than meet any need to serve that region for decades to come.

The other sites outwith the North West sector - Barking and Dagenham, Kent International Gateway and Redhill Aerodrome

9.119 Alongside Howbury Park and London Gateway there are several other sites, outwith the over-restricted North West Sector within which the appellant was looking, which similarly could serve London and the South East. Barking and Dagenham is favoured by Transport for London as a freight terminal to serve the capital and is possessed of excellent rail links, without gauge restrictions, between the terminal and the Channel Tunnel Rail Link. Moreover, it is previously developed industrial land, and in a despoiled, industrialised landscape. It is an obvious contender.

9.120 Likewise, and for the reasons given by Mr Wilson (which we endorse) both Kent International Gateway and Redhill Aerodrome also would be readily developable as SRFIs, and if so developed capable of meeting the need (such as it is) in London and the South East. Through its flawed methodology however, whereby the appellant has Nelsonian blindness to any alternative site which lies beyond their North West Sector, even if it could serve London and the South East, all of the above sites have simply been ignored.

⁵⁶¹ Para. 7.8

⁵⁶² See 9/CD/6.1 and 6.2

The Alternative North West Sector sites – Sundon, Littlewick Green and Colnbrook

9.121 However, even within the North West Sector, the appellant's limited area of search, there are further alternatives available to meet the need: Sundon, Littlewick Green and – of course – Colnbrook.

9.122 Colnbrook is shortly to come before Slough Borough Council again as an application site for an SRFI. That site is, as Mr Tilley openly concedes, degraded land. It is in close proximity to a sewage treatment plant, a waste incinerator facility, an industrial estate and Heathrow Airport. It is served by the A4, and is within 1½ miles of the M4 (and a further mile or so from the M4/M25 junction). In addition, it is adjacent to an operational rail link which provides access to the GWML, gauge-cleared to W8, and offers head-on access to Southampton via Feltham without any need for turnaround⁵⁶³. As above, it is not constrained and is able to expand. It is in an area of low employment and with good links to public transport. It is, and quite obviously, an alternative to Radlett. Moreover, it is an alternative which, unlike Radlett, is unencumbered by the Thameslink Programme, and remote from any building of comparable importance to St Albans cathedral.

9.123 Neither is there any case for arguing that there is a compelling Local Plan policy objection which can be raised against Colnbrook, differentiating it from Radlett. So far as the Strategic Gap is concerned, and for all of the reasons covered by reference to Farnborough, the designation within such a gap does not offer any additional policy protection against inappropriate development over and above Green Belt designation. In the Green Belt very special circumstances have to be demonstrated sufficient to justify permission being granted; and where they are so demonstrated, especially by reference to the asserted need for an SRFI, the exception to Strategic Gap policy will also be made out.

9.124 That there is no policy embargo upon SRFI development at Colnbrook is made absolutely clear upon close examination of the Slough Borough Council's Core Strategy⁵⁶⁴. The only sensible reading of that Strategy is that the Council appreciate the potential of the site for an SRFI development; understand the tests against which such a proposal will be determined; and are of the view that they should be applied in the context of a planning application rather than the proposal being ruled out through the LDF process.

9.125 The only rational conclusions are that there are alternative sites which could meet such need if any as exists for SRFIs to serve London and the South East; that many of those sites would perform materially better as SRFIs than the Radlett site (which appears not to be able even to operate as an SRFI other than at night); and that the appellant's Alternative Sites Assessment is so error-strewn, so misconceived, that it provides no sound basis for concluding otherwise.

(4) Could the alternative sites meet that need without occasioning the same extent of harm as at Radlett?

9.126 The harms which would be occasioned should the appeal proposal be permitted have already been described - the loss of a huge tract of Green Belt land

⁵⁶³ Gallop XX

⁵⁶⁴ See: Hargreaves Proof of Evidence at §7.16 and §5.72 of his Appendix 25.

to inappropriate development, with four of the purposes of Green Belt designation offended against; harm to visual amenity and local landscapes; noise and sleep disturbance, caused by both on and off-site activities; disruption and inconvenience to users of rail, with trains delayed by freight movements or engineering works; and increased congestion, with drivers caught up in gridlocked roads, especially the A414, whenever an incident occurs on the nearby motorways.

9.127 So far as roads are concerned, the points previously made are not repeated. Suffice it to say that the roads are already congested and this development would make them more so; there remains no credible contingency plan should an incident occur on the motorways, with access and egress to the site being along a single road only; and that all of these effects may have been very considerably under-estimated by the Highways Authority given the evidence about the height of the sheds in comparison to DIRFT and about the potential of this development to attract large retail occupiers.

9.128 So far as noise is concerned, STRIFE endorses the conclusions of Mr Stephenson for the Council on cognate issues and also invites attention to the careful critique of the previous Inspector's conclusions on noise by J&S Consulting Ltd⁵⁶⁵.

9.129 First, it is clear that Mr Sharps cannot justify his assertion that his own modelling over-predicts by 5dB, a truly astonishing claim in any event given that this is his *own* noise prediction and, if inaccurate to that extent, would be a several-fold over-estimation of the total noise energy. In particular, none of the factors Mr Sharps relied upon accounts for the over-prediction he claims - for all of the reasons given by Mr Stephenson (who, unlike Mr Sharps, was available for cross examination).

9.130 Second, the evidence clearly demonstrates that, properly assessed in accordance with BS4142 (agreed to be the correct methodology by the last Inspector despite Mr Sharps' evidence to the contrary), and even upon the current inputs as to usage, the noise from the depot will give rise to a likelihood of complaints.

9.131 Third, and again on current inputs, the evidence also demonstrates that, properly assessed, the noise from the depot and associated activities will, at several locations, cause sleep to be disturbed, especially in the summer months when bedroom windows will more likely be left open.

9.132 Fourth, however, the current inputs manifestly do not represent a worst case scenario so far as noise is concerned, and for two reasons. So far as trains are concerned, since none (or very few) could access the site by day, all (or most) would do so at night, with all of the consequential operational noises generated in the most noise-sensitive hours. And so far as HGVs are concerned, and by reason of both the height of the sheds and the potential occupation by retailers, there may be many more HGV movements than currently predicted.

9.133 Fifth, the evidence also demonstrates that the condition proposed by Helioslough, accepted on the last occasion, is incapable of being complied with in any event, and that – even if it could be complied with – would not prevent sleep from being disturbed. That condition seeks only to control average noise levels at night,

⁵⁶⁵ STRIFE 9/03

when it is not an average that wakes one up or prevents one from going back to sleep. The condition suggested during the last inquiry could be complied with and still mask numerous sleep-disturbing incidents every night.

9.134 Set against the above, it is quite clear that some at least of the alternative sites would not only meet the SRFI need better than it is at Radlett, they would do so without inflicting the savage planning harm which an SRFI at Radlett would occasion. By way of just one very short example, it is inconceivable that an SRFI at Barking would cause planning harm of a comparable magnitude to that caused at Radlett, a sensitive Green Belt location close to an historic town and very many residential dwellings, and accessed on roads which are already so heavily congested and inevitably will become more so.

(5) If there are no sites available, is the extent of the remaining need for an SRFI to serve London and the South East such that the harm to the Green Belt and other identified harms, is clearly outweighed?

9.135 The weighing of the planning balance of harm against need was never undertaken by the SoS on the last occasion, so we know not the SoS's view on the evidence before her. Since then, however, the extent of any remaining need has considerably diminished, if not been eradicated, through subsequent planning permissions. Even if a residual need for an SRFI development to serve London and the South East has survived, the question arises as to whether it is so large as to justify 330,000 sq. m of warehouse development, all of it 20 metres high, in this particular Green Belt location.

9.136 Irrespective of the fact that Appendix G to the 2004 SRFI Policy document imposes no ceiling on SRFI development, it is equally a fact that, in consequence of that Appendix, just 400,000m² of SRFI development is stated to be required to serve the need of London and the South East up to 2015. If three or four SRFIs are anticipated to meet that need, each would be approximately 100,000m² in extent.

9.137 Radlett, however, is an application for in excess of three times that floorspace and, *by itself*, would comprise in excess of 75% of the floorspace for which the 2004 Policy sought provision, even ignoring the permissions already granted. Radlett would also have sheds which appear to be 66% higher than those developed at DIRFT or proposed at Hollingbourne, with an equivalently greater volume of storage capacity, potentially generating proportionately additional HGV movements.

9.138 So far as height alone is concerned, this presents an intractable dilemma: how can that additional height conceivably be justified in Green Belt terms, even by reference to a need for SRFIs in the light of other SRFIs operating with just 12.5m sheds when 20m sheds are here proposed?

9.139 Accordingly, and whether by reference to floorspace or height, and even if any demand for an additional SRFI does survive, incapable of being met elsewhere, it is quite apparent that the Radlett proposal amounts to a massive overdevelopment, unjustified by need and beyond the contemplation of the 2004 Policy. As such, it will cause additional, and unjustifiable, harm in terms of its impact on the openness of the Green Belt, on landscape, on the roads, and on residential amenity.

(6) Would the grant of planning permission for an SRFI at Radlett be premature?

9.140 In STRIFE's submission, moreover, it would be plainly premature to grant planning permission now for Radlett⁵⁶⁶. In particular, the context within which all of the above 5 questions fall to be answered is about to be transformed by the publication of the NPS in respect of SRFIs, out for consultation very shortly and anticipated to be designated sometime next year.

9.141 The statute specifically contemplates that such Statement may set out all of the following: (1) the amount, type and size of SRFI development which is appropriate, either nationally or for a specified area; (2) the criteria to be applied in deciding whether a location is suitable or potentially suitable; (3) the relative weight to be given to the specified criteria; and (4) the locations which are suitable or potentially suitable, or indeed unsuitable, for SRFI development.

9.142 The Statement will, in all of these regards, be underpinned by a national and strategic assessment by the Government of need and market, of economic viability, of impact on other nationally important infrastructure (such as intensively used passenger rail lines) and other site-specific planning and topographical considerations.

9.143 It would, in STRIFE's respectful submission, be wholly wrong to pre-empt that Statement, and the assessments which will underpin it, by granting consent now for so substantial an SRFI. To do so might, quite obviously, cut across completely the detailed, and binding, policy pronouncements which the Government is about to make, potentially derailing their strategic planning assessments as to how much SRFI floorspace should be provided, and where that floorspace is best located.

9.144 This can easily be demonstrated. The requirement for SRFIs to serve London and the South East is both finite and limited⁵⁶⁷. Imagine, then, that the Statement promotes Colnbrook as a preferred location to Radlett, or acknowledges that Howbury Park, London Gateway and, therefore, Barking can serve the entire region and that the latter is also a preferred location. The end result will be that the Statement will have identified all of the preferred locations and not one of them will be Radlett. And yet if Radlett is already permitted, one or other of Colnbrook or Barking would not – in all likelihood – come forward, which is exactly the opposite of that which the new system is designed to achieve.

9.145 However, the proposal is also premature in other ways. As we have seen, the level of assessment on all pertinent railway matters is currently wholly inadequate. On pathing, there is no certainty at all that a single off-peak train could enter or exit the site other than at night. So far as even Network Rail is concerned, the project is at a *pre-feasibility* stage only. Moreover, and as already emphasised, the proposed northerly connection is not actually proposed at all – it is nothing more than a schematic possibility for which passive accommodation only is suggested.

9.146 In all of these regards the proposal is brought to the inquiry before it is ready for determination: it pre-empts the NPS; it cannot be demonstrated even to operate

⁵⁶⁶ See section 14 of the Proof of Evidence of Douglas Hirst (STRIFE 9/04) and the evidence of Mr Hargreaves, which STRIFE endorses.

⁵⁶⁷ IR16.195

as an SRFI; its feasibility is wholly unproven, indeed untested; and the development embraced by the appeal application is obviously incomplete.

Conditions

9.147 Moreover, taken together, all of the above demonstrate that to permit Radlett now would raise the spectre of a massive warehouse development in the Green Belt, permitted on the false prospectus that it can meet a need for the interchange of freight between rail and road, only for it to operate as a predominantly road to road depot, something for which no very special circumstances at all could be prayed in aid.

9.148 It was precisely to prevent this Trojan Horse that the Council proposes its conditions, which STRIFE endorse, tying the development to achievement of rail infrastructure improvements. However, even these are not enough, as experience at Alconbury so aptly demonstrates.

9.149 Imagine that those works are all completed but that, as at Alconbury (and as predicted by Mr Wilson), the pathing issues cannot be overcome. In that event, Network Rail would prevent freight trains from crossing the lines in protection of the Thameslink Programme. And yet Helioslough could, and undoubtedly would, then use their site as a road-only depot.

9.150 That is why STRIFE proposed their addendum to condition 9. It ties the amount of HGV movements to the number of train movements, all within the existing projections of the Environmental Assessment. It does not prevent the development from going ahead exactly as promoted, it facilitates it. There is nothing whatsoever in that condition for Helioslough to fear, provided that the confidence they invite the SoS to repose in their rail case is well-placed. If Helioslough object to that condition, it can only be because they have no confidence in their rail case. And if they do not have confidence in their own case, sufficient to sign up to so innocuous a condition – one designed only to ensure that something promoted as an SRFI, permissible only if it is an SRFI, actually functions as an SRFI, neither should the SoS.

Conclusion

9.151 Accordingly, and for all of the reasons given, and in fidelity to Green Belt policy, and in accordance with the legal authorities, and upon the compelling evidence, the appeal should be dismissed and the Trojan Horse expelled in terms that prevent it ever from returning. This is no location for an SRFI and this valued part of Green Belt land should ever be protected from the huge road-based depot that this development would inevitably become.

10. The Cases for other Interested Persons

10.1 **Mrs Anne Main MP**⁵⁶⁸ was particularly concerned about the contribution of Network Rail to the inquiry and its lack of attendance to be questioned, particularly in view of its support for the appellants in the previous appeal. Network Rail is unable to offer guarantees that the proposal would be viable. 10 of the inter-peak period paths are used now, which only leaves 4 during the day, and these are only in the

⁵⁶⁸ 9/AM/1.1

morning. Given that the industry standard is 80% usage, there would only be one train per day between 6am and 7 pm. The remaining 11 of the proposed freight trains would have to be in the night between 7pm and 6am with the consequent impact due to noise and light pollution. Network Rail have not provided any detailed study of path availability. It is not sensible to approve the application on this basis. The new Thameslink commitments have not been factored into future prediction for path availability. Network Rail is only able to use data from an old timetable and cannot project availability for the period when the SRFI would be operational. Network Rail has a commercial interest in getting freight on line.

10.2 The proposal is premature in that Network Rail has stated that *“development work is currently ongoing (18 November 2009) to develop the committed Thameslink Programme and like Radlett, this is still in the development stages of the GRIP process. The timetable development work for this project commences in January 2010 and will be completed by the end of March 2010.”* In addition, the Rail Minister has indicated that the National Network National Policy Statements being published later in 2010 will set out the case for the establishment of a network of SRFIs in the regions and will supersede the Strategic Rail Policy for SRFIs published in 2004.

10.3 London Overground Rail Operations Ltd indicated that rail freight is to be supported but must be as part of a strategy which examines capacity across the country and it is an area for which a regional strategy would be beneficial to balance conflicting requirements.

10.4 Passenger Focus commented that it would be absurd if, after the much needed investment in central London, the proposed Thameslink timetable cannot be operated in full. Paths to operate the proposed timetable must not be jeopardised. In addition, future investment in high speed rail has to be taken into account. The regional distribution of SRFIs should be properly planned, not led by speculative developments such as this.

10.5 A repeat of the situation at Alconbury should not be allowed, where sufficient rail paths were dependant on alterations being made to the East Coast Main Line; they did not materialise and the scheme stalled, with a subsequent planning permission granted for residential development.

10.6 The Freight Transport Association are concerned about the lack of motorway access and any delays to lorries due to heavily congested local roads. The lorry delays would lead to a build up of air pollution. Night time noise will be a problem as recognised in a recent appeal for a Metal Recycling Centre at Kings Langley, Hertfordshire⁵⁶⁹. The proposal would have a huge impact on the views of the city centre along many lines of sight. The view of the Cathedral from the main railway line would disappear as a result of the earth bunds to be built around parts of the site.

10.7 **Mr James Clappison MP**⁵⁷⁰ agreed that there would be substantial harm to the Green Belt and agreed with the submissions of STRiFE and Hertsmere Borough Council that this particular part of the Green Belt is not large and is in a sensitive location. It is one of last significant areas of open Green Belt which separates St

⁵⁶⁹ 9/AM/1.2

⁵⁷⁰ 9/James C/1.1

Albans from Radlett and London Colney. Special circumstances to justify such damaging encroachment onto the Green Belt do not exist.

10.8 **Mr S Walkington**⁵⁷¹ queried the basis of the traffic generation data which have been derived from actual vehicle movements at Daventry International Railfreight Terminal (DIRFT) and at Magna Park, in that floorspace has been used as a comparator, whereas a volume comparison would offer a more accurate assessment. The warehousing at the appeal site would have a maximum height of 20m which would require automated rail guided loading and unloading systems. The older warehousing at DIRFT and Magna Park is 12m high. Therefore, the storage capacity at the appeal site would be far greater per m² of floorspace than at the comparator sites used to generate the forecast. Consequently the likely HGV traffic into and out of the site has been underestimated.

10.9 This same comment applies in relation to the predictions for Kent International Gateway (KIG) and Colnbrook, nr Slough. Therefore all the assumptions must be re-examined. If there is to be such a large increase in HGV traffic, there should be a commensurate increase in trains, otherwise the development is really a road distribution centre with a few sidings, rather than a genuine rail freight interchange.

10.10 There is a significant conflict between the existing demand for rail freight paths and the ambitions for commuter rail traffic into and out of London. Furthermore, a maximum W9 gauge and a rail connection only to and from the south fatally undermine the pretensions of the appeal site to be an SRFI. If it is not strategic, the destruction of the Green Belt nor the impact on local infrastructure cannot be justified. The view of St Albans and skyline would also be damaged irreparably.

10.11 **Revd Cllr R Donald**,⁵⁷² as Leader of the District Council, stated the public opposition to the application has grown not declined since the first inquiry. The site contributes to the unique character of the District. The openness of the Green Belt would be destroyed by the 330,000m² of built floorspace, 20m high with the associated infrastructure and noise bunds. 173ha would be permanently lost. If the development is permitted, the southern villages, separate communities and city would merge in a short time, which could set a precedent which could lead to the coalescence of St Albans, Radlett, Borehamwood and Mill Hill. This could extend around the whole of north London bordering the M25.

10.12 The recent Sustainable Communities Strategy (SCS) and Draft Local Development Framework (LDF) Core Strategy have clearly prioritised the protection of the Green Belt. The Core Strategy does not support the need for or the development of an SRFI locally to ensure the economic future of the District.

10.13 The proposals are estimated to generate daily movements of about 3,200 HGVs and 6,500 associated lighter vehicles which would cause further congestion, especially on the A41 and would substantially add to the District's carbon footprint. St Albans has the second worst CO₂ emissions after Winchester. Although freight would be taken off roads and put on trains, it would have the opposite effect by putting more container lorries and employees cars on the roads.

⁵⁷¹ 9/SW/1.1

⁵⁷² 9/RD/1.1

10.14 It is likely that, if permitted, the development would not be a rail freight interchange but a road freight interchange. There is currently inadequate capacity and paths available to accommodate the additional volume of freight trains required to service the interchange. The gauge alterations and necessary associated bridge and tunnel reconstructions have not been adequately scoped or costed, nor any funding identified. Good rail connections to the north and to any deep ports are lacking.

10.15 The Government's requirements for 400,000m² of rail related warehouses has already been met and so the need for the development has diminished since the first inquiry. The appellants' analysis of alternative sites has not been robust or sufficiently wide ranging. In addition, there have been no measures proposed to alleviate the adverse effects of the development on the Cunningham Ward of the District, north east of the site, particularly from the traffic congestion caused by the proposal and the already permitted Butterfly World scheme. There would also be a threat of expansion of the North Orbital Commercial Park onto adjoining Green Belt to provide more lorry parking or warehouse space. Residents would suffer increased noise and air quality pollution from cars and lorries, the SRFI itself and the freight trains.

10.16 **Mr M Saunders**⁵⁷³ stated that the application should be fully considered and judged afresh. Although Policy T10 of the East of England RSS states that provision will be made for at least one SRFI within the east of England to serve London and the region, the Government has indicated that it intends to revise the policy. If there is a change in Government, the RSS will be abolished. A study has not been carried out by the East of England Regional Authority, only the private sector which cannot do it in a disinterested way.

10.17 The damage to the very sensitive area of Green Belt so close to London would be enormous. It is difficult to imagine any set of circumstances which would clearly outweigh the harm brought by the development. It is still the intention of Herts CC to develop the land as a series of public open spaces with public footpaths.

10.18 The proposed country park does not meet the normal criteria for country parks. It is just a disjointed patchwork of land holdings and would be very high maintenance. Employment has never been a major problem in this part of Hertfordshire. A project such as this ought to be directed towards a regeneration zone.

10.19 The junction of the A5183 with Harper Lane is substandard. There is a need to reduce through traffic from Radlett. Elstree Crossroads on the A5183 already causes problems and is an Air Quality Management Site. Rail freight originating from the north would have to travel to Cricklewood to then return to the site. There is a lack of capacity. Increased noise at night from freight traffic would be unacceptable.

10.20 If allowed, planning conditions should be imposed to: (a) ensure that the SRFI does not become a road freight interchange; and (b), provide for a substantial contribution to solving traffic congestion at Harper's Bridge off the A5183 north of Radlett, other traffic calming measures in Radlett, solving the problems at Elstree crossroads and to fund the revenue loss of the proposed country park; (c)

⁵⁷³ 9/MS1.1

10.21 **Mr LaRiviere**⁵⁷⁴ commented on the rural atmosphere of the area and supported the reasons for refusal of the Council and wished to concentrate on the highways objections. The addition of the 3000 lorry movements per day from the development on top of the existing traffic, plus the cars belonging to workers and ancillary traffic would add a huge burden to the road system, despite minor improvements to the A414. There can be no certainty that the SRFI would not develop in to a road to road interchange.

10.22 Herts CC does not support the SRFI and has been intimidated by the prospect of financial reprisals for stating their continued concern. The A414 is one of the busiest roads in Hertfordshire. The impact of an SRFI on traffic flow in Park St would be tremendous. The congestion would also be exacerbated by the Butterfly World development and a new Hilton Hotel at Chiswell Green. Road safety would be prejudiced. Air quality would suffer from motor fume pollution and excessive noise pollution would disturb night time sleep.

10.23 The projected population increase in the area will result in a population increase of about 25,000 over the next 20 years, resulting in about 8,000 more road users. Frogmore, Park St, How Wood, Chiswell Green and Bricket Wood are identified as "large villages excluded from the Green Belt" in which housing development will take place. Harperbury Hopsital is identified as a location for 350 dwellings and the site of the former Building Research Establishment as a location for 150 dwellings. Over 200 houses have been built as infill in Park Street since the last inquiry. The only factor in favour of the development is the flat site. On all other considerations, the scheme fails.

10.24 **Mr Roberts**⁵⁷⁵ as a former timetable planner and manager with various rail companies, questioned the ability of the appellants and Network Rail to deliver reliability and a full SRFI. Although the appellants operation is for 12 loaded and 12 empty freightliner trains in and out of the terminal each day, Network Rail has been reported as not being able to guarantee the pathways. The loading gauge restriction prohibits the carrying of 9'6" continental containers, unless on special wagons.

10.25 The Thameslink programme must not be overlooked and requires almost split second timing otherwise a large part of the inner and outer suburban network will be disrupted. The MML is already a very busy railway with limited additional pathway capacity, particularly during the day and, most certainly, not in the morning and evening peak hours. There are currently just 5 slots into the terminal during the day off peak and that is without the additional Thameslink programme. If the freightliners cannot come by day, the operation will be predominantly at night time which would have impacts from noise, light pollution and road transfer vehicles. A full draft working timetable is required to include all the proposed passenger services, especially on the up and down slow lines where the proposed SRFI's access points would be. Rail capacity and pathways are compromised as trains slow down, stop or cross over at junctions. This should be presented in detail.

⁵⁷⁴ 9/ILaR/1.1

⁵⁷⁵ 9/ER/1.1

10.26 **Mr Trevelyan**⁵⁷⁶ stated the St Albans Civic Society wishes to see the appeal dismissed and supports the arguments submitted by the Council and STRiFE. The development would lead to the merging of Radlett and St Albans. It would effectively close the gap between Park St and London Colney and so be contrary to the second, third and fourth purposes of including land in the Green Belt. The site has been successfully transformed from a former mineral working to agricultural countryside. It is usual practice in traffic assessment to find comparative developments which are similar to that proposed. If the height or volumes of the comparators are significantly different, the traffic generation estimates could be seriously in error.

10.27 **Mr Parry**⁵⁷⁷ supported the cases submitted by the Council and STRiFE and had further objections based on ecology and traffic. The appeal site is a good hunting area for Barn Owls, a declining species in Hertfordshire, but which bred successfully at a location about 1.2 km away. The previous ecological survey is flawed.

10.28 There is also a fundamental flaw in the traffic assessment in that floor areas of comparative developments at DIRFT and Magna Park (nr Milton Keynes) are used and not the respective volumes. The HGV traffic would be at least double of that claimed by the appellants, Herts CC and the Highways Agency. Even a minor traffic incident on the A1M, M25, M1, A405 or A414 can result in gridlock and Park St being cut off from St Albans. This can happen about once per fortnight.

10.29 **Mr Bell**,⁵⁷⁸ on behalf of the Chiswell Green Residents Association, also commented critically on the traffic implications of the proposal, especially when there would be incidents on the M25 or M1. Furthermore, no consideration has been given by the appellants to alternatives should the site access road or the rail access become blocked. Alternative sites, which are workable and sustainable, should be assessed by independent specialists and not rely on reports produced by the appellants.

10.30 **Mr Taylor**,⁵⁷⁹ of the Radlett Society and Green Belt Association, referred to the reason for refusal dealing with the Green Belt and commented that the suitability of a site does not amount to very special circumstances. The Green Belt in this location has prevented the outward spread of London, has helped to retain the separate character of Hertfordshire's towns and villages, has prevented the merging of settlements and has preserved the visual amenity and openness of the site. The loss of the site will harm the openness and visual amenity of the Green Belt.

10.31 In the assessment of Alternative Sites, the North Pole International Depot has been omitted and it would appear to require little change to rail infrastructure. Moreover, the north west to south east orientation of the proposed buildings on the relatively elevated appeal site would be unsustainable in terms of energy loss. The introduction of the Park St relief road from the A41 to the A5183 south of the M25 would open up even more what is already an intolerable rat run, especially when either the M1 or M25 is closed. Radlett is a small town and cannot be bypassed. There are 54 schools served mainly by coach. The additional traffic generated by the proposal could unduly extend school journey times.

⁵⁷⁶ 9/PT/1.1

⁵⁷⁷ 9/DP/1.1 & 1.2

⁵⁷⁸ 9/JB/1.1

⁵⁷⁹ 9/RSGBA/1.1

10.32 The junction of Harper Lane and the railway bridge is substandard and no longer fit for purpose. There is a need for the bridge to be rebuilt. The Elstree crossroads further down the A5183 is also problematical. HGV drivers might be tempted to drive a longer but less congested route using Harpers Lane, rather than the A41 and A1081, should traffic conditions be difficult. The site is not ideally located in terms of the strategic highway network.

10.33 The overall increase in noise would be harmful, especially the effects caused by night time freight services on properties close to the railway, particularly in the shallow valley through the centre of Radlett. The scheme, if allowed, should have buildings fitted with solar panels. The proposal is not in the public interest because of its location in the Green Belt. Although a claim is made that lorries would be taken off roads, the evidence indicates that the site would become a predominantly road – road logistics park for which no very special circumstances can be argued in support.

10.34 **Mr Peak**⁵⁸⁰, of the London Colney Village Concern, referred to the issues concerning external traffic around London Colney which are still not resolved. Problems with lorry parking, excessive noise and the impact on safety and comfort have appeared with the approval of various Business Parks built near the junctions 21A and 22 of the M25. Consideration of the proposal at the appeal site should take the cumulative impact into account.

10.35 **Miss Pudsey**⁵⁸¹ spoke on behalf of the St Albans Community Forest Association and concurred with many of the objections by others but concentrated on the direct impact of the proposals on the Watling Chase Community Forest (WCCF) and the objectives of the Watling Chase Forest Park (WCFP), and whether the country park proposal constitutes sufficient mitigation and amelioration to contribute to special circumstances.

10.36 The proposals constitute unacceptable development in the Green Belt and contradict central policies in the WCFP. Watling Forest, covering 72 square miles, is one of 12 community forests set up in England and aims to increase woodland cover whilst working for the conservation of nature and provision of recreation, education and employment opportunities. The SRFI proposals, even in conjunction with the country park, fall foul of both PPG2 and the WCFP, as was agreed by the previous Inspector.

10.37 There would be the loss of a genuine working landscape at Hedges Farm, which combines environmental and recreational benefits with traditional land use. A sustainable local enterprise would be lost in the interest of moving large amounts of goods over long distances.

10.38 Many of the best landscape areas of the country park are already accessible to the public via existing RoW and, whether accessible to the public or not, a large part of the area already fulfils WCFP objectives, and all of it already fulfils the main purposes of the Green Belt. The country park would be incoherent. The current high

⁵⁸⁰ 9/KP/1.1

⁵⁸¹ 9/SACFA/1.1 – 1.4

volume of traffic discourages people from using the WCCT sites. The increased traffic from the proposal would not improve that situation.

10.39 There could be benefits from a new country park but it is not clear how the park would be administered, nor is the level of funding sufficiently guaranteed, the loss of amenities, including views, open spaces, wildlife and farming areas from WCCF would be considerable, as would be intrusions due to increased traffic volumes. The harm would not be outweighed by the country park.

10.40 If allowed the SACFA would wish to see stringent conditions and an adequate S106 funding secured: ensure the development operates as an SRFI not a lorry park; ensure all necessary sustainability, mitigation and other measures are fully and correctly applied; ensure secure adequate and sustainable funding for the development and management of the country park; and to provide for suitable input from a wide range of stakeholders in the design, development and management of the country park; restrict the use of the buildings for anything other than rail freight and ancillary uses only. If rail freight becomes unviable, there should be a requirement for the buildings to be demolished and the site restored to green field status.

10.41 **Mr Johns** ⁵⁸² on behalf of Park St Primary School opposed the proposal because of various reasons. The SRFI would adversely affect the health and sleep patterns of pupils during construction and operation. Strategic Noise Maps show that the Radlett Aerodrome already suffers seriously from noise pollution due to major roads and railway with an average volume level of over 65dB during daylight. Similarly, the area has a level of night noise more than 55dB everywhere with many locations more than 60dB. Both during the day and night that area has noise levels which the EU noise directive describes as "annoyance" during the day and "sleep disturbance" at night. Noise levels would increase were the proposal to go ahead. The scheme does not interpose between locations in Park St and the primary noise sources.

10.42 The appellant has acknowledged that the development would affect the water table of the surrounding area. Additional houses have been built along the Radlett road. The risk of flooding has been increased during peak rain activity. The flood risk has increased significantly since the previous inquiry. The inadequate assessment provides insufficient evidence that the infrastructure would be able to support the additional water flow associated with the proposed scheme. Little thought has been given to site security and the storage of hazardous materials.

10.43 The local roads are not capable of accepting additional traffic and the increases of up to 3,000 more HGVs and 6,000 cars would place the children who attend the school at greater risk. The extra traffic would also worsen the health of children with breathing difficulties like asthma.

10.44 Green Belt would be lost. The water meadows of the Ver would be replaced by a small artificial habitat. Some local populations of several species would be permanently lost from the area, especially in the wetlands. The local open farm and bridleways would be lost. Several thousand transient workers would pass through the area each day bringing added risks to school pupils. There would be a failure to

⁵⁸² 9/MJ/1.1

return the former mineral working to its original state. The proposed SRFI buildings would not be hidden by the earthworks.

10.45 The appellant has land south of the M25 and in Harrow and Luton which could be used for the development. That land is in areas where there is a greater need for jobs and where the environmental impact of the scheme would be less. The development would not be an SRFI. The rail line connection is simply to obtain planning permission in the Green Belt. It is highly geared towards road freight. It is unlikely that the rail freight capacity can be met by a single unidirectional line sharing a major commuting line.

10.46 The proposal is premature until the NPS on National Networks has been published, which should be within months. There is no evidence of demand for warehouse facilities. The appellant has failed to demonstrate that there are adequate paths in the wider national rail network to support the number of freight trains the facility is intended to serve, especially in view of the growth in passenger numbers. Landscape has been inadequately addressed given that 200 additional homes have been built since the last inquiry. The proposals would also lead to harmful air quality conditions; no attempt has been made to update the assessment. The country park proposals are unacceptable. Insufficient information on traffic and highways has been submitted to enable the proposal to be adequately assessed.

10.47 **Mr Carter** ⁵⁸³commented on the increase in traffic on the A5183 and the consequent noise and vibration. The SRFI would lead to even more traffic, even more damage to roads and houses and air pollution. In addition, there are no acceptable proposals for dealing with surface water run-off.

10.48 **Mr D Brown** ⁵⁸⁴claimed that the proposal has not been thought through. At the junction of the SRFI with the A414, a roundabout would be cheaper for the developer but would maximise CO₂ emissions and carbon particulates, cause collisions and result in delays to vehicles and a waste of time for people in them. A grade separated junction would be more expensive.

10.49 **Mr R Webb** ⁵⁸⁵commented on the dangers which would be caused by the increase in traffic, air and light pollution and on the lack of a comprehensive alternative site survey. If it is a new application, all the facts must be considered.

10.50 **Mrs E Brown** ⁵⁸⁶stated that, given the existing permissions at London Gateway and Howbury Park exceed current needs, there are no special circumstances which justify the development of this land in the Green Belt. Even if there is an eventual carbon emission reduction as a result of the scheme, the actual construction works would cause very large carbon expenditure. In any event, the reduction would be based on the site operating as an SRFI and that suitable paths can be found in the future. The appellant has said that it would take 10 – 15 yrs to build up to 10 – 12 trains per day.

⁵⁸³ 9/JC/1.1

⁵⁸⁴ 9/DB/1.1

⁵⁸⁵ 9/RW/1.1

⁵⁸⁶ 9/EB/1.1

10.51 The appellant predicts that the forthcoming SIFE proposal at Colnbrook would result in a slightly lower carbon emission reduction, but the buildings would be lower in height and less extensive and hence the carbon expenditure from construction would be lower. It appears that Colnbrook would have greater accessibility to the necessary freight paths.

10.52 There would be increased noise near to the development. Windows would have to be kept closed. There would be sleep deprivation. Travelling would become more difficult, which is especially concerning for emergency vehicles.

10.53 **Mr C Brown**⁵⁸⁷ referred to the decision by the Secretary of State at Alconbury Airfield where the development was permitted subject to a condition which indicated that no part of the development could be occupied until a rail link to the ECML is provided. The rail paths would be sufficient provided that alteration were made to the ECML. The alterations were not made. The freight path situation here is less clear and there is nothing to show that the unused paths could be used to enter the site now or in the future when the Thameslink Programme is fully operational.

10.54 In this case, if the scheme is allowed, a condition should be imposed so that no ground work shall be permitted to commence of the site until all Gauge Enhancement works have been completed and the Spur and Under Bridge have also been completed. The S106 Agreement should also place a limit on the number of vehicles which could use the site. It is not certain that the site would operate as an SRFI even with expenditure on the rail connection due to the possibility of attracting high rents for modern warehousing, albeit road connected.

10.55 If the DIRFT warehouses are 12m high and the appeal site warehouses 20m high, this would increase the volume available for storage by 67% and so could lead to 5333 HGV movements per day, rather than 3200.

10.56 Based on comparisons of the relative volumes of the development at Kent International Gateway (KIG) with the appeal site, the possible stock turnover with the storing of temperature controlled stock, and the likelihood of the SRFI receiving food goods from East Anglia and Lincolnshire, the road traffic forecasts may well be understated. Radlett could operate almost entirely as a Regional Distribution Centre (RDC) which will be entirely road based with substantially more HGV movements than the 5333 suggested above.

10.57 If the HGV movements are compared to cubic volume, the proposed scheme would need about 2062 m³ per HGV, which is about 70% more than KIG and 130% more than Colnbrook. For each train, Radlett would take up about 65% more land than KIG and 90% more than Colnbrook.

11. Written Representations

Network Rail

11.1 Network Rail submitted a Statement of Agreed Facts for the inquiry (see para 6.1 above).⁵⁸⁸ Network Rail also supplied written answers to questions which were

⁵⁸⁷ 9/CB/1.1 – 1.8

⁵⁸⁸ 9/CD/7.4

put to them in a joint submission during the inquiry.⁵⁸⁹ Answers included the following:

11.2 In answer to the question seeking confirmation that the Rules of the Plan and the Rules of the Route in the Radlett area on the MML will be unchanged following completion of the Thameslink programme, Network Rail stated that there would be no alteration to the headways in the Radlett area within the Rules of the Plan. The Rules of the Route is an evolving document which changes from year to year dependent on engineering work.

11.3 Network Rail does not recognise that 80% represents the ceiling of capacity that can be used viably for passenger or freight. Network Rail is aware that statements of this kind have been made but there has been no evidence to confirm the statistics. In a regular pattern timetable, all the pathing opportunities are constructed robustly to comply with "Rule of the Plan" and, as such, they should be useable if operators want to bid for them. The circumstances in which access to spare capacity might not be granted are theoretical and Network Rail would need very strong grounds to deny an applicant access into spare capacity and 89% utilisation would be very unlikely to satisfy those criteria.

11.4 Network Rail does not consider there to have been any material changes in the capabilities of the rail network since 2007, and in relation to the conclusions of the previous inquiry reference is made to para 2.3 of the 2009 Statement of Agreed Facts (para 6.1 above).

11.5 Network Rail continues to express a desire to work with the applicant to achieve a technical solution to the issues raised by the provision of the new rail facility. Network Rail is obliged to do this under its Licence Conditions and Dependent Persons Code.

11.6 If any aspect of the development work calls into question the feasibility of the proposed railway works, Network Rail will discuss possible solutions with the developer.

Cliff Bassett with Goodman (Harlington)⁵⁹⁰

11.7 Harlington, north of Luton, adjoins the M1 and the MML and was rejected by the appellants as a more suitable alternative to the appeal site. The appellants claimed that Radlett would clearly perform better than the Harlington site in meeting the assessed need for an SRFI. Three reasons are given: Harlington is significantly further from London; it would be difficult to achieve a rail connection to Harlington without causing significant harm to local environmental conditions; and a development at Harlington is unlikely to provide any additional planning benefits.

11.8 Harlington falls within the "North West of London" area of search and would provide intermodal connectivity with rail access from the MML and a link to the Strategic Road Network (SRN) via the M1, M10 and M25. The Hanger Lane Gyratory on the North Circular Road was chosen by the appellant as the point from which to assess lorry kilometre savings. On that basis, the distance between Harlington and

⁵⁸⁹ 9/HS/INQ/1.0

⁵⁹⁰ 9/CBwG/1.1

London compared to Radlett by road is about 26km, which equates to a modest 15 – 18 minutes. A similar travel time and distance by rail is insignificant in the context of moving freight long distances.

11.9 The rail access to the Harlington site would allow for direct routing to the north and south of the site at entry and exit speeds appropriate to the MML. Therefore, it would function better than Radlett in relation to the Strategic Rail Freight Network. The capacity of the M1 and the nearby Junction 12 of the M1 are to be improved and, so far as road access is concerned, the comparison of Harlington and Radlett is neutral.

11.10 The appellant acknowledges that Harlington offers the potential for a higher proportion of workplace trips to be made by non car modes. It is also likely that trips would be shorter and that the development would draw its labour force from communities such as Luton and Dunstable where there are greater concentrations of unemployment. In addition, alternative development configurations are possible on the Harlington site in order to meet market requirements.

11.11 The harm to the Green Belt by reason of inappropriateness would be substantially the same at both Harlington and Radlett. However, the perceived harm to openness would be less at Harlington because of the relative containment of the site. Overall effect on air quality should be less at Harlington than the appeal site due to the fewer number of car borne commuters to the site. Noise, archaeological interests and biodiversity are not determining issues in the comparison.

11.12 In terms of landscape, the appellant's assessment of the comparison between the two sites is that there is little material difference, but that is not correct because the effects at Harlington would be "moderate adverse" rather than "significant adverse" and the visual effects would be "low to moderate adverse" rather than "moderate adverse". The issue of need for an SRFI is common to both, although Harlington would be more effective in meeting the need and so is to be preferred to Radlett and weighs heavily in its favour. This would carry more weight than the benefits of the Park Street bypass and new country park.

11.13 The appellant's assessment overstates the likely effects of an SRFI on the Harlington site in a number of respects. Whilst the harm to the Green Belt by reason of inappropriateness would be similar in each case, Harlington would cause less harm in terms of perception of openness; would cause less other planning harm (notably in terms of landscape and visual effects); would meet the need for an SRFI more effectively as part of the planned SRFN; operate more effectively in terms of sustainability and economic development and could also offer wider planning and landscape benefits.

11.14 Therefore, there is demonstrably a materially better site which is available that would meet the needs for an SRFI more effectively and following the reasoning of the Secretary of State the appeal should be dismissed.

Goodman (SIFE)⁵⁹¹

⁵⁹¹ 9/G/1.1 and 9/LPA/2.13 (Appendix K: Wilson)

11.15 Representations were received from Goodman who own land at Colnbrook which has been short listed as an alternative SRFI location to the appeal site. It is claimed that, in assessing the alternatives, the appellant made inaccurate statements in the "Need Case for a Strategic Rail Interchange", where the SIFE site is referred to as Site 9/10. Therefore, the conclusion that the appeal site is the best in the north west sector is flawed and incorrect. The representations suggest that the developers are at a very advanced stage in the preparation of a planning application for an SRFI on the site. Reference is made to the site at Colnbrook in the Slough Borough Council Core Strategy DPD which was adopted in 2008.

11.16 The appellant's conclusions regarding the relative merits of SIFE and the appeal site are factually incorrect. SIFE is located immediately adjacent to the west of the Colnbrook branch line which serves the existing Thorney Mill aggregates depot and the former Heathrow T5 construction compound. The branch line is fully operational and connects with the Great Western Mainline immediately west of West Drayton station and West Drayton junction.

11.17 The appellant implies that the branch line is limited to only W6 freight, whereas it is cleared to W8 on the Network Rail Freight Utilisation Strategy (RUS) and is also capable of accommodating the full range of intermodal units on standard height platform wagons. By the time the SIFE site would open, all rail routes serving the site would be cleared to at least W9, probably W10. The line would not have to cross third party land to reach the site. At least one freight path per off peak hour per direction will be available to serve the site (agreed with the Office of Rail Regulation, Network Rail, DfT and Crossrail).

11.18 Benefits that could form part of a proposal for SIFE include provision of new dedicated cycle infrastructure, enhanced bus transport, improvements to footpaths and bridleways in accordance with the aspirations of the Colne Valley Park and various landscaping and biodiversity improvements. The SIFE site could be developed to avoid areas of floodplain. There is a large potential workforce which does not compete with Heathrow.

11.19 In Green Belt terms, the SIFE site is relatively well contained visually and does not contribute towards the openness beyond its immediate confines. There are few surrounding locations that currently gain any benefit from its existing undeveloped nature. The proposal is consistent with the five purposes of including land within the Green Belt. The Strategic Gap designation in the Slough Local Plan is not used or applied consistently by other authorities, especially in more recently adopted planning policies, not by any local planning authorities that adjoin the SIFE site and not by St Albans District Council. Therefore little weight should attach to it.

11.20 There are few features of intrinsic landscape value or interest. The landscape is in poor condition and of low landscape sensitivity. Only about 2000m of public rights of way would require diverting as opposed to 5000m suggested by the appellants. Although the appeal site is closer to the M25, SIFE is nearer to a motorway, the M4. Goodman anticipate that the use of the range of available sustainable modes of transport at SIFE would comprise 55% after 3 years and 59% after 5 years, compared to the appellant's claim that only 6% would arrive at the SIFE site by bus and 4% would walk or cycle.

11.21 Both SIFE and the appeal site at Radlett would perform similarly so far as air quality is concerned and, in terms of numbers of vehicles generated, the latter might be worse. It cannot be claimed by the appellant that the SIFE scheme would have more than a slight noise impact on the residential community. There would be no adverse archaeological effects. The majority of the site has been quarried. There would be an overall minor positive benefit on biodiversity interests due to potential habitat creation and enhancement work.

11.22 Although the appellant claims that there has been little demand for large new distribution centres in the locality in recent years due to its limited capacity and high cost base, there is potential to accommodate an SRFI here because it would cater for West London, Heathrow and the Thames Valley; it is a mature area which serves a wide range of markets; the local area includes Southall, Hayes, Brentford, Iver, Slough, Thorpe and Sunbury where there are less or no direct airport related facilities; excellent accessibility to the strategic road network (M25, M40, M4, M3 and A3) which means that it would serve a wide area including Central London, M25 West, M25 North West and M25 South West.

Others

11.23 The written representations received from the many individual and other organisations followed the same themes as those who appeared at the inquiry, including the Council and STRIFE, and others who gave evidence against the scheme, other than one letter of support from Freight on Rail. The letters are included as part of the documentation together with the proofs of evidence and appendices.

11.24 Areas of concern raised in the representations included the effect on the Green Belt and the merging of settlements; the impact of the traffic generated by the scheme; the effect of noise, especially on those who live near the appeal site and the effect of a deterioration of air quality on health.

12. Conditions and Unilateral Undertaking

12.1 There were two sessions at the inquiry where planning conditions were discussed which culminated in an agreed list, with reasons, being submitted on the closing day. Sections highlighted as LPA/STRIFE additional, or alternate, wording showed the areas of disagreement. (Docs 9 /HS/INQ/7 – 9)

12.2 Conditions 1 to 8 were agreed by the appellants, the Council and STRIFE. Condition 1 imposes a 5 year commencement period and I agree that, in this case, it is justified due the complexity of the scheme and the time which may be required to agree details.

12.3 However, I have recommended the deletion of “substantially” from Condition 3 due to the lack of precision and consequent unenforceability should the word be included. I have recommended the deletion of the phrase “unless otherwise agreed in writing by the local planning authority” from most of the relevant conditions in order to prevent a process which would otherwise enable the developer and planning authority to sidestep the planning application process for items which might have a significant environmental impact. I have also recommended the deletion of the phrase “in consultation with ...” from those conditions where it occurs and which is contrary to advice in Circular 11/95.

12.4 STRIFE seek additions to Condition 9 in the form of Conditions 9.4 – 9 .7. The additions aim to monitor the number of HGVs entering and leaving the site and would place a limit (Cap) on the number of lorry movements based on the mean average daily train movements calculated over the monitoring period. The reason for the additional conditions is to ensure that the development would act as an SRFI and not a “road to road” interchange which would not constitute a very special circumstance justifying being granted planning permission in the Green Belt.

12.5 My concern about the proposed additional conditions is that, in capping the number of HGV movements to the number of trains, albeit measured by a mean average of trains over a specified period, there would be insufficient flexibility to attract developers to the site. This would defeat the purpose of the SRFI which is to encourage and enable freight operators to send goods by rail. SRFIs will normally accommodate both rail and non rail served businesses from the outset, with an expectation of increasing the proportion of rail served over time. (CD 5.1 para 4.5). Therefore, I do not support the condition suggested by STRIFE.

12.6 Conditions 10 and 11 were agreed.

12.7 The Council seek an alternative Condition 12 to the appellants. This deal with the provision of rail related works. A primary aim of the Council is to avoid significant destruction of the Green Belt for a facility which it considers would not function as an SRFI. The Council considers that there is a very real prospect of the rail connections not being approved. Therefore, a key difference between the parties in the first part of the condition is that the appellant suggests that the condition should state that “None of the units should be occupied until...works have been completed, etc...”. Whereas a variation proposed by the Council is that “The development shall not commence until...works have been completed, etc...”.

12.8 I note the comment of the appellant that the Conditions were discussed at the previous inquiry where agreement was reached with the Council about conditions addressing Rail Related Works. I also realise that some rail related issues were discussed at this inquiry in more depth than at the previous inquiry. However, I consider that the suggested conditions by the Council do not meet the test of reasonableness in Circular 11/95. For example, in Condition 12.1 agreement would have to be sought with Network Rail, which conflicts with Circular 11/95 Para 38 (Conditions depending on others’ actions). In addition, I consider that Condition 12.2 which varies the MML connection works, has requirements which are too detailed and for which there might be preferable alternatives when implemented. The appellant’s conditions more properly reflect the advice in Circular 11/95 and I shall recommend that they be imposed should the appeal be allowed.

12.9 Condition 13 considers Gauge Enhancement to the MML. The Council has sought a variation to the condition suggested by the appellant to require a Feasibility Study to be agreed by Network Rail prior to the commencement of development. As stated above, I consider that such a requirement is not reasonable and fails the test of Circular 11/95 para 38. In addition, the restriction on occupation of the units until completion of the works would be contrary to the development of an SRFI as envisaged by the SRA.

12.10 Condition 14 is agreed subject to the noise issue discussed below.

12.11 Condition 15 is disputed and I agree with the appellant that the degree of detail of planting and seeding sought by the Council is excessive.

12.12 Conditions 16 to 18 are agreed.

12.13 The detail of Condition 19 is disputed and I agree with the appellant that the degree of detail sought by the Council on marginal and aquatic planting is unnecessary.

12.14 Conditions 20 to 23 are agreed.

12.15 Condition 24 on contaminated land is disputed but I note that the wording suggested by the appellant has been agreed with the Environment Agency. In my opinion, the additional phrase proposed by the Council is unnecessary and would be superfluous given the remaining words of the condition.

12.16 Condition 25 deals with noise. The Council and STRIFE have made proposals to vary the conditions suggested by the appellant. I do not agree with the proposals to control construction noise. Construction noise can be adequately addressed under the Control of Pollution Act, as accepted at the previous inquiry. However, I agree that a noise management scheme should incorporate monitoring measures and that the L_{Amax} threshold as proposed in the Council's Condition 25.3 should be incorporated in order to safeguard the residential amenities of those who live nearby. I consider that the additional Condition 25.1 (b) proposed by STRIFE lacks precision and is unreasonable. The two conditions suggested by the appellant meet the tests of Circular 11/95 and I shall support them.

12.17 Conditions 26 and 27 are agreed.

12.18 Condition 28 is disputed. I consider that the additional words sought by the Council to the first paragraph of the condition lack precision. Therefore I do not support them. The remainder of the suggested alterations by the Council lack precision and are unreasonable in terms of Circular 11/95. Therefore, I do not agree with them.

12.19 Conditions 29 to 32 are agreed.

12.20 Condition 33 is disputed and is related to the Unilateral Undertaking in that it seeks to ensure that various positive works and financial contributions which are essential to the implementation of the scheme are secured. However, the majority of Area 1, which is where the built development of the SRFI would take place, is owned by Hertfordshire County Council which has declined to enter into the undertaking in respect of its land. The appellant has therefore suggested three alternative Grampian conditions to address the situation that the land owned by the County Council is not bound at this stage by the Unilateral Undertaking. (*See Doc 9/HS/INQ/8.0 for the full text of the submissions*)

12.21 Alternative 1 and Alternative 2 would prevent the development being commenced until the whole of Area 1 is bound by the terms of the undertaking. Alternative 3 would prevent the Units within the development being occupied until a detailed scheme has been submitted to and approved in writing by the local planning

authority. The scheme would be consistent with the obligations contained in the unilateral undertaking and would address the same matters covered by the obligation, as listed at (a) – (i) of Alternative 3.

12.22 At the previous inquiry, the appellant proposed Alternative 1 and submitted a detailed note of justification which is attached to Doc 9/HS/INQ/8.0. In her decision letter, the Secretary of State queried whether the condition complied with para 13 of the Annex to Circular 11/95. However, the condition was not rejected by the Secretary of State. She stated at para 52 of the decision that “in view of her conclusion on the planning merits of the proposal, she did not consider it necessary to pursue the matter further.”

12.23 The appellant is still firmly of the view that the condition (Alternative 1) remains valid and is not contrary to para 13 of the Circular 11/95 Annex. Para 13 states that: “Permission cannot be granted subject to a condition that the applicant enters into a planning obligation under Section 106 of the Act or an agreement under other powers.” Whereas the Council considers that the condition would conflict with advice in para 13, I agree with the appellant that the condition proposed at Alternative 1 does not require the applicant to enter into a Section 106 obligation but prevents development being commenced until an appropriate obligation has been secured. Therefore, for that reason I consider that the condition would be reasonable and shall recommend it.

12.24 Alternative 2 has been submitted in order to address any concerns there may be about Alternative 1. It has the effect of preventing works in Area 1 until the approved rail works have been commenced in Area 2. This has to be read in conjunction with Clause 14 of the completed unilateral undertaking which binds the whole of Area 2. In effect, development would not be commenced in Area 2 until a binding Section 106 obligation to bind all those parts of Area 1 not bound by the terms of the completed undertaking has been completed. A criticism made by the Council is that when there are no prospects at all of the action in question being performed within the time-limit imposed by the permission, negative conditions should not be imposed. However, there is no reason to presuppose that the County Council, like any other landowner, would maintain its current stance in the face of the significant financial benefits which would occur were planning permission to be granted for the scheme. Therefore, in that regard, I have no reservations about Alternatives 1 and 2.

12.25 Alternative 3 would prevent any of the units being occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority. The matters to be covered by the scheme would reflect those addressed in the covenants on the part of the owners contained in the undertaking and is a further option should Alternatives 1 and 2 be considered inappropriate. The Council suggested that Alternative 3 would be unlawful in that it would require the payment of money by condition and, following advice in Circular 11/95 Annex para 83, I agree.

12.26 So far as any other outstanding issues are concerned on the unilateral undertaking, I note the concerns of others including the County Council, but having regard to the submission of the appellant (Doc 9/HS/INQ/10.0), I am satisfied that the undertaking is necessary to make the proposed development acceptable. It is

directly related to the development and is fairly and reasonably related in scale and kind to the development.

13. Conclusions

[The numbers in square brackets refer to the source paragraphs in the report]

Introduction

13.1 The proposal is to build a Strategic Rail Freight Interchange (SRFI) with a rail link to the adjoining Midland Main Line (MML) and with road access onto the A414 dual carriageway, which then leads to the M10, the A405 and the M25. The appeal site lies within the Metropolitan Green Belt about 3.5km from the centre of St Albans and in a gap between the built up areas of London Colney, Colney Street and Park Street/Frogmore.

13.2 The entire scheme comprises eight separate parcels of land (Areas 1 to 8), with the main body of the SRFI and connecting roadways being on Area 1 (146ha), which is mostly restored mineral workings, following its former use as Radlett Aerodrome. Area 2 (26ha) would accommodate the rail link to the MML. Areas 3 to 8 would generally remain in agricultural and woodland use with improved public access and some areas given over to more formal recreational uses. The description of the proposal includes these areas of land as a country park. The scheme would also include a bypass along the western edge of the site which would link the A5183 to the A414 around the build up areas of Park Street and Frogmore. [2.2 – 2.18, 4.1 – 4.19]

13.3 The application is in outline with details of siting, means of access and landscaping to be considered as part of the application to the extent that these matters are defined and described in the Development Specification. The development on Area 1 would include 331,665m² of buildings most which would be warehousing up to 20m in height, together with ancillary vehicle maintenance units and a recycling centre. [1.8, 4.2]

The Previous Appeal

13.4 In October 2008, following a public inquiry, the Secretary of State dismissed an appeal against a refused application for an identical proposal on the same site. The overall conclusions of the Secretary of State were that the proposal did not comply with the development plan as it was inappropriate development in the Green Belt, and that it would also cause substantial further harm to the Green Belt. She also identified limited harm from conflicts with the development plan in relation to landscape and visual impact and highways, but considered these would be insufficient on their own to justify refusing planning permission. [3.5 – 3.30]

13.5 The Secretary of State was not satisfied that the appellant had demonstrated that no other sites would come forward to meet the need for further SRFIs to serve London and the South East, and she was unable to conclude that the harm to the Green Belt would be outweighed by the need to develop an SRFI at Radlett and that this was therefore a consideration amounting to very special circumstances. Having balanced the benefits of the proposal against the harm to the Green Belt, she also concluded the benefits of the proposal taken either individually or cumulatively would not clearly outweigh the harm to the Green Belt and did not constitute very special circumstances.

13.6 The Secretary of State therefore concluded that there were no material considerations of sufficient weight which required her to determine the application other than in accordance with the development plan. She then dismissed the appeal.

Environmental Statement

13.7 An Environmental Statement (ES) was submitted in accordance with the 1999 Regulations, as amended. In my opinion, the ES meets the requirements of the 1999 Regulations, and I have taken its contents into account in arriving at the recommendation in this report, together with all the other environmental information considered at the inquiry and submitted in connection with the appeal.

Legal Submissions⁵⁹²

13.8 All three legally represented parties at the inquiry, the appellants, the Council and STRIFE made references in opening and closing submissions about how the current case should be approached in view of the previous decision on the appeal site by the Secretary of State. [7.4 – 7.14; 8.2 – 8.15; 9.3 – 9.9]

13.9 The stance of the Council and STRIFE was that there is no duty to decide a case in the same way as the previous decision and that, whilst previous relevant decisions should be taken into account and dealt with adequately, an Inspector (or Secretary of State) has to exercise his/her own judgement and is free to disagree with the earlier decision. This has been set out in the Planning Encyclopaedia (P70.38) where references are made to judgements in the cases of *North Wiltshire District Council v. Secretary of State for the Environment* [1992] J.P.L. 955; *Rockhold v. Secretary of State for the Environment* [1986] J.P.L. 130; *Barnet London Borough Council v. Secretary of State for the Environment* [1992] J.P.L. 540 and *R. v. Secretary of State for the Environment, ex p. Gosport Borough Council* [1992] J.P.L. 476. [8.5, 9.6]

13.10 As a result of reviewing the judgements, the Council submitted that (a) the decision-maker on a fresh application is considering the application as a new application; (b) the decision maker should reach a conclusion taking into account all relevant matters, including any previous decision of relevance; (c) the need to establish a “good reason” for a change of mind from an earlier decision applies where the later decision, if decided in a particular way, would be inconsistent with the previous decision; (d) what will amount to a “good reason” is not a closed list; and (e) a good reason may be a change of circumstances, but need not be that; (f) the decision maker decides that the balance should be struck in a different way and (g) a new argument or a new piece of evidence or the compelling nature of the way the evidence is presented may also amount to a good reason. [8.7]

⁵⁹² At the inquiry, I was formally requested by Mrs Anne Main MP to issue a witness summons against an employee of Network Rail in order to compel that person to attend the inquiry to be cross examined. Notwithstanding the submissions by the appellant that a witness summonsed in that way would be there to give evidence rather than answer questions, after I indicated that the person initiating the summons would be responsible for meeting the expenses incurred by the witness, and taking into account the willingness of Network Rail to supply written answers to questions which had been put collectively by the main parties earlier in the inquiry and were awaited the following day, I declined the request. The matter was not pursued further and after receipt of the answers from Network Rail, no more questions were put to that body.

13.11 The appellants stated that the previous decision letter should be the starting point for this appeal and that clear guidance is thus given as to what is required to be addressed in order to secure permission. The reasons given for refusing permission should “enable disappointed developers to assess their prospects of obtaining some alternative development permission”: per Lord Brown in *South Bucks DC v. Porter (No.2)* [2004] 1 WLR 1953 at [36] or, by analogy and in the context of this case, should enable disappointed developers to know what they need to do to overcome the problems identified with their proposals. The Secretary of State here has told the appellant company what it needs to do in order to secure a planning permission. The appellant stated that it would be plainly unfair, inconsistent and unreasonable for the Secretary of State to subsequently move the goalposts. [7.4, 9.4]

13.12 This basic proposition applies both to consistency in treatment of different people and to consistency in treatment of the same person at different times: see *R (oao Kings Cross Railway Lands Group) v. Camden LBC* [2007] EWHC 1515 (Admin): “... However, given the desirability of in principle (to put it no higher) of consistency in decision making by local planning authorities, Mr Hobson rightly accepted that in practice the Committee in November 2006 would have to have a “good planning reason” for changing its mind. That is simply a reflection of the practical realities. If a local planning authority which has decided only eight months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable”. PPS1 paras 7 and 8 also emphasise the need for consistency. (Inspector’s emphasis) [7.6, 8.6]

13.13 The appellants accepted that the Secretary of State was legally entitled to come to a different conclusion to that previously reached, but unless there were any material changes in circumstances (MCCs) there could be no rational reason for him to do so and would be inconsistent with paragraph B29 of Circular 3/2009. However, in my opinion, the *Kings Cross Railway Lands Group* judgement above supports the submission of the Council that a good reason may be sufficient for the decision maker to come to a decision which is inconsistent with one made earlier. Indeed, I would suggest that the phrase within the *Kings Cross Railway Lands Group* judgement indicating “a very good planning reason” describes the appropriate test for a change of mind. Therefore, in my opinion, it follows that, in relation to the current appeal, the point can be applied to either the Secretary of State, Inspector or Council and that an MCC need not be the sole reason for a conclusion or decision to differ from one made previously. [7.10]

13.14 This opinion is reinforced by a quote from the case of *North Wiltshire District Council v. Secretary of State for the Environment* [1992] J.P.L. 955: “To state that like cases should be decided alike presupposed that the earlier case was alike and was not distinguishable in some relevant respect. If it was distinguishable then it usually would lack materiality by reference to consistency although it might be material in some other way. Where it was indistinguishable then ordinarily it had to be a material consideration. A practical test for the Inspector was to ask himself whether, if he (the Inspector) decided this case in a particular way was he necessarily agreeing or disagreeing with some critical aspect of the decision in the

previous case? The areas for possible agreement or disagreement could not be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there was disagreement then the Inspector had to weigh the previous decision and give his reasons for departure from it. These could on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they might have to be elaborate” (Mann LJ). Therefore, the Inspector was not precluded from disagreeing with some critical aspect of a case indistinguishable from a decision in a previous case, only that reasons had to be given.

13.15 However, the Council also submitted “...simply ... a change of view...” was a sufficiently good reason for a decision maker to come to a different decision. I consider that this is far too simplistic. A mere change of view or opinion which then resulted in a different decision, would have to be supported by an adequate chain of logic, otherwise it would be too easy for that decision to appear unsound. Accordingly, whereas I agree that an MCC could result in a different conclusion or decision, such a change could also be prompted by another “very good planning reason”. [8.7]

13.16 Therefore, following the findings in the *Kings Cross Railway Lands Group* case, whereas for reasons of consistency I accept that identical cases should be decided alike, I consider that neither I nor the Secretary of State are bound to follow either the conclusions of the previous Inspector or the decision provided that there are very good planning reasons, which are clearly explained, why such disagreement has occurred.

13.17 I note that the Council deliberately stepped back from arguing against certain conclusions by the previous Inspector and Secretary of State because of the “threat” of costs which had been made if it had pursued various issues without identifying a change in circumstances. The Council did not agree with the contention that costs would apply in such circumstances, but felt incumbent to limit the costs exposure as a result of the points made at the PIM.

13.18 However, at the inquiry, neither the Council, nor any other party, was prevented from calling any evidence to support its case, which was consistent with what I advised at the PIM, notwithstanding the comments I made about the risk of unreasonableness in relation to paragraph B29 of Circular 3/2009. It seems to me that, if the Council elected not to present evidence on an issue and that decision was based on a consideration of an award of costs being made against it, there is a tacit admission of possible unreasonableness and a recognition that a very good planning reason for challenging a particular previous conclusion of the Secretary of State might not exist. [7.12]

13.19 Therefore, in my opinion, the Secretary of State may consider that, if there is a very good planning reason, he is able to differ from the conclusions or decision of his predecessor.

Main Considerations

13.20 Accordingly, after hearing the evidence at the inquiry, reading the written representations and inspecting the site and surroundings, including the alternative sites shortlisted by the appellant, I believe that the main considerations in the case,

having regard to the aims of the adopted planning policies for the area and the previous decision of the Secretary State are:

- (a) the extent to which the proposal would result in harm to the openness of the Green Belt and the purposes of including land within the Green Belt;
- (b) the extent to which the proposal would cause other harm;
- (c) whether other considerations clearly outweigh the totality of any harm identified;
- (d) and, if they do, whether the circumstances of the case are very special and justify granting permission.

The Development Plan

13.21 **The East of England Plan** (RSS) published in 2008 includes Policies T1 and T10 to which references have been made in the reasons for refusal of the planning application. Policy T1 describes regional transport strategy objectives and also the outcomes which should arise if those objectives are successfully achieved. An objective of the policy is to manage travel behaviour and the demand for transport to reduce the rate of traffic growth and greenhouse gas emissions. This could lead to an increased proportion of freight movement by rail and safe, efficient and sustainable movements between homes, workplaces etc. [5.2]

13.22 Policy T10 provides that priority should be given to the efficient and sustainable movement of freight, maximising the proportion of freight carried by e.g. rail including that: *“provision should be made for at least one strategic rail freight interchange at locations with good access to strategic rail routes and the strategic highway network, unless more suitable locations are identified within London or the South East for all three to four interchanges required to serve the Greater South East”*. [5.3]

13.23 Para 7.25 of the Plan states that *“Currently, the movement of freight in the region is largely by road. To increase movements by rail... there is a need for interchange locations. The 2004 Strategic Rail Authority Strategic Rail Freight Interchange Policy identified a need for three to four strategic rail freight interchanges for the Greater South East and the 2006 Eastern Regional Planning Assessment for the Railway envisaged development of strategic sites around the M25. Given that the region includes a third of the M25 ring and that all the main rail lines from London to the North and Scotland cross the M25 within the East of England it is likely that at least one of the required strategic interchanges will need to be in the region.”*

13.24 **The South East Plan** was published in 2009. The appeal site is not within the South East for the purposes of the Plan and so is not part of the development plan for the area. However, Policy T13 deals with Intermodal Interchanges and seeks the provision within the region of up to three intermodal interchange facilities well related to rail and road corridors capable of accommodating the anticipated level of freight movements, the proposed markets and London. [5.7]

13.25 Potential sites should meet a number of criteria such as being of sufficient size, have rail connectivity, the potential for adequate road access and be situated away from incompatible land uses. The Plan states that suitable sites are likely to be located where the key rail and road radials intersect with the M25.

13.26 There are no saved policies in the **Hertfordshire County Council Structure Plan Review 1991 – 2011** which are relevant to the current proposals. [5.4]

13.27 **The St Albans District Plan Review 1994** includes Policies 1, 97, 104, 106 and 143. Policy 1 deals with the Metropolitan Green Belt and describes the circumstances in which planning permission might be granted for certain types of development, none of which include an SRFI. Policy 97 seeks to safeguard footpaths, bridleways and cycleways. Policy 104 aims to preserve and enhance the quality of the landscape throughout the District. Policy 106 provides for taking account of ecological factors when considering planning applications. Policy 143 provides for visual and ecological improvements in the Upper Colne Valley and encourages measures to promote the enjoyment of the countryside. [5.5]

13.28 No policies in the **Minerals Local Plan** or the **Waste Local Plan** are referred to in the reasons for refusal. An Issues and Options Consultation paper for the **St Albans City & District Core Strategy Development Plan Document** was published in July 2009 and so the Core Strategy is at such an early stage in its preparation that I accord little weight to it. [5.6, 5.7]

Other Policies [5.7]

13.29 The London Plan Consolidated with Alterations since 2004 published in 2008 encourages the provision of SRFIs (Policy 3C.20). A New Plan for London (2009) has been published for consultation and supports the provision of SRFIs setting out features which the facilities must deliver and recognising that they can often only be located in the Green Belt.

13.30 The Strategic Rail Authority (SRA) published a Strategic Rail Freight Interchange Policy in March 1994. Although the SRA has ceased and the responsibilities for Route Utilisation Strategies (RUSs) and identifying impacts on the rail network has now transferred to Network Rail, the document is still a source of advice and guidance.

13.31 The aim of the policy is to facilitate the development of a network of commercially viable rail freight interchanges with the right facilities and in appropriate locations to support the required growth of freight on rail. Key factors in considering site allocations at the recommended scale of regional planning include suitable road and rail access, ability for 24/7 working, adequate level site area and potential for expansion, proximity to workforce, proximity to existing and potential customers, fit with the primary freight flows in the area, the ability to contribute to the national network by filling gaps and to fit with strategies promulgated by the then SRA including Freight Strategy, RUSs and Regional Planning Assessments.

13.32 The SRA policy suggests that London and the South East, as then constituted, could meet the required capacity by the provision of 3 or 4 new SRFIs in the region, supplemented by smaller locations within the M25 ring. The qualitative criteria to

deliver the capacity mean that suitable sites are likely to be located where the key road and rail radials intersect with the M25.

13.33 In 2009 the DfT published The Longer Term Vision for the Strategic Rail Network. This seeks the delivery of items including longer and heavier trains, efficient operating characteristics, a 24/7 capability, W12 loading gauge on all strategic container routes, increased freight capacity, and the development of SRFIs and terminals.

13.34 As the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents.

Green Belt

13.35 When dismissing the previous appeal for an SRFI at the site in 2008, the Secretary of State concluded that it would be inappropriate development in the Green Belt and would conflict with national and local policy. The Secretary of State agreed with the previous Inspector that, whilst the impact on the landscape of the proposal would be mitigated to some degree by the mounding and planting proposed, the proposal would have a substantial impact on the openness of the Green Belt and harm on this account could not be mitigated. The Secretary of State also concluded that the proposal would result in significant encroachment into the countryside, would contribute to urban sprawl and would cause some harm to the setting of St Albans. The appellant, the Council and STRIFE did not dissent from those conclusions which were also reflected in the representations from many members of the public. I have no reason to disagree. [7.26 – 7.36; 8.16 – 8.23; 9.15 – 9.34, 10.7, 10.10, 10.11, 10.17, 10.30]

13.36 However, the Secretary of State also concluded that the proposal would not lead to St Albans merging with Radlett, or Park Street and Frogmore merging with either Napsbury or London Colney. In taking a contrary view, the Council argued that there was no requirement for a proposal to be similar to the development to which it would be near in order to create the impression that urban forms were merging. Neither was there a requirement that the proposal should have to actually enclose the open space between two separated settlements in order to have merged. [7.28 – 7.30; 8.18 – 8.22; 9.23 – 9.31, 10.26]

13.37 In considering the issue of the merging of neighbouring towns, the previous Inspector commented that, given the areas of open land which would remain between Radlett and St Albans with the development in place, there was little merit in the contention that they would have merged. Similarly, he stated that the built up area of the SRFI would be located to the west of the Midland Main Line (MML) with open fields between the MML and Napsbury/London Colney.

13.38 The new railway line to give access to the SRFI would be built on land between the MML and Napsbury. However, an open gap would continue to exist and, although I accept that the gaps between the various settlements would be significantly eroded by the SRFI, they would not merge as a consequence of the development. New development may have been built at Frogmore, Colney Street and Napsbury Park since the previous inquiry, but they were commitments known about and assessed at that time and I do not take the view that the proposal would lead to the merging of neighbouring towns.

13.39 STRIFE submitted an appeal decision at Farnborough in which it was explained by the Inspector and endorsed by the Secretary of State that the effectiveness of a Strategic Gap could be reduced even though the distances between development and surrounding settlements increased. I do not disagree with that proposition, but I do not accept that, in this appeal, the proposed development would lead to merging. The physical gaps would still remain, although I acknowledge that the SRFI would be a visually dominant feature.

13.40 The fifth purpose of including land in the Green Belt is to assist in urban regeneration by encouraging the recycling of derelict and other urban land. I do not accept that there were any strong contenders within the assessment of alternative locations for the SRFI which were at sites where derelict land or other urban land could be recycled, especially due to the need for good transport links to the motorway and rail networks and the size of site to accommodate the development which is proposed. Therefore, in this case, the aim to encourage the recycling of derelict and other urban land would not be frustrated by the proposal.

Other Harm

Landscape and Visual Impact

13.41 The Council submitted that its assessment of the landscape and visual impact of the proposal was similar to that of the previous Inspector as agreed by the Secretary of State. The landscape value of Areas 1 and 2 is high and the landscape impact of the proposals on Area 1 and at Year 15 would be "significant adverse". The landscape impact in Areas 1 and 2 would not be offset by the proposals for Areas 3 – 8. Overall, balancing all the Areas together, the Secretary of State agreed with the conclusions of the Inspector that the impact would be moderately adverse. [8.24 – 8.33; 9.126]

13.42 Whereas the Council largely agreed with the Secretary of State's assessment from the previous inquiry, it suggested that there would be additional significant impacts caused by the embankments and cuttings for the rail route. Furthermore, the scale of impact of the scheme when viewed from viewpoints on Shenley Ridge would be moderate adverse. I agree that the visibility of the warehouses when seen from wider viewpoints, including Shenley Ridge would place the impact on the landscape at moderate adverse, but this does not increase the severity of the impact as was concluded previously by the Secretary of State. Similarly, I agree that the embankments and cuttings for the new rail link would have a moderate adverse impact visually and on the landscape. Nevertheless, this would not be inconsistent with the overall conclusions of the Secretary of State on the first appeal.

13.43 In addition, although the widening of the M25 has commenced to the south of the site, I would expect that new lighting would be designed to best practice standards, with full directional cut-off lights and would not add significantly to any prominence and visual harm which would be caused by the SRFI. In any event, the Council was not seeking to rely on significant changes of circumstances to support the landscape and visual impacts of the case.

13.44 The previous Inspector and Secretary of State noted that the upper parts of the warehouses would be open to view from some higher vantage points. Advice in

PPS7 and PPS1 and emphasised in Policy ENV2 of the East of England Plan and the St Albans Local Plan Review aims to safeguard the countryside. However the guidance and the policies were in place at the time of the previous decision. The effect of the proposal on the landscape and the visual impact would be moderately adverse and would be contrary to Policy 104 of the Local Plan. Therefore I do not dissent from the previous conclusions of the Secretary of State. Neither, it appears from submissions, does the Council, albeit it claims that the effects would be unacceptable. In my opinion, the acceptability or otherwise cannot be judged until the final balance of harm and other considerations are evaluated. [7.59 – 7.60]

Ecology

13.45 In the previous decision, the Secretary of State concluded that the harm to ecological matters resulting from the proposed development would not be significant. Since then, the Council has indicated that the lapwing has been included on the UK Biodiversity Action Plan List and that the site is now defined as a County Wildlife Site (CWS) in part for its bird interest. Although the soundness of the definition is somewhat undermined by the paucity of data, the designation has been made and which attracts consideration under Policy 106 of the Local Plan. Policy 106 indicates that planning applications will be refused for proposals which adversely affect sites of wildlife importance. Therefore, the proposal is in conflict due to the harm to the CWS. [7.83 – 7.86; 8.70 – 8.81, 10.27]

13.46 Accordingly, to that extent, 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, I agree with the Council that more weight should be attached to the harm to ecological interests. The designation of the area of acid grassland within the appeal site as a CWS reinforces that view, although there is no reason to doubt that translocation would be successful if were to be carefully planned and executed and the harm mitigated.

Sustainability

13.47 The Council's sustainability objection to the proposal is based on the degree to which it would offend against sustainability policy given that, in the Council's opinion, it would not function as an SRFI. I shall deal with that issue below. So far as travel to work is concerned, "proximity to workforce" is one of the key factors listed by the former Strategic Rail Authority to be taken into account when selecting sites for an SRFI. [8.67 – 8.69]

13.48 In the previous decision, the Secretary of State concluded that the appeal site would perform poorly against this criterion. The Secretary of State considered the fact that only a small proportion of workers would live locally would be a disadvantage in terms of relative sustainability of the travel to work pattern of the workforce and that the site is not well placed to encourage workers to travel to it by means other than the private car. Taking the draft Travel Plan into account, the Secretary of State did 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. I consider that there has been no sound evidence advanced which would contradict that earlier conclusion. [7.87; 9.113 – 9.114]

Highways

13.49 At the previous inquiry, the Highways Agency (HA) withdrew its objections. The concerns of the Hertfordshire CC (HCC) as highway authority were largely rejected. The Secretary of State attached limited weight to concerns about highways. In the current appeal, there were originally two reasons for refusal concerning highways, but neither were pursued at the inquiry by the local highways authority or the Highways Agency. [7.38, 7.39, 7.41, 7.42]

13.50 The approach in the Transport Assessment (TA), including trip assessment, was approved by the HA. Appropriate works would be carried out to Junctions 21A and 22 of the M25. The appellant claims that implementation of the The Freight Monitoring and Management Plan (FMMP) would result in there being no material impact on the strategic highway network. The Agreed Statement between the appellant and the HA is consistent with that conclusion. There was no objection from the highway authority at the inquiry. [7.40]

13.51 STRIFE contended that the appeal site does not enjoy the high quality road links which national policy demands. The projected 3,200 daily HGV movements would have to be all routed via the A414 to gain access to the motorway network, but the A414 is already heavily congested and the local roads become "gridlocked" whenever there is an incident on the M25 or M1. [7.43, 9.101, 10.21, 10.43]

13.52 The appellant accepts that the traffic on the A414 would increase in order to gain access to the motorways via the A405 and the A1081 and states that those roads are suitable for the HGV flows being dual carriageway, without direct access from houses, and currently carry heavy flows. The improvements to the Park Street and London Colney roundabouts would ensure that traffic congestion should be no worse, and might even improve. Following the previous inquiry, the Secretary of State concluded that the fears that the development would increase traffic congestion were generally not supported by the evidence. There has been no change to the evidence of any significance which would lead me to a different conclusion. [7.45, 10.32, 10.34]

13.53 Concerns were expressed about the risk of "gridlock" and related rat running to avoid the consequent congestion. The previous Inspector concluded that he had no reason to expect that HGV drivers would risk the fines and other penalties that should be imposed if they flout weight restrictions. A "gridlock" might well occur from time to time, but anecdotal evidence suggests they are rare and this bears out my experience of using the M25 and its supporting road network. [7.47 – 7.48; 9.102 – 9.104, 10.29]

13.54 As the appellant indicates, HGV drivers would be unlikely to leave the SRFI to join a traffic queue which is not moving. Arriving vehicles would most likely be in the queue and would just have to wait. The previous Inspector commented that traffic conditions in the area are often poor, but then concluded that, with the road improvements that would be secured by condition, congestion on the network would be no worse with the development than without. The Secretary of State agreed with the conclusions and I have no reason to disagree.

13.55 STRIFE raised the issue of trip generation and claimed that the warehouses may be 66% higher than those built at DIRFT upon which the appellant relied in

predicting the HGV movements generated by the proposal. This is because the estimate was based on floorspace and no account was taken of height and, consequently, shed capacity. The appellant has indicated that the Traffic Assessment is the same as was presented at the last inquiry. The trip generation has been robustly tested by the HA and the local highway authority. The HA has confirmed its acceptance of the trip generation and the highway authority has not attempted a reassessment. [7.50 – 7.56; 9.106- 9.107, 9.109, 10.8, 10.9, 10.28, 10.55 – 10.57]

13.56 The appellant stated that the trip generation was based on surveys at comparable locations and there is no evidence of a correlation with volume. Variables could also include actual internal racking heights and spacing, occupier, nature of operation, level of automation, density of stacking, stock turnover, the relative volume and weight of goods, the efficiency and type of the vehicles used. [7.52]

13.57 In my opinion, whether or not the DIRFT buildings are 12.5m, 18m or 20m high, the evidence submitted suggests that trip generation is more complex than a simple volumetric ratio. Whereas, if all other factors were equal, a propensity for a larger volume to result in more traffic would be a reasonable assumption, the reality appears to be far more complicated. I place greater reliance on the judgment of the HA and the local highway authority, given that neither body having chosen to challenge the trip generation forecasts. In any event, as the appellant indicates, the FMMP would restrict the HGVs in peak hours. There is no substantive evidence to support the assertion that the only occupiers of the warehouses would be major retailers or those trading in heavier goods which might lead to a higher number of HGV trips than average. [7.53]

13.58 Any impact of traffic on residential amenity because of noise or air quality should be mitigated by the provision of the Park Street bypass which would be used by traffic travelling to and from the appeal site rather than along Park Street itself. Neither the District Council nor the County Council expressed adverse comments about the effect of the Butterfly Farm development and the proposed new hotel on overall traffic flows when combined with that relating to the SRFI. Accordingly, in the face of the lack of objection from the highway authority and Highways Agency and the lack of concern expressed by the County Council about the design of the Park Street roundabout at this inquiry compared to the one previously, I do 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. [10.15, 10.19, 10.22, 10.23, 10.47, 10.48, 10.49]

Noise

[7.63 – 7.81, 8.34 – 8.58. 9.128 – 9.133, 10.41, 10.52]

13.59 Following the previous inquiry, the Secretary of State agreed with the conclusions of the Inspector on noise and noted that the expert witnesses who appeared at that inquiry agreed that increases in traffic noise which would affect those living next to the railway line or those living near main roads would not be significant. The Secretary of State considered that the condition proposed which included the limitation of night time noise to 50dB L_{Aeq} , 8hr between 2300 and 0700 the following day to be reasonable and agreed with the Inspector that the noise generated by activity on the site during the night would not be unacceptable, albeit

that it would be readily perceptible to residents living in the quieter areas about the site.

13.60 In summary, the appellant submitted that there have been no material changes in circumstances on noise since the last inquiry and there is no need to revisit the conclusions of the Secretary of State. There was no error in the Inspector's approach at the last inquiry and the condition which was deemed acceptable by the Secretary of State, which is suggested at the inquiry, is unchanged.

13.61 The conclusions which the Council contend in this case should not be accepted are that the proposed condition to control noise would be achievable and that it would have the effect of adequately protecting residents, even if achievable. The Council was especially concerned with intermittent noise and L_{Amax} events. Using BS4142 as guidance, the Council estimated that noise from the development would lead to levels of exceedance of background noise by up to 20dB which would mean that complaints would be likely.

13.62 There is no new survey data at this inquiry. The appellants in supplying a written statement and in making submissions and the Council and STRIFE in the evidence of their witnesses and in submissions relied on the information gathered for the previous inquiry.

13.63 The degree of exceedance of the background noise level claimed by the Council was not directly challenged in cross examination at this inquiry and there was no evidence submitted which could be tested in order to counter the claim. However, I note that 5 dB of the excess is made up of the character correction for the tonal variations which would be caused by the irregularity of the noise and bangs and clatters. This correction was also applied by the previous Inspector, but with two reservations.

13.64 The first was that the noise from the site would be made up by contributions from many individual sources which would, to some degree, combine to create a more continuous tone, less distinguishable from traffic noise. The second reservation was that the noise sources would generally be several hundred metres from the residential properties of concern with intervening earth mounds which would have the effect of muffling individual sounds. The Inspector commented that this would result in the noise impact from the development being over-estimated.

13.65 I also note from the Environmental Statement that the property identified by the Council as receiving 20dB in excess of background would not remain in residential use with the proposed scheme. Moreover, my interpretation of the noise contours presented in Appendix 7.A8vi of the ES (2011 with scheme, night) does not show that noise levels for Rosemary Drive would exceed 60 dBA. The boundary is close, but the houses are not on the noisier side of the boundary judging from the map base. In any event, I consider that the map representation and modelling would have a degree of tolerance and the difference on the map between the noise levels in this location "with the scheme" compared to "without the scheme" are so small that the implication is that the noise levels would remain very similar, mostly because of the dominance of the nearby MML.

13.66 The Council indicated in evidence that even if the +5 dB penalty was not applied to the BS4142 rating, the difference would still range from +5 to +10 resulting in an assessment from “marginal” to “complaints likely”, but the +10 dB shown is for the property described as not in residential use with the proposed scheme. Therefore, bearing in mind the reservations which I share with the previous Inspector about the use of applicability of the 5 dB tonal penalty, the probable noise levels would not necessarily be as extreme as portrayed by the Council and less than those which would make complaints likely on an 8 hour averaging basis.

13.67 The Council claimed that short duration events with higher noise levels as expressed as L_{Amax} should be used to assess the development as presented in the 2009 WHO Night Noise Guidance. Although the Council suggested that the WHO Guidance is a material change in circumstances, the appellants submitted it was available as a draft to be used at the previous inquiry and, in any event, the new guidance adopted an average yearly approach which has overtaken the emphasis on L_{Amax} .

13.68 It was accepted by the previous Inspector, following the Statement of Common Ground for the earlier inquiry, that rail noise would be unlikely to constitute a significant impact. In addition, there is no substantive evidence to suggest that flange squeal would be an issue for the rail radii which are proposed. Construction noise could be controlled under the Control of Pollution Act as agreed at the previous inquiry. [10.33]

13.69 The appellant suggested two conditions which could be imposed which are consistent with those discussed and agreed at the last inquiry. One deals with the submission of a scheme, the other would set a noise level of 50dB $L_{Aeq, 8hr}$ between 2300 and 0700. The Secretary of State agreed with the Inspector at the previous inquiry that these proposed conditions would be reasonable.

13.70 The Council has submitted that this condition would provide insufficient protection for residents due to the lack of control on loud noises which would exceed the 50dB threshold, but be of short duration. A limited number of such noises could be enabled by the proposed condition where the time for consideration is for 8 hours with the averaging process. The Council suggested a further condition based on L_{Amax} and, although the appellants resisted such a condition at the inquiry, I consider that it is essential in order to protect the living conditions of nearby residents.

13.71 Therefore, subject to the inclusion of the three conditions on noise which are recommended should the appeal be allowed, I am satisfied that the noise generated by the activity on the site during the night would not be unacceptable, albeit it would be noticeable to residents living in the quieter areas around the site. On that basis, the noise from the development would not bring the proposal into conflict with the development plan.

Additional Matters

13.72 The reason for refusal based on air quality was not pursued at the inquiry and I agree with the appellant that the living conditions along Park Street should improve because of the proposed bypass, rather than deteriorate.

13.73 The Secretary of State previously concluded that lighting on the site would not result in unacceptable sky glow or materially detract from the character or amenity of nearby residents living in Napsbury Park. I have not read or heard any convincing evidence which would constitute a very good planning reason for me to differ from that conclusion. Therefore, I do not consider that air quality or lighting issues would bring the proposal into conflict with the development plan.

13.74 Similarly, as the Secretary of State previously concluded, I consider that the impact of the proposed development on Park Street and Frogmore would be beneficial due to the construction of the Park Street bypass and the consequent traffic reduction through Park Street and Frogmore. The character and appearance of the Napsbury Conservation Area would still be preserved because of its distance from the scheme.

13.75 So far as footpaths and bridleways are concerned, the need for one bridleway and one footpath to be diverted to accommodate development on Areas 1 and 2 have to be balanced against the proposals by the appellant for new routes, footpaths and bridleways and also footpath improvements outside the site. The Secretary of State considered that, overall, the harm to the existing footpaths and bridleways would be outweighed by the appellant's proposals for improvements. I have no good planning reason to differ from that conclusion.

Other considerations

Whether the development would operate as an SRFI?

[6.1, 7.100 – 7.138; 8.84 – 8.148; 9.52 – 9.116, 10.1 – 10.6, 10.10, 10.14, 10.16, 10.24 – 10.25, 10.45, 10.53, 10.54, 11.1 – 11.6]

13.76 The Council submitted that there would be no rail movements in or out of the site between 0600 and 2200; it would receive no channel tunnel traffic until the gauge has been enhanced to W9; it is in a poor location to compete with rail from the primary deep sea ports; it has poor accessibility to the primary rail route for competing with the road based domestic market, the west coast mainline (WCML); it requires a rail subsidy and gauge enhancement to assist with its competitiveness which would be insufficient in the circumstances; and any doubt should be resolved against the proposal since the need to 2015 is currently capable of being met by other developments.

13.77 The appellant claimed that there are adequate paths on the MML and that no party contends to the contrary and I agree that generally this is the case. Indeed Network Rail stated that between 0900 and 1600 two freight paths per hour in each direction are provisionally allocated to existing freight customers, and not all are currently used. Further capacity is available at night. The rail dispute between the main parties primarily centred on access to and egress from the site. I note that, at the previous inquiry, the Inspector concluded that sufficient freight train paths were then currently available to serve the SRFI facility, but that the detail of whether the paths enabled access to the site was not tested.

13.78 The Council emphasised that the 2015 Thameslink service would prevent trains from crossing into the site between 0600 and 2200, but that claim is based on the details of timetabling implementation yet to be confirmed. There was conflicting evidence about the number of First Capital Connect (FCC) trains which would run on

the MML past the site, whether 8, 10 or 12. Indeed it appears as though the number of FCC trains to run past the site has increased from 6 as stated in July 2009 to 10 as claimed at the inquiry. Although assumptions were made by the Council at the inquiry about matters including dwell times at stations, the headways, the signalling arrangements and possible junction layouts, it is quite apparent that variables such as the degree of investment in junctions and the performance of new rolling stock for Thameslink in reducing dwell time would influence the timetabling outcomes.

13.79 The timetabling process would enable negotiations to be conducted between those who would wish to run services, both passenger and freight, and the regulatory authorities until the timetable becomes firm. Network Rail does not consider that there are any major technical obstacles to achieving a connection such as is proposed at the site. They can offer no guarantee that the currently available paths will be available in the future because they are open to all licensed freight operators. All paths required for the SRFI would need to be bid for and are subject to the industry wide timetable planning process.

13.80 Network Rail function as guardians of the UK rail network and as concluded by the Secretary of State in the previous decision, I attach weight to assurances given by them and to their commitment to adopt best working practices to regulate freight train access onto busy main lines. Network Rail has stated that the SRFI would enable both the growth of rail freight and mode shift from road to rail which it considers entirely consistent with Government and Network Rail objectives and that it does not consider there to have been any material changes in the capabilities of the rail network since 2007. Therefore, on that basis, I consider 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.

13.81 Turning to gauging, in order for the development to act as an SRFI, it must be capable of being accessed by wagons carrying containers from around the UK, from the deep sea ports and from the Channel Tunnel. Subject to the appeal being allowed, the conditions would provide for gauge enhancement works. There is no reason to suppose that, pending gauge enhancements, the services would be uneconomic and require subsidy. However, these are commercial considerations rather than those relating to land use. The Council also stated that the proposal was not at an advanced stage in Network Rail's Guide to Railway Investments Projects (GRIP) system which manages investment schemes, but that is an internal NR evaluation method and not part of the planning process.

13.82 The appellant also states in evidence that the enhancement works would provide for a W10 gauge link to the Haven and north Thames side ports and the West Coast Main Line, a W9 gauge link to the Channel Tunnel via Acton and Kew, and a W8 gauge link to Southampton and Thamesport. Should W10 gauge enhancement be delivered in due course along the Great Western Main Line, this would create a W10 gauge link from Radlett to Southampton via Acton and Reading. Network Rail does not consider there to be any major technical obstacles to achieving enhancement works to W10 gauge into London. Moreover, as the appellant indicates, the works to deliver Thameslink would also create an opportunity for those engineering works to be carried out. Therefore, I do not doubt the ability of the SRFI to be accessed from all the key destinations.

13.83 The MML has been identified as part of the Strategic Freight Network of trunk freight routes with its attendant eventual upgrading to continental standards. Therefore, I have no doubt that the MML will develop as a key part of the rail freight network and that the aim of Network Rail and rail regulators will be to enable freight to be carried efficiently, albeit without compromising its passenger carrying ability.

Alternatives

[7.168 – 7.257; 8.149 – 8.253; 9.117 – 9.134, 10.31, 10.50, 10.51, 11.7 – 11.14, 11.15 – 11.22]

The North West Sector

13.84 In the consideration of the Alternative Sites Assessment following the previous inquiry, the Secretary of State concluded, in the circumstances of that case, that it was sensible and pragmatic to restrict the search for alternative sites for an SRFI at Radlett to broadly the north west sector studied by the appellant. The Council sought to dismiss the concept of there being a north west sector for SRFI purposes, commenting that the analysis which led the previous Inspector to conclude on the appropriateness of the north west sector which was endorsed by the Secretary of State, was based on lorry mileage benefits that would derive from locating an SRFI in one part of London as opposed to another.

13.85 I also note that the previous Inspector concluded that there was no policy support in the SRAs SRFI Policy or elsewhere for limiting the search in this way. However, I share his doubts that an SRFI at London Gateway could efficiently serve development to the west of London. This view is emphasised in the SRFI Policy statement of March 2004 by the SRA that the location of interchange facilities in relation to ultimate journey origin or destination is critical in making the rail option attractive to business customers. Furthermore, London Gateway was proposed on the basis of being a ship to shore facility. I am not aware of any evidence to suggest there is road and rail capacity sufficient for it to act as an SRFI in addition to a port complex, despite the reported comments from the developers that the site could be available for such a function.

13.86 The SRA policy further states that the required capacity for rail freight growth in the London and the South East would be met by 3 or 4 new SRFIs in the region, supplemented by smaller locations within the M25 ring. In addition, the policy states that qualitative criteria to deliver the capacity mean that suitable sites are likely to be located where the key rail and road radials intersect with the M25. Therefore, I consider that the policy statements indicate that SRFIs serving London and the South East would not normally be located closer to London than the M25 and that the optimum locations are on the intersections of the M25 with key rail and road routes into and out of London.

13.87 As indicated in the East of England Plan, given that the region includes a third of the M25 ring and that all the main rail lines from London to the North and Scotland cross the M25 within the East of England it is likely that at least one of the required strategic interchanges will need to be in the region. The main rail lines referred to are the East Coast Main Line (ECML), the Midlands Main Line (MML) and the West Coast Main Line (WCML), all of which are in the north west sector as described by the appellant and which gives further credence to the concept of there being a north west sector for the purposes of the assessment of alternatives.

13.88 The Council advanced an argument based on a market approach which suggested that the north west sector is not a primary distribution area of those likely to be occupying an SRFI. Nevertheless, as also indicated in the Council's evidence, much locational decision making remains fairly intuitive and I consider that, like the Inspector at the previous inquiry, restricting the assessment of alternative sites for an SRFI at Radlett to the north west sector is sensible and pragmatic, especially in view of the SRFI which has been permitted at Howbury Park in the London Borough of Bexley even if London Gateway were to operate as an SRFI. It does not seem credible to envisage a small cluster of SRFIs to serve London and the South East all in the same general location. The Council accepted that the degree of spread of accessibility is a material consideration and I consider that the broad approach of the appellant in focusing on the north west sector in the assessment of alternatives is reasonable.

Selection Criteria

13.89 The appellant was criticised for excluding sites which were regarded as unavailable due to being allocated for housing or being existing employment land. However, I consider that the suggestion that an SRFI could be sited on land allocated for housing is unrealistic. Not only would the residential allocation have to be relocated elsewhere within a region where housing land is scarce, even if property values were sufficiently compatible to enable this displacement, but the SRFI could find itself embedded within a "nest" of surrounding houses which would not be consistent with the need to reduce harm to adjoining properties. Therefore, I support the approach of the appellant in discarding areas which have been allocated for housing purposes. Similarly, I consider the notion of including employment land as a potential SRFI site is unrealistic. Such land would have issues of availability and land assemblage and the need to seek alternative premises for those uses which would be displaced by the SRFI.

13.90 Parameters used to identify a "long list" of sites were: a 40ha minimum site area; being located within 5km of rail infrastructure and being located within 5km of a motorway junction or Class A road. A criticism of the assessment by the Council was the exclusion of possible sites beyond 5km from a railway line. However, I agree with the appellant that a realistic judgement has to be made about distance, taking into account the terrain through which any rail connection would have to be made and so I do not support the points made by the Council.

13.91 The Council has repeatedly suggested that the assessment is flawed due to the appellant seeking to add further information during the inquiry. Nevertheless, I consider that the appellant was merely responding to comments made and it would have been even more open to criticism had it failed to respond. In my opinion, the general approach by the appellant to the assessment of alternatives and producing the "long list" has been robust and realistically pragmatic.

13.92 The appellant used topography, rail connection, road access and availability to assess the long list sites. Sites within an AONB or an SSSI were excluded. The Council claimed that sites very close to others (duplicated sites) were inappropriately discarded, but I do not agree. I consider that it would have been unnecessary to examine all possible sites within a general area where that particular location was

subject to a dominant constraint which applied to the selected site. Furthermore, I agree that it was sound to use the AONB and SSSI status of land as hard constraints.

13.93 The availability criterion was questioned by the Council, but given the unlikelihood of employment land in areas such as Slough being released or strategic housing allocations such as in Wokingham becoming superfluous, I consider that the appellant is being realistic. Similarly, I have no issue with the way in which the appellant has applied the criteria of rail connection, where there was no substantive dispute about which sites were excluded, and road access. Denham Aerodrome was an exception, but was rejected for a combination of reasons of road and rail connectivity and availability.

13.94 The Council commented that there was no consideration of landscaping or other harm during the long list stage in respect of any of the sites but, as stated by the previous Inspector, it is often very easy for those who are critical of a proposal to expose flaws in any study of alternative sites carried out by a promoter of a scheme, given the vast amount of data that needs to be collected and analysed. The appellant has used a methodology which is transparent and has undertaken sensitivity tests to illustrate that considering areas greater than 5km distance from a railway line makes no difference to the result and that there are no suitable sites in the area around to the M3 motorway.

The Short List

13.95 The appellant's short listed sites comprised the appeal site and four others: Upper Sundon, Littlewick Green, Harlington and Colnbrook. There was no suggestion by any party at the inquiry that **Upper Sundon** scored better than the appeal site and I have no reason to disagree. Although the assessment by the Council found that **Littlewick Green** and Colnbrook performed better than the appeal site, I consider that the former site, west of Maidenhead is relatively poorly located to serve London. The appellant claimed that an SRFI here would have a significant adverse effect on the landscape, have an adverse impact on the setting of the conservation area to the north, cause possible harm to local residents due to noise and could have adverse effects on archaeological interests, as well as being located within the Green Belt. I agree and I do not consider that it performs overall markedly better than Radlett.

13.96 **Harlington**, north of Luton, located close to the M1 motorway and adjacent to the Midland Main Line (MML), was the subject of a planning application for an SRFI in 2008, albeit the application was subsequently withdrawn. The Council did not claim that Harlington outperformed Radlett in its assessment of alternatives. The appellant claimed that Radlett would perform better than Harlington due to the latter being significantly further from London, the difficulty of making a rail connection and the unlikelihood of providing any additional planning benefits.

13.97 The rail connection at Harlington would enable links to be made in both a northerly and southerly direction, unlike Radlett, at which it is currently proposed to link only to the south. The connections would be made to the fast tracks, albeit with significant engineering works, but I do not consider that the disadvantages would be so great that the comparison with Radlett would significantly suffer. Like Radlett, the site is within the Green Belt. However, in my opinion, Harlington would be very

prominent when seen from the AONB to the south and would have a greater visual impact on the open countryside than Radlett.

13.98 Some of the comparators between the sites would perform similarly, such as air quality, noise and archaeology. I am also not convinced that the lack of planning benefits, such as the provision of a country park of the type proposed at Radlett, weighs significantly against the Harlington site. However, I consider that the location of Harlington is inferior to Radlett as an SRFI to serve London and the South East. The greater distance along the M1, away from the M25 would reduce the versatility offered by the Harlington location compared to Radlett which virtually adjoins the M25/M1 intersection and offers significantly greater accessibility. I realise that the appellant measured the lorry kilometre savings from the Hanger Lane Gyratory on the North Circular Road. Nevertheless, in my view, Radlett would perform more effectively as an SRFI than Harlington and that reason together with the greater adverse effect on the landscape is why I conclude that it is not a preferred alternative location, were a single SRFI required within the north west sector.

13.99 The site identified by the appellant at **Colnbrook** is also referred to as SIFE (Slough Intermodal Freight Interchange), where it is the subject of interest by developers who are promoting a scheme for an SRFI through the development plan process. The site lies between the M4 and A4 east of Slough, close to the M25 and just to the west of Heathrow. The appellant accepts that the site would be well located to serve the London market. Indeed, the site is readily accessible to the M25, M40, M4, M3 and A3, which means that it could serve a wide area including central London, the M25 West, M25 North West and M25 South West.

13.100 The appellant stated that the site would perform materially worse than Radlett in providing an SRFI due to its location in a designated Strategic Gap in the Green Belt between Slough and London, and that it would be unlikely to provide any significant planning benefits. The Strategic Gap designation is the subject of a saved policy in the Slough Local Plan and has been brought forward in the adopted Core Strategy, although I note that it is not used or applied consistently by other local planning authorities which adjoin the SIFE site, nor by St Albans District Council. Moreover, the South East Plan suggests that authorities operating gap policies will need to review them carefully to ensure that there is a continuing justification in view of the need to avoid duplication of other protection policies such as Green Belt. Nevertheless, the Strategic Gap designation is a policy to which substantial weight should be applied. In 2002, when the then Secretary of State dismissed an appeal for a freight exchange on the site (the "LIFE" proposal), he commented that seen from the elevated viewpoints east of the M25, the function of the open land to the west in helping to demarcate and separate London from Slough was clear to the Inspector.

13.101 The site is also within the Colne Valley Regional Park where regional and local policies seek to promote countryside recreation, and landscape and biodiversity enhancement. Whereas this is another policy consideration which weighs against Colnbrook in the comparison exercise with Radlett, a proposal for an SRFI could offer opportunities for improvements to the footpath and bridleway network, biodiversity and landscape in the same way that the appeal scheme is promoting a country park.

13.102 The developers of Colnbrook state that the branch line is cleared to W8 and is capable of accommodating the full range of intermodal units on standard height

platform wagons. They further state that by the time SIFE would open, all rail routes serving the site would be cleared to at least W9, probably W10, and at least one freight path per off peak hour per direction would be available to serve the site. The appellant contends that Colnbrook would not perform in a materially better way as an SRFI than the appeal site, but that is difficult to ascertain in view of the absence of evidence from the Colnbrook developer which could be tested in the inquiry. However, I have no reason to disagree with the data showing that the appeal site is closer than Colnbrook to Felixstowe and the Channel Tunnel in rail miles, although more distant from Southampton. There are conflicting views on the availability of paths in each direction on the GWML which is incapable of resolution in the absence of the opportunity to test the developer's evidence at the inquiry.

13.103 There are other comparative factors which both the appellant and developer raise in written submissions including noise, air quality, archaeology, sustainability, proximity to workforce and biodiversity, but the differences appear to be of less significance than Green Belt considerations and may well be capable of resolution should a scheme at Colnbrook be progressed to the same extent as the current proposal at Radlett. Nevertheless, due to the site being located in a Strategic Gap within the Green Belt, I agree with the appellant that it cannot be rationally concluded that Colnbrook would meet the needs for an SRFI in a less harmful way than the appeal site.

Other benefits

[7.22 – 7.24; 8.354 – 8.261, 10.18, 10.35 – 10.40]

13.104 The scheme would bring about certain local benefits, of which two were highlighted by the Secretary of State in the decision on the previous appeal. On the proposed Park Street and Frogmore bypass, the Secretary of State agreed with the previous Inspector that traffic travelling through Park Street and Frogmore on the A5183 would be reduced. She also agreed that the effect on the conservation area would be positive and that it would bring about some improvement of living conditions of residents fronting or close to the A5183. She afforded this benefit a little weight and, following the evidence heard at this inquiry, I have no good reason to disagree with her views.

13.105 With regard to the provision of the country park, the Secretary of State agreed with the previous Inspector that the proposals for Areas 3 to 8 would not deliver a "country park" in the sense that the term is generally understood, but accepted that there would be benefits to the countryside. These would include significant areas of new woodland, which would accord with the aims of the Watling Chase Community Forest Plan. New footpaths and bridleways would also be created which would facilitate circular walks and rides in the area. On ecology, the Secretary of State previously saw no reason why the proposals should not be beneficial overall and add to the existing biodiversity interest present at the site. However, with the recent definition of the CWS I now find that the proposals would be contrary to the development plan where ecology is concerned. The Secretary of State concluded that the proposals for Areas 3 to 8 would accord with the development plan and with the objectives of the Watling Chase Community Forest Plan. There has been no convincing evidence submitted to this inquiry to cause me to come to a different conclusion.

The Planning Balance including Prematurity

Green Belt

13.106 The Secretary of State previously concluded that the proposal would constitute inappropriate development in the Green Belt and she attached substantial weight to that harm. She also identified that it would further harm the Green Belt because it would cause a substantial loss of openness, significant encroachment into the countryside and would contribute to urban sprawl and she considered that the harm would be substantial. The evidence I heard at this inquiry reaffirmed those conclusions. The Secretary of State also previously concluded that limited weight should be attached to the harm to the setting of the historic city of St Albans and there is no sound reason why I should depart from those views.

Other Harm

13.107 The Secretary of State previously concluded that significant adverse landscape impacts would occur on the main SRFI site (Area 1) but that the new rail line through Area 2 would only have a marginally adverse impact. Furthermore, whereas the impact of the proposal on Areas 3 to 8 would be beneficial, the degree of improvement would not offset the harm to the landscape overall. The Secretary of State concluded that the overall impact on the entire site would be moderately adverse and, based on the evidence I have heard at this inquiry, I agree with that conclusion.

13.108 I consider that there has been no convincing evidence to justify departing from the previous conclusions of the Secretary of State concerning sustainability, air quality, lighting, conservation areas, or impact on footpaths and bridleways where either no demonstrable harm was identified or there was an overall beneficial effect. However, on ecology, I conclude that the proposal would now be in conflict with Policy 106 of the Local Plan.

13.109 In view of the lack of objection from the highway authority and the Highways Agency and the lack of concern expressed by the County Council about the design of the Park Street roundabout at this inquiry compared to the one previously, I do not consider that any significant harm would be caused by highways issues or that there would be any conflict with the development plan. Similarly, subject to the inclusion of the conditions on noise which are recommended should the appeal be allowed, I am satisfied that the noise generated by the activity on the site during the night would not bring the proposal into conflict with the development plan. Therefore, overall, I consider that harm would arise from the Green Belt considerations and also due to the impact on landscape and ecology.

Benefits

13.110 So far as benefits are concerned, those more locally site specific include the proposal by the appellant for a country park, the improvements to footpaths and bridleways and the provision of the bypass to Park Street and Frogmore. The Secretary of State previously attached "some weight" to the predicted reduction on CO₂ emissions identified in the Environmental Statement. I have no reason to disagree with that conclusion. Some weight was also afforded by the Secretary of State to the numbers of people who would work at the SRFI, albeit not necessarily living close to the site.

13.111 On a general basis, there is no dispute about the need for an SRFI. It is stated and restated in a number of documents and encouraged in PPG13 (paragraph 45). Government policies have consistently supported shifting freight from road to rail. SRA Policy (2004) suggests that 3 or 4 new SRFIs could serve London and the South East located where key road and rail radials intersect the M25. The indication in the SRA Policy that 400,000m² of rail connected warehousing floorspace would be needed in the South East by 2015 does not constitute a target or a ceiling. In the previous decision in 2008, the Secretary of State concluded that the need for SRFIs to serve London and the South East was a material consideration of very considerable weight. No new SRFIs have been developed since the earlier decision. Therefore, the weight has not diminished.

Alternatives

13.112 The Secretary of State also concluded that, given the site's Green Belt location, whether or not the need which the proposal seeks to meet could be met in a non-Green Belt location, or in a less harmful Green Belt location, was a material consideration in that case. I consider that is still the same position for this appeal and I also endorse the concept of assessing a possible alternative location for an SRFI in the broad sector north west of London, as previously accepted by the Secretary of State.

13.113 The Secretary of State previously indicated that had the appellant 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 the other benefits referred to, would have been capable of outweighing the harm to the Green Belt and the other harm identified. However, she considered that the appellant's Alternative Sites Assessment was materially flawed and its results to be wholly unconvincing.

13.114 In this particular case, I am satisfied that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate 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. The sites which I consider are the most comparable are those at Harlington and Colnbrook, both of which have schemes which are being progressed by intending developers.

13.115 At Harlington, although the harm to the Green Belt might be broadly similar to that at Radlett, I consider that the visual impact of an SRFI would be greater, and its location north of Luton, albeit easily accessible to the M1, makes it less attractive to serve London and the South East. I consider 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. Nevertheless, should a scheme be developed to the same extent as the appeal proposal, it is possible that, under the challenge of evidence tested under cross examination at an inquiry, the differences between the two locations, other than the Green Belt issue would be marginal.

Prematurity

[7.88 – 7.98; 8.59 – 8.66; 9.140 – 9.146]

13.116 The Secretary of State had considered whether the previous proposal was premature in the absence of a region-wide study to establish the most suitable locations for SRFIs to serve London and the South East. She had concluded that a refusal of planning permission of the scheme on prematurity grounds would lead to a substantial delay in providing further SRFIs to serve London and the South East, contrary to the Government's declared aim of increasing the proportion of freight moved by rail. There are no signs of any substantive progress in the initiation of inter or intra regional studies on the need for and locations of SRFIs to serve London and the South East.

13.117 The Council has indicated that a National Policy Statement (NPS) including the consideration of SRFIs is due for production shortly. However, although a draft publication is imminent, there is no suggestion that the NPS will be site specific and there is no Government advice that proposals which might be influenced by the content of an NPS should be deemed premature pending its publication and subsequent designation. Consequently, I have no reason to conclude that determination of the proposal would be premature.

Overall Conclusion

13.118 Accordingly, I conclude that the proposal would constitute inappropriate development in the Green Belt which, in itself, would cause significant harm to which substantial weight should be attached. Harm would also be caused to the Green Belt because of a loss of openness, significant encroachment into the countryside and the contribution to urban sprawl. There would be an adverse effect on the setting of St Albans, although the Secretary of State concluded previously that only limited weight should be attached to this. Harm would also arise from the adverse effects on landscape and ecology. Therefore, the proposal would conflict with Policies 1, 104 and 106 of the adopted Local Plan Review.

13.119 However, other considerations including, particularly the need for SRFIs to serve London and the South East and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt, together with the local benefits of the proposals for a country park, improvements to footpath and bridleways in the immediate area and the provision of the Park Street and Frogmore bypass, lead me to conclude that very special circumstances exist in this case which outweigh the conflict with the development plan and therefore the appeal should be allowed subject to conditions discussed in Section 12 and attached as Annex A.

13.120 Should the Secretary of State disagree with my conclusions and recommendation, he may wish to consider the circumstances of the provision of SRFIs to the north and west of London where schemes at Harlington and Colnbrook are currently being developed. At the date of completion of the report, the proposals have not been progressed to the application stage.

Conditions

13.121 The appellant has asked the Secretary of State to note that in respect of both the conditions and the undertaking, save where necessary to reflect any change as a consequence of the Area 1 issue, or as a consequence of discussion with the HA

and Environment Agency, the conditions and undertaking remain in substantially the form they were in at the time of the previous decision. Accordingly, they represent a comprehensive and acceptable package which the Secretary of State has already decided would deliver an SRFI together with the benefits identified in the evidence.

14 Recommendation

14.1 I recommend that the appeal be allowed and planning permission be granted subject to the conditions recommended in Annex A.

A Mead

Inspector

DOCUMENTS

Planning Application Documents

- 9/CD/1.1 Covering Letter, Planning Application Form, Certificate of Ownership & Agricultural Holding Certificate dated (8 April 2009)
- 9/CD/1.2 Drawing No 3945-DSD-001 Location Plan (December 2008)
- 9/CD/1.3 Illustrative Masterplan (December 2008)
- 9/CD/1.4 Development Specification Document (April 2009)
- 9/CD/1.5 Sustainability Statement (April 2009)

Documents Submitted in Support of the Application

- 9/CD/2.1 Environmental Statement Part 1 - Non Technical Summary
- 9/CD/2.2 Environmental Statement Part 2 - Project Information
- 9/CD/2.3 Environmental Statement Part 3 - Reports and Analysis
- 9/CD/2.4 Environmental Statement Part 4 – Appendices
- 9/CD/2.5 Design and Access Statement
- 9/CD/2.6 Transport Assessment
- 9/CD/2.7 Planning Policy Report
- 9/CD/2.8 The Needs Case
- 9/CD/2.9 Consultation Statement

Post Application Documentation

- 9/CD/3.1 Planning Referral Committee Report, 20 July 2009
- 9/CD/3.2 Minutes of Planning Referral Committee, 20 July 2009
- 9/CD/3.3 Refusal of Planning Permission Notice, 21 July 2009
- 9/CD/3.4 Hertfordshire County Council Development Control Committee Report, 23 June 2009
- 9/CD/3.5 Helioslough Statement of Case
- 9/CD/3.6 St Albans City & District Council Statement of Case
- 9/CD/3.7 Highways Agency Statement of Case
- 9/CD/3.8 STRiFE Statement of Case
- 9/CD/3.9 SDG The Suitability of Radlett to Accommodate an SRFI Report July 2009
- 9/CD/3.10 Report for Planning Referrals Committee Meeting 14 October 2009
- 9/CD/3.11 HCC Committee Report 20 July 2009
- 9/CD/3.12 SADC Committee Report of 12 November and the Technical Assessment, Conclusions and Appendix 1 of the HCC Highways Report

Development Plan and Related Documents

- 9/CD/4.1 RSS for East of England May 2008
- 9/CD/4.2 South East Plan May 2009
- 9/CD/4.3 Hertfordshire Structure Plan Review 1991-2011, adopted April 1998
- 9/CD/4.4 Hertfordshire Minerals Local Plan Review 2002-2016, adopted March 2007
- 9/CD/4.5 The London Plan (Consolidated with Alterations since 2004), February 2008
- 9/CD/4.6 The St Albans City and District Local Plan Review, adopted November 1994
- 9/CD/4.7 St Albans Local Plan List of saved policies (14 September 2007)

- 9/CD/4.8 St Albans City and District Consultation Core Strategy, July 2009 & Appendices
- 9/CD/4.9 Watling Chase Community Forest: Forest Plan, January 1995
- 9/CD/4.10 Watling Chase Community Forest: Forest Plan, Review 2001

Transportation, Rail and Highways

- 9/CD/5.1 Strategic Rail Freight Interchange Policy, SRA March 2004
- 9/CD/5.2 Status of the SRA Strategic Rail Freight Interchange Policy, DfT, October 2005
- 9/CD/5.3 East of England Freight Strategy November 2008
- 9/CD/5.4 DfT Strategic Freight Network - The Longer Term Vision September 2009
- 9/CD/5.5 E Midlands Rail Utilisation Strategy Draft September 2009

Miscellaneous

- 9/CD/6.1 Howbury Park Decision Letter and Inspectors Report December 2007
- 9/CD/6.2 Howbury Park NLP Alternative Sites Assessment report

Statements of Common Ground and Agreed Facts

- 9/CD/7.1 Statement of Common Ground
- 9/CD/7.2 Statement of Common Ground – Highways Agency
- 9/CD/7.3 Statement of Common Ground - Hertfordshire County Council Highways (**not received**)
- 9/CD/7.4 Statement of Agreed Facts – Network Rail

The Decision on the 2006 Application

- 9/CD/8.1 Secretary of State's Decision Letter 1 October 2008
- 9/CD/8.2 The Inspectors Report 4 June 2008
- 9/CD/8.3 Unilateral Undertaking 16 January 2008

Inquiry Documents

- 9/HS/INQ 1.0 Questions and Answers from Network Rail
- 9/HS/INQ 2.0 Email Correspondence dated 01 December 09
- 9/HS/INQ 3.0 Schedule of Correspondence between Lovells and the Council regarding Draft Conditions and S106 Obligation
- 9/HS/INQ 3.1 Lovells letter to the LPA dated 14 December 09 regarding Conditions and S106 Unilateral Undertaking
- 9/HS/INQ/4.0 Chief Planning Officer Letter dated 25/11/02 regarding Circular 11/95
- 9/HS/INQ/5.0 Herts CC Letter dated 17 December 2009 regarding Indexation under Unilateral Undertaking
- 9/HS/INQ/6.0 HS Reply to 9/HS/INQ/5.0
- 9/HS/INQ/7.0 Draft planning conditions (agreed as at 18 December 2009 apart from sections highlighted as LPA/SRIFE additional or alternate wording)
- 9/HS/INQ/8.0 Appx A – additional note to closing submissions regarding proposed condition in relation to Area 1 and Area 2.
- 9/HS/INQ/9.0 Appx B - Appellant's comments on draft conditions which

- are not agreed
- 9/HS/INQ/10.0 Appx C - Appellant's comments on the provisions of the Unilateral Undertaking which are not agreed
- 9/HS/INQ/11.0 Unilateral Undertaking

Documents Submitted by Helioslough

- 9/HS/0.1 Opening Statement
- 9/HS/0.2 Closing Submission
- 9/HS/0.3 Application for Costs
- 9/HS/0.4 Reply to LPA Response to HS Cost Application
- 9/HS/1.1 R Tilley Proof of Evidence
- 9/HS/1.2 R Tilley Appendices
- 9/HS/1.3 R Tilley Summary
- 9/HS/1.4 R Tilley Planning and Alternative Sites Rebuttal
- 9/HS/1.5 R Tilley Response to SDG Report
- 9/HS/1.6 Extracts from LIFE Decision
- 9/HS/1.7 CLG protocol for handling proposals to save adopted Local Plan, UDP and Structure Plan policies beyond the 3 year saved period
- 9/HS/1.8 Colnbrook - Response to Barton Willmore (Wilson Appendix K)
- 9/HS/1.9 Mr Wilson's 15 Extra Short Listed Sites - HS Response
- 9/HS/1.10 Harlington - HS Response to Cliff Bassett's Representation (Doc 9/CBwG/1.1)
- 9/HS/1.11 Correspondence between CgMs and St Albans City and District Council
- 9/HS.1.12 East of England Plan Secretary of State changes to the draft Revision to the Regional Spatial Strategy December 2006
- 9/HS/1.13 HS Response to 9/LPA/6.13
- 9/HS/1.14 Extracts from LB Havering Core Strategy and Development Control Policies DPD
- 9/HS/1.15 Harlington - HS Response to Savills' Representation 9Doc 9/CBwG/1.2)

- 9/HS/2.1 Mr N Gallop Proof of Evidence
- 9/HS/2.2 Mr N Gallop Appendices
- 9/HS/2.3 Mr N Gallop Summary
- 9/HS/2.4 Mr N Gallop Rebuttal
- 9/HS/2.5 Mr N Gallop Proof of Evidence from 2007 Inquiry
- 9/HS/2.6 Section 13 of Mr Thorne's proof from 2007 Inquiry
- 9/HS/2.7 Letter from Tesco's dated 24 November 09
- 9/HS/2.8 Interfleet Letter to Intermodality dated 11 December 09
- 9/HS/2.9 Note of Evidence of Mr Clancy

- 9/HS/3.1 Mr G Smith Proof of Evidence
- 9/HS/3.2 Network Rail Route Plan Midland & Continental & East Anglia
- 9/HS/3.4 Mr G Smith Rebuttal

- 9/HS/4.1 Mr N Findlay Written statement
- 9/HS/4.2 Mr N Findlay Appendices 1
- 9/HS/4.3 Mr N Findlay Summary 1
- 9/HS/4.4 Mr N Findlay Rebuttal 1
- 9/HS/4.5 Gridlock Condition Note from WSP dated 10 December 09
- 9/HS/4.6 WSP Trip Generation Note including Appendices. Appendix A

	(PCC Data), Appendix B (DTA Tech. Note), Appendix C (Statement of Agreed Facts with Highways Agency and Appendix D (Trics Data)
9/HS/4.7	Letter from CBRE dated 24 November 09
9/HS/4.8	Appendix 2 Extracts from Barton Wilmore
9/HS/4.9	DIRFT Buildings Height
9/HS/5.1	Mr M Kelly Written Statement
9/HS/5.2	LCA Topic Paper 6
9/HS/5.3	Mr M Kelly Rebuttal
9/HS/5.4	Colne Valley Action Plan
9/HS 5.5	Extracts from GLVIA
9/HS/6.1	Mr D Sharps Written Statement
9/HS/6.3	Mr D Sharps Rebuttal
9/HS/7.1	Mr T Goodwin Written Statement
9/HS/7.2	Mr T Goodwin Appendices
9/HS/7.3	Mr T Goodwin Ecology Rebuttal 1
9/HS/7.4	Mr T Goodwin response to 9/LPA/3.5
9/HS/9.1	Response from the Secretary of State for Transport (Intermodality, 15 October 2009)
9/HS/9.2	Letter to the Secretary of State for Transport (Intermodality, October 2009)
9/HS/9.3	Original Report to SADC Planning Referrals Committee 20 th July 2009

Documents Submitted by St Alban's District Council

9/LPA/0.1	Opening Statement
9/LPA/0.2(a)	Closing Submission Part 1
9/LPA/0.2 (b)	Closing Submission Part 2
9/LPA/0.3	LPA Response to HS Cost Application
9/LPA/1.1	Mr J Hargreaves Summary
9/LAP/1.2	Mr J Hargreaves Proof of Evidence
9/LPA/1.3	Mr J Hargreaves Appendices
9/LPA/1.4	Mr J Hargreaves Rebuttal
9/LPA/1.5	Mr J Hargreaves Appendices
9/LPA/1.6	Addendum to Mr J Hargreaves Evidence
9/LPA/2.1	Mr B Wilson Summary
9/LPA/2.2	Mr B Wilson Proof of Evidence
9/LPA/2.3	Apps A and A2
9/LPA/2.4	App B
9/LPA/2.5	App C
9/LPA/2.6	App D
9/LPA/2.7	App E and E2
9/LPA/2.8	App F
9/LPA/2.9	App G
9/LPA/2.10	App H
9/LPA/2.11	Apps I, I2, I3, I4 and I5
9/LPA/2.12	Apps J and J2
9/LPA/2.13	App K
9/LPA/2.14	App L
9/LPA/2.15	App M

- 9/LPA/2.16 App N
- 9/LPA/2.17 App O
- 9/LPA/2.18 App P
- 9/LPA/2.19 Rebuttal of Mr Gallop's Evidence
- 9/LPA/2.20 Rebuttal App A
- 9/LPA/2.21 Rebuttal App B
- 9/LPA/2.22 Rebuttal App C
- 9/LPA/2.23 Rebuttal App D
- 9/LPA/2.24 Rebuttal App E
- 9/LPA/2.25 Rebuttal of Mr Smith's Evidence
- 9/LPA/2.26 Rebuttal of Mr Tilley's Evidence
- 9/LPA/2.27 SDG Errata Sheet

- 9/LPA/3.1 Mr M Hicks Statement of Ecological Issues
- 9/LPA/3.2 Mr M Hicks Appendices
- 9/LPA/3.3 Mr M Hicks Rebuttal
- 9/LPA/3.4 Mr M Hicks Rebuttal Appendices
- 9/LPA/3.5 Mr M Hicks Comments on Mr Goodwin's Rebuttal

- 9/LPA/4.1 Mr S Stephenson Proof of Evidence
- 9/LPA/4.2 Apps Volume I & Volume II
- 9/LPA/4.3 Mr S Stephenson Summary
- 9/LPA/4.4 Mr S Stephenson Rebuttal

- 9/LPA/5.1 Mr J Billingsley Proof of Evidence
- 9/LPA/5.2 App 1
- 9/LPA/5.3 Apps 2-10
- 9/LPA/5.4 Mr J Billingsley Summary
- 9/LPA/5.5 Mr J Billingsley Rebuttal

- 9/LPA/6.1 Mr J Billingsley Instructions from the LPA
- 9/LPA/6.2 SDG Access to the Radlett Site – Time Table Issues
- 9/LPA/6.3 Response to Mr Tilley – Rebuttal App 2
- 9/LPA/6.4 Rail Connection Scores
- 9/LPA/6.5 Criterion 1 Scoring Commentary

- 9/LPA/6.6 SDG Access to the Radlett Site – Further Timetable Issues
- 9/LPA/6.7 Meeting Note – Discussion of Common Ground – Rail and Alternative Sites
- 9/LPA/6.8 Interfleet Timetable Analysis
- 9/LPA/6.9 Dr Hawkes Proof Of Evidence Table 7.1 and Mr Sharps Comments and Alternative Table
- 9/LPA/6.10 Map of Areas above 5km from a railway line shown over Green Belt and Areas of Outstanding Natural Beauty
- 9/LPA/6.11 Map of A Watson's UK Regional Distribution Centres
- 9/LPA/6.12 Steer Davies Gleave Instructions from the LPA
- 9/LPA/6.13 SDG Response to 9/HS/1.9

Documents Submitted by STRiFE

- STRiFE 9/02 Opening Statement
- STRiFE 9/01 Mr A Wallace Proof of Evidence
- STRiFE 9/01 Mr A Wallace Summary
- STRiFE 9/01 App to Document No 9/01
- STRiFE 9/01(a) App 2 Hartland Park Report Consideration One:
The Strategic Gap and Inspectors Report
- STRiFE 9/01(b) App B Figure 4.45 Existing Area 3

STRiFE 9/03 J&S Consulting Proof of Evidence
STRiFE 9/04 Mr D Hirst Proof of Evidence
STRiFE 9/04 Mr D Hirst Summary
STRiFE 9/04 Apps
STRiFE 9/04 (a) KIG Assessment of Railway Connectivity & Site Layout
STRiFE 9/04 (b) Letter dated 08 August 2008 from Mike Garratt (for
Alconbury Developments Limited)

STRiFE 9/05 Mrs A Morton Proof of Evidence
STRiFE 9/05 App 1
STRiFE 9/05 App 2

STRiFE 9/06 Mr P Pryce Proof of Evidence
STRiFE 9/06 (a) Memo from Sandra Constable dated 02 December 2009

STRiFE 9/07 Mr M Mark Proof of Evidence

STRiFE 9/08 Mr A Wilkinson Proof of Evidence

STRiFE 9/09 Mr B Pryce Proof of Evidence

STRiFE 9/10 Mr J Morgan First Capital Connect
STRiFE 9/10 Apps
STRiFE 9/10/01 Draft Thameslink Programme Specification
STRiFE 9/10 (a) Introduction to Hugh Clancy on behalf of First Capital
Connect
STRiFE 9/10 (b) FCC Comments on Appendix Q of Nick Gallop's Proof
STRiFE 9/10 (c) FCC Comments on Completeness of Appendix A of
Helioslough's Technical Report 4

STRiFE 9/11 Closing Submissions

Documents submitted by Interested persons

9/AM/1.1 Anne Main MP statement

9/AM/1.2 Emailed copy of Decision for Proposal at ASM
Metal Recycling Centre, Kings Langley

9/AM/1.3 Letter from Anne Main 16th December 2009

9/James C/1.1 James Clappison MP statement

9/CBwG/1.1 Clive Basset with Goodman (Written Representations)

9/CBwG/1.2 Letter from Savills dated 16th December 2009

9/SW/1.1 Mr S Walkington statement

9/RD/1.1 Cllr R Donald statement

9/MS/1.1 Mr M Saunders statement (on behalf of Cllr Caroline
Clapper)

9/ILaR/1.1 Mr I LaRiviere statement
9/ILaR/1/2 Appendices

9/ER/1.1 Mr E Roberts statement

9/ER/1.2	App 1
9/PT/1.1	Mr Peter Trevelyan statement
9/PT/1.2	Appendices
9/DP/1.1	Mr D Parry statement
9/DP/1.2	App A Analysis of Traffic Generation from the proposed Rail Freight Terminal at Radlett
9/DP/1.1	Mr J Bell statement
9/RSGBA/1.1	Mr G Taylor statement
9/KP/1.1	Mr K Peak statement
9/SACFA/1.1	Miss C Pudsey statement
9/SACFA/1.2	Appendix 1
9/SACFA/1.3	Appendix 2
9/SACFA/1.4	Appendix 3
9/MJ/1.1	Mr M Johns statement
9/JC/1.1	Mr J Carter statement
9/DB/1.1	Mr D Brown statement
9/RW/1.1	Mr R Webb statement
9/EB/1.1	Mrs E Brown statement
9/CB/1.1	Mr C Brown statement
9/CB/1.2	App 1 Table of Comparison of Radlett – KIG- Howbury
9/CB/1.3	App 2 A4 Page from Needs Case for a Strategic Rail Freight Interchange Technical Report 1: Background Context submitted by HS
9/CB/1.4	App 3 Letter from Network Rail dated 11 11 09
9/CB/1.5	App 4 Letter from Sainsbury's
9/CB/1.6	App 5 SoS Letter for Alconbury Development
9/CB/1.7	App 6 S106 Agreement for Alconbury Development
9/CB/1.8	App 7 SEEDA Letter 19 11 09
9/CB/1.9	App 8 Letters from Network Rail dated 29 10 2007; 07 12 07
9/G/1.1	Barton Willmore on behalf of Goodman (SIFE): written representation

PLANS	Location Plan 001)	
	Key Parameters Plan 002A)	are contained within the ES
	Indicative Master Plan 003)	

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Reed of Counsel; instructed by Head of Legal Services, St Albans District Council

Who called

Mr J Billingsley MA(Oxon)
BPhil MLI

Mr S Stephenson BSc
(Hons) MIOA CEng

Mr J Hargreaves DipTP
MRTPI

Mr B Wilson CEng
BSc(Hons) MIMechE

FOR THE APPELLANT:

Mr M Kingston of Queens Counsel, assisted by

Mr D Forsdick of Counsel; instructed by Ms E Mortimer Managing Director, CgMs Ltd

Who called

Mr R Tilley

Mr G Smith

Mr N Gallop

FOR STRIFE:

Mr P Stinchcombe of Counsel, assisted by

Mr N Helm of Counsel; instructed Fladgate LLP

Who called

Mr A Wallace

Mr D Hirst

Mr J O'Keefe

Mr H Clancy Commercial Director, First Capital Connect

Mrs A Morton Bricket Wood Residents Association

Mrs P Pryce Park Street and District Residents Association

Mr B Pryce	St Stephen Parish Council
Mr N Mark	Napsbury Park Residents Association
Mr A Wilkinson	Napsbury Lane Residents Association

INTERESTED PERSONS:

Mrs Anne Main MP	House of Commons
Mr James Clappison MP	House of Commons
Cllr Robert Donald	St Albans District Council
Mr E Roberts	St Albans Civic Society
Mr P Trevelyan	St Albans Civic Society
Mr J Bell	Chiswell Green Residents' Association
Mr G Taylor	Radlett Society & Green Belt Association
Miss C Pudsey	St Albans Community Forest Association
Mr M Johns	Park Street and How Wood Primary Schools
Mr S Walkington	Local Resident
Mr M Saunders	Local Resident
Mr D Parry	Local Resident
Mr K Peak	Local Resident
Mr J Carter	Local Resident
Mr I LaRiviere	Local Resident
Mr R Webb	Local Resident
Mr D Brown	Local Resident
Mrs E Brown	Local Resident
Mr C Brown	Local Resident

ANNEX A

RECOMMENDED CONDITIONS

Definitions of the terms used in the conditions can be found at the end.

COMMENCEMENT OF DEVELOPMENT

1. The development hereby permitted shall be commenced either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters to be approved, whichever is the later.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

APPROVAL OF RESERVED MATTERS

2. Application for approval of the Reserved Matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

DEVELOPMENT IN ACCORDANCE WITH KEY PARAMETERS PLAN

3. The development shall be carried out in accordance with the Key Parameters Plan and the specified paragraphs of the Development Specification Document dated March 2009 and drawing number 394503-LV-074 referred to in condition 3(f) comprising:
 - (a) layout of the new buildings to the extent to which it is shown on the Key Parameters Plan together with para 4.3;
 - (b) the maximum ridge height of the new buildings as specified on the Key Parameters Plan together with para 4.4;
 - (c) the maximum length and width of the B8 distribution units and the administration and ancillary buildings as set out in para 4.5;
 - (d) the maximum total floorspace of the new buildings applied for as specified on the Key Parameters Plan together with para 4.6;

- (e) the proposed finished site levels specified on the Key Parameters Plan together with para 4.7;
- (f) the height of earth mounds shown on drawing number 394503-LV-074 together with para 4.8;
- (g) various access and circulation routes shown on the Key Parameters Plan together with paras 4.9 and 4.10;
- (h) access to lorry and car parking/storage areas as shown on the Key Parameters Plan together with para 4.11;
- (i) proposed structure planting areas as shown on the Key Parameters Plan together with para 4.12.

Reason: This condition is necessary to ensure that the development does not materially depart from that applied for and considered in the ES.

4. PARTIAL SIGNALISATION OF PARK STREET ROUNDABOUT

- 4.1 None of the Units shall be occupied until the Park Street Roundabout Signalisation Works have been completed and brought into use.
- 4.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 4.3 The improvements shall have:
 - (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

Reason: This condition is necessary to ensure that the improvements to Park Street Roundabout are completed before the units are occupied.

5. IMPROVEMENT TO TRAFFIC SIGNALS AT LONDON COLNEY ROUNDABOUT

5.1 None of the Units shall be occupied until details of the London Colney Roundabout Improvements have been submitted for approval in writing by the local planning authority.

5.2 The London Colney Roundabout Improvements shall be completed in accordance with the approved details before the later of:

(a) two years of occupation of any of the Units, or

(b) twelve months of approval of the details of the improvements.

Reason: This condition is necessary to increase the capacity of the London Colney Roundabout

6. PROVISION OF ACCESS WORKS AND PARK STREET BYPASS

6.1 None of the Units shall be occupied until the Access Works and the Park Street Bypass Phase 1 Works have been completed and brought into use.

6.2 The works shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.

6.3 The works shall have:

(a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and

(b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

6.4 Not more than 230,000 square metres of floor area in the Units shall be occupied until a scheme for the Park Street Bypass Phase 2 Works (which shall include a programme for the delivery of the works) has been submitted to and approved in writing by the local planning authority.

6.5 The Park Street Bypass Phase 2 Works shall be completed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that the access is completed before the Units are occupied, including the Park Street Bypass with a 'temporary' connection to the A5183 at its southern end.

7. IMPROVEMENTS TO JUNCTION 21A OF THE M25

- 7.1 None of the Units shall be occupied until the M25 Junction 21A Improvements have been completed and brought into use.
- 7.2 The improvements shall include any revisions as required by the Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).
- 7.3 The improvements shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 21a.

8. IMPROVEMENTS TO JUNCTION 22 OF THE M25

- 8.1 Not more than 130,000 square metres of floor area in the Units shall be occupied until the M25 Junction 22 Improvements have been completed and brought into use.
- 8.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).
- 8.3 The improvements shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
 - (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 22.

9. TRAVEL AND FREIGHT MONITORING AND MANAGEMENT PLAN

- 9.1 None of the Units shall be occupied until a Travel and Freight Monitoring and Management Plan substantially in accordance with the Draft Travel and Freight Monitoring and Management Plan dated 18 December 2009 has been submitted to and approved in writing by the local planning authority.
- 9.2 The Travel and Freight Monitoring and Management Plan shall be submitted for approval no later than 12 months following the commencement of the Development.
- 9.3 The approved Travel and Freight Monitoring and Management Plan shall be implemented in accordance with the timetable contained therein and its requirements shall continue to be observed as long as any part of the development is occupied.

Reason: This condition is necessary to ensure that the measures proposed in the Travel Plan and Freight Management Plan to regulate movement to and from the development are carried out in the interests of (i) encouraging travel by means other than the private car and (ii) regulating the impact of HGV traffic on the surrounding network

CAR PARKING

10. Car parking spaces shall be provided at a standard of not more than 1 space per 207 square metres of floorspace for each Unit within the development

Reason: This condition is necessary to limit the amount of parking on the site in order to encourage travel by means other than the private car.

CONTROL OVER SOUTHERN ROUNDABOUT

11. None of the Units shall be occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority to ensure that only pedestrians, cyclists and authorised public transport and emergency vehicles can use the eastern limb of roundabout Y on the Highways Plan. The scheme shall specify the physical measures to be incorporated and the management arrangements for the operation of those measures. The scheme shall be submitted for approval no later than 12 months following the commencement of the Development. The approved scheme shall be provided before any of the Units are occupied and the only users of the eastern limb shall be those authorised under the approved scheme.

Reason: This condition is necessary to ensure that the southern entrance to the SRFI is not used by employee's vehicles or goods vehicles in order to limit the impact of traffic generated by the development on the local road network.

12. RAIL RELATED WORKS

- 12.1 None of the Units shall be occupied until the Midland Mainline Connection Works have been completed and until an operational rail link has been provided from such works to the relevant Unit.
- 12.2 A second track linking the reception sidings to the Midland Mainline shall be completed and become operational upon the earlier of:
- (a) as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds seven per 24 hour weekday period, or
 - (b) 10 years following first occupation of any of the Units.
- 12.3 None of the Units shall be occupied until the Intermodal Terminal Phase 1 Works have been completed.
- 12.4 The Midland Mainline Connection Works and the rail links to each of the Units and the Intermodal Terminal once provided shall thereafter be managed and maintained such that they remain available and operational to serve the Units.
- 12.5 The Intermodal Terminal Phase 2 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds four per 24 hour weekday period.
- 12.6 The Intermodal Terminal Phase 3 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds eight per 24 hour weekday period.
- 12.7 The Intermodal Terminal shall be equally open to access by all licensed rail freight operating companies.
- 12.8 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in conditions 12.1, 12.2, 12.3, 12.5 and 12.6 until such works have been completed.

Reason: This condition is necessary to ensure that the rail facilities on the site and the connection to the main line are provided and maintained in a manner compatible with the intended use of the site as a SRFI.

13. RAIL RELATED WORKS – GAUGE ENHANCEMENT TO THE MIDLAND MAINLINE

13.1 Not more than 175,000 square metres of floor area in the Units shall be occupied until the Midland Mainline Gauge Enhancement Works have been completed such that the W10 gauge enhancement has been provided either:

(a) from the development to Acton Yard, West London Junction and Willesden Junction (Acton Branch), or

(b) from the development to Junction Road Junction.

13.2 If Network Rail confirms in writing to the local planning authority before occupation of 175,000 square metres of floorspace within the Units that both sets of the works set out at condition 13.1 are required to be completed to meet the anticipated demand for train paths to the development, not more than 230,000 square metres of floorspace within the Units shall be occupied until a programme for such works has been approved in writing by the local planning authority. The works shall be completed in accordance with that programme.

13.3 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in condition 13.1 until such works have been completed.

13.4 There shall be submitted to the Council written notice of the anticipated date of occupation of 175,000 sq metres of floorspace within the Units, such notice to be served at least 6 months prior to such anticipated date of occupation.

Reason: This condition is necessary to ensure that the rail gauge enhancement works are completed in a timely fashion

CONSTRUCTION METHOD STATEMENT

14. The Development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a construction method statement. The construction method statement shall include:

- (a) details of the methods to be used to control dust, noise, vibration and other emissions from the site;
- (b) details of all temporary buildings and compound areas including arrangements for their removal following completion of construction;
- (c) details of areas to be used for the storage of plant and construction materials and waste;
- (d) details of temporary lighting arrangements;
- (e) hours of construction work.
- (f) measures to ensure that construction vehicles do not deposit mud on the public highway.
- (g) a scheme for the routing of construction vehicles accessing the site including measures to be taken by way of penalties if construction vehicles do not observe the identified routes.
- (h) details of the construction earthworks methodology.

The construction of the development shall be carried out in accordance with the approved construction method statement.

Reason: This condition is necessary in the interest of controlling the construction works and limiting the impact of construction on surrounding residents.

15. **LANDSCAPING**

15.1 The details to be submitted for approval under condition 2 in relation to landscaping for Areas 1 and 2 shall include:

- (a) a topographical survey of the Country Park within Area 1 and Area 2 comprising an updated version of drawing number 394503/LV/041 showing landform, water features, boundary structures, land uses, access roads and footpaths.
- (b) proposed ground modelling, re-profiling and mounding with proposed contours to be at a maximum of 1 metre levels;

- (c) a survey of existing trees and hedges (including ground levels at the base of all trees) in the Country Park within Area 1 and Area 2, the survey to show details of all trees and hedges to be removed and those to be retained and a scheme for the protection of retained trees during the construction of the development on Area 1 and Area 2. The survey and the tree protection measures shall be in accordance with BS 5837 (2005) unless otherwise agreed in writing with the local planning authority;
- (d) the comprehensive treatment of planting and seeding areas including plans and sections at a scale of not less than 1:1250;
- (e) all boundary treatment, retaining walls and security fencing including materials to be used, typical elevations and heights;
- (f) acoustic fencing including materials to be used, typical elevations and heights and details of acoustic performance;
- (g) hard landscape works including access roads, parking areas, signage, seating, litter bins and picnic areas;
- (h) all existing, diverted (whether temporary or permanent) and proposed rights of way including footpaths, bridleways and cycleways and their proposed surfacing treatment and details of enclosures, gates and stiles;
- (i) works to Hedges Farm to provide the Country Park Visitor/Interpretation Centre;
- (j) a programme of implementation and a management plan.

15.2 The landscaping programme shall be implemented as approved and the landscaping shall be maintained in accordance with the approved management plan.

Reason: This condition is necessary to guide the submission of landscaping details required as part of the reserved matters application and to ensure that the landscaping in Areas 1 and 2 is carried out and appropriately maintained.

POLLUTION CONTROL

16. Where any Unit or other facility in the development has oil fuel storage or chemical tanks serving such Unit, the relevant Unit shall not be occupied until a pollution control strategy in relation to such tanks has been submitted to and approved in writing by the local planning

authority. The development shall be carried out in accordance with the relevant approved strategy.

Reason: This condition is necessary to reduce the risk of any oil or chemicals stored on site polluting the environment.

17. DRAINAGE

17.1 The development shall not be commenced on Area 1 and Area 2 until a detailed scheme of drainage for Area 1 and Area 2 has been submitted to and approved in writing by the local planning authority. Such scheme shall include:

- (a) the provision of sustainable urban drainage systems to control the run-off from the development;
- (b) the provision of storm water balancing swales and other storage facilities; and
- (c) details of the design of the drainage infrastructure to illustrate the discharge rates will be less than existing levels.

The development shall be carried out in accordance with the approved scheme.

17.2 The development shall not be commenced on Areas 3 - 8 respectively until it has been confirmed in writing to the local planning authority whether development on the relevant Area includes the provision of foul and surface water drainage. If such drainage is to be provided on any of Areas 3 - 8 the development shall not be commenced on the relevant Area until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such drainage and its effect on groundwater. Foul and surface water drainage on the relevant Area shall be constructed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that drainage of the developed areas of the site does not increase run-off into local watercourses.

18. PILING

Piling or the construction of any other foundations using penetrative measures shall not take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such measures and their effect on groundwater. Piling or the construction of any other foundations using penetrative measures shall only take place in accordance with such approved scheme.

Reason: the site is in a sensitive location with respect to the potential contamination of groundwater. The construction of piles or other types of foundation could provide a potential pathway for contamination at the surface to migrate into the underlying major aquifer and Source Protection Zone.

AREA 2 PONDS

19. The development on Area 1 shall not be commenced until details of the provision (including the timing, monitoring and aftercare of the new ponds to be located in Area 2 have been submitted to and approved in writing by the local planning authority. The ponds shall be constructed in accordance with the approved details. None of the Units shall be occupied until the ponds on Area 2 have been constructed.

Reason: This condition is necessary to ensure that ponds are provided on Area 2 to provide appropriate habitat for newts and invertebrates.

TRANSLOCATION OF ACID GRASSLAND

20. The development shall not be commenced on the land forming part of Area 1 shown on EPR Map 11 until a mitigation strategy for the translocation of acid grassland from Area 1 to Area 2 (including timing, monitoring and aftercare) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.

Reason: This condition is necessary to ensure that appropriate provision is made to mitigate for the loss of acid grassland on Area 1.

PROTECTED SPECIES

21. The development shall not be commenced until an up to date survey has been submitted to the local planning authority showing the location of any protected species (being reptiles and nesting birds protected under the Wildlife and Countryside Act 1981 (as amended)) within Areas 1 or 2. Thereafter development shall not be commenced on any land forming part of Area 1 or 2 and identified by the survey as a location for a protected species, until a mitigation strategy for such species has been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved strategy.

Reason: This condition is necessary to ensure that any protected species on the site are identified and that appropriate steps are taken to avoid harm to them.

BADGERS

22. Not more than 6 months prior to the development being commenced on Area 1 or Area 2 the developer shall carry out a badger survey on the relevant Area and shall submit the results of such survey to the local planning authority. If appropriate the survey shall include a mitigation strategy for approval in writing by the local planning authority. Development shall be carried out only in accordance with the approved mitigation strategy.

Reason: This condition is necessary to ensure that any Badgers on the site at the time development is due to commence are identified and appropriate measures taken to mitigate the effects of the development on them.

ARCHAEOLOGY

23. The development shall not be commenced within Areas 1, 2, 3 or 4 or the part of Area 6 shown on drawing CgMs Radlett/01 dated 13 December 2007 until a written scheme of archaeological work and protection in relation to the relevant Area has been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the preservation in situ or, where that is not possible, the full excavation of remains considered to be of local or greater significance. The development shall be carried out in accordance with the scheme subject to any amendments approved in writing by the local planning authority. All remains preserved in situ shall be preserved in accordance with the scheme.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the recording or preservation of any archaeological remains that may be found on those areas of the site not previously disturbed by quarrying.

24. CONTAMINATION

- 24.1 The development shall not be commenced on any Area until the following components of a scheme to deal with the risks associated with contamination of the relevant Area has been submitted to and approved in writing by the local planning authority:

- (a) A preliminary risk assessment which has identified:
 - (i) all previous uses
 - (ii) potential contaminants associated with those uses
 - (iii) a conceptual model of the site indicating sources, pathways and receptors

- (iv) potentially unacceptable risks arising from contamination at the site.
 - (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - (c) The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 24.2 Any changes to the approved remediation strategy and the longer-term monitoring require the express consent of the local planning authority. The remediation strategy and longer-term monitoring shall be implemented as approved.
- 24.3 The development shall not be commenced on any Area until a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation on the relevant Area has been submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.
- 24.4 If during development of the relevant Area contamination not previously identified is found to be present at the site then no further development shall be carried out on that Area until the developer has submitted to and obtained written approval from the local planning authority for an amendment to the approved remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To ensure that an appropriate remediation strategy is undertaken as part of the development

25. NOISE

- 25.1 The development shall not be commenced on Areas 1 and 2 until a scheme has been submitted to and approved in writing by the local planning authority which specifies the details of the provisions to be made for the control of noise emanating from these Areas during the operation of the development. The development shall be operated in accordance with the approved scheme.
- 25.2 The level of noise emitted from the site shall not exceed 50dB LAeq, 8hr between 2300 and 0700 the following day as measured at 1 metre from the facade of any residential property. The measurement shall be made in accordance with British Standard 74451:2003.
- 25.3 The level of noise emitted from the site shall not exceed 60 dB LAFmax as measured at 1 metre from the façade of any residential premises between 23.00 and 07.00, every day.

Reason: This condition is necessary in the interests of preventing significant noise disturbance to residents living around the site.

EXTERNAL LOUDSPEAKERS

26. No external loudspeaker systems shall be installed on any Area.

Reason: This condition is necessary in the interests of preventing residents living around the site being disturbed by (intermittent) noise from any external loudspeakers that may be installed on the site.

REFUSE

27. The development shall not be commenced on any Area until details of the facilities for the storage of refuse on that Area have been submitted to and approved in writing by the local planning authority. The approved details shall thereafter be implemented and retained.

Reason: This condition is necessary to ensure that proper provision is made for the storage of refuse on the site.

RENEWABLE ENERGY

28. Construction of the Units within Area 1 shall not be commenced until a report has been submitted to the local planning authority setting out the measures to be taken such that the predicted CO2 emissions of the development will be reduced by a target of 10% through the

use of on-site renewable energy equipment and until such measures have been approved in writing by the local planning authority. The development shall be carried out incorporating such approved measures.

Reason: This condition is necessary in the interests of sustainable development and to comply with the requirements of RSS14.

LIGHTING

29. No Unit shall be occupied until a detailed external lighting scheme for Areas 1 and 2 has been submitted to and approved in writing by the local planning authority. No external lighting other than that approved shall be provided on Areas 1 and 2.

Reason: This condition is necessary to ensure that the design and installation of external lights on the site pays due regard to the need to protect the amenities of local residents and the environment.

CYCLE STORAGE

30. None of the Units shall be occupied until details of the cycle storage for employees of the Unit has been submitted to and approved in writing by the local planning authority. The approved cycle storage shall be provided and thereafter retained.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the storage of cycles on the site.

31. COUNTRY PARK

- 31.1 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Countryside Management Plan. The Countryside Management Plan shall include landscaping details for Areas 3 to 8 submitted for approval under Condition 2 above and shall be substantially in accordance with the following documents:

- (a) Countryside Management Plan – Overall Objectives and Design Principles dated 19 December 2007 and drawing numbers 394503-LV-042, 394503-LV-044, 394503-LV-046, 394503-LV-048, 394503-LV-050, 394503-LV-052, 394503-LV-054, 394503-LV-056, 394503-P-057 and 394503-LV-018 and EPR Maps 2, 3 rev A, 4, 5, 6, 7, 8, 9 and 10 Rev A; and

(b) Countryside Management Plan – Objectives and Specific Measures for Areas 1 – 8, dated 19 December 2007.

31.2 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Landscape Management Plan substantially in accordance with the Draft Landscape Management Plan prepared by Capita Lovejoy in December 2008.

31.3 The approved Countryside Management Plan and the approved Landscape Management Plan shall be implemented and their requirements shall thereafter continue to be observed.

31.4 The Countryside Management Plan when submitted under condition 31.1 shall define the landscaping and countryside access works and the public access and the sport and recreation facilities referred to in condition 32.1 and the works to create waterbodies and related facilities for bird habitat referred to in condition 32.2. It shall also set out measures to protect the areas of ecological interest within the Country Park pending the completion of the Country Park.

Reason: This condition is necessary to ensure that details of the Country Park are settled at an early stage.

32. **DELIVERY OF COUNTRY PARK**

32.1 The landscaping and countryside access works in those parts of Areas 1 and 2 proposed for use as a Country Park and in Areas 3, 4 and 5 and in the southern part of Area 6 and the provision of public access and the sport and recreation facilities in Area 5 shall be completed prior to occupation of any of the Units. These works shall include the restoration of Hedges Farm as a working farm and as a Country Park Visitor/Interpretation Centre as approved under condition 15.1(i) above.

32.2 The works to create waterbodies and related facilities for bird habitat on Areas 5 and 8 shall be completed within twelve months following occupation of any of the Units.

32.3 The Country Park works on Areas 7 and 8 shall be completed no later than the occupation of 290,000 square metres of floor area in the Units.

32.4 The Country Park measures on the northern part of Area 6 shall be completed by the later of:

- (a) 12 months following completion of the restoration of Area 6 in accordance with the planning permission dated 27 March 2007 reference 5/1811-04(CM112) (and any variation thereof); or
- (b) occupation of more than 290,000 square metres of floor area in the Units.

Reason: This condition is necessary to ensure timely delivery of the Country Park.

CONDITION IN RELATION TO AREA 1⁵⁹³

33. **(Alternative 1)** [The development shall not be commenced until a written planning obligation under Section 106 Town and Country Planning Act 1990 substantially in the same terms as the Unilateral Undertaking dated 16 January 2008 and binding the rest of Area 1, has been entered into by all relevant parties, completed and submitted to the local planning authority.]
- 33 **(Alternative 2)** [The development shall not be commenced within Area 1 until the approved rail works forming part of the development have been commenced on Area 2]
- 33 **(Alternative 3)** [None of the Units shall be occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority securing the matters listed in (a) - (i) below. The approved scheme shall be implemented in accordance with its terms, which shall include both a timetable for the implementation of each component part of the scheme and a framework to provide for the enforcement of the scheme. The scheme shall be consistent with the terms of the Unilateral Undertaking dated [2009].
- (a) a mechanism to ensure that Heavy Goods Vehicles use appropriate roads in respect of their routing to and from Area 1;
 - (b) the provision of the Park Street/Frogmore Environmental Improvements;

⁵⁹³ 3 alternative versions of condition 33 are set out. Alternative 1 is the same condition proposed by the Appellant and recommended by the Inspector at the previous inquiry. The Secretary of State raised queries on that condition (para 52 of the decision letter). The Appellant considers that the condition is appropriate and will be making submissions at the inquiry to that effect. If the Secretary of State is not satisfied regarding the condition, the second and third alternative versions are put forward by the Appellant as alternative options. Alternative 2 needs to be read in conjunction with the obligation in clause 14 of the Section 106 undertaking which restricts development from taking place on Area 2 until all of the application site is bound by the Section 106 obligation.

Additional definitions are included in square brackets at the end of the Definitions section to define the additional terms used in Alternative 3.

- (c) the provision of the Park Street Railway Station Improvements;
- (d) the provision of the Watford Branch Railway Line Improvements;
- (e) the appointment of the Travel/Freight Management Plan Co-ordinator prior to the occupation of any of the Units. The scheme shall contain details of the Co-ordinator's express responsibility for the promotion of rail freight at the development and to the surrounding area;
- (f) the provision, operation and maintenance of the fixed rail infrastructure within the development and the branch line to the Midland Mainline;
- (g) the funding of the costs of managing and maintaining the Country Park in accordance with the Countryside Management Plan and the Landscape Management Plan;
- (h) the inclusion in the lease of any Unit prior to the occupation of such Unit or in the lease of the Intermodal Terminal prior to its occupation an obligation that the relevant tenant shall comply with conditions 25.1 and 25.2 in relation to noise and the scheme shall require the enforcement of such lease provisions;
- (i) the provision of the Footpaths, Bridleways and Cycleways Improvements]

Reason: this condition is necessary to ensure that the planning obligations which have been entered into in relation to areas 2 - 8 are also secured in relation to the whole of area 1.

DEFINITIONS

"Access Works"	The creation of the new vehicular access to serve Area 1 from the A414 including the at grade signalised roundabout linking the A414 to the Park Street bypass
"Area"	The relevant area within Areas 1 – 8
"Area 1"	The area marked Area 1 shown edged red on

	drawing number 394503-LV-018
"Area 2"	The area marked Area 2 shown edged red on drawing number 394503-LV-018
"Area 3"	The area marked Area 3 shown edged red on drawing number 394503-LV-018
"Area 4"	The area marked Area 4 shown edged red on drawing number 394503-LV-018
"Area 5"	The area marked Area 5 shown edged red on drawing number 394503-LV-018
"Area 6"	The area marked Area 6 shown edged red on drawing number 394503-LV-018
"Area 7"	The area marked Area 7 shown edged red on drawing number 394503-LV-018
"Area 8"	The area marked Area 8 shown edged red on drawing number 394503-LV-018
"Country Park"	The country park to be provided on part of Area 1 and part of Area 2 shown coloured green on drawing number 394503-LV-077 and the Key Parameters Plan and on Areas 3-8
"Countryside Management Plan"	A plan setting out details of the long term management and maintenance of the Country Park
["Footpaths, Bridleways and Cycleways Improvements"	improvements to footpaths, bridleways and cycleways in the vicinity of the application site to include: (a) formation of new or upgrading of existing footpaths or bridleways outside the application site as shown

on Figure 56B; and/or

- (b) the upgrade of the pavement on the southern side of the A414 to a combined pavement and cycleway in the vicinity of the application site; and/or
- (c) improvements to the pedestrian bridges and underpasses in the vicinity of the application site]

["Heavy Goods Vehicle"

any goods vehicle which has an operating weight exceeding 7.5 tonnes]

"Highways Plan"

Plan 6035/37A dated December 2007

"Intermodal Terminal Phase 1 Works"

The first phase of the on-site rail works comprising the construction of three reception sidings and two intermodal terminal sidings and associated works to facilitate its operation as an intermodal terminal including security, hardstanding and lighting substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007

"Intermodal Terminal Phase 2 Works"

The second phase of on-site rail works comprising the construction of two additional intermodal terminal sidings and new temporary hardstanding substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007

"Intermodal Terminal Phase 3 Works"

The third phase of on-site rail works comprising the construction of two additional intermodal terminal sidings with the extension of the track to the reception sidings substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007

"Intermodal Terminal"	The intermodal terminal forming part of the development
"Key Parameters Plan"	Plan 394503-DSD-002a dated December 2008
"Landscape Management Plan"	A plan setting out details of the long term management and maintenance of the landscape areas within the Country Park
"London Colney Roundabout Improvements"	Improvements to the existing traffic signal controller at the London Colney Roundabout by the installation of the MOVA signal control system and other works to improve safety and capacity of the roundabout
"M25 Junction 21A Improvements"	Improvements to M25 Junction 21A as shown in principle on drawing number 11012495/PHL/01 Rev C
"M25 Junction 22 Improvements"	Improvements to M25 Junction 22 as shown in principle on drawing numbers 2495/SK/003 Rev A and 2495/SK/004 Rev A
"Midland Main Line"	The railway running from Bedford to St Pancras
"Midland Main Line Connection Works"	The formation of a southerly connection from the Midland Main Line northbound and southbound slow lines to the new branch line (including necessary signalling works) to serve Area 1
"Midland Main Line Gauge Enhancement Works"	<p>The gauge enhancement to the Midland Main Line to W9 and W10 loading gauge on the following routes;</p> <ul style="list-style-type: none">(a) the development to Brent Curve Junction, and(b) either;

- (i) Brent Curve to Acton Wells Junction; or
- (ii) Brent Curve to Junction Road Junction (at Tufnell Road)

"Park Street Bypass Phase 1 Works" The provision of the Park Street Bypass from the A414 between points A and C on the Highways Plan

"Park Street Bypass Phase 2 Works" The provision of:

- (a) a modification to the existing bridge over the M25; or
- (b) a new bridge over the M25 as shown in principle on Drawing 14297/BR/AIP/ST01/001-Rev A linking Area 1 with the A5183 by connecting roundabout Y and point D on the Highways Plan

["Park Street/Frogmore Environmental Improvements" environmental improvements at Park Street/ Frogmore to include;

- (a) traffic management measures to be introduced to restrict Heavy Goods Vehicles from using the A5183 in the vicinity of Park Street/ Frogmore save for those vehicles delivering to addresses in the vicinity of Park Street/ Frogmore and/ or;
- (b) traffic calming measures and/or;
- (c) footway widening and/or;
- (d) associated townscape and landscape works to improve the environment and residential amenity]

["Park Street Railway Station Improvements" improvements to passenger facilities at Park Street Railway station and improvements to the street layout in the vicinity

of Park Street Railway Station]

**"Park Street Roundabout
Signalisation Works"**

Improvements to the Park Street Roundabout as shown in principle on drawing no. 2495/SK/001 Rev A

"Reserved Matters"

Details of:

- (a) layout except as already approved for layout of the new buildings;
- (b) scale except as already approved for the maximum total floorspace of the new buildings and the maximum height, width and length of the new buildings;
- (c) appearance of the new buildings;
- (d) access except as already approved for rail, lorry and car access;
- (e) landscaping except as already approved for the location of the structure planting and earth mounds on Areas 1 and 2

**["Travel/Freight Management
Plan Co-ordinator"**

a person appointed under the terms of the Travel/Freight Management Plan referred to in condition 9.1 to co-ordinate the initiatives under the plan]

"Unit"

Each of the respective warehouse units within Area 1 to be constructed as part of the development

**["Watford Branch Railway Line
Improvements"**

the provision of a passing loop on the St Albans Abbey to Watford Junction branch line to facilitate a two way rail service, or alternative improvements to the rail service on the St Albans Abbey to Watford Junction branch line]

Annex B**ABBREVIATIONS**

SA	Alternative Sites Assessment
CA	Conservation Area
CMP	Countryside Management Plan
COPA	Control of Pollution Act
DBS	DB Schenker Rail (UK) Ltd
DCLG	Department of Communities and Local Government
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department of Transport
Drg	Drawing
DIRFT	Daventry International Rail Freight Terminal
DL	Decision Letter
DoE	Department of the Environment
EERA	East of England Regional Assembly
EH	English Heritage
EiC	Examination in Chief
EiP	Examination in Public
ES	Environmental Statement
FCC	First Capital Connect
FMMP	Freight Management and Monitoring Plan
FOC	Freight Operating Company
GB	Green Belt
GLA	Greater London Authority
GOSE	Government Office for the South East
GRIP	Guide to Railway Investments Projects
HA	Highways Agency
HBRC	Hertfordshire Biological Records Centre
HCC	Hertfordshire County Council
HGV	Heavy Goods Vehicle
HMWT	Herts and Middlesex Wildlife Trust
HP	Howbury Park
HS	Helioslough (appellant)
IR	Inspector's Report
LGW	London Gateway
LIFE	London International Freight Exchange
LPA	Local Planning Authority
MCC	Material Change in Circumstances
MML	Midland Main Line
NDC	National Distribution Centre
NPS	National Policy Statement
NR	Network Rail
ORR	Office of the Rail Regulator
PIM	Pre Inquiry Meeting
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
RDC	Regional Distribution Centre
RFR	Reason for Refusal
RPG	Regional Planning Guidance
RUS	Route Utilisation Survey

RSS	Regional Spatial Strategy
RX	Re-examination
SACDC	St Albans City and District Council
SOAF	Statement of Agreed Facts
SoCG	Statement of Common Ground
SoS	Secretary of State
SRFI	Strategic Rail Freight Interchange
SRA	Strategic Rail Authority
TA	Transport Assessment
TL	Thameslink
TOC	Train Operating Company
XX	Cross Examination
WHO	World Health Organisation

Annex C - Howbury Decision Letter (2009)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

Morag Thompson
Marrons
1 Meridian South
Meridian Business Park
Leicester
LE19 1WY

Our Ref: APP/T2215/A/05/1185897
APP/D5120/A/05/1198457

20 December 2007

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEALS BY PROLOGIS DEVELOPMENTS LIMITED
APPLICATION REFS: DA/04/00803/OUT AND 04/04384/OUTEA
LAND ADJACENT TO SOUTH EASTERN TRAINS DEPOT, SLADE GREEN,
BEXLEY**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Andrew M Phillipson, BSc CEng FICE MIHT, who held a public local inquiry which opened on 24 April 2007, into your clients' appeals under Section 78 of the Town and Country Planning Act 1990 against:-

- i) the decision of Dartford Borough Council to refuse outline planning permission for a rail freight interchange with dedicated intermodal facility and rail-linked warehousing; and
- ii) the failure of the London Borough of Bexley to give notice within the prescribed period of a decision on an outline planning application for a rail freight interchange with dedicated intermodal facility and rail-linked warehousing

both on land adjacent to South Eastern Trains Depot, Slade Green, Bexley.

3. On 27 September 2005 (in the case of the Dartford appeal) and 16 June 2006 (in the case of the Bexley appeal) the planning appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

4. The Inspector, whose conclusions are reproduced in the Annex to this letter, recommended that the appeals be allowed and planning permission granted. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR). For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with his recommendations.

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Department for Communities and Local Government
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Procedural matters

5. The Secretary of State has, like the Inspector (IR 1.20 and 15.4), taken into account the Environmental Statement and Supplementary Environmental Statements which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and in response to further requests for information under Regulation 19 of those Regulations. In doing so she has taken account of the various actions detailed in paragraphs 1.1, 1.2, 1.9, 1.11-1.14 and Appendix C of the Inspector's report. The Secretary of State considers that the information provided complies with the above regulations and that, along with other environmental information supplied at the Inquiry, sufficient information has been provided for her to assess the environmental impact of the application. The Secretary of State also notes that various amendments to the planning application and plans were made as part of the revised Environmental Statements (IR1.11,1.12, 1.14 and Appendix C). She has determined the application as amended, and considers that no party has been prejudiced by doing so.

Policy considerations

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises *Regional Planning Guidance for the South East*, *Regional Planning Guidance for the Thames Gateway*, the *London Plan*, the *Bexley Unitary Development Plan*, the *Kent and Medway Structure Plan* and the *Dartford Local Plan*.

7. The Secretary of State observes that the majority of policies of relevance to this appeal in the development plan have been saved under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004. However, she notes that Bexley UDP policies G1, G10, G12, ENV1, ENV 13, T1 and T2 have now expired. The Secretary of State does not consider that this raises any new issues relevant to this application that either affect her decision, or require her to refer back to the parties for further representations before reaching her decision. The Secretary of State agrees with the Inspector that relevant development plan policies include those set out in paragraphs IR5.2-5.47, except for those listed above which have now expired.

8. Material considerations which the Secretary of State has taken into account include: PPS1 "*Delivering Sustainable Development*"; PPG2 "*Green Belts*"; PPG4 "*Industrial and Commercial Development and Small Firms*"; PPS9 "*Biodiversity and Geological Conservation*"; PPG13 "*Transport*"; PPG15 "*Planning and the Historic Environment*"; PPS22 "*Renewable Energy*"; PPG24 "*Planning and Noise*"; and PPS25 "*Development and Flood Risk*".

9. Other material considerations include those emerging documents identified by the Inspector at paragraphs IR 5.48-5.51. The Secretary of State affords limited weight to the Second Draft Deposit Local Plan prepared by Dartford Borough Council, since it will not proceed further to adoption. She also affords limited weight to the *South East Plan*, since the panel report following the examination in public has not yet been published. However, the Secretary of State affords some weight to the *Draft Further*

Alterations to the London Plan as, since the close of the Inquiry, the panel report following the examination in public has been published. She does not consider that this raises any new issues relevant to this application that either affect her decision, or require her to refer back to the parties for further representations before reaching her decision.

10. The Secretary of State has also taken into account as material considerations those other documents identified by the Inspector at IR5.52-5.58, though she gives limited weight to the draft *London Freight Plan* which may be subject to change. The Secretary of State also considers that *Transport 2010* and *Sustainable Distribution: A Strategy* are material considerations.

11. The Secretary of State has also taken into account “*Planning and Climate Change*”, the supplement to PPS1, published on 17 December 2007. She does not consider that this raises any new issues relevant to this application that either affect her decision, or require her to refer back to the parties for further representations before reaching her decision. The Secretary of State has also taken into account draft PPS4 “*Planning for economic development*”, published for consultation on 17 December 2007, but as this document is still in draft and may be subject to change, she affords it little weight.

Main Issues

12. The Secretary of State agrees with the Inspector’s introduction and assessment of the main issues as set out in IR15.1-15.4. She agrees that as the development would constitute inappropriate development in the Green Belt, it is for the applicant to demonstrate that harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by very special circumstances that justify granting planning permission (IR 15.1).

Harm to the Green Belt

13. The Secretary of State agrees with the Inspector’s reasoning and conclusions on harm to the Green Belt, as set out in IR 15.5-15.11. She agrees that the proposal would have a substantial impact on the openness of the Green Belt (IR 15.6), would result in significant encroachment into the countryside (IR 15.7), and would contribute to urban sprawl (IR 15.7). She also considers that the function that the Green Belt serves in maintaining separation between the two settlements alongside the Thames would be materially weakened by the development proposed. However, she agrees that a gap would remain, and its width would be sufficient to maintain a clear physical and visual separation at this point between the eastern edge of London and the western edge of Dartford (IR 15.9).

Other Harm

14. The Secretary of State agrees with the Inspector’s reasoning and conclusions on other harm, as set out in IR 15.12-15.77.

15. On landscape and visual impact, the Secretary of State agrees with the Inspector that the character of the landscape immediately about the appeal site would be significantly changed as a result of the development (IR 15.13). She

considers that the proposal's visual impact would be limited from many directions (IR15.14). However, the Secretary of State considers that change would be most pronounced from Bob Dunn Way and its environs to the south of the site, and from viewpoints in an arc to the north running from Oak Road, through Moat Lane and the edge of Slade Green out to the Crayford and Dartford Marshes (IR 15.15). In such instances, she considers that the landscape and visual impact would be substantial and adverse.

16. On noise, dust, air quality and lighting, the Secretary of State agrees with the Inspector that noise from the development would not result in material harm to the living conditions of nearby residents (IR 15.27). She also agrees that development should not be constrained by concerns regarding the impact on air quality (IR 15.31), and that light spill, glare and upward escape of light would be controlled to acceptable levels (IR 15.32). With regard to these matters, she agrees that the proposal would not conflict with the development plan (IR 15.161). She agrees that condition 21(ii) should serve to prevent any nuisance to local residents from dust during the construction phase of development.

17. The Secretary of State agrees with the Inspector that there would inevitably be some impacts on nature conservation and biodiversity (IR 15.42). However, she agrees that these impacts would be limited and would be adequately offset by the mitigation measures proposed, which would be secured by the agreed conditions and through the Section 106 Non Highway Obligations (IR 15.42). These include the offer to secure the long term future of the Crayford Marshes by transferring the land to a trust - a factor, she notes, which is widely supported (IR 15.40). The Secretary of State agrees with the Inspector's overall conclusion on these matters that the proposal would not conflict with the development plan (IR 15.42, IR15.163)

18. On heritage features, the Secretary of State agrees with the Inspector that there would be no harm to the settings of Howbury Moat (IR15.44), the listed tithe barn (IR 15.44), or the conservation area (IR15.46). She also agrees that only limited negative weight should be given to the proposal's impact on the emerging Green Grid proposals (IR 15.49, IR15.165). Furthermore, the Secretary of State agrees with the Inspector that there is no reason to refuse planning permission for the development on flooding grounds (IR 15.51), given that the Environment Agency confirm that the development is not at significant risk of flooding (IR 15.50, IR15.166).

19. With regard to highways matters, the Secretary of State agrees that a Grampian condition requiring details of the entrance roundabout, to be submitted and agreed before development commences and the roundabout completed before the development is first occupied, is an appropriate response to concerns relating to the design of the site entrance roundabout (IR 15.60). She also agrees that, with regard to concerns about the capacity of the Crayford Way roundabout, it would be less than reasonable to require the appellant to fund any necessary adaptations to the roundabout which further analysis showed would be very small in any event (IR 15.66). The Secretary of State further agrees that it would not be reasonable to impose a Grampian condition requiring, in effect, that the developer of the proposal provide or fund a replacement for the Thames Road bridge (IR 15.75).

Very Special Circumstances

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on very special circumstances, as set out in IR 15.78-15.132.

21. On the matter of policy support for Strategic Rail Freight Interchanges (SRFIs), the Secretary of State agrees with the Inspector that policies in the London Plan effectively embrace the Strategic Rail Authority's conclusions and support the provision of three or four SRFIs in London and the South East (IR15.94). She also agrees that the adopted London Plan qualifies this support given that it states that any SRFI should be wholly or substantially on previously developed land (IR15.94). The Secretary of State also observes that the emerging London Plan requires that new locations for intermodal facilities should meet strategic planning and environmental objectives (IR 15.94), and notes that policy 3C.25 is expanded to include sites which would enable the potential of the Channel Tunnel Rail Link to be exploited (IR15.87).

22. The Secretary of State agrees with the Inspector that little weight should be given to the suggestion that planning permission for the proposal should be refused because it has not been demonstrated that the need for additional intermodal terminal capacity amounts to a "situation requiring relief" (IR 15.100). She also agrees that there are no viable alternative sites for the SRFI in the examined arc around south and east London (IR 15.177) – including the Barking site, which she agrees is not a realistic alternative (IR 15.105). Like the Inspector, she affords this issue considerable weight (IR 15.177).

23. On practical considerations relating to the proposal, the Secretary of State is, like the Inspector, satisfied that, on the totality of the evidence available, she can be reasonably assured that sufficient train paths would be available to service a SRFI at Howbury Park (IR 15.112); and that the disadvantage that Howbury Park would suffer from not being on a route cleared to W10 gauge would not be fatal (IR 15.118). The Secretary of State also considers that, whilst trains between Howbury Park and Felixstowe or Southampton are unlikely to be competitive when compared to road transport (IR 15.120), the proposal would be well placed to accept freight traffic coming through the channel tunnel (IR 15.121), and corporate social responsibility and other considerations are also likely to drive a general move from road-based to rail-based transport (IR 15.180). The Secretary of State is also satisfied with the Inspector's assessment of the positive indications that the proposal would operate as a SRFI (as set out in IR15.127-15.132), and agrees that she can be reasonably assured that the proposal would operate as such (IR 15.182).

Sustainability

24. The Secretary of State agrees with the Inspector's reasoning and conclusions on sustainability, as set out in IR 15.133-15.141. She agrees that the proposal would benefit the environment by reducing CO₂ emissions (IR 15.140), and that the design of the buildings would incorporate a range of measures to increase their sustainability (IR 15.141).

Precedents

25. The Secretary of State agrees with the Inspector's reasoning and conclusions on precedents, as set out in IR 15.142-15.143. She agrees that, whilst it is right to have regard to the precedent set by the London International Freight Exchange in reaching her decision on Howbury Park, she does not consider that she is bound to arrive at the same conclusion (IR 15.142).

Other matters

26. The Secretary of State agrees with the Inspector's reasoning and conclusions on those other matters addressed in IR 15.144-15.150. She agrees that the number of parking spaces should not be reduced below the 1,167 proposed by the appellant (IR 15.147, IR15.168); and that there is no evidence to support the view that providing rail-linked warehouses on the site as part of a SRFI aimed at meeting the strategic needs of London and the South East would materially impact on the demand for conventional warehouses in the Borough served only by road (IR 15.149, IR15.169). The Secretary of State considers that there is no shortage of employment land in Bexley; and that the employment benefits that would flow from the development should not weigh significantly in deciding whether planning permission should be granted (IR 15.150).

Conditions and obligations

27. The Secretary of State agrees with the Inspector's assessment of conditions, as set out in IR 15.151-15.155 and considers that the Inspector's proposed conditions comply with the policy tests in DoE Circular 11/95. She also considers that the Section 106 agreements considered by the Inspector in IR 1.15-1.19 are relevant to the proposed development and meet the policy tests of ODPM Circular 05/05.

Overall Balance

28. The Secretary of State agrees with the Inspector's conclusions as set out in IR 15.156-15.186, except with respect to conformity with the development plan which is addressed in paragraph 33 below.

29. She agrees with the Inspector that the proposal would be in conflict with the development plan insofar as it constitutes inappropriate development in the Green Belt, that it would cause substantial harm to the Green Belt, and that warehouses would be built in an area where they are not contemplated when there is sufficient other employment land available in the Borough of Bexley (IR15.170). She also agrees that it would conflict with the requirement of the existing London Plan that any site for a SRFI should be wholly or mainly on previously developed land (IR 15.184). The Secretary of State also considers that the proposal would have an impact on the emerging Green Grid proposals, but gives this issue only very limited weight (IR15.165).

30. The Secretary of State considers that the fundamental issues are, therefore, whether, in line with PPG2 and the development plan, this harm is clearly outweighed by other considerations and whether these can be regarded as being very special circumstances.

31. The Secretary of State agrees with the Inspector's assessment of the benefits of the proposal and their relative weight, as set out in IR 15.183 and 15.185. She considers that there are a number of benefits with the proposal, including the reduction in CO₂ emissions (IR15.140), the benefits generated by employment at the site (IR15.150) and benefits to nature conservation interests (IR15.40). However, the Secretary of State agrees with the Inspector that the ability of the proposal to meet part of London's need for three or four SRFIs is the most important consideration to which she affords significant weight. She also affords considerable weight to the lack of alternative sites to meet this need.

32. Having agreed with the Inspector that the benefits which he has identified are positive factors that weigh in favour of the proposal, she has then gone on to consider if these benefits could either individually or cumulatively amount to very special circumstances in accordance with the development plan.

33. The Secretary of State concludes that, in this particular case, the beneficial effects of the proposal together amount to very special circumstances and are of sufficient weight to clearly outweigh the harm to the Green Belt, and other harm. She therefore considers that the proposal complies with London Plan policy 3D.8 and Bexley UDP policy ENV2. Overall, the Secretary of State considers that the proposal complies with the development plan.

Overall Conclusions

34. The Secretary of State considers that the proposal is inappropriate development in the Green Belt, and would cause substantial harm to it. To comply with Green Belt policy the proposal cannot overcome the conflict with both local and national Green Belt policies unless very special circumstances exist. Having carefully considered the proposal, the Secretary of State considers that, in this particular case, the benefits of the proposal constitute very special circumstances and are sufficient to clearly outweigh the harm to the Green Belt and other harm. She therefore considers that the proposal complies with Green Belt policies of the development plan. The Secretary of State considers that the proposal complies with the development plan in other respects.

35. The Secretary of State does not consider that there are any material considerations of sufficient weight which would justify refusing planning permission.

Formal Decision

36. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows the appeals and grants outline planning permission for a rail freight interchange with dedicated intermodal facility and rail-linked warehousing, on land adjacent to South Eastern Trains Depot, Slade Green, Bexley in accordance with application numbers DA/04/00803/OUT and 04/04384/OUTEA, both dated 9 August 2004 (as amended), subject to the conditions set out in Annex A.

37. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent,

agreement or approval is refused or granted conditionally or if the local planning authority fail to give notice of their decision within the prescribed period.

38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than that required under section 57 of the Town and Country Planning Act 1990.

39. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

40. 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 6 weeks of the date of this letter.

41. A copy of this letter has been sent to the London Borough of Bexley and Dartford Borough Council and all parties who appeared at the inquiry.

Yours faithfully,

Mark Plummer

Authorised by the Secretary of State to sign in that behalf

ANNEX A

Conditions

1. Approval of the details of the design, external appearance of the buildings (including the bridge, the extent of which is shown in blue on Plan 2144-LE-79A), and the landscaping of the site (hereinafter called the reserved matters) shall be obtained in writing from the Local Planning Authority before any development is commenced.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than the expiration of three years from the date of this permission.

3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. The development hereby permitted shall be carried out substantially in accordance with the principles illustrated on the Parameters Plan, with the exception of the area shown as the Public Pocket Park which shall instead be landscaped in accordance with the details submitted pursuant to Conditions 1 and 8.

5. The total gross external area of the warehouses to be erected on the site shall not exceed 198,000 sq.m.

6. Prior to the commencement of development details of the sustainability measures (including a programme of implementation) to be substantially in accordance with Section 5 of the Design Code contained within the Environmental Statement shall be submitted to and approved in writing by the Local Planning Authority. The sustainability measures shall be implemented as approved.

7. The details to be submitted in accordance with Condition 1 shall include a schedule of materials and finishes to be used for the external walls and roofs of the proposed buildings.

8. The landscaping details to be submitted in accordance with Condition 1 shall be substantially in accordance with the Landscape Strategy set out in the Environmental Statement and shall specify:

- i) details of all ground modelling, re-profiling, bunding and mounding, including a comprehensive ground level survey with information relating to the existing and proposed ground levels above Ordnance Datum and cross-sections at a scale of not less than 1:200 at Moat Lane/Oak Road and 1:500 elsewhere at the boundary;
- ii) a detailed scheme for the comprehensive treatment of planting and seeding areas including plans and sections at a scale of not less than 1:1250;
- iii) all site boundary treatment, retaining walls, gabions, footpaths and security fencing;
- iv) acoustic fencing and barriers between letters A-B; C-D and E-F as shown on the Parameters Plan; and
- v) a programme of implementation and management plan.

The landscaping scheme shall be carried out as approved and shall be maintained in accordance with the approved management plan for a minimum of ten years after planting. Any trees, shrubs, or other plants which die, are removed or become seriously damaged or diseased during this period shall be replaced with others of a similar type and size unless otherwise agreed by the Local Planning Authority.

9. Prior to the commencement of development details of the landscaping scheme for the area shown edged green on plan 2144-FE-78 (including a programme of implementation)

shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

10. Prior to the commencement of development details of the highway works on Moat Lane and at the access to the site from the A206 Bob Dunn Way/Thames Road/ Burnham Road junction shall be submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied or brought into use until these off-site works have been completed in accordance with the approved details.

11. The bridge details to be submitted in accordance with Condition 1 shall specify:

- i) details of the provision to be made for access for the Environment Agency to and along both banks of the River Cray;
- ii) details of the bridge piers which shall be substantially in accordance with the Environmental Statement and shall create no greater blockage to the River Cray than shown on the revised application drawings dated January 2007;
- iii) details of the works to the banks of the River Cray which shall project no further into the watercourse than shown in the revised application drawings dated January 2007 and the Environmental Statement;
- iv) details of fenders;
- v) details of guard rails; and
- vi) the materials and finishes to be used for the external surfaces of the bridge.

The bridge shall be provided in accordance with the approved details.

12. Prior to the commencement of development an ecological mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme of implementation and a management plan and shall be substantially in accordance with the details contained in the Ecological Chapter of the Environmental Statement (including the provision of a 5m wide buffer zone alongside all wet ditches and ponds). The ecological mitigation scheme shall be carried out as approved.

13. Prior to the commencement of development a scheme providing details of all permanent access roads, cycle ways and footpaths shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme of implementation and shall be substantially in accordance with the Parameters Plan. The scheme shall be implemented in accordance with the approved details.

14. Prior to the commencement of development details of the northern access from Moat Lane together with measures to be introduced to ensure that only authorised vehicular traffic, cyclists and pedestrians can use the northern access from Moat Lane as identified on the Parameters Plan shall be submitted to and approved in writing by the Local Planning Authority. The said details shall specify the type of vehicles to be authorised and the management arrangements for the operation of those measures. Thereafter the northern access shall be provided in accordance with the approved details and the only vehicles to use this access shall be those authorised in accordance with the approved details.

15. Prior to the commencement of development details of the areas affected by all vehicular and pedestrian sight lines and visibility splays within the site including the height of zone within which there shall be no obstruction to visibility shall be submitted to and approved in writing by the Local Planning Authority. The sight lines and visibility splays shall be provided in accordance with the approved details before that part of the development which utilises those sight lines and visibility splays is first brought into use. Thereafter the sight lines and visibility splays shall be maintained in accordance with the approved details.

16. Prior to the commencement of development a scheme specifying the management arrangements for the operation of the lifting bridge shall be submitted to and approved in

writing by the Local Planning Authority. Thereafter the bridge shall only be lifted in accordance with the agreed scheme.

17. Prior to the commencement of development details of the boundary treatment between the western boundary of the application site and the area denoted as the "Area reserved for Crossrail" on the Parameters Plan shall be submitted to and approved in writing by the Local Planning Authority. The treatment of that boundary shall be undertaken in accordance with the approved details.

18. Prior to the commencement of development a drainage strategy (including a programme of implementation) shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall be substantially in accordance with the details set out in the Environmental Statement. The strategy shall be implemented as approved.

19. Prior to the commencement of development a scheme of archaeological investigation and, if necessary, mitigation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.

20. Prior to the commencement of development a scheme detailing the location and appearance of the refuse storage areas and recycling facilities shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and maintained as approved.

21. Prior to the commencement of development a construction method statement shall be submitted to and approved in writing by the Local Planning Authority. The method statement shall include:

- i) details of the means of access to the site (including details of temporary construction accesses to the site and to the banks of the River Cray and details of the temporary bridge over the River Cray);
- ii) details of the methods to be used to control dust, noise, vibration and other emissions from the site (including emissions to the River Cray);
- iii) measures to prevent blockages to the River Cray and to control the loadings to the river embankments;
- iv) a scheme for the routing, management and signage of construction traffic;
- v) a scheme for the maintenance and/or temporary diversion of Public Rights of Way;
- vi) details of fencing to prevent incursion of construction traffic onto landscaped areas within and outside the site;
- vii) details of all temporary buildings and compound areas including arrangements for their removal;
- viii) details of areas to be used for the storage of plant and construction materials and waste (including demolition waste);
- ix) details of the areas to be used for parking, loading and unloading of construction vehicles and for parking employees vehicles;
- x) details of temporary lighting arrangements; and
- xi) a programme of works.

All construction shall be carried out in accordance with the approved method statement.

22. Prior to the commencement of development a noise mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall set out the provisions to be made for the control of noise from the site and shall be substantially in accordance with the Environmental Statement and the Statement of Common Ground on Noise (CD7.5). Noise from the site shall be controlled in accordance with the approved scheme.

23. Prior to the commencement of development a contaminated land assessment and associated remediation strategy together with a programme of implementation, shall be submitted to and approved in writing by the Local Planning Authority.

The assessment and remediation strategy shall include a site investigation report detailing all investigative works and sampling carried out together with the results of analysis and risk assessments to any receptors. The strategy shall be of such a nature so as to render harmless the identified contamination having regard to the proposed end use of the site and the surrounding environment including all controlled waters.

The approved remediation scheme shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the approved methodology and best practice. Any variation to that scheme shall be agreed in writing with the Local Planning Authority in advance of the varied works being undertaken. If during any remediation works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to and approved in writing by the Local Planning Authority and carried out.

Upon completion of the remediation works this condition shall not be discharged until a validation report has been submitted to the Local Planning Authority. The validation report shall include details of the remediation works and quality assurance certificates to show that the remediation works have been carried out in full in accordance with the approved methodology. The report shall include all relevant correspondence with the regulating authorities and other parties involved with the remediation works, details of post remediation sampling and analysis to show the site has reached the required standard of remediation, and documentation detailing all materials that have been imported to or removed from the site in connection with the remediation works.

24. Prior to the commencement of development a groundwater monitoring scheme relating to the chalk aquifer under the Crayford Landfill Phase 7 (including a programme of implementation) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.

25. Details of the construction of the foundations for each building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction of that building. The foundations shall be constructed in accordance with the approved details.

26. No works of construction (including earthworks) other than internal works to the buildings, the laying of floors, works requiring rail possessions and tidal works shall be undertaken before 08.00 or after 18.00 on any weekday or before 09.00 or after 14.00 on Saturdays nor at any time on Sundays, Bank or Public Holidays unless otherwise agreed in writing by the Local Planning Authority.

27. Prior to the occupation of each building details of any external storage areas (including the maximum height of any such storage) for that building shall be submitted to and approved in writing by the Local Planning Authority. No materials shall be stored outside the buildings except in the approved areas.

28. No building or the intermodal area hereby permitted shall be occupied until the associated car parking, HGV parking, servicing and manoeuvring spaces and the roads and footpaths providing access for that building or the intermodal area have been constructed and laid out in accordance with details submitted to and approved in writing by the Local Planning Authority. The car parking approved for each building or the intermodal area shall be completed ready for use prior to the occupation of that building but shall not be used prior

to such occupation. Cars and HGVs shall not be parked on the site other than in the approved parking spaces unless otherwise agreed in writing by the Local Planning Authority.

29. No building or the intermodal area hereby permitted shall be occupied until the cycle parking for that building or use has been provided in accordance with details submitted to and approved in writing by the Local Planning Authority, such details to be substantially in accordance with the Framework Travel Plan. The cycle parking approved for each building or use shall be provided prior to the occupation of that building or use and thereafter shall remain available for such use at all times unless otherwise agreed in writing by the Local Planning Authority.

30. Prior to first occupation of any part of the development a detailed external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. No external lighting other than that approved shall be provided on the site.

31. The buildings hereby permitted shall be used solely for Class B8 (storage or distribution) purposes and uses ancillary thereto and for no other purpose.

32. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or replacing the same) no extension of the buildings hereby approved shall be carried out.

33. The height of stacked containers on the area coloured orange on the plan ref 2144-LE-85 shall not exceed 12m.

34. No more than 1,167 car parking spaces shall be provided on site including spaces for disabled and car share drivers.

35. There shall be no burning of materials or waste on the site.

36. Details of any gantry cranes to be used on the site shall be submitted to and approved in writing by the Local Planning Authority prior to their first use. No gantry cranes shall be used on the site other than as previously agreed in writing by the Local Planning Authority.

37. No railway line or siding provided within the site further to this permission shall be removed, realigned or closed to rail traffic unless otherwise agreed in writing by the Local Planning Authority.

Definitions

In these conditions the following expressions shall have the following meanings:

Local Planning Authority: As between the London Borough of Bexley and Dartford Borough Council means the local planning authority within whose administrative district the part of the site to which the condition relates is located and where a condition relates to the whole development or any part of the development which straddles the boundary between the two local authorities then the expression shall be taken to mean both authorities.

Commencement of development: The earliest date on which any of the material operations (as defined by Section 56(4) of the Town and Country Planning Act 1990) pursuant to the implementation of this planning permission is begun on the application site with the exception of:

i. any works carried out in connection with any archaeological investigation of the application site; and

- ii. any trial holes or other operations to establish the ground conditions of the application site; and
- iii. any works of demolition and ground clearance.

Environmental Statement: The Environmental Statement revised January 2007 and the Supplementary Environmental Statement dated July 2007.

Parameters Plan: The Development Parameters Plan Drawing No. 2144/PL/49D (or alternatively Drawing No 2144/PL/104 in the event that the levels of the adjoining landfill are reduced to those shown on Figure B3 in the Supplementary Environmental Statement dated July 2007).

Crayford Landfill Phase 7: The area identified as Phase 7 in the planning permission for the landfill on land adjacent to the application site.

Framework Travel Plan: The document entitled "Framework Employee Travel Plan/Freight Management Plan" produced by WSP Consultants and dated 24 May 2007.

Annex D - Howbury Inspector's Report (2007)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited



Report to the Secretary of State for Communities and Local Government

by Andrew M Phillipson BSc CEng FICE MIHT

**an Inspector appointed by the Secretary of State for
Communities and Local Government**

The Planning Inspectorate
Temple Quay House
2 The Square
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Bristol BS1 6PN
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Date 24 September 2007

Town and Country Planning Act 1990
Bexley Council and Dartford Borough Council
Applications by
ProLogis Developments Ltd
Howbury Park Railfreight Interchange

Inquiry opened on 24 April 2007

Land adjacent to South Eastern Trains Depot, Slade Green, Bexley

File Refs: APP/T2215/A/05/1185897 & APP/D5120/A/05/1198457

File Ref: APP/T2215/A/05/1185897

Land adjacent to South Eastern Trains Depot, Slade Green, Bexley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by ProLogis Developments Ltd against the decision of Dartford Borough Council.
- The application Ref DA/04/00803/OUT, dated 9 August 2004, was refused by notice dated 8 February 2005.
- The development proposed is a rail freight interchange with dedicated intermodal facility and rail-linked warehousing.
- The inquiry sat for 20 days on 24 April to 1 June 2007.

Summary of Recommendation: That the appeal be allowed and planning permission granted, subject to the conditions set out in Appendix E.

File Ref: APP/D5120/A/05/1198457

Land adjacent to South Eastern Trains Depot, Slade Green, Bexley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by ProLogis Developments Ltd against the Council of the London Borough of Bexley.
- The application Ref 04/04384/OUTEA is dated 9 August 2004.
- The development proposed is a rail freight interchange with dedicated intermodal facility and rail-linked warehousing.
- The inquiry sat for 20 days on 24 April to 1 June 2007.

Summary of Recommendation: That the appeal be allowed and planning permission granted, subject to the conditions set out in Appendix E.

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1. INTRODUCTION AND PROCEDURAL MATTERS

- 1.1 The inquiry opened on 24 April 2007 and sat for 20 days before adjourning on 1 June. The adjournment was at the request of ProLogis to allow time for a revised visual impact analysis and photomontages to be prepared, taking account of changes to restoration levels on the adjacent landfill site which were found during the course of the inquiry not to match those surveyed in 2004 and used to prepare the visual impact analysis contained in the Environmental Statement (ES), or indeed those permitted by the planning permission for the landfill. This information was produced and a Supplementary ES was published in July 2007 (PDL/0.17). It was advertised and sent to all consultees, with a request that any representations on the material supplied be sent to the Planning Inspectorate (PINS) (INQ6). This was followed up by a letter from PINS to all participants at the inquiry setting a deadline for responses of 24 August 2007 and asking if anyone wished to be heard at the resumed inquiry (INQ7). Eight responses were received (INQ8), none of which requested that the inquiry resume sitting.
- 1.2 Following receipt of the responses, a letter was sent by PINS (INQ9) on my behalf asking the landscape witnesses for ProLogis and Bexley Council to meet and, if possible, agree common ground with regard to differences in the montages presented in the Supplementary ES and Bexley Council's response thereto (LBB2.11). A response was duly received (CD7.10). In a second letter to the Rule 6 parties (INQ10) I formally set out my position with regard to the changes to the design shown on the drawings included with the Supplementary ES (see paragraph 1.14 below), and the need for changes to one of the agreed conditions (without prejudice). One response was received agreeing to my proposals (PDL/0.18).
- 1.3 By 7 September it was clear to me that no useful purpose would be served if the inquiry were to resume sitting on the date arranged. I accordingly arranged for PINS to notify the parties in writing that the inquiry was closed (INQ11).
- 1.4 During the course of the inquiry I made accompanied visits to the site and the surrounding area with the landscape witnesses on Monday 14 May. On Tuesday 29 May I made a further accompanied visit to the site and the surrounding area with representatives of ProLogis and Bexley Council. This visit took in Howbury Farm, parts of Crayford Marshes and Slade Green and Dugdale Wharf. The following day I made accompanied visits to the rail freight terminals at Barking and Willesden, again with representatives of ProLogis and Bexley Council. Before the inquiry opened, I visited the Daventry International Rail Freight Terminal (DIRFT) with representatives of Bexley Council, ProLogis and the Highways Agency. I also made several unaccompanied visits to Slade Green, the footpaths about the site and other features referred to in the evidence.
- 1.5 The application site straddles the boundary between the London Borough of Bexley and the Borough of Dartford. In August 2004 identical planning applications were submitted to Bexley Council and Dartford Borough Council. They were each described as being for:

“A rail freight interchange with dedicated intermodal facility and rail-linked warehousing.”

- 1.6 Both applications were in outline with design, external appearance and landscaping reserved for future consideration. They were accompanied by an ES, a planning statement, design statement, landscape design statement, rail report, alternative sites report, public consultation report, flood risk assessment and transport assessment.
- 1.7 Information supplied on the application forms gave the site area as 63.83ha. The area of rail-linked warehouses proposed was given as 198,000m². The main access to the site was shown as being from the roundabout at the junction of Bob Dunn Way, Thames Road and Burnham Road, via a lifting bridge over the River Cray. A secondary pedestrian and cycle route was shown connecting the site to Moat Lane, Slade Green.
- 1.8 In February 2005, Dartford Borough Council refused planning permission for that part of the development within the Borough of Dartford.
- 1.9 In June 2005 Bexley Council requested further information, under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (the EIA Regs). In response a revised ES was submitted, together with revised drawings and a number of reports (the November 2005 submission). The appeal against Bexley Council’s failure to determine the application was lodged in March 2006.
- 1.10 Bexley Council considered the application at Committee on 1 August 2006 (CD1.1). At that meeting it was resolved that, in the absence of the appeal, the Council would have been minded to refuse planning permission for 15 reasons. Of these, 8 reasons referred to a lack of sufficient information to enable the authority to fully assess the application.
- 1.11 At the pre-inquiry meeting in January 2007, ProLogis advised that a revised planning application and accompanying ES was being prepared and would be submitted by the end of the month (INQ1). The amendments were considered to be minor and the changes to the ES were primarily intended to address the alleged shortcomings identified in Bexley Council’s report to Committee. A plan was circulated showing the revisions proposed to the red line boundary and electronic copies of the revised ES were given to those requesting them. The changes proposed included changes to the warehouse roof design to incorporate sections of green roof and photovoltaics, a revised drainage strategy, provision of an access road for buses to the site from Moat Lane, revisions to the proposed roundabout at Thames Road/Bob Dunn Way to allow for the Thames Road dualling works, and provision of access tracks to the banks of the River Cray for the Environment Agency.
- 1.12 The revised ES was advertised and copies placed on deposit in accordance with the procedural requirements laid down for the submission of further environmental information under Regulation 19 of the EIA Regs. Subsequently, in February 2007 ProLogis proposed that the works to the banks of the River Cray should be extended,

- following further comments from the Environment Agency. The site application boundary plan was amended, as was the plan showing the proposed profile of the riverbed.
- 1.13 On opening the inquiry, I announced the revisions and asked if everyone was content that the inquiry should proceed (and the Secretary of State should reach her decision) on the basis of the revised plans. No one objected.
- 1.14 The plans were further revised on submission of the Supplementary ES in July 2007. The revisions were, to my mind, minor and in a letter dated 29 August 2007 (INQ10) PINS wrote to ProLogis, the two planning authorities and the Rule 6 parties formally proposing that I should complete my report, and the Secretary of State should reach her decision, on the basis of the proposals presented in the Supplementary ES. No one objected.
- 1.15 At the inquiry two Section 106 (S106) Unilateral Undertakings were submitted, executed by ProLogis and the landowners (PDL/0.15 and PDL/0.16).
- 1.16 The first of these (PDL/0.15) covers non highway obligations and provides, amongst other matters, for various measures to encourage the take up of rail use. These include undertakings to complete the intermodal terminal and other rail infrastructure before any of the rail-served warehouses are occupied and to provide rail sidings to each of the warehouses before they are brought into use. £3,000,000 is to be set aside in a rail subsidy fund to provide lift subsidies for users of the intermodal terminal in the first three years of operation and to secure a regular train service between the site and an appropriate rail freight hub. There is provision in the undertaking to increase this funding to £4,000,000 if necessary and to apply the money to alternative measures to encourage rail use if that is agreed to be appropriate. Further funding is provided to support the work of the Thames Gateway Sub-Regional Freight Quality Partnership, and to finance the appointment of a Rail Officer at Transport for London (TfL). A rail freight plan is required to be submitted containing specific actions to encourage rail freight with the aim of building the amount of goods arriving at the warehouses by rail to at least 25% by weight by the end of the first 10 years of operation. The undertaking also requires that a second rail chord be provided at the entrance to the site (to allow a train to enter the site whilst a second train is waiting to depart) as soon as traffic exceeds 24 trains per week, or within 10 years from commencement of development, in any event. Gantry cranes are required to be provided in the intermodal terminal within the same timescale.
- 1.17 On nature conservation, the obligation provides for the submission of a plan for the management and maintenance of the Marshes Trust Land, the extent of which is defined in the agreement. The land is to be transferred for a nominal consideration to a trust set up to maintain and manage the land. An endowment¹ is to be provided to

¹ Inspector's note. The body to whom the land will be transferred is not specified in the undertaking; neither is the amount of the endowment given. The expectation, however, is that the London Wildlife Trust would take

secure this. The Grade II listed tithe barn is to be refurbished and transferred to the same body to whom the Marshes Trust Land is transferred.

- 1.18 On public transport, the undertaking provides for £180,000 to be paid to extend the No 89 bus route into the site, or alternative measures to maximise the use of public transport by persons employed at the development. Money is also required to be paid to provide noise insulation to five houses on Moat Lane, to improve local footways and cycleways, to improve Slade Green Station and to fund employment and training initiatives. A local liaison group is required to be established to monitor the implementation of the development.
- 1.19 The second undertaking (PDL/0.16) covers highway obligations. It provides for a travel plan co-ordinator to be appointed to secure the implementation of the Framework Employee Travel Plan/Freight Management Plan (PDL/5.21). It provides for employee travel patterns to be monitored and for measures to be taken to achieve a car mode share for employees of no more than 70% of inbound and outbound trips between 07.00 and 10.00 and 16.00 to 19.00 within 2 years of occupation. Ultimately it aims to reduce the equivalent car mode share to 56% of trips. It further provides for up to £500,000 to be paid for works to increase the capacity of M25 Junction 1a and for goods vehicles leaving the site to be monitored and, if necessary, controlled to specified levels in the morning and evening peak periods. A series of remedial actions are specified if the number of goods vehicles is found to exceed that allowed, culminating in the installation of traffic signals to restrict the number of goods vehicles leaving the site to the permitted levels.
- 1.20 As noted above, an Environmental Statement was submitted with the application (CD1.6). Further environmental information was supplied with the proofs of evidence and during the course of the inquiry, including a Supplementary ES (see paragraph 1.1 above). In reaching my conclusions and recommendations, I have taken this environmental information into account.
- 1.21 Chapter 2 of this report contains a description of the site and the surrounding area. This is followed by chapters briefly describing the proposal; setting out those matters which are common ground between the parties; and summarising the relevant planning policies. The following chapters set out the gist of the cases made by each of the inquiry participants, case by case. The main points made by those who submitted written representations are also recorded. The final chapters contain my conclusions and recommendations.
- 1.22 A list of those appearing at the inquiry is contained in Appendix A. Documents and plans submitted to the inquiry are listed in Appendices B and C. Appendix D contains a list of abbreviations used in this report.

on responsibility for the management and maintenance of the land and that an endowment of some £2 million would be provided to secure this (LWT3).

2. THE SITE AND SURROUNDINGS

Inspector's Note. An oblique aerial photograph of the appeal site and parts of the surrounding area can be found in the Design Statement (Planning Statement, Volume 1, Section 3, p3). The boundary of the application site is shown on Drg 2144/PL/52C. The topography is shown graphically on a plan in the ES, Volume 5a, Appendix B, Figure B2.

- 2.1 The application site has an area of approximately 64ha. It comprises mainly open, gently undulating, grassed fields used in part for the grazing of animals. The Grange stands near the centre of the site. It was built and originally used as a dwelling house, but is now in commercial use. A group of mature trees stand within the curtilage of the Grange, but otherwise the site is open, with the exception of hedgerows alongside Moat Lane and close to the site's northern boundary.
- 2.2 The southern section of the main body of the site, to the north of the River Cray, is currently a landfill site, but this is expected to be landscaped and restored by 31 December 2007 (LBB0.3). To the south of the River Cray a corridor of land approximately 50m wide extends across open marshland to a roundabout on the A206 at the junction of Bob Dunn Way, Thames Road and Burnham Road. A second spur from the main body of the site runs between the Grosvenor Waste Depot and part of Southeastern's Slade Green Depot to connect to the North Kent rail line.
- 2.3 Existing ground levels on the main body of the site range from a maximum of 13.5m AOD at the Grange to approximately 5.0m AOD at the northern site boundary.
- 2.4 As to the surroundings, the south-western boundary of the site runs parallel to Southeastern's depot buildings and sidings, beyond which is the North Kent rail line. A strip some 50m wide would remain between the depot and the site boundary, however, which has been reserved to accommodate a possible future depot for Crossrail rolling stock. To the south of the train depot, the buildings and yard occupied by Grosvenor Waste abut the site boundary.
- 2.5 The southern boundary of the main body of the site follows the line of the footpath and cycleway which runs along the northern bank of the River Cray eastwards towards the River Darent. A former landfill site, now restored to grassland, occupies the land between the eastern boundary of the site and the River Darent.
- 2.6 The northern boundary of the site follows the line of Moat Lane. This road, which is unmade where it abuts the site boundary, is open to traffic for a distance of some 200m east from the junction with Hazel Road, beyond which it continues as a footpath and cycleway out to the River Darent. A pair of houses (Nos 71 and 73 Moat Lane) front this road and face the appeal site, and three further houses sit slightly to the north, close to Howbury Farm and Moat (Nos 1, 2 and 3 Moat Farm Cottages). Howbury Moat (LBB2.3, DrgDH1, photo DHA5) is a scheduled ancient monument. To the north of the cottages, a substantial Grade II listed tithe barn dominates the small group of farm buildings.

- 2.7 The main body of Slade Green lies to the north and west of the site, with Slade Green Station some 250m from the north-west corner of the site. At this corner, houses on Moat Lane and Oak Road lie close to the site boundary, many of which are in a conservation area (PDL/3.9). Houses at the southern end of Hazel Road are only marginally further from the site. Further to the north, some of the houses on Leycroft Gardens and other roads on the fringes of Slade Green look out over playing fields towards the site.
- 2.8 To the north of Moat Lane, east of Howbury Moat, there is open marshland (the Crayford Marshes) which extend out to the Rivers Darent and Thames. The Darent Industrial Estate (also known as the Crayford Ness Industrial Area) sits at the junction of these two rivers. On the opposite side of the River Darent there is further marshland (the Dartford Marshes) which extends east to the edge of Dartford.
- 2.9 There are no public footpaths or other rights of way within the site boundary except for a short length of path along the northern bank of the River Cray, which lies within the site boundary where the river crossing is proposed (see paragraph 3.8 below).
- 2.10 Settlements surrounding the site include Dartford, to the east and south and Crayford to the south and west. Erith lies beyond Slade Green to the northwest.
- 2.11 The main road serving the site is the A206, which leads from Junction 1a of the M25 westwards towards Erith, Belvedere and Thamesmead. This is a dual carriageway from the M25 to the Bob Dunn Way/Thames Road roundabout and at the time of the inquiry works were in progress to dual the “missing” section of Thames Road. These works, however, no longer include replacement of the railway bridge which crosses the road some 200m west of the Bob Dunn Way/Thames Road roundabout, and the carriageway will be reduced to a single lane in either direction at this point.
- 2.12 The boundary between the London Borough of Bexley and the Borough of Dartford follows the line of the River Cray through the appeal site.

3. THE PROPOSAL

Inspector's Note. The applications were made in outline, with all matters reserved for future consideration except access and siting. Notwithstanding this an agreed condition would require the development to be carried out substantially in accordance with the principles illustrated on the Development Parameters Plan - Drawing No 2111/PL/49D - i.e. substantially in accordance with the scheme considered in the Environmental Statement (PDL/0.15, Condition 4).

- 3.1 The proposal is for a strategic rail freight interchange comprising an intermodal rail freight area and four rail-linked warehouses with an aggregate floor area of 198,000m².
- 3.2 The site would be linked by road via a new lifting bridge over the River Cray to a replacement roundabout on the A206 at the junction of Bob Dunn Way, Thames Road and Burnham Road. By rail it would be linked to the North Kent Rail Line via an existing, disused connection through Southeastern's Slade Green Depot. A secondary road access to the site would connect the site to Moat Lane, but use of this access would be restricted to pedestrians, cyclists and public service or other buses specifically authorised to use the access.
- 3.3 The rail-linked warehousing would be provided in four separate units (see Development Parameters Plan). Unit A would be the largest, with a floor area of approximately 106,250m². Unit B would be 46,650m². Units C and D would be 31,150m² and 13,950m² respectively. All units would be of similar design, with roofs supported by cables. The maximum ridge height of the warehouses would be 14.7m above finished floor level. The height of the columns supporting the cables would be 24.0m. The finished floor level of all the warehouses would be 9.1m AOD.
- 3.4 Railway lines would be provided along one side of each of the warehouses. The other side would have docking bays for heavy goods vehicles (HGVs). Ancillary offices would be provided within the warehouses, with nearby car parking at the northern and southern ends of the site. In total 1,167 car parking spaces are proposed. The main parking area for HGVs would be within the service yards between Unit A and Units B and C.
- 3.5 Three rail sidings would be provided in the intermodal area. Each of these would be capable of holding trains of 420m to 460m in length, but longer trains (up to 775m) could be brought to the site if required, and split on arrival (PDL/6.17). Initially it is proposed that containers passing through the intermodal area would be handled using reachstackers, but as traffic builds these would be replaced by gantry cranes. Initially the sidings would be connected to the North Kent Line via a single chord which would accommodate incoming and outgoing trains, but the design allows for this chord to be doubled as traffic increases.
- 3.6 The main road serving the site would connect to the A206 at the junction of Bob Dunn Way and Thames Road. This would then pass around the eastern boundary of the site before turning westwards to reach the main service yards situated between the warehouses. This route is designed to avoid the road having to cross the railway

tracks. A connection from the southern end of the yard, would link the road system to Southeastern's Depot and the land safeguarded for Crossrail. Another connection from the main access road would lead to the Grosvenor Waste site.

- 3.7 The yard serving the intermodal area would measure some 3.4ha. It would be used for the handling and storage of containers, swap bodies and other intermodal units. The height of containers stored on the site would be limited by condition to a maximum of 12m.
- 3.8 Pedestrian and cycle routes would be provided on the site alongside the main vehicle routes. Further routes would be provided through the landscaped areas linking through to Moat Lane. The existing public footpath and cycle route which runs along the north bank of the River Cray would remain on its present alignment, passing under the new access roadway bridge approach structure. Vehicular access for the Environment Agency to both banks of the River Cray would be provided.
- 3.9 Non-operational areas at the southern end of the site and between the access roadway and the eastern site boundary would be landscaped. Alongside the northern boundary, mounding would screen the activities on site from users of Moat Lane. This would be planted with groups of trees on the upper slopes and would wrap around the north-west corner of the site to provide screening to Oak Road. A wetland ecological area would be provided near the Moat Lane boundary and hedgerow.
- 3.10 An acoustic fence would top the mounding at its narrowest point (see plan) and further acoustic fencing would be provided close to the railway line at the north-east corner of Unit A.
- 3.11 A public pocket park is proposed on land at the north-west corner of the site.¹
- 3.12 At the main entrance to the site the existing roundabout at the junction of Bob Dunn Way, Thames Road and Burnham Road would be replaced with a larger roundabout. This would incorporate a pelican crossing on the Thames Road arm.
- 3.13 As to the design of the buildings, this would be a reserved matter. It is envisaged, however, that the buildings would be built to a high specification and would incorporate a range of measures to increase their sustainability. These are detailed in the Design Code (ES, Volume 5a, Section A) and would be secured by an agreed condition (PDL/0.13, Condition 6). They include the provision of some 28,240m² of green roof and 6,285m² photovoltaics and other measures to reduce CO₂ emissions. Rain water from the roofs would be collected and used to reduce on-site water consumption, whilst run-off from other parts of the site would be directed via

¹ Inspector's Note. Whilst a public pocket park is proposed in the (amended) planning application, at the inquiry both Bexley Council and Slade Green Community Forum voiced concerns regarding its provision (see LBB0.2 and para 10.17 below). The suggested conditions allow for it to be deleted (see para 6.19 below).

- treatment ponds to swales and infiltration trenches, with multiple controlled connections to the Crayford Marshes.
- 3.14 The site would operate around the clock. External lighting would be provided to illuminate the working areas, roads, car parks etc. Asymmetrical floodlights on 18m high columns would be used in the intermodal area and service yards, with baffles if required to control light spill and glare. Car parks and roads would be lit with conventional full cut off road lanterns.
- 3.15 As noted in paragraph 1.1 above, a Supplementary Environmental Statement (ES) was submitted during the course of the inquiry. This was necessary to take account of inconsistencies, discovered during the course of the inquiry, between the (“as constructed”) restoration levels of the adjoining landfill surveyed during the course of the inquiry and those previously surveyed in 2004 on which the ES was based. Amended application plans and illustrative plans accompanied this Supplementary ES (see Appendix C). These show how the design of the access road and its earthworks would be adjusted to tie in to the as constructed levels of the landfill (Scheme 2). Further illustrative plans were also provided showing how the design would be adjusted should the adjoining landfill be re-profiled to match the restoration levels for which planning permission was granted (Scheme 1).
- 3.16 In the context of the scale of the scheme, the changes are minor and are essentially confined to the area of earthworks between the access road and the eastern site boundary. With Scheme 1, the embankment slopes would be less steep than originally assumed (Supplementary ES, Figures B3 and B4, Sections D1, E1 and F1). With Scheme 2, a 90m length of gabion wall would be introduced at the foot of the cutting to the east of the access road, and the adjoining cutting slopes would be steepened (ibid, Figures B5 and B6). Both schemes would also involve minor adjustments to the earthworks on the northern side of the proposed bridge over the River Cray.
- 3.17 As part of this revision, ProLogis also proposed filling and re-profiling the area of land lying in the north-east corner of the site between the access road and the eastern site boundary. This was done in response to suggestions made at the inquiry in order to enhance the screening of the development, and particularly the intermodal area, from viewpoints located to the north-east of the site.

4. COMMON GROUND

Inspector's Note. A statement of common ground covering planning matters (CD7.2) was agreed between ProLogis, Bexley Council and Dartford Borough Council. Further statements covering air quality (CD7.4), noise (CD7.5 and CD7.8) and lighting (CD7.7) were agreed between ProLogis and Bexley Council. A Statement of Common Ground with the Environment Agency (CD7.1) sets out the parties agreed positions on surface water drainage, flood risk, the River Cray crossing and ecological/nature conservation matters. Below I set down the gist of those matters included in the statements that are not covered elsewhere in this report.

Planning

- 4.1 The statement of common ground on planning (CD7.2) contains a description of the site and surrounding area (see Section 2 above) and a description of the proposed development (see Section 3 above). The planning history of the appeal site is set out, together with the history of the planning applications, now subject to the appeals. Section 6 of the document lists the national, regional and local planning guidance and policies which the parties agree to be relevant to the consideration of the appeal proposals (see Section 5 below).
- 4.2 The final section of the planning document records the policy designations covering all or part of the application site as:
1. Metropolitan Green Belt;
 2. Area of Archaeological Search;
 3. Site of Borough Importance for Nature Conservation (Grade II – the Crayford Landfill Area);
 4. Site of Metropolitan Importance for Nature Conservation (the River Thames and Tidal Tributaries);
 5. Heritage Land; and
 6. Primary Employment Area (Thames Road Employment Area).
- 4.3 Policy designations applying to land adjacent to or near the application site are listed as:
1. Scheduled Ancient Monument (Howbury Moat);
 2. Site of Metropolitan Importance for Nature Conservation (the Crayford Marshes); and
 3. Site of Nature Conservation Interest (the Dartford Marshes).

Air Quality

- 4.4 It is agreed that there is potential for dust and PM₁₀ impacts from construction activities at receptors less than 200m away from the source, but that the mitigation measures proposed in the air quality chapter of the revised ES are reasonable and proportionate to control these emissions (CD7.4, Section 5). It is further agreed that an Environmental Management Plan would be prepared for the construction phase of the development which would have regard to the Londonwide Best Practice Guide for minimising the generation of dust and particulate matter (ibid).
- 4.5 Once the development is operational, it is agreed that the air quality impacts for NO₂ and PM₁₀ would range from minor adverse to insignificant. Traffic associated with the development is not predicted to result in exceedances of the current statutory objectives for annual average and daily average PM₁₀ concentrations. It is further agreed that any increase in NO₂ concentrations close to the main transport routes would have only a minor impact. Accordingly, Bexley Council has no objection to the proposed development on air quality grounds (CD7.4, para 5.6).

Noise

Baseline

- 4.6 It is agreed that the baseline noise data used in the ES is generally representative of the existing background and ambient noise levels in the closest residential areas to the north and north-west of the site. Notwithstanding this, data from a survey undertaken in February 2007 recorded significantly lower background noise levels for a short period during a weekend day and night when the wind direction was northerly. It is accordingly agreed that there would be occasional periods when background noise levels at residential properties that would be affected by noise from the development would drop below those used in the ES. However, these will be associated with particular wind directions that vary from the prevailing conditions and which are not favourable to the propagation of noise from the site towards these properties (CD7.5, paras 4.1 to 4.5).

Construction Phase

- 4.7 It is agreed that emissions of noise and vibration are an unavoidable consequence of construction activities but that their generation can be successfully reduced by mitigation measures. It is further agreed that the mitigation measures set out in the ES for the construction phase are reasonable and appropriate. Bexley Council accepts the results and conclusions of the construction phase impacts set out in the ES (CD7.5, paras 4.7 to 4.10).

Operational Phase

- 4.8 It is agreed that noise from traffic using the access roads on the site would result in the noise levels at the south-east façades of 1, 2 and 3 Moat Farm Cottages and the south façades of 71 and 73 Moat Lane with the windows open exceeding the WHO

Community Noise Guideline Level of 30dB $L_{Aeq,8h}$ for inside a bedroom at night. It is further agreed that, notwithstanding that the existing noise level would exceed that limit by a similar margin, it would nonetheless be appropriate to offer the occupiers of those properties double glazing and sound attenuating mechanical ventilation (CD7.5, paras 4.11 to 4.15).

- 4.9 As to noise from vehicles, plant and other activities on the site, it is agreed that, with mitigation, operational noise levels at houses on Oak Road, Moat Lane and Leycroft Gardens would be such that, when assessed in accordance with BS4142 against the background levels contained in the ES, the impact would be of “*less than marginal significance*” if the noise levels are assumed to be the mean noise levels calculated using the CONCAWE methodology (CD7.5, p58). However, if 5.7dB is added to these levels (representing the 95% confidence limit for the CONCAWE methodology) the night-time levels at Oak Road and Moat Lane would lie between values that are of “*marginal significance*” and a “*positive indication that complaints are likely*” (ibid, para 4.23 and p59).
- 4.10 With regard to noise from trains, it is agreed that a shunting locomotive standing or operating at the northern end of the proposed siding to the west of Unit A would result in significant noise impact without mitigation at the south façade of properties towards the east end of Oak Road, particularly at night. However, this could be mitigated by an appropriate acoustic screen at the north-west corner of Unit A, which would achieve at least 15dB(A) attenuation (CD7.5, paras 4.27 to 4.29).
- 4.11 As to the cumulative impact of the individual noise sources, it is agreed that there is no all encompassing method that reconciles the different ways in which different noise sources are perceived. However, if the methods employed in the ES are used, daytime impacts are in all cases assessed to be “*slight*”. At night the impacts are assessed as “*slight*” at all locations except 71/73 Moat Lane, where the impact would be “*moderate*”. This assessment is based on external noise levels, however, and it is agreed that residents in insulated bedrooms would experience little, if any, noise impact from the development (CD7.5, paras 4.30 to 4.36 and p65).
- 4.12 At Oak Road the cumulative noise levels from the development are not predicted to exceed the appropriate WHO guideline, and external noise levels due to road traffic noise from the access road would be 1.5dB below the guideline. However, measured existing noise levels at 36 Oak Road already exceed the level that would ensure a “*good*” standard in bedrooms at night and the contribution of the development overall would result in a 1.6dB(A) increase (CD7.8).

Lighting

- 4.13 It is agreed that in terms of light trespass, glare and sky glow the scheme, with the mitigation proposed, would comply with the guidance outlined in the ILE *Guidance Note for the Reduction of Obtrusive Light*. General light levels would fall to below 1 lux well within the site boundary and 40m from the nearest property on Moat Lane. If permission is granted, conditions are recommended to ensure that lighting used during both the construction and operational phases is appropriate (CD7.7).

Environment Agency Matters

- 4.14 By letter dated 31 March 2006 to Bexley Council,¹ the Environment Agency registered three objections to the proposed development. These related to:
1. An absence of sufficient detail of the works proposed in the vicinity of the River Cray, coupled with a concern that the proposal could prejudice flood defence interests and restrict the Agency's access to the watercourse.
 2. The encroachment into the River Cray and the potential consequences for the hydrology of the river and the stability of nearby river banks and flood defences.
 3. The need for the drainage strategy to more fully incorporate sustainable drainage systems in the design and the need to demonstrate that surface runoff from the development would not adversely affect the Crayford Marshes and the River Cray.
- 4.15 Guidance on how these objections might be overcome was set out in the letter. The letter further noted that flood risk and ecological impacts and mitigation were key issues for the Environment Agency for the proposal.
- 4.16 In response to this, ProLogis and their consultants submitted revised drawings for the River Cray crossing, showing how access to the river banks would be provided for the Agency. The surface water drainage strategy for the site was refined and further information supplied. Several studies and reports from specialist consultants were also commissioned to address the Agency's key concerns. A dialogue with the Agency was established culminating in the Statement of Common Ground (CD7.1). This confirms, amongst other matters:
1. That the Agency is satisfied with the proposals detailed on the additional drawings showing works in the vicinity of the River Cray and that the detailed design of the access routes to the riverbanks is a matter that can be dealt with by condition (CD7.1, para 2.3).
 2. That the Agency is satisfied with the work undertaken in the fluvial geomorphology survey, bridge scour assessment, contaminated sediment survey, fish population data review and the River Cray flood embankment stability assessment (CD7.1, paras 3.10, 3.16, 3.21, 3.27 and 3.33) and that details of the fendering arrangements for the bridge piers can be dealt with by condition (ibid, para 3.2).
 3. That the concerns relating to the impact on the Crayford Marshes have been addressed (CD7.1, para 4.35) and the revised drainage proposals for the site would accord with the Agency's requirements such that their

¹ A copy of this letter can be found with the questionnaire.

objection could be removed, subject to the imposition of conditions (ibid, paras 4.7, 4.28 and 4.57).

4. That fluvial flood risk is not significant in relation to the risk posed by a breach in the River Thames defences (CD7.1, para 5.29). Furthermore, since the tidal defences are recently constructed and well maintained, it is considered that the chances of such failure are extremely remote and of a much lower probability than 0.1% (ibid, para 5.31). The risk posed by flood defence failure, failure in defence structure operation and the combination of flood generating process is less significant than that resulting from a breach in the tidal defences (ibid, para 5.32).¹
5. That loss of flood plain storage volume consequent upon the development would be negligible and would be more than offset by the compensation storage provided in the pocket park (ibid, para 5.34).
6. That there are no sites statutorily designated for their nature conservation interest within the zone of influence of the development (CD7.1, para 6.12).
7. That the area of the Crayford Landfill Site of Borough Importance Grade II within the appeal site boundary is of limited nature conservation value and any loss as a result of the proposals will be replaced by new habitats of increased biodiversity value (CD7.1, para 6.14). Other habitats within the appeal site are of limited nature conservation interest and their loss would not be of particular significance (ibid, para 6.20).
8. That measures undertaken within the appeal site would ensure that the hydrology of the Crayford Marshes Site of Metropolitan Importance would not be compromised. Future management of the marshes would represent a significant gain for biodiversity (CD7.1, para 6.16).
9. That losses to reed bed habitat at the proposed River Cray crossing in the River Thames and Tidal Tributaries Site of Metropolitan Importance would be mitigated by the creation of new reed beds and the riverbank set back. The new tidal pond to be created in the south of the appeal site would offer new habitat for fish, plants, birds and invertebrates (CD7.1, para 6.18).
10. That the area represents good habitat for bats, but activity levels are low, maybe due to the lack of good roost sites. New roosting opportunities provided at the proposed bridge over the River Cray would represent a significant gain for this group (CD7.1, paras 6.25 and 6.26).

¹ At the time the Statement of Common Ground was prepared, the flood risk assessment had not been updated to take account of the revised guidance in PPS25.

11. That evidence of water voles was recorded in a channel in the south of the appeal site in 2005, but not subsequently; a check survey would be undertaken for this species and mitigation agreed if appropriate. Also, that the important water vole population in the Crayford Marshes would benefit from the proposals (CD7.1, para 6.26).
12. That birds recorded on the appeal site, which included two Wildlife and Countryside Act Schedule 1 birds and a number of Red and Amber list species of conservation concern, do not rely on the appeal site. Measures proposed in the form of new habitats and enhanced nesting opportunities would mitigate for the losses (CD7.1, para 6.27).
13. That habitats to be provided for reptiles, amphibians, fish and invertebrates would mitigate for any losses in habitat for these species and in some cases offer significant gains (CD7.1, paras 6.28 to 6.34).
14. That the surveys were sufficient to address the Agency's concerns (CD7.1, para 6.35).
15. That the baseline ecological impact assessment is sound and the mitigation measures appropriate for the impacts identified (CD7.1 para 6.36).
16. That the development would safeguard the River Cray and Crayford Marshes, and put in place mitigation and enhancement where appropriate (CD7.1, para 6.37).
17. Accordingly, the Environment Agency has withdrawn its objection on ecological grounds, subject to the attachment of suitable planning conditions to any consent granted (CD7.1, para 6.38).

5. PLANNING POLICY

Inspector's Note. The Statement of Common Ground on Planning (CD7.2) lists those policies in the development plan and other planning guidance which the Appellant and Council agree are relevant to the appeal. In this chapter of the report I set out those policies in the development plan and related documents which I consider to be the most relevant to the proposal. Relevant passages of Government policy statements and guidance can be found in the cases put by ProLogis and the Councils.

The Development Plan

- 5.1 The development plan for the area includes the *Regional Planning Guidance for the South East* (RPG9) and the *Regional Planning Guidance for the Thames Gateway* (RPG9a). At local level, the development plan for the main part of the site includes the *London Plan* (CD3.3) and the *Bexley Unitary Development Plan* (UDP) (CD3.5). For the part of the site to the east of the River Cray, it comprises the *Kent and Medway Structure Plan* (CD3.4) and the *Dartford Local Plan* (CD3.6).

The Regional Planning Guidance for the Thames Gateway (RPG9a)

- 5.2 *RPG9a* notes the Thames Gateway's importance for the distribution/logistics sector. Local authorities are encouraged to identify suitable sites to meet the sector's needs. Adequate size and location are noted as "critical". Sites which facilitate multi-modal handling of goods and which are close to the M25 should be considered first (para 5.2.7).
- 5.3 On environmental improvement, the strategy states that the overall approach should be to promote an improvement in the quality of the environment offered by the Thames Gateway. Attention should be paid to the design of buildings and how they relate in their surroundings (para 5.4.10).
- 5.4 At Erith Reach, the guidance notes that the town of Erith and the adjoining riverside is a community undergoing regeneration and that there are significant opportunities for the creation of new jobs in the Erith-Belvedere Employment Area (para 6.6.1). The area's accessibility is noted as having improved with the opening of the Dartford Northern Bypass¹ (para 6.6.4).

The London Plan

- 5.5 The Spatial Development Strategy for London - the *London Plan* – (CD3.3) was adopted in February 2004.
- 5.6 The Mayor's objectives are set out in the introduction to the plan. They include accommodating London's growth within its boundaries, without encroaching into open spaces (Objective 1); making London a better place for people to live in (Objective 2); making it a more prosperous city with strong and diverse economic

¹ i.e. the A206 Bob Dunn Way between the M25 and the site.

- growth (Objective 3); promoting social inclusion and tackling deprivation and discrimination (Objective 4); improving London's accessibility (Objective 5) and making London a more attractive, well-designed and green city (Objective 6).
- 5.7 Sustainability criteria set out in policy 2A.1 include optimising the use of previously developed land; ensuring that development occurs in locations that are, or are planned to be, accessible by public transport, walking and cycling; and taking account of the impact that development will have on London's natural resources and environmental assets.
- 5.8 Policy 3B.5 promotes Strategic Employment Locations (SELs) as London's reservoir of industrial capacity. Outside the SELs, boroughs should identify employment sites having regard, amongst other matters, to the Mayor's locational strategy and their accessibility to the local workforce.
- 5.9 Policy 3C.4 requires UDP policies to ensure the provision of sufficient land and appropriately located sites for the development of an expanded transport function to serve the economic, social and environmental needs of London. Amongst other matters, the policies should take account of interchange and freight transport improvements which require additional land by identifying sites for these purposes within UDPs.
- 5.10 Policy 3C.5 records that the Mayor will work with strategic partners to improve and expand London's international and national transport links for passengers and freight; to support London's development; and to achieve the spatial strategies of the plan, especially growth in the Thames Gateway.
- 5.11 Policy 3C.22 states that the Mayor, in conjunction with the boroughs, will seek to ensure that on-site car parking at new developments is the minimum necessary and that there is no over-provision that could undermine the use of more sustainable non-car modes. UDP policies should adopt policies that encourage access by sustainable means of transport and adopt the maximum parking standards set out in Annex 4 of the London Plan.
- 5.12 Policy 3C.24 states that the Mayor will promote the sustainable development of the full range of road, rail and water-borne freight facilities in London. He will seek to improve integration between the modes and between the major rail interchanges and the centres they serve. The development of a London rail freight bypass route is supported. UDP policies should implement the spatial aspects of the Mayor's transport strategy, seek to locate developments that generate high levels of freight movement close to major transport routes, and ensure that suitable sites and facilities are made available to enable the transfer of freight to rail and water through the protection of existing sites and the provision of new sites.
- 5.13 Policy 3C.25 states that the Mayor will, and the boroughs should, support the provision of strategic rail-based intermodal freight facilities. Each proposal will be considered on its own merits and in the context of wider policies in the plan. The explanatory text following this policy (para 3.218) notes that the SRA's *Freight*

Strategy identifies a requirement for three or four large multi-modal freight facilities on or close to the periphery of London, with smaller facilities in the urban area. It records that, at the time the plan was prepared, no specific proposals were available and that more detailed consideration of the proposal will be contained within the *Land for Transport Functions SPG* and work on the *East London Sub-Regional Development Framework*. Any site promoted as a suitable location must meet operational and strategic planning objectives and should be located wholly or substantially on previously developed land.

- 5.14 Policy 3D.8 states that the Mayor will and the boroughs should maintain the protection of the Green Belt. There is a general presumption against inappropriate development in the Green Belt, and such development should not be approved except in very special circumstances.
- 5.15 Policies 3D.12 and 3D.13 seek to ensure that a proactive approach is taken to the protection, promotion and management of biodiversity. Planning of new development should have regard to nature conservation and biodiversity and opportunities should be taken to achieve positive gains for conservation. Sites of Metropolitan Importance for Nature Conservation should be given strong protection and sites of Borough or Local Importance should be afforded a level of protection commensurate with their borough or local significance. Where, exceptionally, development is permitted that would cause significant harm to nature conservation, appropriate compensation should be sought. Boroughs should support schemes for cross-boundary and urban fringe management.
- 5.16 Policy 4A.7 promotes energy efficiency and renewable energy. Land use and transport policies should be integrated and reduce the need to travel by car and energy efficient and renewable energy technologies should be included in new developments, where feasible. Light lost to the sky should be minimised. The drive for greater energy efficiency and for energy to be derived from renewable sources are given further weight in policies 4A.8 and 4A.9.
- 5.17 World-class architecture and sustainable design and construction are promoted in policies 4B.2 and 4B.6 respectively. Policy 4B.11 requires boroughs to ensure the protection and enhancement of historic assets, based on an understanding of their special character.
- 5.18 Policy 5C.1 sets out the strategic priorities for East London. These include delivering the London element of the Government's priority for the Thames Gateway. The policy notes that the Mayor will work with sub-regional partnerships to develop a coherent Sub-Regional Development Framework for East London.

The Bexley UDP

- 5.19 The *Bexley UDP* (CD3.8) was adopted on 24 April 2004. General strategy and part one policies in the plan seek, amongst other matters, to protect, maintain and improve the quality of the built and natural environment for the economic well being of the Borough whilst making efficient use of the Borough's land resources (G1).

- Development should be of a high standard and relate sympathetically to and be in scale with the existing built and natural environment (G7). The Council will support the promotion of the Thames Gateway initiative (G10).
- 5.20 On Green Belt, policy G12 follows the guidance in *PPG2* and the *London Plan* with a strong presumption against development other than that which accords with policies ENV2 and ENV3.
- 5.21 Policy G16 aims to contain, and in the longer term reduce, traffic growth in the Borough and policy G23 states that the Council will co-ordinate parking in the Borough in order to, amongst other matters, promote sustainable transport choices. They will ensure that no more parking spaces are provided as part of a development than justified by a transport assessment or prescribed by the Council's parking standards.
- 5.22 Policy G24 states that, subject to other policies, the Council will promote the Borough as a centre of industrial and business growth by encouraging the provision of modern accommodation and modern workspace for expanding small and medium businesses.
- 5.23 Policy G26 builds on and amplifies policy G1's objective of protecting and conserving those features of the natural and built environment which contribute to the special character of London. These are noted as including Conservation Areas, the Thames Marshes, the River Cray and Sites of Nature Conservation Importance.
- 5.24 In the plan's environment section, policies ENV1 to ENV3 define the extent of the Green Belt and, following closely the policy guidance in *PPG2*, set out a general presumption against new building in the Green Belt (except for the limited range of purposes specified) and other development which would not maintain openness or conflict with the purposes of including land in the Green Belt. Policy ENV13 states that the Council will seek to protect the visual amenities of the Green Belt by opposing proposals for development that are conspicuous from it or visually detrimental by reason of their siting, materials or design.
- 5.25 Policy ENV23 records that the Council will resist development that would damage or destroy habitats in the Crayford Marshes and River Thames and Tidal Tributaries Areas of Metropolitan Importance for Nature Conservation.
- 5.26 Policy ENV39 deals with the built environment and requires proposals to be compatible with the character of the surrounding area, not prejudice the environment of the occupiers of adjoining property, and be appropriately landscaped. Development should not have any unreasonable effect on the surrounding area by reason of emissions to land, air or water; should make adequate provision for parking in accordance with Council's parking standards; and take into consideration important local and strategic views, particularly where the proposed development is one which significantly exceeds the height of its surroundings or is located on a prominent skyline ridge.

- 5.27 Policy ENV41 notes that the Council will have regard to national and local air quality standards in seeking to ensure that development does not compromise air quality objectives.
- 5.28 Policy ENV58 sets out a presumption against any development that would adversely affect any scheduled ancient monument or its setting.
- 5.29 Policy E1 records that proposals for industrial and commercial uses will be resisted unless certain conditions are met, including the avoidance of material adverse effects on occupants of residential areas or neighbouring properties.
- 5.30 In the transport section of the plan, policies T1 and T2 require applications for major development to be accompanied by travel plans and transport assessments. Policy T3 requires significant generators of traffic to be located in town or district centres or other locations accessible by, or capable of being made accessible by, a range of transport modes, especially public transport, walking and cycling.
- 5.31 Policy T6 states that the Council will normally refuse proposals that would either cause local traffic flows to rise above the design flow for a road, or would generate additional traffic on a road where flows are already considered to exceed the design flow, unless improvements to the affected road are programmed or the applicant is prepared to undertake the required improvements.
- 5.32 Policy T17 states that applicants should make provision for off-street car parking spaces in their developments up to the maximum levels of parking prescribed in Annex 1, unless a transport assessment indicates the need for higher levels of parking.
- 5.33 Policy T24 deals with freight. It states that the Council will, subject to environmental and other policy considerations, encourage proposals that support the carriage of freight by rail or river transport.

The Kent and Medway Structure Plan

- 5.34 The *Kent and Medway Structure Plan* (CD3.4) was adopted in July 2006.
- 5.35 Policy SP1 in the plan defines the primary purpose of Kent's development and environmental strategy as being to protect and conserve the environment and achieve a sustainable pattern of development. This will be done by, amongst other matters, protecting the countryside and wildlife, reducing reliance on greenfield sites to accommodate development and using and re-using land more efficiently, reducing the need to travel, encouraging high quality development, supporting employment and responding to climate change by advancing the conservation and prudent use of energy, water and other natural resources, minimising pollution and assisting the control of greenhouse gas emissions.
- 5.36 Paragraph 2.11 of the plan notes that Kent is the UK's main gateway to Europe. The volume of freight passing through the county has risen greatly since the Channel Tunnel was opened, and further growth is expected. Freight travelling on the county's

- motorways results in significant environmental pollution. Promoting alternative routes outside Kent, together with a shift to less environmentally damaging methods of transport – such as rail – would help to relieve pressure on the county’s trunk roads and communities.
- 5.37 Paragraph 2.17 of the plan and policy SS1 identifies the Thames Gateway as one of the “*main priorities for development and investment in Kent*”. Re-use of previously developed land is noted as a “*priority*” but the plan recognises that there will be a continuing need to release some greenfield land.
- 5.38 Policy SS2 defines the Green Belt in Kent and sets down a general presumption against inappropriate development and new building in it, except where it accords with *PPG2*.
- 5.39 Environmental policies in the plan seek to protect and conserve Kent’s countryside (EN1) and to enhance, protect and conserve its landscape, wildlife habitats and biodiversity (EN3 and EN8). To assist in promoting a high quality of life in the county, development should be well designed (QL1). Local authorities should establish and extend green space networks and protect and improve open space and public rights of way (QL17). Proposals for development should incorporate sustainable development techniques and demonstrate that their design contributes to the conservation and prudent use of energy, water and other natural resources (NR1).
- 5.40 Priorities set by the plan’s transport strategy include promoting a pattern and form of development that reduces the need to travel, making efficient use of the existing transport network and providing travel choice and alternatives to the private car (TP1). Policy TP2 states that proposals for enhancing the transport network in Kent and Medway will be assessed according to their transport, economic and environmental effects with particular regard to, amongst other matters, the contribution towards achieving a more sustainable pattern of development, the impact on the environment, the effects on air quality and carbon dioxide emissions, the contribution to movement of freight by rail, the need to concentrate traffic on the most suitable routes, and the ability to enhance the environment for local communities. Paragraph 8.16 of the plan notes that major development of the rail network is needed to encourage rail travel and reduce pressure on the road network. Strategic Rail schemes identified in policy TP5 include increasing the rail capacity through and around London for freight and passengers, and schemes at Dover Docks, Sheerness Docks and Thamesport to promote transfer of freight from road to rail.
- 5.41 Policy TP13 states that development which will encourage the transfer of freight from road to rail will be permitted unless there is overriding conflict with other planning and environmental considerations. Paragraph 8.52 of the plan notes that the *Ports White Paper* and *Regional Transport Strategy* together provide criteria for developing major freight distribution and transport uses. This includes making best use of existing infrastructure, encouraging the movement of freight by rail, and developing intermodal interchange facilities.

- 5.42 Paragraph 8.54 states that cross-Channel rail freight is currently at a severe disadvantage because trains have to be assembled at Willesden in North London; new interchanges to alter this situation need to be well located in order to prevent increased traffic on inappropriate roads. The draft *South East Plan* is noted as proposing a small number of such facilities in the region, which, if well located, could help increase the volume of freight carried by rail. The text continues by cautioning that locating these facilities outside urban areas may conflict with strategic policies to protect the countryside and adversely impact on the highway network. It concludes by advising that “*proposals in Kent will be weighed against their environmental and transport impacts together with the need for the development and its viability. There will need to be firm evidence that rail facilities at such sites will be used.*”
- 5.43 Policy TP23 supports proposals which encourage the transfer of freight from road to rail, road to air or road to water. Several possible locations for such proposals are listed (not including Howbury Park or any similar location in west Kent). Elsewhere proposals for major distribution or transshipment centres will only be supported where, firstly, the site is easily accessible to the trunk road system and served by rail sidings and/or water; secondly, strong evidence is provided that the proposal is necessary and viable and would not have any significant adverse impact on the local highway network; and finally, the proposal would have no significant adverse effects on the local economy, countryside character or the environment.

The Dartford Local Plan

- 5.44 The *Dartford Local Plan* (CD3.6) was adopted in 1995.
- 5.45 Green Belt policies in the plan (GB1 and GB2) define the extent of the Green Belt in the Borough and set down a strong presumption against permitting development other than that which accords with *PPG2* or the Kent Structure Plan.
- 5.46 Policies C13 and C16 state that proposals for development at or near Sites of Special Scientific Interest or the National Nature Reserve, which would materially harm the special interest will not be permitted. The protection of sites and features of nature conservation value, not formally protected, will be encouraged.
- 5.47 On the built environment, policy B1 is a general policy which seeks to ensure that all new development in the Borough is carried out to a high standard. Policy B3 requires proposals to incorporate appropriate hard and soft landscaping. For development in the countryside these requirements are reinforced by policies C1 and C2.

Emerging Plans

- 5.48 Whilst Dartford Borough Council issued an amended *Second Deposit Draft Local Plan* in April 2004, the plan did not proceed further. Notwithstanding that the plan is used in Dartford for development control purposes, the Council accepts that it carries less weight than the adopted local plan (DBC1, para 4.11).

- 5.49 In London, *Draft Further Alterations to the London Plan* (CD3.12) were issued in September 2006. At the time of the inquiry they had not been subject to Examination in Public; accordingly the weight the alterations currently carry is limited.
- 5.50 In the plan, the key policy dealing with strategic intermodal freight facilities (3C.25 – see para 5.13 above) is expanded to include sites which would enable the potential of the Channel Tunnel Rail Link to be exploited for freight serving London and the wider region. The explanatory text in paragraph 3.218 following the policy is altered to include a reference to the *Land for Transport Functions SPG*. The requirement for any strategic rail-based intermodal freight facility site to be wholly or substantially on previously developed land is deleted and replaced with a requirement that new locations for intermodal facilities “*should meet strategic planning and environmental objectives*”.
- 5.51 A draft *South East Plan* was published in March 2006 (CD3.16). Policies on freight seek generally to safeguard facilities and sites that are, or could be, critical in developing the capacity of the transport system to move freight by rail, to safeguard sites for new intermodal facilities and rail related industry and warehousing (T11). They seek to develop the railway system to carry an increasing share of freight movements (T12). On intermodal interchanges, policy T13 states that the Regional Assembly should work with a range of other bodies to identify broad locations within the region for up to three intermodal interchange facilities. These should be well related to road and rail corridors, the proposed markets and London. Paragraph 1.32 in the explanatory text links this to work undertaken by the SRA which identified the need for between three and four intermodal interchange terminals to serve London and South East England.

Other Local Planning Guidance

- 5.52 Other local planning guidance referred to at the inquiry included *The Mayor’s Transport Strategy*, the *East London Sub-Regional Development Framework* (CD3.8), adopted in May 2006 and the *Land for Transport Functions SPG* (CD4.16), published in March 2007. A consultation draft *London Freight Plan* (CD4.12) was published in September 2006.
- 5.53 *The Mayor’s Transport Strategy* was prepared in advance of the *London Plan* and along with TfL’s *London Rail Freight Study* (CD4.11) served to inform the *London Plan* policy.
- 5.54 The *East London Sub-Regional Development Framework* (CD3.8), paragraph 242, notes that freight and distribution make a significant contribution to the East London economy and stresses the importance of efficient and economic freight services to sustainable development. Paragraph 246 states that it is “*vital that freight access from the trunk road and main rail networks is improved to increase the efficiency of distribution and support economic development.*” Action 2F (vii) states:

“*The Mayor will encourage the provision of two inter-modal freight facilities in the sub-region, one north and one south of the Thames. In determining*

applications for such facilities, boroughs should have regard to the forthcoming London Freight Strategy and weigh economic benefit against strategic and local impacts.”

5.55 The draft *London Freight Plan* (CD4.12) under the heading “*Rail Freight Challenges*” (Section 2.1.1.2) notes that London’s population and employment growth will generate significant additional demands on the London rail network in terms of both freight and passenger services. Eurotunnel is recorded as estimating that the Channel Tunnel could attract between 6m and 14m tonnes of freight, compared to 2m today. Planning of passenger and freight capacity needs to be integrated and the solution is likely to include route enhancement and co-operation to gain agreement for timetable solutions.

5.56 On rail freight sites the guidance states:

“It is estimated that a further three to four strategic rail freight sites around the M25 could be required if rail freight is to help London minimize its environmental footprint. Additional smaller sites for rail terminals in London, particularly those needed to supply construction materials, are needed, but problems continue to be experienced in gaining planning permission. It is important that an appropriate balance is struck between local and strategic issues in such cases.....”

5.57 The *Land for Transport Functions SPG* (CD4.16) deals with rail freight in Section 12. It notes that the *Mayor’s Transport Strategy* and the *London Plan* support the Government’s objective of increasing rail’s share of the freight market and delivering a modal shift from road to rail (paras 12.1 and 12.2). Boroughs are urged to encourage development of rail freight in appropriate locations and protect existing or proposed rail freight sites. Paragraph 12.7 states:

“Required capacity from rail freight growth in London and the South East would be met by three or four strategic RFIs in the region, supplemented by smaller locations within the M25 ring.....suitable sites are likely to be located where key road and rail radials intersect with the M25.”

5.58 The following paragraph sets out the characteristics of a RFI and notes that they are such that “*there is a very limited range of suitable sites in the London/South East England area.*” Paragraph 12.10 notes that detailed guidance and advice on strategic RFIs can be found in the SRA’s *Strategic Rail Freight Interchange Policy*. Paragraph 12.12 states:

“When planning applications are submitted for new rail freight sites, or for enhancements to existing RFIs.....As a general premise, the potential of rail freight sites to deliver sustainable transport objectives should be afforded considerable weight by boroughs determining the planning application”

6. THE CASE FOR PROLOGIS DEVELOPMENTS LTD

Introduction

- 6.1 By virtue of *PPG2* it falls to ProLogis to persuade the Inspector and/or the Secretary of State that the harm caused by reason of the proposed Strategic Rail Freight Interchange (SRFI) being inappropriate development in the Green Belt, and any other harm, is outweighed by very special circumstances.
- 6.2 Whether the benefits of any particular scheme would outweigh the harm that it would cause – even where there is a strong presumption against development as there is in the Green Belt – must always be a decision on the individual merits of the case in hand. The way in which the balance should fall in the case of ProLogis’s SRFI proposal has not and could not have been pre-determined either by previous local plan and appeal decisions (which dealt with very different proposals) or by the First Secretary of State’s decision in the London International Freight Exchange (LIFE) case. No previous case has involved the consideration of the unique and unprecedented circumstances of the proposed SRFI at Howbury Park.

Harm to the Green Belt and Landscape Impact

- 6.3 ProLogis accepts that the proposed development would have a substantial impact on the openness of the Green Belt; that is inevitable given its scale. However, the impact has to be weighed against the very special circumstances present in this case (see below). These very special circumstances include the lack of any suitable alternative site to Howbury Park, and the acceptance by the Mayor of London of the difficulty of finding appropriate sites within or near London for a SRFI (CD1.2 para 47 and CD1.7, para 14) such that it is almost inevitable that they will be in the Green Belt (PDL/1.4, Appendix 1).
- 6.4 Moreover, a distinction needs to be made between the impact the development would have on the appeal site on the one hand and the wider marshes on the other.
- 6.5 Whilst there is agreement that the development would have a substantial effect on the openness of the Green Belt, there is disagreement as to the extent of the impact that it would have on the other purposes of the Green Belt. ProLogis accepts that the proposals would contribute to urban sprawl but disagrees with the suggestion that such sprawl would be unrestricted. If planning permission is granted it will be because the Inspector and/or the Secretary of State are satisfied that there are sufficiently weighty very special circumstances in this particular case. Plainly, therefore, permitting this development could not act as a precedent for other future proposals in the Green Belt.
- 6.6 Contrary to Bexley Council’s case, the proposed development would not result in Slade Green (as part of Greater London) merging with Dartford (in Kent), even though it would reduce the amount of open land in this part of the Green Belt; nor would it detract from the protection of historic towns or regeneration of the existing urban area (PDL/1.1, paras 7.7 to 7.12).

- 6.7 Bexley Council, through their landscape witness Mr Huskisson, placed significant reliance on a suggestion that the appeal site might become part of a potential regional park as referred to in the Mayor of London's emerging Green Grid Framework. However, the *Consultation Draft East London Green Grid SPG* (CD3.23) identifies a process for including land as part of a regional park through the development plan. Both Mr Huskisson and the Council's planning witness, Mr Bryant, accepted in cross-examination that:-
1. no land has been so allocated in any existing or emerging development plan document (CD3.23, p8);
 2. there is no delivery plan for a regional park (ibid p9);
 3. much of the land is privately owned;
 4. no one has any idea how much it would cost to bring about a 400ha park; and
 5. there is no existing or draft policy under which money could be collected to purchase, improve and manage the land as part of a regional park and no money has been collected so far.
- 6.8 Accordingly, as things currently stand, the idea that the appeal site might become part of a wider regional park is at most an aspiration and in reality is an unfunded and vague idea which has not been thought through. It should be given little, if any, weight in the consideration of ProLogis's proposals.
- 6.9 Importantly, the Mayor was fully aware of his own draft policy document when he considered the Howbury Park proposals and decided not to object to them on the basis that the Green Grid would be prejudiced (CD1.7, para 75).
- 6.10 Similarly, ProLogis submits that little if any weight can be attached to the Thames Gateway Interim Plan which sets out similar aspirations. It too requires framework and delivery plans to be prepared (LBB2.3, Appendix 2, paras 5.4 and 5.5); but Mr Huskisson accepted in cross-examination that this work has not been done to date.
- 6.11 ProLogis also accepts that the proposed development would have a substantial impact on the landscape from certain viewpoints (PDL/3.6 and Supplementary ES). However, the impact would be largely restricted to views from the north-west to the north-east of the site and the existing landfill would provide a screening effect for views from the east and south-east. Moreover, the development has to be seen in the context of the wider landscape which includes existing examples of significant industrial development (CD5.1, para 4.3). Managing the Marshes also recognises that significant engineered bunds are a characteristic feature of the landscape (CD5.2, para 5.1).
- 6.12 ProLogis has sought to reduce the impact of the development from these views by the proposed bund along the northern edge of the site and around the north-east corner.

Although Mr Huskisson criticises the effect of the bund on Moat Lane, the Council accepted that the bund would reduce the impacts “*to something more sensitive to the lines and broad vistas of the landscape*” (CD1.1, p79). English Heritage considered that the bund would go some way to reducing the visual impact on the listed tithe barn and Howbury Moat (which is a scheduled ancient monument) such that their settings would not be harmed (ibid, p25).

- 6.13 Mr Huskisson plainly has a different view of the effect of the bund to the Council but it remains unclear what he would wish to see done to the bund. He does not appear to favour any reduction in the height of the bund. He accepted in cross-examination that “[ProLogis’s landscape witness] Mr Chinn has done only what is possible in the circumstances” and was unable to say whether a reduction in the height of the bund could be achieved. Rather, he put reliance on the possibility of reducing the height of the development platform (see below). If there is any substance in the point, his concern that the proposed planting would introduce alien woodland into the landscape would be addressed by the agreed landscaping condition.
- 6.14 Whilst Mr Huskisson’s position appears to be that he would wish to reduce the impact further by lowering the development platform by 2.4 metres, the Greater London Authority (GLA) recognises that it would not be possible to screen the development altogether (CD1.7, paras 65 and 66). Indeed, the landscape strategy has been developed to reflect to some extent the GLA’s wish that there should be views of the proposed buildings with the contrast between contemporary buildings and heritage assets being celebrated rather than diffused (CD1.2, para 87). It should not be forgotten that the proposed buildings would be at the forefront of warehouse design. They would not be traditional distribution “sheds” but leading edge buildings in terms of their appearance and sustainability (PDL/7.1, para 3.8).

Reduction of the Development Platform

- 6.15 Mr Huskisson suggested that the development platform could be lowered. This was his only positive suggestion for further mitigating the impact of the scheme not already proposed by ProLogis. When giving evidence he said “everything flows from lowering the level of the platform”. He contended that the platform should be 2.4m lower than proposed.
- 6.16 However, it is difficult to see what advantage there would be in adopting his suggestion as he states that lowering the development platform would not make the proposals acceptable and would only reduce the visual impact “*to a small degree*” (LBB2.2, para 6.4). Notwithstanding this, he continued to argue for a reduction of the development platform as a possible means of mitigating the development further and suggested that the additional material could be used to re-profile the existing landfill to the east of the appeal site.
- 6.17 ProLogis has considered Mr Huskisson’s suggestion and has decided not to pursue it for a number of good reasons. First, the proponent of the idea considers that the benefit of adopting it would be “*small*”. Second, a planning application would have to be made for waste development. Third, the additional material would have to be

deposited on land outside the red line of the application site. Fourth, the restored landfill (which would be disturbed and re-contoured) has been identified as being of borough-wide importance to nature conservation. Fifth, the majority of the material which would be produced by lowering the platform would have to be taken off site, which would generate a significant number of additional HGV movements (56,000 if all the material is taken off-site – PDL/2.2, p5).

- 6.18 Notwithstanding this, ProLogis accepts that construction of a bund within the application site boundary at the north-east corner of the site would enhance the screening of the development at that point. Proposed contours for this minor alteration to the submitted application plans are shown on the development parameters plan included with the Supplementary ES (Drg 2144/PL/49D). The change is commended to the Secretary of State.

Pocket Park

- 6.19 The “pocket park” at the north-west corner of the site is shown on the Development Parameters Plan (Drg 2144/PL/49D) and was included at the suggestion of the GLA. However, Bexley Council and Slade Green Community Forum (SGCF) do not support it because of their concerns that it might be abused and become a focus for anti-social behaviour (LBB0.2). It can be deleted from the scheme by condition (PDL/0.13, Condition 4, as amended). This amendment, read with the associated landscaping condition (ibid, Conditions 1 and 8), would not prevent the area being laid out and managed for its wildlife interest as suggested by SGCF (SGCF/18, 1st paragraph).

Masts/Cable Stays

- 6.20 Mr Huskisson was critical of the visual effect of the masts and cable stays. That criticism is not one that was ever expressed by the Council; nor is it one shared by anyone else. The masts and stays are proposed in order to reduce substantially the height of the proposed buildings, and Mr Huskisson accepted in cross-examination that they would have that beneficial effect. He did not put forward any alternative means of achieving the reduction in height and confirmed that he would rather have the masts than higher buildings.

Green Walls/Roofs

- 6.21 Although critical of the proposed green walls and roofs, Mr Huskisson confirmed in cross-examination that he was not asking that they should be removed from the scheme.

River Crossing

- 6.22 Mr Huskisson agreed that if the Secretary of State accepts that there are very special circumstances for the proposed SRFI, then the proposed river crossing would be acceptable. Mr Parkinson, for Dartford Borough Council, accepted that there was no better place for the crossing and that, if the Secretary of State were to be satisfied that very special circumstances exist for the proposed rail-linked warehouses and

intermodal area, then permission for the access, including the proposed bridge, should follow. This is reflected in Dartford Borough Council's closing submissions (DBC0.2, para 3).

Inter-Tidal Pond

- 6.23 Mr Huskisson looked at the impact of the inter-tidal pond purely from a landscape point of view, although it is there for ecological reasons. He stated in cross-examination that planting a woodland block might be a more acceptable landscape solution.

Eastern Edge Footpath

- 6.24 Although critical of the alignment of the footpath along the eastern edge of the site and its proximity in certain places to the access road, Mr Huskisson was unable to put forward any alternative to what is shown on the Illustrative Public Access Plan (Drg 2144/PL/518), save to suggest that there might be a wider boundary margin and localised re-grading with appropriate landscape treatment.

Lighting

- 6.25 The concerns expressed by Mr Huskisson in relation to the effects of lighting on Moat Lane and the area to the west of the site are not well founded. The impact of the lighting on the land surrounding the site would be controlled by the use of asymmetrical light fittings in the intermodal area, which would prevent upwards spill of light and significantly reduce the effects of glare and light spill to neighbouring receptors. The lanterns used to light the roadway and car parks in the vicinity of Moat Lane would also be a full cut off type, with flat glass. Tilt would be limited to 5 degrees to prevent light spill or glare to neighbouring receptors, particularly properties along Moat Lane (PDL/11.3).

Generally

- 6.26 Generally, Bexley Council's case on the landscape impacts of the development was entirely critical but when challenged in cross-examination Mr Huskisson was unable to suggest what else could be done to improve the scheme (apart from lowering the development platform). This is a reflection of the Council's unwillingness to engage with ProLogis in the development process in stark contrast to the other authorities who, through their active participation, have significantly influenced the design of the buildings and the mitigation strategy presented to the inquiry.

Other Harm

- 6.27 The only other harm relied on by Bexley Council is the noise impact of the development on the amenity of residents. This is the subject of a Statement of Common Ground with the Council (CD7.5) from which it is evident that only five properties would be impacted in such a way as to justify mitigation measures being taken (i.e. Nos 71/73 Moat Lane and Nos 1, 2 & 3 Moat Farm Cottages). That so few

properties would be adversely affected shows the care taken with the location of the buildings and the effectiveness of the bund and acoustic measures proposed. Moreover, the Inspector and Secretary of State can attach very significant weight to the position agreed with, the Council's noise witness, Mr Fiumicelli, that:

1. the BS4142 night-time assessment of operational noise with the mitigation proposed, but an additional 5.7dB(A) to reflect the CONCAWE 95% confidence limit, is only of *marginal significance* (CD7.5, Appendix H, p59); and
2. the revised March 2007 assessment of cumulative noise impact is only of moderate significance for the Moat Lane properties (CD7.5, Appendix J, Tables 39 and 41).

6.28 ProLogis's planning obligation secures funds to install acoustic double glazing, should the owners of those properties wish (PDL/0.15, Schedule 1, 1.18 and 1.19).

Highways

6.29 The impact of the proposed development on both the strategic and local highway network has been the subject of very considerable assessment by ProLogis, much of it on an agreed basis with statutory bodies with a direct interest in the network. This resulted in the Highways Agency, Kent County Council and Transport for London (TfL) withdrawing their objections. Bexley Council is the only authority objecting to the development on highway related grounds.

6.30 The importance of the highway issues was recognised at an early stage by ProLogis who through its consultants sought to engage with the relevant authorities from the outset. The development of the scheme and the degree of agreement as to how ProLogis should assess the impact of the proposals on the highway network is evident from the agreed notes of the Transport Forum (PDL/0.7). This was set up in March 2006 with the express purpose of "*...monitoring and assessing the transport implications of the application*" (PDL/0.7, Meeting on 2 March 2006, para 1.2).

6.31 It is plain from the Transport Forum meeting notes that the Highways Agency, Kent County Council, TfL and Bexley Council all agreed that:-

1. trip generation would be assessed using survey data from the Daventry International Rail Freight Terminal (DIRFT);
2. a sensitivity test assuming an all road-based operation would use an average of the trip generation for the largest seven warehousing sites in the TRICS database;
3. the GB Freight Model would be used to distribute HGV trips and the Special Workplace Statistics to distribute non-HGV trips;
4. the Kent Thameside Model (KTS) would be used to model the impact of the development traffic; and

5. the SATURN UFS files were available for any party to consider if they wished (but no-one other than the Highways Agency requested a copy).
- 6.32 It is also evident from the meeting notes that representatives of Bexley Council attended all the Transport Forum meetings and agreed with the approach set out above, save only that they considered that the data for the “*second worst ATC weekday*” should be used to assess trip generation instead of the average of the DIRFT ATC data. It is equally plain that the Council’s reservations about using the average were not shared by the other authorities even though the issue of trip generation was a matter of interest to all of them.
- 6.33 It was clear from the evidence presented by Bexley Council’s highways witness, Mr Edwards, that the Council’s primary concerns relate to the impact of the development on the junctions on the A206 (i.e. the Site Access, Crayford Way and Perry Street junctions) and arise from Mr Edwards’ evidence as to how the trip generation has been assessed, how the generated traffic has then been distributed, and what impact that traffic would have on the junctions.

Trip Generation

- 6.34 How much traffic Howbury Park is likely to produce was assessed with the agreement of all the parties (including Bexley Council) by surveying DIRFT as set out in Technical Notes 7 and 9 (CD4.29 and 4.30) and using an average of the survey data. However, Mr Edwards suggested at the inquiry that the trip generation for Howbury Park should be derived from the TRICS database and applying an 85th percentile. That approach is not supported by the Transport Forum, and is plainly wrong for four reasons. First, the TRICS sites relied on by Mr Edwards are the same as those that the Transport Forum agreed should be used for the all road sensitivity test. Second, the use of TRICS for assessing the trip generation from Howbury Park was considered by the Transport Forum but not pursued except in relation to the all road sensitivity test. Third, none of the TRICS sites are for rail-connected warehouses and are not therefore comparable to the proposed development. Fourth, all the sites are substantially smaller and older than the proposed development.
- 6.35 Mr Edwards’ approach of applying an 85th percentile to the TRICS data is equally flawed. The approach was not one suggested by Bexley Council at the Transport Forum, even in relation to the all road sensitivity test, and is subject to the “health warning” for data sets of less than 20 survey days (LBB4.6, para 11.6). Moreover, undertaking a cross-testing exercise as recommended in the TRICS Good Practice Guide (ibid, para 11.7) demonstrates that for the pm peak there is a significant variation (28%) between the median and the mean and reinforces the inadvisability of using 85th percentiles calculated from limited data sets.
- 6.36 The use of an 85th percentile instead of the average of the DIRFT survey data has no support from any of the parties at the Transport Forum. Also, whilst the Council suggested the use of the 2nd worst ATC day, no evidence has been produced to justify its use; neither were traffic generation figures produced showing what the impact would be if it were to be used. Contrary to Mr Edwards’ assertion that the application

of an 85th percentile is supported by the DfT's new guidance for Transport Assessments, that guidance plainly refers to data from a number of different sites and not from a single site (CD4.40, para 4.62).

- 6.37 In many respects the debate about traffic generation is academic because of ProLogis's agreement through the Highways Unilateral Undertaking (PDL/0.16) to install traffic lights at the site access to control commercial vehicle departures from the site if the predicted traffic levels for the development in the peak hours are regularly exceeded. The effect of those signals would be to limit the amount of traffic able to enter onto the local road network to the predicted levels.

Trip Distribution

- 6.38 All the parties agreed without qualification to the use of the GB Freight Model for the purposes of distributing the HGV trips generated by the proposed development, with the assignment of those trips onto the local road network done by the KTS. Insofar as Mr Edwards had a criticism of the way in which traffic had been distributed and assigned, it appears to be no more than a wish for a sensitivity test to be done in the event that permission is granted for the Thames Gateway Bridge. Whilst Mr Findlay shows how HGV Howbury Park traffic might reassign to travel west in the peak hours if the bridge were built (PDL/5.3, Figure 5.3-11) there has been no assessment of what the effect of the new bridge would be on traffic patterns in the area, although it is reasonable to assume that it would have a far wider effect than the additional traffic generated by Howbury Park. This analysis was reasoned, in contrast to Mr Edwards' "sensitivity test" (LBB4.2, Table 9.1) which he accepted in cross-examination used entirely arbitrary 50/50, 30/70 and 70/30 east-west splits for HGV traffic leaving the site.

Site Access Roundabout

- 6.39 Bexley Council has no interest as a highway authority in the site access roundabout which is in Dartford Borough (and therefore the responsibility of Kent County Council as highway authority for Dartford Borough - who do not object) save to the extent that any queues at the junction might impact on that part of the A206 Thames Road to the west of the junction which is within Bexley.
- 6.40 The junction assessment of the site access roundabout uses demand flows taken from the KTS model. ARCADY analyses, with the agreed roundabout geometry and traffic from the Grosvenor Waste site reassigned to the site access roundabout, demonstrates that the junction would operate acceptably in 2025 with only small queues (PDL/5.4, Table 3.5). It is accepted that this analysis shows that the predicted ratio of flow to capacity (RFC) in the am peak hour would be greater than 0.85 on the Thames Road arm in 2025 (PDL/5.4, Table 3.5). However, RFC values above 0.85 in congested urban areas like London are not unusual, and Mr Findlay's view is that it is more important for the road network capacity to be balanced, with RFCs broadly the same, than that they should each be no more than 0.85. Indeed, improving a junction to achieve an RFC of 0.85 would be likely to cause traffic to reassign to that junction from more congested parts of the network.

- 6.41 However, should the Inspector and/or the Secretary of State conclude that it is necessary and desirable to achieve an RFC of 0.85 at the site access roundabout, both Mr Edwards and Mr Findlay agreed in their evidence that minor changes to the proposed design could be made which would achieve this value. Indeed, Mr Findlay produced a scheme (albeit not yet agreed) which would address the Council's concerns (PDL/5.19).

Thames Road Bridge

- 6.42 A further concern of the Council concerns the capacity of Thames Road and the possibility of westbound traffic queuing back along Thames Road from the Crayford Mill rail bridge to the site access roundabout. This possibility only arises because the Council dropped the replacement of the rail bridge from the Thames Road Dualling Scheme currently being implemented. As a consequence, a single lane pinch point will remain in what will otherwise be a dual carriageway road. During his cross-examination, the Council's highways and parking witness, Mr Able, advanced the proposition, not canvassed before, that, unless ProLogis were to pay for a replacement bridge, Howbury Park (or indeed any other development which would increase the traffic flow on to this section of the A206) should not be allowed by virtue of policy T6 of the *Bexley UDP*.
- 6.43 There is no basis for this demand for the following reasons:-
1. The improvement of the A206, including the replacement of the rail bridge, has for some time been and remains Bexley Council's "number 1 priority" and the probability is that by 2025 it will have been replaced.
 2. There is no published policy to support Mr Able's position that there is a moratorium on any development in the Thames Gateway which would add traffic to Thames Road until the rail bridge is replaced.
 3. Replacement of the rail bridge is necessary, even without further development, as part of a scheme to improve the regeneration prospects of Bexley. Its replacement is not triggered by Howbury Park.
 4. Mr Able relied on the technical evidence of Mr Edwards to provide an evidential base for his position. However, his proof does not do this (LBB4.2, paras 10.11 and 10.13).
 5. A requirement for ProLogis to write a (blank) cheque to fund the entire cost of replacing the rail bridge, estimated at £7.7m, cannot conceivably be related in scale and kind to the proposed SRFI and its traffic effects. The requirement therefore fails the tests in Circular 05/2005.
 6. No attempt has been made by Bexley Council to identify what proportion of the (unknown) total costs would be fairly related to Howbury Park (if any).

7. Mr Able subsequently agreed that there was a possibility that some part of the proposed development could be brought forward before the rail bridge was replaced. However, he had not assessed how much.
- 6.44 The position adopted by Mr Able, that the development of Howbury Park should be conditional on ProLogis funding the estimated, but otherwise unknown, costs of a replacement rail bridge had the appearance of being made up on the spot. This appearance was corroborated by Mr Edwards who in cross-examination was unable to give any satisfactory answer as to whether and/or when he was made aware that his evidence would be relied upon to provide an evidential base for the Council's position.
- 6.45 In any event, the asserted difficulties in 2025 created by Bexley Council dropping the replacement rail bridge from the Thames Road Scheme arise because Mr Edwards assessed the capacity of the Thames Road as being 1,800 PCUs each way (LBB4.2 & 4.3, Appendix JME-4). To the extent that it is necessary to determine this issue, ProLogis submits that Mr Findlay's evidence is plainly to be preferred. His assessment of the effect of retaining the rail bridge was sent to Bexley Council in March 2007 (Technical Note 14 (TN14) - PDL/5.4, Appendix A). It was not criticised by the Council or Mr Edwards until he gave his evidence, during which he submitted a single manuscript sheet (LBB4.5). TN14 undertook an analysis of the effect of retaining the rail bridge using a capacity of 2,000 PCUs each way derived from Jacobs (the KTS modellers and Bexley Council's modellers for the Thames Road scheme) who re-ran the SATURN model with the rail bridge as a pinch point. Jacobs' capacity figure was then cross-checked by Mr Findlay using a calculation based on RR67 (TN14, para 2.1.7).
- 6.46 Although Mr Edwards sought to criticise Jacobs' use of 2,000 PCUs and suggested that a micro-simulation model should have been used instead of a SATURN model (LBB4.5), there is no logic in the criticism because the capacity of a link is an input into both a SATURN and a micro-simulation model, and not an output. Mr Findlay's RR67 calculation was not challenged. As to support for Mr Edwards' assessment of the capacity of the pinch point, Bexley Council were unable to inform the inquiry what figure they had assumed when they decided to drop the bridge from the Thames Road widening scheme. Indeed, their failure to produce any analysis of the consequences of this decision, despite the specific interest shown by the Inspector in the matter, was surprising. It suggests that no analysis was done, which sits uncomfortably with the Council's written confirmation that, with the bridge omitted, "*the performance of the highway network along this section of Thames Road will be no worse than the current situation*" (PDL/0.8).

Crayford Way Roundabout

- 6.47 The junction assessment as originally run used the ARCADY model provided by Bexley Council's consultants. However, it subsequently became apparent that the geometry of the roundabout had changed since the data was provided. Using the new geometry, the analysis shows that in the 2025 base year the RFCs for Thames Road will exceed 0.85 during both the am and pm peaks (PDL/5.4, Table 3.4). In other words, the Council is presently constructing the Crayford Way roundabout in the

knowledge that the RFCs on Thames Road will exceed 0.85 without any traffic from Howbury Park. In 2025, the Howbury Park traffic is assessed to increase the RFCs on Thames Road by a minor amount. Whilst the queues would increase in length, they could easily be accommodated (PDL/5.4, Table 3.6 and para 3.6.10).

- 6.48 During cross-examination, Mr Edwards suggested that the Council was seeking mitigation for the Crayford Way junction such that its operation would be no worse with Howbury Park than without it (“nil detriment”). Mr Findlay stated that nil detriment could be achieved by minor alterations to the entry widths and this was subsequently demonstrated (PDL/5.20). However, the point he made in evidence (which was shown to be good by PDL/5.20) is that the ARCADY capacity assessments are theoretical and very susceptible to small changes in geometry. In his view there would be little sense in digging up a newly completed roundabout, with the disruption that would cause, for small theoretical improvements to the RFCs. Nonetheless, the scheme analysed in PDL/5.20 would mitigate the impact to nil detriment if that is considered necessary.

Perry Street Gyrotory

- 6.49 At the Perry Street junction the TRANSYT runs show that there would very little difference in the saturation flows and queues in 2025 with and without Howbury Park traffic (PDL/5.1, Tables 6.9 and 6.10). At the inquiry Mr Edwards accepted in cross-examination that the Council had no real concern about the operation of the Perry Street Gyrotory.

Other Matters

- 6.50 Mr Edwards’ concern about the validity of the models used in the assessments is overstated. The Thames Road Traffic Model (TRTM) is the Council’s own validated model, whilst the 2005 KTS is an update of an earlier validated model which all the parties agreed should be used (PDL/0.7). It is correct that as a matter of fact the KTS has not been validated by a Local Validation Report, but that is because current road works at Junction 2 of the M25 make it impossible for accurate journey times to be surveyed in order to validate the model. There is no reason to think that the use of the model is uncertain or inappropriate.
- 6.51 Similarly, there is no substance in the Council’s concern that demand rather than actual flows should have been used for the assessments of the Crayford Way roundabout and Perry Street junction. These flows were supplied by the Council’s consultants and Mr Findlay confirmed there was no concern about the use of actual flows expressed at the time. The use of actual flows is explained in PDL/5.4 paragraph 3.2.1 et seq and TN15 (PDL/5.11). This latter note drew together the various analyses that had been done to understand what effect Howbury Park traffic and re-assignment by the KTS model would have on other parts of the network. It was not criticised by the Council. Ultimately, Mr Edwards appeared not to suggest that demand flows should have been used instead of actual flows but said that they should have been used as a sensitivity analysis.

- 6.52 Bexley Council's concerns about the impact on the local road network must also be put in context. TfL, although not the highway authority, retains a statutory responsibility in relation to and an interest in the A206 because of its designation as a Strategic Road. TfL was fully involved in the Transport Forum and advised by its own highways consultants. They did not object to the proposed development on highways grounds.

Parking

- 6.53 Bexley Council's position in cross-examination was that 1,000 spaces would be the correct amount of car parking. This compares to ProLogis's proposal, which is for 1,167 spaces. Thus, the difference between the parties as to the appropriate amount of car parking is 167.
- 6.54 At 1,167 spaces the car parking provision would be some 52% of the maximum permitted by the *Bexley UDP* and the *London Plan* for a Class B8 development of 198,000m². The number is substantially less than the 2,000 or so spaces that the inquiry was advised ProLogis would normally seek for a development of this size. The company representative, Mr Woodbridge's, evidence is that reducing the number of spaces further would make the warehouses difficult to let in a competitive market.
- 6.55 Reducing it further would also run the very real risk that employees who travel by car would be unable to find a space and would park off site in the residential streets of Slade Green. That risk would be most acute at 14.00 when the afternoon shift arrives and the parking demand would be greatest (CD4.31). The potential consequence is that parking spaces in Slade Green that would otherwise be available to residents returning home in the evening would be filled by employees' cars until they come off shift at 22.00. In this connection it should be noted that the residents of Slade Green are known not to want a controlled parking zone in their area.
- 6.56 Suggestions by the Council that spaces should be dug up and removed if they are unused would create significant practical problems because of changes in contract lengths, different users over time, and seasonal changes in operations in the warehouses all having different parking requirements. The key to making the development successful is to make it attractive by retaining sufficient flexibility to meet the needs of occupiers over time and not to constrain it in such a way that it becomes commercially unattractive to them.
- 6.57 So far as HGV parking is concerned, it would all be contained between the buildings. Accordingly, there would be nothing to be gained from limiting HGV parking in terms of reducing the impact of the scheme on the Green Belt.

Third Party Objections

Natural Environmental Focus Group

- 6.58 The Bexley LA21 Natural Environment Focus Group's (NEFG's) concerns relate to landscape impacts, flooding/drainage and ecology. The landscape impacts are

addressed in paragraphs 6.3 et seq above. So far as flooding and drainage are concerned, the Environment Agency has withdrawn all its objections in the light of the further work that has been done (CD7.1; PDL/4.1, Section 5; PDL/4.3, Annex; INQ5, letter 16 and PDL/12.1).

- 6.59 As regards the ecological impact, there is no objection from Natural England, the London Wildlife Trust or from any of the local authorities. Moreover, NEFG's primary concern, that development of the site would prevent a managed retreat of the marshes and its flora/fauna in the event that they are allowed to flood, is unreal, especially within any timescale that the planning system is capable of grappling with. As ProLogis's witness dealing with ecology, Mr Goodwin, explained, the topography and habitat on the appeal site is not suitable for marsh species and could not be made suitable without human intervention on a massive scale.
- 6.60 Mr Goodwin also did not accept the proposition put to him that the development would result in fragmentation (the phrase "*Encroaching Fragmentation*" was only introduced in NEFG's closing submissions). On the contrary, his evidence was that the habitat creation associated with the proposal, on land which is otherwise of low ecological value, would extend the wildlife corridor.
- 6.61 Similarly, NEFG's concern about the salinity of the water in the marshes being altered has no substance. Rather, the drainage scheme, which has been accepted in principle by the Environment Agency, is intended to be sufficiently flexible to preserve the existing situation.
- 6.62 Overall, NEFG's concern about the development hindering some process of "managed retreat" at some indefinite time in the future misses the point. The benefit recognised by all other parties, including the Mayor of London, Natural England and the Wildlife Trust, is that through the development a substantial area of marshes would be put into trust with a significant endowment which would ensure that the present ecological interest in the marshes would be preserved and enhanced in a way that is otherwise unlikely. The objections that these bodies might otherwise have had to the proposal were removed because they saw greater benefit in the long term management of the marshes.
- 6.63 As to NEFG's continuing concerns about TE2100, this has no relevance to the merits of the appeal proposals. The appeal site is not on the marshes and managed retreat to the appeal site is not a realistic option (see above). Any future decision by the Environment Agency to abandon the current flood defences would have no impact on the appeal site.

Slade Green Community Forum

- 6.64 The matters raised by the Slade Green Community Forum (SGCF) are largely addressed by the responses to the Council's and NEFG's objections. However, one specific issue of concern to SGCF is the extension of the No. 89 bus into the site via Moat Lane. In this connection, Mr Findlay accepted some of the points made by the SGCF chairman, Mr Hillman, and explained in his rebuttal evidence how it was

anticipated that the service would operate (PDL/5.10). In addition, ProLogis recognised the benefits of making the S106 Undertaking as flexible as possible and the final undertaking (PDL/0.15) would allow the Moat Lane access to be used by private buses if it were to be decided that a private shuttle bus to Slade Green Station would be a preferable option to extending the route of the No 89 bus into the site.

Individual Residents and Other Objectors

- 6.65 The planning issues raised by third party residents (noise, impact on landscape, traffic and rail operations) were all addressed in ProLogis's evidence to the inquiry.
- 6.66 As to the alternative site on land next to Plumstead Sidings suggested by Mr Rodmell, this site was not originally assessed in the alternative site assessments submitted with the applications. Notwithstanding this the site is not of sufficient size at 19ha and is some 13km from the M25 (PDL, paras. 7.42 to 7.44 and PDL/0.4).

Very Special Circumstances

Policy Framework

- 6.67 It is of vital importance to understand and fully to take into account the policy basis that has laid the ground, first, in overarching terms for the desirability of transferring freight from road to rail, and second, more specifically, for the provision of three or four SRFI around London. It is only with this policy framework in mind that due consideration can be given to the strength of the justification for the Howbury Park proposals.

Government Policy Statements

- 6.68 *PPG13*, paragraph 45, states that *Sustainable Distribution: A Strategy* sets out Government policy on freight. This policy document echoes the previous year's White Paper, *A New Deal for Transport*. The policies set out in *Sustainable Distribution* promote the greater use of rail for freight in no uncertain terms; rail is more fuel-efficient, reduces congestion and has a better safety record than road; it is under-exploited and less damaging to the environment (CD4.3, pp 3, 4, 5, 19, 27, 28 and 32).
- 6.69 *Sustainable Distribution* specifically recognises the benefits of intermodal terminals in integrating road and rail (para 5.11). The term "Strategic Rail Freight Interchange" had not been coined at the time when *Sustainable Distribution* was published; the Government referred to "Major Freight Interchanges" instead and gave warehouses at ports, and DIRFT as examples of what it had in mind (ibid, pp29-32).
- 6.70 Bexley Council rely upon the exhortation in paragraph 5.17 of *Sustainable Distribution* to re-use existing facilities where suitable as if it places an embargo on providing new facilities until existing facilities are used fully. However, there is no such embargo either here or anywhere else in Government policy. Indeed, such an embargo would be inconsistent with later statements of Government and development

plan policy which envisage the provision of three to four SRFI around London (see below).

- 6.71 ProLogis accepts that it would be eminently sensible, as well as being consistent with the Government's cross-cutting preference to re-use previously developed land, to re-use an existing rail-connected site rather than develop on greenfield land in the Green Belt. But this proposition can only hold good where the existing brownfield site is suitable, viable and likely to be made available within a reasonable period of time to meet the need which Howbury Park would address – namely for one of the three or four SRFI provided for in the London Plan. This fundamental point must be recognised.
- 6.72 In *Transport 2010* the Government reaffirmed its aim to significantly increase the use of rail by freight (CD4.4, paras 6.9, 6.22 and 8.5). The subsequent statement by the Secretary of State for Transport in July 2005 (CD4.44), which cautioned against treating the aspiration to grow rail freight by 80% over ten years as a target, did not water down the Government's commitment to significantly increase rail freight.
- 6.73 *PPG13* was published in 2001. It reiterated the theme developed in *A New Deal for Transport, Sustainable Distribution* and *Transport 2010* that rail freight should be promoted (*PPG13*, paras 4 and 45). All of these publications state Government policy. Bexley Council seek to draw a distinction between statements of Government transport policy on the one hand and Government planning policy on the other. In ProLogis's view, both are equally relevant in a case in which the issue in hand concerns facilitating the transport of goods by rail. But if there is any significance in the distinction, it is plain that *PPG13* is a statement of planning policy and by virtue of the cross-reference in *PPG13* so too is *Sustainable Distribution* (see para 6.68 above). *PPG13*, paragraph 45, also draws attention to the role of the (now former) Strategic Rail Authority (SRA) in advising on rail freight sites.

SRA Statements

- 6.74 The SRA's *Strategic Agenda*, published in 2001, focussed on switching non-bulk intermodal traffic from road to rail. It saw the need to provide intermodal transfer facilities generally and noted that new interchanges were particularly needed in the South East (CD4.7, pp22, 42, 43, and 61).
- 6.75 These themes were elaborated in the SRA's *Freight Strategy*, also published in 2001, which explained that in order to grow rail freight a substantial increase in rail-connected warehouses and intermodal handling capacity is required (CD4.8, p4). In it the SRA drew attention to the public interest benefits of transferring freight to rail by virtue of reduced road congestion, accidents and emissions, which it saw as being particularly important in the South East (CD4.8, p9).
- 6.76 All of these publications by the Government and the SRA pre-date the First Secretary of State's decision in the LIFE case which was delivered in August 2002 (CD8.1).

- 6.77 The LIFE decision has been much relied upon by Bexley Council, but this reliance is based upon a misinterpretation of its significance and its terms, and upon a mistaken belief that the decision is to be read as stating a generally applicable and onerous test of need which in some way negates or qualifies the policies set out in all these prior publications. It does no such thing.
- 6.78 These points are elaborated elsewhere in these submissions but, whatever the proper meaning and effect of the LIFE decision, it is important to pay close attention to the policies which were published after the decision. These policies are of vital significance to determining the Howbury Park proposals because they include the SRA's detailed policies for SRFI, the Government's endorsement of these policies, and their incorporation into the statutory development plan – the *London Plan* – and associated supplementary planning guidance.
- 6.79 As ProLogis's planning witness, Mr Gartland, explained in his evidence in chief, his firm (Nathaniel Litchfield & Partners) was commissioned by the SRA to advise it upon how to pick up the pieces and move forward after the LIFE decision. He explained how, in accordance with his advice, the decision caused the SRA to commission copious research to underpin a specific and detailed policy statement on SRFIs (CD4.10, Appendix H; PDL/6.6, Appendix 1 and PDL/6.7).
- 6.80 In his closing submissions, Counsel for Bexley Council submitted that the SRA's *Freight Strategy*, was taken into account by the Secretary of State in the LIFE decision (LBB0.8, para 6.7). He specifically asserted that the advice on page 25 of the document, which refers to a strategy for an interchange at Colnbrook and in addition two or three major interchanges to serve London, was considered by the Secretary of State in arriving at the decision. The point was not made before, either in evidence by the Council's witnesses or in cross-examination of PDL's witnesses.
- 6.81 The point is anyway a poor one. The *Freight Strategy* was published in 2001, after the LIFE inquiry closed. Thus it was not referred to in the Inspector's report. In the decision letter it is mentioned only once; but not in relation to the idea that there should be three or four SRFIs around London (CD8.1, para 15). The relevant passage in the *Freight Strategy* (CD4.8, p25) moreover makes it clear, firstly, that at the time of publication the research that the SRA had commissioned was underway and not completed; and secondly, that the need for two or three major new facilities in the London region in addition to Colnbrook was an "*emerging conclusion*".
- 6.82 The tentative nature of these references contrasts sharply with the detailed and firm conclusions reached in the SRA's later *Strategic Rail Freight Interchange Policy*. The list of research set out in Appendix H of this document refers to 11 research studies – only one of which (the first) "*formed the basis for the Interchange Strategy contained within the SRA Freight Strategy May 2001*" (CD4.10, Appendix H). Accordingly, the point which Counsel for Bexley Council sought to make is a poor one.
- 6.83 As to the SRA's *Strategic Rail Freight Interchange Policy (SRFI Policy)*, this was issued in 2004. It sets out the critical importance of a network of SRFI to achieving higher levels of rail freight (CD4.10, paras 4.2 to 4.4, 5.13, 6.3, 6.8, 7.1 and p65) and

that three to four SRFI are required in London and the South East (ibid, paras 6.9 and 6.10). The policy explains the scale of facilities required for a SRFI which generally points to a site of at least 40ha (ibid, para 4.28). It emphasises that the combination of intermodal facilities and rail-linked warehouses found in a SRFI enables businesses to change over time, either to introduce the use of rail or to increase its use in their operations (ibid, paras 4.5, 4.8, 4.16 and 4.17). The policy draws attention to the lower emissions of carbon dioxide by rail compared to HGV road freight (ibid, para 5.10).

- 6.84 By letter dated 24 June 2005 the SRA confirmed that the Howbury Park proposals met its *SRFI Policy* and expressed support for them (PDL/6.3, Appendix C).

DfT Statements

- 6.85 At the time of its publication, the SRA's *SRFI Policy* was not a statement of Government policy in itself. However, since the demise of the SRA, the DfT has explained its status noting that "*the interchange policy was based on the Government's existing policies for transport, planning, sustainable development and economic growth, and much of chapters 4, 5, 6 & 7 is still relevant.*" It further states that the document will be retained on the DfT's website "*as a source of advice and guidance*" (CD4.14). In this connection the term "*still relevant*" appears to have been used to distinguish those parts of the SRA's publication which had become irrelevant with the demise of the SRA (e.g. an explanation of the role of the SRA) from those parts which remain relevant as a source of advice and guidance (e.g. the advice concerning the importance of SRFIs and the requirement for three or four in London and the South East).

- 6.86 Any uncertainty about the continuing relevance and status of the SRA's *SRFI Policy* was dispelled decisively by the DfT in January 2007 when it submitted its *South Eastern Regional Planning Assessment for the railway*. In this document, which covers south-east London, the DfT explains that (CD4.5, pp48 & 49):

1. the Government encourages the development of SRFIs;
2. the SRA's *SRFI Policy* is broadly endorsed by Government; and that
3. the outcome for the London region is foreseen to be three to four major strategic sites around the M25 ring.

- 6.87 Bexley Council emphasise that the statements made by the DfT do not amount to expressions of Government planning policy. Strictly speaking (and provided that one treats the Government's transport and planning policies as distinct) this is correct. However, this seems a somewhat esoteric point given: (a) the breadth of the DfT's statements that the Government encourages the provision of SRFIs and broadly endorses the SRA's *SRFI Policy* including the provision of three or four SRFIs around London, and (b) that the development plan specifically incorporates that requirement (see below).

The Development Plan and Other Local Planning Guidance

- 6.88 As to the development plan, the *London Plan* (CD3.3) was adopted in 2004. The *Draft Further Alterations to the London Plan (Draft Alterations)* were published for consultation in September 2006. Policy 3C.24 promotes the provision of rail freight facilities and improved integration between freight modes. Apart from introducing a specific cross-reference to TfL's *London Freight Plan* the *Draft Alterations* do not propose amendments to this part of the *London Plan*. The supporting text to the policy seeks to foster the progressive shift of freight from road to rail because rail is more sustainable, and the *Draft Alterations* do not propose to change this (CD3.12, para 3.215).
- 6.89 The Howbury Park proposals are entirely consistent with, gain support from and would help to deliver this part of the *London Plan*.
- 6.90 Policy 3C.25 specifically supports the provision of strategic rail intermodal freight facilities and the supporting text explicitly incorporates the requirement identified by the SRA for three or four SRFIs around London. The *Draft Alterations* do not propose to amend these aspects in any material way, nor did Bexley Council suggest any changes to them in its consultation response (LBB1.3, Appendix 7).
- 6.91 In response to a question asked by the Inspector, Mr Gartland provided a written explanation (PDL/1.8) which demonstrates that the *London Plan's* explicit support for three or four SRFIs around London stems from the Mayor's response to the Panel's report. This report recommended that the policy should be strengthened in its terms and should be more specific. The cross-reference to the SRA's policies came about as a result of representations made by the Government Office for London to this effect. In other words, these aspects of the *London Plan* did not arise fortuitously but rather following deliberation and analysis.
- 6.92 It is significant that the Mayor of London, as the strategic planning authority for London and the custodian of the *London Plan*, supports the Howbury Park proposals (CD1.2 and CD1.7) as does the neighbouring county planning authority, Kent County Council.
- 6.93 There is one aspect of paragraph 3.218 of the *London Plan* that the Howbury Park proposals are inconsistent with, namely the aspiration that SRFIs should be located wholly or substantially on previously developed land. In view of this, the Inspector and/or the Secretary of State will need to determine whether, having regard to all the circumstances of this case, material considerations indicate that the appeal should be determined otherwise than in accordance with the plan, in applying Section 38(6) of the Planning and Compulsory Purchase Act 2004 to the letter of this part of the development plan.
- 6.94 ProLogis relies upon the rail freight case which it puts forward to demonstrate sufficient very special circumstances to allow inappropriate development in the Green Belt as being sufficiently powerful to outweigh the aspiration in the *London Plan* that SRFIs should utilise previously developed land. It must follow, as a matter of logic,

that if the Secretary of State is convinced that there are sufficient very special circumstances present here to allow a major development in the Green Belt, that normally would not be contemplated, these same circumstances must also outweigh the reference to previously developed land in the *London Plan*.

- 6.95 As to this matter, the statement in the *London Plan* concerning previously developed land was written at a time when the realism or otherwise of this proposition could not be tested as no specific proposals had come forward for SRFIs (CD3.12, p156). It is telling how the Mayor of London's attitude to this aspect has changed as specific proposals have come forward and been tested by the Mayor and his agencies and advisors. The Mayor moreover jealously guards London's Green Belt in his role as strategic planning authority and needs a great deal of persuasion to sanction development within it – his support for the Howbury Park proposals should be seen as highly significant especially in view of this.
- 6.96 Secondly, the recognition by the Mayor that his original aspiration that SRFIs should use previously developed land is unrealistic is seen in the *Draft Alterations* which propose its deletion and substitution with the words “*New locations should meet strategic planning and environmental objectives.*” Whilst this phraseology is plainly intended to represent a departure from the previously stated aspiration to use previously developed land, it would still militate against the use of a site in the Green Belt for a SRFI. However, the Mayor is plainly alive to this and specifically addresses the point in his Stage 2 report in which he acknowledges it and concludes that there are very special circumstances in the case of the Howbury Park proposals (CD1.7, para 47).
- 6.97 Bexley Council has objected to this change in the policy and suggested that the policy should additionally require SRFIs to be located within Strategic Industrial Locations (LBB1.3, Appendix 7). The Panel appointed to examine the *Draft Alterations* programmed a session on 5 July to consider, amongst other things, the implications of SRFIs for the Green Belt (LBB1.5). The outcome of their deliberations will be known by the time that the Secretary of State makes her decision on the Howbury Park proposals.
- 6.98 Thirdly, the Mayor of London and the agencies of and advisors to London Governance have had to consider the strength of ProLogis's case that there are very special circumstances to justify permitting the Howbury Park proposals in the Green Belt.
- 6.99 In the Mayor's Stage 1 Report (July 2006) following detailed and careful analysis, the conclusion is reached that there is a clearly recognised need for several SRFI around London (CD1.2, paras 33 to 41); that there is a lack of suitable alternative sites to Howbury Park to meet the identified need (*ibid*, paras 42 to 48) and that given the identified need and the lack of alternative sites, there is a strong case to override Green Belt policies (*ibid*, para 49).
- 6.100 Later that year, the Mayor wrote to St. Albans City & District Council concerning the proposals for a SRFI in the Green Belt at Radlett setting out his conclusion that in

order to accommodate such a large facility the use of Green Belt land is almost inevitable (PDL/1.4, Appendix 1).

- 6.101 These conclusions are strengthened in the Mayor's Stage 2 Report (February 2007) in which it is concluded that ProLogis's alternative sites assessment (which demonstrates that there is a dearth of such sites) is robust (CD1.7, para 14) and that the need for SRFI sites is accepted (ibid, para 15); TfL draw attention to the consequences should the Howbury Park proposals be refused (ibid, pages 5-10), namely that objectives of the *London Plan* and the *London Freight Plan* would not be achieved, and state that the proposals present a real opportunity which is very much supported from the rail perspective (ibid, paras 25 and 40); GLA Economics advise that the need is well acknowledged and that there is more than enough evidence as to the benefits of the scheme (ibid, para 49). The Mayor's overall conclusion is that the lack of alternative sites is accepted and that the case to use Green Belt land is very strong (ibid, para 108).
- 6.102 These are powerful and weighty conclusions drawn by London's strategic planning authority in relation to the use of part of London's Green Belt to meet a strategic need for a SRFI. It is highly unlikely that the parochial authority in which a potential site lies – here the London Borough of Bexley – would ever support the use of Green Belt in order to meet a need which is strategic and which resonates far beyond the horizons of the local authority in question. In such circumstances, the support of the Mayor of London is particularly significant. It is also worthy of note that Bexley Council has not sought to engage with the Mayor to persuade him otherwise in relation to these key matters.
- 6.103 The conclusion reached by the Mayor that ProLogis's alternative sites assessment is robust is important. It is key to this to grasp that the SRA's *SRFI Policy* sets out the benefits of SRFIs – a strategic combination of intermodal terminal facilities and rail-linked warehouses – and what was required in order to provide a SRFI. These points are elaborated in the more recent *Land for Transport Functions SPG* (see below). There is no realistic scope to disaggregate the intermodal area from the rail-linked warehouses as this would run counter to the policy framework to provide three to four SRFIs around London as well as failing to respond to market forces (PDL/1.12).
- 6.104 Further support for the principle of providing a SRFI at Howbury Park is found in the draft *London Freight Plan* which reiterates that three to four SRFIs are required around London to help to minimise London's environmental footprint and urges that it is important that an appropriate balance is struck between local and strategic issues in such cases (CD4.12, p26).
- 6.105 The recently adopted *Land for Transport Functions SPG* supplements the *London Plan*. It discusses SRFIs in depth. The SPG draws attention to the requirement for rail-linked warehouses (CD4.16, para 12.2); distinguishes between the need for three or four SRFIs around London and the complementary role of smaller rail freight interchanges (ibid, para 12.7); states that there is a very limited range of potentially suitable sites (ibid, para 12.8) and indicates a likely minimum site size of some 40ha (ibid, para 12.9). It also draws attention to the need to provide large distribution units

which meet modern requirements within a SRFI (ibid, para 12.8); recognises how occupiers can evolve to take up and to increase their take up of rail freight (ibid, para 12.10); cross-refers to the SRA's *SRFI Policy* (ibid, para 12.10), and indicates that a site's potential to provide rail freight facilities and thereby to deliver sustainable transport objectives should be accorded considerable weight in determining planning applications (ibid, para 12.12). This is a critically important planning policy statement in the context of considering ProLogis's case.

- 6.106 The SPG is undoubtedly a planning policy document. Bexley Council made no representations regarding its contents during its consultation stage. It should be given significant weight.
- 6.107 The Howbury Park proposals are entirely consistent with, gain support from, and would help to deliver the objectives of both the draft *London Freight Plan* and the recently adopted *Land for Transport Functions* SPG.

Conclusions

- 6.108 ProLogis submit that it is beyond argument that there is a sufficiently detailed policy framework in place to enable the proper consideration of the Howbury Park proposals and that, save for the Green Belt status of the site, all of the policies discussed above provide clear support for the proposals at every level.
- 6.109 The strategic planning authority for London, the Mayor, is convinced that a strong case of very special circumstances has been made good, as is Kent County Council. At the inquiry the County's witness described the case to use Green Belt land for the Howbury Park SRFI as founded upon an "*inescapable logic*" (KCC1, para 10.4).
- 6.110 Meanwhile a range of documents continue to be produced which either set out the urgent importance of addressing climate change through sustainable development and/or encourage the transfer of freight from road to rail in order to reduce greenhouse gases. Since the LIFE decision there have been more than 30 such publications (see PDL/1.9) including the recent Planning White Paper (*Planning for a Sustainable Future*) and the Energy White Paper.
- 6.111 The requirement for three or four SRFIs to serve London has been advocated for at least three years. ProLogis argue that the time has come to move from deliberation to delivery, from laying the ground, to provision on the ground. The Howbury Park proposals are supported by the Mayor of London and objections once lodged by the Highways Agency, Kent County Council and the Environment Agency have been withdrawn. The proposal represents a unique opportunity to deliver the first of the three or four SRFIs required to serve London. If permission is not granted then the reality is that the strategy set out in, amongst other places, the *London Plan* and the *Land for Transport Functions* SPG will not be delivered either in the foreseeable future or at all.
- 6.112 It is for these reasons that reference was made in ProLogis's Opening Submissions to it being "put up or shut up time" for the planning system, this being a less elegant but

more direct way of submitting that the circumstances are ripe here for oft-repeated aspirations to become reality. The concept is also linked to the Inspector's reference at the inquiry to the "chicken and egg" analogy - namely that one needs to provide rail freight facilities in order to obtain the benefits of having done so.

- 6.113 A good example of this is DIRFT which was originally planned to handle Channel Tunnel freight exclusively. Problems with Channel Tunnel freight did not lead to DIRFT failing. Rather, it has become a significant and successful intermodal facility for other forms of freight traffic. As Mr Gartland put it when giving his evidence, if DIRFT had not been there, none of this could have been achieved.
- 6.114 The simple fact of the matter is that, unless SRFIs are provided as these policies envisage, the planning system will continue to do no more than pay lip service to the desirability of transferring freight from road to rail.

Carbon Dioxide Emissions

- 6.115 Underlying the policy imperative to move freight from road onto rail are the carbon dioxide (CO₂) savings that such a shift would entail. Exactly how much CO₂ is likely to be saved is a matter of some dispute, although it is hard to treat seriously Mr Fox's fleeting claim on behalf of Bexley Council that the proposed development would result in an increase in the amount of CO₂. Savings are now estimated by both ProLogis and Bexley Council (PDL/6.23). Whilst it is difficult to be precise, ProLogis's estimate is consistent with the savings publicised by Tesco and Stobarts in relation to the freight train services which they run between DIRFT and Grangemouth, and it is evident that Bexley Council's estimate has been driven down by Mr Fox adopting an incorrect conversion ratio for the number of containers per train, and the number of equivalent HGV trips per train (PDL/6.22, paras 1.5 to 1.17).

The LIFE Decision

- 6.116 It has been fundamental to Bexley Council's case to contend that the LIFE decision sets some form of test or hurdle which applies generally, namely that there must be a "*situation requiring relief*" before permission can be granted (CD8.1: IR para 13.48 and decision para 17). This, so it is said, must be something more than and different from a mere "*policy need*". Thus (so the argument continues) compliance with policies which seek to transfer freight from road to rail is insufficient and the presence of disused or less than fully used old railway sites (such as Willesden and Barking) demonstrates that there cannot be a "*situation requiring relief*."
- 6.117 In fact, the LIFE decision does not state any generally applicable principles and does none of the above. It is simply a decision on its own merits (or lack of them). Mr Bryant agreed in cross-examination that, read in its proper context, the finding that there was not a situation requiring relief in that case was simply a conclusion reached by the Inspector (and agreed with by the First secretary of State) on the evidence in that case and not a gloss on the very special circumstances test in *PPG2*, which contains no such requirement. *PPG2* does not state or imply that a case can only be

made where there is a situation which requires relief, nor does the LIFE decision purport to say that it does.

- 6.118 Further, the policy framework in the case of Howbury Park (unlike that at the time of the LIFE decision) does a great deal more than make generalised statements in favour of transferring freight from road to rail. Now there is specific *London Plan* and SPG support for the provision of three to four SRFIs around London, and the DfT acknowledges this as the outcome of the SRA's *SRFI Policy*, which it broadly endorses. This policy framework contrasts with that at the time of the LIFE decision.
- 6.119 It would be wrong, as a matter of first principles, to dismiss compliance with specific policies which recognise the need for SRFIs around London as merely being a "*policy need*" (whatever that means). The point is that a carefully researched and thought-through sequence of policies, adopted by the SRA and then enshrined in the *London Plan* and associated SPG, and now broadly endorsed by the Government, has laid the ground for the delivery of SRFIs such as the Howbury Park proposals.

Other Industrial and Warehouse Sites

- 6.120 In their evidence, Bexley Council drew attention to the supply of (non rail-connected) industrial and warehouse sites and to the planned release of some of this supply for other uses. They suggested that the appeal proposals might "divert" investment and undermine regeneration in other parts of the Thames Gateway (LBB1.2, para 9.8.2). These points have no relevance to the Howbury Park proposal, which is for rail-connected warehouses and an intermodal facility.

The Practicality of Need

- 6.121 The need case is founded upon the overarching policies reviewed above which seek to move freight from road to rail and, crucially, the specific set of policies that there should be three to four SRFIs around London. Notwithstanding this, it is relevant to consider whether the proposal would be likely to attract occupiers who would use the rail infrastructure. In other words, does the policy case (which supports these proposals) marry up with practical reality?
- 6.122 Mr Woodbridge tackled this point in his evidence to the inquiry. He advised that ProLogis is the largest provider of logistics space in the world and has the largest market share in the UK. The company has a five year business plan to deliver SRFIs nationwide. It has acquired the rail sites at DIRFT and Corby and the proposed site at Parkside (Warrington). It has its own Rail Freight Strategy. It is very significant that such an important developer in the distribution market has invested so much time, effort and money in pursuing the rail sector and this particular rail-linked scheme. ProLogis should be encouraged to develop this strategy. Also, the distribution sector is watching the progress of the Howbury Park proposals and permission would instil confidence into a market where many developers have been deterred by their perception of the LIFE decision.

- 6.123 ProLogis’s commitment to delivering rail freight is shown by the unprecedented rail incentives scheme which is tied into the proposals by ProLogis’s planning obligation. It is also evident in the layout of the buildings (with road access on one side only) which is custom made for rail-served warehouses. To build in such a way for occupiers who are interested solely in road access would, as Mr Woodbridge graphically put it, be “commercial suicide”. Such occupiers would not consider Howbury Park because of this (PDL/7.4).
- 6.124 As to the type of occupiers likely to be attracted to the rail-served warehouses and intermodal facilities, there is clear evidence that the intermodal area would be taken up by the market with both EWS and ABP keen to run the facility (PDL/6.3, Appendix E and PDL/7.7). Notwithstanding this, the S106 Undertaking provides that the terminal would be run on an “open access” basis (PDL/0.15, Schedule 1, para 1.14).
- 6.125 The rail-linked warehouses would provide a unique offer.
- 6.126 At the inquiry, Bexley Council made the point that Unit A would be larger than any existing warehouse unit in London and the South East and that the total floorspace of the scheme would also be uniquely large.¹ In any event, the point merely serves to illustrate one of the strengths of the proposal; if indeed the largest warehouse and the largest warehouse scheme in London and the South East would be rail-linked, this amounts to a huge vote of confidence by ProLogis in the sector.
- 6.127 Also, as Mr Woodbridge explained, ProLogis would not need many occupiers to let the four buildings proposed; indeed one party could well take the entire scheme. The London and South East market which would be served by the likely occupiers of the scheme is huge. The importance of the Corporate Social Responsibility agendas to major companies such as Tesco must not be lost sight of. Reducing greenhouse gas emissions – and being seen to take action to do so – is an important feature of the contemporary market for rail freight services and facilities. Practical and realistic examples of occupiers who would be likely to take units within the scheme include large retailers (Tesco, Argos and Morrisons); third party logistics operators such as DHL, Wincanton and Eddie Stobart; companies such as MFI and IKEA who operate in the “bulks and furniture” sector; and drinks wholesalers/retailers such as Threshers and Oddbins.
- 6.128 At the inquiry Mr Woodbridge also explained the role that rail currently plays for companies such as Asda, Tesco and M&S and the way in which Howbury Park would provide them with significant opportunities. He also suggested that DHL, or another similar company, could sensibly run a large building on the site for a number of customers who in their own right might not have enough demand to receive a direct train.

¹ Subsequent to this evidence being given, planning permission was granted for the Shellhaven (London Gateway) proposal. This scheme would provide 5 times as much floorspace – 10 million square feet - as ProLogis’s proposals and could provide a series of individual buildings each as large as Unit A (PDL/7.8).

- 6.129 One example that Mr Woodbridge gave should be particularly noted. Whirlpool ran six trains per week with 12 containers per train of white goods to a unit that they occupied at Paddock Wood. That building was destroyed in a fire. Whirlpool was unable to find a rail-connected warehouse in London and the South East to take its place. If Howbury Park had been available, Mr Woodbridge anticipated that Whirlpool's interest in taking a unit would have been exceptionally keen. As it is, they now occupy a non rail-connected warehouse in Aylesford.
- 6.130 Currently there is a fundamental problem in that there are no modern rail-connected warehouses to serve London. Given this, it is hardly surprising that there is a carefully formulated policy basis moving from the SRA's *SRFI Policy*, through the Government's endorsement of it, to the *London Plan* policies which support the provision of three or four SRFIs around London – the practical need and the policies both support ProLogis's case.

The Lack of Suitable Alternative Sites

- 6.131 Bexley Council's case that there is a suitable alternative site to Howbury Park for a SRFI is not supported by the Mayor of London or Kent County Council as strategic planning authorities. The Council's concerns in relation to the Nathaniel Lichfield and Partners (NLP) Alternative Sites Report (Planning Statement, Volume 2, Section 6) stand in stark contrast to the Mayor's view that the site selection and consideration of alternatives is robust (CD1.2, paras 42 to 48 and CD1.7, para 14).
- 6.132 The Council's principal criticism of the Alternative Sites Report was that it had applied an "arbitrary" minimum size of 40ha. ProLogis rejects that criticism. Far from being arbitrary, the 40ha criterion is founded in detailed research commissioned by the SRA which led to the guidance that the area of land likely to be required for an SRFI is between 40 and 400ha. Subsequently, the Mayor in his *Land for Transport Functions* SPG adopted a minimum site area for a SRFI of 40ha. During the consultation stage for this SPG, Bexley Council neither objected nor made representations on this matter. Thus the NLP criterion – which is in fact the SRA's and London Governance's criterion - is firmly based on thorough research and planning policy.
- 6.133 As regards the suggestion that there is a suitable alternative site to Howbury Park, the Council's case has been schizophrenic. Following the pre-inquiry meeting on 19 January 2007, ProLogis sought to ascertain whether the Council was relying on the existence of alternative sites as a reason for refusal. At that time the Council's position was that it would critique the NLP Alternative Sites Report and argue that elements of the proposed development could be located on adjacent smaller sites (i.e. that the proposed development could be disaggregated). Subsequently, when the proofs were delivered, the Council's witness dealing with rail matters, Mr Niblett, no longer argued that the development could or should be disaggregated and instead referred to a number of alternative sites which he claimed were suitable alternative sites to Howbury Park for a SRFI.

- 6.134 Later in cross-examination it became clear that the Council were only really concerned with promoting Barking as a suitable alternative to Howbury Park, even though Mr Niblett accepted in cross-examination that he had only considered the suitability of that site and not its viability or availability. Indeed, having put forward a number of criteria against which he contended that alternative sites should be assessed, Mr Niblett then failed to apply his own criteria in his assessment.
- 6.135 The inherent unsuitability of Barking, and the difficulties concerning viability and availability of the site are fully addressed in the NLP Alternative Site Assessment Report (CD1.4), Mr Gartland's rebuttal on alternative sites (PDL/1.5) and a further paper prepared by ProLogis's rail witness, Mr Gallop (PDL/6.18). There are several reasons why a site at Barking is unlikely to be developed for a SRFI in the foreseeable future with a significant amount of rail-linked warehousing. Of particular note, the shape of the site constrains the developable area and the costs of the rail and road infrastructure would be very significant. The local planning authority is also resistant to warehousing and plans significant housing and mixed use development in close proximity to the site.
- 6.136 In this connection it is extremely important to note that TfL sees Barking as a unique opportunity to serve as a CTRL freight terminal which it distinguishes from the three or four SRFI facilities which it advocates around London. The *Land for Transport Functions* SPG clearly makes this point (CD4.16, paras 12.14 to 12.18).
- 6.137 In his evidence Mr Woodbridge drew attention to the real and practical difficulties which would stand in the way of developing rail-served warehouses at Barking. As well as the planning issues and the need for major enabling works, a significant number of land ownerships would need to be brought together and CPO procedures would inevitably be required to assemble the site. This would give rise to significant compensation payments and delay.
- 6.138 ProLogis's case is not to say that it would be impossible to deliver development at Barking, but rather that it would take a considerable period of time and concerted effort to overcome these issues. In other words, Howbury Park and Barking should not be seen as competitors either in terms of their respective potential roles (Howbury Park as one of the three or four SRFIs required for London; and Barking as a CTRL related facility) or the timescales for their delivery. Rather, they should be regarded as complementary facilities (PDL/6.18 and KCC8, para 15).
- 6.139 In any event, refusing Howbury Park on the basis of the potential to redevelop Barking would be utterly futile – there is no evidence to suggest, let alone to substantiate, that the Howbury Park proposals have inhibited the bringing forward of proposals for the Barking site.
- 6.140 There are echoes of the LIFE decision in the case put by Bexley Council. At LIFE, the Inspector relied upon perceived opportunities to use Willesden and Barking as a reason for recommending against the proposals. Some seven years after that inquiry, the decision to refuse the LIFE proposals has had no effect whatever on bringing these sites into fuller use; indeed they are less used now than they were then.

- 6.141 The reality is that the rail freight market that would be well served by a SRFI at Howbury Park is not going to rush to Barking in the absence of a facility at Howbury Park.
- 6.142 What the market wants is a critical mass of high quality rail-connected warehouses (with a private road network) and an intermodal area which combines good road and rail access to serve the London and South East market. This would be provided by Howbury Park which would be the first of London's three or four SRFIs. The market needs all of this now; a hope that with massive investment and years of planning something might happen at Barking is of no use to the market that ProLogis and the SRA's *SRFI Policy* aim to address.
- 6.143 Even if it is assumed that Barking could be developed as a rail freight interchange without prejudicing its role as the only available site for a CTRL freight terminal, the development of Howbury Park as an SRFI would not prejudice its development for that purpose (PDL/6.18, paras 5.1 to 5.3).
- 6.144 Although Bexley Council has not said in terms that Willesden should be considered as a suitable alternative to Howbury Park, repeated references were made during the inquiry to it and its under-use. ProLogis can only assume that these references have been made in order to re-run the argument that appealed to the Inspector in the LIFE case, namely that there is not a situation which requires relief because there is a disused site elsewhere. This argument is addressed above. Also, it is telling that the market has shown no interest in Willesden since the LIFE inquiry – this only goes to show how simplistic and naïve it is to imagine that if a site such as Howbury Park (which the market would take up and which has the backing of a major player like ProLogis) is refused, the demand would be displaced to a site in which the market has shown very little interest.
- 6.145 In any event, the policy basis is for a ring of three or four SRFIs around London. The Howbury Park SRFI would be the first of these. When examining this proposal it is of no relevance to refer to a site which is in a wholly different sector. The reality is that there is no suitable, viable and available site to address that part of the policy framework and practical need which the Howbury Park proposals would meet.

Operational Matters

Gauge

- 6.146 Bexley Council's concern is that because Howbury Park is on the W8 gauge rail network, it would be at a disadvantage and unattractive to freight operators as intermodal containers increase in height.
- 6.147 This matter is addressed in the technical note on loading gauge agreed between Mr Niblett and Mr Gallop (PDL/6.15). Being on W8 gauge is a theoretical rather than a real drawback. The practical loss of capacity under W8 loading gauge over W10 loading gauge, in terms of the number of containers per train, is in the 2% of the global equipment fleet accounted for by 45' x 9'6" high containers, where for an

average 420m length train, 14 could be carried on Lowliner wagons compared to 20 on standard flat wagons. Using Megafret wagons under W8 loading gauge, 22 x 45' containers can be carried up to a maximum of 9'2" high (PDL/6.15, Executive Summary, para k).

Train Paths/Timetable

- 6.148 Although there has been concern as to the number of train paths that would be available for freight trains to and from Howbury Park on a part of the network where (as is common in London) there is high demand for passenger trains, it is plain that there are three paths for the start up phase and that future paths are likely to be made available as and when required (PDL/6.16 and PDL/6.24). That there is no guarantee from Network Rail that all the paths that might be required in the future will be available is unsurprising and reflects their normal practice. But Network Rail is supportive of the Howbury Park proposals and between May 2006 and May 2007 wrote four letters saying so (PDL/6.3, Appendices D and F; PDL/6.6, Appendix 2 and PDL/6.13). EWS's experience is that "... *most pathing requests can be catered for...*" (PDL/6.3, Appendix E). Accordingly, the Secretary of State can be confident that the required train paths would be available for trains to access Howbury Park at the commencement of operations and as the facility develops.
- 6.149 Without a planning permission, the Howbury Park proposals can only be assessed in outline by Network Rail in their consideration of the 2009 timetable. Should permission be granted, Network Rail and the DfT would then be in a position to advance not only the start up path requirements but also to take a strategic view in developing the 2009 timetable and the 2012 Integrated Kent Franchise. The important point is that, with permission granted, ProLogis would be a stakeholder in this process.
- 6.150 It is highly regrettable that Bexley Council, through Mr Niblett, should have sought to suggest that Network Rail's position was something other than that set out by Barbara Barnes by deliberately omitting a paragraph from an e-mail he solicited from Paul Harwood (LBB3.4, Appendix A). The full version (PDL/6.21) casts a quite different complexion on the contents of that e-mail than he sought to give it.

Operational capacity

- 6.151 In response to a request from the Inspector, Mr Gallop produced a note detailing the rail operations on the site. This demonstrates that Howbury Park would have the capacity to handle the nine intermodal trains (and three conventional trains) per day which are forecast to use the facility (PDL/6.17).

Breakeven Distances

- 6.152 Like other evidence produced by the Council, Mr Niblett's evidence on breakeven distances relied on the theoretical and not the actual. Moreover, the spreadsheets and explanation of the methodology supporting Mr Niblett's breakeven figure are incomprehensible. ProLogis prefer the real world and the evidence is that there are a number of examples of freight operators running rail services on routes that are below

Mr Niblett's so called "breakeven" distance, including one service on a route only 57km long (PDL/6.19).

- 6.153 There is also a common sense point to be made in relation to this issue and the other rail issues namely, would ProLogis really be investing tens of millions of pounds in developing a SRFI unless it was confident that it would be attractive to occupiers wishing to use rail? At the inquiry Mr Woodbridge gave evidence as to the types of occupiers that were likely to be attracted to Howbury Park (see para 6.127 above). Both he and Mr Gallop stressed the increasing significance of the corporate social responsibility agenda. These, together with worsening road congestion, the ageing profile of HGV drivers, escalating fuel costs, and the possibility of road pricing all demonstrate that the equation is going one way – in favour of rail freight.

The Rail Incentive Package

- 6.154 ProLogis is confident that Howbury Park would be attractive to rail freight users. Nonetheless, concerns were expressed by Bexley Council that the occupiers of the units would not use the rail facilities. The point was put in colourful language by their witness dealing with CO₂ emissions, Mr Fox, in an e-mail to Melanie Hobson (AEA) which betrays a good deal about the Council officer's thinking on the subject - "*In order to squeeze the proposal through the planning process, it has been billed as a rail freight interchange.*" (LBB7.5, e-mail dated 20 March 2007).
- 6.155 However, the key to making the proposed development a successful SRFI is not, as the Council suggest, to shackle and constrain its operation by imposing restrictive conditions and penalties if rail share targets are not met ("sticks") but to provide flexibility and incentives ("carrots") to encourage and ensure the take up of the rail facilities.
- 6.156 The carrots being offered by ProLogis have rightly been described as unprecedented and are detailed in the planning obligation. They comprise a suite of measures designed to encourage occupiers to use rail including initial lift subsidies, the funding of a rail promotion officer and ensuring the rail infrastructure to be provided remains accessible and available (PDL/0.15, Schedule 1, paras 1.1 to 1.14).
- 6.157 In contrast, the only effect of sticks is likely to be a commercially unviable and unlettable development as Mr Woodbridge explained by reference to practical and real issues concerning pricing, resilience, contract lengths/alienation and investment value.

Other benefits

Sustainability

- 6.158 There are two aspects to the sustainability of the proposed development that ProLogis would particularly draw attention to. First, the design of the buildings incorporates a considerable number of features that would reduce the amount of embedded energy, their energy requirements and impact on the environment (PDL/10.1). Examples are the lower height of the buildings, the use of photovoltaic cells and green roofs. As a

consequence 30% less steel would be required in the construction of the warehouses, the energy demand for the proposed buildings would be 85% of a good practice typical UK distribution warehouse, 10% of its energy requirements would come from renewable sources, and rainwater would be collected and recovered for use within the development. All these features and the resulting carbon savings are welcomed by the Mayor (CD1.7, paras 50 to 54) and not criticised by Bexley Council (CD1.1, pp88-89).

- 6.159 Critically, the Government's and the strategic planning authorities' sustainability agenda would also be supported by encouraging the move of freight from road to rail (see above).

Socio-Economic, Regeneration and Other Benefits

- 6.160 There is no dispute that Howbury Park would bring a substantial number of jobs to an area which shows signs of deprivation (PDL/1.1, paras 7.50 to 7.74). This is a factor which evidently would be welcomed by many of the residents (SGCF7).
- 6.161 The development would bring other significant environmental and biodiversity benefits. In particular, the majority of the Crayford Marshes (50ha) would be put into trust together with a significant financial endowment (circa. £2million) to ensure their long term preservation and maintenance. The benefits of this are recognised by the Mayor of London, Natural England, the London Wildlife Trust and Bexley Council. The scheme would also result in the restoration and beneficial use of the tithe barn and the creation of new areas of habitat within the appeal site, including an inter-tidal pond.
- 6.162 Bexley Council's response to this is that Howbury Park is not needed for regeneration to occur - there are lots of sites for warehousing in the Borough. However, the number of additional jobs created in the last few years has been modest (LBB1.4, para 4.5) and a fraction of those that Howbury Park would generate. The fact that there is a very significant surplus of (non rail-linked) warehousing sites in the area (a 20 year supply in south-east London – see LBB1.6) is nothing to the point.

Conditions and Unilateral Undertakings

- 6.163 The suggested conditions (PDL/0.13) reflect the comments of both the Inspector and the parties (including the comments made by Slade Green Community Forum) where agreed by ProLogis and where they satisfy the tests of Circular 11/95. The S106 Obligations are in the form of Unilateral Undertakings and divided into Highway and Non Highway Undertakings (PDL/0.14 and 0.15 respectively). The Highway Undertakings are agreed with the Highways Agency, TfL and Kent County Council. The Non Highway Undertakings include the rail incentive package agreed with and endorsed by TfL and Kent County Council (KCC8, para 11).

Overall Conclusion

- 6.164 ProLogis's keynote message is simple and clear. Here is a unique combination of circumstances in which there is a detailed policy framework which requires the provision of three or four SRFIs around London and lays the ground for Howbury Park; where all the strategic authorities and consultees either support the proposals (e.g. the Mayor of London, Kent County Council and Network Rail) or have withdrawn their objections (e.g. the Highways Agency and the Environment Agency); where the world's leading provider of logistics floorspace would facilitate a massive investment and vote of confidence in delivering rail freight, the success of which would send a vitally important message to the logistics industry that the Government takes seriously the delivery of its core ambition to transfer freight from road to rail.
- 6.165 It is time to recognise that if this unprecedented set of circumstances is not considered sufficient to enable the grant of planning permission for this SRFI, then the practical reality is that the *London Plan* strategy to deliver SRFIs would be dealt a fatal blow.
- 6.166 Granting permission for the Howbury Park proposals is the right thing to do, it makes sense and the benefits of doing so would more than outweigh the impacts.
- 6.167 It is time to make a seminal decision to deliver a cutting-edge development that would make a huge and positive difference to rail freight logistics. ProLogis accordingly ask the Inspector to recommend and the Secretary of State to allow the appeals.

7. THE CASE FOR BEXLEY COUNCIL

Introduction

- 7.1 The hallmark of a good case in planning is one that follows weighty mainstream national planning policy and the adopted development plan. The hallmark of a bad case is one which starts with a document produced by non-policymakers who are set up for an entirely different purpose and does not get much further. The appeal proposal, if allowed, would do serious harm to one of the most fundamental planning policies that is as important now as it was at the inception of the planning system in the 1940s. The Green Belt is protected at all levels of policy. There is no national planning policy in favour of the proposal and it is contrary to the development plan. The policy on Strategic Rail Freight Interchanges (SRFIs) in the emerging London Plan will be discussed at the forthcoming Examination in Public. Clearly, before examination the policy can attract very limited weight. All levels of policy are against putting warehouses which are not needed on this greenfield Green Belt site.
- 7.2 That is the contrast between a good planning case and a bad one. Looking at the contrast between harm and benefits, the position is stark. The appeal proposal would inflict very significant, certain and irreversible harm. By contrast, what it would offer is much less significant, unsecured and uncertain and could largely be provided on a nearby brownfield site which is all ready to go and awaiting customers.
- 7.3 The Secretary of State has already reached a clear judgment on where the balance lies between certain destruction of the Green Belt and unsecured, uncertain, possible benefits from increasing rail freight in London in the London International Freight Exchange (LIFE) decision (CD8.1). The Appellant's position on this important decision of the Secretary of State is bizarre. First, they tried to ignore it. Second, they tried to say a lot has moved on since the decision. But with Green Belt policy the same and Government policy on freight the same, they tried to rely on some shift in the Strategic Rail Authority's (SRA's) position as justifying it. That is unlikely to be a good point, but in any event the Secretary of State took into account the Strategic Rail Authority's (SRA's) freight strategy in the LIFE decision. They then tried to rely on the London Plan. However, the adopted plan seeks any site that is promoted to be wholly or substantially on previously developed land. Then they argued that the LIFE decision of the Secretary of State is putting off similar developments. But if it puts off similar developments, with massive destruction of the Green Belt in exchange for paltry benefits, as judged by the Secretary of State, is that a bad thing? In any event, the development industry is known to be promoting sites in Kent and at Radlett. In addition there are suggestions of a site serving London in the East of England Plan in addition to Shellhaven and of Colnbrook coming back.
- 7.4 What is argued is that the lion's share of this Green Belt application site should be lost to provide warehouses. This is in the context of no need in the identified adopted plan policies for warehouses. In fact, overall industrial land in Bexley is being encouraged as, a matter of policy, to be transferred to other uses. So what is the stated reason for this? ProLogis's case is that the warehouses, which would have a gross floor area of

198,000m², need to be built because some of the goods to them may or may not arrive and depart by rail. The need case falls wholly short of what would be required in order to do irreparable permanent damage to the Green Belt in Bexley.

Green Belt Policy

- 7.5 The Government attaches great importance to Green Belts which have now been an essential element of planning policy for some five decades (*PPG2*, para 1.1). The development control policies set out in 1955 remain valid today with very little alteration (*ibid*). Thus Green Belt policy is one of the most successful and long standing planning policies. It has assisted in preventing English cities sprawling with disfigured urban fringes with severe urban deprivation as has occurred in so many other parts of the world. In the recent White Paper the Government unsurprisingly stated (para 7.62):

“The Government is committed to the principles of the Green Belt and will make no fundamental change to planning policy as set out in PPG2.”

- 7.6 The fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open (*PPG2*, para 1.4). The essential characteristic of Green Belts is their permanence and their protection must be maintained as far as can be seen ahead (*ibid*, para 2.1). This part of the Green Belt has been maintained and kept open since the inception of the planning system, despite it being a vastly valuable site to develop and there being numerous attempts to develop it under different pretexts.
- 7.7 To be allowed to develop inappropriate development in the Green Belt is, of course, an extremely stringent test to pass. The harm by inappropriateness and any other harm must be clearly outweighed by other considerations. The Secretary of State will attach considerable weight to the harm to the Green Belt (*PPG2*, para 3.2).

Regional Policy

- 7.8 At the regional level, *London Plan* policy 3D.8 follows the stringent test in national guidance. The plan notes the valuable role that the Green Belt performs in preventing urban sprawl. It notes that the Green Belt is a permanent feature. It also states that the quality of land within the Green Belt is not a reason for excluding land from the Green Belt or allowing development (CD3.3, para 3.247).

Local Policy on Green Belt

- 7.9 The *Bexley Unitary Development Plan* (UDP) describes the Green Belt as a “*long standing and essential element of planning policy to which the Government has attached great importance*” (CD3.5, para 4.35). The functions of the Green Belt set out in the *UDP* are to check unrestricted sprawl, to prevent the merging of settlements, to safeguard an area of mainly open countryside around London for the enjoyment of its residents and to assist in urban regeneration. In Bexley the *UDP* states that the Green Belt is “*particularly important in maintaining the break between the outer edge of London’s built-up area and the settlements of Joyce Green, Dartford ..*” (*ibid*). The

Government's intention is noted as being *"to strictly restrain development within the Green Belt"* (ibid) and this is reflected in policies G12 and ENV2 which create a strong presumption against permitting the construction of new buildings in the Green Belt and set out the very special circumstances test.

The Particular Vulnerability of the Green Belt in Bexley

- 7.10 In the vicinity of the appeal site, the Green Belt is particularly vulnerable, narrow and in need of protection. It is narrow by comparison to the extent of the Green Belt to the north and south (LBB1.3, Appendix 8A). It is one of the narrowest areas around London. PDL1/13 shows that this part of the London Green Belt is literally the most vulnerable shown. It is also narrow by reference to what the Government seek for Green Belts. PPG2, para 2.9 states:

"wherever practicable a Green Belt should be several miles wide, so as to ensure an appreciable open zone all round the built-up area concerned."

- 7.11 If the proposed development proceeds, the remaining section of Green Belt would be only 1,100m wide, measured from east to west. In the north to south direction Slade Green would be almost joined up with Dartford (LBB1.3, Appendix 8). The proposal would thus cause a large part of the Green Belt in a most vulnerable location to vanish forever.

- 7.12 An attempt was made to take this land out of the Green Belt at a previous local plan inquiry in 1983, which the Inspector rejected. That Inspector concluded that the boundaries as currently drawn along the industrial area to the south are firm (LBB1.3, Appendix 2, para 1.58). He concluded that (ibid, paras 1.63 and 1.65):

"Of overriding and fundamental importance however, is the matter of the Green Belt....."

However the Green Belt is very much concerned at Slade Green, and to my mind development on the scale indicated would noticeably alter its characteristic open nature and effectiveness."

- 7.13 He accordingly went on to recommend the deletion of this proposed change to the Green Belt.

- 7.14 A further appeal was determined by the Secretary of State in 1988. There, the Inspector concluded that development of this land would seriously weaken the Green Belt function in this particular area. He stated (LBB1.3, Appendix 3, p24):

"In contrast south of Moat Lane the Green Belt wedge is at its narrowest and the open space concept at its most vulnerable. Its further reduction... would in my opinion seriously weaken the Green Belt function in this particular area.

.....development of... the southern area would be sufficiently damaging to the Green Belt function in the area for the Proposal to be rejected."

- 7.15 The Inspector's report and judgments were accepted by the Secretary of State both as to his findings of fact and his conclusions drawn therefrom (ibid, para 5).
- 7.16 Thus the site comprises a heavily protected area which has been successfully and correctly protected from development since the Second World War in the public interest. Twice inspectors have come to the rescue of this land south of Moat Lane to continue its protection.

Harm to the Green Belt

- 7.17 The appeal proposals, by developing a very high, very prominent, giant series of warehouses and associated rail infrastructure on the site, would clearly conflict with the fundamental aim of Green Belt policy of preventing urban sprawl by keeping land permanently open. In fact it was revealing that, following a question from the Inspector, no-one at the inquiry could find a building, or series of buildings, as large to view in London. Building A, if permitted, would be the largest warehouse in London. In the LIFE inquiry, the Inspector considered descriptions of the impact of the buildings proposed there as being "huge" or "massive" as "apt" (CD8.1, para 13.115). That would also be the case here.
- 7.18 The proposal would severely compromise the purposes of the Green Belt.

Effect on Openness

- 7.19 There is no dispute that the landscape of the site is sensitive. The *Managing the Marshes: Landscape Character Assessment* identifies the site as being within character area CA3 - higher grazing land in keeping with CCA81 (CD5.2, Section 6). It notes (ibid, para 3.2):

"The marshes..... demonstrate many of the key characteristics outlined in the Countryside Agency's document, as follows

- *Extensive open spaces, dominated by the sky, in a predominantly flat, low lying landscape."*

- 7.20 This description is picked up in *Managing the Marshes* (CD5.1, para 4.3). In cross-examination ProLogis's landscape witness, Mr Chinn, agreed that the character of extensive open spaces and low lying landscape is particularly sensitive to development.
- 7.21 In addition to the sensitivity derived from the character of the land, the site is on a plinth. On three sides, there is higher ground at a distance from which it is possible to look across the site (ES, Volume 5a, Figure B). The topography of the site adds to its sensitivity and would serve to exacerbate the effect of development.
- 7.22 Bexley Council's landscape witness, Mr Huskisson, accurately assessed the scale of the buildings. His conclusions on the effect on openness were as follows (LBB2.2, para 8.2):

“This wall of development which, discounting the cable stay roof structure and floodlighting would be about 3.5m higher than the railway depot building, will limit inter-visibility and be a dominant and, from many locations, overpowering form”

- 7.23 He categorised the impact on openness as *“materially adverse, locally very damaging and irreversible”* (LBB2.2, para 8.11).
- 7.24 The views of the 3D model illustrate just how disproportionate in scale the giant sheds would be with existing development in Slade Green (LBB2.3, Drg DH2).
- 7.25 The photomontage from viewpoint 9, on the marshes near to the River Darent, shows how the current perception of depth and expansiveness of views would be lost (CD7.10, Fig B.7A). Mr Huskisson noted that if one were to continue to walk from that point back towards Slade Green along Moat Lane the open expansive view would be replaced by a wall of development. In the Environmental Statement (ES) Mr Chinn concluded that the effect from viewpoint 9 would be substantial, based on his original analysis (ES, Volume 5a, Figure B31). Subsequently the photomontages were corrected to remove the “tilt” (PDL/3.6, Viewpoint 9) and additional screening was introduced at the north-east corner of the site. Notwithstanding this, the Supplementary ES acknowledges that the impact would remain substantial and adverse.
- 7.26 From viewpoints to the north of the site, on the edge of housing in Slade Green, Mr Huskisson’s evidence was that the development would again cause a substantial loss of openness. An open view would be replaced with one of industrial warehouses (LBB2.3, Drg DH4). He classified the impact as at “the top end of substantial”. Mr Chinn accepted that the impact would be substantial in year 1 (ES, Volume 4, Chapter B, p44).
- 7.27 It stands to reason that the closer views are also very adversely affected in terms of openness. From viewpoint 2, close to Howbury Grange, the corrected photomontage reveals that these high sensitivity long views would be shut off by a wall of development 100m or so away from the viewer (PDL/3.6, Viewpoint2). Although the ES described the impact as moderate, Mr Chinn did not stand by that and in evidence with the benefit of the new montages described the development as having substantial impact. Mitigation would not reduce effect on openness.
- 7.28 In summary Mr Chinn having done the visual assessment albeit on the basis of montages which underplayed the development concluded *“it will from the majority of viewpoints have a substantial impact”* (PDL/3.1, para 9.1). Mr Huskisson’s position is that, from many viewpoints, including those to the south and east of the site, the visual impact would be more severe than assessed by Mr Chinn (LBB2.11 and CD7.10).
- 7.29 As to mitigation for loss of openness, the correct position is that openness cannot be reinstated or mitigated by planting (LBB2.2, para 8.12). This is a matter which the

LIFE Inspector addressed noting that “*Hiding urban development from view does not make it acceptable.*” (CD8.1, para 13.112).

- 7.30 Thus in terms of openness the clear conclusion is that there would be substantial harm to openness which cannot be mitigated. This was accepted in cross-examination by ProLogis’s planning witness, Mr Gartland.
- 7.31 The trust land provided does not in any way mitigate for the destruction of 64ha of Green Belt. It is Green Belt land in its own right and a prospective SSSI so the prospects of developing it are remote. It is currently managed under a S106 Agreement, albeit for a shorter period.

Conflict with the Purposes of the Green Belt

To Prevent Urban Sprawl

- 7.32 The first purpose of the Green Belt with which there is clear conflict is that designed to prevent unrestricted urban sprawl of large built up areas. It is accepted by all that this massive development in the Green Belt is urban sprawl of London. Indeed, Mr Gartland said (PDL/1.1, para 7.5):

“The proposals do, of course, involve development on land beyond the existing urban boundary of Slade Green and as concluded by the GLA in their Stage II report will result in urban sprawl.”

- 7.33 Having concluded that the proposal would result in London sprawling by a further 64ha the point that Mr Gartland went on to take was that the boundaries may be better and so it is all okay. The point has no merit.
- 7.34 The reality is that south of Moat Lane the Green Belt boundary has been fixed since the Kent Development Plan of 1958. It has been maintained without loss. It is a boundary that the local plan inspector described as “*firm*”. The idea that a boundary to one side of the access road is really preferable to the one that has survived for 40 years is absurd; if anything it would help to cause the spread of development to the other side of the access road.

To Prevent Neighbouring Towns Merging

- 7.35 Paragraph 4.35 of the *Bexley UDP* explains that the Green Belt in the Borough is particularly important in maintaining the break between the outer edge of London and Joyce Green and Dartford.
- 7.36 This site is beside Slade Green and the continuous development of London on the one side and Dartford and Joyce Green on the other. It clearly serves an important function of preventing London merging with these settlements.

To Assist in Safeguarding the Countryside from Encroachment

- 7.37 It is accepted by all, including ProLogis's landscape witness, that the proposed development would be encroachment in the countryside (PDL/3.1, para 8.8).

To Assist in Urban Regeneration

- 7.38 Government policy, the *London Plan* and the *Bexley UDP* all seek to put development of warehouses on brownfield sites and in industrial areas (see paras 7.48 to 7.52 below). There is a surplus of industrial land in Bexley. Allowing warehouse development on a greenfield site would undermine the regeneration of existing brownfield sites.

Landmark Projects and Regional Park

- 7.39 *PPG2*, paragraph 1.7 states:

"The purposes of including land in Green Belts are of paramount importance to their continued protection, and should take precedence over land use objectives."

- 7.40 However, it should not be forgotten that the Government attribute considerable importance to improving the Thames Gateway's environment. The DCLG's *Thames Gateway Interim Plan* provides that (LBB2.3, Appendix 2):

"5.2 We intend to do that by transforming the environment in a way that creates a new identity for the Gateway as the Thames Gateway Parklands....."

5.4 To make this a reality, we will create a Parklands Framework that starts from existing environmental assets and the Green Grid plans....."

5.5.....Communities & Local Government will provide co-ordination and the team will need to include a range of organisations with the right spread of expertise. The team will also need to consider what sources of funding are available and what the priorities are for spending....."

- 7.41 The Government are thus alive to the importance of the environment to the success of the Thames Gateway and the hopes they have for it. On the site they have in mind a landmark project in their Thames Gateway Parklands (ibid, Figure in para 5.3).

- 7.42 The Mayor of London's *Consultation Draft East London Green Grid Framework* notates the site as an area for a Regional Park Opportunity (LBB2.3, Appendix 1). In a similar vein, Bexley Council's vision and strategy document *Managing the Marshes* states (CD5.1, p6):

"Together with the Lea Valley and Cross River Park, the Crayford/Dartford marshes and Rainham Marshare identified as one of three major open space opportunities in the London Thames Gateway with strategic importance."

- 7.43 Following this, the text confirms that “*The marshes are viewed as having the potential to be flagship multifunctional sites ..*” (ibid, p7).
- 7.44 ProLogis argue that the funding is not yet in place and the initiatives will fail. But, if the Green Belt is protected in the long term and permanently it will assist in bringing about these plans. Landowners will become more realistic about development potential and the plans will have the chance to come to fruition.
- 7.45 Alongside the policy arguments, it should be remembered that the people of Slade Green, and the future generations in this part of the Gateway who seek relief from urban development, will have an appreciation and love of their local environment in an area where it is rare to have such an expanse of open green land with such potential. As Mr Hillman put it for Slade Green Community Forum, the community would suffer a loss of amenity in a place where they go to get away from their problems, to think or just relax. To the local people, and those that do and will enjoy this landscape, this relief from endless development would be destroyed permanently and irrevocably by the proposed SRFI.

Planning Policy

Warehousing

- 7.46 The major part of the development proposed (over 60ha) would comprise warehouses and associated development. It is thus relevant to see whether the warehouses are themselves contrary to policy. The short answer is that at all levels of policy warehouses in this area are not needed in planning terms, because other uses are needed more, and they are certainly not wanted on a greenfield Green Belt site.
- 7.47 The warehouses on the site would be worth in excess of £200million to ProLogis. They would clearly cost vastly less to build, even allowing for the land acquisition costs, accepted by ProLogis’s company witness, Mr Woodbridge, to be £42million (less an ability to deduct £5m for S106 Obligations). The construction costs are estimated at £73million (ES, Volume 4, Chapter J, para 3.3).

National Policy

- 7.48 It is an important theme of Government policy to make prudent use of natural resources which of course involves using brownfield land rather than using non-renewable greenfield land (*PPSI*, paras 4, 24 and 27(viii)). This is reflected in *PPG4* which seeks the re-use of land “*once used for industrial purposes but now under-used or vacant*”.
- 7.49 Thus Government policy favours using brownfield land in preference to greenfield for industrial purposes. For Green Belt land the presumption against its use in preference to brownfield land is even stronger.

Regional Policy

- 7.50 It is the Strategic Employment Locations that the *London Plan* treats as London's reservoir of industrial capacity. Outside of those areas the *London Plan* seeks the release of surplus land for other uses (CD3.3, p92 and policy 3B.5). The appeal site is not a Strategic Employment Location (ibid, list at Annex 2).
- 7.51 At the London level the decline in demand for industrial land is sufficient to justify a release of 30-50ha per annum (CD6.4, para 5.5). The draft SPG goes on to advise boroughs in the position of Bexley to have policies for the managed release of industrial land (ibid pp15-16). The Borough of Bexley is in the category of boroughs which it recommends to have the most permissive approach to transfer - "*Managed Transfer*". Thus the guidance is recommending that Bexley should have a policy allowing managed release of some of its current industrial land. It most certainly is not recommending having more industrial land in the Green Belt. The amount of industrial land that it is suggested is released in Bexley between 2001 and 2016 is 25-26ha (CD3.8, p37).

The Bexley UDP

- 7.52 As part of the careful preparation and scrutiny of the *UDP* a review of the supply of industrial land was performed. This shows that the land allocated and available for industrial use is (CD3.5, para 4.17):

"sufficient to meet the needs of industry and commerce in the Borough"

Freight Interchanges

- 7.53 It is telling that the Appellant's evidence failed to consider at all the Government's policy framework on freight set out in *Sustainable Distribution: A Strategy*. This document is given high billing in *PPG13* where in the opening lines on freight it says (para 45)

"The Government has set out its policy framework on freight in its 'Sustainable Distribution Strategy'"

- 7.54 The extant Government policy is set out in *Sustainable Distribution: A Strategy*. It is a document produced by the DETR, expressly referred to as setting out the Government's policy in *PPG13*, and with a foreword by the Secretary of State. This national statement of Government policy stands in stark contrast to documents produced by organisations set up for a particular purpose such as promoting the use of the railway.
- 7.55 Under the heading "*A Strategy for Major Freight Interchanges*" the document advises (CD4.3, para 5.17):

"The framework which the Government proposes has four key objectives:

.....to encourage full and efficient utilisation of existing interchange facilities in preference to expansion in cases where suitable spare capacity exists or can be created, for example by improving access or by encouraging regeneration of under-used sites to minimise new land take”.

7.56 Thus a very familiar and very important theme of Government policy, namely to make prudent use of natural resources, which includes using brownfield land in preference to using greenfield land, is applied to major freight interchanges. *PPSI* makes it clear that the loss of greenfield land is a matter the Government treats seriously (see para 7.48 above). It is also reflected in the Government’s housing policy.

7.57 In the LIFE report and decision the Inspector and Secretary of State took proper account of extant Government guidance on freight. The Inspector reported the following, which the Secretary of State accepted (CD8.1, IR para 13.377):

“One of the objectives in the Government guidance in “Sustainable Distribution – A Strategy” is to encourage full use of existing interchanges to minimise new land take. In my view the LIFE proposal would not meet this objective and I see that as a distinct disadvantage, especially bearing in mind the general desirability of making the most effective use of urban land before allowing development in the countryside. The LIFE scheme is clearly not directly comparable with the Willesden terminal, but there would be some overlap of function and catchment area; and to my mind it would not be right to encourage development in the Green Belt while land designated for freight exchange use at Willesden is so under-used that the operator has found it necessary to seek other short-term occupiers.”

7.58 Substitute Howbury Park for LIFE and Barking for Willesden and the same logic applies. Thus the whole central plank of Government guidance applied to major freight interchanges in *Sustainable Distribution: A Strategy* points quite clearly away from allowing development of a greenfield Green Belt site when there is a brownfield site already built which overlaps in function and catchment area. At Howbury Park, the overlap would be with Barking, which is an intermodal facility 14 miles away by road. It has the same intermodal capacity as proposed at Howbury Park, where ProLogis predict that three quarters of the trains will be intermodal. The proposal to provide warehouses on the site, and the limited amount of traffic that would go to them, does not undermine this conclusion. In any event the Inspector at LIFE and the Secretary of State had that case made to them and still thought that intermodal only facilities were highly relevant. The SRA policy supporting the Colnbrook and two or three major new facilities to serve the London region was in any event considered by the Secretary of State in the LIFE decision (CD8.1, SoS letter, para 15 and CD4.8, p25).

7.59 Mr Gartland had nothing to say in either cross-examination or re-examination to undermine the application of this policy.

The Absence of National Planning Policies in Favour of SRFIs

- 7.60 It is important to realise the critical differences between the SRA documents and National Planning Policy.
- 7.61 It was accepted by Mr Gartland in cross-examination that the SRA do not give planning guidance and do not have to balance harm to the Green Belt for example with train matters. They said in the response to the application that (letter of 25 June 2005 to Bexley Council, penultimate paragraph):
- “The SRA has looked only at rail policy considerations and presents no view on other land use planning issues. These are properly to be reviewed by planning authority.”*
- 7.62 The SRA was set up as a non-departmental body, sponsored by the Department for Transport, and their purposes were to *“Promote the use of the railway network for the carriage of passengers and goods”* (CD4.10, para 2.1). Their functions did not include promoting Government policies, let alone Government planning policies. That was a proposition that Mr Gartland replied “naturally not” to. It is thus clear that SRA documents should not be treated as Government policy.
- 7.63 Further weight to this conclusion comes from the SRA’s *Strategic Rail Freight Interchange Policy* (CD4.10). Paragraph 3.1 of the document records that the SRA are a body that were required to have regard to Government policies. Accordingly they clearly did not make Government policy. The SRA’s *Strategic Rail Freight Interchange Policy* clearly did not start its life as national Government planning policy, or indeed any other form of national policy. Neither has it somehow been transformed since.
- 7.64 The Department of Transport’s letter of 14 October 2005 (CD4.14) says the Department will retain the document on the website. This did not elevate its status, as Mr Gartland accepted. The document did not thereby become something which it was not originally.
- 7.65 ProLogis’s case that the SRA’s *Strategic Rail Freight Interchange Policy* in some way became national transport policy in the Regional Planning Assessment is not to be found in any of their written proofs of evidence. It is an absurd proposition and Mr Gartland accepted in cross-examination that there was “No change in national policy as a result of [the policy contained in the *South Eastern Regional Planning Assessment for the railway* – CD4.5]”.
- 7.66 There are several points that would militate against the Regional Planning Assessment (CD4.5) being taken as Government national transport guidance.
- Firstly it is called a *“Regional Planning Assessment for the railway”*.
 - The purposes of the document are set out in paragraph 1.1. They do not include setting out Government transport policy.

- The RPA programme was commenced by the SRA (CD4.5, para 1.1) who did not have policy making functions (see above). It would be bizarre if in handing over the programme to the DfT it would assume a wholly different purpose of setting out national policy.
- In any event, the passages on which ProLogis rely are from Chapter 5 which is described in paragraph 1.3 as “*the baseline description of the RPA area and its transport networks, and the passenger rail and rail freight markets today*”.
- It is manifestly unlikely that Government would set out its new transport policy in the part of the RPA where the current baseline is being described.

7.67 The place in the document where Government policy is discussed is in Chapter 7 where there is a heading of “*Planning Objectives*”.

7.68 To build so much of the case on the SRA document as ProLogis has done, whilst ignoring real Government planning guidance, is to build a case on shaky foundations. This is especially so as much of even the SRA document has been ignored; namely paragraph 7.11 which refers to Government advice in *Sustainable Distribution*.

7.69 In this regard it is relevant also to note the origin of the three to four SRFI which the SRA argue for. The SRA tell us that the origin of the requirement is the Radical Study (CD4.10, para 6.10). This study was done before the SRA’s 2001 *Freight Strategy* was published and that is why the 2001 *Freight Strategy* had a very similar requirement, namely two or three facilities in addition to Colnbrook (CD4.8, p25). Appendix C of the SRA’s *Freight Strategy* has further information on the Radical Study. In that it is said that the “*rail costs are adjusted to force the modal shift forecast by the SRA*” - i.e. the model is not forecasting the future proportion of goods to be carried by rail; rather, it is adjusted to make it come up with an outcome that fits other forecasts. Appendix B further advised that the freight model used to inform the target for growth was not capacity constrained and worked on a “*series of actions that could be taken by Government or the rail industry to improve the rail offer.*” In any event it was a point that was before the Secretary of State who expressly considered the SRA’s *Freight Strategy* in the LIFE decision (see para 7.58 above).

Very Special Circumstances

7.70 It is for the applicant to show very special circumstances. This is set out in *PPG2* and in numerous legal authorities. Even when there was a presumption in favour of development, the Court of Appeal found that it was for the developer to prove their case *Pehrsson v Secretary of State 61 P & CR 266*. This is now enshrined in the words of *PPG2*, paragraph 3.2 which provides that:

“*It is for the applicant to show why permission should be granted.*”

7.71 Furthermore, the test is a stringent one. In the case of Chelmsford BC v First Secretary of State and Draper (LBB0.9), Mr Justice Sullivan set out some important points as to the meaning of the very special circumstances test.

“54 ... However, I do not accept.....that, if the decision taker concludes that a particular factor outweighs the harm to the Green Belt, that factor can therefore be described as a very special circumstance. To accept that submission would be to rewrite paragraphs 3.1 and 3.2 of PPG2, and to strip the words "except in very special circumstances" of any effective meaning.

...

57. The submission advanced on behalf of the first defendant strips very special circumstances of any independent objective meaning in paragraph 3.1, and effectively rewrites the second sentence in paragraph 3.2 as follows:

"Very special circumstances to justify inappropriate development will exist if the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations."

58. It is no accident that the second sentence in paragraph 3.2 is not worded in this way. The combined effect of paragraphs 3.1 and 3.2 is that, in order to justify inappropriate development in the Green Belt, (a) there must be circumstances which can reasonably be described not merely as special but as very special, and (b) the harm to the Green Belt by reason of inappropriateness and any other harm must be clearly outweighed by other considerations. Those other considerations must be capable of being reasonably described as very special circumstances. If they are capable of being so described, whether they are very special in the context of the particular case will be a matter for the decision maker's judgment.

59. It was open to those formulating Green Belt policy in PPG2 to formulate the guidance, omitting any reference to very special circumstances, as follows:

"Inappropriate development will not be permitted unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations."

They did not do so. Every aspect of the policy in paragraphs 3.1 and 3.2 must be given its full force and effect.

.....

61. The need to demonstrate very special circumstances to justify what would now be described as inappropriate development in the Green Belt goes back to the very first Central Government Policy Advice on Green Belts: Ministry of Housing and Local Government Circular 42/55. For nearly 50 years Central Government Policy has been that what would now be described as inappropriate

development should not be approved in the Green Belt "except in very special circumstances". Those words mean precisely what they say.

70 ... An approach which in effect defines very special circumstances as any circumstances which in the decision taker's view clearly outweigh the harm to the Green Belt, would potentially drive a coach and horses through Green Belt policy which, as PPG2 explains, has been an essential element of planning policy for some four (now nearly five) decades: see paragraph 1.1 of PPG2.

72 ... The Secretary of State may choose to depart from his policies, including those in PPG2; he may choose to publish revised policy guidance in relation to gypsy caravan sites in the Green Belt if the problem is perceived to be a more general one; but if he purports to determine an application in accordance with PPG2, he must abide by its terms. Accordingly, this application succeeds on ground (2) and the decision is quashed."

- 7.72 The justification the applicant gives in the case of Howbury Park must be scrutinised very carefully indeed. It is not for the local planning authority to show the absence of very special circumstances, but for the developer to prove them.
- 7.73 The justification that ProLogis makes for the inappropriate and damaging development on the marshes is related to providing some rail infrastructure and the possibility that some of the goods will arrive and depart by rail. Even at what is held up as the most successful comparator, the Daventry International Rail Freight Terminal (DIRFT) only a small percentage of the goods travel by rail (see paras 7.86 to 7.89 below). The Secretary of State has previously decided at LIFE, in the context of very similar planning policies¹ and very similar alleged benefits, that no very special circumstances exist. To take a different decision now would need the most careful of all justifications.
- 7.74 There is one matter that is of such little weight that it adds practically nothing to a very special circumstances case. This is the so-called regeneration point. It was conceded it did not amount to very special circumstances in its own right.
- 7.75 In virtually any part of the Green Belt, if it were developed for industrial purposes some jobs could be created. The amount of jobs that would arise at the SRFI are unexceptional; indeed they would be lower than most other employment areas of equivalent size. The very local wards are prayed in aid, but it is the Boroughs of Bexley, Greenwich and Dartford that are defined as the primary catchment area (PDL/1.3, Appendix 5, Table 5.3). It is quite obvious from any sensible analysis of the employment catchment area that most of the employees will not come from the local wards. Whilst Mr Gartland said in his proof that he considered the socio-economic and regeneration benefits "*in themselves to be very special circumstances*

¹ The *London Plan* is different but that provides that any site should be on wholly or substantially previously developed land (page 129). National Planning Policy is the same. Even SRA policy (which anyway has little weight) was to all intents and purposes the same from May 2001.

justifying the appeal proposals in the Green Belt” (PDL/1.1, para 7.51) he subsequently conceded that this was not the case.

7.76 As to the unemployment rate, the evidence is that in the primary catchment area unemployment is 3.0% by comparison with 3.2 % in London (PDL/1.3, Appendix 5, Table 5.3). To give much weight to this argument as amounting to some of the very special circumstances would, in the words of Mr Justice Sullivan, drive a coach and horses through the policy which has been a pillar of our system for five decades (see above).

7.77 As to the very special circumstances test, this was manifestly not misapplied in the LIFE case. In his decision the Secretary of State concluded that (CD8.1, SoS letter, para 19):

“these matters are not of sufficient weight as to constitute very special circumstances that would justify allowing inappropriate development in the Green Belt.”

7.78 On route to that decision the Secretary of State noted that there was no clear or compelling need for the LIFE development in the sense of a situation requiring relief and that some aspects of Argent’s “need” case were unconvincing (ibid, para 17). It cannot be that an unclear and unconvincing need case should be able to be very special circumstances and outweigh the massive harm that would be done to the Green Belt. To so conclude would amount to driving a coach and horses through Green Belt policy.

Noise

7.79 It has been agreed that there would be a serious adverse effect on Moat Lane Cottages. With windows open the World Health Organisation guideline level of 30dB inside a bedroom would be exceeded (CD7.5, para 4.15). Working on the basis of traffic generated by a 185,800m² development, and generation equivalent to rates observed at DIRFT as opposed to the higher rates that would come from application of the TRICS database, the noise increase at Nos 71 and 73 Moat Lane would be +3.2dB L_{Aeq} (ibid, p64).

7.80 As a general proposition it was agreed between the experts that if you increase the noise when existing baseline noise levels are above the guidelines, the effect is more serious than would be the case for an equivalent noise increase with a baseline level below the guideline (LBB6.2, paras 7.40 to 7.43). Accordingly, at Moat Lane and Moat Farm Cottages, where there are already exceedances of the WHO guidelines, the proposed development would make matters significantly worse. Whilst mitigation is proposed through the S106 Undertaking, there is no obligation on individuals to take up an offer of artificial ventilation and/or double glazing.

7.81 There is no dispute that the noise climate experienced by walkers on the currently tranquil footpath to the marshes would be radically altered by the HGVs which would use the access road which is proposed to run close to the northern boundary of the site.

- 7.82 The reality is that the design of these proposals was not noise centred. The sequence followed was not that set out in BS8233. There was no noise assessment of any other designs in 2004 before the design before the inquiry was formulated.
- 7.83 At the 95% confidence limits of the CONCAWE predictions, the rating level calculated using the BS4142 methodology would be 8dB. Accordingly, complaints would be likely at night (LBB6.1, paras 2.1.1 to 2.1.8).
- 7.84 Also, under conditions of low background noise, the BS4142 assessment is such that it would be close to complaints being likely, even without taking the 95% confidence levels of the CONCAWE predictions. At the Oak Road properties, the Statement of Common Ground sets out that there would be a night-time rating level of 2.3dB (CD7.5, p58). That calculation assumes a background of 38.3dB L_{A90} (ibid). But the background noise level measured by the Council's noise consultant, Mr Fiumicelli, on Saturday night was 29.6dB L_{A90} (ibid, p21). At the inquiry Mr Fiumicelli gave evidence that the propagation of noise from the development at Oak Road would be less affected by a change in wind direction than background noise, because the source would be closer. The difference between the background noise level measured on the Saturday night (29.6dB L_{A90}) and that assumed in the BS4142 assessment (38.3dB L_{A90}) is 8.7dB. If this is added to the rating level of 2.3dB, the rating level becomes 11dB (or 16.7dB if allowance is included for the CONCAWE confidence level). Thus if climatic conditions reduced the background noise levels, the rating level obtained would signify that complaints were likely at Oak Road and neighbouring properties.

The Rail Case

- 7.85 Bexley Council approaches ProLogis's rail case on the basis that it is this on which they hinge the very special circumstances which they must prove to justify the proposal.

The Warehouses

- 7.86 On any sensible view the warehouses at Howbury Park would not attract a high percentage of goods by rail. The best information on this was provided by Bexley's rail witness, Mr Niblett. Within the survey cordon at DIRFT¹, data analysis showed that 5.8% of goods to the warehouses were rail hauled (LBB3.2, paras 3.1.7 to 3.1.9). Thus in the area at DIRFT for which most data is available, only 5.8% of goods arrive or depart by rail, either by conventional wagons or through the intermodal terminal. Whilst it is true that not all the warehouses in the survey cordon are rail-linked, the majority, some 70,420m², are (PDL/6.25).
- 7.87 In comparison with Howbury Park, DIRFT has several advantages with regard to the attractiveness of the rail offer. It is W10 gauge, with relatively very free access to the mainline. It is a larger site with vastly more train storage. It is also in a much better

¹ Inspector's note. It is my understanding that the survey cordon at DIRFT covered "DIRFT South" – i.e. buildings 10 to 15 on PDL/6.25.

location to be a national distribution centre and attract traffic from the ports (LBB3.2, para 3.1.10).

- 7.88 At Howbury Park the volume of conventional wagon rail traffic is expected to be much smaller than that which would use the intermodal terminal. Thus if at DIRFT only 5.8% of the goods using the warehouses are rail hauled, it is reasonable to assume that this would be the upper limit for the proposed development at Howbury Park. In the Council's submission, such a small percentage could not amount to very special circumstances justifying inappropriate development in the Green Belt. Indeed, at LIFE the Secretary of State described a much larger percentage as being small. He said (CD8.1, para 16):

".. only a small proportion of goods (25%) in to and (8.2%) out of the warehouses would be carried by rail and a high proportion of the warehouse space would actually be used for road-to-road distribution purposes."

- 7.89 Another feature of the proposal is that the warehouses would not support the intermodal terminal to any great degree. At DIRFT 6% of the goods passing through the intermodal terminal go to or from the warehouses in the cordoned area (CD4.29, para 5.2.1). In the cordoned area at DIRFT the area of warehousing is of the order of 110,000m². Howbury Park would be bigger and, if it is assumed that the volume of goods increases pro rata to the area of warehouses, around 11% might be expected at Howbury Park. However, bearing in mind the large catchment area that an intermodal terminal at Howbury Park would serve (Planning Statement, Volume 3, Figures 11 and 12) and the substantial amount of warehousing in Bexley (670,000m²) and Barking (781,000m²), the percentage at Howbury Park is not likely to be higher than this.

The Intermodal Terminal

- 7.90 At Howbury Park some 75% of the rail use that is predicted is from the intermodal terminal and that has very little interplay with the warehouses. It is interesting to note that at LIFE it was argued that an integrated facility was required, with an intermodal terminal and warehousing on one site (CD8.1, Inspector's Report para 13.22). That view was rejected and both the Inspector and the Secretary of State viewed intermodal only facilities as relevant to policy set out in *Sustainable Distribution: A Strategy* and more generally to need. At Howbury Park, ProLogis said that the SRA did some analysis behind closed doors. No documents that they relied upon were presented. A case that is not presented or tested by a former body, who amongst other things chose to rely upon the most misleading of all figures on CO₂ and seemed to take very little cognisance of the Secretary of State's view in LIFE, should not be given great weight. This is especially the case as figures are now available showing what actually happens at DIRFT which were not available to or considered by the SRA.
- 7.91 The market is, in any event weak. This was illustrated by Mr Woodbridge's answers to the Inspector's questions on the subject. Mr Woodbridge said in his proof that ProLogis believes that *"changes in global trade and specifically the growth of goods from the Far East in the form of containerised traffic via ports underpin the use of rail for the movement of freight"* (PDL7.1, para 4.5). There is no dispute that this is by far

the largest market for intermodal freight in the UK but it is conspicuously unlikely to come to Howbury.

7.92 The amount of maritime containers at the moment dwarfs the amount of domestic intermodal by about 20 times (CD4.36, p124). That position of maritime being the main intermodal traffic will continue. If one looks at the bottom up forecast, which is the one based on evidence from the rail industry, it shows that maritime will continue to be vastly bigger by a factor of 8 times in 2014/15 (ibid, p35).

7.93 One of the key problems that would prevent Howbury Park capturing much of this port traffic is that the site is a relatively short distance from the UK's main ports by road. As Ove Arup put it (CD4.11, p60):

“The key problem is that the distance between London and the ports is not long enough for rail to compete with road.”

7.94 It is 130km from Howbury to Felixstowe and 160km to Southampton (Planning Statement, Volume 2, Rail Technical Report, Figure 4). Mr Niblett's evidence is that the breakeven distances is around 190km for port traffic and 400 to 500km for non port traffic (LBB3.2, paras 3.3.2 and 3.3.3). These were not criticised in the evidence of ProLogis's rail witness, Mr Gallop and no rival figures were supported by him.

7.95 Furthermore, his analysis accords with what actually happens in the real world. In the rail statement accompanying the planning application, ProLogis gave two examples of intermodal services that run at shorter distances than Mr Niblett's breakeven calculation would suggest is viable. These were Southampton to Barking and Thamesport to Willesden (Planning Statement, Volume 2, Rail Technical Report, para 4.21). But Mr Gallop accepted that both have subsequently ceased to run. As to the new short services that Mr Gallop put in the day before he gave evidence (PDL/6.19), they do not show a materially different position. Mr Gallop was unable to confirm or otherwise whether the very short service from Grangemouth to Elderslie is linked in with a longer service from DIRFT. The Immingham to Selby service is conventional, not intermodal traffic and thus not relevant. It was accepted that the Wilton to Leeds service had ceased. As to the Southampton to Wentloog service, the distance by road is 137 miles (219km) according to the AA route planner, and the 106 mile (171km) route assumed by Mr Gallop, whilst available, is not recommended. Thus the shortest intermodal service that is known to be running, that does not connect with another service, is from a port to a destination 171/219km away. This confirms Mr Niblett's view that in general goods would not be transported by rail for the short distances from Southampton and Felixstowe/Harwich to Howbury. Shellhaven, of course, would be even closer to Howbury Park than either Southampton or Felixstowe/Harwich.

7.96 This conclusion also is consistent with the average distances travelled by intermodal rail traffic which can be derived from data in the Route Utilisation Study (RUS) as 460km, most of it is either to or from a port (CD4.36, p19 – 4,000/8.7).

- 7.97 The gauge disadvantages of the Howbury Park site are also palpable. The RUS predicts that by 2023 68% of containers at deep sea ports, which is and will be the bulk of intermodal traffic, will be “high cube” 9ft 6in high boxes (CD4.36, pp 58 and 59). High cube container wagons require W10 gauge.
- 7.98 What ProLogis tried to rely upon was a low platform wagon option in their proofs and notes. But would the rail industry be spending vast sums of money upgrading to W10 if there was such an easy solution? Clearly not. When pushed Mr Gallop acknowledged that, if there was no other alternative, low platform wagons would be the solution.
- 7.99 It is quite obvious that Network Rail have considered other solutions, but regard them as inferior. They say in the RUS on the topic of low platform wagon options that (CD4.15, p61):
- “this reduction in productivity efficiency explains why freight train operators have not invested in significant numbers of well wagons and favour gauge clearance....”*
- 7.100 The routes to the major ports in terms of volumes, namely the Haven ports and Southampton, are either already cleared to W10 gauge, or doing so is the highest priority.
- 7.101 Tellingly, only 4% of the intermodal wagon fleet can carry 9ft 6in boxes on W8 gauge (Planning Statement, Volume 2, Rail Technical Report, Table 2). But none of these wagons are currently being made and each type has shortcomings (LBB6.4, paras 6.1.4 to 6.1.7). The RUS confirms that the “lowliner” wagons are *“presently more expensive to purchase and maintain”* (CD4.15, p62). With wagons generally lasting around 20 years in the view of Network Rail (CD4.15, p62), their use as a long term solution for Howbury Park would not be attractive.
- 7.102 The reality is that Network Rail would not be putting forward very expensive gauge enhancement, if a low platform wagon solution were better. They put forward Nuneaton to Peterborough at a cost of £132.8 million as being easily justified in terms of net present value (CD4.15, p77). Also Southampton to the West Coast Main Line at a cost of £61million (ibid, p79).
- 7.103 For all the above reasons it can be concluded that port traffic is unlikely to come to Howbury Park.

European Traffic

- 7.104 ProLogis’s need case also relies on three trains coming from Europe to Howbury Park. In this connection the conclusions of the LIFE Inspector, which were endorsed by the Secretary of State, repay close inspection. They were prescient. He did not think that it was likely that costs would reduce through the tunnel (CD8.15 Inspector’s Report, para 13.32 et seq). This was accepted by the Secretary of State.

- 7.105 The reality of what has occurred has born the Inspector out to be realistic about European freight. In fact international rail freight has halved between 2000 and 2005 (CD4.36, p19). That was before the charges increased substantially in January 2007, which caused the intermodal train at DIRFT to cease running in February, even though it was clearly going further than would be the case for a terminal at Howbury Park. The case that ProLogis put has not been adapted at all since they made their original case and they have not revised their forecasts down. They effectively assume that Eurotunnel will substantially reduce charges for freight trains through the tunnel, whereas the reality is that they have increased.
- 7.106 As to domestic traffic, the reality is that if there were demand, or need, for domestic intermodal freight services, these would have come to Willesden or Barking, or could do so in the future.
- 7.107 There is no dispute that the existing terminal at Barking has broadly the same intermodal capacity as that proposed at Howbury Park. It has capacity to handle 10 to 12 trains per day at the moment (PDL/6.4, para 2.22). It currently has plenty of free capacity, gantry cranes and a loading gauge of W10. The absence of warehouses on the site is not really the problem, with 781,000m² in Barking, 670,000m² in Bexley and obviously millions of square metres of warehousing in the catchment area assumed for the transport assessment.

Rail is not Needed in Terms of a Situation Requiring Relief

- 7.108 There are of course genuine, real and pressing needs for many things in planning, for example housing. How then can the lack of demand for rail capacity at Howbury Park amount to very special circumstances to permit inappropriate development in the Green Belt, when real cases of need have to be resisted if the Green Belt is to survive?
- 7.109 At the LIFE inquiry, the Inspector found (CD8.15, para 13.42):
- “The site at Willesden cannot be compared directly with LIFE but it is relevant to the question of need and alternative sites.”*
- 7.110 It was, in other words, relevant to consider intermodal only facilities as part of the need and alternative sites consideration. The Inspector then went on to consider other sites including DIRFT, Willesden and Hams Hall before concluding that this was not an industry struggling to meet demand. He concluded (CD8.15, para 13.48):
- “I have not found a clear and compelling need in the sense of a situation requiring relief.”*
- 7.111 That was a conclusion that was adopted by the Secretary of State who wrote in August 2002, after having considered the SRA Freight Strategy, that (CD8.15, letter, para 17):
- “.... there is not a clear or compelling need in the sense of a situation requiring relief.....”*

- 7.112 The Inspector’s conclusions in LIFE on this issue were formed on the basis of the then current, and still current, Government guidance. At paragraph 13.377 in the overall balancing evaluation exercise, the Inspector said that the proposal would not meet the objective of *Sustainable Distribution: A Strategy* because in essence there was another brownfield site that overlapped in function and catchment area, namely Willesden. So his conclusion on this issue of no need in the sense of a situation requiring relief was based on a central theme of Government guidance applied particularly to specific policy on major freight interchanges.
- 7.113 It is interesting that Transport for London (TfL) since the publication of the SRA’s Interchange Policy in “*Freight on Rail in London*” in a section entitled “*Terminals – the SRA’s Interchange Policy is not enough*” said (LBB3.3, Appendix 1, Section 7):
- “... LIFE, near Heathrow, was turned down at planning consent stage by Government, to protect a green belt area, which was entirely consistent with national planning policy.*
- However the SRA’s response in publishing its Interchange Policy is disappointing.....”*
- 7.114 Since the LIFE decision, traffic at Willesden has declined. Traffic at Barking ceased altogether and the site is now used at nothing like capacity for handling waste containers. DIRFT has not seen an increase in traffic so as to justify investment in gantry cranes. The same logic that the Inspector and Secretary of State applied previously at the LIFE inquiry applies today. It cannot possibly be right to allow a new intermodal facility 14 miles away in the Green Belt when there is a brownfield intermodal terminal with the same capacity and better gauge all ready to take traffic if it were to materialise and when the policy of the Government is to use brownfield sites first.
- 7.115 ProLogis’s argument that in some way their facility would be complementary to Barking is not convincing. Mr Gallop conceded in cross-examination that Howbury Park would not assist Barking. What it does is to take potential traffic which Barking could have captured. The problem at Barking is too little traffic, not too much, and there is no reason why Barking could not take domestic intermodal traffic as well as traffic from the Channel Tunnel Rail Link. The normal rules of competition would apply and there is no reason why having a facility at Howbury Park would assist Barking get more traffic.
- 7.116 ProLogis also tried to put forward a reason to go against the impeccable logic of the LIFE Inspector and the Secretary of State by relying on “the chicken and the egg”. But there are several problems with this analysis. In particular:
1. There is no national Government planning policy that seeks SRFIs. There is not even any national Government policy that supports them (see above).

2. The national policy on major freight interchanges seeks to use brownfield sites first to minimise land take (see above).
3. The Secretary of State has applied that policy on the basis that existing intermodal terminals should be used before new greenfield SRFI sites are allowed having considered the SRA research on the matter (see above).
4. The current regional policy expressly wants sites to be on wholly or exclusively brownfield land, thus ruling out the site (see above).
5. At Howbury Park, the best evidence is that the warehouses would take about 11% of the intermodal traffic and overall would probably receive around 5.8% of the goods by rail (see above). Accordingly, they are not significant in the very special circumstances case. ProLogis submitted no evidence that the warehouses would make a large contribution that could be tested or scrutinised.
6. Even the SRA do not think that SRFIs will make that much difference to the amount of rail freight carried. Their predictions are that the vast majority of their expected increase in non-bulk rail traffic is predicted to occur without additional rail-connected warehouses (from 2.5 million tonnes per annum in 2002 to 11.7 million tonnes per annum in 2015 in the South East - CD4.10, p64). After that, 200,000m² of rail-linked buildings are predicted to increase the non-bulk volume of goods to 16.5 million tonnes per annum in 2015, with diminishing returns thereafter (ibid).
7. The gauge serving the terminal would be substandard (see above).
8. The paths to the terminal are extremely uncertain (see below).

7.117 The chicken and egg analogy is thus an analysis that does not start with weighty policy. Rather, it would result in certain destruction of the Green Belt for speculative demand, which the evidence suggests would be weak.

Rail Paths

7.118 Notwithstanding the above, there is absolutely no certainty that sufficient rail paths would be available should, contrary to Bexley Council's case, the demand for trains to serve the site which ProLogis anticipate actually materialise.

7.119 In an e-mail to ProLogis's rail witness, EWS identify only two paths to serve the site, one arriving and departing via Sidcup and one arriving and departing via Barnehurst. They observe that, based on the current timetable (PDL/6.3, Appendix E):

"...the majority of paths would be available overnight subject to agreement with Network Rail. Other paths may emerge..."

7.120 Thus EWS have looked at the timetable and can tell us about only two paths. One of these is via the Sidcup line and would involve running round in the Slade Green Depot, which Southeastern would not allow (PDL/6.20, Comment 8).

7.121 Network Rail were given the timetable analysis. All they are able to say was (PDL/6.3, Appendix F):

“We believe there is theoretical capacity to accommodate three trains (each way) per day in the short term subject to the following caveats:”

7.122 The caveats are important. First, the view is based on today’s timetable, notwithstanding that the passenger trains on the relevant line are likely to increase (CD4.5, pp80 and 81). The second caveat is:

That the time of day for running trains is an issue and that it is extremely unlikely that there would be any capability for freight to enter or leave [the site] during the passenger trains’ peak hours.

7.123 The principal route planner Paul Harwood in his e-mail to Mr Niblett said quite clearly (PDL/6.21) that:

“My own view would be that, despite the pressure coming off the network in certain locations, the chance of many more paths becoming available is limited. This is because of the growth in demand that we are predicting for passenger journeys and the fact that however we address the growth it will certainly mean more movements through Slade Green Depot.....I cannot see the quantum available for rail services to and from Howbury Park increasing in any significant way in the medium term.”

7.124 Mr Harwood has to make the trains run safely on the network, so his view carries some weight.

7.125 Mr Gallop’s technical note on timetabling (PDL/6.16), which was presented shortly before he gave evidence, does not take the matter much further. It relies upon the timetable study of 2005 which was submitted to Network Rail for validation but not validated. Why was this? ProLogis’s case does not make sense and is internally inconsistent. The note’s usefulness is also limited because it was drawn up without taking the timetable changes that will come about when the Eurostar and some Southeastern service changes come in (PDL/6.16, para 1.6). Also, whilst the analysis of the 2007 timetable looked at three routes, the northern route (via Plumstead) is W6 gauge and the southern route (via Sidcup) would involve running around in the Slade Green Depot, which Southeastern will not accept.

7.126 For the 2009 timetable, the analysis assumed that the number of off peak passenger trains on the Barnehurst line would remain at four trains per hour (PDL/6.16, para 2.8). This was on the basis of an undisclosed document. But the *Regional Planning Assessment for the railway* states that there will be two additional trains per hour on the line through Bexleyheath and Barnehurst in the off-peak period (CD4.5, pp80 and

- 81). Thus the bulk of the paths shown on the last page of PDL/6.16 would be affected by the two extra passenger trains.
- 7.127 After all the evidence was presented, a new document was handed in from the timetable consultants (PDL/6.24). An explanation followed (PDL/6.26), but there was no explanation as to why the consultants had taken the wrong number of passenger trains when they prepared their original analysis and no real explanation as to why this had not been looked at before.
- 7.128 As to this further analysis, there are problems insofar as, first, the two additional trains per hour assumed in the 2009 timetable for passenger trains along Bexleyheath line are not evenly spaced. This is unlikely to be acceptable to the train operators. Second, certain current freight trains are not included in the timetable used for the study, for example aggregate trains between Angerstein Wharf and south London.
- 7.129 Third, there is no indication as to how the study has interpreted Network Rail's rules regarding timetabling of services, particularly the requirement to provide some gaps between trains running at the minimum headway on the route in order to ensure reliability. The minimum headways are 2.5 minutes between fast trains or 3 minutes between slow trains; but after every fourth train there should be a further gap of 2 minutes. Also, there is no indication that the paths identified in the analysis would match available paths for trains from places beyond London, e.g. from Scotland via the West Coast Main Line.
- 7.130 Finally, and most importantly, the study only examined train paths in each direction along a particular line of route - i.e. from Factory Junction to Howbury Park and vice versa. This route contains several flat junctions where trains to other destinations have to cross the path of those going to or from Howbury Park. Examples are at Peckham (Crofton Road Junction), Nunhead, Lewisham, Blackheath and Slade Green. At each of these junctions a 3 minute gap is required between conflicting movements, and these conflicting movements have not apparently been studied. At the most congested location, Lewisham, it appears that there may not be sufficient capacity to accommodate the claimed train paths to and from Howbury Park. This position will worsen in the future.

The Capacity of the Intermodal Terminal

- 7.131 PDL/6.17 examines the theoretical capacity of the proposed intermodal terminal. It assumes that train paths between the main line and the SRFI would be available as required (PDL/6.17, para 1.1), notwithstanding that ProLogis's Rail Technical Report assumes that only a 16 hour window would be available each day for access to the main line (CD1.5, para 3.14). The document also makes other questionable assumptions, such as cranes and reachstackers operating at the same time on the same train, which would clearly not be safe unless they were operating on different parts of the train. It also assumes that more than two reachstackers would service a train, which is unlikely to occur in practice.

- 7.132 Even if this is put to one side, the study misses a fundamental point - the site would lack the flexibility to do what the customer wants. At DIRFT trains often stay at the terminal for 8 to 14 hours. The Felixstowe train arrives at 23.59 and leaves at 08.05 (PDL/6.12, Table 2). The Southampton train arrives at 04.50 and leaves at 19.10 (ibid). The Grangemouth train arrives at 03.38 and leaves at 21.30 (ibid). The reality is that DIRFT has operational flexibility and enough storage so that trains can do what the customer wants and operate on the network within the paths available there. The way of operating found to be most effective and actually operated at DIRFT would not be possible at Howbury Park. This would have a serious effect on the ability of this site to find any customers.

The Lack of a Mechanism to Secure the Claimed Rail Benefits

- 7.133 There is no mechanism that ProLogis brings forward to secure the train benefits they argue would occur. Their uncertainty is manifested in their unwillingness to put serious money at risk and agree to Bexley's suggestion that an undertaking should be offered by which financial payments would be made into a fund to promote rail use, should defined targets not be met (LBB0.5, p3 and PDL/0.10).
- 7.134 The importance of cross-docking for warehouses served by road was exaggerated by Mr Woodbridge. It cannot be seen as a guarantee of the train benefits. The Inspector's conclusions at LIFE, having heard evidence on the point was (CD8.1, para 13.52):

“On that basis a high proportion would be entirely road-to-road. Thus it seems to me that Argent are not expecting the building layout to put off road-only use significantly.....Although some companies favour having double-sided road access, the evidence suggests that this is not crucially important.”

- 7.135 Mr Woodbridge in his proof said that for warehouses with a floor area over 45,000m² the normal practice is to cross-dock (PDL/7.1, para 6.12). But at Howbury Park Units C and D would both be less than 45,000m². The area of Unit B would only slightly exceed Mr Woodbridge's guideline figure and Unit A could be subdivided. Even if the warehouses perform like DIRFT, there can be no credible suggestion that more than 5.8% of the warehouses' goods would arrive or depart by train (see para 7.86 above). Of this, the goods arriving or departing via the intermodal terminal would use the road side of the warehouses. Given that the major share of the traffic through the warehouses would be road-to-road in any event, it is hardly likely that they would be designed not to satisfactorily accommodate this.
- 7.136 Equally, the S106 Highway Undertakings (PDL/0.16) would not secure rail use. All it does is to put forward a cascade of steps on long averages which could, if there were massive persistence and no action to comply with the limits specified, eventually lead to goods vehicles leaving the site being restricted at certain times. But the restricted times are not the times which are the peak times for HGV movements from the site; rather they correspond to the peak hours on the local road network. The restriction was designed not to secure the rail benefits, but to limit the traffic at M25 Junction 1a.

It would not secure the long term use of the rail facility as called for in policy TP23 of the Kent and Medway Structure Plan.

- 7.137 ProLogis also declined to agree to a suggestion that the construction of the warehouses should be phased, with later phases tied to rail use of the initial phases (LBB0.6, Additional Condition E).
- 7.138 Also, one has to be careful about placing too much reliance on what one company who owns the site says in corporate documents. There would be nothing to prevent ProLogis selling the site to another company. There would be nothing to prevent another company, with different motivations taking over ProLogis. Planning is not personal, and there are no hard documents that would operate to secure the rail use anticipated by ProLogis.
- 7.139 The history of Birch Coppice is testament to how careful one has to be of allowing a development on the basis of unsecured benefits. There a condition to secure the use of rail at the site was removed on appeal, following which rail use ceased (CD8.3).

Carbon Dioxide (CO₂) Emissions

- 7.140 The Council's witness on CO₂ emissions, Mr Fox, produced evidence that even if 12 trains per day were to run to Howbury Park, contrary to the Council's case above, then the saving in CO₂ emissions for the part of the journey from rail head to rail head would represent a difference of 2,582 tonnes per annum (PDL/6.23). However, for a fair comparison, the trip end mileage from the rail terminal would have to be added in for over half of the journeys. Also, trains have less flexibility to pick up a backload and this would have to be factored in. The position is thus around neutral between train and HGV in total.
- 7.141 On CO₂ emissions there are two key differences between Mr Fox and, ProLogis's witness who gave evidence on CO₂ emissions, Mr Gallop. On both the evidence of Mr Fox is preferable.

Train Emission Rates

- 7.142 Both Mr Fox and Mr Gallop originally used the same emission rates for the Class 66 locomotive which it was agreed was the correct locomotive to use. The figure used, 19,147gm/km CO₂, came from the SRA's Rail Emission Model (LBB7.4, Appendix 1, p11). This model was constructed by AEA Technology so as to "...allow rail emissions to be compared to displaced road emissions..."(ibid, p1).
- 7.143 It was subsequently confirmed that the consultants advising ProLogis originally used the same source and figure.¹

¹ See PDL/6.5, Appendix 1, pp2-3. This gives emissions for the locomotive as 5262.6 gm/km CO₂ as carbon, equivalent to 5262.6x (44/12) CO₂ = 19,296 gm/km CO₂. Orally it was confirmed at the inquiry that the figure originally came from AEA.

- 7.144 At the inquiry, ProLogis tried to distance themselves from this figure on the basis that the trains may have been pulling an (unknown) heavier load. But data subsequently provided by GB Railfreight showed that the trailing weight of the train does not make a large difference to its fuel consumption – their advice was that fuel usage for a fully loaded train is around 9 litres per mile, compared to 7 litres per mile for the same train with empty containers (LBB7.5, e-mail from Paul Taylor, dated 15 May 2007). The same e-mail confirmed that the company’s financial model was based on a consumption of 9 litres per mile which Mr Taylor stated “...is a good average across the range of [intermodal] services operated.”
- 7.145 This works out to be a rate of 5.6 litres per kilometre, equivalent to 16,184 gm/km CO₂ (PDL/6.23). It is in the same ball park as the figure used by AEA, which both sides relied on to start with.
- 7.146 Subsequently, EWS presented a figure to the Eddington Study, published on the DfT website. This quoted a figure of 13 litres per mile (LBB7.8, p27). This is equivalent to 23,481 gm/km CO₂. It is in the same ballpark, albeit the train is heavier.
- 7.147 In stark contrast to these figures submitted to Eddington, produced by AEA and sent in an open e-mail from GB Railfreight, ProLogis relied on a figure derived from a press release by Stobarts. It is around half that used by the AEA model and half that used by GB Railfreight. It was questioned when produced, but no audit trail or other data was produced to support it. This is revealing. Mr Fox’s evidence on emissions from the train should be preferred.

Number of Containers per Train

- 7.148 Another factor that influences the potential savings in CO₂ emissions, is the assumptions made regarding the number of containers carried on a train. The Council’s figures for this were set out in Mr Niblett’s proof (LBB3.2, para 3.6.7).
- 7.149 Mr Niblett set out his assumption for the number of containers on intermodal trains in his original proof (LBB3.2, para 3.6.7). This used the number of containers handled over a whole year at DIRFT to arrive at the average number of containers on a train – 20. His figures were not seriously challenged and are plainly more reliable than the method used by Mr Gallop in PDL/6.15, table 2. In any event, the average if one looks at the inland (i.e. non-port and non-international) routes in Mr Gallop’s table is in the low 20s.
- 7.150 With up to two thirds of the containers on the railway being 20ft, it would certainly be possible for some of those to go by road with two containers on a single HGV. They will not necessarily be too heavy. The assumptions made by Mr Fox to derive the equivalent number of HGV trips per train are very reasonable (LBB7.5, p2).

Trip ends

- 7.151 Mr Niblett’s calculation for the average trip end distance of 74.915km was derived from data in ProLogis’s Traffic Assessment (LBB3.8). Furthermore, it is obvious

from the map showing HGV origins and destinations that most of the journeys would have a shorter journey by road if coming from, say, Scotland. For those journeys hauling containers to Howbury by train and then taking them back by HGV it would clearly waste fuel. Including this factor would easily be enough to neutralise any benefits.

Empty Running

- 7.152 Trains are inherently less flexible than HGVs and consequently are less able to attract “backloads” i.e. to run loaded in both directions (LBB3.2, para 3.5.2). It is a point which Argent frankly acknowledged in their evidence at LIFE (LBB7.6). In calculating the potential CO₂ savings, some allowance for this needs to be made.

Conclusions at LIFE

- 7.153 The conclusion reached by the inspector at LIFE was that (CD8.15, para 13.192):

“For CO₂ emissions, the effect of the development is difficult to predict with any certainty. It could be beneficial or harmful, but would certainly not have the clear benefits claimed by Argent.”

- 7.154 This conclusion was reached by the Inspector notwithstanding that there were generalised statements that put a contrary view (ibid, para 13.184). His conclusion was endorsed by the Secretary of State (ibid, para 22). A similar conclusion should apply at Howbury Park.

- 7.155 It is not Bexley Council’s case that there will not be instances where rail freight is better than road. But if you look at the specifics in relation to Howbury Park that is most unlikely to be the case with respect to CO₂ emissions. Government policy does not say that rail is always better than road. The *White Paper on Transport* advocates a considerably more sophisticated approach, namely(CD4.39, paras 8.8 and 8.9):

“The Government’s policies should not be guided by attachment to particular forms of transport, but by the approach that offers the best value for money to deliver the best outcomes for our economy, society and the environment.

.....

We will continue to encourage freight traffic to be shifted from road to rail or water where this makes sense,.....”

Parking

National Policy

- 7.156 At the national level, the policy relating to parking is one of restraint. It is not sufficient just to be less than the maximum. *PPG13*, paragraph 49 provides that:

“The availability of parking has a major influence on the means of transport people choose for their journeys. Some studies suggest that levels of parking can be more significant than levels of public transport in determining means of transport.....”

7.157 It then goes on to say (ibid):

“Reducing the amount of parking in new development... is essential, as part of a package of planning and transport measures, to promote sustainable transport choices.”

7.158 Accordingly, reducing parking is not an optional extra but it is essential as part of the package. In developing and implementing policies on parking, *PPG13*, paragraph 51 encourages local authorities to:

“ensure that... levels of parking provided in association with development will promote sustainable transport choices.”

7.159 One of the ways that ProLogis fell into error was to say that, because the application was for less parking spaces than the maximum permitted for Class B uses, that was satisfactory. But *PPG13* advises at paragraph 55 that:

“It should not be assumed that where a proposal accords with the relevant maximum standard it is automatically acceptable in terms of achieving the objectives of this guidance.”

The London Plan

7.160 The *London Plan* similarly has a policy of restraint. The relevant policy provides that the Mayor will, in conjunction with the boroughs (CD3.3, policy 3C.22):

“... seek to ensure that on-site car parking at developments is the minimum necessary and that there is no over-provision that could undermine the use of more sustainable non-car modes.”

7.161 As with national policy, it does not say that if you are within the maximum then that will be acceptable in parking terms.

The Bexley UDP

7.162 The policies in the *UDP* are in line with this national and regional level policy. They speak of this restraint (CD3.5, paras 8.48 and 8.49). The standard in the plan is for all Class B uses and one space for every 100 to 400m² gross floor area (ibid, Annex1, p130). But employment densities are very much lower for Class B8 uses than Class

B1. Offices of equivalent size to the warehouses proposed would be expected to generate about five times the number of jobs.¹

The Parking Accumulation Study

7.163 One of the fundamental problems with the parking accumulation study is that it plans on 70% of people being able to be drivers to the site (CD4.31, para 3.1.5). It plans to have enough spaces so that the site can replicate what is currently achieved in the North End ward, which includes sites that do not have a travel plan, and are further from the station. It effectively plans for the failure of the travel plan. The danger with this is that, if you leave out one of the essential elements of the travel plan - restraint - you are going to help bring about its failure.

7.164 As to the 70% figure, ProLogis's consultants accept that the figure could be lower. In their note on trip generation they state (CD4.30, para 3.2.6):

“At Howbury it is expected that [the figure of 70%] could be lower as it is closer to the station than other employment sites in the ward and a bus service will be extended into the site.”

7.165 It is accepted that the 70% “*primarily includes the isolated Darent Industrial Estate*” (PDL/0.7, meeting on 18 May 2006, para 6.1). It is also accepted that there are areas of the North End ward which already achieve 56% (ibid, meeting on 16 November 2006, para 4.3). In the technical note on trip generation, the 70% is described as a “*worst case*” (CD4.30, para 3.2.7). Accordingly, the accumulation study makes sure there will be enough spaces for the worst case of how many people may want to drive if the travel plan totally fails and if no allowance is made for the site being better located than most in North End ward.

7.166 The accumulation exercise then starts with too high a number. It starts with 354 (CD4.30, Table 2.3). This was a figure that in the Transport Forum meetings neither TfL nor the Highways Agency accepted (PDL/0.7, meeting on 16 November 2006, para 5.1). Whether one looks at the amount of traffic that goes out, making allowance for a background number, or those that come in for the shift before, one arrives at a number very much below that chosen. If the number arriving for the evening shift change is taken to be the number parked at midnight, as the Council's highways and parking witness, Mr Able, suggested, the number would be 196. Alternatively, if 90 is deducted from those leaving, as ProLogis's highways witness, Mr Findlay, put forward, the overnight figure would reduce to 264 (PDL/5.4, para 2.3.5). Thus the overnight total would be in the range of 196-264. The maximum accumulation at the afternoon shift changeover would be correspondingly reduced from the 1077 calculated by WSP to somewhere between 919 and 987.

¹ See LBB 5.3. A 198,000m² office development would generate $198,000/19 = 10,421$ jobs c.f. 1,500 to 2,440 predicted for the development.

- 7.167 It would be wholly wrong in Mr Able's view to provide 10% surplus parking spaces over the maximum accumulation to make it still easier to park at work. TfL did not support this number. The provision of effectively unrestrained parking on the site would undermine the aims and success of the travel plan.
- 7.168 ProLogis have furthermore put forward no mechanism for the removal of spaces once provided and rejected the Council's suggested condition which would have secured this (LBB0.6, Condition 34 and PDL/0.14, para 57). Their approach of effectively providing unrestrained parking on the site would undermine the travel plan and takes no account of Government guidance and those development plan policies which call for parking restraint. In their reports the GLA were not satisfied on parking numbers (CD1.2, paras 61-62 and CD1.7, para 33). If they have changed their position, this has not been explained.

Highways Matters

- 7.169 The Council's position on highways matters is that they want the access junction to work according to normal standards and the rest of the network to experience nil detriment as a result of the proposals.

Trip Rates

- 7.170 Throughout all the highway meetings, the wrong figure was used for the amount of development on the site. Effectively traffic generation was assessed for warehouses with a total floor area of 185,800m², not the 198,000m² proposed. The Highways Agency and TfL were apparently content. The figures were only revised shortly before Mr Findlay gave evidence (PDL/5.7), well after publication of the ES.
- 7.171 In terms of trip rates, the Council's position is that the safest assessment for trip rates is to use the TRICS database and the 85th percentile figures. If the Secretary of State does not agree that 85th percentile figures should be used, then the Council would argue for the average trip rates derived from the TRICS database. There is so much uncertainty as to how Howbury Park would operate, that this is the correct approach. At the inquiry ProLogis would not agree to any condition or obligation that creates any certainty about delivery of the rail use (see above). Also, whilst ProLogis used surveys at DIRFT to estimate the traffic that Howbury Park would generate, the two sites have very different characteristics. DIRFT is a national distribution centre in an isolated location. Its trip rates are very different to those observed at the TRICS sites.
- 7.172 In terms of the 85th percentile, it was accepted in cross-examination by Mr Findlay that it was requested by TfL by letter. It was used by ProLogis's consultants, WSP, in Technical Note 6. It was also used in an earlier Transport Assessment (TA) (November 2005 Planning Statement, Volume 3, pp33 and 34 and Appendix D). The TRICS sites for which data is available are not comparable in scale or location to the warehouses proposed at Howbury Park (LBB4.4, p5). Accordingly, it follows that the correct approach is to use the 85th percentile traffic generation figures, in accordance with the Guidance on Transport Assessments published by the DfT and DCLG (CD4.40, para 4.62). The IHT guidelines note that the approach of using 85th

percentile figures is common (ibid, para 2.2.10). The argument ProLogis advance against their use comes from an odd reading of a TRICS caveat. They say that for small samples, their bold quotes should not be relied upon. However, the good practice guide says that it is for the data supplier to prove the robustness of the figures. Just because one has few samples, it does not mean the 85th percentile approach should be abandoned; such an approach would be convenient but bizarre.

- 7.173 The reality is that what the good practice guide recommends is to establish the robustness. Here there is a good measure of agreement if the cross testing approach is done with medians, which suggests that the 85th percentile figures are robust.

Site Access Roundabout

- 7.174 TA23/81 notes that the starting parameters for any roundabout junction assessment should not be showing RFCs of greater than 0.85 using ARCADY software. That is the appropriate standard for the site access roundabout (LBB4.4, paras 2.5.1 and 2.5.2). It is the standard to which the current roundabout was designed. The proposed new roundabout at the site access should clearly work, and there is no reason why RFCs of 0.85 or below should not be achieved. Policy T6 in the *Bexley UDP* states that the Council will refuse planning permission for development that would cause traffic to rise above the design flow unless improvements are anyway programmed, or the applicant is prepared to undertake improvements to increase the design flow capacity to safely accommodate the demands from the development.
- 7.175 The design for the roundabout submitted with the application would not be satisfactory, whereas the present roundabout would operate with a maximum RFC on Thames Road of 0.77 (PDL/5.1, p32, Table 6.3).
- 7.176 It is significant that ProLogis did not give any adequate reasons as to why the site access should not be designed to the 0.85 RFC standard. Indeed, a revised design for the roundabout was produced during the course of the inquiry implicitly adopting this approach (PDL/5.19).
- 7.177 The reality is that on all the evidence ProLogis must be required to do improvements to this site access junction. The present junction works with an RFC well within the 0.85 limit (see above). With the traffic from the site and from Grosvenor Waste using the junction, the new roundabout proposed would have a queue of 17 on Thames Road and a RFC of 0.96 (PDL/5.5, Table 3.5). With the alternative geometry measured by the Council's highways witness, Mr Edwards, the RFC would be 0.944 (LBB4.4, p17). This would not be satisfactory.
- 7.178 As to the improvements proposed in PDL/5.19, these are not agreed. The Council has several concerns. First, the calculations appear to be based on the wrong size of warehouses (185,800m², not 198,000m² – see para 7.170 above). Second, they do not model 100% of Grosvenor Waste traffic using the site access, which would seem probable given the new connection proposed. Third, the design has not taken into account the Toucan crossing as proposed. Fourth, a scale drawing would need to be examined to make sure the design complies with current standards regarding entry

path curvature (LBB4.8). Finally, the junction should be shown to work with a maximum RFC of 0.85 at the critical time for that section of the network – i.e. considering peak hours for the development traffic (07.00 to 08.00 and 14.00 to 15.00) not just peak hours on the wider network.

- 7.179 Further, the Council's position is that the trip rates used should be the 85th percentile rates derived from TRICS, not the average trip rates derived from the DIRFT surveys for the reasons given in paragraphs 7.171 and 7.172 above.
- 7.180 The Council do not seek to argue that a satisfactory design for the proposed site access roundabout could not be developed. Accordingly, should the Secretary of State be minded to grant planning permission for the development, contrary to the Council's case, a Grampian condition would need to be applied specifying the design parameters to be applied (LBB0.6).

Crayford Way Roundabout

- 7.181 The position is similar with respect to the Crayford Way roundabout. Even taking ProLogis's figures, the junction would not work satisfactorily with the development traffic. The RFCs would increase from a base position in the pm peak of 0.87 on both the Thames Road East and Thames Road West approaches, and very modest queues, to 0.97 and 1.00 (PDL/5.4, Tables 3.4 and 3.6). The queue length in the pm peak on Thames Road East would double from 17 to 34 vehicles (ibid). Mr Edwards' figures similarly show a considerable worsening of the position in 2025 (LBB4.4, p21).
- 7.182 Thus, on either view, the Crayford Way roundabout exceedances of design flows would be exacerbated by the development, in conflict with policy T6 of the *UDP*. There is no dispute that the test of nil detriment, which so far as this junction is concerned was not seriously challenged, would not be achieved even on ProLogis's own figures. Again a Grampian condition would be necessary.
- 7.183 As to the further analysis submitted in PDL/5.20, this would not provide a solution. The development has not been modelled on the correct floor area, DIRFT traffic figures have been used as opposed to TRICS, and the Grosvenor Waste traffic has not been assigned fully to the new access. Also, no drawing has been provided to allow the geometry to be checked for compliance with the design standards (LBB4.8).

The Bridge

- 7.184 Regrettably, the Thames Road bridge has been taken out of the improvement programme for Thames Road. Whilst Bexley Council accord high priority to the bridge's replacement, currently there is no funding available for the works and no guarantee that it will come forward without the development.
- 7.185 At the inquiry there was a difference of opinion between the highway engineers as to whether the capacity of the present bridge should be assessed as 1,800 or 2,000 PCUs per hour. Mr Edwards, for the Council, argued for 1,800 taking account of the

- character of the road and the guidance in TA79/99 (CD4.25). The matter is anyway not determinative of the issue.
- 7.186 On the basis of a capacity of 1,800 and using the methodology that Mr Edwards adopted, the queue at the bridge would increase dramatically from 93 to 204 vehicles (LBB4.3, Appendix 4).
- 7.187 Ultimately, even if one takes 2,000 as the capacity through the bridge, the effect of the proposal is either to create problems and queues where there were not any or to exacerbate what would be an existing bad position.
- 7.188 It is clearly the correct approach to use demand flows. This is because demand flows represent where people want to go using the best route in the model. Demand flows with the existing bridge retained would increase from 1,860 to 2,107 vehicles per hour travelling eastbound in the am peak hour as a result of the development (PDL/5.9, Figure 5). So the effect of the development would be to push the model from working to not working. In the pm peak, the position is that the development would exacerbate base flows that will be above the capacity (PDL/5.9, Figure 6). Accordingly, even looking at the Appellant's case in the am peak, flows are pushed over capacity; and in the pm peak, flows already over capacity would be exacerbated.
- 7.189 There are also problems with relying to a great extent on the KTS model for the bridge because the bridge is on the extreme edge of the model. The model has not been validated. Its stability is questionable.
- 7.190 Looking at the position of the bridge from a common sense point of view, it is quite clear that adding more traffic going west from the development when there is a restriction would exacerbate the problem. In the pm peak, ProLogis's evidence is that the predicted flow of 2,149 PCUs if the bridge were widened would be reduced to 2,026 PCUs with the present bridge retained. (PDL/5.4, Appendix A, Table 3.3). Mr Findlay accepted that this traffic would reassign to other roads because of the bridge restriction (PDL/5.9, para 2). The analyses show several other instances where the development would exacerbate or create problems through the bridge (LBB0.8, paras 16.25 to 16.29). 14.00 to 15.00 would be the critical hour for traffic flows on Thames Road near to the site access, at which time the development would add 311 light vehicles and further heavy vehicles to the present flow.
- 7.191 In policy terms, the development would cause local traffic to exceed the design capacity of Thames Road and/or generate additional traffic on a road on which the flows would already exceed the design flows, in conflict with policy T6 of the *Bexley UDP*.
- 7.192 It is of course impossible to quantify exactly how much the new bridge would cost, albeit that Mr Able, provided the latest estimate. This cannot be a bar on the developer having to comply with policy T6. It is not an unreasonable stance to take that a development of the scale proposed, which would clearly have significant effects on the network, particularly between 07.00 and 08.00 and 14.00 and 15.00 should comply with the policy and create a nil detriment. To remedy this, if the Secretary of

State is minded to grant planning permission, a Grampian condition should be attached to the permission granted to bring the development into accord with policy T6 (LBB0.6, Additional Condition A). Alternatively, if the view is taken that a development of this size should not fully fund infrastructure that it requires to go ahead, but that some of this should fall upon the taxpayers, then the best route would be to give a “minded to grant” decision so that negotiations can take place.

Conclusions

- 7.193 This is an application for literally colossal buildings which would cause massive harm to the Green Belt. It is contrary to well established national and development plan policy.
- 7.194 The alleged benefits do not amount to anything like very special circumstances. There is no demand, let alone need, for the rail facilities proposed and there is an empty intermodal terminal waiting for customers nearby at Barking. The policy of the Government is to use what we have rather than to waste non-renewable finite precious resources. Bexley Council have considered these matters carefully and attended the inquiry to be cross-examined. They urge that the proposals be rejected. Less weight should be given to the views of the GLA, who chose not to attend the inquiry, and the SRA, who have now been abolished.
- 7.195 As to compliance with the development plan, the proposal would be contrary to the plan’s Green Belt and landscape policies, contrary to the employment policies and contrary to the parking policies.
- 7.196 The adopted London Plan must be given greater weight than the emerging plan. It clearly requires that any site for the type of use proposed should be wholly or substantially on previously developed land. Thus the only available conclusion is that the proposed development is:
- contrary to the development plan;
 - contrary to national Government planning policy; and
 - contrary to the previous decision of the Secretary of State on LIFE, which had a similar balance.
- 7.197 Accordingly, the appeals should be dismissed.

8. THE CASE FOR DARTFORD BOROUGH COUNCIL

Introduction

- 8.1 The two appeals concern the same development, being a Strategic Rail Freight Interchange (SRFI) at Howbury Park. The main part of the development is within the London Borough of Bexley and the majority of the evidence before the inquiry concerned this part of the development. Only a relatively small part of the development falls within Dartford Borough, namely the access road and bridge across the River Cray.
- 8.2 Bexley and Dartford Borough Councils' case is that the site falls within the Green Belt and that there are no very special circumstances which outweigh the policy and further harm the development would cause. Bexley Council called evidence in respect of the detail of the very special circumstances put forward by the Appellant, ProLogis, and challenged the factual basis of their evidence at the inquiry. Due to resource constraints, Dartford Borough Council did not call such evidence in respect of the overall development and did not cross-examine the Appellant's witnesses on this basis. Dartford Borough Council accepts that in this regard their case is reliant on that made by Bexley Council.
- 8.3 Dartford Borough Council's position remains, however, that, even on the Appellant's case, there are no very special circumstances outweighing the harm to the Green Belt. Plainly, if the Inspector and/or the Secretary of State is satisfied, contrary to the view of the two Councils, that there are in fact very special circumstances justifying the development in the Green Belt, then it forms no part of Dartford Borough Council's case that there is a differential in that regard in respect of the part of the development in Dartford Borough.

Green Belt

Presumptive Policy Harm

- 8.4 The starting point must be both a recognition that the site falls within the Green Belt and that accordingly close attention to that is required. The Appellant has conceded that the development is inappropriate development in the Green Belt. The significance of this must not be glossed over.
- 8.5 The Appellant cannot point to any national planning policy in support of SRFIs. This is plainly significant. *PPG2* maintains clear and continuing support for the protection of the Green Belt and stands in stark contrast to the absence of national planning policy in support of SRFIs. It states:

"1.1 The Government attaches great importance to Green Belts, which have been an essential element of planning policy for some four decades. The purposes of Green Belt policy and the related development control policies set out in 1955 remain valid today with remarkably little alteration....."

2.1 The essential characteristic of Green Belts is their permanence. Their protection must be maintained as far as can be seen ahead....

3.2 Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development.”

- 8.6 The fact that an applicant needs to demonstrate very special circumstances to justify inappropriate development in the Green Belt is a longstanding policy requirement. The first central government policy advice on Green Belts, Circular 42/55, enshrined this principle and for over 50 years Government policy has been that what would now be described as inappropriate development should not be approved in the Green Belt "except in very special circumstances". The unchanging nature of the commitment to this policy of protecting the Green Belt by successive governments is significant and the lack of alteration in both the purposes of the Green Belt, and the development control policies over time, draws comment in PPG2 (PPG2, para 1.1 - see above).
- 8.7 The courts have consistently affirmed the need for very special as opposed to merely special circumstances. In *Doncaster Metropolitan Borough Council v. Secretary of State for the Environment, Transport and the Regions* [2002] EWHC 808 (Admin), Mr Justice Sullivan warned at paragraph 74 that:
- “It is important that the need to establish the existence of very special circumstances, not merely special circumstances in Green Belt cases, is not watered down.”*
- 8.8 In light of this policy context, and the absence of a national planning policy in support of SRFIs, it is not sufficient to categorise the case as a struggle between “parochial” concerns and progress at a strategic level which must prevail. The Green Belt is of national importance. There is no national planning policy in respect of SRFIs which suggests that they ought, or even may, be regarded as very special circumstances. The Government, through planning policy, can and does address such issues where it regards a particular form of development as of national importance. PPS22, for example, addresses the potential tension between Government support for renewable energy developments and the planning system and more local concerns and contemplates that in the context of the Green Belt the environmental benefits associated with increased energy production from renewable sources may amount to very special circumstances (PPS22, para 13).
- 8.9 The commitment at a national level to the protection of the Green Belt plainly trickles down to local policy. Policy SS2 of the Adopted *Kent and Medway Structure Plan* (CD3.4) affirms the general presumption against development in the Green Belt as

does policy GB2 of the *Dartford Local Plan* (CD3.6) and policy GB2 of the *Dartford Local Plan Review Second Deposit Draft*.

Further Harm

- 8.10 In addition to the presumptive policy harm, Dartford Borough Council contend that the development would occasion further harm to the openness, purposes and integrity of the Green Belt. The site currently acts as a buffer between built development and the integrity of this would be harmed by the development proposed. Whilst Mr Parkinson accepted in examination in chief that the appeal decision cited in his evidence (DBC1, Section 6 and CD8.2) concerned a different case of very special circumstances than that advanced by the Appellant, the decision is still relevant insofar as it addresses the detrimental visual impact of a road and bridge in this particular location.
- 8.11 This further harm is a key concern. The appeal site is in an exposed location and the bulk and height of the elevated roadway and the bridge would be very visible, particularly when the bridge is elevated (DBC1, para 7.5). HGVs and other vehicles using the road would also draw attention to the bulk and impact of the roadway and bridge (ibid, para 7.8). The part of the appeal site within Dartford is visible from a number of key public vantage points, including Bob Dunn Way and footpaths to the north and east of the site (ibid). Given the size and design of the roadway they are features which will be seen over a wide area and from over a very long range.

Submissions

- 8.12 The first step is for the Appellant to show that there are very special, as opposed to special, circumstances which justify development in the Green Belt. The development is for a large amount of warehousing as part of an SRFI and Dartford Borough Council contend that, even on the Appellant's case, very special circumstances have not been demonstrated. The "balance" which is required is between the presumptive policy harm occasioned by the development and also the further harm to the openness and purposes of the Green Belt on the one hand (harm, which in accordance with *PPG2* is afforded substantial weight) and the case of very special circumstances being advanced by the Appellant. The case of very special circumstances must clearly outweigh the harm. This is a high threshold and the burden is firmly on the Appellant.
- 8.13 Dartford Borough Council remain of the view that the Appellant has failed to meet the high threshold required by national planning policy.
- 8.14 Even on the factual basis of the case being put forward by the Appellant, the paucity of their case in terms of any national planning policy support for SRFIs, the need for which forms the lynchpin of their case on very special circumstances, is significant. Dartford Borough Council submit that the longstanding national planning policy support for the protection of the Green Belt, which is in turn reflected at the regional and local level, stands in stark contrast, and that the Appellant has failed to meet the threshold required in the circumstances of this case. Accordingly, the appeal should be dismissed.

9. THE CASE FOR KENT COUNTY COUNCIL

The Central Consideration

- 9.1 Kent County Council (KCC) agrees with the Inspector's assessment that the Green Belt issue is likely to be a central consideration in the Secretary of State's determination of the appeals, if not "the" central consideration (INQ2). The test is whether there are very special circumstances for a strategic rail freight interchange (SRFI) at Howbury Park which clearly outweigh the harm caused by the inappropriateness of the development and any other harm caused to the Green Belt (PPG2, para 3.2).
- 9.2 In their consideration of the proposal, KCC have not addressed "local matters" (KCC1, para 1.4). Rather, the Council have sought to address policy need for the development of SRFIs in the London area and how that need can be met at Howbury Park with particular benefits for encouraging freight on rail through Kent.

Policy Need

- 9.3 In the London International Freight Exchange (LIFE) appeal decision, under the heading "*Very Special Circumstances*", the Secretary of State recognised that there was a "*policy need*" for SRFIs "*in that the Government is seeking to encourage the transfer of freight transport from road to rail. In part this is in response to European policy to promote cross-frontier rail transport. The need is also made clear in the Strategic Rail Authority's Freight Strategy and Strategic Plan*" (CD8.1, para 15).
- 9.4 That need has not gone away. In his evidence KCC's witness, Mr Martin, identified relevant European policy and its development since 1996 (KCC1, Section 2). That policy recognises that a proper network of rail freight terminals is necessary to ensure success of the policy to shift more freight from road to rail.
- 9.5 He also had regard to the Strategic Rail Authority's (SRA's) *Freight Strategy* published in 2001, and the requirement there for three or four large new interchanges in the South East (CD4.8, p25). This requirement was reiterated in the SRA's *Strategic Rail Freight Interchange Policy*, published in 2004 (CD4.10, para 6.10).
- 9.6 Bexley Council have criticised reliance on SRA policy on the ground that it is not planning policy. The Secretary of State, however, placed weight on the 2001 policy in his determination of the LIFE appeals (CD8.1: para 15). In his open letter of the 14 October 2005, the Secretary of State for Transport described the policy as "*based on the Government's existing policies for transport, planning, sustainable development and economic growth...*" and stated that it would remain "*a source of advice and guidance*" (CD4.14). The utility of the SRA's policy has been subsequently confirmed in the Department for Transport's *South Eastern Regional Planning Assessment for the railway* (CD4.5, p48).
- 9.7 KCC submit, accordingly, that the SRA's *SRFI Policy* is Government guidance recently considered which should be given substantial weight in these appeals.

- 9.8 While the Government's *Sustainable Distribution Strategy* (CD4.3) encourages the full use of existing interchanges, it does not preclude the development of new interchanges on greenfield sites. What *PPG13* paragraph 45 expressly requires is that local authorities should identify sites, both existing and potential, which could be critical in developing infrastructure for the movement of freight (such as major freight interchanges). Where possible these should be away from congested central areas and residential areas with adequate access to trunk roads. The evidence demonstrates that Howbury Park is such a site.

The SRA's Strategic Rail Freight Interchange Policy: March 2004

- 9.9 KCC contend that significant weight should be placed on the SRA's *SRFI Policy* as being soundly based. It notes that the SRA see SRFIs as a "*form and type of rail interchange without which longer term growth and development of an efficient rail freight distribution network will not be achieved*" (CD4.10, para 4.2). It recognises that:
1. SRFIs are necessary to promote a shift from road to rail freight (CD4.10, para 4.3);
 2. a network of SRFIs is required to support longer term freight growth (ibid, para 4.4);
 3. SRFIs represent the potential for businesses to use rail freight now or in the future and are key features in encouraging a gradual conversion from road to rail (ibid, para 4.5); and
 4. SRFIs will normally accommodate both rail and non rail-served businesses at the outset, with an expectation of increasing the proportion of rail servicing over time (ibid).
- 9.10 What is being said here is that the policy need for a transfer of freight from road to rail will be delivered over time if a network of SRFIs is provided.
- 9.11 Mr Martin stated that he is "convinced" that a SRFI at Howbury Park would be so used. His conviction is well founded on all the evidence. The proposed investment is being made and underwritten by ProLogis, a leading company in international logistics with established rail freight facilities in other regions of the UK. The S106 Undertaking (PDL/0.15) provides for an unprecedented package of measures to act as a catalyst to rail freight growth in the local area. SRFIs elsewhere in the UK have become established over time, notably at Hams Hall and Daventry (DIRFT). Furthermore, there are significant opportunities to attract rail freight to Howbury Park; Teesport/Asda, M&S wine through the Channel Tunnel are examples. It is accepted that other long distance rail freight could come from areas such as Liverpool, Immingham and Glasgow. The Need Case provides further examples of traffic that could be hauled by rail through Howbury Park (CD1.10, paras 4.28–4.48).

- 9.12 Further, and importantly, only 21% of freight train paths through the Channel Tunnel are currently used (CD4.36, Table 3.9) and the rail routes via Ashford and Maidstone through Kent and south London have below 40% utilisation (ibid, Figure 3.2). Accordingly, there is unused capacity and considerable scope for growth of freight on rail through Kent. This a view shared by the DfT's *South Eastern Regional Planning Assessment for the railway* (CD4.5) which highlights the potential for very strong growth in Channel Tunnel traffic in the longer term.
- 9.13 With regard to present and future rail network capacity, the Secretary of State can and should place substantial weight on the authoritative statement from Network Rail, the operators of the railway network, that they will work with ProLogis on the development of Howbury Park (PDL/6.13). On the evidence provided, the Secretary of State can conclude that there is a reasonable prospect that the necessary freight paths will be made available to serve Howbury Park in the future when required.

Location

- 9.14 The *South Eastern Regional Planning Assessment for the railway* notes that the SRA policy, endorsed by Government, favours sites for development which are strategically located close to good road and rail links (CD4.5, p48). This requirement, when considered in the light of the recommendation of the Eddington report - that the priorities of transport policy should be congested and growing urban areas and their catchments - is supportive of the locating of an SRFI at Howbury Park. The site is, as a matter of fact, on the edge of the UK's principal market. It has direct access to the road and rail routes to the main international gateways in Kent and on the south and east coasts, including the designated rail freight route to the Channel Tunnel. It meets the main criteria for an SRFI identified by the SRA (KCC1, para 4.26).

Other Sites

- 9.15 When cross-examined on his evidence on alternative sites, Bexley Council's rail witness, Mr Niblett, said that he was not making a positive case that there was a suitable, viable and available alternative site for an SRFI in substitution for Howbury Park. Bexley Council's principal focus was on pressing the potential of Barking as a site for a SRFI. Mr Martin rightly queried whether the Barking or Willesden freight facilities could be compared with the proposals for Howbury Park. But in any event Barking and Howbury Park would not be alternatives but complementary to one another in the policy context of there being a need for a network of SRFIs to encourage the transfer of freight from road to rail.
- 9.16 This complementarity is considered further in the Intermodality Report (PDL/6.18, para 5.3 and Section 6). KCC support and commend this analysis which demonstrated that the two sites offer distinct rail freight opportunities. It accords with Transport for London's view that the Howbury Park proposal would offer potential as a complementary facility on the south bank of the Thames to potential developments at Barking/Dagenham (CD4.37, p4). Bexley Council have not identified an alternative site to Howbury Park for a SRFI in south-east London.

Kent and Medway Structure Plan

- 9.17 The *Kent and Medway Structure Plan* was adopted in 2006. It is part of the development plan for the purposes of section 36(8) of the Planning and Compulsory Purchase Act 2004. It promotes the expansion of the rail network in Kent including rail access to Dover, Sheerness and Thamesport and greater use of the Channel Tunnel (KCC1, para 7.9). Policy TP23 supports proposals which encourage the transfer of freight from road to rail at portside locations and would permit an inland intermodal interchange, subject to criteria being met. However, unless the terminal is located near to London an inland intermodal facility could fail to bypass the congested sections of the M20 and the A2/M2 in mid and west Kent (KCC5 and 6). Howbury Park is well located in this respect to receive Channel Tunnel rail freight. In doing so it would bypass the congested international roads in Kent and, thereby, encourage growth in the movement of freight by rail. Accordingly, whilst the appeal site is predominantly in the London Borough of Bexley, its location nonetheless accords with the generality of Structure Plan policy.

Very Special Circumstances

- 9.18 KCC, of course, do not ignore the policies in the Structure Plan which seek to protect the Green Belt (SS2) and the requirement that, where inappropriate development is proposed, very special circumstances need to be demonstrated that clearly outweigh the harm to Green Belt. The very special circumstances that KCC rely on are set out in KCC1, para 9.2. They include, in particular, the compelling need to realise the benefits of transferring freight from road to rail by the provision of appropriate SRFI infrastructure. This special circumstance is properly to be considered in the context of a longer term view of the policy need for SRFIs, which takes into account the substantial investment in the Channel Tunnel. It offers the opportunity to achieve a significant transfer of freight from road to rail for international traffic with particular benefits for the relief of congestion on roads through Kent, particularly the M20 and the M25. The achievement of that transfer is contingent on the provision of an appropriately located SRFI in the London area; that is the inescapable logic.
- 9.19 Howbury Park is such a site. In the absence of any cogent evidence that there is a credible alternative site elsewhere in south-east London, either within the Green Belt or without, the appeals ought to be allowed, in the public interest of realising the acknowledged policy need to encourage the sustainable growth of freight off road and on to rail.

10. THE CASE FOR SLADE GREEN COMMUNITY FORUM

Introduction

- 10.1 Slade Green Community Forum (SGCF) opposes the proposed development on behalf of the residents of Slade Green in North End ward. A majority of local people is opposed to the proposal, particularly because of the impact on local traffic, the loss of Green Belt and the impact on the centre of Slade Green.

Impact on Local Traffic

- 10.2 SGCF has general concerns as to where the traffic from the development would go and what its impact would be. At present on-road parking on South Road, Erith results in traffic queuing back to the North Road/South Road/Boundary Street/Larner Road roundabout. This causes problems for people and businesses in Slade Green as this prevents them going round this roundabout to access Slade Green via Bridge Road (SGCF/1, para 4.4). ProLogis's transportation witness, Mr Findlay, confirmed that no work had been done to assess the impact of the proposals on this junction. SGCF believe that even a small amount of extra traffic would result in more frequent queuing and problems.
- 10.3 SGCF is also concerned that extra traffic on Bob Dunn Way and at Junction 1a of the M25 would cause delays to local people wishing to use local amenities via Crossways Boulevard (notably Asda at Greenhithe and Bluewater Shopping Centre). SGCF do not see how the plans agreed with the Highways Agency to regulate the traffic lights at this junction, in circumstances where there will be extra traffic on Bob Dunn Way and extra traffic going on and off the M25, can result in anything but greater queues from Crossways Boulevard.
- 10.4 The Borough Council and ProLogis argued about the different traffic models presented to the inquiry, but the reality is that no-one knows for sure. In his evidence, ProLogis's representative, Mr Woodbridge, cited Asda as one possible user of the facility. This illustrates the point. If they were to use the facility, in all likelihood extra vehicles would travel between the proposed site and their existing depots in Erith and on Crossways Boulevard, with extra impact on both of the junctions of concern noted above. In cross-examination, Mr Findlay accepted that the possibility of HGVs travelling between the proposed site and the container ferry terminal off Crossways Boulevard had not been taken into account. This, or the possibility of a user of the proposed site having a warehouse at Crossways, would not be considered in any study of Junction 1a and in any resulting measures. It is clear that there would be a traffic impact locally, but it is also clear that where the impact would be felt is dependent on who actually uses the proposed site.
- 10.5 The traffic impact would also be dependent upon the success of the travel plan. This is put at risk by the number of car parking spaces proposed, which would make it very easy to come to the site by car. Currently 70% of people working in North End ward travel to work by car and the number of car parking spaces proposed assumes that this

would be the case at the site. However, these figures include the Darent Industrial Estate, which has no public transport, industrial areas on Manor Road served by one bus and Social Service workers at the Howbury Centre who need their own transport during the day to get to cases. It was agreed that except at the time of the afternoon shift change, there would be a substantial number of free parking spaces available on the site. If shift change times for the different occupiers were staggered, the peak parking demand may be reduced. The proposed level of parking spaces would do little to help the travel plan succeed, and its failure would add to the amount of traffic predicted for local roads.

- 10.6 The traffic impact would also depend on the site's success in moving freight by rail. SGCF notes the suggested conditions to help this, but it also notes the concerns expressed by Bexley Council regarding whether the proposal would succeed given the gauging issue. If the application is permitted, it should be given the best possible chance not just to succeed as a rail freight depot initially, but also to sustain that success. In his evidence Mr Woodbridge suggested some potential users, such as DHL, would serve a series of different clients, and that contracts with their clients could be renewed, perhaps every five years. The incoming clients would need to be encouraged to use the rail freight opportunities. SGCF believe the lack of positive measures to encourage rail use beyond the initial three years proposed could lead to a progressive reduction in the amount of goods moved to the site by rail. This in turn would increase the number of HGV movements and the impact on local roads.

Loss of Green Belt Land and Mitigation

- 10.7 The proposal envisages that the Crayford Marshes would be put into a trust and opened up more for community use, which ProLogis argue would be a major benefit. SGCF see the more active management of the marshes by a trust as having a potential positive impact. However, when someone in Slade Green says they are "going out onto the marshes", to get away from their problems, to think, or just to relax, they do not actually mean the marshland itself. Quite often this would simply be a walk from the Slade Green end of Moat Lane, down to the River Darent and back again. Most of this would be alongside the proposed site, and to achieve the same sense of openness would entail going much further if the development proceeds. People may well not have the time, fitness or suitable clothing to do this, so the community would suffer a loss of amenity. Furthermore, the hedgerow on Moat Lane, which is part of what makes it pleasant to walk along, will be lost at the end nearest Slade Green as the road would be widened to create a bus lane.
- 10.8 SGCF is also concerned about the future sustainability of the Crayford Marshes.
- 10.9 First, the proposals envisage that drainage water from the site flowing towards the marshes would be carefully regulated. In his evidence ProLogis's drainage witness, Mr Armitage, advised that this could be achieved with the right controls. However, nothing in the application or the conditions guarantees that such controls would be put in place.

- 10.10 Second, although flood risk is low it is not as low as stated by ProLogis. It was agreed in cross-examination that the 5.9m AOD quoted as the height of a 1 in a 1,000 year tide was a year 2000 figure. But by 2080 sea levels could rise by as much as 86cm (SGCF/15, para 2.2), and it was established under cross-examination that the 1 in a 1,000 year tidal surge for the year 2000 would not be the 1 in a 1,000 year surge later in the century, as the frequency of such events is being increased by global warming. That the risk of flooding is not non-existent is also shown by the fact that the Environment Agency and Bexley Council continue to talk to residents who live on the same flood plain as the Crayford Marshes about flood risk and what to do in the event of a flood (SGCF/10). SGCF are concerned that any trust established to run the site would not have sufficient funds to clean-up and restore the marshes if a flood were to occur.
- 10.11 Third, SGCF is concerned that the Environment Agency may propose using the site for controlled flooding, so as to better protect London, as they have to make a decision as to what to do with flood defences after 2030 (SGCF/11). They do not expect to finalise their plans for this until late 2008 (SGCF/12). However, SGCF ask that if anything emerges in draft documents from the Environment Agency that may affect Crayford Marshes and reduce the mitigation they provide, then the Secretary of State should take this factor into account when assessing this application.
- 10.12 SGCF is also concerned that the mitigation offered through the Environmental Studies Centre may not work as well as it should. In particular, if there is not a good footpath alongside and near the proposed bus lane on Moat Lane, local schools will not use the facility as they will not consider the walk to the Centre to be safe enough. An additional condition would overcome this (SGCF/18).
- 10.13 The most positive impact of the proposals as perceived by local people is the potential for jobs for people locally. But there is nothing that guarantees there would be jobs for local people. Initial investment in training for this is planned, but nothing further. There is nothing in the plan that helps train the future workforce by working with schools to provide training for young people to ensure their suitability for the jobs on offer. The claimed sustainability advantages of continuing to provide jobs for local people may not be achieved. Potentially this would also impact on the success of the travel plan, which assumes sufficient people would be local to the site to use public transport or arrive on foot or by bike.
- 10.14 Also, with such a large potential workforce, people with disabilities should fill some of the jobs. But two factors may limit this. First, the number of disabled car parking spaces should be able to expand if there is greater demand. Second, Slade Green Station lacks disabled access between its sides and a long journey around local roads is necessary to get from one side to the other. This also prevents disabled access to the site from the 428 bus. SGCF is concerned that the amount of money that ProLogis would provide for improving Slade Green Station would not be adequate to address this key issue (SGCF/18).

Impact on the Centre of Slade Green and the Community

- 10.15 Various impacts will be felt by the people of Slade Green, particularly those living in the centre of Slade Green and near the railway line.
- 10.16 It emerged during the inquiry that the rail authorities may be unhappy with the use of the Sidcup line for routes to the proposed rail freight depot, and it was suggested that the lines from Plumstead might be used instead. This would bring a greater number of trains close to housing in Slade Green. In this regard ProLogis argue that existing train movements take place around the clock, but in fact their own evidence shows there are no train movements between 01.00 and 05.00, and very few trains between 23.00 and 01.00 and between 05.00 and 06.00 (PDL/9.4, para 6.1). Train movements during these hours to or from the proposed terminal would cause night-time disturbance to local residents.
- 10.17 Local residents are also concerned that if the proposed pocket park is allowed, it would turn into a haven for teenage drinking and for drug selling. However, if the area is simply landscaped in a way similar to elsewhere, not only would people have lost a view across the farmland and marshes, they would be looking at something completely uninteresting. If a decision is made to approve the application, a far better proposal for this area would be to create a wildlife area, with limited access for educational purposes. Preferably it should be managed by the same trust intended to manage Crayford Marshes and the Environmental Studies Centre.
- 10.18 Another impact would be the emotional and practical impact of house prices falling, particularly in those streets within the conservation area (Moat Lane and Oak Road). This would cause stress to residents. Practical impacts would include people not being able to move for employment, family or other reasons because of negative equity; and older people being less adequately able to use the value of their homes to provide for their old age.
- 10.19 Additional car parking in the centre of Slade Green by workers at the site would also add to an already congested situation. Whilst it is fair to assume that most workers arriving by car would use the car parks on the site, some of those living to the west of the site might find their journey is quicker if they drive to the centre of Slade Green, park and walk to the site rather than travel down North End Road and Thames Road to get to the site (SGCF/1, para 4.10).
- 10.20 On noise, SGCF note that only a limited number dwellings are to be given assistance with noise mitigation measures. But others would be affected and would suffer extra noise when in their gardens. This represents a loss of amenity (SGCF/1, para 4.8, GB1).
- 10.21 As to the proposed extension of the No 89 bus route into the site, SGCF is concerned that this would have a negative impact on Slade Green. If the proposed bus entry is not adequately monitored, abuse may occur. Also, ProLogis accept that there is no practical way to extend the route into the site without sending each double-decker No 89 bus around the centre of Slade Green twice (SGCF/4, paras 2.1.3 and 2.1.4). The

number of buses passing the houses, which are set close to the road, would increase from 14 buses per hour to 20 buses per hour, which would inflict additional noise on the occupiers. The extension of the route would also add to congestion as the buses would pass along roads where parking is on the street on both sides. In particular, problems would arise in front of the shops on Forest Road, where parking for the shops reduces the carriageway to a single lane, and buses have to negotiate around on-coming cars. It was also agreed that during the hours between shift changes, many of these buses would be likely to run to and from the Howbury Park site empty.

10.22 SGCF note that a shuttle bus might be an alternative. We believe that this would have a much more positive impact on the travel plan. In particular it would run when it was needed, and could be planned to interchange properly with other bus services and the train services. It would also not suffer from the inevitable peak time delays experienced by buses that come all the way from Lewisham, and so would actually be there when workers were changing from other buses or the trains at Slade Green Station. SGCF therefore ask that if the application is approved, it is only approved with options for a shuttle bus, which should include the possibility of this being run by TfL, possibly using a London Community Transport Association member. If the application is approved without a restriction on extending the No 89 bus route, mitigation should be included, to take place if the option of using the No 89 is approved. This should include mitigation to local residents for additional noise and congestion on their streets, and mitigation for the additional problems on Forest Road (SGCF/8).

10.23 If the application is approved, many of the “*raft of measures to benefit the wider community*” initially promised by ProLogis in their consultation leaflet (SGCF/3) would simply not take place (SGCF/1, paras 1.3.1 and 5.1). This would have negative impact, as people would be less inclined to believe future organisations proposing changes in the area, and less inclined to engage with any consultation process. This in turn would make the work of SGCF and others working to improve the community that much harder.

Conclusions

10.24 Many of the concerns expressed by SGCF could be addressed by further conditions being imposed upon the applicant - the effects on the North End Road/South Road junction, the effect of too many car parking spaces on the travel plan, the site’s ongoing use as a rail freight depot, the loss of the hedgerow in Moat Lane, the flood risk for Crayford Marshes, variability of water drainage onto the marshes, house values, car parking in Slade Green, the pocket park, night time train movements, the lack of a guarantee of local jobs, and accessibility to jobs for people with disabilities. All could be covered by measures that reduce the problem (SGCF/18).

10.25 However, some things could not be addressed - the extra distance needed to reach an area of truly open space, the extra traffic on local roads and the impact on Crossways Boulevard, the noise impact on people in their gardens, the noise from additional train movements and the effect on the community of the failure to deliver items initially promised by the applicant. All of these, however, could be mitigated to some degree

- by a more general measure to benefit the community, namely the setting up of a “community chest” to fund projects of benefit to the local community (SGCF/18).
- 10.26 In the absence of such mitigation, SGCF take the view that the negative impacts on the Slade Green community would be such as to justify refusing the application.
- 10.27 But even if this is all addressed, SGCF nonetheless believe that the location and scale of the development is unacceptable and the application should be turned down.
- 10.28 As to location, the site is at a narrow point in the Green Belt. It does not abut other industrial land but a community with housing, and it is in an area with already congested roads. As for scale, if the proposal were half the size, it would not stand next to a conservation area, and residents would not have the stress of losing value in their homes and possibly being trapped and unable to move when they need to. If it were half the size, the Green Belt impact would not be so great, and the Green Belt could flow round the site. If it were half the size, local people would still be able to walk down Moat Lane and get a sense of space, and the loss of amenity would not be so great. If it were half the size, the impact of extra traffic on local roads would be much less.
- 10.29 So if it were half the size, would the local community oppose it? One resident, strongly opposed to the application, stated "No, given the jobs, we'd grab it with both hands, wouldn't we?" At half the size, SGCF might support the application.
- 10.30 SGCF does not know whether a terminal half the size could be viable. But if it could be, then this application is of the wrong scale and should be turned down. If it could not, then this application is in the wrong location and should be turned down. Accordingly, SGCF asks that the appeals be dismissed.

11. THE CASE FOR BEXLEY LA21 NATURAL ENVIRONMENT FOCUS GROUP

Introduction

- 11.1 The central question in the appeal is the clear breach of planning policy involved in taking Green Belt land. This is the core of Bexley LA21 Natural Environment Focus Group's (NEFG's) objection. ProLogis claim that this is mitigated by, amongst other matters, the arrangements to be made for the Crayford Marshes. The marshes are a Site of Metropolitan Importance for Nature Conservation (SMINC) and a potential Site of Special Scientific Interest (SSSI). To evaluate ProLogis's claim, it is essential to establish the true value of each side of the equation, and NEFG's evidence attempted to do this. However, as is always the case in ecological investigations, the evidence is incomplete, on both sides of the inquiry and on both sides of the equation. It is a truism, in all ecological work, that absence of evidence is not evidence of absence. When there are as many gaps in the evidence as there are in this case, the only responsible course is to recommend no change.

The Value of the Site as Green Belt and Green Grid

- 11.2 The value and status of the site as Green Belt land is the subject of legislation and policy stretching back over many years. It is addressed in the London Borough of Bexley's evidence. NEFG adopt the Council's submissions on this matter.
- 11.3 As to the East London Green Grid, this is being developed from a proposal by the Mayor of London to establish and create green spaces throughout East London, north and south of the river, particularly in areas that are currently seen as being deficient. The north of Bexley is one such area, and the application site provides a key location within this area in which the Green Grid Framework can be established, enhancing the green space within the Borough. Again, this issue is discussed in more detail in the London Borough of Bexley's evidence.
- 11.4 If the appeal succeeds, the development will fragment the Green Belt within the London Borough of Bexley. This is contrary to the evidence given by Mr Goodwin who asserted that fragmentation would not occur. The term "encroaching fragmentation" is applied to this type of development, in which a new development spreads out from an earlier one. In this case the construction of the railway was a divisive fragmentation event, which divided the marshes. The appeal proposal is a development which will spread into the Green Belt from the line of the original development, i.e. encroaching fragmentation.

The Value of the Site as a Green Lung

- 11.5 The value of the whole of this area of Green Belt land to local residents is described in Tula Maxted's submissions (NEFG/M/2). It has not been challenged. It is supported by evidence from the Slade Green Community Forum. The value of the open skies and open landscapes of the whole area are described by Dr Gray (NEFG/G/2, paras

3.1-3.8). The people of Slade Green and other local communities should be free to continue to enjoy this section of London's Green Belt.

The Value of the Application Site for Biodiversity

- 11.6 As to the site's value for biodiversity, here the inquiry is handicapped by a lack of species evidence. This is clear from the paucity of records held by Greenspace Information in Greater London (GIGL) (NEFG/C/4 and PDL/8.4, Appendix 1). Comparison of these records with the earlier records confirms the lack of recording activity in the area, which in turn explains the lack of species evidence. The inquiry would be in a stronger position if there were more species evidence independent of the surveys commissioned by Mr Goodwin for ProLogis.
- 11.7 In terms of habitat, however, we have the descriptions in *Sites of Importance for Nature Conservation in Bexley* (SINCB) (CD5.3 and NEFG/C/4, Annex A). The list of sites is compiled by professional contractors independent of the GLA (CD5.3, Introduction), who are able to compare and contrast sites in a number of different boroughs to establish valid standards of comparison. The prospective sites are then assessed by officers of the GLA Biodiversity Strategy team (ibid). Metropolitan sites are designated by the Mayor of London on advice from the team; borough and local sites are designated by the GLA and the borough concerned jointly.
- 11.8 Under cross-examination, Mr Goodwin made the point that although the sites in SINCB have been designated, they have not yet been through the Local Development Framework process and therefore do not have the protection of the planning system. While this may be true in planning terms, it is irrelevant in ecological terms. In striking a balance between the application site and the mitigation site in terms of their ecological value, it is ecological value that counts. The application site is designated as a Grade II site of Borough Importance (BxBII16) in SINCB.

The Importance of Continuity of Habitat and Biological Corridors

- 11.9 The whole of the Green Belt in this area should be considered on a landscape scale and consideration given to the interaction between the green spaces, albeit that currently some may not be of high ecological importance. The potential value of such sites far outweighs the limited benefits that the mitigation proposals would bring. Replanting, grazing and management of the application site would bring greater ecological benefit than the limited ponds, hedgerows and trees, which it is claimed may act as biological corridors between the remaining fragmented green spaces. Covering the proposed development site with large areas of buildings and hardstandings would create an ecological desert which would negate any benefits from the landscaping. A landscape ecology approach to the relationship of this site to the surroundings needs to be the basis from which an ecological evaluation takes place.
- 11.10 The network of ecological corridors in Bexley connects to the appeal site via site 18635/02 (NEFG/C/4, Map of Habitat Survey Parcels). They include the railway banks (CD5.3, Site BxBII14 and BxBII23), which provide a habitat and corridor for the movement of Common Lizards. The appeal proposals would effectively sever the

connection between the railway lands and the remaining part of the Grade II site of Borough Importance - whilst birds can fly, many other species cannot.

The Value of the Mitigation Proposals for Crayford Marsh

- 11.11 NEFG sympathises with the current owners of Crayford Marsh in the situation they now face, which is not of their making. However, in proposing to transfer both the ownership and the liabilities attached in perpetuity to a separate body with inevitably limited financial resources, they are creating long term problems for the recipient body. Whilst the London Wildlife Trust may be willing to take on the management, they would need to be satisfied as to the full extent of the liabilities they would be taking on and undertake a full risk analysis.
- 11.12 Among other problems in managing any site, that of liaising with adjacent land managers is one of the most critical. When an ecological site relies on an adjacent land manager for its water supply, as is proposed in this case, this situation can become impossible. Mr Woodbridge confirmed under cross-examination that, on completion of the development, he would expect the site to be transferred to the European Fund, a separate company based in Luxemburg. In that case control of the water supply, essential for habitat management and for desalinating the marshes in the event of flooding episodes, enters completely unpredictable territory.
- 11.13 In order to assess the value of the mitigation site and balance it against the value of Green Belt land to be lost, then a risk analysis needs to be undertaken. Unfortunately the necessary evidence and data is not available. The uncertainties include those stemming from the Environment Agency's Thames Estuary 2100 (TE2100) project. (NEFG/C/8).

Thames Estuary 2100

- 11.14 On Thursday 17 May a presentation on TE2100 was made to the Thames Gateway Strategic Partnership. Those present included Yvette Cooper, Minister for Housing and Planning and also, NEFG believe, local authority representatives. Subsequent correspondence from the Environment Agency confirms that at least some early findings of the study have been released to local authorities (NEFG/C/8, penultimate para). Further information is not available. The TE2100 early findings were not available at the time the Statement of Common Ground between the Applicants and the Environment Agency (CD7.1) was compiled. In any event, ProLogis's witness covering flooding matters, Mr Greenyer, confirmed in cross-examination that the discussions between ProLogis and the Agency that led to the Statement of Common Ground concentrated on the application site, and tidal flooding, not the proposed mitigation site on the Crayford Marshes.
- 11.15 NEFG respects the difficult position that the officers of the Environment Agency are in. It remains true, however, that information has been released at central and local government level which is not yet available to voluntary organisations, or to the public, and is therefore not available to the inquiry.

- 11.16 NEFG regard it as essential that the latest and most reliable evidence be used, both by any organisation taking on the management of Crayford Marsh to assess the liabilities and risks they are committing themselves to, and by those responsible for determining the appeal in balancing the value to be lost on the application site against the value possibly to be gained on the mitigation site.
- 11.17 While that information is not available to this inquiry, it is available at Minister of State level and elsewhere within central and local government. In this regard NEFG submits that it would be unreasonable, in terms of the Wednesbury criteria, to exclude it from consideration. By the time the Secretary of State announces a decision, parts of the information will be more widely available.
- 11.18 On the substance of the information available so far, NEFG's representative has been told that both Dartford and Crayford Marshes will be proposed for flood storage areas. Habitat or biodiversity considerations are far behind that primary purpose, if anywhere. NEFG/C/8 also confirms that the critical area is the Thames Estuary between the Thames Barrier and Tilbury. Only when the results of TE2100 are available will it be possible to draft long term management proposals for the proposed mitigation area. It may well prove impossible to secure the site in perpetuity. If this is so, then the balance between the loss of Green Belt and the mitigation proposals needs to be recalculated.
- 11.19 If the management proposals for the Marshes are in reality only feasible in the short term, followed by abandonment to salt marsh (a relatively common habitat), then this should be openly recognised. The Secretary of State will need to have an accurate report of what mitigation is offered for the loss of Green Belt land. If only a short term continuation of the Inner Thames Grazing Marsh habitat on this site is in fact feasible, this should be made clear to the Secretary of State and to all the other parties involved.

12. THE CASE FOR THE LONDON WILDLIFE TRUST

- 12.1 London Wildlife Trust (LWT) recognises that the development will only be permitted if there are sufficient grounds to overcome the harm to the Green Belt.
- 12.2 The development site comprises mainly grassland of limited interest. It has some interest for wildlife in its present condition (LWT2, Section 3), but its value, given past and present management, is more directly related to its contribution to the openness of the wider landscape.
- 12.3 The proposals for habitat creation within the site would help to mitigate the losses, provided that they are properly implemented and managed and monitored in the long term. But they would not fully compensate for the losses within the development area and the proposal to create a nature reserve from part of Crayford Marsh, and to provide funding to safeguard and enhance its value for wildlife, is a vital part of the mitigation package.
- 12.4 LWT have considered the evidence presented in relation to the ecology of the site, and the statements prepared by Natural England and the Environment Agency in particular. The Trust concludes that, taken as a whole, the proposals would adequately compensate for ecological losses from the development and create new opportunities for managing the main part of Crayford Marsh in a better way in future, whilst also encouraging greater public access and engagement with the area.
- 12.5 LWT sees this as a starting point for safeguarding the future of London's Southern Marshes.

13. THE CASE FOR INDIVIDUAL OBJECTORS TO THE PROPOSAL

- 13.1 **Gill Bruckner** (GB1) objects to the proposal to build a rail freight depot on Green Belt land. It would be too big and it would drastically increase traffic in the area. Experience with the present train depot suggests the development would not provide a large number of jobs for Slade Green residents. Diesel engines are very noisy and smelly and, whilst some residents may be offered double glazing, you cannot double glaze a garden. Also air conditioning is expensive to run and not environmentally friendly. In the past Slade Green has been used as a dumping ground. It is the poor relation in Bexley Borough. The development would create light pollution, noise pollution and air pollution and would increase congestion on the roads. Planning permission should be refused.
- 13.2 **Ian Lindon** (IL1 and IL2) is the chairman of Local Agenda 21 in Bexley. He objects to the proposal because of the extensive area of natural habitat that would be lost. ProLogis accept that the planting and ground modelling would never totally screen the development and that there would be an impact on sites of nature conservation interest. As such, it would be contrary to policies G1, ENV15, ENV23 and ENV39 of the *Bexley Local Plan*.
- 13.3 His main concerns, however, are the lack of rail capacity on a network that is already overcrowded and the impact of the additional HGVs and employees' vehicles on Bexley's roads. Rail capacity will not be available in the daytime, so the trains would have to run at night, which would disturb local residents. The single spur connection to the main line would be very inefficient. If it is subsequently found that the rail service is not viable, the Borough would be left with a monstrous scar on the Crayford Marshes, only suitable for HGV use.
- 13.4 Traffic across London is growing and Bexley is heavily reliant on car use. The Thames Gateway Bridge, if it is permitted, would place further strain on the local roads. The proposal would conflict with *PPG13* which requires developments generating substantial freight movements, such as distribution warehousing, to be located away from congested central and residential areas.
- 13.5 **Dave Reynolds'** particular interest is the effect the proposal would have on the future viability of passenger rail transport in Bexley and Dartford (DR1 and DR2). Currently the configuration of railway lines and services is such that Dartford residents have a "turn up and go" service to London Bridge of eight trains per hour. But services are less frequent at the intermediate stations. The *London Plan* aims to improve this; and Government planning policy aims to promote public transport and reduce the need to travel by car. Ideally a turn up and go service should run at a frequency of 10 minutes or less; but none of the routes serving stations in the Bexley Borough currently achieve this. The population in the Thames Gateway area, which the lines serve, is expected to grow significantly.
- 13.6 As to the proposals, the link to the North Kent main line would be at the busiest section of track in the whole of Bexley Borough, close to the Crayford Creek junction.

To cater for the proposed future enhancements to the passenger service, capacity for 32 passenger trains each way on this section of track is required during the daytime outside peak hours. Movements into and out of Southeastern's Slade Green Depot also need to be allowed for. Introducing additional freight train services that need to cross the line at slow speed would use any remaining capacity and prevent further enhancement of the passenger service.

- 13.7 ProLogis's analysis is flawed, in that it did not examine the feasibility of introducing the required freight trains alongside the expected increases in the passenger services. Similarly, Network Rail only identify paths for three freight trains each way, based on the winter 2005 timetable; they did not address future enhancements of the passenger service. Southeastern have not confirmed that the proposal would not affect the operation of their depot. Planning permission should be refused because of the detrimental effect the proposal would have on the capacity of the future passenger network.
- 13.8 **Tim Walters** (TW1) lives close to the proposed development and when plans were announced he was advised that the value of his property would decrease by at least £30,000 if the terminal proceeded. What is currently a quiet neighbourhood would be turned into a sprawling industrial estate with attendant air, traffic and noise pollution. Rail movements and loading/unloading operations at night under floodlights would be particularly disturbing. The development would increase flood risk. ProLogis is a big company and appropriate recompense should be offered to those who would be affected by the proposal.
- 13.9 **Juliette Miller** (JM1 and JM2) is concerned that the proposal would increase noise, light pollution and traffic in the area. It would operate around the clock and the number of buses passing properties such as hers in Slade Green would be doubled. A lovely tranquil area of Green Belt land, which is home to a number of different animals and birds, would be lost. Many people moved to Slade Green because they wanted a traditional house in an area with green space. This green space would be taken and the proposed landscaping would not overcome the visual impact. The proposed rail freight depot would be very close to the conservation area and would not preserve its character. Local residents' living conditions would be harmed and their houses devalued.
- 13.10 **Connie Egan** moved to Slade Green because of the green space it offered. This should be preserved along with the wildlife it supports. Planning permission for the proposed development should be refused.
- 13.11 **Brian Rodmell** (BR1 and BR2) is a long standing resident of Slade Green. He supports the principle of rail to road transfer facilities to the extent that they help to shift freight from road to rail, where less fuel is generally needed. However, he considers that ProLogis's criteria for selecting the site are unduly restrictive. They reproduce fairly closely the features of the Howbury Park site, but rule out other sites that are potentially suitable. As an example, a key criterion is the minimum site size of 40ha, but only some 3ha of this is used for the intermodal transfer facility.

- 13.12 An alternative location for the development would be on the “White Hart Triangle”, adjacent to the North Kent line near Plumstead station. This has an area of around 20ha, but is large enough to accommodate the intermodal transfer area and a number of warehouses. It is designated as employment land and European Union funds have been applied to fund the construction of an access road to the A2016. It is served by a fairly frequent bus route. It is about 8km further west than Howbury Park and more convenient for Greater London’s industrial belt. Unlike Howbury Park it is not Green Belt land.
- 13.13 In their submissions, ProLogis argue that a large warehouse complex is needed to achieve the economies of scale that would make it possible to develop the road and rail connections. In this regard the Triangle would not offer so much scope for cost spreading, but the capital costs would also be reduced having regard to the investment already made in access roads. It would also benefit from proximity to the Woolwich Industrial area, with potential to develop shared services.
- 13.14 It is understood that the Russell Stoneham Estate is prepared to make the land at Howbury available to ProLogis at an attractive price. This reflects the Estate’s unsuccessful attempts to obtain planning permission for more development on the Crayford Marshes. This would bring a competitive advantage to ProLogis over other developers, but such advantage would not constitute the “exceptional circumstances” needed for a major departure from Green Belt policy.

14. WRITTEN REPRESENTATIONS

Inspector's note. Written representations submitted in response to the appeal can be found in the red folder (INQ5). Prior to the inquiry opening some ten written representations were received. These included submissions from the Environment Agency (INQ5/8) and the Greater London Authority (GLA) (INQ5/10). Further representations were received whilst the inquiry was sitting, including submissions from the Environment Agency (INQ5/13 and INQ5/17) and Transport for London (INQ5/11 and INQ5/16). Other submissions came from Crossrail (INQ5/3), CPRE (INQ5/6), Freight on Rail (INQ5/9) and consultants representing Kent International Gateway (INQ5/12). Several local residents wrote individually objecting to the proposals and a petition containing some 800 signatures objecting to the proposal was sent to the inquiry (INQ5/16).

Written representations submitted to the Councils whilst the applications were before them included consultation responses from English Nature, English Heritage, the Port of London Authority, the London Green Belt Council, Bexley Civic Society, the Strategic Rail Authority, the Ramblers' Association and Bexley Thames-Side Partnership. These can be found with the questionnaires.

The Greater London Authority (INQ5/10)

- 14.1 On 4 April 2007 the GLA wrote confirming that the Mayor of London generally supports the proposal, subject to the caveats contained in the Stage II Planning Report (CD1.7). This report concludes that the proposal would be inappropriate development in the Green Belt. It would have a detrimental impact on the strategic purposes of the Green Belt, would result in urban sprawl and would not safeguard the openness of the area. It would be contrary to Green Belt Policy. It would not meet the emerging "*strategic policy objectives*" which generally resist the loss of Green Belt. Furthermore, the site has historically been used as a farm and is not previously developed land. Notwithstanding this, the view is taken that the development is justified by the special circumstances of there being a strategic need for the facility and the lack of alternative sites with access to the road and rail network that could accommodate a facility of the size required. The report notes that the consequences of not allowing such a proposal would be that key new markets for rail freight are unlikely to be developed in the London area and the *London Freight Plan* modal share targets for rail will be very difficult to achieve (CD1.7, para 25).
- 14.2 Reservations in the report concern several matters of detail regarding the architectural design of the buildings, the landscaping proposals and the proposals for footpaths. However, it is accepted that many of the points raised could be controlled through conditions or the S106 Undertaking, should planning permission be granted. Concerns are also voiced regarding the lack of details regarding the arrangements to transfer land in the Crayford Marshes to a trust to manage as a nature reserve. On noise, the report notes that relatively few properties would be affected and concludes that adverse noise impact would not be of such a scale as to indicate a major, strategic noise conflict. On air quality, it is suggested that monitoring should be carried out to ensure there are no excessive emissions of dust and PM₁₀ particles in the construction phase.

- 14.3 Whilst several concerns expressed by TfL at the time the report was written¹ were noted (CD1.7, para 16 et seq), the report concludes that the rail aspect of the proposal would be acceptable, notwithstanding that it would operate predominantly as a road-based facility with very high levels of HGV movements, particularly over the initial 10-15 year period. The report states that TfL believes that the proposal represents the best opportunity to achieve a strategic rail freight facility in London (ibid, para 109).

The Highways Agency

- 14.4 The Highways Agency is satisfied that the proposal conforms in principle with national transport policy aimed at transferring freight from road to rail. Notwithstanding this, concerns were raised regarding the impact that traffic from the development would have on the queues and delays at M25 Junction 1a (HA1.1 to HA4). Negotiations continued, however, and further analysis was undertaken, following which the Highways Agency wrote advising that the S106 Undertaking entered into by ProLogis (PDL/0.16) will address their concerns. Accordingly, the Agency advised that it does wish to maintain its objection to the proposal (HA5).

The Environment Agency

- 14.5 By letter dated 18 February 2007 (INQ5/8) the Environment Agency formally withdrew its objections to the proposal. A Statement of Common Ground was prepared, containing a series of conditions which the Agency requested should be attached to any planning permission granted (CD7.1, Section 8). Subsequently the Agency confirmed that the addendum flood risk assessment supplied by ProLogis removed the need for a condition to be imposed requiring a further flood risk assessment to be undertaken (INQ5/13). They also wrote confirming that the schedule of conditions agreed at the inquiry covered all the matters addressed by the Agency's conditions set out in the Statement of Common Ground (INQ5/17).

Transport for London (INQ5/11 and INQ5/16)

- 14.6 Transport for London (TfL) support the proposal from a rail perspective as it would help to achieve the *London Plan* policy aspiration to provide rail-based intermodal facilities.
- 14.7 Whilst initially TfL raised concerns in relation to the rail element, and the lack of strong commitments to future upgrades, ProLogis clarified matters and TfL take the view that the obligations contained in the S106 Undertaking reasonably address TfL's concerns. Some degree of uncertainty remains over the level of future freight use on the network, but TfL will work with the other stakeholders to deliver the proposals with the aim of achieving the *London Plan's* policy aspirations.
- 14.8 Negotiations and discussions have also resulted in agreement on car parking and public transport funding. Whilst TfL still have some reservations about the final

¹ Note TfL subsequently wrote to the inquiry, see para 14.6 et seq below.

outcome the travel plan might deliver, the Framework Employee Travel Plan/Freight Travel Plan (PDL/5.21) is acceptable.

Cross London Rail Links (INQ5/3)

- 14.9 Cross London Rail Links (CLRL) note that the application site affects the margins of the area safeguarded for Crossrail by the Directions issued by the Secretary of State for Transport on 22 February 2005. Notwithstanding this, CLRL advise that the footprint of the proposed Crossrail Depot at Slade Green can be accommodated adjacent to the appeal site provided the boundary treatment is appropriate. If a suitable condition is imposed on any consent granted to secure this, CLRL do not wish to register a formal objection to the proposal.¹

CPRE (INQ5/6)

- 14.10 CPRE consider the proposal would constitute a serious and unacceptable intrusion into the Green Belt. Direct land take would be significant. Also, the development would attract supporting development, much of which would be likely to further erode the Green Belt. CPRE do not accept that the claimed environmental advantages of rail transport over road transport constitute exceptional circumstances within the terms of PPG2.

Erith Town Centre Forum (INQ5/14)

- 14.11 Erith is a riverside town which is currently being regenerated as part of the Thames Gateway. The regeneration is bringing an influx of traffic. The town is bisected by the A206 which links the M25 to the Belvedere Industrial Park. Much of the A206 through Erith is residential. It is congested, with tailbacks at peak times. Traffic from the development would add to congestion, increase pollution and exacerbate medical problems particularly for the young and elderly. The barrier the A206 would create through Erith would discourage people from coming to the town and adversely affect its economy.

Freight on Rail (INQ5/9)

- 14.12 Freight on Rail see Howbury Park as essential for the success of rail freight movement to, from and across London. London is a huge growing market which needs to be serviced. The site has good connections to the M25 and ProLogis's commitment to the scheme is shown by their willingness to finance the rail infrastructure and intermodal terminal and to provide a range of financial and other incentives to secure its success. Network Rail have committed to provide three rail paths to the terminal

¹ Subsequently Cross London Rail Links e-mailed Bexley Council shortly before the inquiry closed (INQ5/18). In that letter they suggested a further condition should be imposed on any consent granted, in order to "adequately safeguard the provision of a possible Crossrail extension to Ebbsfleet, by ensuring that alterations associated with the development within the Slade Green Depot area are compatible with Crossrail requirements in this area of land."

initially and Freight on Rail understand that there is unlikely to be an issue with providing further paths as traffic builds up.

- 14.13 National policy has consistently supported the growth of rail freight and the rail industry is confident that the proposal can introduce new customers to rail. Whilst the amount of goods moved by rail declined slightly in the mid-1990s, it has since risen. Major companies are investing in alternatives to distribution by road. Over the last ten years rail freight tonne kilometres have increased by 60% and deep sea container traffic and domestic intermodal traffic are both forecast to grow significantly over the next ten years. The similar freight interchange at Daventry (DIRFT) has seen steady growth.
- 14.14 Moving freight by rail reduces CO₂ emissions and helps to alleviate congestion on the roads. Rail is the safest form of transport.
- 14.15 There is no alternative site within the defined catchment area, which studies have shown to have a particular need for a rail freight interchange. A network of three or four strategic rail freight interchanges is required for London, and refusal of planning permission for the Howbury scheme would not encourage other schemes to come forward, having regard to the precedent that would be set.

Kent International Gateway (INQ5/12)

- 14.16 Consultants representing Kent International Gateway (KIG) wrote on behalf of the prospective developers of a potential SRFI site at Hollingbourne, considered in the NLP Alternative Sites Report (CD1.4). Details of the KIG proposal were provided. It would operate primarily as a national distribution centre for rail, receiving traffic from Europe and consolidating it onto trains serving the UK. It would also act as a regional distribution centre for the South East, consolidating goods hauled by returning trains from suppliers in the Midlands and the North. Importantly, London would not be its principal market. Accordingly, the KIG and Howbury Park proposals would not be in competition. Rather, they would complement each other as part of the network of SRFIs which needs to be developed in the South East and across the country.

Individual Objectors

- 14.17 **Mr Keep** (INQ5/1) is a retired railwayman. In his view the proposal would be incompatible with the intensive railway passenger services that operate in the area.
- 14.18 **Mr Harvey** (INQ5/2) wrote strongly objecting to the development because of the visual impact that would result, and its effect on those living nearby. Society would be better served by preserving Green Belt land and locating development of the type proposed on brownfield sites, such as the former Joyce Green Hospital.
- 14.19 **Mr and Mrs Salter** (INQ5/5) live at 73 Moat Lane. They object to the proposal on account of the impact it would have on wildlife, Howbury Moat and their family's living conditions. The proposal would not benefit Slade Green - traffic congestion would increase, as would pollution and noise. During construction, noise would

interrupt their peaceful enjoyment of their property and dust would be a nuisance. The semi-rural outlook from their house would be lost.

Consultation Responses and other Written Representations Submitted to the Councils

- 14.20 **English Heritage** note that the scale of the proposed warehouses and their proximity to Howbury Farm suggests they would have an impact on the settings of the Grade II listed barn and the moated site which is a Scheduled Ancient Monument. However, the proposed bund and landscaping would mitigate the impact, and the important views of the protected features are from Moat Lane and the footpath towards Crayford Ness. In English Heritage's view the proposal would affect but not harm the settings of the barn and the moated site. English Heritage do not object to the proposal to use the barn as a rural studies centre.
- 14.21 **Bexley Thames-Side Partnership** acknowledges the positive contribution the proposal would make to reducing road traffic in south-east London and north-west Kent, but considers that the negative impacts on local businesses and communities outweigh the potential benefits.
- 14.22 **The Bexley Civic Society** objects to the development on the grounds that it would involve demolition of existing buildings on the site which are of some historical importance; increase traffic to the detriment of residents of Slade Green and North End; and result in the loss of Metropolitan Open Land and terrestrial and aquatic habitats.
- 14.23 **The London Green Belt Council** note that the loss of Green Belt in the wider area to other schemes has been significant. Cost, including that of alternative sites, should not be the factor determining the application which the Council hopes will be refused.
- 14.24 **English Nature** (now **Natural England**) advise they are broadly satisfied with the Environmental Statement, but comment on some of the supporting information.
- 14.25 **The Strategic Rail Authority** support the proposal. The scheme would satisfy the requirements of the SRA's *SRFI Policy* in that it would facilitate a modal shift from road to rail in London and the South East. The site is suitable for a SRFI and is of an appropriate size to deliver the required critical mass of development for this type of facility. Whilst there do not appear to be any network constraints to the scheme's successful operation, there is not open-ended capacity for the scheme.
- 14.26 **The Ramblers' Association** object to any new access road across the marsh area and note that no indication of the provision to be made for footpaths affected by the proposals has been forthcoming.
- 14.27 **The Port of London Authority (PLA)** advise that the PLA is the statutory Harbour and Navigation authority for Crayford Creek and own the bed and foreshore to mean high water (MHW) mark. Works placed in, on or over the MHW mark require a licence from the PLA. Additional information on the proposed lifting bridge,

particularly in relation to how the lifting operation would be undertaken and the means by which the commitment would be financed, will be required.

- 14.28 In addition some 20 letters were received by Bexley Council from **local residents, businesses and interest groups** objecting to the proposals on grounds similar to those raised at the inquiry. One resident wrote supporting the proposal, subject to the creation of a connecting road between Bob Dunn Way and Walhouse Road.

15. CONCLUSIONS

Inspector's Note. In this section references in square brackets [] indicate the paragraph in which the relevant source material can be found. Where I wish to draw attention to a particular word or passage, I have done this by underlining.

Introduction and Main Issues

- 15.1 There is no dispute that the development would constitute inappropriate development in the Green Belt and that, following the guidance in *PPG2*, it is for the applicant to demonstrate that harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by very special circumstances that justify granting planning permission [6.1, 7.70, 7.71, 7.72, 8.6, 8.7, 8.12]. Protection of the Green Belt is a fundamental plank of the development plan at all levels [5.14, 5.20, 5.38, 5.45, 7.8, 7.9, 8.9], and harm to the Green Belt lies at the core of Dartford Borough Council's reason for refusing planning permission for the part of the development within Dartford Borough. It also features prominently within Bexley Council's putative reasons for refusal.
- 15.2 As I noted at the pre-inquiry meeting, and repeated on opening the inquiry, the balance to be struck between harm to the Green Belt on the one hand, and the need for a strategic rail freight terminal at Howbury Park is, to my mind, likely to be a central consideration in the Secretary of State's determination of the appeals (INQ2). This was not called into question by anyone appearing at the inquiry.
- 15.3 In considering and reporting on this balance, the following fall to be considered in the context of the policies in the development plan and elsewhere:
1. The extent to which the proposal would result in harm to the openness of the Green Belt and the purposes of including land within the Green Belt (Harm to the Green Belt).
 2. The extent to which the proposal would cause other harm, including harm to the landscape and visual impact, harm to features of nature conservation and biodiversity interest and harm to the living conditions of nearby residents and others potentially affected by the proposals. Concerns voiced at the inquiry on the effect the development would have on proposals for enhancing green space in the area, flood risk, and the local highway network also need to be considered, with due thought given to the extent to which any impacts could be addressed by condition. (Other Harm).
 3. The strength or otherwise of ProLogis's very special circumstances case. This includes consideration of the policy support for strategic rail freight terminals (SRFIs). It also requires attention to be given to whether or not the proposed terminal would operate as a rail-based (as opposed to a road-based facility) and whether or not alternative sites for a SRFI are available elsewhere (Very Special Circumstances).

4. Allied to this there is a need to address matters relating to sustainability, including the policy drive to make optimum use of previously developed land and the extent to which granting planning permission for the proposal would be likely to reduce CO₂ emissions arising from the transport of goods (Sustainability).
5. Finally, the extent to which precedents, including particularly the First Secretary of State's decision in respect of the London International Freight Exchange (LIFE) should bear on the decision also need to be considered (Precedents), as does the matter of what conditions should be imposed in the event that the Secretary of State is minded to allow the appeals and grant planning permission (Conditions).

15.4 In this section of the report I consider each of these matters in turn. In doing so I have had regard to the information supplied with the application, including that contained within the Environmental Statement, the Supplementary Environmental Statement and the various technical reports and appendices attached thereto. I have also taken into account the further environmental information supplied in the proofs of evidence and elsewhere during the course of the inquiry.

Harm to the Green Belt

- 15.5 *PPG2 states that “the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness”.*
- 15.6 Against this background there is no doubt in my mind that the proposal would result in substantial harm to the Green Belt on account of loss of openness. The site is agricultural land, currently laid to grass, and the only building on it is a former dwelling - The Grange - now used as offices [2.1]. Whilst the site is at a noticeably higher level than Crayford Marshes to the north of Moat Lane [2.3], and bordered by Southeastern's Depot [2.4], views across it are nonetheless expansive. The openness which is now a characteristic of the site would be lost to the development. 198,000m² of warehouses would be built [1.7], and substantial screening mounds would be introduced at the northern end of the site. Large service yards with parking for HGVs would be located between the warehouses and an intermodal terminal would be built close to the north-east corner of the site where trains would be loaded and unloaded and containers stacked. The height of these containers would be limited by an agreed condition to a maximum of 12m (Appendix E, Condition 33). The buildings would be some 14.7m high to the ridge, and the cable support masts for the roofs would rise to 24.0m [3.3].
- 15.7 Bexley Council's description of the development as “huge” or “massive” [7.17] is not, to my mind, inaccurate. Warehouse Unit A would be one of the largest warehouses in London and the South East (ibid) and in excess of 60ha of Green Belt land would be lost to development, albeit that part would be used for landscaping. The impact on openness is inevitable and not in question. Indeed, ProLogis acknowledge in terms that the development would have a substantial impact on the

- openness of the Green Belt [6.5]. The harm on this account cannot be mitigated [7.29, 7.30].
- 15.8 As to the impact on the purposes of the Green Belt, there is equally no doubt that the proposal would result in significant encroachment into the countryside [7.37]; some 60ha of land that is, as a matter of fact, countryside, would be developed mainly for warehousing. Inevitably the development would also contribute to urban sprawl insofar as the present urban area would be extended [7.32]. However, there is no reason to believe that this sprawl would be “*unrestricted*”. If planning permission for the development were to be granted, the status of the adjoining land to the east and north would not be affected. It would continue to attract the strong protection afforded to the Green Belt and, whilst its size would plainly be reduced, to my mind there is no reason to believe that allowing the appeal would lead to its eventual development [6.5].
- 15.9 As to whether the purpose that the Green Belt serves in preventing neighbouring towns from merging would be compromised, the encroachment is such that the gap between the edge of the Thames Road Industrial Area and Slade Green on the one side, and Dartford and Joyce Green on the other, would be diminished. That gap is already, in Green Belt terms, narrow and the development proposed would reduce it to 1,100m approximately [7.11]. The section of Green Belt involved is also small [7.10] and calculations show that around 10% of its total area would be lost to the development (PDL/1.10). Clearly, the function that the Green Belt serves in maintaining separation between the two settlements alongside the Thames would be materially weakened by the development proposed [7.14]. A gap would remain, however, and its width would, to my mind, be sufficient to maintain a clear physical and visual separation at this point between the eastern edge of London and the western edge of Dartford¹.
- 15.10 It is common ground that the development would not affect the setting and character of historic towns [6.6].
- 15.11 Whether allowing development in the Green Belt would, in this case, fail to assist urban regeneration, by failing to encourage the recycling of urban land, depends on the conclusions reached as to whether or not it would be practicable to develop a SRFI in this sector of London and the South East on previously developed land. This is a matter which I address below.

¹ In looking at this matter it is important to appreciate the nature of the area of Green Belt involved. It lies alongside the Thames, and is centred on the Crayford and Dartford Marshes to either side of the River Darent. It is isolated from the main body of the Metropolitan Green Belt by development in Crayford and Dartford which run together to the south of the appeal site (see plans PDL/1.10 and PDL/1.13). At no point is this section of the Green Belt “*several miles wide*” [7.10]. Insofar as the area of Green Belt in question serves to separate London (Slade Green) from Dartford (Joyce Green), it does so alongside the Thames. Looking more widely, the two settlements already merge.

Other Harm

Landscape and Visual Impact

- 15.12 As to the impact on the landscape, there is no dispute that the landscape of the site is sensitive [2.1, 7.19 et seq]. It is open, predominantly flat and low lying [ibid]. Whilst there are flood defence embankments along the riversides, these are comparatively modest in their scale. There are few hedgerows and trees. It is not a landscape that is readily capable of absorbing change.
- 15.13 Coupled with this, the scale of the proposed buildings is such that from many viewpoints they could not practically be screened. Whilst there is little dispute that the measures which ProLogis propose to mitigate the landscape and visual impact of the proposals are appropriate [6.13]¹, there is no doubt that the character of the landscape immediately about the appeal site would be significantly changed as a result of the development. Its flat, open expansive character would be lost and replaced with massive buildings, surrounded at the northern end of the site by substantial earthworks.
- 15.14 Notwithstanding this, having visited the site and its surroundings and studied the evidence produced by the two landscape witnesses, including the various photo-montages, it seems to me that the proposal's visual impact would be limited from many directions. From the east and south-east, the adjoining landfill, which rises to a peak of around 18m AOD, would largely screen views of the main body of the site from the footpath adjacent to the Rivers Cray and Darent (Supplementary ES, Figures B3 and B4, Sections B1, C1, D1, E1 and F1). From more distant viewpoints in this direction the upper sections of the buildings would be clearly visible, but the lower levels would be screened by the adjoining landfill and the impact would be generally moderate, in my opinion, increasing to substantial if the landfill were to be reduced to its consented levels (CD7.10, Figures B8A, B9A and B10A). From the west, the existing buildings in the Thames Road Industrial Estate would screen the development from nearby public viewpoints; and, whilst the warehouses would be visible from some more distant viewpoints on higher ground to the west, they would generally not break the skyline and I am satisfied that the impact from these viewpoints would be no more than moderate (ES, Volume 4, Chapter B; Volume 5a, Chapter B, and PDL/3.6, Viewpoints 16, 17, 18 and 19).
- 15.15 The locations from which change would be most pronounced would be from Bob Dunn Way and its environs to the south of the site and from viewpoints in an arc to the

¹ At the inquiry Bexley Council's landscape witness Mr Huskisson suggested that the impact of the development could be reduced by lowering the development platform by some 2.4m [6.15]. He conceded, however, that doing so would only reduce the visual impact of the scheme "to a small degree" [6.16]. Calculations were produced subsequently which showed that a large amount of the material generated would need to be transported off site, generating up to 56,000 lorry movements and ProLogis resisted the invitation to amend the proposals [6.17]. In the event, the matter was not pursued further by Bexley Council and was not mentioned in their closing submissions.

north running from Oak Road, through Moat Lane and the edge of Slade Green out to the Crayford and Dartford Marshes.

- 15.16 From the Bob Dunn Way/Thames Road roundabout the proposed new access road and bridge would be clearly visible as would the southern ends of the warehouses. Mounding and screening would prevent direct views into the service yards and parking areas, however, and, as it matures, landscape planting would assist in screening and softening the views of the buildings. The impact would nonetheless remain substantial (ES Volume 4, Chapter B and Volume 5a, Chapter B, Viewpoint 15; Supplementary ES, Figure B12). From further to the east, along Bob Dunn Way, the impact would reduce as the screening afforded by the adjoining landfill site increases. However, should the landfill be reduced in height to its permitted levels then visibility of the buildings from this direction would increase significantly, raising the impact to substantial (CD7.10, Figures B10A and B11A and LBB2.11, p4). From the footpath adjacent to the River Cray, the access road and bridge would be prominent (PDL/3.6, Photomontage Viewpoint 10), but the main body of the development would generally be screened as noted above.
- 15.17 As to the visual impact as seen from Slade Green and the open land to the north and east of the site, there is no doubt in my mind that it is from these directions that the impact would be greatest. Notwithstanding this, within the main body of Slade Green, the impact would generally be limited by the intervening housing (PDL/3.6, Viewpoint 6). However, where the land is more open the warehouses would be clearly visible against the skyline above the existing roofs and the impact would be substantial (ibid, Viewpoint 5). But it is from the edge of the settlement that the impact would be greatest. At the end of Oak Road a large earth embankment would replace the present views across open fields (ibid, Viewpoint 4). Whilst this embankment would screen the lower levels of the development and the planting would provide further screening and visual interest as it matures, to my mind the development would remain a dominating presence when viewed from the eastern end of Oak Road or the footway linking it to Moat Lane (see photograph JM2). In my opinion, the initial impact would be substantial and adverse, reducing only slightly as the planting matures.
- 15.18 Similar impacts would be experienced by walkers and other users of Moat Lane passing the site. This public footpath and cycleway is well used by local residents walking out towards the River Darent who can currently look out through gaps in the hedges across the appeal site towards The Grange [10.7]. These views would be lost and replaced by a substantial embankment, topped in part with an acoustic fence. Sections of the bank would be planted and the toe would be set back from the footpath behind a hedgerow and swale. The bank would perform an essential function in providing a visual and acoustic screen to traffic on the internal access road, which would benefit both users of Moat Lane and the residents of Nos 71 and 73 Moat Lane and Nos 1 to 3 Moat Farm Cottages (PDL/3.13 (revised)). There is no doubt in my mind, however, that the landscape impact would nonetheless still be substantial and adverse, particularly in the early years before the planting becomes established. Walkers on Moat Lane would also experience an increase in ambient noise levels [7.81] similar to that which would impact on nearby residents (see para 15.25 below).

- 15.19 Further from the boundary, the visual impact from viewpoints to the north of the development in the vicinity of Howbury Moat and on the edge of Slade Green would similarly be substantial and adverse (PDL/3.6, Viewpoints 1, 2, 3, 7 and 8) [7.26 to 7.28]. Most houses in this part of Slade Green face out eastwards onto the Marshes, however, and those on the south side of Leycroft Gardens, which face the appeal site, would have their ground floor views obscured by a row of garages. Again these impacts would be reduced as the planting matures.
- 15.20 Beyond the eastern end of the site, walkers on Moat Lane and the footpath which continues along the top of the River Darent flood bank towards the Thames would have clear views of the development when walking back towards Slade Green. From Viewpoint 9 and similar vantage points along the footpath the full extent of the warehousing would be visible (CD7.10, Figure B7A). The distance to the developed edge of Slade Green would be reduced significantly which would impact on the present openness and expansiveness of the view [7.25]. Whilst the mounding now proposed at the north-east corner of the site would screen and reduce the impact of the intermodal area [3.17], there is no suggestion that the impact from this sector would be other than substantial and adverse.
- 15.21 Further from the development, on the Dartford Marshes, the greater distance to the site would reduce the impact. The scale of the buildings would nonetheless be plain to see and the expansiveness of the present views would be reduced (CD7.10, Figure B9A).

Noise, Dust, Air Quality and Lighting

- 15.22 Statements of common ground covering noise (CD7.5 and CD7.8), air quality (CD7.4) and lighting (CD7.7) were concluded between Bexley Council and ProLogis. Reflecting this, Bexley Council's putative reasons for refusal relating to air quality and lighting impacts were withdrawn prior to the inquiry opening, subject to suitable conditions being imposed on any planning permission granted by the Secretary of State (CD1.8)¹. The Council maintained its objection with regard to the impact that operational noise from the development would have on certain nearby residents in Slade Green, however, and others at the inquiry voiced concerns regarding dust, air quality and lighting impacts.
- 15.23 Considering firstly noise, the S106 Non Highway Obligations provide for up to £5,000 each to be paid to provide noise insulation to the five properties most affected by the development – Nos 71 and 73 Moat Lane and Nos 1, 2 and 3 Moat Farm Cottages [1.18, 6.27]. The matters at issue are the effect on these properties and those at the eastern end of Oak Road.
- 15.24 As to the case put by the Council, it is argued, firstly, that there is no obligation on individuals to take up an offer of noise mitigation measures [7.80] and that, secondly, with the windows open, the agreed calculations conclude that the WHO guideline noise level of 30dB inside a bedroom at night would be exceeded at the Moat Lane

¹ See Appendix E, Conditions 21, 22, 26, 30 and 35.

properties [7.79]. But the calculations which underpin this conclusion took no account of the margin for error inherent in the CONCAWE noise prediction methodology which at the 95% confidence limits would increase the night-time BS4142 rating levels for Moat Lane properties to around 8dB. It is thus argued that complaints would be likely, particularly at those times when background noise levels are materially lower than the average [7.83 and 7.84].

- 15.25 As to the points made, I accept that there is no obligation on individuals to take up offers of noise insulation. The offer has nonetheless been incorporated in a S106 Obligation and I see no reason to suppose that it would not be taken up. Even if it were not, the predicted night-time rating noise level outside the Moat Lane properties from vehicles, plant and other activities on the site, calculated using the procedure adopted in BS4142, would only exceed the background (L_{A90}) noise level by some 2.0dB, or 7.7dB if the full addition for the CONCAWE 95% confidence limit were applied (CD7.5, pp58 & 59). Thus the impact with the CONCAWE addition would lie between values that are of “*marginal significance*” and a “*positive indication that complaints are likely*” [4.9]. Also, the night-time cumulative noise impact, which is driven by noise from the access road (and is thus not materially affected by any addition to take account of the CONCAWE confidence limits) would be only some 3.2dB L_{Aeq} higher than the measured existing L_{Aeq} noise levels, representing a moderate impact (CD7.5, pp64 and 65 and paras 4.11 and 7.79 above). Given the attenuation that the building fabric would provide if the offer to provide acoustic insulation is taken up, it is agreed that residents in insulated bedrooms would experience little if any noise impact from the development [ibid].
- 15.26 As to the case put by the Council regarding properties on Oak Road, noise measurements did indeed show that measured background levels are likely sometimes to be significantly lower than the figures used by ProLogis’s consultants to assess the impact of the proposals [7.84]. If these lower levels are used in a BS4142 assessment it might theoretically be concluded that complaints are likely at night [ibid]. However, at Oak Road it is further agreed that the cumulative noise levels from the development, including noise from the access road, would not breach the appropriate WHO guideline levels [4.12]. In these circumstances, it is my firm view that additional mitigation by way of acoustic double glazing, would not be justified.
- 15.27 In conclusion on noise, I find that with the earthworks, noise fences and other mitigation proposed about the site, which would be required by condition¹, and the noise insulation which the S106 Undertaking would secure for the most affected properties, noise from the development would not result in material harm to the living conditions of nearby residents. In this regard I find no conflict with the development plan.
- 15.28 Moving to air quality, expert representatives of Bexley Council and ProLogis agree that air quality impacts for the operational development would range from minor

¹ See Appendix E, particularly Conditions 8 and 22.

adverse to insignificant [4.5]. For its part, the ES records that the standards for NO₂ and PM₁₀ are currently of concern for receptors adjacent to the main roads in both Bexley and Dartford (ES, Volume 4, Chapter E, paras 1.10 to 1.18). However, background pollution levels are generally predicted to fall because of the expected improvements in vehicle emissions (ibid, Table E1 and para 3.37). Also, the increases in the predicted levels of these pollutants due to the development are very small in comparison to background levels at the main sites of concern and the completed development is not predicted to increase the number of receptors at which the annual average NO₂ concentrations are expected to be exceeded (ibid, particularly paras 3.37 and 3.41). Similarly, the number of receptor locations at which the current statutory objectives for PM₁₀ are predicted to be exceeded with the development operational would be fewer than at present (ibid, particularly paras 3.46 and 3.50).

- 15.29 During the construction phase, it is common ground that nearby residents living close to the north-west corner of the site could be troubled by dust from activities on the site if normal precautions to prevent dust rising from haul roads, materials stockpiles and the like are not taken. In my experience this is generally the case where large scale construction works are undertaken and the measures necessary to control dust emissions are well understood. An agreed condition¹ should serve to prevent any nuisance on this account [4.4].
- 15.30 At the inquiry some individuals voiced general concerns regarding the development's potential to increase pollution levels in the area [13.1]. No evidence was presented to support their concerns, however, and Bexley Council agreed in terms that they had no objection to the proposed development on air quality grounds [4.5]. Plainly this was a carefully considered decision, supported by the Borough Environmental Health Officer. To my mind, it should be given significant weight. I accordingly conclude that, having regard to the agreed conditions, development should not be constrained by concerns regarding the impact on air quality. In this regard also I find no conflict with the development plan.
- 15.31 On lighting, the site would operate around the clock. External floodlights would accordingly be required in the operational areas, including the service yards and intermodal terminal. Further lights would also be needed to illuminate the access roads and car parks [3.14]. Plainly, if not sympathetically designed, light spill could result; also nearby residents and others could be affected by glare. Such an outcome was of considerable concern to several local residents [13.1, 13.8 and 13.9].
- 15.32 For their part, ProLogis acknowledge the concerns. An outline design for lighting the development was prepared and the impact analysed in detail by a specialist lighting consultant (ES, Volume 4, Chapter N). This work was subsequently reviewed by a second specialist consultant employed by Bexley Council (CD7.7, para 3.1). It was concluded in short that, with appropriate design incorporating asymmetrical floodlights in the working area and full cut off luminaries for the roads and car parks

¹ See Appendix E, Condition 21(ii).

[6.25], upward escape of light and glare would be minimal and that light spill would be controlled to acceptable levels well within the site boundary [4.13]. Having regard to these findings, Bexley Council concluded that the concerns identified in their putative reason for refusal relating to lighting could be addressed by way of conditions (CD1.8). I agree.

- 15.33 The agreed conditions can be found in Appendix E. Condition 30 requires the external lighting scheme to be submitted to the Council and approved before the development is occupied. Thereafter it prevents any external lights other than those approved being provided on the site. Condition 21(x) similarly requires details of temporary lighting arrangements in the construction period to be submitted for approval.

Nature Conservation and Biodiversity

- 15.34 Areas of nature conservation and biodiversity interest on and about the site include the Crayford Marshes Site of Metropolitan Importance for Nature Conservation (Crayford Marshes SMINC) which covers the marshes to the north of Moat Lane; and the River Thames and Tidal Tributaries SMINC which includes the tidal section of the River Cray passing through the site. A small portion of the site is included within the Crayford Landfill Site of Borough Importance Grade II. Proposals have also been made to extend this designation to cover the remainder of the site area, but this has yet to be formally confirmed [11.8]. Likewise, it is understood that proposals are in hand to designate the Crayford Marshes as a SSSI [11.1].
- 15.35 As regards the ecological impact of the proposals, there is no objection from Natural England, the London Wildlife Trust or any of the local authorities [6.59]. Notwithstanding this, Bexley LA21 Natural Environment Focus Group (NEFG) raised several concerns regarding the potential for the development to harm nature conservation and biodiversity interests [11.6 et seq] and these were echoed to some degree by others present at the inquiry.
- 15.36 As to the site itself, the London Wildlife Trust and the Environment Agency both accept that the main body of the site, which comprises mainly grassland, is of limited interest for wildlife [4.16, 12.2]. Surveys conducted for the ES confirmed that the grassland within the site is of low ecological interest and largely devoid of habitats of significant ecological value (ES, Volume 4, Chapter 5, para 3.41 et seq). The use of the site by protected species is also limited and, where these were recorded, mitigation measures have been proposed to ensure that there is no adverse impact. Whilst part of the Crayford Landfill Site of Borough Importance for Nature Conservation Grade II falls within the site, the majority of the affected land is currently in active use as a landfill site and of limited nature conservation value (ibid, para 4.11). The remainder would be safeguarded.
- 15.37 Turning to NEFG's concerns, there is to my mind no merit in the argument put initially that development of the appeal site should be resisted having regard to its future value as an area for the long term managed retreat of the Crayford Marshes. There are several reasons for this, but fundamentally the level of the site is several metres higher than that of the marshes and its character is entirely different.

Accordingly, massive intervention would be required to render it suitable as an area for managed retreat [6.59].

- 15.38 As to NEFG's further suggestion that the worth of the application site may have been undervalued by a lack of species evidence [11.6], I reject the claim. It may be true that the number of records held by Greenspace Information in Greater London (GIGL) is limited, but there is no evidence to support the view that the surveys commissioned for the ES and subsequently were inadequate or not properly conducted [ibid]. The London Wildlife Trust did not raise criticisms of this kind, neither did Natural England who wrote shortly before the inquiry opened confirming their satisfaction with the ES (PDL/8.3, Appendix 3). In a similar vein, the Environment Agency confirmed in terms that the surveys were sufficient to address their concerns and agreed that the baseline ecological impact assessment was sound [4.16].
- 15.39 With regard to the impact on biological corridors, the GIGL map shows the site as connected to the wider Bexley network of habitat parcels through the adjacent train depot [11.10]. This connection would be severed if the development were to proceed. The railway depot is not, however, identified as a site of importance for nature conservation and its character in terms of habitat is completely different to that of the appeal site. Having regard to the proposals to provide new habitat within the site which would include wildlife corridors [6.60] and would be secured by condition¹, and the lack of any objection from the London Wildlife Trust on the grounds that important ecological corridors would be severed by the development, it seems to me that NEFG's objection on this account should be given only minimal weight.
- 15.40 Turning to the Crayford Marshes, there is no doubt that ProLogis's offer to secure their long term future for nature conservation purposes by transferring the land with an endowment to a trust set up to maintain and manage them is widely supported. The details have to be finalised [1.17], and it is arguable whether the benefit would be as high as claimed given the protection that they are already afforded, which would be increased if, as expected, they are designated as a SSSI [7.31]. The proposals are nonetheless welcomed by London Wildlife Trust as a vital part of the mitigation package [12.3]. They are supported by the Environment Agency who conclude that the hydrology of the marshes would not be compromised by the development and that the proposals for their future management would represent a significant gain for biodiversity [4.16]. Natural England similarly report that they are satisfied that the likely damaging effects of the scheme on features of recognised nature conservation value could be outweighed by the potential benefits of the proposed ecological mitigation and compensation package (PDL/8.3, Appendix 3). The Environment Agency is likewise satisfied that the mitigation proposed for the River Cray crossing would safeguard the Thames and Tidal Tributaries SMINC [4.16].
- 15.41 It is against this background of positive support for the proposals for the Marshes that NEFG's reservations regarding their value should be seen [11.11 et seq]. Whilst the

¹ See Appendix E, particularly Conditions 8 and 12.

future of the Crayford and Dartford Marshes is to some degree uncertain, given that the Environment Agency is currently reviewing the flood risk management strategy for the Thames Estuary, there is currently no report or other material available indicating that material changes are planned which would impact on the Marshes' value as a nature conservation resource. Should this change, then I have no doubt that those planning the changes would have full regard to the implications of their proposals on biodiversity. There is no dispute that the development itself would not be at significant risk from flooding (see below). Accordingly, it seems to me that speculation as to what might possibly happen at some indefinite time in the future with regard to flood protection measures on the Thames is not helpful, and I take the view that it should not materially influence the decision on the appeal proposal. Notwithstanding this, were conclusions from the TE2100 study to emerge in advance of the Secretary of State reaching a decision on the appeal proposal, then it would be open to her to take those conclusions into account in reaching her decision [10.11].

- 15.42 In conclusion on nature conservation and biodiversity, it is inevitable with a site of the size and nature involved, that some impacts would result. However, these impacts would be limited and would be adequately offset by the mitigation measures proposed which would be secured by the agreed conditions and through the S106 Non Highway Obligations. No statutory sites of nature conservation or biodiversity interest would be affected. This position is accepted by Natural England, the Environment Agency and the London Wildlife Trust, who broadly support the proposals, and none of the planning authorities involved maintained objections to the development on nature conservation grounds. To my mind, their collective views should be given weight. Given the suite of mitigation measures proposed, I conclude that, in this regard also, the proposal would not conflict with the development plan.

Heritage Features

- 15.43 Notwithstanding the concerns expressed by the Bexley Civic Society [14.22], my understanding is that there are no known features of recognised heritage interest within the site. However, Howbury Moat (a Scheduled Ancient Monument) lies some 50m north of the site boundary, near to which is a Grade II listed tithe barn [2.6]. The edge of the Moat Lane/Oak Road Conservation Area lies adjacent to the north-west corner of the site [2.7].
- 15.44 The impact on Howbury Moat and the tithe barn was considered by English Heritage. Their proximity to the development was noted, but it was concluded that the important views of the protected features are from Moat Lane and the footpath towards Crayford Ness. In English Heritage's view, the proposal would not harm their settings [14.20]. I do not disagree.
- 15.45 As to the future of the barn, the S106 Non Highway Obligations provide for it to be refurbished and transferred to the body taking on the responsibility for the Marshes Trust Land [1.17]. English Heritage did not object to this proposal [14.20] which seems to me to be a positive move which should help to secure the future of an asset which otherwise may well deteriorate with time.

- 15.46 No properties within the Moat Lane/Oak Road conservation area would be directly affected by the proposed development. In my opinion, its character and appearance would be preserved.

Loss of Green Space

- 15.47 A further plank of NEFG’s objections to the development, taken up by Bexley Council in more depth, concerns the impact on proposals to establish a “Green Grid” in the area. These proposals, which are outlined in a series of recent publications, are in essence to develop a network of open spaces for recreational and other uses in the Thames Gateway. The intention is supported by the Government in the *Thames Gateway Interim Plan* which proposes a “landmark project” for the area including the site [7.40 and 7.41]. Similarly, the Mayor’s draft SPG *East London Green Grid Framework* notates the site and the land to the north and east of it as a “Regional Park Opportunity” [7.42]. The marshes are noted as “having the potential to be a flagship multifunctional site”. At the local level, Bexley Council’s *Managing the Marshes* identifies the Crayford and Dartford marshes as “one of the three major open space opportunities in the London Thames Gateway with strategic importance” [ibid].
- 15.48 Whilst many of these documents have limited status in planning terms, it seems to me that the intention is clearly to develop the wider area of open space, including the appeal site, as part of a regional park. At the same time it is also clear that the proposals are at a relatively early stage. The SPG is still in draft and the process which it sets out for including land as part of a regional park through the development plan has yet to commence [6.7]. So far, land has not been allocated and, critically, the mechanism by which funding would be secured has not been defined [6.7, 6.8]. ProLogis’s suggestion that, as things currently stand, the intention is, “at most an aspiration” [6.8] is not, to my mind, unfair.
- 15.49 Whether, and if so how, the proposal will develop is not known. Equally, it is not at all clear what impact allowing the appeal proposals would have on the proposal¹. For his part the Mayor, specifically considered the impact on the East London Green Grid in his Stage II Report [6.9], but nonetheless wrote confirming his general support for the proposals [14.1]. Accordingly, it seems to me that only limited weight should be given to the proposal’s impact on the emerging Green Grid proposals.

Flood Risk

- 15.50 The statement of common ground with the Environment Agency confirms that the development is not at significant risk of flooding and that the tidal defences in the area

¹ Simplistically, if it is assumed that the intended area of the regional park equates to the area of Green Belt to the south of the Thames centred on Crayford and Dartford Marshes, then permitting the proposed SRFI would reduce the area potentially available for a park from around 500ha to around 440ha (PDL/1.10). However, the site is currently farmland, with no public right of access and this would need to change if it were to make a meaningful contribution to any future regional park. Also, if the land were developed as a SRFI it might still be possible to incorporate some of the peripheral landscaping areas into a future regional park.

are well maintained; accordingly the risk that they will fail is regarded as extremely remote [4.16]. The statement further confirms that the loss of flood plain storage volume consequent upon the development would be negligible and more than offset by the compensation storage proposed [ibid]. At the time the statement of common ground was concluded, the flood risk assessment had not been updated to take account of the revised guidance in *PPS25*, but this was completed subsequently and the Agency wrote confirming that they were content with the addendum flood risk assessment [14.5]. They further confirmed that the conditions agreed at the inquiry covered the matters of concern to the Agency which included the need to ensure the bridgeworks at the River Cray did not impact on the integrity of the flood defences or prejudice nature conservation and navigation interests [ibid].

- 15.51 Given the Agency's position [6.58], and their responsibilities with regard to flood risk management, it seems to me that, notwithstanding the various concerns and questions regarding flooding raised by Slade Green Community Forum (SGCF) [10.10], the Secretary of State can be assured there is no reason to refuse planning permission for the development proposed on flooding grounds.

Highways Issues

- 15.52 Initially the Highways Agency and Kent County Council submitted proofs of evidence raising concerns regarding the impact the proposals would have on the local highway network, particularly at Junction 1a of the M25. At the inquiry opening, ProLogis advised me that negotiations were in hand with the Agency, Kent County Council and Transport for London (TfL) regarding the highways objections and it was hoped that an agreement would be concluded which would enable these parties to withdraw their objections. Subsequently the agreement was concluded and embodied in the S106 Highway Obligations [1.19]. The Highways Agency wrote confirming that they did not wish to maintain their objection [14.4]. TfL similarly wrote confirming that the obligations contained in the S106 Undertaking addressed their concerns [14.7]. Kent County Council, as the responsible highway authority for non-trunk roads within Dartford, withdrew their proof of evidence on highways matters (KCC6).
- 15.53 Notwithstanding this, Bexley Council maintained objections regarding several aspects of the highways proposals. Of particular concern was the adequacy or otherwise of the proposed new roundabout at the site entrance [7.174 et seq], the adequacy of the Thames Road/Crayford Way roundabout [7.181 et seq] and the need for a replacement railway bridge over Thames Road near to Crayford Mill [7.184 et seq].
- 15.54 In pursuing this case, it was accepted by the Council that their concerns could be addressed by modifications to the geometry of the two roundabouts at issue and by ProLogis agreeing to fund the replacement of the Thames Road bridge. A Grampian condition was drafted for the Secretary of State to consider requiring details of these works to be submitted and approved before works commenced and completed before the development is first occupied (LBB0.6, Additional Condition A).

The Entrance Roundabout

- 15.55 The existing roundabout at the junction of the A206 Bob Dunn Way, Thames Road and Burnham Road has three arms. The application provides for the roundabout to be significantly enlarged and a fourth arm added, leading to the proposed SRFI.
- 15.56 There is no dispute that the capacity of the current roundabout is adequate [7.175]. The matter at issue is whether or not the capacity of the proposed replacement roundabout would be adequate to accommodate the traffic from the development. Fundamental to this is a disagreement concerning whether traffic generated by the development should be assessed using data derived from surveys at the Daventry International Rail Freight Terminal (DIRFT), or whether data from TRICS should be used [7.179]. Here, I favour DIRFT as the dataset most likely to be representative of Howbury Park, principally because the DIRFT data is specific to a SRFI whereas the TRICS data is for smaller warehouses than those proposed, served by road only. The DIRFT data was collected expressly to inform the traffic analysis for Howbury Park, with the agreement of the Transport Forum who further agreed, notwithstanding Bexley Council's concerns, that the appropriate data to use was that for an average weekday [6.31, 6.32, 6.34]. I see no reason to depart from this agreement reached with the responsible highway authorities, including Kent County Council who are the highway authority responsible for the site access roundabout [6.39]. Notwithstanding this, it is accepted that the traffic generation for the development was underestimated slightly due to a misunderstanding as to the area of warehousing within the survey cordon at DIRFT [7.170, 7.178]. To my mind, if the design for the entrance roundabout is to be reviewed (which I recommend for the reasons I come to below), this discrepancy should be corrected.
- 15.57 As to the design standard for the roundabout, all present at the inquiry agreed that this should be assessed using ARCADY. But what design standard is appropriate? Here I take the view that there is no reason in principle to depart from the usual approach of designing the roundabout to operate with an RFC (ratio of flow to capacity) of 0.85 or less on all arms in the agreed design year. This is the standard normally applied to new junctions [7.174], which this would be, and it has endured for many years. Whilst I accept that in congested urban situations roundabouts sometimes do function in the peak hours with RFCs greater than 0.85 without excessive queuing, it seems to me inherently unwise to design for such a situation where, as here, the site is unconstrained and the roundabout and its immediate approaches would have to be modified in any event. Importantly, adopting an RFC of 0.85 also allows a small margin for the uncertainties inherent in design, including day to day fluctuations in traffic flow. Notwithstanding this, I do accept that the standard is not absolute and in some circumstances an RFC greater than 0.85 for a future design year may be considered acceptable – it is a matter of balance which experienced highway engineers are best placed to exercise.
- 15.58 Allied to this is the question of what are the appropriate periods at which capacity should be tested. Plainly these should include the hours on which traffic flows on the local network are highest – i.e. the morning and evening peak hours. Alongside this it is important to recognise that at this junction the capacity critical time may not be the

normal peak hours. The expectation is that shift changes would occur outside the peak hours and evidence presented to the inquiry suggests that the entrance roundabout may be more heavily loaded at times when the shifts are changing than in the normal network peak [7.178]. Flow patterns on the roundabout at shift change times would also be different to those at other times of day and may be critical for some elements of the design. This plainly needs to be checked.

- 15.59 Other aspects of the design that will need to be settled before the capacity analysis can be finally concluded include the geometry of the proposed roundabout (which the highway engineers involved should be readily able to agree), the effect of the proposed Toucan crossing [7.178] and the most appropriate routeing for the Grosvenor Waste traffic¹.
- 15.60 In the latter stages of the inquiry, consultants acting for ProLogis submitted an alternative roundabout design taking account of some of the criticisms levelled at their earlier work [7.178]. Unfortunately it only addressed some of the concerns I have identified above and time did not permit its critical appraisal by the responsible highway authority [6.41]. Accordingly, in the event that the Secretary of State decides to grant planning permission for the development, I recommend that a Grampian condition be attached to that permission requiring details of the entrance roundabout to be submitted and agreed before development commences and the roundabout completed before the development is first occupied – see Appendix E, Condition 10.

Crayford Way Roundabout

- 15.61 The Crayford Way roundabout is currently under construction as part of the Thames Road improvement works. It is located on the A206 some 1,200m west of the site access roundabout. It links the A206 to Crayford Way, and the “London Loop” which is a cul-de-sac serving the Grosvenor Waste site and a few smaller industrial premises situated to the north of Thames Road.
- 15.62 Traffic passing through the roundabout would be affected by the proposed development in two ways. Firstly, flows on Thames Road would be increased by traffic generated by the development; and secondly, traffic to and from the Grosvenor Waste site would be reduced as part of the flow generated by that site would be diverted to the proposed new roundabout at the site access (see footnote to paragraph 15.59 above).

¹ Currently all Grosvenor Waste traffic is routed to the A206 Thames Road via the roundabout now under construction at Crayford Way (see below). With the development proposed an alternative route would be available via the proposed access to the SRFI [3.6]. As far as I am aware there is no proposal to close Grosvenor Waste’s present access which logically they would continue to use for traffic routed to or from destinations to the west of their site. Similarly, the site access would logically be used for traffic routed to or from the east. Plainly, the design of the site access roundabout needs to allow for this traffic. However, in the absence of any evidence that the present access would fall out of use, I see no reason to design the site access roundabout for 100% of the Grosvenor Waste Traffic as Bexley Council suggest – see para 7.178 above.

- 15.63 In checking the capacity of this roundabout, both changes need to be taken into account and there is no dispute that ARCADY is appropriate for this. It is equally accepted that, if the roundabout is to be modified, “nil detriment” is the standard which should be applied [6.48, 7.182]. The issue is whether or not modifications are justified.
- 15.64 In regard to this matter, there is no dispute that if the predicted traffic flows for 2025 without the proposed development (the “base flows”) are applied to the roundabout using the geometry supplied by Bexley Council’s consultant, then the ARCADY analysis shows it to be over capacity in the morning and evening peak hours. RFCs for the two Thames Road arms in the morning peak are 0.85 and 0.95; in the evening peak they are 0.94 and 0.96. For the London Loop the RFCs are 1.22 in the morning peak; in the evening the capacity of that arm is noted as “*effectively zero*”. The corresponding queues on Thames Road are modest, at a maximum of 17 vehicles. On the London Loop they are 10 and 20 vehicles in the morning and evening peaks respectively (6.47 and PDL/5.4, Table 3.4). Whilst the Thames Road queues would involve a modest delay, given that the approach flows are of the order of 1,800 vehicles per hour; delays for traffic wishing to exit the London Loop would be significant, particularly in the evening peak when workers at Grosvenor Waste and the other sites served by the road wish to depart, but capacity for that arm at the roundabout is effectively zero.
- 15.65 As to the situation with the proposed SRFI, and no changes to the roundabout geometry, the calculated RFCs on the Thames Road approaches in 2025 would increase slightly as would the calculated queue lengths. The differences would not be large, however. More significantly, with the Grosvenor Waste traffic split between the London Loop and new site entrance roundabout (see footnote to para 15.59 above) the queues and delays on the London Loop would reduce, albeit that in the evening peak capacity would remain effectively zero (6.47 and PDL/5.4, Table 3.6). With the Grosvenor Waste traffic reassigned to the site access only they would be eliminated (*ibid*).
- 15.66 In conclusion, whilst in theory the queues and delays on the Thames Road approaches to the roundabout would be increased in the peak hours by the development, which would bring the proposal into conflict with policy T6 of the *Bexley UDP* [7.182], the evidence is that the increases would be only modest. They would be offset by the significant benefits that would arise from providing an alternative route for the Grosvenor Waste traffic. Given the acknowledged levels of peak hour congestion in the area generally, and the inherent degree of uncertainty involved in calculations of this nature, I take the view that it would be less than reasonable to require ProLogis to fund any necessary adaptations to the roundabout which further analysis showed would be very small in any event [6.48]. This conclusion is reflected in my suggested wording for the Grampian condition covering highways improvements - see Appendix E, Condition 10. Of course, should the Secretary of State be minded to grant planning permission for the development, but disagree with my conclusions in this regard, it would be open to her to extend the condition along the lines suggested by the Council – see LBB0.6, Additional Condition A.

Thames Road Bridge

- 15.67 Thames Road bridge is located on the A206 Thames Road, between the proposed site entrance roundabout and Crayford Way roundabout. It is on the section of Thames Road where dualling works are currently in hand. As part of these works it was originally planned that the bridge would be replaced with a new structure able to accommodate two lanes of traffic in each direction. However, there were problems with the bridge design and Bexley Council dropped the replacement bridge from the road improvement contract. As matters currently stand, the dualling works will be completed without a new bridge and both eastbound and westbound carriageways will be restricted to a single lane under the bridge. At the time of the inquiry there was no programme or funding for replacement of the bridge [6.42, 7.184].
- 15.68 Plainly the situation is less than satisfactory and Bexley Council argued at the inquiry that, since the development was predicted to increase flows on the A206 as it passes under the bridge, queuing at that point would be exacerbated and the proposal would conflict with policy T6 of the *Bexley UDP* [7.185 to 7.191]. Accordingly, they sought funding for a replacement bridge.
- 15.69 As to the merits of the point, I tend strongly to the view that such a demand is not reasonable (see below). Since the advice in Circular 11/95, paragraph 14, on planning conditions is that, to be valid, a condition has, amongst other matters, to be “*reasonable in all other respects*”, it follows that a condition requiring in effect that the developer pays for, or makes a substantial contribution towards, the cost of replacing the bridge should not be imposed. This conclusion is reflected in my suggested wording for the Grampian condition on highways matters already referred to and found at Appendix E, Condition 10. Of course, should the Secretary of State be minded to grant planning permission for the development, but disagree with my conclusion in this regard, it would be open to her to extend the condition along the lines suggested by the Council – see LBB0.6, Additional Condition A.
- 15.70 As to my reasons for concluding that the imposition of such a condition would not be reasonable, they are as follows:
1. If the bridge replacement were “*in an improvement programme*” (as indeed it was before being dropped from the contract now in progress) then there would be no case for applying Policy T6 of the *Bexley UDP* to in effect require the developer of the SRFI to wholly or partly fund its construction. Given also that replacement of the bridge remains Bexley Council’s “No 1 priority” [6.43], there has to be a reasonable expectation that it will be completed in any event by the time the SRFI would become fully operational [ibid].
 2. The bridge’s replacement does not depend on whether planning permission for the SRFI is granted. It is required/planned in any event as part of a scheme to dual and upgrade Thames Road for the wider benefit [6.43].

3. There is no evidence that the Council are similarly resisting other developments in the area that would increase traffic on Thames Road (notably development in the Belvedere Industrial Area) [6.43]. Neither is there any evidence that contributions towards the cost of replacing the bridge have been or are being sought from any such developers.
- 15.71 In any event the precise effect that the development would have on queues and delays at the bridge were it not to be replaced is less than certain. Whilst the Council argued that the capacity of the road under the bridge, were it not improved, would be of the order of 1,800 PCUs per hour each way and queues would be substantial, the advice note relied on to support the capacity figure of 1,800 PCUs per hour is clearly not directed at the situation in question.¹ The Council were furthermore unable to say what capacity figure, if any, had been assumed when it was decided to drop the bridge replacement from the widening scheme [6.46].
- 15.72 As to ProLogis's position, their expert witness, Mr Findlay, calculated that the capacity at the bridge would slightly exceed 2,000 PCUs per hour, as did Bexley Council's consultant responsible for the Thames Road traffic model (TRTM) [6.45]. To my mind, this evidence is to be preferred to that presented by the Council witnesses at the inquiry.
- 15.73 With a capacity at the pinch point of 2,000 PCUs per hour, the evidence from the TRTM (using actual flows) is that there would be no queues at the bridge in 2010 with 50% of the development operational (PDL/5.4, Appendix A). In 2025, with the development fully operational there would be a short queue on the westbound carriageway in the pm peak (ibid), albeit that in this scenario the model runs indicated that some traffic would be displaced to alternative routes [7.190]. Whilst Bexley Council argued at the inquiry that the impact should correctly be assessed using demand flows [7.188] (and, by implication, flows from the KTS model)² their position on this matter appears to be at odds with that of their traffic consultants responsible for the TRTM, which the Council did not question at the time [6.51]. Also, demand flows model where people wish to go in an unconstrained network [7.188]. But in an urban situation, such as found in Bexley, there are numerous capacity constraints which operate to limit traffic flows on some routes in the peak hours and hence to displace traffic to routes which at less congested times of the day would not be the optimum. The effect of these constraints across the network as a whole are seen in the differences between the modelled demand and actual flows.

¹ The advice note relied on is contained in TA79/99 which provides guidance on the maximum capacity of a complete section of urban road, not an isolated pinch point such as would exist at the bridge.

² The figures quoted by Bexley and included in para 16.21 of their closing submissions (LBB0.8) (see para 7.188 of this report) are demand flows from the KTS traffic model. But, the Council's case is that the bridge is on the extreme edge of the KTS model [7.189] and its reliability is questionable. The alternative for this section of the network is the TRTM which was used by Mr Findlay to assess the effect of the bottleneck in his TN14 (PDL/5.4, Appendix A). In this regard, it seems to me that Bexley Council's case is inconsistent.

- 15.74 In practice, if traffic is held up generally along a route, little benefit accrues from relieving one constraint on that route (such as the Thames Road bridge) unless all other constraints on the route are similarly relieved. Accordingly, it seems to me that assessing the effects of not replacing the Thames Road bridge using the modelled actual flows, with and without the pinch point in place at the bridge (as was done in PDL/5.4, Appendix A) is the most appropriate course of action.
- 15.75 These findings add weight to my earlier conclusion that it would not be reasonable for the Secretary of State to accede to Bexley Council's request that a Grampian condition be imposed on any planning permission granted requiring, in effect, that the developer of the SRFI provide or fund a replacement for the Thames Road bridge.

Other Highways Matters

- 15.76 In their submissions SGCF suggest that the development would cause or exacerbate traffic problems at the North Road/South Road/Boundary Street/Larner Road junction, noting that ProLogis's traffic witness conceded that no work had been done to assess the impact on this junction [10.2]. This may be so, but the junction is some distance from the site and, as far as I am aware, not one that was identified as requiring assessment by the responsible highway authorities. In any event, it seems to me from what I heard and saw, that the cure for any congestion would seem to lie in a fairly simple change to parking restrictions [ibid]. I accordingly conclude that it would not be reasonable to refuse planning permission on this account.
- 15.77 Similarly, whilst SGCF argue that traffic generated by the development might delay local people at Junction 1a of the M25 [10.3], this junction was undoubtedly subject to detailed examination by the two highway authorities responsible for its operation who both withdrew their evidence in the light of the S106 Highway Obligations entered into by ProLogis (see para 15.52 above). I see no reason to question their collective judgement in this matter.

Very Special Circumstances

Policy Support for SRFIs

- 15.78 There is no doubt that Government policies support the movement of freight by rail. This is reflected in *PPG13*, paragraph 45, which states that "*land use planning can help to promote sustainable distribution, including ...the movement of freight by rail ...*". Planning authorities are encouraged to identify and protect sites which could be critical in developing infrastructure for the movement of freight, including facilities for allowing road to rail transfer, and to promote opportunities for freight generating development to be served by rail. The policy guidance points to *Sustainable Distribution* as setting out the Government's policy framework on freight.
- 15.79 *Sustainable Distribution* likewise supports and encourages the use of rail for freight distribution. Amongst other measures, it aims to improve integration within the freight transport industry and promotes major freight interchanges as a measure to increase the use of rail and water for freight transport. It notes that freight trains can

- be substantially more fuel efficient than lorries and states that Government wants to see more freight being moved by rail [6.68, 6.69].
- 15.80 On new facilities, it encourages the full and efficient utilisation of existing interchanges, in preference to expansion, in cases where suitable spare capacity exists or can be created, but does not rule out the possibility of creating new facilities where they are required [6.70, 9.8]. DIRFT is quoted as an example of an intermodal rail freight terminal that provides opportunities for fast, integrated road and rail distribution [6.69].
- 15.81 The Government's aim to significantly increase the use of rail by freight was re-affirmed in *Transport 2010*. Whilst subsequently a statement from the Secretary of State for Transport cautioned against treating *Transport 2010's* aspiration to grow rail freight by 80% over ten years as a target, the commitment to significantly increase rail freight remained [6.72].
- 15.82 For its part, the Strategic Rail Authority (SRA) planned to switch a proportion of non-bulk intermodal traffic from road to rail and in doing so saw a need to promote intermodal transfer facilities generally and a requirement for new interchanges in the South East [6.74]. In their *Freight Strategy*, published in 2001, they explained that, in order to grow rail freight, a substantial increase in rail-connected warehouses and intermodal handling capacity would be required [6.75]. On page 25 the document states that "*in addition to the proposed interchange at Colnbrook,... the London region will require two or three major new facilities*" [6.80, 7.58].
- 15.83 This strategy was subsequently developed in the SRA's *Strategic Rail Freight Interchange Policy* issued in 2004. It sets out the importance of having a network of SRFIs to increasing the carriage of freight by rail. It suggests that the capacity required in London and the South East would be met by "*three or four new SRFI in the region, supplemented by smaller locations within the M25 ring*". It notes that the size of SRFIs will vary considerably but that generally they will range between 40ha and 400ha [6.83]. Intermodal facilities and large-scale warehousing on the same site are regarded as a "*key characteristic*" of SRFIs which may also contain processing and manufacturing facilities and bulk handling facilities where there is demand (CD4.10, paras 4.11, 4.12 and 4.19). Open access is noted as important to enable competitive rail haulage and customer choice (ibid, para 4.10).
- 15.84 At the time of its publication there is no doubt that the SRA's *Strategic Rail Freight Interchange Policy* was not a statement of Government policy [6.85, 7.62, 7.63]. It was based on Government policy and Government has since explicitly endorsed "*much of chapters 4, 5, 6 and 7*" as "*still relevant*". It is retained on the DfT's website "*as a source of advice and guidance*". Whilst plainly Government broadly accepts the SRA's advice as set out in the document, this does not, to my mind, render it equivalent to Government policy [7.64].
- 15.85 Neither do I take the view that the subsequent references to the *Strategic Rail Freight Interchange Policy* in the *South Eastern Regional Planning Assessment for the railways* settles the matter for the reasons set out by Bexley Council [7.65 to 7.67].

- 15.86 Notwithstanding this, the development plan lends significant, albeit general, support to SRFIs. Policy 3C.24 in the *London Plan* promotes the provision of rail freight facilities and improved integration between freight modes [5.12, 6.88]. The following policy, 3C.25, specifically supports the provision of strategic rail-based intermodal freight facilities whilst noting that each proposal will be considered on its own merits and in the wider context of the plan [5.13]. The text following the policy records that the SRA's *Freight Strategy* identifies a requirement for three or four large multi-modal freight facilities on or close to the periphery of London, with a number of smaller facilities in the urban area. It advises that any site promoted as a suitable location for a SRFI must meet operational and strategic planning objectives and be located wholly or substantially on previously developed land [ibid].
- 15.87 In the *Draft Further Alterations to the London Plan*, which currently carry only limited weight [5.49], policy 3C.25 is expanded to include sites which would enable the potential of the Channel Tunnel Rail Link to be exploited for freight serving London and the wider region. The explanatory text is altered to include a reference to the *Land for Transport Functions SPG*. The requirement for any strategic rail-based intermodal freight facility site to be wholly or substantially on previously developed land is deleted and replaced with a requirement that new locations for intermodal facilities “*should meet strategic planning and environmental objectives*” [5.50].
- 15.88 Significantly, there is no evidence to suggest that the policy was the subject of objections by Bexley Council [6.90].
- 15.89 As to the SPG, this was adopted in March 2007. It notes that the *Mayor's Transport Strategy* and the *London Plan* support the Government's objective of increasing rail's share of the freight market and delivering a modal shift from road to rail. Boroughs are urged to encourage development of rail freight in appropriate locations and protect existing or proposed rail freight sites [5.57]. Paragraph 12.7 states:
- “Required capacity from rail freight growth in London and the South East would be met by three or four strategic RFIs in the region, supplemented by smaller locations within the M25 ring.....suitable sites are likely to be located where key road and rail radials intersect with the M25.”*
- 15.90 The following paragraph sets out the characteristics of a SRFI and notes that they are such that “*there is a very limited range of suitable sites in the London/South East England area*”. The SPG points to the SRA's *Strategic Rail Freight Interchange Policy* as providing detailed guidance and advice on SRFIs [6.105], following which paragraph 12.12 advises:
- “When planning applications are submitted for new rail freight sites, or for enhancements to existing RFIs.....As a general premise, the potential of rail served freight sites to deliver sustainable transport objectives should be afforded considerable weight by boroughs determining the planning application”*
- 15.91 Again there is no evidence to suggest that the SPG was the subject of adverse representations by Bexley Council during the consultation stage [6.106].
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- 15.92 At the other end of the spectrum, European policy is equally supportive of rail freight in general and the development of a network of rail freight terminals [9.4].
- 15.93 Bringing these policy strands together, there is undoubtedly strong Government support for proposals which foster the movement of freight by rail. The provision of rail freight interchanges is seen as a necessary component in delivering this strategy. Against this policy background, it was the SRA that developed the policy for SRFIs and first identified the need for three or four such facilities to serve London and the South East. Their conclusions were broadly endorsed by Government, but not specifically embodied in Government planning policy guidance.
- 15.94 The matter has, however, moved on and policies in the *London Plan* effectively embrace the SRA's conclusions and support the provision of three or four SRFIs in London and the South East. That support is qualified in the adopted plan, however, which states in terms that any SRFI should be wholly or substantially on previously developed land. Plainly, the appeal proposal would fly in the face of this requirement [6.93]. Given its status as Green Belt, it would equally fly in the face of the emerging replacement to that policy which requires that new locations for intermodal facilities should meet strategic planning and environmental objectives.

A Situation Requiring Relief

- 15.95 In looking at policy matters, it is appropriate to deal with Bexley Council's evidence and submissions on whether or not the asserted need for a SRFI at Howbury Park amounts to a "*situation requiring relief*" [7.108 et seq]. The phrase stems from the LIFE appeal decision where the Inspector concluded, and the First Secretary of State agreed, that there was not a "*clear and compelling need for a SRFI at Colnbrook in the sense of a situation requiring relief*" [7.110, 7.111]. The conclusion was reached having regard, in particular, to the amount of spare capacity available at the Willesden intermodal terminal at the time the LIFE appeal was considered. In doing so it was specifically acknowledged that "*the site at Willesden cannot be compared directly with LIFE, but it is relevant to the question of need and alternative sites*" [7.109].
- 15.96 Whilst plainly the matter was of considerable importance in the LIFE decision, as far as I am aware the phrase "*situation requiring relief*" is not otherwise found in any relevant planning policy. It is a concept which to my mind embraces the general policy requirement that proper use should be made of facilities that exist, where they are suitable, before planning permission is granted for new facilities. In the context of rail freight interchanges, this is clearly embodied in *Sustainable Distribution* – see paragraph 15.80 above.
- 15.97 I deal with the matter of alternatives below, but in regard to this matter there are plainly parallels between the Howbury Park and LIFE proposals insofar as there is an existing intermodal terminal at Barking with capacity to handle a similar number of trains to that which Howbury Park would accommodate [7.58]. It is run by Freightliner and well equipped with gantry cranes. Whilst its access to the main road network is clearly not as good as that which would be provided at Howbury Park, there is, in my opinion, no reason why it could not be improved to an acceptable

standard. At the time of the inquiry the only traffic that the terminal was handling was waste containers; all other intermodal traffic from ports and elsewhere having ceased [7.114].

15.98 Traffic at Willesden, whilst not, in my view, directly relevant to the decision at Howbury Park having regard to its location in inner West London, has similarly declined since the matter was considered by the LIFE Inspector. Indeed, at the time of my visit no intermodal traffic was being handled at that site [7.114].

15.99 Insofar as there is plainly spare intermodal terminal capacity available at Barking which could theoretically handle much, if not all, of the intermodal traffic that might be attracted to Howbury Park if it were to be developed [7.107], it might be concluded that the need for an intermodal terminal at Howbury Park does not amount to a situation requiring relief. However, I do not see the matter in such stark terms. In particular:

1. Whilst the intermodal terminal at Howbury Park could be mirrored by that at Barking there is only very limited potential to develop rail-linked warehousing at Barking (see para 15.105 below) The SRA's guidance, broadly endorsed by Government and referred to in the *London Plan*, is that a key characteristic of SRFIs is the provision of large-scale warehousing and an intermodal terminal on a single site (see para 15.83 above). Their minimum size is seen as 40ha (ibid).
2. Both the former SRA, the *London Plan* and the SPG that followed it all see SRFIs as distinct from intermodal terminals. A continuing role for smaller facilities within the M25 (such as Barking) is clearly envisaged [15.89].

15.100 To my mind the message underlying the policy is clear - SRFIs are not equivalent to intermodal terminals. SRFIs are seen as necessary to bring about a shift from road-based freight haulage to rail-based freight haulage. There is no suggestion in any policy document that I am aware of that a SRFI can in effect be disaggregated to its component parts, with an intermodal terminal separate from large scale rail-served warehousing, and still operate successfully. Indeed, the experience at Willesden and Barking, where traffic has declined markedly since the LIFE decision notwithstanding the lack of alternative rail freight terminals in London, suggests that such intermodal terminals offer little to attract users [6.140]. I accordingly give little weight to the suggestion that planning permission for Howbury Park should be refused because it has not been demonstrated that the need for additional intermodal terminal capacity amounts to a "*situation requiring relief*".

15.101 Further weight to my conclusions in this regard comes from TfL who specifically considered Barking in reaching their decision to support Howbury Park. Their conclusion was that Barking was well placed to serve traffic from Europe travelling via the Channel Tunnel Rail Link [6.136]. They did not see Barking and Howbury Park as being in competition [9.16 and INQ5.10, para 20].

- 15.102 It is useful here also to pick up on the “chicken and egg” analogy [6.112, 7.116]. Plainly, the analogy has its limitations. However, the former SRA and now the Mayor both see a need for three or four SRFIs around the M25 as necessary to foster movement of freight by rail in London and the South East. Currently there are no such terminals anywhere around London, let alone the three or four envisaged by the policies. Accordingly, unless and until they are provided the benefits that they might offer in terms of increasing the proportion of freight carried by rail will not be seen.
- 15.103 In this connection Bexley Council put it that in their *SRFI Policy* the former SRA predicted that non-bulk rail traffic in the South East would increase substantially even without additional rail-connected warehouses [7.116]. This is so; but the increase predicted with 200,000m² of rail-linked buildings is some 4.8million tonnes per year greater [ibid]. As I see it, this conclusion only serves to reinforce the argument for providing SRFIs with rail-linked warehouses.

Alternatives

- 15.104 In considering whether or not very special circumstances exist to outweigh the harm to the Green Belt and other harm that would result from building and operating a SRFI at Howbury Park, it is plainly necessary to consider whether there are alternatives that could meet the identified need. In this regard the application was accompanied by two reports examining alternative sites. The first, compiled by PFD Savills (CD1.3), examined some 19 sites and concluded that two of these – those at Howbury Park and Swanley (also in the Green Belt) would be suitable for a SRFI. The second, compiled by Nathaniel Lichfield and Partners (CD1.4) refined the study. Initially it looked at 34 sites in an arc around South and East London extending from the A1(M) to the M3 corridors, out of which seven sites were selected for more detailed examination. The report concluded that there are no alternative locations for a SRFI within the sector examined, other than Howbury Park, that would be deliverable and offer the opportunity to serve the London Market (CD1.4, para 6.13).
- 15.105 The robustness of this conclusion was accepted by both strategic planning authorities involved [6.131, 9.19, 14.1], but not by Bexley Council who maintained an argument at the inquiry that Barking represented an alternative¹. As to the merits of Bexley Council’s case, the Barking site clearly has potential as a rail interchange; indeed it has all the facilities in place to allow it to operate as an intermodal terminal. Having visited the site, however, the constraints are obvious. Its size is around half the minimum of 40ha specified for a SRFI and the existing railway land is an elongated lozenge shape and not at all suitable for the erection of large-scale rail-served warehouses (see plan in CD1.4). Whilst it might be possible to expand the site to the north, this would require the acquisition of numerous freehold interests and the relocation of the eastbound London, Tilbury and Southend railway track [6.137]. The planning regime is furthermore resistant to the construction of warehousing on the site

¹ Initially Mr Niblett suggested that several other sites to the north of the Thames might also be suitable as alternatives (LBB3.2). However, these were not pursued by the Council following cross-examination on the point.

[ibid]. To my mind, even if a viable scheme were to be drawn up, significant delays in assembling the necessary land would be almost certain [ibid]. I accordingly do not see the Barking site as a realistic alternative to Howbury Park for a SRFI. Notwithstanding this, I do accept, as TfL suggest (see para 15.101 above), that the site may well have a future role in handling specialist high speed/high volume freight trains brought into the UK via the Channel Tunnel and routed to Barking along the Channel Tunnel Rail Link [6.136].

- 15.106 At the inquiry Mr Rodmell suggested that a SRFI on the White Hart Triangle near Plumstead could also operate as an alternative to Howbury Park [13.12]. The suggestion was not taken up by Bexley Council or any other body at the inquiry, however, and it was accepted that the area of the site is around half the minimum of 40ha required for a SRFI [ibid]. In comparative terms the site is also remote from the M25 [ibid]. Having visited the area and considered the evidence presented on the subject, my opinion is that the White Hart Triangle can be safely discounted as a suitable site for a SRFI.

Practical Considerations

- 15.107 In looking at the strength of the very special circumstances case, it is also pertinent to consider whether, if planning permission were to be granted for Howbury Park, the resulting development would operate as a SRFI. Put candidly some objectors to the development were suspicious that ProLogis's proposal for a SRFI was no more than a device to obtain planning permission for a large warehouse complex on Green Belt land in a prime location close to the M25 [6.154]. The suspicions were heightened by ProLogis's unwillingness to enter into any agreement that would make them liable for significant financial payments should the rail facilities not achieve the level of use anticipated [7.133], and by the limited information available regarding the costs and value of the development [7.47].
- 15.108 As to the practical considerations that could potentially constrain the use of rail at Howbury Park the following were cited:

1. Lack of suitable train paths.
2. Restricted loading gauge.
3. Location relative to the UK's major ports.
4. Capacity of the intermodal terminal.

Lack of Suitable Train Paths

- 15.109 It is common ground that during the peak commuter periods passenger traffic using the suburban railway network in the vicinity of the site, including trains entering and leaving Southeastern's Slade Green Depot, is likely to prevent freight trains accessing a SRFI at Howbury Park [7.122, 7.131]. Bexley Council and others are also concerned that at other times of day pressures on the network from passenger trains

might restrict the number and/or routeing of trains to and from Howbury Park, thereby limiting the development's potential to succeed as a SRFI.

- 15.110 Evidence on this matter took a significant amount of inquiry time, without, in my view, reaching a completely firm conclusion. In essence, there is little doubt that Network Rail are supportive of the scheme [6.148]. They have effectively guaranteed that paths for three trains each day would be made available on opening the terminal and they state that further paths are likely to be made available as and when required [ibid]. At the same time, they are not prepared to guarantee that all the inbound and outbound paths per day which the fully operational terminal would require will be made available [ibid].
- 15.111 This is, as I understand it, Network Rail's normal practice [6.148], reflecting their need to keep their options open and to deal even-handedly with all train operators who might want to use the network (PDL/6.6, Appendix 2 and PDL/6.13). There is no suggestion on their part that they would not be able to accommodate the growing needs of the terminal.¹ EWS are equally confident that the terminal could be adequately served [ibid] as are Interfleet who undertook several timetable analyses [7.125 et seq]. The evidence also is that there are several unused train paths (including "Q" paths and paths assigned to Channel Tunnel traffic) that could be re-allocated to the terminal in any timetable revision [9.12].²
- 15.112 Alongside this positive picture of path availability, it has to be recognised that the implications of the emerging Kent Franchise and planned timetable changes on the North Kent Lines are not yet fully understood and have not yet been fully assessed [7.122, 7.125, 7.128 et seq, 13.5 et seq]. Accordingly, whilst I take the view that, on the totality of the evidence available, the Secretary of State can be reasonably assured that sufficient train paths would be available to service a SRFI at Howbury Park, I do not consider this guaranteed.

Restricted Loading Gauge

- 15.113 As to loading gauge, the principal route to the site, via Barnehurst is W8 gauge. As such it would not be able to accommodate "high cube" 9ft 6in high containers on standard height wagons [7.97]. The evidence is that a significant number of these high

¹ In reporting this I differentiate between the various letters sent by Barbara Barnes, Network Rail's Head of Customer Services (PDL/6.3, Appendix F; PDL/6.6, Appendix 2 and PDL/6.13) and the e-mail sent by Paul Harwood to Bexley Council's rail witness, Mr Niblett. Whilst Mr Harwood clearly has concerns regarding the potential future availability of sufficient paths to service the terminal [7.123] his e-mail says in terms that this is "*very much my own gut feeling and not the result of any analysis*" (PDL/6.21). Barbara Barnes' letter of 14 April 2007 (PDL/6.6, Appendix 2) advises that Mr Harwood's comments have been taken out of context by Mr Niblett.

² For Q paths see PDL/6.16, Appendix 1. It should also be noted that the two paths identified by EWS and referred to by Bexley in their closing submissions (LBB0.8, para 12.2 and 12.3 - see paras 7.119 and 7.120 above) are both existing unused Q paths allocated to EWS. The submissions do not make this clear.

cube containers are being used for international shipping; moreover, the proportion is increasing [ibid].

- 15.114 Whilst high cube containers could be carried on special low platform wagons, it is plain that this is not the preferred method of doing so [7.98, 7.99, 7.101]; indeed it is proposed to spend large sums of money elsewhere to enhance the gauge from Southampton to the West Coast Main Line and from the Haven ports to the East Coast Main Line via Peterborough to W10 gauge [7.102].
- 15.115 As to the degree to which Howbury Park would be disadvantaged in practice by not being on a route cleared to W10 gauge, it is difficult to reach a firm conclusion. On the one hand there is little doubt that an increasing proportion of the containers used internationally will be high cube (see above); but there is no evidence that this trend is being followed for containers used on inland routes. Indeed, there is evidence that Tesco recently took a decision to employ lower intermodal units for their traffic running between Scotland and DIRFT (which is cleared to W10 gauge) because of the flexibility that it would offer to route trains on alternative or diversionary routes. Other UK operators have likewise taken decisions to use intermodal units compatible with W8 gauge (PDL/6.15, para 7.3).
- 15.116 The number of routes cleared to W10 gauge on the UK rail network is also limited - only some 2% of the total UK rail network is currently cleared to W10, compared to around 30% cleared to W8 or larger (PDL/6.15, Table 3). Notwithstanding this, the lines cleared to W10 gauge are the most important for container traffic and include the West Coast Main Line (WCML) and the route between Felixstowe and the WCML via London. The London Tilbury and Southend Line (which covers Barking) is also cleared to W10 gauge. There are plans to increase the length of the network cleared to W10¹ (see para 15.114 above) but some routes with a more restricted gauge are nonetheless already well used, notably the routes from Southampton which are currently only cleared to W8 (PDL/6.15, Table 5). The existing route from the Channel Tunnel through Kent and south London is cleared to W9 gauge and the CTRL is built to the larger UIC GC gauge, but elsewhere south of the Thames all other routes are a maximum of W8; indeed the majority are W6 (LBB3.8).
- 15.117 As to the penalty which would accrue from using low platform wagons, there is no dispute that build and operating costs with low platform wagons are higher than for standard wagons [7.101]. However, low platform and standard wagons can be mixed in a single train and the penalty in terms of the number of containers which can be carried on a given length of train very much depends on the actual mix of containers involved [6.147 and PDL/6.15, Figure 5]. It is also important in deciding whether a penalty would accrue to consider both the origin and destination of the train – if, for example a train comes to Howbury from a remote destination cleared to W8 gauge

¹ In this connection it should be noted that the Network Rail's Freight Route Utilisation Study identifies the North Kent Line as an "additional priority" for gauge enhancement (CD4.15, Figure 6.2). However, no timetable for this enhancement is given.

such as Tees Dock, then that gauge will in any event dictate the train's configuration (PDL/6.15, paras 9.5 and 9.6).

- 15.118 In conclusion there is little doubt that a SRFI at Howbury Park would be at some disadvantage insofar as the site would only be able to accept trains that would run under W8 gauge, not W10. Notwithstanding this, it has to be recognised that only a small proportion of the UK rail network is currently cleared to W10 gauge. Also, with low platform wagons, high cube containers can be carried on routes cleared to W8 gauge, albeit that doing so incurs additional costs. As such I tend to the view that the disadvantage that Howbury Park would suffer from not being on a route cleared to W10 gauge would not be fatal; indeed the evidence is that any SRFI proposed to serve London and located to the south of the Thames is likely to be at a similar disadvantage.

Location Relative to the UK's Major Ports

- 15.119 A further concern voiced by Bexley Council relates to the distance between Howbury Park and the UK's major ports. In essence the case put is that the distance between the site and Southampton or the Haven Ports is not long enough for rail to compete with road [7.93]. Analysis by Mr Niblett was produced which claimed to show that the "breakeven distance" above which rail haulage would be competitive compared to road haulage would be of the order of 190km for port traffic, rising to around 400 or 500km for non-port traffic [7.94]. Given that the intermodal terminal is expected to account for a high proportion of traffic to the site [7.90], and that a high proportion of this is containerised international traffic routed via the ports [7.92], it was argued that the number of trains using the site would be likely to fall well short of the number forecast by ProLogis.
- 15.120 As to the merits of this line of reasoning, there is no doubt in my mind that it is basically sound, so far as it goes. Whilst I would hesitate to put precise numbers to breakeven distances, and agree with ProLogis that some aspects of Mr Niblett's calculations were difficult to comprehend [6.152], it does seem to me that current practice bears out the case made by the Council. Whilst there are some examples of freight operators running rail services over distances that are less than Mr Niblett's breakeven distance [6.152], there are very few and the evidence is that several that were running have now ceased to do so [7.95]. To my mind it has to be accepted that trains between Howbury Park and Felixstowe (160km) or Southampton (130km) are unlikely to be competitive when compared to road transport. Plainly, trains from Thamesport or the recently approved terminal at Thames Gateway would be even more uncompetitive.
- 15.121 Notwithstanding this, the analysis only goes so far. Freight traffic coming through the Channel Tunnel is not considered, which the site would be well placed to accept. ProLogis expect this to generate three trains daily [7.104]¹. Equally, the breakeven

¹ Whilst Bexley Council question this and point to the general downward trend in freight through the Channel Tunnel over recent years in support of their case [7.105], it seems to me that these effects may well be short

analysis does not attempt to take on board considerations other than cost, and uses today's cost base. Whilst this approach is practical, and in most circumstances would not be unreasonable, it does seem to me that other factors are also likely to drive a movement of road-based traffic to rail. Corporate social responsibility is a major consideration that appears to be driving a move to rail-based transport; others are the impact of increasing congestion on the road network (particularly in the London area) on road-based transport costs and delivery schedules. Escalating fuel costs, the ageing profile of HGV drivers and road pricing, if it is introduced, could all also serve to increase the propensity of those responsible for moving goods to move towards rail-based haulage [6.153].

- 15.122 Plainly these effects cannot be quantified. However, I agree with ProLogis's view that overall the trend is likely to be towards increased rail traffic. This would fit with the Government's ambitions (see paragraph 15.81 above). Also, whilst no documents were produced at the inquiry to back up the former SRA's conclusion, embodied in the *London Plan*, that three or four SRFIs are required to service London and the South East [7.90] it seems to me very unlikely that such a firm conclusion would have been reached without credible research to establish the demand.

Capacity of the Intermodal Terminal

- 15.123 The capacity of the intermodal terminal is the subject of a note (PDL/6.17). It was put into the inquiry by ProLogis's rail witness Mr Gallop but, as the introduction notes, it was discussed with representatives of Bexley Council before it was finalised and the assumptions and variables input to the capacity calculations were broadly agreed between the parties (ibid, paras 1.2 and 1.3).
- 15.124 It concludes that, with two reception sidings, the three primary handling sidings in the intermodal terminal would be capable of handling between 9 and 15 x 420m long trains per day, using reachstackers (PDL/6.17, para 3.4). With gantry cranes this would increase to 13 to 16 trains per day (ibid). On this basis it is concluded that it would be feasible to process the nine intermodal trains per day expected to use the intermodal terminal, and the three conventional trains to the warehouses within the window available to move trains in and out of the site [6.151 and PDL/6.17, para 3.5].
- 15.125 It is further concluded that it would be possible to accommodate trains of up to 775m in length if necessary, albeit that the maximum length of train that can currently operate on the North Kent Line is 512m (3.5 and PDL/6.1, para 7.15).
- 15.126 The S106 Non Highway Obligations require gantry cranes to be provided on the site, together with a second arrival/departure chord as soon as traffic exceeds 24 trains per week or by the end of 10 years in any event [1.16].

term. Given the policy aims at the highest European level to increase the proportion of freight carried by rail [15.92], and the capacity available in the Channel Tunnel at night which could be used to accommodate additional freight I see no reason why the recent downward trend should not be reversed. The draft *London Freight Plan* records that Eurotunnel estimate that freight traffic through the tunnel could increase from 2 million tonnes today to between 6 million and 14 million tonnes [5.55].

Positive Indications that the Development would Operate as a SRFI

- 15.127 Against these concerns it has to be recognised that ProLogis is a major provider of logistics space with wide experience of the market and their customers' requirements. They have recently acquired DIRFT and two other intermodal facilities in the UK and have a programme to deliver SRFIs nationwide [6.122]. Notwithstanding the simple economics of transporting goods by rail, it also has to be recognised that the corporate desire on the part of large retailers and others is embracing environmental matters. Moving goods by rail fits with that agenda as was recently demonstrated by Tesco when they set up the regular intermodal service between Scotland and DIRFT. Other retailers are also reported to be moving towards rail haulage, as are third party logistics operators such as DHL and Eddie Stobart [ibid]. Plainly, if these and similar companies are to move from road-based haulage operations to a mix of road-based and rail-based haulage, they need the warehouses and terminals to fulfil those ambitions (see also para 15.102 above).
- 15.128 There is also no doubt in my mind that ProLogis is fully committed to delivering the rail infrastructure on the site. Whilst they resisted Bexley Council's suggestion that they should enter into an agreement by which financial payments would be made into a fund to promote rail use, should defined targets for rail use not be met [7.133], the S106 Non Highway Obligations nonetheless contain a range of measures that should encourage rail use. These include undertakings to (i) complete the intermodal terminal and other rail infrastructure before any of the rail-served warehouses are occupied and to provide rail sidings to each of the warehouses before they are brought into use; (ii) provide a £3,000,000 rail subsidy fund to pay for lift subsidies for users of the intermodal terminal in the first three years of operation and to secure a regular "start up" train service between the site and an appropriate rail freight hub (with options to increase the funding to £4,000,000 if necessary and to apply the money to alternative measures to encourage rail use if that is agreed to be appropriate); (iii) fund and support the work of the Thames Gateway Sub-Regional Freight Quality Partnership, and finance the appointment of a Rail Officer at TfL; (iv) provide a second rail chord to the site (to allow a train to enter the site whilst a second train is waiting to depart) as soon as traffic to the terminal exceeds 24 trains per week, or within 10 years from commencement of development, in any event; and (v) provide gantry cranes in the intermodal terminal within the same timescale [1.16].
- 15.129 A rail freight plan is also required to be submitted containing specific actions to encourage rail freight with the aim of building the amount of goods arriving at the warehouses by rail to at least 25% by weight by the end of the first 10 years of operation [1.16].
- 15.130 In this connection, Bexley Council argue that the survey carried out at DIRFT showed that only a small proportion of the goods passing through the warehouses there were moved by rail [7.73, 7.86 to 7.89]. They submit that the proportion at Howbury Park would be similarly low. However, my view is that the case made is, at best, weak. My reasons for this are:

1. The survey cordon at DIRFT was not drawn specifically to measure the amount of goods carried by rail, but to measure traffic flows; the cordon included the intermodal terminal and both rail-linked and non rail-linked warehouses [7.86].
2. Whilst more than half the warehouses in the cordon area at DIRFT are rail-linked [ibid], the proportion that is rail-linked across DIRFT as a whole is around 20%.¹ In contrast, at Howbury Park 100% of the warehouses would be rail-linked.
3. No reliable data was available as to what percentage of goods passing through the intermodal terminal was destined to go to or come from those warehouses at DIRFT which lie outside the cordon.
4. Whilst it is argued that there is a large supply of other warehouses in the Thames Gateway near to Howbury Park which the intermodal terminal could serve [7.89], it is my understanding that there are also other major warehousing sites close to Daventry which the intermodal terminal at DIRFT serves. In any event, if the intermodal terminal at Howbury Park were to generate rail traffic destined for other warehouses in the Thames Gateway, I would see that as a positive outcome, not a negative outcome overall.
5. Whilst DIRFT benefits from a W10 gauge rail connection and more reception sidings than would be provided at Howbury Park [7.87, 7.132], I do not see the gauge issue as fatal to the success of Howbury Park for the reasons given above. Equally, there is no evidence to show that the rail facilities proposed at Howbury Park would unacceptably limit its rail capacity or flexibility to accommodate its customers' needs. Indeed, whilst it would appear that the number of reception sidings available at DIRFT is exceptional, it is agreed that several other terminals (including DIRFT, Hams Hall and Birch Coppice) have single track access to the intermodal terminal (PDL/6.17, para 1.17). This is a critical link in the operation of any terminal and it seems to me that in this regard the arrangements proposed for Howbury Park would not be out of step with those found elsewhere.
6. Finally, whilst it is fair to acknowledge that DIRFT operates as a national distribution centre and is better placed to attract port traffic [7.87], Howbury Park would have other advantages. In particular it would be well placed to serve the London and South East markets where there is currently a lack of similar facilities, especially rail-linked warehouses [6.129, 6.130]. It would also be well placed to receive traffic from Europe travelling via the Channel Tunnel [9.14].

¹ See PDL/6.25. The area of non rail-linked warehousing is given as 280,472m². The area of rail-linked warehouses is given as 70,420m².

- 15.131 Overall I accordingly take the view that the evidence does not demonstrate that the warehouses would not attract a significant percentage of goods by rail.
- 15.132 In this connection there is also no doubt that the design of the proposed warehouses at Howbury Park has been optimised to attract users committed to rail. In essence they would be large - indeed Unit A would be one of the largest in London and the South East [6.126, 7.17] - and their width, at around 150m for Units A, B and C, would be considerable. Loading bays suitable for lorries would be provided along one side only, however, and the other side would be taken up by rail tracks. The units would thus not be “cross-docked” which the evidence shows is normally required by operators of road-served warehouses of this size [6.123]. Plainly cross-docking is not an essential requirement for road-served warehouses [7.135]. However, the evidence available points to the conclusion that the larger units proposed at Howbury Park would be difficult to let to a road only user given their configuration. Also, it seems to me that the peak hour cap on lorry movements from the site, embodied in the S106 Highway Obligations [1.19], would further tend to dissuade road-only users from occupying space at the site, albeit that its provisions would only take effect in the peak hours on the local network, which are not normally the peak hours for HGV movements [7.136].

Sustainability

Use of Previously Developed Land

- 15.133 It is a fundamental plank of Government policy, reflected in the development plan for the area, that previously developed land should be utilised for development wherever it is feasible to do so before greenfield sites [5.6, 5.35, 7.48, 7.49, 7.56]. Clearly the appeal proposal would run counter to this principle. But the principle can only hold good where suitable previously developed land is available to meet the need identified. If it is not, as my above conclusions on the availability of alternative sites demonstrates in this instance, then inevitably greenfield land must be used if that need is to be met.

CO₂ Emissions

- 15.134 There is no doubt that when drawing up their *SRFI Policy* (CD4.10) the SRA anticipated that one of the benefits of moving to rail-based freight from road-based freight would be a significant saving in CO₂ emissions [6.83]. Paragraph 5.10 of the document states:

"Rail freight has a material advantage over road freight in terms of carbon dioxide emissions, which impact on climate change. The average CO₂ emission per tonne kilometre of rail freight is 23g whereas, for HGVs, it is 178g."

- 15.135 At the inquiry the correctness of this and similar statements was called into question by Bexley Council. In doing so they pointed out that similar issues had been the subject of evidence at the LIFE inquiry. There the Inspector concluded and the Secretary of State agreed [7.153]:

“For CO₂ emissions, the effect of the development is difficult to predict with any certainty. It could be beneficial or harmful, but would certainly not have the clear benefits claimed by Argent.”

- 15.136 Initially ProLogis calculated that the appeal proposal would, when fully operational, “save” around 35,300 tonnes of CO₂ per year (ES, Volume 5a, Appendix A4, p14). Bexley Council’s witness on the other hand suggested that the development would in fact increase CO₂ emissions [6.115].
- 15.137 During the course of the inquiry the two witnesses sought to gather further data and reach agreement on the matter, but with only limited success. In essence they were able to agree the CO₂ emissions for HGVs, but not those for the Class 66 locomotive which would be used to haul the trains, where it seems to me that the research base is both limited and less reliable. There were also differences in the assumptions made regarding the average number of containers carried per train and the number of HGVs saved (PDL/6.23). “Final” estimates of the savings produced ranged from 2,582 tonnes CO₂ per annum (Bexley) to 33,581 tonnes CO₂ per annum (ProLogis) (ibid).
- 15.138 As to what the actual savings would be I tend on the evidence available to err towards the Class 66 fuel consumption figure ultimately relied on by Bexley Council’s witness which came from GB Railfreight and related specifically to an intermodal train [7.144 and 7.145]. It is in the same range as other figures from AEA and EWS [7.145 and 7.146], but around double that ultimately relied on by ProLogis which came from a press release from Stobarts, with no substantiation to back the figure [7.147]. As to the number of containers which each train would carry, and the consequent saving in HGV trips, I tend towards Bexley’s assumption that there will be an average of 20 containers on each train, which was derived from analysis of actual trainloads at DIRFT [7.149]. It does however, seem to me that Bexley’s assumption that these 20 containers on a train would be carried by 16.6 HGVs is optimistic as it assumes that one third of containers on a train are 20ft in length and all of these are carried in pairs on an HGV (LBB7.5, p2). The assumption takes no account, however, of HGV weight limits which would prevent heavy 20ft containers being loaded in pairs on a single vehicle. Neither does it account for any need to deliver each single 20ft container to a different destination. Overall, it seems to me that an assumption that each train would carry 20 containers and replace 18 or 19 HGVs would be more realistic.
- 15.139 If this line of reasoning is followed through, the total savings in CO₂ would be of the order of 6,000 tonnes per annum.¹ If, alternatively, the average number of containers carried on a train were to increase to the 28 assumed by ProLogis, the figure would increase to around 20,000 tonnes of CO₂ per annum.²

¹ See PDL/6.23. Taking Bexley’s figures for rail, CO₂ generated is 16,184 gm/km. If this replaces 18.5 HGVs the saving is ((18.5x1,065)-16,184) = 3,518gm/km or 6,077 tonnes of CO₂ per annum.

² See PDL/6.23. A train with 28 containers is assumed to displace 26 HGVs. The saving thus becomes ((26x1,065)-16,184) = 11,506gm/km or 19,873 tonnes of CO₂ per annum.

- 15.140 Overall there is little doubt in my mind that, even with allowances for empty running and trip end mileage [7.140, 7.151 and 7.152], the proposal would benefit the environment by reducing CO₂ emissions, albeit that the amount of the reduction in emissions achieved would almost certainly not be as great as that initially claimed by ProLogis.

Design

- 15.141 There is no suggestion that in terms of its sustainability credentials the design of the terminal would be less than satisfactory. Indeed it is proposed that the buildings would incorporate a range of measures to increase their sustainability. These are detailed in the Design Code (ES, Volume 5a, Section A) and would be secured by an agreed condition (PDL/0.13, Condition 6). They include the provision of some 28,240m² of green roof and 6,285m² photovoltaics and other measures to reduce CO₂ emissions. Rain water from the roofs would be collected and used to reduce on-site water consumption whilst run-off from other parts of the site would be directed via treatment ponds to swales and infiltration trenches, with multiple controlled connections to the Crayford Marshes [3.13].

Precedents

LIFE

- 15.142 I have dealt with the LIFE decision above where I consider the matter of a “situation requiring relief”. Whilst plainly many features of that proposal were common to the proposal now being considered, I nonetheless do not see, as Bexley imply, that the Secretary of State’s decision on Howbury Park must necessarily follow that reached in respect of LIFE [7.3, 7.58, 7.69, 7.73]. It is a fundamental principle of the planning process that each application should be determined on its merits, in accordance with the development plan unless material considerations indicate otherwise. It is true that the SRA’s 2001 *Freight Strategy*, which first introduced the concept of a requirement for two or three major new freight facilities around London in addition to Colnbrook, was published before the LIFE decision was reached, albeit not before the inquiry was concluded [6.81]. But policies evolve with time and there is no doubt that in the five years since the LIFE decision (and the seven years that has elapsed since the inquiry was held) the policy base for the provision of three or four SRFIs to serve London and the South East has evolved and strengthened (see para 15.78 et seq above). Accordingly, whilst plainly it would be right for the Secretary of State to have regard to the precedent set by LIFE in reaching her decision on Howbury Park, I do not see that she is bound to arrive at the same conclusion.

Other Precedents

- 15.143 As to other precedents, Bexley and Dartford Councils both brought evidence to the inquiry showing that past attempts to secure development on the area of Green Belt including the appeal site had been unsuccessful and the Green Belt boundary had been upheld [7.12, 7.14, 8.10]. There is no doubt that this is so. However, it is plain that the developments then under consideration were not at all comparable to the appeal

proposal. I therefore take the view that as precedents in favour of dismissing the appeal proposals these decisions should carry insignificant weight.

Other Matters

Car Parking

- 15.144 ProLogis propose that 1,167 car parking spaces be provided in the development [6.53], in five dedicated car parks located near to the office accommodation at the ends of the warehouses. The number would be controlled by condition which would also operate to prevent cars being parked elsewhere on the site (Appendix E, Conditions 28 and 34).
- 15.145 At the inquiry Bexley Council, with support from SGCF, argued that fewer spaces should be provided, in the interests of encouraging workers at the terminal to travel to work by means other than the private car. A maximum of 1,000 spaces was suggested [6.53]. ProLogis resisted the suggestion.
- 15.146 As to the merits of the point, *PPG13*, paragraph 49, records that the availability of car parking has a major influence on the means of transport people choose for their journeys. Reducing the amount of parking in new development is essential to promote sustainable transport choices [7.156 and 7.157]. The requirement to provide no more car parking spaces than necessary is reflected in the *London Plan* [5.11, 7.160] and the *Bexley UDP* [5.21]. Accordingly, it is put that providing more spaces than the minimum required would both conflict with policy and could potentially undermine the success of the travel plan, which aims generally to encourage travel by means other than the private car [7.168].
- 15.147 I acknowledge that the argument put has some force, and that some elements of the parking accumulation study which underpins ProLogis's application for 1,167 spaces are open to question. It seems to me that the number of cars assumed to be parked overnight at DIRFT is probably not as high as the number calculated by ProLogis's consultants [7.166]; equally the underlying assumption that 70% of workers would travel to Howbury Park by car may be pessimistic for the reasons cited by the Council and SGCF [7.164, 7.165, 10.5]. Having considered the matter in the round, I nonetheless conclude that the number of parking spaces should not be reduced below the 1,167 proposed by ProLogis. My reasons for this are as follows:
1. Whilst the number of spaces is large, it is just over half the maximum permitted by the development plan's parking standards [6.54]. Also, whilst these standards apply equally to Class B1 uses and Class B8 uses [7.162], the site is not in a town centre or other highly accessible location which would normally be the case for large-scale Class B1 office uses where the employment density would be significantly higher than the appeal site.
 2. The total number of parking spaces proposed (1,167) would need to be divided between the five car parks proposed. These car parks are linked to

the individual warehouses and, if they were to be occupied by independent companies [6.127], any spaces that were available in one company's car park would probably not be available to workers of a different company. Also, the size of the site is such that a worker in an office at the north end of the site is unlikely to want to park at the south end, or vice versa. In these circumstances I take the view that providing 10% extra spaces over and above the number calculated by the global accumulation study is reasonable [7.167]. Removing any unused spaces, as Bexley Council suggest, would be wholly impractical, given the potential for occupiers and/or their needs to change over time [6.56].

3. The site is expected to operate around the clock. This has two practical consequences. Firstly, the availability of public transport for those workers starting shifts early in the morning or finishing late in the evening is likely to be reduced, leading to an increased tendency/need to travel to or from work by car in comparison to those working normal daytime hours.
4. Secondly, if the shift pattern follows that at DIRFT, the evidence from the parking accumulation study is that the car parks would only approach capacity at the afternoon shift change time (i.e. at the point when workers on the morning and afternoon shifts are both on site as well as those employees working standard daytime hours [6.55]). At all other times spare spaces would be available. Accordingly, restricting the number of car parking spaces on the site would in practice only limit travel choice for workers arriving for the afternoon shift; others would not be affected. Any gains in terms of persuading workers to use more sustainable means of travel by limiting parking spaces would therefore only impact on a small proportion of the workforce.
5. Critically, and allied to the above, should there be a shortage of parking spaces in one of the northern car parks, such that a worker arriving to start his or her shift has difficulty finding a parking space, then it would be open to them to park in one of the nearby residential streets in Slade Green and walk into the site along Moat Lane. Were this to happen – and there are no parking regulations in force or proposed which would prevent it – then local residents would be inconvenienced [6.55, 10.19]. Moreover, the worker would still travel by private car; thus there would be no gain in sustainability terms.
6. Critically also the S106 Obligations and the accompanying Framework Employee Travel Plan/Freight Travel Plan contain a number of obligations aimed at encouraging workers to travel by non-car modes to the site. Schedule 2 of the Highway Obligations (PDL/0.16) sets out some of these. The Non Highway Obligations provide for £180,000 to be paid to extend the No 89 bus route into the site, or alternative measures to maximise the use of public transport by persons employed at the development [1.18]. Other measures set out in the Travel Plan (PDL/5.21) aim to encourage

walking, cycling, travel by train and car sharing. Whilst TfL originally raised concerns regarding the number of parking spaces proposed, they wrote shortly before the inquiry closed confirming that “in principle” agreement had been reached on car parking. Whilst they had reservations about the outcome the Travel Plan might deliver, they advised that it was nonetheless acceptable [14.8].

- 15.148 Should the Secretary of State be minded to grant planning permission for the proposed development but disagree with my conclusions on the appropriate provision to be made for parking cars on the site, then it would, of course, be open to her to adjust the permitted number by varying suggested Condition 34.

Other Industrial and Warehouse Sites

- 15.149 In their evidence Bexley Council drew attention to the more than adequate supply of land for industrial and warehouse uses in the area [7.4, 7.51, 7.52]. Plainly the construction of warehouses on the site would not accord with policy [7.46, 7.50]. But the argument is deeper than this and implicitly it was suggested that, if Howbury Park were permitted, investment which might otherwise have gone to these sites might be lost, thereby undermining regeneration initiatives [6.120]. I reject that argument. Put simply the proposal is for a SRFI with rail-connected warehouses and an intermodal facility [ibid]. There is no suggestion that there are other industrial sites in the Borough where large-scale rail-connected warehouses could be provided. If the Secretary of State determines that planning permission should be granted for Howbury Park, the permission will be for a SRFI containing rail-connected warehouses. Also, the S106 Non Highway Obligations, whilst not providing all the safeguards that Bexley Council would like to see to secure the rail use (see below), would nonetheless ensure that the rail facilities are provided and maintained. A substantial package of incentives would also be put in place to encourage their use. To my mind there is no evidence to support the view that providing rail-linked warehouses on the site as part of a SRFI aimed at meeting the strategic needs of London and the South East would materially impact on the demand for conventional warehouses in the Borough served only by road. Indeed, it seems to me that the provision of a nearby intermodal terminal might well tend to enhance demand for such units.

Employment and Socio-Economic Benefits

- 15.150 There is no dispute that the development would bring a substantial number of jobs to the area, which would be welcomed by residents [6.160, 10.29]. Notwithstanding this, I tend to the view that the employment and socio-economic benefits that would accrue from the development would be modest; there is no shortage of employment land in Bexley (see above), and unemployment in the Borough is unexceptional [7.76]. The employment density at the development is also likely to be less than for other sites of comparable size [7.75]. Accordingly, I take the view that the employment benefits that would flow from the development should not weigh significantly in deciding whether planning permission should be granted.

Conditions

15.151 Conditions were discussed at the inquiry, without prejudice, and largely agreed as between ProLogis and the two local planning authorities (PDL/0.13 and LBB0.6). Should the Secretary of State be minded to grant planning permission for the proposed development, then I recommend that the conditions listed in Appendix E be attached to the permission granted. These conditions follow those discussed and agreed at the inquiry and, to my mind, accord with the six tests for conditions laid down in Circular 11/95. They reflect the nature of the applications, which were in outline with all matters reserved for future consideration except means of access and siting. Several of the conditions are necessary to ensure that any development built accords with the scheme assessed in the ES and at the inquiry¹. Others are necessary to ensure that the amenities of the locality are protected, that pollution is prevented, that the operation of the highway network is not prejudiced and that the development provides and retains appropriate facilities for its future occupiers. As to the individual conditions:

1. **Condition 4.** Whilst a “pocket park” is proposed as part of the development and is shown on the application plans, its provision is not supported by Bexley Council or local residents [6.19, 10.17]. I have therefore adjusted Condition 4 to require the area proposed for the pocket park to be landscaped. This would not preclude it being laid out and managed for its wildlife interest as suggested by SGCF [ibid].
2. **Condition 9.** The area shown to be landscaped is a small area of land which would remain between the proposed access road and the boundary of the application site. It is in the control of the Appellants and all at the inquiry were agreed that it should be landscaped. The condition provides for this.
3. **Condition 10.** The suggested condition relating to the pocket park is deleted for the reasons given above. A new Grampian condition is proposed, requiring details of the proposed highway works on Moat Lane and at the main access roundabout serving the site to be submitted for approval prior to development commencing. This reflects my conclusions on the need for further checks and adjustments to be made to the design of the access road roundabout and the lack of detail on the proposals for Moat Lane, particularly with regard to the footway to the east of the proposed new entrance (SGCF/18, p1). The form of the condition follows that suggested by the Council (LBB0.6, Additional Condition A). The absence of references to the Crayford Mill Railway Bridge and the Thames Road/Crayford Way roundabout reflects my conclusions on these set out above. Similarly, there is no mention of HGV direction signs as this matter is covered by the S106 Highway Obligations (PDL/0.16, Schedule 1, Clauses 4 and 5).

¹ Notably Conditions 4, 5, 6, 7, 8, 11, 12, 21, 22, 31 and 34.

15.152 As to the various amendments and additional conditions suggested by Bexley Council (LBB0.6):

1. **Amended Condition 27:** The suggestions, which are necessary to control parking on the site are accepted and incorporated in Condition 28.
2. **Amended Condition 28:** The amendment to the wording is accepted and incorporated in Condition 29.
3. **Amended Condition 34:** The parking condition has been amended to include specific mention of spaces for disabled and car share drivers, in the interests of clarity, but the other amendments are not accepted for the reasons set out in paragraph 15.147 above.
4. **Additional Condition A:** This has been accepted in part – see note on Condition 10 above.
5. **Additional Condition B:** The requirement to provide parking spaces for HGVs prior to occupying the warehouses is covered by Condition 28. In my opinion, the requirement for a separate emergency “stack” parking area for HGVs is unnecessary and unreasonable having regard to the large amount of space in the service yards and intermodal area which should be readily available to park any HGVs whose departure is delayed by an incident on the highway network.
6. **Additional Condition C:** The Travel Plan is agreed by Kent County Council, the Highways Agency and Transport for London. It is defined in the S106 Highway Obligations (PDL/0.16, definition of “the FTP”) which require its terms to be observed (ibid, Schedule 2). To require it to be separately approved by the local planning authority is unnecessary and could potentially lead to requirements differing from those agreed by the highway authorities principally affected.
7. **Additional Condition D:** The S106 Non Highway Obligations require the rail infrastructure on the site to be provided before the intermodal terminal and warehouses are beneficially occupied (PDL/0.15, Schedule 1, Clauses 1.2 and 1.3). Other obligations indirectly encourage its maintenance and use. There is no specific obligation, however, which would prohibit the removal of all or part of the rail infrastructure at some future date. To my mind, such a requirement would be necessary and reasonable having regard to the nature of the development proposed and the very special circumstances cited by ProLogis as justification for the grant of planning permission for it [6.67 et seq]. I have therefore drafted a condition to this effect and included it in my schedule of suggested conditions (Appendix E, Condition 37).
8. **Additional Condition E:** This condition seeks to prevent construction of more than 50% of the proposed warehousing unless it can be shown that

25% or more of the freight handled in the warehousing already constructed has been moved to or from those warehouses by rail over the previous year. In principle the underlying aim of the condition - to ensure that the warehousing is used for rail related purposes and not simply as road based warehousing - is sound. However, other measures are proposed which would operate to achieve this. These include the requirement to provide and retain the rail infrastructure on site (see note on Additional Condition D above) and the raft of measures included in the S106 Non Highway Obligations to foster and encourage rail use. These include a requirement that a Rail Freight Plan be drawn up for approval containing specific actions to encourage rail freight with the objective of progressively building the amount of goods arriving at the warehouse to 25% by the end of the first 10 years of operation (PDL/0.15, Schedule 1, Clause 1.11). Given these safeguards it seems to me that the further condition suggested by Bexley Council is unnecessary. In any event such a condition would, to my mind, not comply with the requirement that conditions should be “reasonable” set down in Circular 11/95 and I am doubtful whether it would achieve the desired outcome.¹ I accordingly recommend against its imposition.

¹ There are several areas in which it might be concluded that such a condition would not be reasonable. Firstly, the amount of goods brought to a warehouse by rail is dependent on the actions of other parties outside the developer’s control. These include the various companies and other bodies responsible for running the railways. Whilst there is no expectation that any of these would not work to ensure the success of the development from the rail perspective, their ability to do so might be fettered by others and/or they may choose to act less than competitively if a condition were in effect to require 25% of goods to be brought by rail to the first tranche of warehouses to be constructed on the site in order for the second tranche to proceed. Occupiers of the first tranche of warehouses would similarly be put in an unusually strong position when negotiating terms with the developer if the developer’s ability to complete the development were dependent on their actions in bringing 25% of goods by rail to their warehouses.

Secondly, experience at DIRFT suggests that rail traffic to SRFIs will build over time. This is reflected in the requirement for the Rail Freight Plan to aim to progressively build the volume of goods arriving by rail to 25% by the end of 10 years. Coupled with this is the SRA’s advice, subsequently embodied in supplementary planning guidance adopted by the Mayor, that the minimum area for a SRFI should be 40ha [6.132]. Allowing only 50% of the warehousing to be constructed until such time as the first tranche of warehouses is shown to attract 25% of goods by rail would leave the effective area of the facility close to, or below, the minimum size contemplated for a SRFI. This in turn could lead to a reduction in the volume of goods moved by rail to the warehouses as the number of occupiers on the site who would be able to “share” space on trains would be reduced. Such an outcome would frustrate the very purpose for which the condition is intended.

Thirdly, but importantly, the end users of the warehouses are not known. The proposal provides for a wide range of warehouse sizes, with more than 50% of total floorspace in Unit A [3.3]. With the condition proposed, this unit could not be built until the other units had been occupied and achieved 25% by rail. Accordingly, if a potential occupier for this Unit A were to come forward early in the development period, their take up of the unit would be frustrated by the condition. Also, the development may well be constructed in a single phase and taken by a single occupier [6.127].

To my mind the suggested condition, if imposed, could well be open to challenge. Plainly, if the challenge were to succeed, as happened in different circumstances at Birch Coppice [7.139], the condition would no

15.153 As to the suggested amendments to conditions made by SGCF (SGCF/18), the additional clauses which SGCF suggest should be added to Conditions 14 (Moat Lane access) and 18 (drainage strategy) are unnecessary in my view. The management arrangements required to ensure that only authorised vehicles use the Moat Lane entrance would reasonably be interpreted as covering plans for monitoring any abuse. Similarly, I would expect any drainage strategy approved to include proposals for regulating the outflow from the site to the Crayford Marshes, which could be varied over time. The suggestion that the number of parking spaces should be reduced from the 1,167 proposed by ProLogis is rejected for the reasons given in paragraph 15.147 above.

15.154 As to the additional conditions sought by SGCF (SGCF/18):

1. **Moat Lane Hedgerow:** Whilst I agree in principle that any of the hedgerows lost to development on Moat Lane should be replaced, this could be secured by the agreed landscaping condition (Appendix E, Conditions 2 and 8). There is no evidence to suggest that the existing hedgerows are of any particular value for wildlife and requiring replacement hedgerows to be established before the existing are removed would be impractical.
2. **Moat Lane Footpath:** The developer is required by proposed Condition 10 to submit further details of the works proposed to Moat Lane for the Council's approval prior to development commencing (see para 15.151 above). This would allow the concerns raised to be addressed.
3. **Night-time Train Movements:** Whilst there are currently very few trains at night on the rail lines through Slade Green, there is no evidence to suggest that night-time trains to the proposed development would cause unreasonable disturbance to residents living near the site or the railway line. Accordingly, I take the view that the condition is unjustified. To so restrict train movements to a SRFI would also to my mind be unreasonable having regard to the acknowledged requirement for SRFIs to operate around the clock and the need for freight trains in and around London to be timetabled to avoid conflict with daytime passenger movements.
4. **Length of Trains:** The evidence is that trains up to 775m long, would be able to enter the site in one movement [3.5]. These are the longest trains operating anywhere on the UK network. Accordingly, the suggested condition would serve no purpose.

15.155 As to the conditions suggested by Cross London Rail Links [14.9], it is agreed that a condition should be imposed requiring details of the boundary treatment between the site and the area reserved for Crossrail to be agreed before development commences – see Condition 17. It seems to me, however, that the further condition subsequently

longer subsist. Should it fail, then the developer would need to assess the commercial risks involved. It may well be that the development would be abandoned [6.157].

requested [ibid, footnote] is unnecessary as any alterations that might be proposed to the track layout in Slade Green Depot are not part of the planning applications.

The Balance

- 15.156 Bringing my findings and conclusions together, there is no dispute that the development would constitute inappropriate development in the Green Belt [15.1]. It would result in substantial harm to the Green Belt by virtue of loss of openness, with significant encroachment into the countryside [15.6 to 15.8]. The function that the affected area of Green Belt serves in maintaining separation between the settlements of Slade Green and Dartford/Joyce Green would be materially weakened [15.9]. Overall, there is no doubt in my mind that the proposal would result in substantial harm to the Green Belt which it would not be possible to mitigate.
- 15.157 In addition to this harm, impacts on the landscape would be inevitable. The landscape of the area is open, predominantly flat and low lying. It is sensitive to development and not readily able to absorb change [15.12]. Whilst there is little dispute that the measures which ProLogis propose to mitigate the landscape and visual impacts are appropriate, there is equally no doubt that the landscape immediately about the appeal site would be significantly changed as a result of the development. Its flat open and expansive character would be lost and replaced by massive buildings, with substantial earthworks at the northern end of the site [15.13].
- 15.158 Notwithstanding this, the visual impact would be limited from many directions. From the east and south-east the adjoining landfill would screen views from the footpath adjacent to the Rivers Cray and Darent and would screen all but the upper parts of the buildings from more distant viewpoints. Similarly, in views from the west the buildings in the Thames Road Industrial Estate would screen the development from nearby public viewpoints. From more distant viewpoints on higher ground to the west, I am satisfied that the visual impact would be no more than moderate [15.14].
- 15.159 The directions from which visual impact would be greatest would be from Bob Dunn Way and its environs to the south of the site and in an arc to the north running from Oak Road, through Moat Lane and the edge of Slade Green out to the Crayford and Dartford Marshes [15.15]. From these directions the visual impact would be substantial and adverse albeit that the low level activity on the site would generally be screened [15.20]. Planting on the site would mitigate this to some degree, but only as it matures [15.17]. From the eastern end of Oak Road and Moat Lane the development would, to my mind, remain a dominating presence. Equally, the impact on walkers and others who currently use Moat Lane as a recreational route to the marshes would be substantial and adverse [15.17, 15.18].
- 15.160 Similar impacts would be experienced from the edge of Slade Green. However, many of the houses on the edge of the urban area face eastwards onto the marshes and within the main body of Slade Green the visual impact would generally be limited by the screening afforded by intervening housing [15.17, 15.19].

- 15.161 As to other harm, I conclude that, with the mitigation that would be secured by condition and through the S106 Obligation, noise from the development would not result in material harm to the living conditions of nearby residents [15.27]. I further conclude that air quality considerations should not constrain the development [15.30] and that, having regard to the agreed conditions, light spill, glare and upward escape of light would be controlled to acceptable levels [15.32]. With regard to these matters, I conclude that the proposal would not conflict with the development plan.
- 15.162 With regard to nature conservation and biodiversity matters, no statutory sites of nature conservation interest would be affected [15.42], albeit that it is likely that in due course the Crayford Marshes will be designated as a SSSI [15.34]. Natural England, the London Wildlife Trust and the local planning authorities all raise no objections to the development on nature conservation grounds [15.35]. Furthermore, whilst existing features of nature conservation or biodiversity interest on the site itself would be lost to the development, and existing connections to ecological corridors severed, the evidence is that the main body of the site is of limited interest for wildlife [15.36]. New habitat within the site would also be secured by condition. Overall, I take the view that NEFG's objections with regard to wildlife and nature conservation matters should be given only minimal weight [15.37 - 15.39].
- 15.163 As to the proposals for the Crayford Marshes, there is no doubt that ProLogis's offer to secure their long term future for nature conservation purposes by transferring the land with an endowment to a trust set up to maintain and manage them is widely supported [15.40]. The proposals are specifically welcomed by London Wildlife Trust and supported by the Environment Agency [ibid]. Natural England are similarly satisfied that the likely damaging effects of the scheme on features of nature conservation value could be outweighed by the potential benefits of the proposed mitigation and compensation package [ibid]. These would be secured through the agreed conditions and the S106 Non Highway Obligations [15.42]. Given the mitigation measures proposed, I conclude that, in this regard also, the proposal would not conflict with the development plan [15.42].
- 15.164 There are no known features of heritage interest within the site. However, Howbury Moat (a Scheduled Ancient Monument) lies some 50m north of the site boundary, near to which is a Grade II listed tithe barn [15.43]. Notwithstanding their proximity to the proposed development, English Heritage's view is that the proposal would not harm their settings. I do not disagree [15.44]. The Moat Lane/Oak Road Conservation Area lies adjacent to the north-west corner of the site, but it would not be directly affected and its character and appearance would be preserved [15.43, 15.46].
- 15.165 Allied to the loss of Green Belt land is the impact the development would have on proposals to develop a "Green Grid" network of open spaces for recreational and other uses in the Thames Gateway [15.47]. The intention is supported by the Government, the Mayor and Bexley Council, but the proposals are at an early stage and no land has been allocated for this purpose in any development plan [15.47 - 15.48]. Equally no funding has been secured [ibid]. The precise effect the development would have on the proposals is not known [15.49]. Accordingly, it seems to me that only very limited

weight should be given to the development's impact on the emerging Green Grid proposals in the overall planning balance [ibid].

- 15.166 The statement of common ground with the Environment Agency confirms that the development would not be at significant risk of flooding [15.50].
- 15.167 As to Highways matters, the obligations contained in the S106 Highway Obligations led to the Highways Agency, Kent County Council and TfL each withdrawing their objections on highways grounds [15.52]. Whilst Bexley Council maintained objections concerning the design of the site entrance roundabout, I conclude that these concerns can be addressed by condition [15.53 - 15.60]. As to their concerns regarding the capacity of the Crayford Way roundabout, I conclude that it would not be reasonable to require ProLogis to fund any necessary adaptations to the roundabout which the analysis submitted to the inquiry showed would be minor in any event [15.61 - 15.66]. I equally conclude that, in the event that the Secretary of State decides that planning permission for the development should be granted, it would not be reasonable for her to accede to Bexley Council's request that a Grampian condition be imposed requiring in effect that the developer of the SRFI provide or fund a replacement for the Thames Road bridge [15.67 - 15.75].
- 15.168 On parking, I conclude that there is no case for requiring the number of spaces provided to be less than the 1,167 proposed by ProLogis [15.144 - 15.147].
- 15.169 On the supply of industrial and warehouse sites in the London Borough of Bexley, there is no dispute that the amount of land allocated and available for industrial and warehouse uses in the area is more than adequate. However, none of this is suitable for large-scale rail-connected warehouses. If the development is permitted it would be for a SRFI, and safeguards would be put in place to secure the rail facilities and encourage their use. To my mind there is no evidence to support the view that providing rail-linked warehouses on the site as part of a SRFI aimed at meeting the strategic needs of London and the South East would materially impact on the demand for conventional warehouses in the Borough served only by road [15.149].
- 15.170 Turning to the balance, there is no doubt that the proposal would be contrary to the planning policy at all levels insofar as it would constitute inappropriate development in the Green Belt. It would result in substantial harm to the Green Belt by virtue of loss of openness and significant incursion into the countryside and it would materially weaken the separation between settlements [15.156]. It would also result in substantial harm to the landscape and significant visual intrusion [15.157 - 15.160]. Warehouses would be built in an area where they are not contemplated when there is sufficient other land available in the Borough [7.52]. In all these respects the proposal would be clearly contrary to the development plan.
- 15.171 As to the positive aspects, the proposal would accord with policy 3C.24 in the *London Plan* which promotes the provision of rail freight facilities and improved integration between freight modes [15.86]. It would also accord with that part of policy 3C.25 which supports the provision of strategic rail-based intermodal freight facilities [ibid]. Notwithstanding this, it would fly in the face of the requirement set down in the

following text that any site promoted for that use should be wholly or substantially on previously developed land [ibid]. Equally, given the policy imperatives of avoiding inappropriate development in the Green Belt, it would conflict with the emerging policy in the *Draft Further Alterations to the London Plan* which proposes to replace this with a requirement that new locations for intermodal facilities “*should meet strategic planning and environmental objectives*” [15.87].

- 15.172 It is a requirement that, if regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. Similarly, *PPG2* advises that inappropriate development in the Green Belt is, by definition, harmful. If proposed, it is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
- 15.173 As to these tests, it is my firm view that the only factor of any significant weight in favour of granting the proposal stems from the Government’s policy desire to increase the proportion of freight carried by rail. This is reflected in *PPG13* [15.78] and *Sustainable Distribution* [15.79]. It is reaffirmed in *Transport 2010* [15.81]. It is further reflected in the SRA’s *Freight Strategy* and *SRFI Policy* which first identified the requirement for three or four SRFIs to serve London and the South East [15.82, 15.83], albeit that plainly the SRA’s publications did not at the time of their publication constitute Government policy [15.84].
- 15.174 To my mind the fundamental position with respect to whether or not the SRA’s *Freight Strategy* constitutes Government policy has not changed subsequently, despite Government having endorsed it as a relevant source of advice and guidance [15.85]. Notwithstanding this, the *London Plan* offers specific support for SRFIs and identifies a requirement for three or four large multi-modal freight facilities on or close to the periphery of London [15.86]. Further advice and support for SRFIs is also contained in the *Land for Transport Functions SPG*. This both restates the requirement for three of four SRFIs in the region and draws a clear distinction between these and other smaller freight interchanges within the M25 ring [15.89]. It notes that suitable sites for SRFIs are likely to be located where key road and rail links intersect with the M25 [ibid].
- 15.175 Clearly, if this policy requirement for three or four SRFIs in the region is to be met, SRFIs have to be developed. If they are not, the policy will not be fulfilled and the benefits that the Government and the Mayor anticipate will flow from their provision, in the form of an increase in the proportion of freight carried by rail, will not be delivered. In this sense, it might be argued that the need for SRFIs amounts to a “*policy need*” and that, as Bexley Council put it following the precedent at LIFE, the need does not stem from a “*situation requiring relief*”.
- 15.176 However, I do not see the distinction in such stark terms [15.99]. Clearly, there is no situation requiring relief insofar as there is not a shortage of intermodal terminal capacity in the London area. Willesden terminal is, to all intents and purposes, now

unused and the Freightliner terminal at Barking equally appears to be grossly under-used [15.97, 15.98]. But the SRA's publications and the London Plan draw a distinction between SRFIs, which provide an intermodal terminal and rail-linked warehouses on a single site, and intermodal terminals [15.83, 15.86, 15.89]. The policies clearly see a need for three or four SRFIs on the periphery of London near the M25 and smaller facilities in the urban area [ibid]. Willesden is in inner West London [15.98] and has no warehousing; it cannot sensibly be regarded as an alternative to a SRFI at Howbury. Barking is broadly in the same sector of London as the appeal site, but it currently has minimal warehousing and, to my mind, very limited potential for expansion. I do not see it as a viable alternative site for a SRFI [15.105], albeit that there is plainly potential for Barking to serve as one of the smaller terminals envisaged by the policy, or indeed as a terminal handling traffic travelling via the Channel Tunnel Rail Link [15.101].

- 15.177 As to other alternatives, there is no dispute that, Barking aside, there are no viable alternative sites for a SRFI in the arc around south and east London examined by PFD Savills and Nathaniel Litchfield and Partners [15.104 - 15.106]. As a circumstance potentially justifying inappropriate development in the Green Belt, this is a matter which, to my mind, should, in principle, attract considerable weight.
- 15.178 Of course, the weight that the lack of alternatives attracts depends both on the need for the development, which I have addressed above, and the extent to which the proposal would address that need. Put simply, if the proposal would, for any reason, not operate as a SRFI then it should not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build road-served warehouses on open land in the Green Belt around London would not come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal. At the inquiry there was a suspicion on the part of Bexley Council and others that the amount of rail traffic that would use the facility would fall significantly short of that forecast by ProLogis; indeed the suspicion was that the out-turn might well amount to little more than a collection of road-served warehouses [15.107]. But are these suspicions justified?
- 15.179 To my mind, this is a question which it is difficult to answer with complete certainty. On the one hand, there is no doubt that the proposal would result in the provision of an intermodal terminal and rail-linked warehousing on a single site in a location with good road access – i.e. it would have the essential features of a SRFI. The warehousing would also be configured to attract occupiers who intend to make use of the rail sidings, given that they would not be cross-docked, which is a normal requirement for warehouses of the size proposed serviced only by road [15.132]. The intermodal terminal and rail sidings would have to be provided before the warehouses could be occupied, and would have to be enhanced with the provision of a second rail chord at the entrance to the site and gantry cranes in the intermodal terminal by no later than 10 years from commencement of development [15.128]. A condition would prevent subsequent removal of the rail infrastructure [15.152, Additional Condition D] and a substantial package of financial and other measures would be put in place to encourage occupiers of the site and others to make use of the rail facilities [15.128].

Also, it seems to me that the peak hour cap on lorry movements from the site, embodied in the S106 Highway Obligations, would further tend to dissuade road-only users from occupying space at the site [15.132].

- 15.180 On the other hand, it has to be recognised that the site would be disadvantaged to some degree by being served by railway lines cleared only to W8 gauge, by its location at a point on the railway network well used by passenger trains, and by its location relative to the country's major ports. I conclude, however, that the gauge restriction would not be fatal, and that any SRFI proposed to serve London and located south of the Thames is likely to be at a similar disadvantage [15.118]. Equally, whilst the availability of train paths to serve the site would be restricted during the peak commuting hours [15.109], I take the view that, overall, the Secretary of State can be reasonably assured that sufficient paths would be available as required to service a SRFI at Howbury Park [15.112]. As to the site's location relative to the UK's major ports at Southampton and Felixstowe/Harwich, there is little doubt that, at the present time, transporting containers between these ports and a SRFI at Howbury Park is unlikely to be economically attractive compared to transporting them by road [15.120]. The site would be well placed to accept Channel Tunnel traffic, however, and my view is that corporate social responsibility and other considerations are also likely to drive a general move from road-based to rail-based transport [15.121].
- 15.181 If the appeal is allowed, there is plainly no guarantee that the proposal would attract the 12 trains each day for which it is planned, as this is dependent on a number of factors, some of which are outside of the control of the developer¹. It seems to me, however, that all that can reasonably be done to ensure that the proposal would succeed as a SRFI, would be secured either by condition or through the S106 Undertaking.²
- 15.182 To my mind, the Secretary of State can therefore be reasonably assured that, if permitted, the development would indeed operate as a SRFI. In so doing it would provide the first of three or four such facilities which the SRA's *SRFI Policy* and the *London Plan* envisage are required to serve London and the South East. On the other hand, if permission is refused, there can be little doubt that having regard to the conclusion that I have reached above on the availability of alternative sites, no SRFI will be provided to serve the south-east sector of London. This in turn is likely to frustrate Government's and the Mayor's ambitions to increase the percentage of freight transported by rail.

¹ Notably the willingness and ability or otherwise of rail freight operators to run trains to the terminal.

² Whilst I am satisfied as noted, Bexley Council argued at the inquiry for further conditions, in particular one which would prevent construction of the second 50% of the warehousing until it has been shown that rail is being used to bring at least 25% by weight of goods to the warehouses already constructed. I conclude, however, that such a condition would not meet the tests set out in Circular 11/95 [15.152, Additional Condition 8]. They also expressed concerns that the S106 Undertaking did not contain any obligations that "put serious money at risk" should rail traffic not develop as anticipated [15.107].

- 15.183 But do such considerations amount to the very special circumstances required to clearly outweigh the harm to the Green Belt by reason of inappropriateness and the other harm which I have identified in this case? This is a difficult balance and, on the same facts, I accept that different decision makers may well arrive at different conclusions as to which way the balance falls. On the one hand, the presumption against inappropriate development in the Green Belt is a strong and enduring policy and *PPG2*, paragraph 3.2, advises that harm to the Green Belt will be afforded substantial weight by the Secretary of State when considering planning applications or appeals concerning such development. On the other hand, there is a clear policy desire at all levels to increase the proportion of freight carried by rail, as opposed to road, and the SRA's advice, which Government has stated that it broadly endorses, is that three or four SRFIs around London are required to further that aim [15.78 et seq]. This policy is reflected in the *London Plan* and the *Land for Transport Functions SPG*.
- 15.184 As to the development plan, there is no doubt that the proposal would be in conflict with the plan. It would fly in the face of those policies which seek to protect and maintain the openness of the Green Belt [15.156]. It would undermine the purposes of including land in the Green Belt [ibid]. The scale of the buildings proposed is also such that it would result in substantial harm to the landscape and visual intrusion [15.157 et seq]. It would also conflict head on with the *London Plan's* requirement that any site for a SRFI should be wholly or mainly on previously developed land [15.171].
- 15.185 As to whether material considerations outweigh this harm and constitute the very special circumstances needed to clearly outweigh the harm to the Green Belt and other harm, the ability of the proposal to meet part of London's need for three or four SRFIs is, to my mind, the only consideration of significance¹. Whilst there is no national planning policy that suggests that SRFIs may constitute very special circumstances justifying inappropriate development in the Green Belt [8.8], it has to be accepted that, if planning permission is not granted for this proposal, the evidence is that there is no other site to the south and east of London that could meet the need [15.176, 15.177]. To my mind this is a material consideration of very considerable weight and one which meets the test above – i.e. (i) it constitutes very special circumstances that clearly outweigh the harm to the Green Belt and all other harm that I have identified; and (ii) it is a material consideration that indicates a decision other than in accordance with the development plan. I accordingly recommend that the appeals be allowed and planning permission granted, subject to the conditions set out in Appendix E.

¹ In making this statement, I differentiate between the weight to be given to the proposal to provide a SRFI per se and other matters which it was argued favour granting planning permission for the appeal proposal. These include the benefits that might be expected to flow from the development in terms of reducing CO₂ emissions [15.140], the benefits generated by employment at the site [15.150] and benefits to nature conservation interests from the proposals to enhance Crayford Marshes [15.40]. Whilst I recognise each of these as potentially valuable, I nonetheless take the view that their value as material considerations in favour of allowing development that would be contrary to the development plan and constitute inappropriate development in the Green Belt, is not such as to attract significant weight in the overall balance.

15.186 That the Mayor of London, having considered the matter at some length and having had full regard to the policies in the *London Plan*, the impact on London's Green Belt, the Green Grid and other matters, supports the proposal adds weight to my conclusion [14.1, 15.49].

16. RECOMMENDATION

- 16.1 For the reasons given above, I recommend that the appeals be allowed and planning permission granted, subject to the conditions set out in Appendix E.

Andrew M Phillipson

Inspector

APPENDIX A – APPEARANCES

FOR THE APPLICANT:

Christopher Katkowski QC
and John Litton of Counsel

Instructed by Morag E. Thomson, Marrons, 1
Meridian South, Meridian Business Park,
Leicester

They called

Tim Goodwin BSc MSc MIEnvSc
MIEEM MIALE

Ecology Solutions Ltd

John Greenyer BEng

Capita Symonds Ltd

Derek Armitage BEng

WSP Environmental Ltd

Andrew Colthurst MIOA MCIEH

WSP Environmental Ltd

Neil Findlay BSc CEng MICE MIHT
MILT

WSP Development and Transportation Ltd

Robin Woodbridge BSc MRICS

ProLogis Developments Ltd

Nick Gallop BSc

Intermodality LLP

Justin Gartland MRTPI

Nathaniel Litchfield and Partners Ltd

Barry Chinn BA DipLA MLI

Barry Chinn Associates

FOR BEXLEY COUNCIL

Richard Ground of Counsel

Instructed by Andrew Maughan, Assistant
Director Legal Services, Bexley Council

He called

David Huskisson DipLA MLI

David Huskisson Associates

Roland Niblett MA MSc

Colin Buchanan and Partners Ltd

Daniele Fiumicelli MSc MCIEH MIOA

Faber Maunsell Ltd

Jonathan Fox BSc MCIEH

Bexley Council

Glyn Bryant MA MRTPI

Bexley Council

Martin Able IEng DEM AMICE

Bexley Council

Jonathan Edwards MIHT MILT MITE

Mouchel Parkman Services Ltd

FOR DARTFORD BOROUGH COUNCIL

Sophie Weller of Counsel

Instructed by Marie Kelly-Stone, Head of
Legal Services, Dartford Borough Council

She called

Graham Parkinson DipTP MRTPI

Dartford Borough Council

FOR KENT COUNTY COUNCIL

Timothy Comyn of Counsel

Instructed by Libby McCutcheon, Solicitor
for Kent County Council

He called

Timothy Martin BA MA MRTPI MCMi

Kent County Council

FOR SLADE GREEN COMMUNITY FORUM

Roy Hillman

Chair, Slade Green Community Forum

FOR BEXLEY LA21 NATURAL ENVIRONMENT FOCUS GROUP

Jeremy Cotton BSc CBIol MIBiol

Dr Raymond Gray BSc MSc PhD

FOR THE LONDON WILDLIFE TRUST

Steven Whitbread BSc MIEEM

London Wildlife Trust

INTERESTED PERSONS

Gill Bruckner

30 Moat Lane, Slade Green, Erith DA8 2NQ

Ian Linton

52 Basing Drive, Bexley, DA5 1ER

Dave Reynolds

43a Faygate Crescent, Bexleyheath DA6 7NS

Tim Walters

35 Oak Road, Slade Green, Erith DA8 2NL

Juliette Miller

36 Moat Lane, Slade Green, Erith DA8 2NQ

Connie Egan

27 Moat Lane, Slade Green, Erith DA8 2NG

Brian Rodmell

22 Alderney Road, Slade Green, Erith DA8 2JD

APPENDIX B - DOCUMENTS

Inspector's Note. For completeness and understanding, all proofs of evidence are included as inquiry documents. However, it should be noted that they have not generally been updated to reflect changes made to the evidence during the course of the inquiry.

General Documents

- INQ1 Pre-inquiry meeting note
- INQ2 Inspector's note on issues
- INQ3 Suggested route for accompanied visit - landscape and visual impact effect
- INQ4 Inspector's comments on ProLogis draft conditions
- INQ5 Folder containing written representations
- INQ6 Letter and folder containing copies of letters sent out and advertisements posted by the Appellant relating to the Supplementary Environmental Statement
- INQ7 Planning Inspectorate's letter of 13 August re Supplementary ES
- INQ8 Bundle of letters sent in response to the Supplementary ES
- INQ9 Planning Inspectorate's letter of 29 August re LBB2.11 and closure of inquiry in writing
- INQ10 Planning Inspectorate's letter of 29 August re changes to design proposed in the Supplementary ES, substitute application plans and changes to proposed conditions
- INQ11 Planning Inspectorate's letter of 10 September closing the inquiry in writing

Core Documents

Application Specific Documents

- CD1.1 London Borough of Bexley Planning Control Committee Report on the appeal proposals, (1 August 2006)
- CD1.2 GLA Consultation Response on the application
- CD1.3 PFD Savills Alternative Sites Report (June 2004)
- CD1.4 Nathaniel Lichfield and Partners Alternative Sites Report (November 2005)
- CD1.5 Rail Technical Report (November 2005)
- CD1.6 Environmental Statement (January 2007)
- CD1.7 GLA Stage II Report on the application
- CD1.8 LBB letter to PINS dated 2 March 2007 advising of withdrawal of some of the putative reasons for refusal
- CD1.9 Transport Assessment (January 2007)
- CD1.10 The Need Case (November 2005)

Government Documents

- CD2.1 Sustainable Communities: Building for the Future (February 2003)
- CD2.2 Creating Sustainable Communities: Making It Happen: Thames Gateway and the Growth Areas (July 2003)

- CD2.3 Growth and Regeneration in the Thames Gateway: Interregional Planning Statement (2004)
- CD2.4 London Thames Gateway Development and Investment Framework (April 2004)
- CD2.5 DTLR Circular 04/2001 - Control of Development Affecting Trunk Roads and Agreements with Developers under Section 278 of the Highways Act 1980
- CD2.6 DfT Circular 02/2007 – Planning and the Strategic Road Network

The Development Plan and Related Documents

- CD3.1 Regional Planning Guidance for the South East (RPG9)
- CD3.2 The Thames Gateway Planning Framework (RPG9a)
- CD3.3 The London Plan (2004)
- CD3.4 The Kent and Medway Structure Plan (2006)
- CD3.5 The Bexley Unitary Development Plan (2004)
- CD3.6 The Dartford Local Plan (1995)
- CD3.7 Kent County Council response to the draft South East Plan (2004)
- CD3.8 Sub-Regional Development Framework: East London (2006)
- CD3.9 Local Transport Plan for Kent 2006-2011
- CD3.10 The Mayor's Transport Strategy Revision 2004
- CD3.11 Not used
- CD3.12 Draft Further Alterations to the London Plan (September 2006)
- CD3.13 Dartford's Core Strategy – Preferred Policy Approaches Document (July 2006)
- CD3.14 Dartford's Site Specific Allocations – Preferred Policy Approaches Document (July 2006)
- CD3.15 Extract from Regional Transport Strategy (Chapter 9 of the Regional Planning Guidance for the South East - RPG9)
- CD3.16 Extract from South East Plan Core Document – Draft for submission to the Government (March 2006)
- CD3.17 South East Plan: Annex to Technical Note 3 – Freight (November 2006)
- CD3.18 Extract from SEERA Statement to SE Plan EiP – Matter 3 (October 2006)
- CD3.19 Extract from Highways Agency: Library Paper 1 – South East Plan Model: Methodology Statement (November 2006)
- CD3.20 Extract from Draft East of England Plan (December 2004)
- CD3.21 Extract from Secretary of State's Proposed Changes to the Draft East of England Plan (December 2006)
- CD3.22 Bexley Core Strategy Issues and Options Consultation Paper (November 2006)
- CD3.23 Consultation Draft East London Green Grid Framework

Transportation/Rail

- CD4.1 European Commission White Paper: A Strategy for Revitalising on Railways (July 1996)
- CD4.2 White Paper: A New Deal for Transport: Better for Everyone (July 1988)
- CD4.3 Sustainable Distribution: A Strategy, (March 1999)
- CD4.4 Transport 2010: The 10 Year Plan (July 2000)
- CD4.5 DfT: South Eastern Regional Planning Assessment for the railway (January 2007)
- CD4.6 European Commission White Paper: European transport policy for 2010: time to decide (2001)
- CD4.7 SRA: A Strategic Agenda, (March 2001)

- CD4.8 SRA: Freight Strategy, (May 2001)
- CD4.9 SRA: Freight Strategy Progress Report 1 (May 2003)
- CD4.10 SRA: Strategic Rail Freight Interchange Policy (March 2004)
- CD4.11 TfL: London Rail Freight Study (April 2003)
- CD4.12 TfL: Draft London Freight Plan (September 2006)
- CD4.13 Thames Gateway London: The Logistics Location (August 2006)
- CD4.14 Department for Transport: Statement on Status of SRA Strategic Rail Freight Interchange Policy (14 October 2005)
- CD4.15 Network Rail: Consultation Draft Cross London Route Utilisation Strategy
- CD4.16 GLA: Land for Transport Functions (March 2007)
- CD4.16a GLA: Land for Transport Functions - Draft (May 2006)
- CD4.17 IHT: Moving Freight
- CD4.18 Not used
- CD4.19 The derivation of accessibility indices as a basis for identifying public transport accessibility levels (June 2000)
- CD4.20 National Statistics Census 2001, origin-destination statistics
- CD4.21 Thames Gateway Bridge: Environmental Statement, Non-Technical Summary (July 2004)
- CD4.22 TD 22/06: Layout of Grade Separated Junctions
- CD4.23 TD 16/93: Geometric Design of Roundabouts
- CD4.24 TD 35/06: All Purpose Trunk Roads MOVA System of Traffic Control at Signals
- CD4.25 TA 79/99: Traffic Capacity of Urban Roads
- CD4.26 WSP Technical Note 2: Trip Distribution - Sensitivity Assessment (August 2005)
- CD4.27 WSP Technical Note 3A: M25 Junction 1a - TRANSYT Validation Report (March 2006)
- CD4.28 WSP Technical Note 4: 2022 Forecast Base TRANSYT Model (November 2005)
- CD4.29 WSP Technical Note 7: HGV and Non HGV Trip Generation Methodology Based on June 2006 DIRFT Surveys (July 2006)
- CD4.30 WSP Technical Note 9: HGV and Non HGV Trip Generation (November 2006)
- CD4.31 WSP Technical Note 10: Parking Accumulation (October 2006)
- CD4.32 WSP Technical Note 11: Kent Thameside Saturn Model Results (November 2006)
- CD4.33 WSP Technical Note 12: All Road Sensitivity Test Trip Generation (January 2007)
- CD4.34 WSP: Errata to December 2006 Transport Assessment (February 2007)
- CD4.35 TRRL Research Report 279: MOVA: The 20 Site Trial (1990)
- CD4.36 Network Rail: Freight Route Utilisation Strategy (March 2007)
- CD4.37 TfL: Barking and Dagenham Rail Freight Terminal Study, Executive Summary (December 2004)
- CD4.38 WSP Technical Note 13: Kent Thameside Saturn Model Results – Actual Flows (March 2007)
- CD4.39 DfT: The Future of Transport: a network for 2030 (July 2004)
- CD4.40 DCLG/DfT: Guidance on Transport Assessment (March 2007)
- CD4.41 Kent Thameside Association Passenger Rail Policy (July 2002)
- CD4.42 Network Rail: 2006 Business Plan - Route 1 Kent
- CD4.43 European Commission: Mid-term Review of 2001 Transport White Paper (September 2006)
- CD4.44 Statement to Parliament on the Government's objectives for rail freight: Alistair Darling 19 July 2005

- CD4.45 Extract from DfT Ports Policy discussion documents (May 2006)
- CD4.46 Extract from SRA Integrated Kent Franchise: Consultation on Train Service Specification (February 2004)
- CD4.47 Extract from Network Rail Cross London Route Utilisation Study (August 2006)
- CD4.48 TfL Response to Network Rail Freight RUS
- CD4.49 Extract from Eddington Transport Study (December 2006)
- CD4.50 Dover Harbour Board: Planning for the Next Generation - Second Round Consultation (January 2007)
- CD4.51 WSP Technical Note 14: Impact of the Retention of the Thames Road Rail Bridge
- CD4.52 Llewelyn Davies Yeang and Steer Davies Gleave: Planning for the Development of Rail Freight in London - Rail Freight Site Assessment

Environment

- CD5.1 Managing the Marshes: Vision and Strategy (March 2006)
- CD5.2 Managing the Marshes: Landscape Character Assessment (February 2006)
- CD5.3 Sites of Importance for Nature Conservation in Bexley: Consultation Draft (December 2004)
- CD5.4 Bexley's Biodiversity Action Plan

Economic/Regeneration

- CD6.1 Economic Employment Development Strategy for London Borough of Bexley: Consultative Draft
- CD6.2 Bexley Regeneration Framework 2005-2016
- CD6.3 Not used
- CD6.4 The London Plan: Industrial Capacity Draft Supplementary Planning Guidance (September 2006)

Statements of Common Ground

- CD7.1 Statement of Common Ground with the Environment Agency
- CD7.2 Statement of Common Ground: Planning
- CD7.3 Not used
- CD7.4 Statement of Common Ground: Air Quality
- CD7.5 Statement of Common Ground: Noise
- CD7.6 Not used
- CD7.7 Statement of Common Ground: Lighting
- CD7.8 Joint Note: Noise Level Input at 36 Oak Road and Environs
- CD7.9 Joint Note: Specification of a Site Noise Level Limit for Draft Condition 32
- CD7.10 Agreed statement between Mr Chinn and Mr Huskisson re photomontages

Miscellaneous

- CD8.1 LIFE appeal decision and Inspector's conclusions
- CD8.2 Appeal decision for access road to industrial area adjacent to appeal site
- CD8.3 Appeal decision relating to conditions imposed on Volkswagen's Birch Coppice site
- CD8.4 Planning permission for Hams Hall Rail Freight Terminal
- CD8.5 Refusal notice for proposed SRFI at St Albans

Documents Submitted by ProLogis Developments Ltd

- PDL/0.1 Opening statement
- PDL/0.2 Extract from Thames Gateway Interim Plan
- PDL/0.3 Illustration of sound level difference in terms of sound energy
- PDL/0.4 Maps showing the Plumstead Triangle site suggested by Mr Rodmell
- PDL/0.5 Maps showing location and size of Sainsbury warehouses in Dartford and Waltham Abbey
- PDL/0.6 Thames Gateway Bridge key plan
- PDL/0.7 Transport Forum meeting notes
- PDL/0.8 Bundle of correspondence between the Appellants and Bexley Council regarding the replacement of the Thames Road railway bridge
- PDL/0.9 Briefing note on Belvedere and Erith Opportunity Area
- PDL/0.10 ProLogis response to Bexley Council's request for additional provisions in the planning obligations
- PDL/0.11 Letter re access to Grosvenor Waste site
- PDL/0.12 Briefing note on history and composition of planning applications
- PDL/0.13 Suggested conditions
- PDL/0.14 Closing submissions
- PDL/0.15 S106 Unilateral Undertaking – Non Highway Obligations
- PDL/0.16 S106 Unilateral Undertaking – Highway Obligations
- PDL/0.17 Nathaniel Lichfield and Partners' letter of 25 July 2007 to PINS enclosing Supplementary Environmental Statement
- PDL/0.18 Marrons' letter of 31 August 2007 confirming ProLogis's agreement to substitute condition proposed by the Inspector
- PDL/0.19 Marrons' e-mail of 7 September 2007, commenting on INQ5/18

- PDL/1.1 Mr Gartland's proof of evidence
- PDL/1.2 Mr Gartland's summary
- PDL/1.3 Mr Gartland's appendices
- PDL/1.4 Mr Gartland's rebuttal
- PDL/1.5 Mr Gartland's rebuttal – alternative sites
- PDL/1.6 Amendments to PDL/1.2
- PDL/1.7 Briefing note on Redhill site mentioned in the draft Land for Transport SPG
- PDL/1.8 Briefing note – SRA policy and the London Plan
- PDL/1.9 Note on policy guidance issued since the LIFE inquiry
- PDL/1.10 Map showing the extent of the Green Belt near the site
- PDL/1.11 Plan of Barking Freightliner Depot and adjacent land
- PDL/1.12 Note on SRFI disaggregation – policy basis
- PDL/1.13 Map showing the extent of the Green Belt around London

- PDL/2.1 Mr Sparks' proof of evidence
- PDL/2.2 Mr Sparks' rebuttal

- PDL/3.1 Mr Chinn's proof of evidence
- PDL/3.2 Mr Chinn's summary

PDL/3.3	Mr Chinn's appendices
PDL/3.4	Mr Chinn's rebuttal
PDL/3.5	Photomontages
PDL/3.6	Amended photomontages
PDL/3.7	Note recording extent of agreement on photomontages
PDL/3.8	Comparison between Mr Chinn's and Mr Huskisson's montages – viewpoints 4 and 5
PDL/3.9	Note on matters arising from the site visit
PDL/3.10	Landfill site, proposed restoration layout
PDL/3.11	Landfill site, topographical survey
PDL/3.12	Landfill site, comparison between surveyed levels and approved restoration levels
PDL/3.13	Sections
PDL/3.14	Extract from Countryside Character: Volume 7 South East and London – Greater Thames Estuary: Character Area 81.
PDL/4.1	Mr Greenyer's proof of evidence
PDL/4.2	Not used
PDL/4.3	Mr Greenyer's appendices
PDL/4.4	Mr Greenyer's rebuttal
PDL/5.1	Mr Findlay's proof of evidence
PDL/5.2	Mr Findlay's summary
PDL/5.3	Mr Findlay's appendices
PDL/5.4	Mr Findlay's rebuttal
PDL/5.5	Errata to PDL/5.4
PDL/5.6	Note on agreement with the Highways Agency and Kent County Council relating to highways matters
PDL/5.7	Note on sensitivity test
PDL/5.8	Note on derivation of Tables A and B in the Highways Unilateral Undertaking
PDL/5.9	Response to LBB comments on Technical Note 14
PDL/5.10	Rebuttal to SGCF/4
PDL/5.11	Technical Note 15 - Review of Local KTS Assignments
PDL/5.12	Plan showing location of proposed toucan crossing
PDL/5.13	Replacement figures showing local road network and public transport network
PDL/5.14	Map of North End Ward
PDL/5.15	Technical Note 6 - Comparison of Peak Hour Traffic Generation
PDL/5.16	Note on cycle path and footpath contribution
PDL/5.17	Note on Thames Road traffic model development assumptions
PDL/5.18	Note on HGV management proposals
PDL/5.19	Note on site access roundabout
PDL/5.20	Note on Crayford Way roundabout
PDL/5.21	Employee Travel Plan/Freight Travel Plan
PDL/6.1	Mr Gallop's proof of evidence
PDL/6.2	Mr Gallop's summary
PDL/6.3	Mr Gallop's appendices
PDL/6.4	Mr Gallop's rebuttal – rail matters

- PDL/6.5 Mr Gallop's rebuttal – CO₂
- PDL/6.6 Mr Gallop's rebuttal – the need case
- PDL/6.7 Jeff Miles' note on SRFI policy methodology and analysis
- PDL/6.8 Plan of DIRFT warehousing
- PDL/6.9 Plans of rail lines in the vicinity of the site
- PDL/6.10 Plan of DIRFT intermodal terminal
- PDL/6.11 E-mail from Barry Faries (DHL) re time to strip and reload a container train
- PDL/6.12 Technical note on DIRFT
- PDL/6.13 Letter from Barbara Barnes clarifying Network Rail's position re Howbury Park
- PDL/6.14 "Rail and the Environment" leaflet issued by the Railway Forum 2002
- PDL/6.15 Technical note on loading gauge
- PDL/6.16 Technical note on timetabling
- PDL/6.17 Technical note on intermodal terminal capacity
- PDL/6.18 Technical note on Channel Tunnel Rail Link and Barking
- PDL/6.19 Examples of existing rail services
- PDL/6.20 E-mail setting out Southeastern's comments on evidence presented to the inquiry
- PDL/6.21 E-mail exchange between Mr Niblett and Mr Harwood, Network Rail
- PDL/6.22 Further rebuttal on CO₂ emissions
- PDL/6.23 Comparison of PDL and LBB data on CO₂ emissions
- PDL/6.24 Interfleet timetabling study 12.00 to 14.00 with six passenger trains per hour through Barnehurst
- PDL/6.25 Plan of DIRFT showing warehouse areas and occupiers
- PDL/6.26 Note explaining PDL/6.24
- PDL/6.27 Rebuttal commenting on LBB3.12

- PDL/7.1 Mr Woodbridge's proof of evidence
- PDL/7.2 Mr Woodbridge's summary
- PDL/7.3 Mr Woodbridge's appendices
- PDL/7.4 Mr Woodbridge's rebuttal
- PDL/7.5 ProLogis Summary Annual Report 2005
- PDL/7.6 ProLogis Summary Annual Report 2006
- PDL/7.7 E-mail from Chris Geldard, Associated British Ports
- PDL/7.8 Note on buildings of similar scale to those proposed in the Howbury Park market area

- PDL/8.1 Mr Goodwin's proof of evidence
- PDL/8.2 Mr Goodwin's summary
- PDL/8.3 Mr Goodwin's appendices
- PDL/8.4 Mr Goodwin's rebuttal
- PDL/8.5 Letter from Natural England confirming their satisfaction with the Great Crested Newt surveys conducted in 2007

- PDL/9.1 Mr Colthurst's proof of evidence
- PDL/9.2 Mr Colthurst's summary
- PDL/9.3 Mr Colthurst's appendices
- PDL/9.4 Mr Colthurst's rebuttal
- PDL/9.5 Note on possible boundary noise condition

- PDL/9.6 E-mail to Mr Fox re site layout and other matters
- PDL/10.1 Mr Battle's statement
- PDL/11.1 Mr Jones' statement
- PDL/11.2 Mr Jones' appendices
- PDL/11.3 Note on floodlighting in intermodal area
- PDL/12.1 Mr Armitage's statement
- PDL/12.2 Mr Armitage's appendices
- PDL/12.3 Mr Armitage's rebuttal
- PDL/13.1 Ms Gough's statement
- PDL/14.1 Mr Skinner's statement
- PDL/14.2 Mr Skinner's appendices

Documents Submitted by Bexley Council

- LBB0.1 Letters of notification
- LBB0.2 Note on Council's position on "public pocket park"
- LBB0.3 Note on land restoration programme at former landfill site
- LBB0.4 Extract from LIFE report
- LBB0.5 List of matters requested by the Council, not included in Unilateral Undertakings
- LBB0.6 Council's suggested amendments/additions to the conditions suggested by ProLogis
- LBB0.7 Plans showing LIFE proposals
- LBB0.8 Closing submissions
- LBB0.9 Chelmsford BC v FSS and Draper - [2003] EWHC 2978 (Admin)
- LBB1.1 Mr Bryant's summary
- LBB1.2 Mr Bryant's proof of evidence
- LBB1.3 Mr Bryant's appendices
- LBB1.4 Mr Bryant's rebuttal
- LBB1.5 Extract from programme for EiP into the London Plan Draft Further Alterations
- LBB1.6 Note on warehousing
- LBB1.7 Note comparing the scale of development at Belvedere with the appeal proposals
- LBB1.8 Plan showing the extent of the Green Belt and other green space in the Thames Gateway
- LBB2.1 Mr Huskisson's summary proof
- LBB2.2 Mr Huskisson's proof of evidence
- LBB2.3 Mr Huskisson's appendices
- LBB2.4 Extract from Guidelines for Landscape and Visual Impact Assessment
- LBB2.5 Photomontages showing comparison between Mr Huskisson's and Mr Chinn's models

- LBB2.6 Further photomontages showing comparison between Mr Huskisson's and Mr Chinn's models
- LBB2.7 E-mail exchange re photomontage methodology
- LBB2.8 Extract of plan showing possible filling of the "valley" on the landfill area to the north-east of the site, prepared by MSA for ProLogis
- LBB2.9 E-mail exchange re LBB2.8
- LBB2.10 Plan showing alternative contours for filling to north-east of site
- LBB2.11 Response to Supplementary ES

- LBB3.1 Mr Niblett's summary
- LBB3.2 Mr Niblett's proof of evidence
- LBB3.3 Mr Niblett's appendices
- LBB3.4 Mr Niblett's rebuttal
- LBB3.5 E-mail from Freightliner re the proposed development
- LBB3.6 Withdrawn
- LBB3.7 E-mail to Paul Harwood, Network Rail from Mr Niblett
- LBB3.8 Bundle of papers supplied in response to questions raised during evidence
- LBB3.9 Note on intermodal cost comparisons for destinations from Howbury Park
- LBB3.10 AA route planner printout: Southampton to Wentloog
- LBB3.11 Letter from Southeastern dated 16 January 2007
- LBB3.12 Comment on Interfleet timetable study (PDL/6.24)

- LBB4.1 Not used
- LBB4.2 Mr Edwards' proof of evidence
- LBB4.3 Mr Edwards' appendices
- LBB4.4 Mr Edwards' rebuttal
- LBB4.5 Comment on WSP Technical Note 14
- LBB4.6 Extract from TRICS Good Practice Guide 2006
- LBB4.7 Replacement table 2.2.2 from LBB4.4
- LBB4.8 Comments on site access roundabout and Crayford Way roundabout design revisions (PDL/5.19 and 5.20)

- LBB5.1 Not used
- LBB5.2 Mr Able's proof of evidence
- LBB5.3 Extract from London Employment Sites Database
- LBB5.4 Note re LBB5.3
- LBB5.5 Extract from Technical Note 6
- LBB5.6 Extract from Howbury Park Traffic Assessment - November 2005
- LBB5.7 Comments on Draft Framework Employee Travel Plan/Freight Management Plan

- LBB6.1 Mr Fiumicelli's proof of evidence
- LBB6.2 Extract from IEMA guidelines on noise
- LBB6.3 Extract from BS8233:1999

- LBB7.1 Not used
- LBB7.2 Not used
- LBB7.3 Not used

LBB7.4	Mr Fox's rebuttal
LBB7.5	Note on comparison of CO ₂ emissions for Class 66 locomotives and articulated HGVs
LBB7.6	Extract from LIFE report
LBB7.7	Not used
LBB7.8	EWS representations for the Eddington Transport Study

Documents Submitted by Dartford Borough Council

DBC0.1	Letters of notification
DBC0.2	Closing submissions
DBC1	Mr Parkinson's proof of evidence
DBC2	Written statement - transport

Documents Submitted by Kent County Council

KCC1	Mr Martin's proof of evidence
KCC2	Mr Martin's summary
KCC3	Withdrawn
KCC4	Map showing average inter-urban traffic flows in Kent in 2004
KCC5	Map showing peak hour traffic congestion on inter-urban routes in Kent in 2004
KCC6	Letter withdrawing KCC3
KCC7	Statement on the use of CTRL for freight
KCC8	Closing submissions

Documents Submitted by the Highways Agency¹

HA/1.1	Summary proof of evidence prepared by Mr Shaw
HA/1.2	Proof of evidence prepared by Mr Shaw
HA/1.3	Appendices to HA/1.2
HA/2.1	Summary proof of evidence prepared by Mr Rajah
HA/2.2	Proof of evidence prepared by Mr Rajah
HA/2.3	Appendices to HA/2.2
HA/3	Supplementary proof of evidence prepared by Mr Shaw
HA/4	Supplementary proof of evidence prepared by Mr Rajah
HA/5	Letter dated 15 May 2007 setting out the Agency's formal position.

¹ Inspector's note. Whilst the Highways Agency submitted the proofs of evidence and other documents listed, on 15 May 2007 a letter was sent (HA/5) confirming that the Highway Obligations entered into by ProLogis (PDL/0.16) addressed the concerns raised in the Agency's proofs of evidence. Accordingly, the Agency did not appear at the inquiry to give evidence.

Documents Submitted by Slade Green Community Forum

SGCF/1	Mr Hillman's proof of evidence
SGCF/2	Mr Hillman's summary
SGCF/3	ProLogis community consultation leaflet
SGCF/4	Mr Hillman's supplementary proof of evidence
SGCF/5	Mr Hillman's rebuttal to statement from Freight on Rail
SGCF/6	Withdrawn
SGCF/7	Consultation questionnaire
SGCF/8	Bundle of two letters of objection
SGCF/9	Map showing boundaries of the North End Ward
SGCF/10	SGCF Annual General Meeting Minutes 10 July 2006
SGCF/11	EA pamphlet re "Planning for Flood Risk Management in the Thames Estuary"
SGCF/12	EA news item "Thames Barrier Closes 100 Closures"
SGCF/13	Extract from Thames Estuary Partnership Website re "Thames Estuary 2100"
SGCF/14	Extract from Thames Estuary 2100 Study - Consultation
SGCF/15	London under threat? Flooding Risk in the Thames Gateway - London Assembly Environment Committee, October 2005
SGCF/16	EA comments on "London under threat"
SGCF/17	Information on Dart Terminal
SGCF/18	Commentary on ProLogis's suggested conditions 15 May 2007
SGCF/19	Concluding statement (Closing submissions)

Documents Submitted by Bexley LA21 Natural Environment Focus Group

NEFG/C/1	Mr Cotton's summary
NEFG/C/2	Mr Cotton's proof of evidence
NEFG/C/3	Mr Cotton's appendices
NEFG/C/4	GIGL ecological data search
NEFG/C/5	Whitehall Lane Recreation Ground Reptile Survey and Report
NEFG/C/6	Extract from Flood and Coastal Defence Project Appraisal Guidance
NEFG/C/7	Environmental Sustainability Network – Implementation. Decision Ref. ETR 62/06-07
NEFG/C/8	Letter from EA to Mr Cotton dated 24 May 2007 re planning for flood risk management in the Thames Estuary
NEFG/C/9	Closing statement
NEFG/G/1	Dr Gray's summary
NEFG/G/2	Dr Gray's proof of evidence
NEFG/G/3	Dr Gray's appendix
NEFG/M/1	Ms Maxted's summary
NEFG/M/2	Ms Maxted's statement
NEFG/M/3	Ms Maxted's appendices
NEFG/M/4	Newspaper article re Grosvenor Waste Management

Documents Submitted by the London Wildlife Trust

LWT1 Rule 6 statement
LWT2 Mr Whitbread's proof of evidence
LWT3 Crayford Marsh - Outline Proposals for Transfer to London Wildlife Trust
LWT4 Closing statement

Documents Submitted by Interested Persons Speaking at the Inquiry

GB1 Mrs Bruckner's statement
IL1 Mr Lindon's statement
IL2 E-mail clarifying IL1
DR1 Mr Reynolds' statement
DR2 Supplementary note put in by Mr Reynolds
TW1 Mr Walters' statement
JM1 Mrs Miller's statement
JM2 Photograph taken on passageway linking Moat Lane and Oak Road
BR1 Mr Rodmell's statement
BR2 Supplementary note put in by Mr Rodmell

APPENDIX C - PLANS

Inspector's Note: Identical applications were submitted in August 2004 to Bexley and Dartford Borough Councils, each accompanied by an Environmental Statement (ES). In February 2005, Dartford Borough Council refused planning permission for the works in the Borough of Dartford. In November 2005 the application was revised, following a Regulation 19 request from Bexley Council; new plans were submitted, together with a revised ES. The appeal against Bexley Council's failure to determine the application was submitted in March 2006.

In January 2007 amended plans were issued and the ES further revised. The revision was announced at the pre-inquiry meeting (INQ1, Section 2) and subsequently advertised. In February 2007 ProLogis proposed that the works to the banks of the River Cray should be extended, following comments from the Environment Agency. The site application boundary plan (Drg 2144/PL/52B) was amended, as was the plan showing the proposed profile of the riverbed (Drg 0402-01-07F).

On opening the inquiry, I announced the revisions and asked if everyone was content that the Secretary of State should proceed to determine the appeals on the basis of the revised plans. No one objected.

Subsequently it was discovered during the course of the inquiry that the "as constructed" restoration levels on the adjoining landfill surveyed during the course of the inquiry did not match those previously surveyed in 2004 which were used to prepare the visual impact analysis contained in the ES, or indeed those for which Bexley Council had granted planning permission. A Supplementary ES was prepared and submitted in July 2007. Revised application plans accompanied this showing the proposed adjustments to the design of the access road and its earthworks needed to tie the development into the as constructed levels of the landfill (PDL/0.17). Further illustrative plans were also provided showing the alterations required should it be decided that the landfill should be re-profiled to match the restoration levels for which planning permission was granted (ibid). With both schemes, changes were also proposed to the levels of the area of proposed landscaping at the north-east corner of the site, in order to enhance screening to the intermodal area when viewed from the north-east. By letter dated 29 August 2007 (INQ10) PINS wrote to ProLogis, the two planning authorities and the Rule 6 parties formally proposing that I should complete my report, and the Secretary of State should reach her decision, on the basis of the proposals presented in the Supplementary ES. No one objected.

The plans listed below are those on which I have based my report and those on which it was agreed the Secretary of State should reach her decision. Should the Secretary of State wish to view the original application plans or those submitted in November 2005 or January 2007 they can be found in the appropriate Planning Statement Folders. The plans submitted in July 2007 are in the folder labelled "Supplementary ES: July 2007".

Plans to accompany conditions were prepared during the course of the inquiry to accompany the conditions suggested by ProLogis (PDL/0.13).

Application Plans

Plan Ref.	Drawing Title
2144/PL/49D	Development Parameters Plan
2144/PL/52C	Site Application Boundary
2144/PL/55B	Trust Boundary Plan
2144/PL/66A	EA Access Plan
0402-01-07H	Riverbed plans and sections
855/LE/001/F	Planning layout (Road Access)
855/LE/002/H	Planning layout (Road Access)
855/LE/003/F	Planning layout (Road Access)
855/LE/004/F	Planning layout (Road Access)

855/LE/005/D	Planning layout (Road Access)
855/LE/006/D	Planning layout (Road Access)
855/LE/007/D	Planning layout (Road Access)
855/LE/009/B	EA Access Points General Arrangement
855/LE/012/A	Planning Layout Slade Green Bus Link

Illustrative Drawings

Plan Ref.	Drawing Title
2144/PL/51/B	Illustrative Public Access Plan
2144/PL/56/C	Illustrative Colour Master Plan
2144/PL/100	Illustrative Elevations
2144/PL/101	Illustrative Plans and Sections
2144/PL/102	Illustrative Colour Details
2144/PL/103	Illustrative 3D Visualisation
L540-02-05N	Illustrative Landscape Masterplan
L540-06-F	Illustrative Landscape Masterplan Sections

Plans to Accompany Conditions

Plan Ref.	Drawing Title
2144/PL/49D	“The Parameters Plan”
2144-LE-79A	Bridge Extends Boundary
2144-FE-78	Entrance Land Boundary
2144-LE-85	Site Layout Plan (marked to show extent of area to be used for stacking containers)

Illustrative Plans Showing the Adjustments to the Design Proposed should the Restoration Levels on the Adjoining Site be Re-Profiled to Match those for which Planning Permission was Granted

Plan Ref.	Drawing Title
2144/PL/104	Development Parameters Plan (Replaces 2144/PL/49D)
855/LE/013/B	Planning layout (Replaces 855/LE/002/H)
855/LE/014/B	Planning layout (Replaces 855/LE/003/F)
855/LE/015/B	Planning layout (Replaces 855/LE/004/F)

APPENDIX D - ABBREVIATIONS

AOD	above ordnance datum
ATC	automatic traffic count
CLRL	Cross London Rail Links Ltd (Crossrail)
cm	centimetres
CONCAWE	Oil Companies International Study Group for Conservation of Clean Air and Water - Europe
CPRE	Campaign to Protect Rural England
CTRL	Channel Tunnel Rail Link (High Speed 1)
DfT	Department for Transport
Drg	Drawing
DIRFT	Daventry International Rail Freight Terminal
EiP	Examination in Public
ES	Environmental Statement
et seq	and the following (pages etc)
GIGL	Greenspace Information for Greater London
GLA	Greater London Authority
gm	grammes
ha	hectares
HGV	heavy goods vehicle
ibid	in the same document
IHT	Institute of Highways and Transportation
ILE	Institute of Lighting Engineers
KCC	Kent County Council
KIG	Kent International Gateway
km	kilometres
KTS	Kent Thameside (Traffic) Model

LIFE	London International Freight Exchange
LPA	local planning authority
LWT	London Wildlife Trust
m	metres
m ²	square metres
MHW	mean high water
NEFG	Bexley LA21 Natural Environment Focus Group
NLP	Nathaniel Lichfield and Partners
p	page
para	paragraph
PCUs	passenger car units
PDL	previously developed land
PLA	Port of London Authority
pp	pages
PPG	Planning Policy Guidance (Note)
PPS	Planning Policy Statement
RFC	ratio of flow to capacity
RSS	Regional Spatial Strategy
RUS	Route Utilisation Study
S106	Section 106
SEL	Selective Employment Location
SGCF	Slade Green Community Forum
SINCB	Sites of Importance for Nature Conservation in Bexley
SMINC	Site of Metropolitan Importance for Nature Conservation
SPG	Supplementary Planning Guidance
SRA	Strategic Rail Authority
SRFI	Strategic Rail Freight Interchange
SSSI	Site of Special Scientific Interest

TfL	Transport for London
TN	Technical Note
TRRL	Transport and Road Research Laboratory
TRTM	Thames Road Traffic Model
UDP	Unitary Development Plan

APPENDIX E - CONDITIONS

Inspector's Note. Conditions were discussed at the inquiry (without prejudice). The conclusions of these discussions are reflected in ProLogis's list of suggested conditions (PDL/0.13), the contents of which were, for the most part, agreed by Bexley Council and Dartford Borough Council. Areas of disagreement are recorded in LBB0.6. In the event that the Secretary of State is minded to grant planning permission for the proposed development, I recommend that the following conditions should be attached to the permission granted. The reasons for the conditions, where not explained in the text of the report, can be found in PDL/0.13.

Definitions

In these conditions the following expressions shall have the following meanings:

Local Planning Authority: As between the London Borough of Bexley and Dartford Borough Council means the local planning authority within whose administrative district the part of the site to which the condition relates is located and where a condition relates to the whole development or any part of the development which straddles the boundary between the two local authorities then the expression shall be taken to mean both authorities.

Commencement of development: The earliest date on which any of the material operations (as defined by Section 56(4) of the Town and Country Planning Act 1990) pursuant to the implementation of this planning permission is begun on the application site with the exception of:

- i. any works carried out in connection with any archaeological investigation of the application site; and
- ii. any trial holes or other operations to establish the ground conditions of the application site; and
- iii. any works of demolition and ground clearance.

Environmental Statement: The Environmental Statement revised January 2007 and the Supplementary Environmental Statement dated July 2007.

Parameters Plan: The Development Parameters Plan Drawing No. 2144/PL/49D (or alternatively Drawing No 2144/PL/104 in the event that the levels of the adjoining landfill are reduced to those shown on Figure B3 in the Supplementary Environmental Statement dated July 2007).

Crayford Landfill Phase 7: The area identified as Phase 7 in the planning permission for the landfill on land adjacent to the application site.

Framework Travel Plan: The document entitled "Framework Employee Travel Plan/Freight Management Plan" produced by WSP Consultants and dated 24 May 2007.

Conditions

1. Approval of the details of the design, external appearance of the buildings (including the bridge, the extent of which is shown in blue on Plan 2144-LE-

79A), and the landscaping of the site (hereinafter called the reserved matters) shall be obtained in writing from the Local Planning Authority before any development is commenced.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. The development hereby permitted shall be carried out substantially in accordance with the principles illustrated on the Parameters Plan, with the exception of the area shown as the Public Pocket Park which shall instead be landscaped in accordance with the details submitted pursuant to Conditions 1 and 8.
5. The total gross external area of the warehouses to be erected on the site shall not exceed 198,000 sq.m.
6. Prior to the commencement of development details of the sustainability measures (including a programme of implementation) to be substantially in accordance with Section 5 of the Design Code contained within the Environmental Statement shall be submitted to and approved in writing by the Local Planning Authority. The sustainability measures shall be implemented as approved.
7. The details to be submitted in accordance with Condition 1 shall include a schedule of materials and finishes to be used for the external walls and roofs of the proposed buildings.
8. The landscaping details to be submitted in accordance with Condition 1 shall be substantially in accordance with the Landscape Strategy set out in the Environmental Statement and shall specify:
 - i. details of all ground modelling, re-profiling, bunding and mounding, including a comprehensive ground level survey with information relating to the existing and proposed ground levels above Ordnance Datum and cross-sections at a scale of not less than 1:200 at Moat Lane/Oak Road and 1:500 elsewhere at the boundary;
 - ii. a detailed scheme for the comprehensive treatment of planting and seeding areas including plans and sections at a scale of not less than 1 :1250;
 - iii. all site boundary treatment, retaining walls, gabions, footpaths and security fencing;
 - iv. acoustic fencing and barriers between letters A-B; C-D and E-F as shown on the Parameters Plan; and

- v. a programme of implementation and management plan.

The landscaping scheme shall be carried out as approved and shall be maintained in accordance with the approved management plan for a minimum of ten years after planting. Any trees, shrubs, or other plants which die, are removed or become seriously damaged or diseased during this period shall be replaced with others of a similar type and size unless otherwise agreed by the Local Planning Authority.

- 9. Prior to the commencement of development details of the landscaping scheme for the area shown edged green on plan 2144-FE-78 (including a programme of implementation) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.
- 10. Prior to the commencement of development details of the highway works on Moat Lane and at the access to the site from the A206 Bob Dunn Way/Thames Road/Burnham Road junction shall be submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied or brought into use until these off-site works have been completed in accordance with the approved details.
- 11. The bridge details to be submitted in accordance with Condition 1 shall specify:
 - i. details of the provision to be made for access for the Environment Agency to and along both banks of the River Cray;
 - ii. details of the bridge piers which shall be substantially in accordance with the Environmental Statement and shall create no greater blockage to the River Cray than shown on the revised application drawings dated January 2007;
 - iii. details of the works to the banks of the River Cray which shall project no further into the watercourse than shown in the revised application drawings dated January 2007 and the Environmental Statement;
 - iv. details of fenders;
 - v. details of guard rails; and
 - vi. the materials and finishes to be used for the external surfaces of the bridge.

The bridge shall be provided in accordance with the approved details.

- 12. Prior to the commencement of development an ecological mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme of implementation and a management plan and shall be substantially in accordance with the details contained in the Ecological Chapter of the Environmental Statement (including the provision of a 5m wide

- buffer zone alongside all wet ditches and ponds). The ecological mitigation scheme shall be carried out as approved.
13. Prior to the commencement of development a scheme providing details of all permanent access roads, cycle ways and footpaths shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme of implementation and shall be substantially in accordance with the Parameters Plan. The scheme shall be implemented in accordance with the approved details.
 14. Prior to the commencement of development details of the northern access from Moat Lane together with measures to be introduced to ensure that only authorised vehicular traffic, cyclists and pedestrians can use the northern access from Moat Lane as identified on the Parameters Plan shall be submitted to and approved in writing by the Local Planning Authority. The said details shall specify the type of vehicles to be authorised and the management arrangements for the operation of those measures. Thereafter the northern access shall be provided in accordance with the approved details and the only vehicles to use this access shall be those authorised in accordance with the approved details.
 15. Prior to the commencement of development details of the areas affected by all vehicular and pedestrian sight lines and visibility splays within the site including the height of zone within which there shall be no obstruction to visibility shall be submitted to and approved in writing by the Local Planning Authority. The sight lines and visibility splays shall be provided in accordance with the approved details before that part of the development which utilises those sight lines and visibility splays is first brought into use. Thereafter the sight lines and visibility splays shall be maintained in accordance with the approved details.
 16. Prior to the commencement of development a scheme specifying the management arrangements for the operation of the lifting bridge shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the bridge shall only be lifted in accordance with the agreed scheme.
 17. Prior to the commencement of development details of the boundary treatment between the western boundary of the application site and the area denoted as the “Area reserved for Crossrail” on the Parameters Plan shall be submitted to and approved in writing by the Local Planning Authority. The treatment of that boundary shall be undertaken in accordance with the approved details.
 18. Prior to the commencement of development a drainage strategy (including a programme of implementation) shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall be substantially in accordance with the details set out in the Environmental Statement. The strategy shall be implemented as approved.
 19. Prior to the commencement of development a scheme of archaeological investigation and, if necessary, mitigation shall be submitted to and approved in

writing by the Local Planning Authority. The scheme shall be implemented as approved.

20. Prior to the commencement of development a scheme detailing the location and appearance of the refuse storage areas and recycling facilities shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and maintained as approved.
21. Prior to the commencement of development a construction method statement shall be submitted to and approved in writing by the Local Planning Authority. The method statement shall include:
 - i. details of the means of access to the site (including details of temporary construction accesses to the site and to the banks of the River Cray and details of the temporary bridge over the River Cray);
 - ii. details of the methods to be used to control dust, noise, vibration and other emissions from the site (including emissions to the River Cray);
 - iii. measures to prevent blockages to the River Cray and to control the loadings to the river embankments;
 - iv. a scheme for the routeing, management and signage of construction traffic;
 - v. a scheme for the maintenance and/or temporary diversion of Public Rights of Way;
 - vi. details of fencing to prevent incursion of construction traffic onto landscaped areas within and outside the site;
 - vii. details of all temporary buildings and compound areas including arrangements for their removal;
 - viii. details of areas to be used for the storage of plant and construction materials and waste (including demolition waste);
 - ix. details of the areas to be used for parking, loading and unloading of construction vehicles and for parking employees vehicles;
 - x. details of temporary lighting arrangements; and
 - xi. a programme of works.

All construction shall be carried out in accordance with the approved method statement.

22. Prior to the commencement of development a noise mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall set out the provisions to be made for the control of noise from the

site and shall be substantially in accordance with the Environmental Statement and the Statement of Common Ground on Noise (CD7.5). Noise from the site shall be controlled in accordance with the approved scheme.

23. Prior to the commencement of development a contaminated land assessment and associated remediation strategy together with a programme of implementation, shall be submitted to and approved in writing by the Local Planning Authority.

The assessment and remediation strategy shall include a site investigation report detailing all investigative works and sampling carried out together with the results of analysis and risk assessments to any receptors. The strategy shall be of such a nature so as to render harmless the identified contamination having regard to the proposed end use of the site and the surrounding environment including all controlled waters.

The approved remediation scheme shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the approved methodology and best practice. Any variation to that scheme shall be agreed in writing with the Local Planning Authority in advance of the varied works being undertaken. If during any remediation works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to and approved in writing by the Local Planning Authority and carried out.

Upon completion of the remediation works this condition shall not be discharged until a validation report has been submitted to the Local Planning Authority. The validation report shall include details of the remediation works and quality assurance certificates to show that the remediation works have been carried out in full in accordance with the approved methodology. The report shall include all relevant correspondence with the regulating authorities and other parties involved with the remediation works, details of post remediation sampling and analysis to show the site has reached the required standard of remediation, and documentation detailing all materials that have been imported to or removed from the site in connection with the remediation works.

24. Prior to the commencement of development a groundwater monitoring scheme relating to the chalk aquifer under the Crayford Landfill Phase 7 (including a programme of implementation) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.
25. Details of the construction of the foundations for each building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction of that building. The foundations shall be constructed in accordance with the approved details.
26. No works of construction (including earthworks) other than internal works to the buildings, the laying of floors, works requiring rail possessions and tidal works shall be undertaken before 08.00 or after 18.00 on any weekday or before 09.00 or after 14.00 on Saturdays nor at any time on Sundays, Bank or Public Holidays unless otherwise agreed in writing by the Local Planning Authority.

27. Prior to the occupation of each building details of any external storage areas (including the maximum height of any such storage) for that building shall be submitted to and approved in writing by the Local Planning Authority. No materials shall be stored outside the buildings except in the approved areas.
28. No building or the intermodal area hereby permitted shall be occupied until the associated car parking, HGV parking, servicing and manoeuvring spaces and the roads and footpaths providing access for that building or the intermodal area have been constructed and laid out in accordance with details submitted to and approved in writing by the Local Planning Authority. The car parking approved for each building or the intermodal area shall be completed ready for use prior to the occupation of that building but shall not be used prior to such occupation. Cars and HGVs shall not be parked on the site other than in the approved parking spaces unless otherwise agreed in writing by the Local Planning Authority.
29. No building or the intermodal area hereby permitted shall be occupied until the cycle parking for that building or use has been provided in accordance with details submitted to and approved in writing by the Local Planning Authority, such details to be substantially in accordance with the Framework Travel Plan. The cycle parking approved for each building or use shall be provided prior to the occupation of that building or use and thereafter shall remain available for such use at all times unless otherwise agreed in writing by the Local Planning Authority.
30. Prior to first occupation of any part of the development a detailed external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. No external lighting other than that approved shall be provided on the site.
31. The buildings hereby permitted shall be used solely for Class B8 (storage or distribution) purposes and uses ancillary thereto and for no other purpose.
32. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or replacing the same) no extension of the buildings hereby approved shall be carried out.
33. The height of stacked containers on the area coloured orange on the plan ref 2144-LE-85 shall not exceed 12m.
34. No more than 1,167 car parking spaces shall be provided on site including spaces for disabled and car share drivers.
35. There shall be no burning of materials or waste on the site.
36. Details of any gantry cranes to be used on the site shall be submitted to and approved in writing by the Local Planning Authority prior to their first use. No gantry cranes shall be used on the site other than as previously agreed in writing by the Local Planning Authority.

37. No railway line or siding provided within the site further to this permission shall be removed, realigned or closed to rail traffic unless otherwise agreed in writing by the Local Planning Authority.

Annex E - Howbury S106 (Non-Highway) (2007)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

DATED 1 June **2007**

BEXLEY LAND RESTORATION LIMITED

and

TRUSTEES OF RUSSELL STONEHAM ESTATE

and

PROLOGIS DEVELOPMENTS LTD

PLANNING OBLIGATIONS BY UNILATERAL UNDERTAKING
under Section 106 of the
Town & Country Planning Act 1990 and Section 16
of the Greater London Council (General Powers)
Act 1974 and Section 156 of the Greater London Authority Act 1999
relating to the development of land adjacent to
South Eastern Trains Depot, Slade Green, Bexley, Kent
known as Howbury Park

NON HIGHWAY OBLIGATIONS

Marrons (Ref MET)
Solicitors
1 Meridian South
Meridian Business Park
Leicester
LE19 1WY

THIS UNDERTAKING is made the 1st day of June Two Thousand and Seven

BY

1. **BEXLEY LAND RESTORATION LIMITED** (Company Registration Number 2567935) whose registered office is at Howbury Grange Moat Lane Slade Green Erith Kent DA8 2NE
2. **COLIN MACHLACHLAN RUSSELL STONEHAM** of Peltings Park Nr Wrotham Kent **DESMOND JOHN RUSSELL STONEHAM** of Highleaze House Oare Nr Marlborough Wiltshire SN8 4JE and **JOHN RUSSELL STONEHAM** of Rack Close Highfield Lane Thursley Nr Godalming Surrey being the trustees of the Russell Stoneham Estate
3. **PROLOGIS DEVELOPMENTS LIMITED** (Company Registration number 2872273) whose registered office is at 1 Monkspath Hall Road Solihull B90 4FY

TO:

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY** of Civic Offices Broadway Bexley Heath Kent DA6 7LB
2. **KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ
3. **TRANSPORT FOR LONDON** of 42-50 Winsor^d House Victoria Street London SW1H 0TL * MBT

DEFINITIONS

For the purposes of this Undertaking the following expressions shall have the following meanings:-

“the Act”	the Town & Country Planning Act 1990
“Additional Rail Subsidy Fund”	the sum of One Million Pounds (£1,000,000) Index Linked
“BLR Ltd “	Bexley Land Restoration Ltd aforesaid
“PDL”	Prologis Developments Ltd aforesaid and its successors in title and/or assigns
“the Appeal Application”	the planning application submitted to the Borough Council and Dartford Borough Council and allocated reference numbers 04/04384/OUTEA and DA/04/00803/OUT respectively applying for permission for the provision of a new rail freight interchange comprising warehouses, rail sidings and terminal, new road links, access roads and lifting bridge over River Cray, associated parking and landscaping
“the Application Land”	the land to which the Planning Application relates shown edged red on the Plan
“BCU Life Skills Centre”	the group known as such whose aims are to improve basic life skills for local residents of the to assist in accessing training opportunities
“Beneficially Occupied” and “Beneficial Occupation”	the actual use or occupation of any part of the RSW or IMT for the purposes authorised by the Planning Permission otherwise than use or occupation solely for the purposes of construction and/or fitting out
“the Borough Council”	London Borough of Bexley Council and its successor in function
“Commencement of Development”	the earliest date on which any of the material operations (as defined by Section 56(4) of the Town and Country Planning Act 1990) pursuant to the implementation of the Planning Permission is begun on the Development Land with the exception of <ul style="list-style-type: none"> i any works carried out in connection with any archaeological investigation of the Application Land and

	ii.	any trial holes or other operations to establish the ground conditions of the Application Land and
	iii.	any works of demolition and ground clearance
“the County Council”		Kent County Council aforesaid and its successor in function
“Cycle/Footpath Improvement Contribution”		the sum of Thirty Thousand Pounds (£30,000) Index Linked
“Development Land”		the land edged blue on the Plan
“the Development”		the development permitted by the Planning Permission and approved pursuant to the conditions imposed upon the Planning Permission
“Employment and Training Contribution”		the sum of £194,340.00 Index Linked
“OGV”		As defined in the Department for Transport Design Manual for Roads and Bridges; Volume 13: Economic Assessment of Road Schemes, Section 1: Traffic Flow Input to COBA, Chapter 8: Vehicle Categories
“FOC”		A Freight Operating Company licensed under the Railways Act 1993
“Gantry Cranes”		two portal cranes spanning the three sidings on the Development Land and part of the adjacent IMT apron
“Highways Agency”		the Secretary of State for Transport in his capacity as highway authority for the M25 and trunk roads or successor in function
“IMT”		the Inter Modal Terminal included within the Development
“Index Linked”		the adjustment of the figure concerned as provided by clause 1.19
“Jobnet”		the London Development Agency co-ordinated project liaising with five London Borough’s via the Borough Council’s Resources Plus Scheme

“Lift”	the operation of transferring a container swap body or piggyback trailer to or from a train to or from an OGV whether or not via an interim placement on the ground	
“Lift Subsidies”	the payment to an occupier of an RSW or user of the IMT as the case may be during the periods referred to in paragraphs 1.4 and 1.5 of Schedule 1 respectively of the following:-	
	Year 1 - £15.00 per Lift	
	Year 2 - £10.00 per Lift	
	Year 3 - £5.00 per Lift	
“Marshes Management Plan”	the plan to be submitted approved and implemented pursuant to paragraph 2.1 of Schedule 1 and in accordance with Schedule 4	
“Marshes Trust Land”	the land edged green on the Plan	
“Marshes Trust Endowment”	the sum of Two Million and Fifty Six Thousand Pounds Six Hundred and Sixty Four Pounds (£2, 556 ²⁵⁶ ,664.00) Index Linked or such lesser sum as shall be agreed between the Owners PDL and the trust to whom the Marshes Trust Land is transferred pursuant to paragraph 2.3 of Schedule 1	+ IMT
“Moat Lane Properties”	numbers 71 and 73 Moat Lane and numbers 1, 2 and 3 Farm Cottages	
“Noise Mitigation Contribution”	the sum of £5,000.00 Index Linked for each of the Moat Lane Properties	
“the Owners”	the Trustees and BLR Ltd	
“the Parties”	the Owners PDL the Borough Council and the County Council and TfL	
“the Plan”	the plan attached hereto	
“the Planning Permission”	any planning permission issued following the completion of this Agreement as a result of the determination of the Appeal Application by the Secretary of State	
“Rail Freight Plan”	a document outlining measures to maximise	

the use of rail to and from the Development Land including:-

- i. targeted information and assistance to occupants of the RSW and local companies in relation to the rail freight opportunity offered by the Development
- ii. measures to maximise awareness of rail freight services and providers generally
- iii. assistance in applications for relevant grants to support new use of rail for freight by individual companies

“Rail Infrastructure”	the rail infrastructure comprising track and sidings shown on the Development Parameters Plan (no.2144/PL/49B) submitted as part of the Appeal Application
“Rail Officer”	an officer at TfL involved in the promotion of rail freight services across London with particular responsibility for and focus on the promotion of rail freight usage at the Development
“Rail Promotion Fund”	the sum of One Hundred and Fifty Thousand Pounds (£150,000) Index Linked
“Rail Subsidy Fund”	the sum of Three Million Pounds (£3,000,000) Index Linked
“Resources Plus Scheme”	the Resources Plus Scheme operated by the Borough Council
“Retail Prices Index”	The All Items Monthly Index of Retail Prices published by the Central Statistical Office
“RSW”	means a rail served warehouse or rail served warehouses (as the context may permit) within the Development
“Secretary of State”	the Secretary of State for Communities and Local Government
“Second Chord”	an additional line of rail track running parallel to the main rail access track from

	the IMT and joining the main rail access track prior to its connection with the main line
“Slade Green Station Contribution”	the sum of One Hundred Thousand Pounds (£100,000) Index Linked
“Slade Green Station Purposes”	<ul style="list-style-type: none"> i. the provision of additional bus shelters at Slade Green Station in connection with the provision of bus connections between the Development and Slade Green Station ii. provision of lighting for the route between the Development and Slade Green Station iii. improvements to footpath links between Slade Green Station and the Development
“TfL”	the body corporate created by section 154 of the Greater London Authority Act 1999 and each body corporate which is from time to time its subsidiary (as such term is defined in section 736 of the Companies Act 1985) or (in the context of its statutory functions as a highway authority and public transport provider) such body as shall succeed to its statutory functions
“Tithe Barn”	the statutorily listed Tithe Barn situated on the Tithe Barn Land
“Tithe Barn Land”	the land shown edged orange on the Plan and the premises situated thereon
“the Trustees”	the trustees of the Russell Stoneham Estate aforesaid

WHEREAS:-

- A. By means of the Appeal Application PDL has applied to the Borough Council and Dartford Borough Council for planning permission to carry out the Development

- B. Most of the Application Land is situated within the London Borough of Bexley and the remainder is situated within the Borough of Dartford in the County of Kent
- C. TfL is the provider of public transport services and is also a highway authority
- D. The Owners are the owners of the Development Land and the Marshes Endowment Land and BLR Ltd also have a charge over parts of the Development Land
- E. PDL intends to carry out the Development and has contractual arrangements with the Owners enabling PDL to acquire the Development Land in the event of the Planning Permission being granted
- F. The Appeal Application was refused planning permission by Dartford Borough Council on 8 February 2005 and the Borough Council failed to determine the application within the statutory period and as a result PDL appealed to the Secretary of State and the Appeal Application is therefore now the subject of an appeal to the Secretary of State pursuant to Section 78 of the Act
- G. This Undertaking which deals with all matters with the exception of obligations relating to regulation of the highway impact of the Development has been entered into with the intent that in the event of the Planning Permission being granted by the Secretary of State pursuant to the beforeinmentioned appeal the Development shall be regulated as set out below
- H. A separate undertaking under s.106 of the Act has also been entered into securing obligations relating to the regulation of the highway impact of the Development

NOW THIS UNDERTAKING WITNESSETH as follows:-

1. GENERAL PROVISIONS

Liability

- 1.1 This Undertaking is made pursuant to Section 106 of the Act Section 16 of the Greater London Council (General Powers) Act 1974 and Section 156 of the Greater London Authority Act 1999
- 1.2 The Owners and PDL (subject clause 1.6 below) hereby jointly and severally undertake as follows:-
- 1.2.1 with the Borough Council to observe and perform the obligations contained in Paragraphs 1.18 and 1.19, 2.1 to 2.8 inclusive, and 3.1 to 3.3 inclusive of Schedule 1
- 1.2.2 with the Borough Council and the County Council and TfL to observe and perform the obligations contained in the paragraphs of Schedule 1 not referred to in clause 1.2.1
- which obligations shall be enforceable by the parties as set out in clause 1.5
- 1.3 The obligations contained in Schedule 1 are planning obligations for the purposes of Section 106 of the Act
- 1.4 The land the subject of the obligations in Schedule 1 is the Development Land and in respect of the obligation in Paragraphs 2.1 to 2.5 of Schedule 1 only also the Marshes Endowment Land and in respect of Paragraphs 2.6 to 2.8 of Schedule 1 only also the Tithe Barn Land
- 1.5 The obligations contained in the paragraphs of Schedule 1 referred to in clause 1.2.1 shall be enforceable by the Borough Council and the obligations in the remainder of the paragraphs of Schedule 1 shall be enforceable by the Borough Council the County Council and TfL
- 1.6 PDL shall not become liable in respect of any of the obligations contained in Clause 1.2 and Schedule 1 until such time as it has

acquired a legal interest in the Development Land not being an option or contract to purchase

Contingencies

- 1.7 The obligations in Clause 1.2 and Schedule 1 of this Undertaking are conditional upon the issuing of the Planning Permission and until such time as the Planning Permission is issued the obligations in Clause 1.2 and Schedule 1 of this Undertaking shall be of no effect
- 1.8 The obligations in Schedule 1 shall be of no effect until such time as Commencement of Development has taken place
- 1.9 In the event of the Planning Permission expiring and not being renewed or in the event of the revocation or quashing of the Planning Permission without the Development having been begun the obligations in this Undertaking shall cease absolutely

Commencement of Development

- 1.10 The Owners and/or PDL shall give the Borough Council twenty eight days notice of the Commencement of Development and shall send copies of such notice to the County Council and to TfL and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between PDL and the Borough Council PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development being taken to have occurred as a matter of fact or the obligations conditional upon the Commencement of Development taking effect
- 1.11 The Owners and/or PDL shall give the Borough Council notice of the following events occurring:-
- 1.11.1 the opening of the IMT
- 1.11.2 the date of first occupation of each RSW

1.11.3 the payment of any monies to any party pursuant to the provisions of this Undertaking

Service of Notices etc

1.12 Any notice or notification to be given or served under this Undertaking shall be deemed to be properly given or served if sent by Registered or Recorded Delivery as follows:-

- i. To the Owners – to Mr C.M.R. Stoneham of Peltings Park Nr Wrotham Kent
- ii. To PDL – to the Company Secretary Prologis Developments Limited at 1 Monkspath Hall Road Solihull B90 4FY
- iii. To the Borough Council – to Assistant Director (Legal Services) and the Head of Development Control
- iv. To the County Council - to the Director of Law and Governance at County Hall Maidstone, Kent
- v. To TfL - to Transport for London Director of Legal Directorate 42-50 Windsor House Victoria Street London SW1H 0TL

unless one of the above mentioned advises all the other above mentioned of a change of recipient or address in which case that revised recipient or address shall be substituted

Gender etc

1.13 Words importing the neuter gender shall include the masculine or feminine (as the case may be) and vice versa and words importing singular numbers shall include the plural and vice versa and words importing persons shall include companies and other bodies and vice versa

Waiver

- 1.14 No waiver (whether express or implied) by the Borough Council the County Council TfL or the Owners or PDL (as the case may be) of any breach or default by the Owners PDL the Borough Council TfL or the County Council (as the case may be) in performing or observing any of the terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Borough Council the County Council TfL or the Owners or PDL (as the case may be) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owners PDL the Borough Council TfL or the County Council (as the case may be)

Statutory Rights/Powers

- 1.15 Nothing herein contained or implied shall prejudice fetter or affect any of the statutory rights powers duties and obligations for the time being vested in ^{TfL} the Borough Council or County Council as local authority and/or local planning authority and the rights powers duties and obligations of ^{TfL} the Borough Council and County Council under all public and private statutes bye-laws and regulations may be as fully and effectively exercised notwithstanding the provisions of this Undertaking
- MGT
- MGT

Right of Inspection

- 1.16 The Owners and PDL shall (in addition to the Borough Council's statutory rights of entry) permit any person duly authorised by the Borough Council or County Council or TfL to enter that part of the Development Land Marshes Endowment Land and Tithe Barn Land which is being or has been developed pursuant to the Planning Permission or is the subject of obligations contained herein to ascertain whether there is or has been any breach of the obligations hereunder

PROVIDED THAT nothing within this sub clause 1.16 shall prevent

the Borough Council from taking any legal proceedings to enforce the obligations set out herein

Delay in Payments

- 1.17 Unless otherwise provided all sums payable under this Undertaking are due 28 days after the date of any invoice or other document requesting payment and in the event of there being any delay in the making of any payment required under the provisions of this Undertaking interest shall be payable on the delayed payment at the rate of two per cent per annum above National Westminster Bank plc (and in the event of it ceasing to trade Barclays Bank plc and in the case of Barclays Bank plc ceasing to trade such major clearing bank as may be approved by the relevant parties) lending rate from time to time in force from the date that the delayed payments was due to the date of actual payment

Contract (Rights of Third Parties Act) 1999

- 1.18 Nothing herein contained or implicit shall give or be construed as giving anyone any rights privileges powers or enforceability and the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contract (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained ^{save that} ~~and~~ it is hereby also acknowledged that TfL have rights in respect of the undertakings made herein pursuant to Section 156 of the Greater London Authority Act 1999

+ MGT

Indexation of Contributions

- 1.19 All financial contributions payable pursuant to the obligations contained in Clause 1.2 and Schedule 1 of this Undertaking shall be adjusted by reference to the Retail Prices Index from the date hereof until the date(s) payment is actually made

- 1.20 If the Retail Prices Index ceases to exist or is replaced then it shall include reference to any index which replaces it or in the event it is not replaced an equivalent index agreed by the relevant parties at the time

Perpetuity Period

- 1.21 For the purposes of such parts of this Undertaking as may be subject to the law against perpetuities, the perpetuity period shall be a period of 80 years from the date hereof

Void Provisions

- 1.22 If any provision of this Undertaking is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Undertaking shall continue in full force and effect

Reference to statutes and statutory instruments

- 1.23 References in this Undertaking to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

Variations

- 1.24 The covenants undertakings and restrictions contained in this Undertaking shall only be capable of being varied by a subsequent deed of variation

2. DISPUTE RESOLUTION

- 2.1 Any differences and questions which arise between the parties hereto and the Borough Council and/or the County Council and/or TFL in connection with this Undertaking shall be referred for determination by an independent person in accordance with the following provisions:-

- a) where such dispute relates to the construction of this undertaking or any other deed or document it shall be referred to a solicitor or barrister agreed upon by the parties to the dispute or in default of agreement appointed on the application or either party by or at the direction of the President for the time being of the Law Society; and
- b) where such dispute relates to engineering construction it shall be referred to a Chartered Civil Engineer agreed upon by the parties to the dispute or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers; and
- c) in any reference to an independent person under this clause such person shall unless the parties to the dispute otherwise agree act as expert and not as arbitrator

IN WITNESS whereof the parties hereto have executed this Undertaking on the day and year first above written

NOTES

SUBJECT TO PLANNING CONSENTS

SUBJECT TO SPARKS

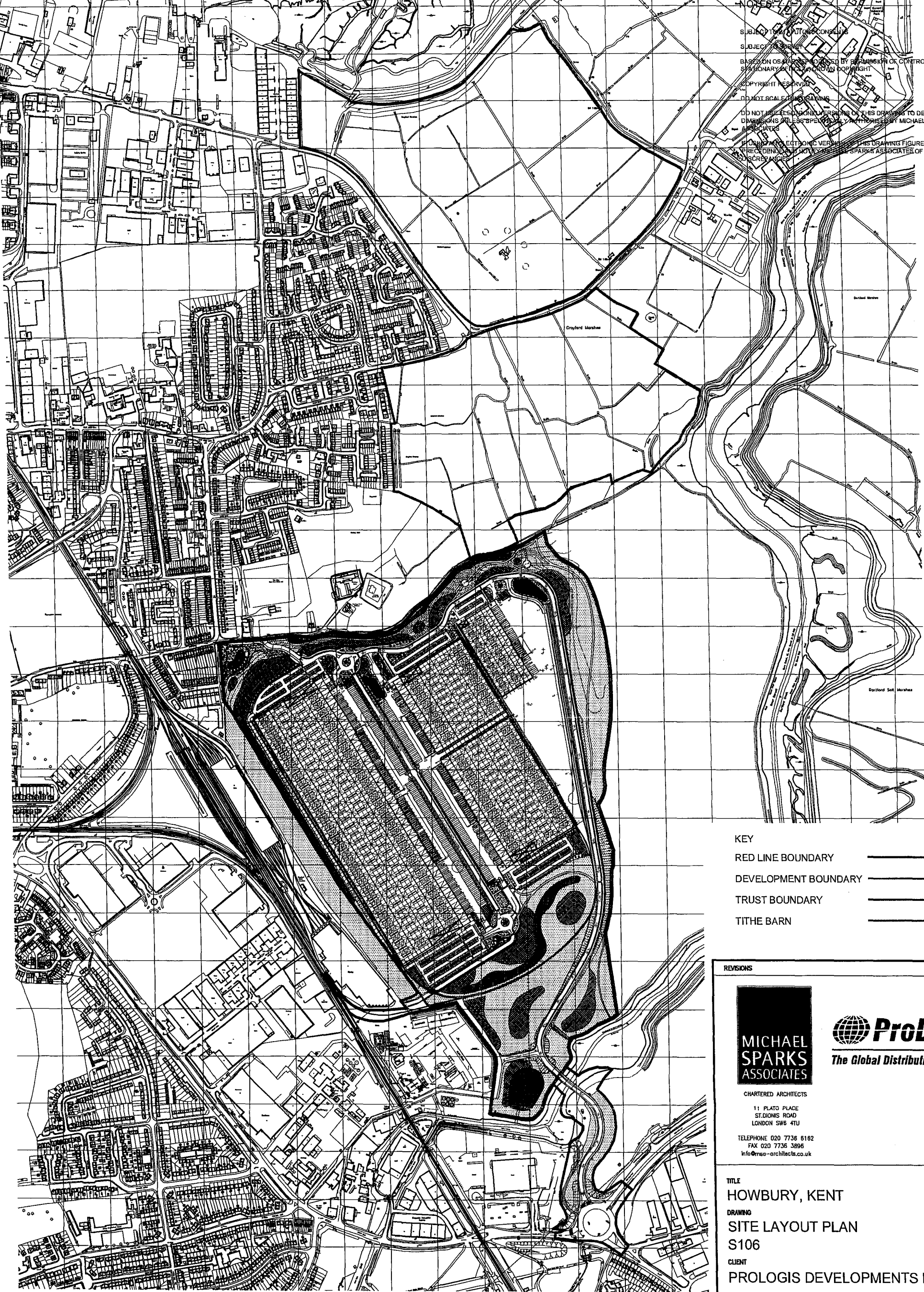
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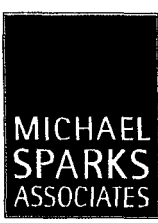

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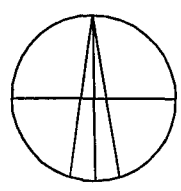
KEY

RED LINE BOUNDARY	_____
DEVELOPMENT BOUNDARY	_____
TRUST BOUNDARY	_____
TITHE BARN	_____

REVISIONS	DATE	
 		
<small>CHARTERED ARCHITECTS</small> 11 PLATO PLACE ST. DIONIS ROAD LONDON SW6 4TU TELEPHONE 020 7736 8182 FAX 020 7736 3896 info@msa-architects.co.uk		
TITLE HOWBURY, KENT		
DRAWING SITE LAYOUT PLAN S106		
CLIENT PROLOGIS DEVELOPMENTS LTD		
DATE	SCALE	DRAWN
JAN 2007	1:7500 @ A3	SD
	STATUS	CHECKED
	LEGAL	
DRAWING NUMBER		
2144-LE-71A		

01 Site Layout Plan

1:7500



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REV		SD	MS
		DRAW	CHCK

SCHEDULE 1**1. TRANSPORTATION****Rail**

- 1.1 Subject to the receipt by the Owners and PDL within 28 days of the grant of the Planning Permission of a written commitment from the Borough Council to comply with the obligations set out in Part A of Schedule 2 to pay the sum of £150,000 (One hundred and fifty thousand pounds) Index Linked to the Borough Council within 28 days of the Commencement of Development for the development of initiatives for the promotion of rail freight by the Thames Gateway Sub-Regional Freight Quality Partnership
- 1.2 To provide the Rail Infrastructure with the exception of the rail sidings to the individual RSW complete and capable of use prior to the opening of the IMT and not to allow the Beneficial Occupation of any RSW until the IMT is operational
- 1.3 To provide the rail sidings to the individual RSW complete and capable of use prior to the Beneficial Occupation of that RSW
- 1.4 To provide the occupants of each RSW with the Lift Subsidies throughout a three year period commencing in each case with the date of occupation of the RSW concerned and finishing upon the third anniversary thereof or when the funds in the Rail Subsidy Fund from which the Lift Subsidies are to be paid are exhausted whichever is the earlier and to provide full details of such payments to TfL and the Borough Council on a quarterly basis
- 1.5 To provide users of the IMT with the Lift Subsidies throughout a three year period commencing with the date of commencement of the operation of the IMT and finishing upon the third anniversary thereof or when the funds in the Rail Subsidy Fund from which the Lift Subsidies are to be paid are exhausted whichever is the earlier and to

provide full details of such payments to TfL and the Borough Council on a quarterly basis

1.6 To provide a regular train service to an appropriate rail freight “hub” agreed with TfL and the Borough Council from time to time (following consultation with the Rail Officer and the operator of the IMT) to and from the Development being a minimum of one train per week either by providing an additional service or by arranging the diversion of an existing service for a period of three years from the date of commencement of operation of the IMT or when the funds in the Rail Subsidy Fund are exhausted whichever is the earlier

1.7 In the event that the total cost of meeting the obligations set out in paragraphs 1.4, 1.5 and 1.6 is less than the Rail Subsidy Fund then the balance of the Rail Subsidy Fund shall be used for other measures to promote rail usage at the Development such measures to be agreed between TfL the Borough Council the Owners and PDL (following consultation with , the Rail Officer and the operator of the IMT)

1.8 In the event that

a at any time prior to or during a period of three years commencing with the date of the opening of the IMT TfL believe that the monies funding the obligations in paragraphs 1.4, 1.5 and 1.6 would be better directed towards different measures to promote rail usage at the Development seeking to achieve at least 25% of freight tonnage entering and leaving the Development by rail by the end of the first ten years of the operation of the Development then alternative measures can be agreed between TfL the Borough Council PDL and the Owners (following consultation with the Rail Officer and the operator of the IMT)

b the monies in the Rail Subsidy Fund are all expended prior to the expiry of a period of three years commencing with the date of the opening of the IMT and TfL and the Borough Council consider that sufficient progress is not being made towards the objective of achieving at least 25% of freight tonnage entering and leaving the

Development by rail by the end of the first ten years of the operation of the Development then the Additional Rail Subsidy Fund shall be made available by the Owners and PDL and utilised for such measures to promote rail usage at the Development as are agreed between TfL the Borough Council (following consultation with PDL, the Rail Officer and the operator of the IMT)

- 1.9 Subject to the receipt by the Owners and PDL within 60 days of the grant of the Planning Permission of a written undertaking from TfL to comply with the obligations set out in Part A of Schedule 3 to pay the Rail Promotion Fund to TfL within 28 days of Commencement of Development as a contribution towards the costs of the Rail Officer
- 1.10 To include within the service charge for each RSW and the IMT the costs of the operation and maintenance of the fixed Rail Infrastructure within the Development and to divide such costs between occupiers of all the RSW and the IMT
- 1.11 To submit a Rail Freight Plan to TfL and the Borough Council and to obtain approval thereof prior to the first Beneficial Occupation of the IMT and thereafter to comply with the provisions of the approved plan which plan shall:
- A contain specific actions for the encouragement of rail freight with the objective of progressively building the amount of goods arriving at the RSW either directly by rail or via the IMT to at least 25% of freight tonnage entering and leaving the Development by the end of the first ten years of operation
 - B identify indicators of success
 - C provide a context for the consideration and operation of the obligations contained in paragraphs 1.4 to 1.8 of this Schedule
- 1.12 To use all reasonable endeavours to encourage the arrival of construction materials for the Development by rail.
- 1.13 To apply for planning permission for the construction of the Second Chord within six years of the date of the Planning Permission and to expeditiously pursue such a permission from the Borough Council and subject only to obtaining such permission to construct the Second

Chord and provide the Gantry Cranes as soon as practicable following the average number of trains arriving or leaving the Development Land over a three month period exceeding 8 per 24 hour week day period and in any event within ten years from the Commencement of Development

^{+ MUST}
~~1.14 to ensure that no FOC is prohibited from gaining access to the Rail Infrastructure on the Development. [see facing page.]~~

Public Transport

1.15 Subject to the receipt by the Owners and PDL within 60 days of the grant of the Planning Permission of a written undertaking from TfL to comply with the obligations set out in Part B of Schedule 3 to pay £180,000 (One hundred and eighty thousand pounds) Index Linked to TfL prior to the first Beneficial Occupation and also upon the first and second anniversaries thereof such monies to be used for the extension of bus route 89 into the Development or alternative measures to maximise use of public transport by persons employed at the Development PROVIDED THAT this obligation shall not apply or shall be varied by agreement in the event of an alternative means of conveying employees of the Development from the Development to Slade Green Station being agreed with the Borough Council utilising a shuttle bus service to and from the Development and Slade Green Station

1.16 Subject to the receipt by the Owners and PDL within ⁶⁰~~28~~ days of the grant of the Planning Permission of a written commitment from the Borough Council to comply with the obligations set out in Part B of Schedule 2 to pay the Slade Green Station Contribution to the Borough Council prior to the first Beneficial Occupation such monies to be used for the Slade Green Station Purposes ^{+ MUST}

Cycle/Footpath

1.17 Subject to the receipt by the Owners and PDL within ⁶⁰~~28~~ days of the ^{+ MUST}

grant of the Planning Permission of a written commitment from the Borough Council to comply with the obligations set out in Part C of Schedule 2 to pay the Cycle/Footpath Improvement Contribution to the Borough Council prior to first Beneficial Occupation for improvements to walking and cycling routes in the area in the form of signing and new gateways

Noise Mitigation

- 1.18 Subject to the receipt by the Owners and PDL within ⁶⁰~~28~~ days of the ^{→ MIT} grant of the Planning Permission of a written commitment from the Borough Council to comply with the obligations set out in Part D of Schedule 2 to pay the Noise Mitigation Contribution to the Borough Council within 28 days of the Commencement of the Development to enable the Borough Council to fund the provision of noise insulation measures for the Moat Lane Properties
- 1.19 To notify the owners of the Moat Lane Properties of the Commencement of Development and the payment of the Noise Mitigation Contribution to the Borough Council and to provide such owners with details (previously agreed with the Borough Council) of how they can arrange for the release of the relevant Noise Mitigation Contribution in conjunction with the carrying out of Noise Insulation measures at their properties
- 2. CONSERVATION/BIODIVERSITY**
- Marshes Management Plan**
- 2.1 To submit a plan for the management and maintenance of the Marshes Trust Land in accordance with the framework set out in Schedule 4 to the Borough Council and to obtain its written approval thereof prior to the first Beneficial Occupation
- 2.2 To manage and maintain the Marshes Trust Land following the approval of and in accordance with the Marshes Management Plan

- 2.3 To transfer the Marshes Trust Land for nominal consideration along with all necessary rights and easements to facilitate the continuance of access thereto to an existing body experienced in habitat management or to a new trust to be set up to own and manage the Marshes Trust Land in accordance with the Marshes Management Plan
- 2.4 Upon the transfer of the Marshes Trust Land to an existing body or the new Trust as referred to in paragraph 2.3 to endow the existing or new trust (as the case may be) with the Marshes Endowment Fund to secure the future management and maintenance of the Marshes Trust Land
- 2.5 To manage and maintain the Marshes Trust Land in accordance with the approved Marshes Management Plan until such time as the transfer to the trust referred to in paragraph 2.3 above has taken place

Tithe Barn

- 2.6 To submit to the Council an application for listed building consent for the refurbishment of the Tithe Barn prior to the first Beneficial Occupation which application shall include the works set out in Schedule 5
- 2.7 To carry out and complete the works of refurbishment to the Tithe Barn specified in the application for listed building consent within 9 months of the issue of listed building consent for those works
- 2.8 To transfer the Tithe Barn for nominal consideration along with all necessary rights and easements to facilitate the provision and continuance of access and services thereto to the body or trust to whom the Marshes Trust Land has been or is being transferred following completion of the refurbishment works for nominal consideration and if no such transfer is effected or until such transfer is effected to maintain the Tithe Barn thereafter in good condition

3. EMPLOYMENT

- 3.1 Subject to the receipt by the Owners and PDL within ⁶⁰~~28~~ days of the + met

grant of the Planning Permission of a written commitment from the Borough Council to comply with the obligations set out in Part E of Schedule 2 to pay the Employment and Training Contribution to the Borough Council within 28 days of the Commencement of Development to be applied as follows:

3.1.1 £30,000.00 to the BCU Life Skills Centre

3.1.2 £164,340.00 to Resources Plus and Jobnet

3.2 To register all job vacancies created in connection with the construction and operation of the Development with Resources Plus

3.3 To provide temporary office accommodation within the Development sufficient to accommodate two persons and two interviewees for a maximum of three years from Commencement of Development at no cost to the Borough Council save for services consumed for the purposes of facilitating employment and training opportunities within the Development for local people

4. LIAISON GROUP

4.1 To establish a Liaison Group to enable regular discussion on the progress of the Development the purpose of which shall be to monitor the implementation of the Development in a manner consistent with the planning conditions to be applied to the Planning Permission and the provisions of this Agreement

4.2 The Liaison Group shall from time to time make such recommendations as it thinks fit regarding measures to be taken to secure the implementation of the Planning Permission in accordance with the planning conditions attached thereto and the provisions hereof and the Owners and PDL shall be obliged to give consideration to such recommendations and advise the Liaison Group of any action it proposes to take in that regard

4.3 The Liaison Group will meet not less than once every six months or

such other period as may be agreed between the Owners PDL and the Borough Council and its first meeting will be within two months of the Commencement of Development

- 4.4 The Liaison Group shall be convened by PDL and representatives of the following parties will be invited to be represented along with other community groups expressing an interest

PDL	Government Office for London
Owner	Slade Green Forum
Bexley Council	GLA (including TfL)
Dartford Borough Council	IMT Operator
Kent County Council	Occupiers of RSW
Highways Agency	Owners of the Marshes Trust Land
Environment Agency	Contractors
Local Police	
Local Chamber of Commerce	

SCHEDULE 2

BOROUGH COUNCIL COMMITMENTS

Part A

1. to apply any monies paid pursuant to paragraph 1.1 of Schedule 1 to the funding of initiatives for the promotion of rail freight taken by the Thames Gateway Sub-Regional Quality Partnership and in the event of any or all of such monies not being applied for the purposes set out above by the fifth anniversary of the their receipt to refund any such unexpended monies to the party who paid the monies originally along with the interest accrued thereon from the date of receipt of the money until the date of repayment

2. to furnish PDL with full details of the expenditure by the Borough Council of the monies paid pursuant to paragraph 1.1 of Schedule 1 by way of a statement provided every twelve months the first such

statement to be provided six months from the first payment of the said contribution

Part B

1. to apply any monies paid pursuant to paragraph 1.16 of Schedule 1 solely to the Slade Green Station Purposes and in the event of any or all of such monies not being applied for the purposes set out above by the fifth anniversary of their receipt to refund any such unexpended monies to the party who paid the monies originally along with the interest accrued thereon from the date of receipt of the money until the date of repayment
2. to furnish PDL with full details of the expenditure by the Borough Council of the monies paid pursuant to paragraph 1.16 of Schedule 1 by way of a statement provided every twelve months the first such statement to be provided six months from the payment of the said contribution

Part C

1. to apply any monies paid pursuant to paragraph 1.17 of Schedule 1 solely to measures designed to integrate new pedestrian routes relating to the Development with the existing network such measures to include updating of signage and the provision of gateways and fencing and in the event of any or all of such monies not being applied for the purposes set out above by the fifth anniversary of their receipt to refund any such unexpended monies to the party who paid the monies originally along with the interest accrued thereon from the date of receipt of the money until the date of repayment
2. to furnish PDL with full details of the expenditure by the Borough Council of the monies paid pursuant to paragraph 1.17 of Schedule 1 by way of a statement provided every twelve months the first such

statement to be provided six months from the payment of the said contribution

Part D

1. to apply any monies paid pursuant to paragraph 1.18 of Schedule 1 solely to the provision of noise insulation measures for the Moat Lane Properties and in the event of any or all of such monies not being applied for the purposes set out above by the tenth anniversary of their receipt to refund any such unexpended monies to the party who paid the monies originally along with the interest accrued thereon from the date of receipt of the money until the date of repayment
2. to furnish PDL with full details of the expenditure by the Borough Council of the monies paid pursuant to paragraph 1.18 of Schedule 1 by way of a statement provided every twelve months the first such statement to be provided six months from the payment of the said contribution

Part E

1. to apply any monies paid pursuant to paragraph 3.1 of Schedule 1 as follows:
 - 1.1 £30,000 to the BCU Life Skills Centre
 - 1.2 £164,340.00 to Resources Plus and Jobnet

and in the event of any or all of such monies not being applied for the purposes set out above by the tenth anniversary of their receipt to refund any such unexpended monies to the party who paid the monies originally along with the interest accrued thereon from the date of receipt of the money until the date of repayment

2. to furnish PDL with full details of the expenditure by the Borough Council of the monies paid pursuant to paragraph 3.1 of Schedule 1 by way of a statement provided every twelve months the first such

statement to be provided six months from the payment of the said contribution

SCHEDULE 3

TfL UNDERTAKINGS

Part A

1. to apply any monies paid pursuant to paragraph 1.9 of Schedule 1 to the funding of ~~an officer within TfL~~ ^{the Rail Officer} with specific responsibility for the promotion of initiatives to encourage the use of the Rail Infrastructure and in the event of any or all of such monies not being applied for the purposes set out above by the fifth anniversary of their receipt to refund any such unexpended monies to the party who paid the monies originally along with the interest accrued thereon from the date of receipt of the money until the date of repayment
2. to furnish PDL with full details of the expenditure by TfL of the monies paid pursuant to paragraph 1.9 of Schedule 1 by way of a statement provided every twelve months the first such statement to be provided six months from the payment of the said contribution

→ MET

Part B

1. to apply any monies paid pursuant to paragraph 1.15 of Schedule 1 to the funding of an extension of bus route 89 into the Development or other public transport measures designed to maximise the use of public transport by employees at the Development and in the event of any or all of such monies not being applied for the purposes set out above by the fifth anniversary of their receipt to refund any such unexpended monies to the party who paid the monies originally along with the interest accrued thereon from the date of receipt of the money until the date of repayment
2. to furnish PDL with full details of the expenditure by TfL of the monies paid pursuant to paragraph 1.15 of Schedule 1 by way of a

statement provided every twelve months the first such statement to be provided six months from the payment of the said contribution

SCHEDULE 4

MARSHES MANAGEMENT SCHEME

1. To submit a management plan for the management of the Marshes Endowment Land. Such a plan to have as an overarching principle the need to protect and enhance the biodiversity interest and status of such land and to include the following:
 - a) a programme of initial works for habitat protection and enhancement
 - b) a programme of timing and implementation of planned maintenance
 - c) a programme of periodical monitoring
 - d) proposals for the review of the management plan and review of long term management of the Marshes Endowment Land

2. The aim of the plan is to secure the following:-

Physical Measures

measures for the protection of the biodiversity of the Marshes Endowment Land

focused signage

prevention of access for activities not compatible with protection of the habitat e.g. motorbikes

Site inventories and surveys

Promotional measures

supervised access including visits by schools and other interest

groups

the provision of interpretation material

raising awareness of the Marshes Endowment Land within the County and wider afield through use of media

- e) provision of a dedicated web site

Monitoring

provision of a warden with appropriate accommodation the duties of which shall extend to the supervision of the Tithe Barn

SCHEDULE 5

WORKS TO TITHE BARN

HOWBURY, KENT

SCHEDULE OF REPAIRS TO BE CARRIED OUT

Renovation/Refurbishment

- Building to be wind and watertight and made good as required and to include internal light and power
- Install “gravel filled French Drain” system to building and connect to soakaways or Howbury Moat
- Remove asbestos slates to roof in controlled manner and replace with Clay Peg tiles
- Repairs to brick walls where settlement has occurred and make good as necessary
- Replace lintols above doorways to side elevations
- Rebuild internal corner brickwork at intersection of bays
- Repair cracks below slit windows on east elevation
- Repointing to building as necessary

- Repairs to the eroded/cracked Caen plinth
- Repairs to timber roof structure - splicing to decayed sections
- Timber noggings or cross bracing to be inserted between rafters to strengthen roof where movement has occurred
- Provide new concrete floor and dpm to ground floor
- Remove decayed mezzanine
- Removal of single storey extensions to rear and front

Fitting Out

- Replace entrance doors with glazed versions (subject to planning and English Heritage approval) to allow daylight into the building
- Add glazing to slit openings
- Provide lighting throughout the building to a minimum of 200 lux
- Install kitchen area with kitchen units, sink, power and water
- Provide a minimum of 10 no. twin electrical socket outlets
- Provide 3 WC's (one disabled) with related water supply, waste and electrical supply
- Create a flexible space capable of accommodating exhibitions, displays, learning areas, retail provision and offices
- All works to be carried out subject to all necessary consents, Building Control and other requirements

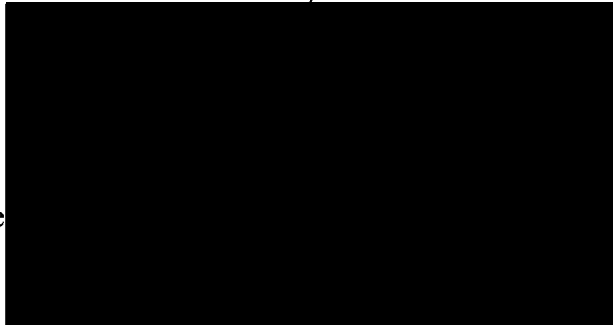
SIGNED AS A DEED on behalf of)

BEXLEY LAND RESTORATION LTD)

by:)

Director

Director/Secre





SIGNED as a DEED by **COLIN**)

MACHLACHLAN RUSSELL)

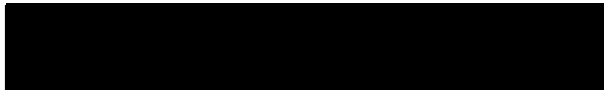
STONEHAM in the presence of:-)



Witness signature 

Witness name 

Witness address 



Witness occupation.....

SIGNED as a DEED by **RUPERT**)

EDWARD ODO RUSSELL)

as the Attorney of **DESMOND JOHN**)

RUSSELL STONEHAM in exercise)

of the power conferred on him by a power)

of attorney dated 14th September 2006 in the)

presence of:)



Witness signature 

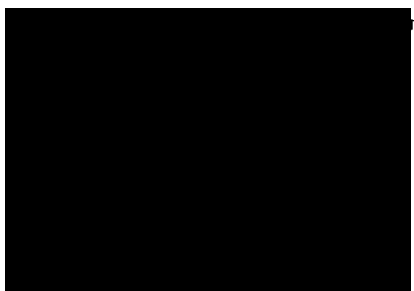
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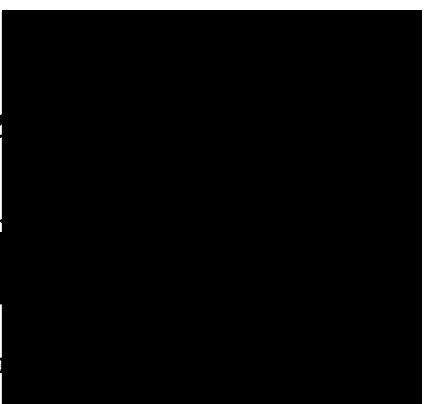


Witness occupation.....

SIGNED as a DEED by JOHN)
RUSSELL STONEHAM in the presence of:-)



Witness signature



Witness name

Witness address...

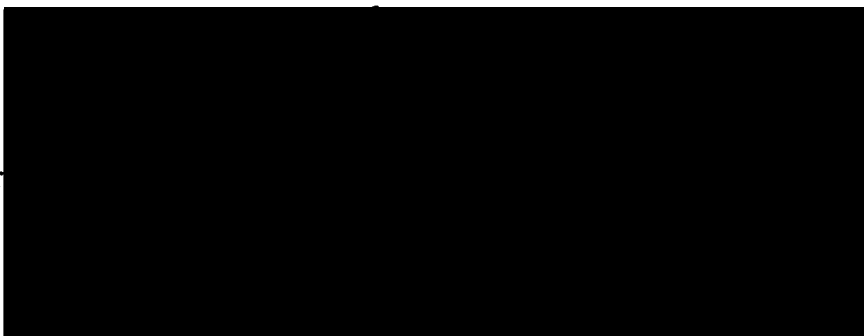


Witness occupation

SIGNED AS A DEED on behalf of)
PROLOGIS DEVELOPMENTS LTD by:)

Director

Director/Secretar



Annex F - iPort Decision Notice (2011)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

CGMS Limited
26 Holborn Viaduct
London
EC1A 2AT

09/00190/OUTA

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

PLANNING PERMISSION GRANTED

Application 09/00190/OUTA

Proposal Construction of an inland port (Strategic Rail Freight Interchange) together with ancillary infrastructure and operational development comprising:-

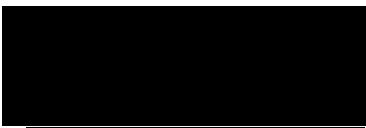
- (i) an intermodal terminal and rail and road served distribution units (562,000 m²) in Use Class B8 (including ancillary B1/B2 floorspace);
- (ii) road, rail and other infrastructure facilities and works, including the Southern arm of junction 3 M18, first section of FARRRS, rail access from the South Yorkshire Joint Line to the west and from the branch colliery line from the East Coast Main Line;
- (iii) the re-alignment of the St Catherines Well Stream and other water courses;
- (iv) landscaping;
- (v) continued agricultural use, landscape, ecological and flood mitigation and enhancement;
- (vi) other ancillary works.

Location Land West Of West End Lane Rossington Doncaster

Dated 19th August 2011

Doncaster Metropolitan Borough Council acting as the Local Planning Authority, has considered your application described above and has decided to **GRANT PERMISSION** subject to the following **CONDITIONS/DIRECTIVES** as set out below. Your further attention is drawn to any informatives attached thereafter.

THIS DECISION IS SUBJECT TO THE TERMS OF THE AGREEMENT MADE UNDER



Scott Cardwell
Assistant Director of Development

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Correspondence Address: Colonnades House, Duke Street, Doncaster, DN1 1ER

SECTION 106, OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED).

STATEMENT OF REASONS FOR DECISION TO GRANT PERMISSION

The Local Planning Authority has decided to grant planning permission:-

Because having regard to the policies and proposals in the adopted Doncaster Unitary Development Plan set out below, and all relevant material planning considerations including the following policies and statements

Doncaster Unitary Development Plan (adopted March 1998)

Policy

GEN 2	New Development
GEN 3	Regeneration Priority Areas
GEN 6	Environmental Quality
GEN 7	Sustainability
ST7	Transport Integration
SEMP 1	Job protection and creation
SENV 1	Protecting the Countryside
SEMP 3	Land for industrial and business development
EMP 2	Existing Employment Area
EMP 6	Existing Employment Area
ENV 3	Development within Green Belt
ENV 16	Development affecting agricultural land
ENV 18	Landscape and Landscape features
ENV 21	Trees and woodlands
ENV 25	Conservation Areas
ENV34	Listed Buildings
ENV 37	Archaeology
ENV 40	SSSI
ENV 41	SSI
ENV 42	Ecology
ENV 43	Ecology
ENV 44	Wildlife Corridors
ENV 49	Wildlife Habitats
ENV 50	Protected Species
ENV 52	Design standards of new buildings
ENV 53	Scale and appearance of new development



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ENV 59 Protection of trees
ENV 60 Landscaping in new development schemes
T2 Highways Schemes
T 5 New development and the highway network
T6 Public Transport
T 22 HGV Access
T 33 Freight Movement
T34 Doncaster Carr Railport
T 38 Rights of Way

Regional Spatial Strategy for Yorkshire and the Humber

YH 1 Overall approach and key spatial priorities
YH 2 Climate change and resource management
YH 5 Principal towns
YH 7 Location of development
YH9 Green Belt Policy
SY 1 Strategic objectives for South Yorkshire sub area
E 4 Regional Priority Sectors and Clusters
EN 7 Agricultural Land
EN 8 Biodiversity
T 4 Freight
T 9 Transport investment and management priorities

National Planning Policy Statements and Guidance

PPS 1 Delivering Sustainable Development
PPS 2 Green Belt
PPG 4 Industrial & Commercial Development and Small Firms
PPS 9 Nature Conservation
PPG 13 Transport
PPS 22 Renewable Energy
PPS 25 Development and Flood Risk

Draft National Planning Statement

PPS 4 Planning for Prosperous Economies

DMBC Emerging Local Development Framework Core Strategy



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DMBC Interim Planning Position Statement IPPS: Employment

DMBC Interim Planning Position Statement IPPS: FARRRS

And having taken into account all of the material planning considerations raised in the consultations and representations, against the policy background referred to above, it has been concluded that the proposed development is acceptable.

The proposal represents a justifiable departure from the Development Plan and the site's location in the Green Belt because -

The RSS promotes Doncaster as key location for the logistics and distribution industries. The Council is satisfied that the applicants have undertaken a robust economic site selection process.

The proposed drainage and flood risk provisions have been approved by the Environment Agency.

The Highways Agency has no objection to the proposed improvement schemes subject to the terms of the proposed Section 106 Planning Obligation and appropriate planning conditions.

The proposals for the mitigation and enhancement of wildlife habitats are acceptable, having regard to the views of Natural England.

The effects of the proposed development on residents have been carefully considered but the Local Planning Authority is satisfied that the effects are acceptable

The Local Planning Authority takes the view that the demonstrable economic benefits of the proposals, which would reinforce key policies of the adopted UDP and the RSS, as well as emerging local planning policies, are sufficient to outweigh the objections raised and in particular justify a departure from the Green Belt restrictions referred to in Policy ENV 3 of Doncaster UDP.

The development will lead to a significant net reduction in HGV traffic and emissions due to the transfer of freight from Road to rail which is considered to be an important benefit

01. The development hereby permitted shall be commenced either before the



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expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved in relation to the first phase of the development as identified in the approved Phasing Plan, whichever is the later.

REASON

Condition required to be imposed by Section 92(2) of the Town and Country Planning Act 1990.

02. All subsequent phases of development shall be commenced within 10 years of the date of this permission, or before the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved in relation to such phase, whichever is the later.

REASON

Condition required to be imposed by Section 92(2) of the Town and Country Planning Act 1990.

03. Applications for approval of Reserved Matters for the first phase of the development shall be made to the local planning authority before the expiration of 3 years from the date of this permission.

REASON

Condition required to be imposed by Section 92(2) of the Town and Country Planning Act 1990.

04. Applications for approval of Reserved Matters for all subsequent phases of the development shall be made to the local planning authority before the expiration of 8 years from the date of this permission.

REASON

Condition required to be imposed by Section 92(2) of the Town and Country Planning Act 1990.



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05. Details to be submitted with Reserved Matters required by conditions 3 or 4 shall include a plan showing how access across the River Torne to the former colliery site can be achieved.

REASON

To ensure that the future benefits for the regeneration of Rossington are not compromised.

06. The development shall be carried out in accordance with the following approved plans:

The Red Line Application Plan 0412-P02

The Development Areas Plan 0412-P04

The Key Parameters Plan 0412-P03, apart from the reference to maximum height of buildings, which is superseded by Plan 0412-PO6A and the maximum ridge height set out in condition 12.

REASON

To ensure the developments complies with the submitted application drawings.

07. The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a phasing plan showing The first phase of the development including any Units and associated highway infrastructure to be constructed in that phase.

The areas and BAP habitat within the Countryside Area to be provided within the first phase.

The boundary walls and fences to be provided within the first phase.

The ancillary buildings which will incorporate green roof technology.

An indicative layout in relation to subsequent phases.

REASON

To ensure the implementation of a phased scheme of development and to ensure the provision of an implementation plan.

08. The details which are required in relation to the first phase under condition 7 shall



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be submitted to the local planning authority in relation to all subsequent phases and shall be approved in writing by the local planning authority before development commences in relation to the relevant phase.

REASON

To ensure the implementation of a phased scheme of development.

09. The development shall be constructed in accordance with the details approved under conditions 7 and 8 (excluding the indicative layout in relation to subsequent phases) subject to any variations to those details approved in writing by the local planning authority.

REASON

To ensure the implementation of a phased scheme of development.

10. Relevant applications for approval of Reserved Matters shall be accompanied by an illustrative build out plan showing:
The disposition of any development that is already permitted under existing reserved matters approvals;
The disposition of any development for which approval of reserved matters is sought under the relevant application;
How those development areas, within which development has already come forward for approval of Reserved Matters under (a) and (b) above, may be built out and completed in conformity with the Key Parameters Plan as provided for under condition 11;
Those development areas for which development has yet to come forward for approval of Reserved Matters; and
The relationship between the development referred to in (a), (b), (c) and (d) above.

REASON

To ensure the provision of an implementation plan.

11. Subject to condition 12, the development shall be carried out in accordance with the Key Parameters Plan and the specified paragraphs of the Development Specification document dated January 2009 comprising:



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The parameters for the Development Site shown on the Key Parameters Plan together with para 4.3;
The parameters for the Development Zones shown on the Key Parameters Plan together with para 4.4;
The parameters for the Access Corridor shown on the Key Parameters Plan together with para 4.6; and
The parameters for the Countryside Area shown on the Key Parameters Plan together with para 4.8
unless the local planning authority approves otherwise in writing.

REASON

To ensure the development is implemented in accordance with the Key Parameters.

12. Within the perimeter zone identified on plan 0412 P06A, the ridge height of any buildings constructed within the zone shall not exceed 10.3m [16 metres AOD]; No Unit within the zone shall be constructed within 62 metres of the application boundary;
A ground modelling bund of a minimum height of 3.5 metres [9.2m AOD] shall be constructed; and
A 2.5m high acoustic close boarded fence shall be constructed on the top of the bund.

REASON

In the interests of amenity.

13. Prior to development being carried out within a relevant phase an archaeological evaluation of the land within that phase shall be undertaken in accordance with a written scheme of investigation which has previously been submitted to and approved in writing by the local planning authority. Such archaeological evaluation shall, if necessary, set out a mitigation strategy in relation to matters of archaeological interest including the carrying out of any further archaeological works and/or preservation in situ of matters of archaeological interest and such mitigation strategy shall be agreed in writing by the local planning authority and the approved scheme shall thereafter be implemented.



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REASON

To ensure protection of archaeological remains.

14. The development shall not be commenced within any phase of the development until there has been submitted to and approved in writing by the local planning authority (in consultation with Natural England) a construction method statement, including a construction environment management plan, in relation to that phase. The construction method statement shall include:
- Details of the methods to be used to control dust, noise, vibration, lighting, potential water pollution and other emissions from the site
 - The location of all temporary buildings and compound areas and arrangements for their removal following completion of construction;
 - Details of areas to be used for the storage of plant and construction materials and waste;
 - Details of temporary lighting arrangements;
 - Hours of construction work;
 - Measures to ensure that construction vehicles do not deposit mud on the public highway;
 - A scheme for the routing of construction vehicles accessing the site including measures to be taken by way of penalties if construction vehicles do not observe the identified routes;
 - Details of the construction earthworks methodology.
- The construction of each phase of the development shall be carried out in accordance with the approved construction method statement subject to any variations approved in writing by the local planning authority.

REASON

To ensure implementation of a construction method statement.

15. The development shall not be commenced within any phase of the development until there has been submitted to and approved in writing by the local planning authority in consultation with Natural England and Yorkshire Wildlife Trust, a green infrastructure management plan (including details of bodies responsible for such management) for that phase of the development. The green infrastructure management plan to incorporate substantially the draft management measures set



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out in appendix C to the Green Infrastructure Strategy dated 8 April 2009 .

REASON

To ensure provision of the Strategy.

16. The green infrastructure management plan shall include details of the following:
Clear time and feature specific goals for habitat creation and management.
Details of those Biodiversity Action Plan habitats necessary to create an effective ecological corridor comprising open water, fen, species rich grassland, wet grassland and broadleaf woodland.
Details of all measures to be undertaken for protected species present on site.
Management practices for all retained and created habitats, landscape features and green roofs that are present on site.
A monitoring and review programme designed to establish whether the habitat creation goals are being achieved, and inform any appropriate changes in management that may be required.
The mechanism for providing financial support for the managing, monitoring and review of the ecological areas.
The establishment of a partnership board for the management of the mitigation land, including membership (to include National England and YWT) and terms of reference.
A Soils Management Plan.
The management practices within the approved plan will then be implemented for the lifetime of the proposed development. Reports detailing the results of the monitoring programme, and any suggested changes in management will be submitted to the Local Planning Authority.

REASON

This condition is necessary to protect the species and habitats within and adjacent to the development site.

17. The approved green infrastructure management plan for each phase shall be implemented and its requirements shall thereafter continue to be observed subject to any variations approved in writing by the local planning authority.

REASON

To ensure provision of the Strategy.



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18. Prior to the commencement of each phase of the development, a plan for the protection and enhancement of species protected under the Wildlife and Countryside Act 1981 (Amended 2008) and associated habitats in relation to that phase, shall be submitted to and approved in writing by the local planning authority in consultation with Natural England and the Yorkshire Wildlife Trust. The plan shall cover impacts during both the construction and operational phases of the development and must encapsulate all proposed habitat mitigation and enhancements. The development of each phase shall thereafter proceed in accordance with the agreed plan subject to any variations approved in writing by the local planning authority .

REASON

This condition is necessary to protect the species and habitats within and adjacent to the development site.

19. Prior to the commencement of phase one of the development a wintering bird monitoring plan shall be submitted to and approved in writing by the Local Planning Authority in consultation with Natural England . This plan shall include details of:

A series of wintering bird surveys to be carried out each year in years 1, 2, 4, 6, 8, 10 and 12 following the commencement of development.

The scope and geographical extent of the surveys to be undertaken in each phase of development.

The approved plan and surveys shall be implemented and the results of each year's surveys shall be submitted to the local planning authority within 2 months of the final survey each winter.

REASON

To inform whether the loss of wintering bird habitat resulting from the development affects the population size of lapwing and golden plover wintering in proximity to Potteric Carr and to direct any corrective action.



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20. None of the Units shall be occupied until the M18 Junction 3 Improvements have been completed and brought into use, unless otherwise agreed in writing by the local planning authority, substantially in accordance with WSP drawing 1999/SK/044E.
REASON
To provide a suitable access to the primary road network.
21. Before the development commences, details shall be submitted to and approved by the local planning authority that show how the use of the site access is to be prevented as a public through route between M18 junction 3 and the existing public highway at Rossington and how such measures will be operated and managed. Such measures shall be in place before the site access is able to be used as a through route and shall be maintained on a permanent basis or until such time to be determined by the local planning authority.
REASON
To ensure that control is maintained over the traffic volumes at Junction 3.
22. No Unit shall be occupied until a freight line and other infrastructure required to ensure rail use linking that Unit to the existing rail freight line has been constructed and the rail link is operational unless otherwise agreed in writing by the local planning authority. The rail line and other infrastructure shall be constructed in accordance with the details to be submitted and approved in writing by the local planning authority and shall be retained for that purpose and no railway line or siding shall be removed, realigned or close to rail traffic unless otherwise agreed in writing by the LPA.
REASON
To ensure that the development provides and maintains rail links.
23. Unless the local planning authority approves otherwise in writing, the development permitted by this planning permission shall be carried out substantially in accordance with the approved Flood Risk Assessment by BWB Consulting (Ref: DA/NTW148/FRAPDM Rev A), including the setting of the development plateau no



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lower than 4.7metres above Ordnance Datum.

REASON

To protect the development from flooding.

24. Development shall not be commenced within any phase of the development until a detailed drainage study for that phase, based upon sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. The scheme shall not result in an increase in the rate of surface water discharge to the local land drainage system and shall mitigate against any increase in surface water velocities resulting from the development. The development of any phase shall thereafter proceed in accordance with the approved scheme for that phase unless the local planning authority approves otherwise in writing.

REASON

To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal. To promote aquifer re-charge.

25. If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority to a remediation strategy detailing how this unsuspected contamination shall be dealt with. The development shall be carried out in accordance with the approved strategy.

REASON

To protect surface and groundwater quality in the area.

26. No development shall be commenced within any phase of the development until a scheme for the prevention of pollution within that phase has been submitted to and approved in writing by the local planning authority. The scheme shall include the following measures:-

Oil interceptors included on drainage runs from all areas of hardstanding;



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Rain water down-pipes sealed at ground level;
Manholes for foul and surface water drainage runs colour-coded accordingly;
Provision of settlement facility during construction period on any surface water discharge points;
Any swales or balancing ponds for dealing with surface water, fitted with penstocks.
The development of each phase shall be carried out in accordance with the approved scheme.

REASON

To prevent pollution to the water environment, especially the major aquifer below the site. To make it easier to trace water pollution back to its source. To minimise sediment pollution during the construction phase. To allow any spillages to be contained and managed before reaching the water environment.

27. The development hereby granted shall not be begun until details of the foul, surface water and land drainage systems and all related works necessary to drain the site have been submitted to and approved by the Local Planning Authority. These works shall be carried out concurrently with the development and the drainage system shall be operating to the satisfaction of the Local Planning Authority prior to the occupation of the development.

REASON

To ensure that the site is connected to suitable drainage systems and to ensure that full details thereof are approved by the Local Planning Authority before any works being.

28. Any application for Reserved Matters for a Unit shall be accompanied by an application for Reserved Matters for any landscaping associated with that Unit. The Unit shall not be occupied until the hard landscaping associated with that Unit has been substantially completed and all associated planting shall be completed in the first planting season following occupation of such Unit.

REASON

To ensure landscape provision.



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29. The landscape details to be submitted for approval shall include in respect of the relevant phase a survey of existing trees and hedges, details of trees and hedges to be retained and a scheme for their protection during the construction of the development.
REASON
To protect trees and hedgerows.
30. Prior to commencement of any construction works in a phase, the approved scheme for the protection of retained trees and hedges shall be implemented and notice of such implementation served upon the local planning authority.
REASON
To protect trees and hedgerows.
31. Before the development is brought into use in the relevant phase, that part of the phase to be used by vehicles shall be properly laid out, drained, surfaced/sealed and/or marked out in a manner to be approved by the Local Planning Authority and shall thereafter be maintained in a condition to the reasonable satisfaction of the Local Planning Authority.
REASON
To encourage drivers to make use of the parking space and ensure that the use of land for this purpose will not give rise to mud hazards at entrance/exit points in the interest of public safety.
32. Prior to commencement of development within any phase, a scheme for energy efficiency and sustainability shall be submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented before the development in the relevant phase is first occupied and shall remain operational for the lifetime of the development.
REASON
In the interests of sustainability, to minimise the impact of the development on the effects of climate change and in accordance with the Sustainable Construction



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SPD.

33. A minimum of 22,000 sq m of ancillary buildings shall include green roofs to be indicated in the phasing plans. The Green Infrastructure Management Plan, referred to in Condition 15 will include measures for the management of the green roofs.

REASON

To provide a strategy for the provision of green roofs on the ancillary buildings.

34. Prior to the commencement of the development hereby approved, a survey of television reception in the area to be agreed with the Local Planning Authority shall be carried out, the results of which shall be submitted to the Local Planning Authority. On completion of the development, a further survey shall be carried out to ascertain whether there has been any deterioration in the television reception by households in the agreed area and again submitted to the Local Planning Authority. Any necessary remedial measures shall be carried out where required by the Local Planning Authority in accordance with an agreed scheme and timetable.

REASON

To ensure that the development does not unduly impact on television reception in the area.

35. Prior to commencement of development of a phase which contains high pressure gas pipelines within the relevant parts of the site details of a scheme for the diversion of such high pressure gas pipelines shall be submitted to and approved by the local planning authority. The development of each phase shall be carried out in accordance with the approved details.

REASON

To protect the pipelines.



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01. INFORMATIVE

The developer shall consider incorporating all possible sustainability features into the design of the proposed development.

02. INFORMATIVE

The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to effect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at www.coal.gov.uk.

03. INFORMATIVE

Nothing in this permission shall be construed as authorising the closure, diversion, stopping up, obstruction or other alteration, either in whole or in part, of any public right of way that crosses or adjoins the application site, in order to protect the existing public right of way. For the guidance of the applicant such alteration can only be made by requesting the Council to make a formal specific footpath order.

04. INFORMATIVE

The development hereby granted has been identified as being located in close proximity to a high pressure gas pipeline, any damage to it may be dangerous and costly to yourself. Your attention is brought to the attached documentation from Transco plc which sets out the necessary procedure you are advised to carry out prior to any excavation of the site.

05. INFORMATIVE

All relevant licences required from Natural England to survey for, and relocate legally protected species must be obtained.

06. INFORMATIVE

The applicant should be aware that a Site Waste Management Plan is needed to cover the movement of all inert materials and wastes. The Environment Agency must be informed of the movement of any soils or colliery wastes so that any



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permits or exemptions to the Environmental Protection Regulations can be considered. The use of recycled aggregates is to be encouraged as much as possible.

07. INFORMATIVE

The prior written consent of the Environment Agency is required for any works in, under, over or within 8m of the River Tome and for any works with the potential to impact upon flows in an ordinary watercourse not under the control of the Internal Drainage Board. There is a statutory two month determination period and a fee of £50 per consent may be charged, subject to the applicable legislation. Applicants are advised to engage in pre-application discussions with the Development and Flood Risk Team at Nottingham to discuss the need for consent.

08. INFORMATIVE

Paragraph 7.50 of the Environmental Statement on Hydrology refers to the developer taking on responsibility for the maintenance of the banks of the River Tome given the River Trent Catchment Flood Management Plan suggests that the Environment Agency reduce existing flood risk management actions in the Axholme and North West Lincolnshire policy unit. The developer is advised to contact Mr. Michael Motteram, Regional Estates Manager on 0115 846 3632 to further discuss this matter.

09. INFORMATIVE
DEFINITIONS

Key Parameters Plan Drawing number 0412-P03 dated January 2009

Phasing Plan Plan approved pursuant to condition.

Reserved Matters Details of:

- (a) layout except as already approved pursuant to this permission
- (b) access except as already approved under this permission
- (c) landscaping except as already approved under this permission
- (d) appearance
- (e) scale

Units Each of the respective warehouse units to be constructed as part of the development.



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Annex G - iPort Committee Report (2009)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited

Schedule No: 2.

Application No: 09/00190/OUTA

**Ward Rossington Parish Rossington/Loversall
Parish Council**

Proposal Construction of an Inland Port (Strategic Rail Freight Interchange) together with ancillary infrastructure and operational development comprising:-

- (i) an intermodal terminal and rail and road served distribution units (562,000 m2) in Use Class B8 (including ancillary B1/B2 floorspace);**
- (ii) road, rail and other infrastructure facilities and works, including the Southern arm of junction 3 M18, first section of FARRRS, rail access from the South Yorkshire Joint Line to the west and from the branch colliery line from the East Coast Main Line;**
- (iii) the re-alignment of the St Catherines Well Stream and other water courses;**
- (iv) landscaping;**
- (v) continued agricultural use, landscape, ecological and flood mitigation and enhancement;**
- (vi) other ancillary works.**

Location Land West Of, West End Lane, Rossington, Doncaster

Applicant Helioslough Limited

Agent CGMS Limited

Date of Valid Application: 2nd February 2009

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MAIN POINTS OF REPORT

*** The application is presented to Committee because the proposals would be a departure from the provisions of the Doncaster UDP since the application site falls within the Green Belt.**

*** This application seeks outline permission for the construction of a Strategic Rail Freight Interchange (SRFI), an Inland Port, and associated infrastructure, landscaping and drainage works, on land west of Rossington**

- * The development consists of a road/rail terminal with 562,000 sq m of rail accessed warehousing. Rail access to the East Coast Main Line and South Yorkshire Joint Line is provided. Road access is by way of Junction 3 Of M18, partially constructing Phase 1 of Finningley and Rossington Regeneration Route Scheme.
- * The application has been subject to an Environmental Impact Assessment and has been publicised for that reason.
- * Campaign to Protect Rural England (CPRE), Yorkshire Wildlife Trust (YWT) and UK Coal oppose the application
- * Rossington PC, Wadworth PC, Loversall PC and Tickhill TC have raised objections to the suitability of the site for such a development.
- * 2 letters of objection have been received from the public.
- * The applicant has carried out an extensive need and site selection exercise and the site is considered in economic terms to be an acceptable site in a regional context
- * The proposed development would reinforce the Borough Economic Strategy which supports the RSS in concentrating logistics development in Doncaster. The terminal will improve the competitiveness of the region and assist in the regeneration of Doncaster and Rossington
- * The applicant states that the development will lead to a net reduction in Heavy Goods Vehicle movements and emissions including CO2 due to the transfer of freight from road to rail which is considered to be an important benefit
- * The development would have significant environmental impacts on the character and appearance of this part of the Green Belt. The application puts forward substantial environmental mitigation proposals which are considered to outweigh the impacts
- * The development will have an impact on the existing local and strategic highway network. The development is considered to provide an acceptable level of provision of transportation facilities to support the development
- * It is concluded that there is an exceptional economic case to justify release land in the Green Belt for the proposed development, and that environmental and transportation impacts are acceptable
- * It is therefore recommended that Members support the application subject to a Section 106 Obligation and the attached conditions

RECOMMENDATION – THAT THE COMMITTEE RESOLVE TO AUTHORISE THE HEAD OF DEVELOPMENT MANAGEMENT TO ISSUE A DECISION NOTICE TO GRANT PLANNING PERMISSION PROVIDED THAT –

1 – THE SECRETARY OF STATE, AFTER REFERRAL OF THE APPLICATION AS A DEPARTURE FROM THE DEVELOPMENT PLAN, ALLOWS THE COUNCIL TO DETERMINE THE APPLICATION

2 – OUTSTANDING HIGHWAY ISSUES ARE RESOLVED TO THE AGREEMENT OF THE HIGHWAYS AGENCY AND THE DMB ASSISTANT DIRECTOR OF DEVELOPMENT AND PLANNING

3 – A LEGAL AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) IS COMPLETED

MEMBERS RESOLVE TO ENDORSE THE FOLLOWING STATEMENT TO ACCOMPANY THE DECISION NOTICE (SUBJECT TO SUCH AMENDMENTS AS MAY BE AGREED BY MEMBERS AT THE MEETING):

STATEMENT OF REASONS FOR DECISION TO GRANT PERMISSION

The Local Planning Authority has decided to grant planning permission:-

Because having regard to the policies and proposals in the adopted Doncaster Unitary Development Plan set out below, and all relevant material planning considerations including the following policies and statements

Doncaster Unitary Development Plan (adopted March 1998)

Policy

GEN 2	New Development
GEN 3	Regeneration Priority Areas
GEN 6	Environmental Quality
GEN 7	Sustainability
ST7	Transport Integration
SEMP 1	Job protection and creation
SENV 1	Protecting the Countryside
SEMP 3	Land for industrial and business development
EMP 2	Existing Employment Area
EMP 6	Existing Employment Area
ENV 3	Development within Green Belt
ENV 16	Development affecting agricultural land
ENV 18	Landscape and Landscape features
ENV 21	Trees and woodlands
ENV 25	Conservation Areas
ENV34	Listed Buildings
ENV 37	Archaeology
ENV 40	SSSI
ENV 41	SSI
ENV 42	Ecology
ENV 43	Ecology
ENV 44	Wildlife Corridors
ENV 49	Wildlife Habitats
ENV 50	Protected Species
ENV 52	Design standards of new buildings
ENV 53	Scale and appearance of new development
ENV 59	Protection of trees
ENV 60	Landscaping in new development schemes
T2	Highways Schemes

T 5	New development and the highway network
T6	Public Transport
T 22	HGV Access
T 33	Freight Movement
T34	Doncaster Carr Railport
T 38	Rights of Way

Regional Spatial Strategy for Yorkshire and the Humber

YH 1	Overall approach and key spatial priorities
YH 2	Climate change and resource management
YH 5	Principal towns
YH 7	Location of development
YH9	Green Belt Policy
SY 1	Strategic objectives for South Yorkshire sub area
E 4	Regional Priority Sectors and Clusters
EN 7	Agricultural Land
EN 8	Biodiversity
T 4	Freight
T 9	Transport investment and management priorities

National Planning Policy Statements and Guidance

PPS 1	Delivering Sustainable Development
PPS 2	Green Belt
PPG 4	Industrial & Commercial Development and Small Firms
PPS 9	Nature Conservation
PPG 13	Transport
PPS 22	Renewable Energy
PPS 25	Development and Flood Risk

Draft National Planning Statement

PPS 4	Planning for Prosperous Economies
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DMBC Emerging Local Development Framework Core Strategy

DMBC Interim Planning Position Statement IPPS: Employment

DMBC Interim Planning Position Statement IPPS: FARRRS

And having taken into account all of the material planning considerations raised in the consultations and representations, against the policy background referred to above, it has been concluded that the proposed development is acceptable.

The proposal represents a justifiable departure from the Development Plan and the site's location in the Green Belt because -

The RSS promotes Doncaster as key location for the logistics and distribution industries.

The Council is satisfied that the applicants have undertaken a robust economic site selection process.

The proposed drainage and flood risk provisions have been approved by the Environment Agency.

The Highways Agency has no objection to the proposed improvement schemes subject to the terms of the proposed Section 106 Planning Obligation and appropriate planning conditions.

The proposals for the mitigation and enhancement of wildlife habitats are acceptable, having regard to the views of Natural England.

The effects of the proposed development on residents have been carefully considered but the Local Planning Authority is satisfied that the effects are acceptable

The Local Planning Authority takes the view that the demonstrable economic benefits of the proposals, which would reinforce key policies of the adopted UDP and the RSS, as well as emerging local planning policies, are sufficient to outweigh the objections raised and in particular justify a departure from the Green Belt restrictions referred to in Policy ENV 3 of Doncaster UDP.

The development will lead to a significant net reduction in HGV traffic and emissions due to the transfer of freight from Road to rail which is considered to be an important benefit

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Introduction

1. The purpose of the development is to provide a rail freight terminal that will facilitate the transfer of freight from road to rail. It forms part of a national strategy that will enable freight to be quickly transported from increasingly congested ports in Southern England to strategic freight termini near to regional destinations

The outline application consists of the following specific developments forming part of the Masterplan for the Strategic Rail Freight Interchange (SFRI).

- Construction of 562,000sq m of warehouse units with ancillary office and employment development. The units will be sited in accordance with the master plan and Development Specification Document. The warehouse units will generally have a maximum ridge height of 25.7m with specified higher buildings with maximum ridge height of 35.7m
- Construction of rail linkages to adjoining railway lines and an internal rail network
- Construction of road network including a new link to junction 3 of M18 and a link to Bankwood Lane and Rossington
- Diversion of watercourses (including St Catherine's Well Stream), rights of way and a high pressure gas main.
- Site levels will be altered in parts and a site level of about 5.2m is proposed. Flood alleviation/drainage balancing facilities are to be provided to the north and west

2. The overall application site is 397 ha in size. Of this the development site is 171 ha and will be an intensively developed and secure site for the project. The site also includes areas of existing woodland and agricultural land mainly to the south and east of the warehouse site for projects to mitigate the environmental impact of the development (158 ha). These include additional woodland planting, hedge planting and replacement ecological habitats.

An additional area of land outside the application site has been included to extend the area of ecological mitigation

The access corridor extends to 68 ha.

3. The application was initially accompanied by the following documents

Application form and land ownership certificates

Illustrative Masterplan

Development Specification

Design and Access Statement

Needs Study

Planning Policy Report

Consultation Statement

Transport Assessment

Sustainability Statement

Environmental Statement including chapters on:-

Transport

Social and Economic

Landscape and Visual

Ecology

Air Quality

Noise

Hydrology

Agriculture

Archaeology

Ground Conditions

Infrastructure and Waste

4. Since submission of the application the applicant has submitted additional information and documents in relation to consultee's observations and representations received on the application

5. The Council has commissioned 2 reports to help to assess the application.

A. Nathaniel Lichfield and Partners (NLP) report entitled "Rossington Inland Port – Planning Application Review" provides independent advice on the robustness of the economic justification for the development site and the site selection process. In particular it examines the alternative sites test for considering if there are other suitable sites in the region, feasibility of the proposal and how the proposal fits in with national rail strategy. The report concludes that the economic case in support of the application is robust

B. AECOM Report - on the feasibility of green roofs on the development – the report supports the provision of green roofing on ancillary buildings on the site and supports further such provision.

6. The following adjoining proposals in the vicinity of the development are relevant to its consideration

Rossington Colliery – the site is in the ownership of UK Coal and the colliery was recently closed. The site is the subject of a proposal for development as an Eco Town.

Finningley and Rossington Regeneration Route Scheme (FARRRS) – The application includes the partial implementation of the above scheme.

Site and Surroundings

1. The application site is mainly to the south of the M18 with some of the scheme's agricultural and ecological mitigation land sited to the north. Rossington is to the east separated from the site by the former Rossington Colliery site and spoil heaps. The River Torne mainly forms the eastern boundary to the warehouse part of the site.
2. To the south and west there is open countryside in agricultural and woodland uses separating the development from the settlements of Loversall, Wadworth and Tickhill. The landform is flat becoming gently undulating and rising to the west beyond the minerals rail line that forms the western boundary of the warehouse part of the site.
3. The application site is open countryside in agricultural use crossed with hedgerows and tree lined field boundaries. A high voltage electricity transmission line crosses the site. The link road to Rossington is through the existing Bankwood Lane industrial area.
4. The site is mainly in agricultural use and will involve development of the following Grades of Agricultural land – 121.7 ha of Grade 2 and Grade 3
5. The East Coast Main Railway Line runs close to the north of the site and a mineral railway line runs to the west of the development site
6. The development affects existing rights of way across the site
7. The development affects existing infrastructure on the site including streams and drainage and 2 high pressure gas pipelines

History

1. The application site has no existing planning permissions.
2. The site formed part of an application for a mixed use development of housing, employment and golf course developments which was submitted by Rossington Hall Investments but was withdrawn.
3. An outline application for a Motorway Service Area to the South of Junction 3 of M18 was also not implemented.
4. Representations have been made to the Local Development Framework by the applicant proposing the site for a Strategic Rail Freight Interchange

Development Plans Policies and Strategies

1. The applicable national, regional and local planning policies, together with relevant draft guidance, supplementary planning documents and other background strategy considerations are summarised below.

2. The statutory Development Plan for the purposes of determining this application includes both the Unitary Development Plan (UDP) and the Regional Spatial Strategy for Yorkshire and the Humber (RSS). Decisions should be made in accordance with the Development Plan unless material considerations indicate otherwise. Material considerations may include statements of Government policy and draft development plan documents (which in this case includes the emerging Local Development Framework (LDF) Core Strategy and the Interim Planning Position Statements (IPPS).

This reports' assessment of proposed development' makes reference to these documents

3. National Planning Policy Statements and Guidance

PPS 1: Delivering Sustainable Development

This Planning Policy Statement underpins the Government's approach to planning and the fundamental principles of sustainable development.

PPS 4 and Draft PPS 4: Planning for Prosperous Economies

These documents indicate government policy on the role of planning in relation to economic development.

PPS 9 – Nature Conservation

The document establishes government policy towards the relationship between development and nature conservation.

PPG 13 – Transport

The document provides government policy in relation to transport policy and its relationship to development

PPS 22: Renewable Energy

This sets out the Government's policies for renewable energy, which local authorities should have regard to when taking planning decisions.

PPS 25: Development and Flood Risk

This prescribes the requirements for Flood Risk assessment and the need for a sequential approach to development site selection.

4. Regional Spatial Strategy for Yorkshire and the Humber (RSS)

This was adopted in May 2008, and covers the period to 2026. It forms part of the Development Plan. It provides an accurate and up-to-date reflection of recent circumstances particularly having regard to economic growth and regeneration. Policies of particular relevance to the current application are set out below.

YH 1 - The policy sets out an overall approach and key spatial strategies

YH2 - The policy looks at climate change and resource management

YH 5 - This policy designates 'Principal Towns' which are identified as the prime focus for housing, employment, shopping, leisure, education, health and cultural facilities in the region.

YH 7 - The policy sets out the location of development

YH 9 - This policy sets out Green Belt policy

E 4 - The policy identifies regional priority sectors and clusters

SY 1 - A policy setting out strategic planning objectives for the South Yorkshire sub-area, this specifically refers to the need to facilitate the growth of storage and distribution development in Doncaster borough (SY 1: B.3). It also seeks to protect and enhance the biodiversity and landscape character of the areas.

EN 7 - Agricultural land protection Policy

EN 8 - Biodiversity

T4 - Sets out Regional freight policy

T9 - Sets out transport investment and management priorities

5 Doncaster UDP

The Doncaster UDP was adopted in 1998 and key policies are relevant as saved policies.

These include

GEN 2 - Location of development

GEN 3 - (Regeneration Priority Areas

GEN 6 - Environmental Quality Policy

GEN 7 - Sustainability policy

SEMP 1 - Affirms that the Borough Council will give a high priority to the protection of existing jobs and the creation of a wide range of new employment opportunities within the Borough.

SEMP 3 - Highlights the importance of sites adjacent to the motorways, primary road network and East Coast main railway, and commits the Council to the promotion of the development of a range of strategic employment sites in these locations, to cater for a Borough-wide as well as a local employment need.

EMP2 AND 6 - Policy towards existing employment areas

SENV 1 - This Policy concerns protection of the countryside. It says that in designated Green Belt and Countryside Policy Areas, only uses appropriate to a rural area will be permitted except in exceptional circumstances.

ST7 - Transport Integration promotion

ENV 3 - Green Belt Policy - - protects Green Belt land from unacceptable and inappropriate development

ENV16 - Development involving Agricultural Land - protects high quality agricultural land

ENV 21 - Trees and Woodlands – protects trees and woodlands

ENV 25/34 - Listed Buildings/Conservation Areas - protects Listed Buildings/Conservation Areas

ENV 37 - Archaeology - protects sites of Archaeological significance

ENV 40, 41, 42, 43, 44, 49, 50 - Protects sites of ecological importance

ENV 52 - Design standards for new buildings. It emphasises the need to respect the townscape or landscape setting by ensuring appropriate layout, siting, form, scale, detailing and materials, and the protection of the amenities of neighbouring occupiers.

ENV53 - Scale of new development

ENV 59 - A policy to ensure the protection of existing trees, hedgerows, wetland habitats, watercourses and other natural features when considering new development.

ENV 60 - This confirms the need to secure comprehensive hard and soft landscaping schemes as part of new development projects involving significant construction works.

T 5 - Transport general control policy

T6 - Access to Public Transport

T22 - Heavy Goods Vehicle Access

T33 - Policy promoting use of railway network for freight development

T 34 - Freight interchange at Doncaster Carr

T38 - Policy to protect footpaths

6 Doncaster Emerging Local Development Framework Core Strategy

The broad direction of travel of the emerging LDF Core Strategy will be referred to along with relevant parts of the LDF evidence base.

8 Doncaster Interim Planning Position Statement 4: Finningley and Rossington Regeneration Route Scheme

The document states the council's position in relation to the implementation of the scheme

9 DMBC Sustainable Community Strategy

The proposal will assist the delivery of Key Outcomes of the Borough Sustainable Community Strategy, most notably -

- A strong, diverse and vibrant local economy
- A raised employment rate and reduced benefits dependency
- Further improvements to Doncaster's transport connectivity
- A skilled and diverse workforce which participates fully in Doncaster's economic prosperity

In addition to these direct benefits it will indirectly deliver several other key outcomes relating to the general well being of the community.

10 DMBC Economic Strategy

The Inland Port will help to deliver many of the Themes of the Economic Strategy by

- Stimulating Technology and Innovation and Accelerating Growth through Start-up and Enterprise
- Promoting a 21st Century Skilled and Diverse Workforce
- Repositioning Doncaster - Inward Investors, Marketing and Image
- Supporting Economic Diversification and Sector Growth
- Social Regeneration and Working Neighbourhoods and
- Encouraging Economic Inclusion: Tackling worklessness

Consultation Responses

The following consultations are particularly relevant. Initial consultations were carried out on the submitted application and discussions have taken place in relation to concerns about the development. The amended views of consultees are summarised where their concerns have been addressed.

1 Environment Agency – initially raised an objection to the Flood Risk Assessment in relation to Sequential Test and Vulnerability Classification. Following discussions and correspondence with the Council these objections have been withdrawn. The development makes adequate provision for surface water run off attenuation.

2 Highways Agency – the impact of the development on the strategic highways network has been assessed particularly in relation to M18 around Junction 3. The Agency has assessed in detail the Transportation Assessment and Travel Plans. The Agency's comments are detailed more fully in the Highways Issues paragraphs later in this report. In short, it currently objects to the grant of permission due to the inadequacies of the Travel Plan submitted with

the application, insufficient details relating to the signalisation of junction 3 of the M18 and insufficient details about the alterations needed to the west bound merge of junction 3. However, it has no objection to the principle of this development and expresses full confidence that these issues will be resolved through ongoing discussions and its objection will be removed.

3 Natural England – initial objection on the grounds that insufficient mitigation had been provided to offset the adverse ecological impact of the development. The loss of high quality agricultural land and the lack of green roofs were also questioned. Following discussions with the applicant and the provision of additional mitigation proposals amended responses withdraw its objections.

4 Yorkshire Forward – as Regional Development Agency support the development because it is aligned with the Regional Economic Strategy and represents sustainable development

5 Health and Safety Executive – no objection in principle subject to satisfactory diversion of high pressure gas mains

6 Development – Environment Group

Landscaping - the development will have a significant impact on the landscape of the site and its surroundings which is mitigated partly by the new landscape proposals.

Trees and Hedgerows – the development will lead to a loss of open countryside and to a significant loss of woodland. The loss of the open countryside cannot be mitigated by the new landscape proposals as the historic field pattern delineated by the hedgerow network cannot be replaced.

Ecology - the development will have significant direct impact on the ecological features of the site and an indirect impact on sites of ecological significance adjoining the site. The impact is partly mitigated by proposed ecological initiatives

Green Infrastructure – the development will have a significant impact on the existing green infrastructure. The impact is partly mitigated by proposed ecological initiatives.

7 Development – Urban Renaissance Group

Conservation – The development does not have a significant adverse impact on Conservation Areas and Listed Buildings in the area.

8 Development

LDF Employment Group – the development has been considered in relation to the development plan and the NLP report. The development has significant regional and local economic and regeneration benefits. The sites siting and characteristics are such that it is assessed as being the prime site in the Yorkshire region for the provision of a S.R.F.I. The significance of the site is such that it represents the “very special circumstance” that outweighs the presumption against inappropriate development in the green belt.

9 Development – Highways Development Control – the impact of the development on local roads and transport particularly in relation to access to Rossington/A6182 White Rose Way has been assessed. The development is considered acceptable provided that Vehicular access to Rossington is restricted to site access prior to completion of FARRRS to Parrots Corner on A638 and subject to strict regulation of HGV traffic
Implementation of Travel Plans including improvements to Public Transport

10 Strategic Transportation Unit – the impact of the development on local roads and transport has been assessed. The development is considered acceptable provided that Vehicular access to Rossington is restricted to site access prior to completion of FARRRS to Parrots Corner on A638 and subject to strict regulation of HGV traffic.

Implementation of Travel Plans including improvements to Public Transport

11 Public Rights of Way – the impact of the development on local rights of way has been assessed and is considered to be acceptable subject to footpath diversion procedures and footpath improvements

12 Network Rail – the development is supported in principle in relation to the provision of a regional facility for rail freight. Access to the East Coast Main Line is likely to be acceptable subject to detailed agreements

13 South Yorkshire PTE – the development is acceptable provided the Travel Plan is implemented.

14 South Yorkshire Mining Advisory Service – no objections on mining grounds

15 Coal Authority – no objections

16 Severn Trent Water - no objections subject to detailed conditions

17 Yorkshire Water – no objections subject to detailed conditions

18 Potteric Carr IDB – no objections in principle to proposals to deal with surface water run off subject to detailed agreements

19 DMBC Drainage – no objections subject to detailed conditions

20 Commission for Architecture and the Built Environment – no observations

21 English Heritage – no observations

22 South Yorkshire Archaeology – raised initial concerns about the impact of the development but, following discussions with the applicant accept that a pre development archaeological evaluation condition is appropriate

23 South Yorkshire Fire Service - no objections

24 DMBC Environmental Services – detailed assessments have been carried out on the Environmental Statement in relation to the following matters

Contaminated Land – as a mainly greenfield site there is unlikely to be significant contaminated land. No objections subject to detailed conditions

Noise - the noise assessment has been considered in detail. Its conclusions are generally acceptable in relation to the limited impact on the living conditions of the relatively few residents near the site

Air Quality - no objections subject to detailed conditions

25 South Yorkshire Badger Group – no objections

26 National Grid / Transco - no objection in principle subject to satisfactory diversion of high pressure gas mains

27 Health and Safety Executive - no objection in principle subject to satisfactory diversion of high pressure gas mains

28 Local Government Yorkshire and Humber - no observations received to date - an update will be provided for Committee

Publicity Responses

1 Publicity

The application has been advertised in accordance with Environmental Impact Regulations and as a departure from the development plan. Site notices have been put up in the surrounding areas and newspaper advertisement utilised

The applicant also carried out pre application consultations on the application the results of which are summarized in the applicants Consultation Statement. The following responses are particularly relevant

2 Parish / Town Councils

- Rossington P. C. object for the following reasons -
Loss of Green Belt

Loss of flood plain and flooding risk

Detrimental impact on attractive countryside containing valuable habitats and protected species. Particular detriment to Potteric Carr Nature Reserve

Destruction of historic environment and archaeology

Detrimental impact on Air Quality

Applicants Statement of Community Involvement does not reflect the above Councils concerns

- Wadworth P.C. object for the following reasons -

Visual impact, detriment to Wadworth Conservation Area

Increased traffic, noise, congestion and fumes

Increase in flood risk

Effect on Countryside Area

- Loversall P.C.

Initial observations raised no objections in principle but concern about possible impact of construction activity on Hall Flat Lane. Further representations raise objections in relation to detrimental impact on Loversall Conservation Area, impact on green belt/ countryside to the east of the village, and effect on Potteric Carr

- Tickhill T.C. object for the following reasons -

Effect on water table

Inappropriate development in Green Belt

Displacement of 3 farms

3 Interested Parties

- Campaign to Protect Rural England – object on the following grounds

The development is inappropriate development contrary to Green Belt policy in Doncaster UDP, and regional/national policy including PPG2. The applicants stated benefits of the scheme (reduction in lorry movements, emissions including CO₂ and increased employment) are inaccurate and uncertain. The visual, landscape and ecology impacts are of significant detriment

Yorkshire Wildlife Trust - initially objected to the development as contrary to PPS 9, Regional Spatial Strategy, and Doncaster UDP due to the adverse impact on Potteric Carr Nature Reserve and loss of agricultural land. The development provides an inadequate level of mitigation of mitigation. An update of further discussions with the applicant will be made.

Doncaster Sheffield Airport and Peel Investments North - as owner/operator of Robin Hood Airport support the development and its contribution to the implementation of FARRRS. The development needs to facilitate further construction of the road and be of an appropriate standard of design

- Rossington Forward – support the application because of its beneficial impact on economic regeneration

- Rossington Welfare and Learning Centre - support the application because of its beneficial impact on economic regeneration

U.K. Coal /Harworth Estates– as owners of adjoining land at the former Rossington Colliery object to the scale and impact of the development. The development will have a significant impact on the site and does not assess the impact on possible residential development of the site. In particular issues of size, proximity, access, noise, air quality, light pollution, visual amenity, ecology and flood risk need to be assessed. The relationship to FARRRS needs to be clarified to provide access to the site.

3 Local Residents

Two letters of objection have been received from the public

A resident of Cantley considers that the existing railport site at Doncaster Carr should be utilised, that the development of the greenfield site is not justified and that the development will cause traffic problems

The owner of allotment land at Bankwood Lane affected by the development does not support the development and considers an alternative access by way of West End Lane would be preferable

Assessment of Proposal

Introduction

1. The assessment will look in detail at the issues raised by the proposed development in the following format

Assessment of Development Need and Alternative Sites

Assessment of Economic Development Issues

Assessment of Environmental Issues

Assessment of Transportation Issues

Assessment of Development Need and Alternatives Sites

2. The applicant has submitted an Assessment of Development Need and Alternatives Sites. To provide expert assessment of this case the council commissioned Planning Consultants Nathaniel Lichfield and Partners (NLP). The advice from NLP will be referred to where appropriate. Such an assessment is particularly important to establish whether very special circumstances exist to permit development in Green Belt.

Assessment of Need

3. The case put forward by the applicant argues that an inland port is needed to serve the Yorkshire and Humber region in the current absence of such a facility.

NLP conclude that the needs case for an inland port at Doncaster is robust utilising sound data on market activity and rail freight usage trend information.

It is considered that the applicant has established a robust case for the provision of an inland port to serve the region

Assessment of Alternative Sites

4. Having established that there is a need in the region for an inland port the question must be asked, must it be here on Green Belt land? The alternative sites case put forward by the applicant argues that there are no suitable alternative sites within the business catchment of the area that are more appropriate for the development. The scope of this was discussed with officers prior to its commencement. The survey short listed sites and then investigated in more detail. Alternative sites were assessed in relation to the size of the site (more than 60 ha), distance from a rail connection (2km) and planning status including flood risk.

5. NLP were asked to look at the robustness of the Alternative Sites Study. Whilst some questions were raised such as the site size selection threshold, NLP concluded that the methodology was appropriate and that the site is substantially more optimal than other locations. NLP state, "In this regard, if the Inland Port does not come forward for development, considerable doubt exists as to whether any other site would be subject to serious development interest, thus the benefits associated with the provision of an SRFI, consistent with government policy and delivering the local regeneration benefits that would be secured by the Inland Port, would be unlikely to be realised." (para 9.5)

6. A total of 109 sites throughout the region were identified as worthy of assessment following a search criteria of sites above 50ha, 2 km from a railway line, road linked to a motorway junction less than 5km away and of a suitable topography and available. Of these sites, 6 sites were selected for more detailed analysis considering a greater range of factors. Of these 6 sites, the application site was found to perform

best overall. Of the 109 sites in the region 5 were local sites including Carcroft Common, Kirk Sandall/ Dunscroft, Stainforth/ Hatfield, land to the east of Thorne and the adjoining Rossington Colliery site.

7. The assessment is sufficiently robust to establish that there are no alternative sites within the region on non Green Belt land capable of delivering this type of development.

Assessment of Economic Development Issues

8. The applicant has submitted a comprehensive justification in relation to the economic need for the development. It concludes that there is a national and regional need for the facility and that the application site is the best available site in the region. The assessment covers two main areas – why this site has been chosen for this regional facility and the job creation and regeneration benefits.

9. The site is located adjacent the motorway and railway networks. It will gain access to junction 3 of the M18 very close to its junction with the A1(M) and is close to the East Coast Mainline, the freight line between Doncaster and Peterborough via Lincoln and adjacent to the South Yorkshire Joint Line. The NLP report recognises that Doncaster is ideally and uniquely placed as a rail freight hub in the region with principal routes radiating in 6 directions as well as the South Yorkshire Joint line to which the main connection would be made. Network Rail has confirmed this view that Doncaster is an excellent rail hub on the national network and on the proposed Strategic Rail Freight Network that has had a series of upgrades and improvements undertaken by Network Rail. These improvements are to give these lines the ability to increase freight carriage especially from for larger intermodal container ports. As these improvements are implemented Doncaster would be a principal hub in that network which would connect it to London, Tilbury, Felixstowe and Harwich, the Channel Tunnel, West Midlands, Southampton, North West and Scotland.

10. The proposal would make use of Doncaster's locational advantages and create regeneration benefits. The proposal fits with Doncaster's economic need to diversify its economy and closing its productivity gap with the region. The proposal makes a positive contribution to FARRRS by requiring and building a link to J3 of the M18.

11. The applicants estimate that the site will generate -
863 person years of construction jobs
5819 (gross) on site jobs – 4364 net jobs
873 additional indirect off site jobs

12. The proposals forecast of 5819 jobs created on site is reduced to 4,364 new jobs as some existing jobs are likely to be transferred to the Inland Port from elsewhere. However, it is estimated that some 873 additional jobs are also created off site as spending and supply chains support other businesses. The development is likely to be phased over several years and these figures are for a fully operational site.

13. The job figures are based on a similar project at Daventry and surveys of other large warehouses built since 1995 conducted by the Cranfield School of Management. NLP commented in their review of the project that the estimated job numbers were realistic. The jobs breakdown will depend on what occupiers will operate from the site. The applicant, using

the Cranfield School of Management information, estimates that 68% of staff would be warehouse staff, 11% are administrative or support staff, 7% are managerial and 13% would be drivers.

14. The Council's Economic Strategy seeks jobs growth in higher skilled jobs and to improve skill and training levels. It is important that the proposal is able to provide training and recruitment mechanisms for the local community. The council has agreed with the developer the need for training schemes to provide a trained workforce for the development. The conclusions are that -

- a new training facility is not required as training requirements can be met by existing providers
- funding support may be required to introduce pre employment courses including the provision of railway related training provision
- a training coordinator post may be required to liaise between the developer and training providers
- training space may need to be provided on site or in Rossington to provide courses

It is necessary to ensure provision of supporting training facilities within the Section 106 agreement.

15. Rossington is ranked at 567 for employment deprivation out of 8,414 wards in the country i.e. within the worst 10%. Health deprivation scores even more poorly at 368. Overall its multiple deprivation position (taking account of 7 factors) is 1026 and it should be noted that large parts of Rossington exhibit high deprivation levels. Doncaster as a whole, to which the project will also serve is ranked 41 out of 354 local authorities for deprivation. The significance of approx 5,500 relevant jobs (with training and recruitment mechanisms in place) is a major consideration of this application.

16. The travel plan (discussed later) will also ensure public transport links are made from the inland port to other deprived communities in the borough.

17. Apart from the important consideration of jobs provided by the project, Inland Port will fulfil the aspirations and growth that regional and local policies support for Doncaster. Doncaster is seen as a location for logistics in the RSS that can make the region more competitive globally. Essential to this are efficient communications. Such a location will attract further investment in due course to Doncaster and the sub-region to access the facilities at Inland Port. The growth in this sector will help replace jobs lost in traditional industries and together with other growth sectors e.g. the airport and business sectors, will provide new job and training opportunities to provide a more robust economic future for Doncaster.

of national, regional and local economic policy including strategic rail policy

18. PPS 1: Delivering Sustainable Development

This Planning Policy Statement underpins the Government's approach to planning and the fundamental principles of sustainable development. It sets out 4 key aims – to achieve social progress which recognises the needs of everyone, effective protection of the environment, the prudent use of natural resources, and the maintenance of high and stable levels of economic growth. A supplement to this PPS, 'Planning and Climate Change', sets out several decision-making principles to minimise future vulnerability to climate change. Amongst other objectives it emphasises the need to make use of existing infrastructure and

Transport connectivity in the selection of land for future development. This proposal helps to deliver these objectives.

19. PPG 4 – Industrial and Commercial Development and Small Firms

Although approved in 1988 this provides guidance on industrial and commercial proposals. It recognises the role that modern distribution facilities can play and that they can have lower job densities. With lorry movements and the need to serve regional, national and European markets such distribution parks are best located away from urban areas where traffic can create congestion and where possible should be accessed by rail. This proposal meets these objectives. It advises that development control should not place unjustifiable obstacles in the way of providing investment and jobs to meet the wider national objectives.

20. Draft PPS 4: Planning for Prosperous Economies

This has as yet no policy status, being a Consultation Paper. However, it has background value as an indication of an emerging comprehensive approach to the role of planning in relation to economic development.

It states that in considering applications for economic development, planning authorities should consider proposals favourably unless there is good reason that the social, economic or environmental costs outweigh the benefits. The consideration should weigh market and economic information alongside environmental and social information, look at the long term benefits including national and regional benefits and whether the proposals would help meet the wider objectives of the Local Development Framework. This report demonstrates how this proposal meets these considerations.

21. PPG 13 – Transport.

This sets out the government's policy requirement for freight. It notes that road will be the main mode for many freight movements but movement by rail will help promote sustainable distribution. In determining planning applications, planning authorities should ;

- Protect sites that will be critical in developing freight movement
- Locate development away from urban areas and ensure access to the trunk roads
- Promote opportunities for generating substantial freight movement by rail.

The location of freight facilities needs to strike a balance between impact on communities, employment opportunities, congestion etc. There is a need to ensure that jobs are accessible by a choice of transport modes. The location of the site means that it is accessible on foot, cycle and car and the Travel Plan will ensure that public transport is provided and its use encouraged,

The PPG states that freight developments should be located away from congested central areas and residential areas and ensure adequate access to trunk roads. Access to rail network is also important. Both are attributes of this proposal.

The development includes proposals for access to M18 and East Coast Main Line.

The development is in accordance with the document.

22. Department of Transport - Delivering a Sustainable Transport System; the Logistics Perspective.

This document sets out government policy for freight transport, It states that the Yorkshire region is currently well provided by existing interchanges but that more capacity will be needed within a 10 year period. The development contributes to meet this need.

23. Former Strategic Rail Authority – Strategic Rail Freight Interchange (SRFI) Policy.

The document sets out government guidance for SRFI developments.

The policy was approved in 2004 by the Strategic Rail Authority. The aim of the policy is to facilitate the development of a network of commercially viable rail freight interchanges with the right facilities and in appropriate locations to support the required growth of freight on rail. The policy specifies that the size of an SRFI will vary considerably around the UK reflecting, inter alia, the existing potential business growth. In general, size and range would be likely to be within 40 to 400 hectares. This reflects increasing globalisation of manufacturing, the growing status of the UK as a net importer of goods leading to larger distribution facilities.

The policy states that to support development of rail in the general freight market, a number of large new interchanges will be required with both intermodal capacity and rail connected warehousing. To be efficient these must be large enough to accommodate longer trains with modern wagons, rapid means of cargo transfer, handling and storage. They may also provide activities such as warehousing, stockholding or processing, all of which may be regarded as adding value to the process of modal transfer

There is a need to update the interchange policy in respect of Yorkshire and Humber region as the Strategic Rail Authority states that whilst the region is currently well provided for by existing interchanges, more capacity would be needed with 10 years. A recent assessment carried out on behalf of HelioSlough Ltd has demonstrated the substantial latent demand for additional distribution floorspace in the Region.

24. Yorkshire and Humber Plan – Regional Spatial Strategy to 2026

A number of policies in the RSS relate to this type of development given its nature and location. The plan seeks to reverse the long term trend of population and investment dispersal from cities and towns. To achieve this it supports making best use of the regions infrastructure (including transport networks), a more diverse and competitive economy and ensuring that areas requiring regeneration will benefit from development. It also stresses the need for the region to respond proactively to global and local effects of climate change and transport related emissions. It sets out a framework to match need with opportunity and identifies a Regeneration Priority Area which includes central Doncaster and Rossington. The plan takes account of the Northern Way Growth Strategy (referred to later)

YH1 sets out the overall approach and key spatial priorities. It sets out 9 aims including; the need to transform economic conditions in Regeneration Priority Areas and the older areas of South Yorkshire, and ensures that transport investment supports the spatial strategy. The policy recognises the need to restructure the economy from the legacies of older declined industries. This has been exacerbated by the growth in financial and business services in the main cities particularly the “Leeds Economy”. It notes the need to look for a more balanced spread of economic development in the region and the need to capitalise on the latent strengths of under-performing areas.

YH2 sets out how the region should help reduce greenhouse gas emissions. This includes “reducing traffic growth through appropriate location of development”. The policy does not specifically mention transferring freight to rail as it is a wide ranging policy but it recognises that transport related activity contributes to climate change.

YH4 designates Doncaster as a sub regional town which is the prime focus for employment development to stimulate urban renaissance and reduce travel.

YH7 sets out how development should be located. Section B of the policy requires a “transport orientated” approach to ensure that development makes best use of existing transport infrastructure and capacity, maximises use of rail for large freight movements and good walking and cycling links are maximised.

YH9 sets out the regional greenbelt policy asserting the valuable role greenbelt plays in support urban renaissance as well as conserving countryside. The policy asserts the continuation of the general extent of the greenbelt but notes there may be a need to reconsider the extent of greenbelt boundaries to achieve the aims of the Regional Spatial Strategy.

The RSS includes a table to set out how the core strategy will be delivered over the plan period. It includes

- creating a stock of employment land and buildings fit for modern 21st century
- realising the opportunities at sites at strategically important locations
- enabling priority sectors to flourish
- implement recommendations from the Rail Route Utilisation Strategies (see below)

SY1 is a wide-ranging policy setting out strategic planning objectives for the South Yorkshire sub-area and specifically refers to the need to facilitate the growth of storage and distribution development in Doncaster Borough (SY 1: B.3). It also seeks to protect and enhance the biodiversity and landscape character of the areas.

A wide-ranging policy setting out strategic planning objectives for the South Yorkshire sub-area, this specifically refers to the need to

- facilitate the growth of storage and distribution development in Doncaster borough
- secure excellent rail links between South Yorkshire and the rest of the UK and beyond
- continued regeneration of former coalfield area as a strategic significant investment priority
- improve air quality along the A1 and M18 corridors (based on the Air Quality Management Areas)
- Maintain the general extent of the South Yorkshire Green Belt.

It identifies an outcome as transforming the economy, radically improving connectivity to adjoining sub regions and enhancing the environmental quality of the area.

The RSS reports that Doncaster is rapidly developing as a logistics centre of regional and national importance because of its strong relationship to the national rail and motorway network. It considers that this will contribute to the renaissance of Doncaster and South Yorkshire.

E1-4 Employment Policies

Employment policies in the RSS support the need for economic growth, restructuring and diversification in the region which includes developing specific clusters with particular requirement such as the logistics cluster. Policy E3 recognises the need for employment growth in South Yorkshire to adjust to a new spatial pattern of activity indicating significant

changes where employment sites are provided. Policy E4 identifies logistics as a key sector requiring the need to provide premises adjacent assets and infrastructure.

T4 Freight

The freight policy recognises that the maintenance of efficient freight and distribution links to the rest of the country and overseas will be essential if the region is to attract greater investment. The policy seeks the following outcomes;

An integrated freight distribution system in the region with a modal shift in freight distribution to more sustainable modes of transport. Policy T4 therefore sets 12 policy levers to achieve this including;

- Maximise the use of rail for freight movements to new and existing developments
- Locate storage/distribution development with high level of traffic to intermodal and rail facilities
- Identify proposed sites for intermodal interchanges including Doncaster and seek improvements to multi-modal transfer facilities

T9 Transport investment and management priorities

This sets out the transport investment priorities for the region. Top priorities include improving north-south and trans-Pennine rail links for freight and passenger and improve the management of strategic north-south road links. The alleviation of lorries on these routes by the proposal will assist in meeting this objective. Policy T9 requires that investment decisions should take account of these priorities and take account of how they can make best use of existing infrastructure, be multi-modal and adopt a presumption against increasing highway capacity unless there is a need to support regeneration or environmental enhancement.

25. Regional Economic Strategy for Yorkshire and Humber 2006-2015

The RES proposes targeted interventions to support the logistics industry. In respect of Transport the Strategy seeks to deliver transport schemes of economic priority.

26. Regional Freight Strategy

This is a strategy prepared by Yorkshire and Humber Assembly and Yorkshire Forward. Although not a statutory strategy it informed the adopted Regional Spatial Strategy. The strategy recognises the important contribution which rail freight makes to government economic, strategic and environmental objectives and seeks to encourage and facilitate its further use. It contains the following policy -

“The region should support the development of further opportunities to enhance current or develop new rail freight terminals in the region where need can be demonstrated and commercial support is in place. The planning process should support terminal provision in the following priority order; rail connected developments with committed business, sites with protected rail connections, non rail connected sites.”

The strategy states that support for the growth of terminals is required if the region wants to expand rail freight

27. The Northern Way Growth Strategy

This document sets out a strategy that the north of England development agencies have agreed. It seeks to improve the sustainable development of the North towards the level of more prosperous regions. In 2007 it published its Strategic Direction for Transport building on the Regional Economic Strategy and Regional Spatial Strategy. It identifies transport as a top priority for the northern way strategy in particular including improving better connections to

ports and the rest of the country. Improving rail links for freight is required to support a prosperous region

28. Doncaster UDP

The UDP sets out 3 sets of policy; general, strategic and detailed policies plus 3 fundamental objectives. As the planning application is strategic, it is important to look at all these policies and objectives in considering the application.

The first fundamental objective of the UDP is Economic Regeneration. This seeks to strengthen and diversify the economic base of the Doncaster. It sets out that this means promoting a variety of measures to regenerate the economies of former colliery towns and developing improving the strategic networks to provide strategic transport interchange facilities. The second objective is to seek substantial improvements to the environment to sustain Doncaster as a place in which to invest and live. This is to be achieved by new development, make a positive contribution to the environment and protecting the countryside. Its third objective is the need to reduce social inequalities through focussing investment in areas of greatest deprivation, promote job creation in areas of high unemployment. All three objectives assert the overall thrust of the UDP and are considered relevant to the planning application.

GEN 2 - New Development. This policy specifies that land will be provide in or adjacent the Doncaster Urban Area. It recognises that extensive Greenfield development is needed and fundamental to regeneration since there is little land that can be recycled. Whilst the UDP considered this site and it was rejected, the site's need was considered prior to 2001 and it wasn't considered as a rail related site that had examined alternatives across the region.

GEN 3 - Regeneration Priority Areas. One of the Key Policies of the UDP, this is a commitment to focussing attention on measures to secure economic, environmental and social improvement in identified Regeneration Priority Areas which includes Rossington and inner areas of Doncaster. These are areas which have characteristically suffered from a combination of problems including high unemployment levels, poor health, inadequate, narrow employment base, low average income levels, rundown housing stock and a degraded urban environment. The policy supports measures to secure economic improvement.

GEN 6 - Environmental Quality. This recognises the need to improve the image of Doncaster by dealing with its industrial legacy. New industries need to promote higher quality design and this approach should be applied over many years to be effective and improve the image of quality of life of the borough.

GEN 7 - Sustainability. This seeks to promote sustainability by protecting and conserving the countryside and encouraging "green" transport options. Also relevant is the need to minimise the distance people travel to work.

The development is in accordance with key economic policies in the UDP, including the promotion of the use of the rail network for freight movement and the integration of transport modes and interchange facilities.

29. Doncaster Local Development Framework

Doncaster's emerging LDF proposes a transformation approach to the economic future of the borough as older declining industries need to be replaced by new sectors. The Core Strategy Preferred Options (Dec 2005) identifies the need to balance economic growth, urban renaissance and sustainable development. Doncaster is attractive to the distribution sector due to its transport network and its available labour. The planning application provides for economic growth through its level of jobs including training provisions and its inclusion of the first phase of FARRRS. Whilst using greenbelt land, it indirectly contributes to urban renaissance by improving the economic prosperity of urban areas particularly of Rossington. It supports sustainable development strategically by providing a facility to transfer freight from road to rail.

The LDF identifies Rossington as a potential growth town with future levels of development dependant on the implementation of FARRRS and the development of the former Rossington Colliery and Bankwood Lane. The application site is located to the west of the former colliery. The motorway corridors and in particular the M18 are recognised as being attractive to the market and proposes areas of search around junctions but not within the green belt.

Proposals for a Strategic Rail Freight Interchange at Rossington were included in the Core Strategy Further Options published in August 2007 following representations made by the applicant. The consultation elicited a largely positive comments and support but concerns were expressed on the use of the green belt.

The evidence base includes the draft Employment Land Review and the Economic Strategy . The Employment Land Review scores the site highly recognising its locational factors although the green belt status would still require exceptional circumstances to warrant its use as a SRFI.

Doncaster Interim Planning Position Statement 3 Employment in Doncaster

. It states that proposals for strategic employment development will be supported in advance of the LDF process where sites meet the following criteria:

- They are required to maintain a supply of available and deliverable employment land to meet the job needs of the Borough, and
- They are suitable having been appraised against the Employment Site Criteria Assessment.

In addition, schemes will be subject to:

- Public consultation having been undertaken with local communities with an opportunity for public comment on the proposals
- Guidance set out in PPS 25 requiring a preference for lower flood risk areas, and it should be demonstrated that the proposed development would not increase flood risk elsewhere, and appropriate flood risk mitigation will be in place to make the development safe
- Agreements will be drawn up with the Highway authorities to manage and mitigate impacts on the strategic and local highway network, through the implementation of the travel and freight management plans

It highlights that the UDP allocations for large strategic sites have been developed leaving no allocations left. However market demand for large warehousing continues, supported by Doncaster Economic Strategy. Hence the IPPS provides a mechanism to bring forward suitable sites that take account of the evidence base of the Doncaster LDF

30. Doncaster Interim Planning Position Statement 4 - Finningley and Rossington Regeneration Route Scheme

F1 supports development of FARRRS in relation to “regeneration opportunities at Rossington including redevelopment proposals for the former Rossington Colliery and Bankwood Industrial Estate” and “Other development opportunities that may come forward in the FARRS corridor”

31. Doncaster Economic Strategy

The strategy approved in March 2008 sets out interventions needed to improve the productivity gap between the Borough and national rates. It identifies 9 themes and specifically includes “supporting economic development and growth”. This identifies logistics as a sector that should encourage development based on the excellent multi modal connectivity of Doncaster. It stresses that this should involve support of advanced logistics and attracting supply chain management operations. It identifies 4 strands of action

- A need to respond to a shortage in land supply, concerns over sustainability and linking sites to local communities
- Expand and improve logistics employment
- develop airport opportunities
- develop flexible training provision

Further work has been undertaken to develop a specific logistics strategy which informed the draft Employment Land Review and the Economic Strategy Business Plan

34. Doncaster MBC Atisreal Logistics Study

The study considers how Doncaster can maximize the benefits of the logistics sector and how much logistics related development should be provided in the future. Key findings include

“Doncaster is in an excellent position to plan for logistics growth taking into account its multi modal transport networks and nearness to Humber Ports

There is a practical market preference for M18 Corridor which focuses on suitable accessible land, access to Humber ports and access to the motorway network and potentially Robin Hood Airport”

□ Economic Development Conclusion

35. There is a vast raft of development plan policies, national and regional guidance and regional and local studies, strategies and statements that point to the Doncaster area being an ideal strategic location for road and rail based logistics industries. This is further supported by the deprivation indices for Rossington which shows great need for job creating investment. With the number of jobs proposed together with the training opportunities that will come with it the regeneration benefits of the development are significant and may, together with the absence of alternative sites, justify the very special circumstances to allow this development in the green belt. However, there are many other significant planning issues that need to be properly assessed to make a balanced decision on this application.

Assessment of Environmental Issues

36. The development represents a large scale development of a green field site and has significant environmental impacts in relation to a number of issues. The applicant has proposed to implement significant measures to mitigate the environmental impacts of the development which will also be assessed. The main issues are the impact of the development in relation to the following matters

Visual Impact on Landscape and Urban Areas

37. This is a large commercial development in the countryside area. The proposals incorporate substantial landscape mitigation which reduces the landscape impact and enhances surrounding countryside. The site lies within the Torne River Carrlands character area in Doncaster Landscape Character and Capacity Study. The site is adjoined to the west by the higher land of the Stainton to Edlington Limestone Plateau. Both areas are attractive countryside areas mainly in agricultural use but the site is affected by adjoining urban developments including M18, Rossington Colliery spoil tip, Balby Carr and overhead electricity lines.

Due to the large scale of the development it would be difficult to completely mitigate for landscape and visual impacts. The land form around the site is such that the site is to an extent visually isolated and would be seen by a limited number of sensitive viewers. This would include the farms in the vicinity of the site and properties on the edges of Loversall and Wadworth. The site is largely shielded from view from Rossington by the tip and Holmes Carr Wood.

The site is currently inaccessible to most vehicles but would be visible from a distance from M18 and A1M. From local roads it would be visible from A60 through Wadworth and from Stripe Road. Users of public rights of way around the site would experience significant adverse impact.

Given the constraints of the development, the applicants have prepared well structured landscape proposals that mitigate the visual impact of a development which includes buildings that could be up to 35m high in parts and 1000m long. However there would still be residual landscape and visual effects particularly from elevated locations such as Wadworth or Sections of Balby Woodfield Mineral Line (a proposed cycleway linking to Conisbrough Viaduct and the TPT), even after 10-15 years.

The mitigation includes the creating of natural re-contouring of the land around the built up part of the site to the south and west using soil from the levelling and flood mitigation processes needed on site. No linear bunds are proposed on the countryside sides of the development. The planting of copses and hedges along particular lines and places is designed to further reduce the impacts of these very large buildings in the landscape. The result it is that the proposal accords with policies YH5 and 7 of RSS and GEN 6, SENV1 and ENV18, 52, 53 and 60 of the UDP

Trees and Hedgerows

38. The development requires clearance of 6.3km of the site's hedgerows whilst a further 800m is lost to adjoining ground modelling works within the mitigation area. Most of these may be considered important under the historic criteria of the Hedgerows Regulations 1997. The historic field pattern and hedgerow boundaries to the north and south of St Catherine's

Well Stream relate to Enclosure Awards dating back to 1767 and 1835 and are largely intact to the south. To the north of the stream the hedgerows are more fragmented with many being between 100 and 300m. Hedgerow management to the south has resulted in few trees but to the north the unmanaged hedgerows form tall hedge lines with rows of trees (oak, Sycamore, Birch and Hawthorn). To mitigate this loss the developer is proposing to plant replacement hedgerows on the countryside part of the site.

The development also affects 2 areas of woodland, Beeston Plantation and Cottage Plantation subject to DMBC TPO No4 Potteric Carr. Woodland of a mixed deciduous character will need to be felled at Beeston Plantation (25% of the trees) and Cottage Plantation (75% of the trees). These woods are at the northern end of the development almost entirely within the site's access corridor. Although this could be seen as a significant negative consequence of this development the loss of these trees would result if the FARRRS project went ahead without this development.

Although the open countryside with its network of Enclosure Act hedgerows cannot be replaced it is considered that the applicants have prepared well structured and extensive proposals to mitigate the impact of the development and the overall impact of the scheme is acceptable. The proposal does lead to the loss of natural features and therefore cannot be deemed to be in accordance with policies ENV 18, 21, and 59 of Doncaster UDP. However the considerable mitigation measures proposed do provide sufficient reason to conclude that if this proposal goes ahead the best possible replacement has been achieved.

Agricultural impacts

39. The development involves the loss of 121.7 ha of Grade 2 (very good) and 3a (good) agricultural land defined as the best and most versatile agricultural land. The development will also affect 3 farms in the area.

The applicant has proposed mitigation in the countryside area of the site by creation of improved land and management practises. The developer also has agreements in place with the owners of the affected farms for the purchase of land, or for obligations for changes to the future management of them to enhance wildlife.

The proposal does lead to the loss of agricultural land and therefore cannot accord with policies EN 7 of RSS and ENV 16 of Doncaster UDP. However the measures to be put in place to manage existing and reformed agricultural land on and adjacent to the site provides some ecological mitigation and recognizes the ecological value of what is to be lost

Heritage Impacts

40. The development needs to be assessed in relation to its effect on a number of heritage sites and issue. In particular there are the Conservation Areas of Loversall, Wadworth and Tickhill, the Listed Buildings at Limpool Farm, Wellingley Grange, Hesley Hall and Eastfield Farm and the Scheduled Ancient Monument at Stencil, Park of Local Historic Interest to the east of Hesley Hall.

Conservation Areas

- Tickhill – no impact due to considerable distance from site.
- Loversall – minimal impact due to distance from site and landscape protection

- Wadworth – the site will be visible from within the Conservation Area but the impact is not adverse due to the distance from the development

Listed Buildings and Scheduled Sites

- the development will not have a significant adverse impact on these Listed buildings sites because they are located at a sufficient distance from the development site.

Archaeology

- the development of the site is acceptable in principle in relation to its impact but it is recommended that a condition is imposed to require detailed work on the site. In addition to the distance between the site and local heritage interests the development's countryside area provides landscape mitigation. The development will not have a significant impact in this respect and as a result the proposal accords with policies ENV 25, 34 and 37 of the UDP.

Ecological Impacts

41. The development will have an effect on a number of ecological sites and issues. It will have a direct impact on the ecology of the site and an indirect impact on adjoining sensitive sites, in particular Potteric Carr SSSI and Beeston Plantation SSI. The development proposes extensive mitigation within the countryside part of the site and an additional area outside of application site has been included as an amendment to the development. These impacts have been discussed with the applicant, Natural England and Yorkshire Wildlife Trust and the applicant has submitted additional details and proposals.

The main issues include

- On site impacts – the development will lead to the loss of arable agricultural land, trees and hedgerows and ditches of ecological interest. The development will reduce the scale of the wildlife corridor along the River Torne
- Impact on Potteric Carr SSSI –The development in conjunction with other developments in the area will increase development pressures on the nature reserve. In particular the development will result in the loss of part of the supporting arable land habitats for wintering birds including golden plover and lapwing.
- Impacts on Beeston Plantation SSI - the development will lead to loss of habitat due to felling of trees.

The application however puts forward a substantial mitigation and compensation strategy to alleviate these impacts. This includes

- the creation within the countryside area of the site, of replacement ecological features and habitats. This includes some wetlands as part of the flood mitigation work, new drainage channels, indigenous trees and hedge planting, management of agricultural land to maximise habitats for lapwings and plover.
- the establishment adjoining the site of an additional area of farmland that will be managed for ecological purposes

The proposed development provides an acceptable framework for implementation of schemes to mitigate the impact of the development. Detailed control will be provided by way of planning conditions and the legal agreement. The result is that the proposal accords with policies ENV 40, 41, 42, 43, 49 and 50 of the UDP and EN8 of RSS

Flood Risk and Drainage

42. The following issues are relevant

- Flood Risk – The site lies partly within an area liable to flooding and a Flood Risk Assessment has been prepared. A Sequential Test has been done and the council is of the opinion that there are no more suitable sites available on less vulnerable sites for this large scale development. It is also a less vulnerable form of development.
- Surface Water Drainage – The development will increase surface water run off from the site and an on site balancing facility is proposed to control the flow and is acceptable. Land formation works on the site will create low land for flood water retention to ensure that water flows down stream in the river Torne will not be increased. The development requires the diversion of St Catherine's Well Stream to a new course around the site. Proposals for this are acceptable. The Environment Agency have no objections to these proposals.
- Foul Water Drainage – the site is capable of being drained subject to detailed proposals.

The development complies with policies PU 5,6, AND 9 of Doncaster UDP.

Green Roofs

43. The applicant has proposed that green roofing will be utilized to cover 22,000sqm on the following ancillary buildings ie 2 recycling buildings amounting to 14,000 sq m; the 2 vehicle maintenance buildings of 4,000 sq m and the 3 Rail office pods on the warehouses amounting to 3,000 sq m.

This is a significant area although only a small part of the roof area proposed. Discussions have been held with the applicant about increasing this by including all or some of the warehouses. The council commissioned AECOM to investigate the feasibility of further roof greening and their conclusion was that it would be feasible and viable. The report stated that significant additional steel and concrete would not be required and that other methods of roof construction such as laminated timber beams could be used. The additional costs were estimated to represent 5% of the construction costs of the project. The applicant argues that further green roofs on the warehouse buildings would impose unacceptable loading requirements on the structures for these large span buildings. This would make the buildings inflexible as warehouses and unviable financially.

Green roofs have a number of environmental benefits. They slow down water run off from buildings, create a softer appearance where they can be seen and help biodiversity. In this situation other mitigation works will ensure that the surface water flows from the site will not increase flooding down stream. The heights of the buildings and the distances from which they will be seen will give limited benefit visually. The extensive mitigation works over the approximately 200ha of other land will create a significant amount of compensatory biodiversity such that the contributions from green roofs, although beneficial, is not essential – matters that both the Environment Agency and English Nature agree.

Green roofing is to be provided on several ancillary buildings on the site providing a total area of 22,000 sq m which is considered to represent a considerable commitment to the scheme. Further green roofing would have a significant impact on the economic viability of the scheme which would undermine the feasibility of the development. Although they would bring additional benefits they are not essential in the overall balance of this proposal.

Residential Amenity Impacts

44. Noise – the applicants submitted a Noise Assessment which has been assessed by Council Environmental Health Officers. The large scale and 24 hour operation of the site will produce additional noise but there are currently only a few isolated farms in the vicinity of the site. The adjoining towns and villages should not be significantly affected. The future residential development of the adjoining former colliery site is possible. The layout of the scheme has been amended to reduce the possible impacts by alteration to the layout and Development Specification. The layout has moved an area of heavy rail based container movement to the west of the buildings nearest to the eastern boundary of the site allowing the buildings to create a noise buffer to such development on the colliery. UK Coal has objected to the development largely based on the restrictions to any future development of their site this scheme may lead to. The inland port has considered this relationship and done as much as it reasonably can to find the balance between making its scheme work and respect the prospect of some housing development on the adjacent site within the context of there being no confirmed plans for that site. Discussions between the applicants and UK Coal have led to a number of conditions being recommended about the detailed treatment of buildings on landscape on the eastern edge of the site.

- Air Quality - increased traffic from vehicles will have an effect on the adjoining area. The impact having been assessed by the Council's Environmental Health Officers, is not significant to restrict the grant of permission.
- Lighting – the site will require the provision of floodlighting which will impact on the darkness of the area, particularly to the south of the site. The impact is not considered significant subject to detailed control.
- Contaminated Land – the site is mainly a green field site on which the degree of contamination is likely to be low. Planning conditions are proposed to control any contamination that is discovered.
- Television Reception – a planning condition requiring intervention is proposed should the scheme cause a reception problem.

The development complies with policies EMP17, ENV 65 and 66 OF Doncaster UDP

Green Belt

45. The site lies mainly within Green Belt which has environmental reasons for designation. Green Belt is protected from development except in very special circumstances by national, regional and local policies. Without such special circumstances the development represents inappropriate development in terms of PPG2 which sets out 5 purposes for retention of Green Belt as open land –

- To check the unrestricted sprawl of urban areas – the present urban area of Rossington will be extended but the impact is lessened by containment by existing site features
- To prevent the merging of neighbouring settlements - -the green belt gap between Rossington and Wadworth/Loversall will be reduced but the remaining gap will ensure sufficient physical separation
- To safeguard the countryside from encroachment – the development will cause significant encroachment into the countryside and affect its openness
- To preserve the setting of historic towns – this impact is not considered significant

- To assist urban regeneration by encouraging the recycling of derelict and other urban land – no other suitable sites are available within urban areas and would involve loss of open land

An additional issue relating to this development in the green belt is the ability to retain the use of the site for rail related use. The rail element is a very important factor in why this green belt site should be built on. NLP, using their knowledge of SRFIs elsewhere provided advice on conditions to ensure the site would not be merely a road based warehouse park which could be located elsewhere on a non green belt site. They advised on planning conditions that stipulate that the extensive investment in rail connectivity should be in place prior to the occupation of any buildings. This in their experience means that it is highly unlikely that the infrastructure would not be used as the costs of infrastructure would be passed on to users who would pay a premium to use the site. Thus an occupier not intending to use the rail facilities would choose to locate at another location without a premium for rail use.

In the light of this and the previously referred to assessments and economic benefits there is sufficient justification to support an exceptional justification in Green Belt terms. As a result it is considered that the proposal accords with policies ENV3 of UDP and YH9 of RSS

Existing Utilities

46. The development affects the safety of the two major utilities that cross the site. Two high pressure gas pipelines pass through the site are proposed to be diverted to facilitate the development of the site. There are also electricity overhead lines which are to be retained. The applicant's proposals are acceptable in principle subject to detailed control and raise no objections from the two responsible utility companies.

Mining impacts

47. The site is not directly affected by underground mining proposals but may be affected by subsidence from Maltby Colliery to the west of the site. The impact is not significant.

Other Development Plan Allocations

48. A small part of the site, forming the proposed access to Rossington via Bankwood Lane lies within an Employment Policy area in Doncaster UDP subject to policies EMP2 (21) and EMP6. The development is acceptable in relation to these policies.

CO2 Reduction

49. The SFRI is intended to provide a facility where containers can be taken by train instead of road to this region from sea ports mainly Felixstowe. It will therefore shift the mode of the haulage of freight to rail from roads. The applicant estimates that the site would have the eventual capacity to process 6,000 trains per annum which could remove 470,000 HGV movements from the strategic road network saving 72 million HGV kms on UK roads. Network Rail estimate that rail freight produces five times less CO2 emissions than road freight and fifteen times less noxious emissions.

However, CPRE have put forward the case that such figures are a huge over estimation and will not deliver such benefits. Whatever the figures used by the applicants and CPRE the

benefits of transferring freight from road to rail in reducing CO2 emissions is not disputed and is supported by technical research carried out by professional and statutory bodies, including the Department for Transport.

Site Layout and Design

50. The application is an outline application but contains an illustrative layout and a Development Specification document. The Development Specification provides specific limits in relation to the development including size, siting and height of buildings. Compliance with the document will be a requirement of the consent if granted through a planning condition.

These documents are considered to provide an adequate framework for consideration of the specific impacts of the layout of the development and the above assessment includes these impacts. The layout is considered to be in accordance with policies ENV 52,53,60, and EMP17 of Doncaster UDP

Sustainable Construction

51. The applicant has produced a sustainability assessment of the development. The scheme addresses each theme of the Councils Sustainability Construction SPD to ensure that the carbon footprint of the development will be as low as realistically achievable. It also examines the Checklist to ensure that the scheme has a high degree of sustainability.

In particular it assesses

Land and Building Reuse

Location and Public Transport Accessibility

Local Social and Economic Needs

Design of the Development

Construction and Demolition

Pollution Control

Open Space and Biodiversity

In particular in relation to the design of the buildings it examines

Reduction in energy demand

Ventilation and lighting

Energy efficiency

Renewables

Materials

Water Conservation

Green Roofs

It is considered that the developer has carried out a comprehensive assessment of the councils document and that the represents a sustainable form of development

Assessment of Transportation Issues

52. The applicant has produced a detailed Transport Assessment and Travel Plans which have been assessed and validated by the Council and Highways Agency. The Transport Assessment examines the impact of the development on the local and strategic network and puts forward improvements. The Travel and Freight Management Plan considers methods of reducing the impact of vehicular traffic including heavy goods vehicle movements on the network and proposes strict levels of control.

Impact on Strategic Highway network

53. The development is accessed from Junction 3 of M18 by construction of a new access road identified locally as a section of FARRRS link. The development will also partially construct the proposed FARRRS link road from the junction to provide access to the site. The Highways Agency has looked in detail at the transport impact on the strategic network and has reached the following initial positions.

- The Transportation Assessment has been validated and is considered to represent an acceptable study of the potential traffic impacts.
- The proposed access to M18 at Junction 3 is acceptable in principle but will require signalisation of the motorway roundabout at Junction 3 and improvement of the westbound access motorway slip road by the provision of an additional lane. The HA considers that these improvements require additional details to be submitted prior to the granting of planning permission.
- The development needs full implementation of the Travel Plans

The Council in partnership with the Highways Agency is also seeking contributions from strategic employment developments in the M18 corridor to fund capacity improvements to the motorway. This approach has been pursued in relation to developments at Junctions 4 and 5 of M18 and Junction 1 of M180.

The Agency has powers to issue directions to the council in relation to the determination of the application. Discussions are continuing with the applicant and the Council to finalise its position.

Impact on the Local Highway Network

54. The roads that would be affected by the development depend on the design of the connections to the local and strategic network. The development potentially has significant effects on the following local roads.

- A6182 – White Rose Way, the dual carriageway scheme is due to commence construction in 2010 and on completion will provide adequate capacity for local access including freight movements
- Local roads in Rossington. Rossington does not currently have direct access to M18 at Junction 3 but the development could provide this access by the proposed link through Bankwood Lane. This would lead to a significant increase in traffic using West End Lane/ Station Lane and across the East Coast Main Line level crossing impacting on the existing capacity of the roads.

It has therefore been necessary to consider a phased development of the access which would provide for the initial access to the development site from Rossington to provide local access but prevent access to M18. The access would need to be controlled to prevent through traffic and would not provide freight access to the site. The completion of the access from Rossington to M18 would follow on completion of FARRRS to Parrots Corner on A 638. This would enable through traffic to use the FARRRS route rather than pass through Rossington.

The development would not have a significant adverse impact on other local roads. Its construction together with the FARRRS scheme would reduce traffic to a small degree on A 638 Bawtry Rd.

Impact on Public Transport

55. The development would allow public transport access to the site from Doncaster and Rossington making use of the new access roads. In the short term bus services for employees would be possible from both directions and in the longer term the provision of through bus services between Doncaster and Rossington is feasible. It is essential to secure the initial bus service provision as part of the Travel Plan agreements.

Pedestrian and Cycle Access

56. The applicant's proposals include provision for access by foot and cycle making a network of connections to the site from surrounding areas including Rossington, Woodfield Plantation and Loversall/ Wadworth. The development affects existing local rights of way but the scheme provides for adequate diversion routes and an improved standard of routes.

Travel and Freight Management Plans

57. The applicant has submitted an Employee Travel Plan and Freight Management Plan to mitigate the effects of increased traffic on the network. The aim of these plans is to reduce the impact of the developments car and road freight traffic on the local and strategic highway network. The plans are acceptable in principal to the Council and Highways Agency and the detailed terms are currently being discussed with a view to the plans being part of the legal agreement. The plans will include proposals to control the following matters –

- Employee Travel
- Phased implementation of the Scheme
- Provision of Public Transport to the development
- Sustainable Transport Fund
- Measures to ensure modal split is achieved
- Appointment of Travel Plan Coordinator
- Freight Management Plan
- Phased implementation of the Scheme
- Controls on Freight Routing
- Controls on Freight Access Timetables
- Appointment of Freight Management Plan Coordinator

Impact on the Rail Network

58. The applicant has assessed these impacts and provided an illustrative site layout and Development Specification Document. These impacts have been assessed by NLP/Royal Haskoning on behalf of the Council in relation to the following aspects

- Location in respect of the Strategic Rail Network – the strategic location of Doncaster on the East Coast Main Line is an important factor
- Connections to the Rail Network – the site can access both the ECML and the adjoining mineral railway. The operator is likely to be able to secure adequate rail access paths for the provision of the levels of service envisaged by the development

- Internal layout – the internal rail layout is generally satisfactory. The initial rail connections need to be in place prior to commencement of freight operations and thereafter need to be phased with the development

Doncaster UDP Transport Policies

59. These policies have been partially assessed earlier in this report but are further considered below

ST7 – promotes the improvement of transport integration

T 5 – sets out general policy for development and traffic generation

T 22 - sets out policy for development and HGV traffic generation

T33 – promotes the development of the rail network for freight movement

T 34 - The Doncaster Carr site is fully developed with a railway connection but is considered not to be capable in terms of its size and location of accommodating the scale of the proposed development

The development is considered to be in accordance with the above policies in the U.DP, including the promotion of the use of the rail network for freight movement and the integration of transport modes and interchange facilities.

Conclusion on Transportation Impacts

60. It is considered that the development is able to be adequately accommodated within the proposed transportation framework subject to detailed agreements in relation to the Section 106 Obligation and planning conditions

Final Conclusion and Recommendation

61. In the light of the above assessments it is considered that

1 the economic benefits of the scheme are significant.

2 the environmental impacts are significant but are acceptable in the light of the proposed mitigation.

3 the development is able to be accommodated within the proposed transportation framework

4 The development represents a sustainable development of the site

62. It is therefore considered that

1 the development is acceptable as a Departure from the development plan because significant material considerations support the development

2 The need to have very special circumstances to justify the provision of inappropriate development in the Green Belt is acceptable.

3 The impact of the development is considered to be not to warrant being “called in” by the Secretary of State for the following reasons

A the development has regional and local economic benefits

B the environmental and transportation impacts of the development are of a local significance

C Outline Planning Permission be granted subject to the attached conditions and the completion of the legal agreement

The above objections, considerations and resulting recommendation have had regard to Article 8 and Article 1 of the First Protocol of the European Convention for Human Rights Act 1998. The recommendation will not interfere with the applicant's and/or objector's right to respect for his private and family life, his home and his correspondence.

RECOMMENDATION

THAT THE COMMITTEE RESOLVE TO AUTHORISE THE HEAD OF DEVELOPMENT MANAGEMENT TO ISSUE A DECISION NOTICE TO GRANT PLANNING PERMISSION PROVIDED THAT –

1 – THE SECRETARY OF STATE, AFTER REFERRAL OF THE APPLICATION AS A DEPARTURE FROM THE DEVELOPMENT PLAN, ALLOWS THE COUNCIL TO DETERMINE THE APPLICATION

2 – OUTSTANDING HIGHWAY ISSUES ARE RESOLVED TO THE AGREEMENT OF THE HIGHWAYS AGENCY AND THE DMBC ASSISTANT DIRECTOR OF DEVELOPMENT AND PLANNING

3 – A LEGAL AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) IS COMPLETED IN RELATION TO THE FOLLOWING MATTERS

A Transport Contributions

– The provision of funding to contribute to the upgrading of M 18.

The provision of funding for the implementation of FARRRS

The provision of funding for off site footpath/ cycle way enhancements

Specific improvements to Junction 3 of M18 including signalisation of Junction 3 and improvements to the west bound access slip road

B Travel and Freight Management Plan

– The implementation of the Travel Plan incorporating Employee Travel Plan and Freight Management Plan

C Connection of Proposed Development to Further Phases of FARRRS

D Off site Ecology

- The provision and management of ecological areas outside the application site**

E Training

- The provision and funding of training facilities to support the development**

01. U21203 The development hereby permitted shall be commenced either before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved in relation to the first phase of the development as identified in the approved Phasing Plan, whichever is the later. All subsequent phases of development shall be commenced within 10 years of the date of this permission, or before the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved in relation to such phase, whichever is the later.
REASON
Condition required to be imposed by Section 92(2) of the Town and Country Planning Act 1990
02. U21204 Applications for approval of Reserved Matters for the first phase of the development shall be made to the local planning authority before the expiration of 3 years from the date of this permission. Applications for approval of Reserved Matters for all subsequent phases of the development shall be made to the local planning authority before the expiration of 8 years from the date of this permission.
REASON
Condition required to be imposed by Section 92(2) of the Town and Country Planning Act 1990
03. U21205 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a phasing plan showing:
 (a) the phasing of construction of each of the Units and associated highway infrastructure
 (b) which areas within the Countryside Area relate to each phase of the development
and will be delivered as part of the relevant phase [the first phase of the Countryside Area to substantially accord with the approved Plans]

The development shall be constructed in accordance with the approved Phasing Plan subject to any variations to the Phasing Plan approved in writing by the local planning authority.

REASON

To ensure the implementation of a phased scheme of development.

04. U21206

Relevant applications for approval of Reserved Matters shall be accompanied by an illustrative build out plan showing:

- (a) the disposition of any development that is already permitted under existing reserved matters approvals;
- (b) the disposition of any development for which approval of reserved matters is sought under the relevant application;
- (c) how those development areas, within which development has already come forward for approval of Reserved Matters under (a) and (b) above, may be built out and completed in conformity with the Key Parameters Plan as provided for under condition 8;
- (d) those development areas for which development has yet to come forward for approval of Reserved Matters; and
- (e) the relationship between the development referred to in (a), (b), (c) and (d) above.

REASON

To ensure the provision of an implementation plan

05. U21207

The development shall be carried out in accordance with the Key Parameters Plan and the specified paragraphs of the Development Specification document dated January 2009 comprising:

- (a) the parameters for the Development Site shown on the Key Parameters Plan together with para 4.3;
 - (b) the parameters for the Development Zones shown on the Key Parameters Plan together with para 4.4;
 - (c) the parameters for the Access Corridor shown on the Key Parameters Plan together with para 4.5; and
 - (d) the parameters for the Countryside Area shown on the Key Parameters Plan together with para 4.8
- unless the local planning authority approves otherwise in writing.

REASON

To ensure the development is implemented in accordance with the Key Parameters

06. U21208

Prior to development being carried out within a relevant phase an archaeological evaluation of the land within that phase shall be undertaken in accordance with a written scheme of investigation which

has previously been submitted to and approved in writing by the local planning authority. Such archaeological evaluation shall, if necessary, set out a mitigation strategy in relation to matters of archaeological interest including the carrying out of any further archaeological works and/or preservation in situ of matters of archaeological interest and such mitigation strategy shall be agreed in writing by the local planning authority and the approved scheme shall thereafter be implemented.

REASON

To ensure protection of archaeological remains

07. U21209

The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a construction method statement. The construction method statement shall include:

- (a) details of the methods to be used to control dust, noise, vibration and other emissions from the site;
- (b) the location of all temporary buildings and compound areas and arrangements for their removal following completion of construction;
- (c) details of areas to be used for the storage of plant and construction materials and waste;
- (d) details of temporary lighting arrangements;
- (e) hours of construction work;
- (f) measures to ensure that construction vehicles do not deposit mud on the public highway;
- (g) a scheme for the routing of construction vehicles accessing the site including measures to be taken by way of penalties if construction vehicles do not observe the identified routes;
- (h) details of the construction earthworks methodology.

The construction of the development shall be carried out in accordance with the approved construction method statement subject to any variations approved in writing by the local planning authority.

REASON

To ensure implementation of a construction method statement

08. U21212

The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a green infrastructure management plan (including details of bodies responsible for such management) for the development. The green infrastructure management plan shall be substantially in accordance with the draft green infrastructure strategy dated April 2009 .

The approved green infrastructure management plan shall be implemented and its requirements shall thereafter continue to be observed subject to any variations approved in writing by the local planning authority.

REASON

To ensure provision of the Strategy

09. U21213 The highway link to Bankwood Lane to be constructed as part of the development shall remain a private road until a scheme for control of traffic management along Bankwood Lane has been approved by the local planning authority and implemented.
REASON
In the interests of road and traffic safety
10. U21214 Unless the local planning authority approves otherwise none of the Units shall be occupied until the relevant part of the intermodal terminal serving such a unit is operational
The intermodal terminal once provided shall thereafter be managed and maintained such that it remains available and operational to serve the Units.
REASON
To ensure that the development provides and maintains rail links
11. U21215 Unless the local planning authority approves otherwise, the development permitted by this planning permission shall only be carried out substantially in accordance with the approved Flood Risk Assessment by BWB Consulting (Ref: DA/NTW148/FRAPDM - Rev A), including the setting of the development plateau no lower than 4.7metres above Ordnance Datum.
REASON
To protect the development from flooding
12. U21216 Development shall not begin until a detailed drainage study for the site, based upon sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. The scheme shall not result in an increase in the rate of surface water discharge to the local land drainage system and shall mitigate against any increase in surface water velocities resulting from the development. The development shall thereafter proceed only in strict accordance with the agreed scheme unless the local planning authority approves otherwise.
REASON
To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal. To promote aquifer re-charge.
13. U21217 If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for a remediation strategy detailing how this unsuspected contamination shall be dealt with.
REASON
To protect surface and groundwater quality in the area.

14. U21218 No development shall be commenced until a scheme for the prevention of pollution has been submitted to and agreed in writing by the local planning authority. The scheme shall include the following measures:-
- (a) Oil interceptors included on drainage runs from all areas of hardstanding;
 - (b) Rain water down-pipes sealed at ground level;
 - (c) Manholes for foul and surface water drainage runs colour-coded accordingly;
 - (d) Provision of settlement facility during construction period on any surface water discharge points;
 - (e) Any swales or balancing ponds for dealing with surface water, fitted with penstocks
- REASON
To prevent pollution to the water environment, especially the major aquifer below the site. To make it easier to trace water pollution back to its source. To minimize sediment pollution during the construction phase. To allow any spillages to be contained and managed before reaching the water environment
15. U21219 Prior to the commencement of development, a plan for the protection and enhancement of species protected under the Wildlife and Countryside Act 1981 (Amended 2008) and associated habitats, shall be submitted to and agreed in writing by the local planning authority. The plan shall cover impacts during both the construction and operational phases of the development and must encapsulate all proposed habitat mitigation and enhancements shown on 'Fig 4-11 Mitigation and Enhancement'. The development shall thereafter proceed only in strict accordance with the agreed plan unless the local planning authority approves otherwise.
- REASON
To protect the species and habitats within and adjacent to the development site.
16. U21220 Prior to the commencement of development an ecological management plan shall be submitted to the Local Planning Authority and Natural England for approval in writing. This shall include details of the following:
- Clear time and feature specific goals for habitat creation and management.
 - Details of all measures to be undertaken for protected species present on site.
 - Management practises for all retained and created habitats, landscape features and green roofs that are present on site.
 - An annual monitoring programme designed to establish whether the habitat creation goals are being achieved, and inform any appropriate changes in management that may be required.
- The management practises within the approved plan will then be implemented for the lifetime of the proposed development. Reports detailing the results of the monitoring programme, and any suggested changes in management, will be submitted to the Local planning

Authority in years 1, 2, 4, 8, 12, 16 and 20 following the commencement of development.

REASON

in the interests of ensuring the long term ecological value of all the wildlife habitats on site.

17. U21221
- Prior to the commencement of development a wintering bird monitoring plan shall be produced and agreed in writing with the Local Planning Authority in consultation with Natural England. This plan shall include details of:
- A series of wintering bird surveys to be carried out each year in years 1, 2, 4, 6, 8, 10 and 12 following the commencement of development.
- The scope and geographical extent of the surveys to be undertaken shall be agreed in writing with the Local Planning Authority in consultation with Natural England prior to the commencement of development. The results of each year's surveys shall be submitted to the Local Planning Authority and Natural England in within 2 months of the final survey each winter.
- REASON
- To inform whether the loss of wintering bird habitat resulting from the development affects the population size of lapwing and golden plover wintering in proximity to Potteric Carr.
18. U21242
- Within the perimeter zone identified on the approved plan
- (a) the ridge height of any buildings constructed within the zone shown shall not exceed 16 metres AOD;
 - (b) no building within the zone shall be constructed within 62 metres of the application boundary
 - (c) a ground modelling bund of a minimum height of 3.5 metres shall be constructed within the area numbered 3 and labelled Eastern Greenway on the Key Parameters Plan.
- REASON
- In the interests of amenity
19. U21244
22. Any application for Reserved Matters for a Unit shall be accompanied by an application for Reserved Matters for any landscaping associated with that Unit. The Unit shall not be occupied until the hard landscaping associated with that Unit has been substantially completed and all associated planting shall be completed in the first planting season following occupation of such Unit.
- REASON
- To ensure landscape provision
20. U21245
23. The landscape details to be submitted for approval shall include in respect of the relevant phase a survey of existing trees and hedges, details of trees and hedges to be retained and a scheme for their protection during the construction of the development

REASON

To protect trees and hedgerows.

21. U21246 24. Prior to commencement of any construction works in a phase, the approved scheme for the protection of retained trees and hedges shall be implemented and notice of such implementation served upon the local planning authority
REASON
To protect trees and hedgerows
22. U21249 25. None of the Units shall be occupied until a Framework Travel Plan and Freight Management Plan (substantially in accordance with the Framework Travel Plan and Freight Management Plan) has been submitted to and approved in writing by the local planning authority
REASON
To ensure provision of a travel plan
23. U21250 26. The approved Framework Travel Plan and Freight Management Plan shall be implemented in accordance with the timetable contained therein and its requirements shall continue to be observed as long as any part of the development is occupied.
REASON
To ensure implementation of the travel plan
24. DA01 The development hereby granted shall not be begun until details of the foul, surface water and land drainage systems and all related works necessary to drain the site have been submitted to and approved by the Local Planning Authority. These works shall be carried out concurrently with the development and the drainage system shall be operating to the satisfaction of the Local Planning Authority prior to the occupation of the development.
REASON
To ensure that the site is connected to suitable drainage systems and to ensure that full details thereof are approved by the Local Planning Authority before any works begin.
25. HM13 Before the development is brought into use that part of the site to be used by vehicles shall be properly laid out, drained, surfaced/sealed and or marked out in a manner to be approved by the Local Planning Authority and shall thereafter be maintained in a condition to the reasonable satisfaction of the Local Planning Authority.
REASON
To encourage drivers to make use of the parking space and ensure that the use of land for this purpose will not give rise to mud hazards at entrance/exit points in the interests of public safety.
26. U21253 Prior to commencement of the development hereby permitted, a scheme for generating a minimum of 10% of the predicted energy requirement of the development from decentralised renewable and/or low carbon sources (as defined in the glossary of Planning Policy Statement:

Planning and Climate Change (December 2007) or any subsequent version) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the development is first occupied and shall remain operational for the lifetime of the development.

REASON

In the interests of sustainability, to minimize the impact of the development on the effects of climate change and in accordance with the Sustainable Construction SPD.

27. U21254
- Prior to the commencement of the development hereby approved, a survey of television reception in the an area to be agreed with the Local Planning Authority shall be carried out, the results of which shall be submitted to the Local Planning Authority. On completion of the development, a further survey shall be carried out to ascertain whether there has been any deterioration in the television reception by households in the agreed area and again submitted to the Local Planning Authority. Any necessary remedial measures shall be carried out where required by the Local Planning Authority in accordance with an agreed scheme and timetable.
- REASON**
- To ensure that the development does not unduly impact on television reception in the area.
28. U21256
- Prior to commencement of development details of a scheme for the diversion of the high pressure gas pipelines on the site shall be submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approved details.
- REASON**
- To protect the pipelines.
29. VJ10
- Details of all unbuilt areas, boundary walls and fences shall be submitted to and approved by the Local Planning Authority before the development hereby permitted is commenced, and such details as approved shall be completed before the buildings, or any parts thereof are occupied or used.
- REASON**
- In order that the Council may be satisfied as to the details of the proposal.
01. IQ171
- INFORMATIVE**
- The developer shall consider incorporating all possible sustainability features into the design of the proposed development.

02. ICOAL INFORMATIVE
The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to effect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at www.coal.gov.uk.
03. IJ101 INFORMATIVE
Nothing in this permission shall be construed as authorising the closure, diversion, stopping up, obstruction or other alteration, either in whole or in part, of any public right of way that crosses or adjoins the application site, in order to protect the existing public right of way. For the guidance of the applicant such alteration can only be made by requesting the Council to make a formal specific footpath order.
04. IN141 INFORMATIVE
The development hereby granted has been identified as being located in close proximity to a high pressure gas pipeline, any damage to it may be dangerous and costly to yourself. Your attention is brought to the attached documentation from Transco plc which sets out the necessary procedure you are advised to carry out prior to any excavation of the site.
05. U03537 INFORMATIVE
All relevant licences required from Natural England to survey for, and relocate legally protected species must be obtained
06. U03538 INFORMATIVE
The applicant should be aware that a Site Waste Management Plan is needed to cover the movement of all inert materials and wastes. The Environment Agency must be informed of the movement of any soils or colliery wastes so that any permits or exemptions to the Environmental Protection Regulations can be considered. The use of recycled aggregates is to be encouraged as much as possible

07. U03539 The prior written consent of the Environment Agency is required for any works in, under, over or within 8m of the River Tome and for any works with the potential to impact upon flows in an ordinary watercourse not under the control of the Internal Drainage Board. There is a statutory two month determination period and a fee of £50 per consent may be charged, subject to the applicable legislation. Applicants are advised to engage in pre-application discussions with the Development and Flood Risk Team at Nottingham to discuss the need for consent.

08. U03540 **INFORMATIVE**
Paragraph 7.50 of the Environmental Statement on Hydrology refers to the developer taking on responsibility for the maintenance of the banks of the River Tome given the River Trent Catchment Flood Management Plan suggests that the Environment Agency reduce existing flood risk management actions in the Axholme and North West Lincolnshire policy unit. The developer is advised to contact Mr. Michael Motteram, Regional Estates Manager on 0115 846 3632 to further discuss this matter.

09. U03541 **INFORMATIVE**
DEFINITIONS

Key Parameters Plan Drawing number 0412-P03 dated January 2009

Phasing Plan Plan approved pursuant to condition.

Reserved Matters Details of:

(a) layout except as already approved pursuant to this permission

(b) access except as already approved under this permission

(c) landscaping except as already approved under this permission

(d) appearance

(e) scale

Units Each of the respective warehouse units to be constructed as part of the development.

Annex H - iPort NMA Decision Notice (2016)

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited



Doncaster
Metropolitan Borough Council

CgMs Consulting Ltd (Richard Tilley)
140 London Wall
London
EC2Y 5DN

Contact: Mark Sewell
Tel: 01302 734840
E-Mail: mark.sewell@doncaster.gov.uk
Our Ref: 16/00227/MAT
Date: 11th March 2016

Dear Sir/Madam

**DETERMINATION OF APPLICATION FOR A NON-MATERIAL AMENDMENT
FOLLOWING A GRANT OF PLANNING PERMISSION. SECTION 96A OF THE TOWN
AND COUNTRY PLANNING ACT 1990**

Proposal **Construction of an inland port (Strategic Rail Freight Interchange) together with ancillary infrastructure and operational development comprising:-**
(i) an intermodal terminal and rail and road served distribution units (562,000 m2) in Use Class B8 (including ancillary B1/B2 floorspace);
(ii) road, rail and other infrastructure facilities and works, including the Southern arm of junction 3 M18, first section of FARRRS, rail access from the South Yorkshire Joint Line to the west and from the branch colliery line from the East Coast Main Line;
(iii) the re-alignment of the St Catherines Well Stream and other water courses;
(iv) landscaping;
(v) continued agricultural use, landscape, ecological and flood mitigation and enhancement;
(vi) other ancillary works.
(being amendment to previous permission 09/00190/OUTA, granted on 19/08/2011, revise the wording of Condition 22)

Location **Land West Of West End Lane New Rossington Doncaster**

Applicant **Rossington Developments Limited**

Further to my acknowledgement letter to you regarding your application as described above. I am now in a position to inform you of the Council's decision.

*Please note that the full version of this document cannot be viewed on all devices.
If this document does not include the Doncaster Council crest and an electronic signature please contact
tsi@doncaster.gov.uk*

Development Management, Civic Office, Waterdale, Doncaster, DN1 3BU

The submitted application for a non material amendment to the original outline consent seeks to vary the wording of condition 22. Condition 22 originally stated;

No Unit shall be occupied until a freight line and other infrastructure required to ensure rail use linking that Unit to the existing rail freight line has been constructed and the rail link is operational unless otherwise agreed in writing by the local planning authority. The rail line and other infrastructure shall be constructed in accordance with the details to be submitted and approved in writing by the local planning authority and shall be retained for that purpose and no railway line or siding shall be removed, realigned or close to rail traffic unless otherwise agreed in writing by the LPA.

REASON

To ensure that the development provides and maintains rail links.

This condition was subsequently varied under 13/00404/MAT to allow for the occupation of the proposed Unit 1 on the site. The reasoning behind this related to interest from a potential occupier whose timescales would have preceded the opening of the rail link. On the basis of securing investment and jobs, and to kickstart the development of the wider site, it was agreed that condition 22 be varied as such;

No Unit, save for Unit 1 shall be occupied until a freight line and other infrastructure required to ensure rail use linking that Unit to the existing rail freight line has been constructed and the rail link is operational unless otherwise agreed in writing by the local planning authority. The rail line and other infrastructure shall be constructed in accordance with the details to be submitted and approved in writing by the local planning authority and shall be retained for that purpose and no railway line or siding shall be removed, realigned or close to rail traffic unless otherwise agreed in writing by the LPA.

REASON

To ensure that the development provides and maintains rail links.

Following that variation and in light of changing market demand. The condition was altered again to allow for the occupation of the equivalent floor space on the site as was allowed by the occupation of the approved Unit 1. Given that evidence was provided to demonstrate that the rail connection process was well underway, it was considered acceptable that Condition 22 could be altered as such;

Only the first 130.000 square metres of floorspace shall be occupied until a freight line and other infrastructure required to ensure that the existing rail freight line is connected to the site and the rail link is operational, unless otherwise agreed in writing by the Local Planning Authority. The rail line and other infrastructure shall be constructed in accordance with the details to be submitted and approved in writing by the Local Planning Authority and shall be retained for that purpose and no railway line or siding shall be removed, realigned or closed to rail traffic unless otherwise agreed in writing by the Local Planning Authority.

REASON

To ensure that the development provides and maintains rail links

In the intervening period, progress has been made in discussions with potential occupiers on the site, however the current wording of Condition 22 as currently written is causing

the site owner difficulties in marketing the site, since the potential first occupiers of the site see the condition as a significant hurdle to occupation, as the timescales for bringing the rail link into place are not definite. Real progress has been made, with the earthworks formed for the rail terminal area and a contractor appointed to bring forward the facility, as well as ongoing discussions with Network Rail. The intention of the condition was to allow the first units to be occupied before the rail connection was fully in place, which would still be the result from this proposed new variation.

This new variation seeks to replace the floorspace figure with the named units IP1, IP2A, IP2B and IP2D, which will result in only a minor increase in floorspace from the previous non-material amendment.

As such it is agreed to vary the wording of condition 22 as such;

“Only the units IP1, IP2A, IP2B and IP2D, shall be occupied until a freight line and other infrastructure required to ensure that the existing rail freight line is connected to the site and the rail link is operational, unless otherwise agreed in writing by the local planning authority. The rail line and other infrastructure shall be constructed in accordance with the details to be submitted and approved in writing by the local planning authority and shall be retained for that purpose and no railway line or siding shall be removed, realigned or close to rail traffic unless otherwise agreed in writing by the LPA.”

Based on the facts supplied with your application received on 3rd February 2016, it is considered that the application constitutes a non material amendment and, as such, no further formal planning permission is required.

I would take this opportunity to remind you that you may need to seek approval for the work (if you have not already done so) under the Building Regulations and that you should therefore check with the Building Control Office before starting (Tel. 01302 734848 or email building.control@doncaster.gov.uk).

You are advised to keep a copy of this letter with the original planning permission to avoid any misunderstanding that can occasionally arise.

Agents should inform applicants of the contents of this letter.

Yours faithfully

A black rectangular redaction box covering the signature of Scott Cardwell.

Scott Cardwell
Assistant Director of Development

Howbury DL and IR (2019)

(ExQ2.3.1(ii))

The West Midlands Rail Freight Interchange Order 201X

Four Ashes Limited



Ministry of Housing,
Communities &
Local Government

Sarah Fabes
Lichfields,
14 Regent's Wharf,
All Saints Street,
London, N1 9RL

Our ref: APP/D5120/W/17/3184205 &
APP/T2215/W/17/3184206.

Your ref: NLP-DMS.FID299507

7th May 2019

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS MADE BY ROXHILL DEVELOPMENTS LIMITED
LAND ADJACENT TO THE SOUTHEASTERN TRAIN DEPOT, MOAT LANE, SLADE
GREEN, ERITH
APPLICATION REF: 15/02673/OUTEA and DA/15/01743/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mr I Jenkins BSc CEng MICE MCIWEM who held a public local inquiry between 19 June and 27 September 2018 into your client's appeals against the decisions of London Borough of Bexley, as directed by the Mayor of London, and Dartford Borough Council to refuse your client's application for planning permission for a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council) in accordance with application ref: 15/02673/OUTEA and DA/15/01743/OUT dated 20 November 2015.
2. On 7 November 2017 these appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be dismissed, and planning permission be refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeals and refuse planning permission. A copy of the Inspector's report (IR) is

enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the supplementary environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR1.2.2, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy and statutory considerations

6. In reaching his decision, 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.
7. In this case the development plan consists of the adopted development plans for the area which comprises The London Plan, March 2016; the Bexley Core Strategy Development Plan Document, February 2012; and, saved policies of the Bexley Unitary Development Plan, 2004 for LBB. The Dartford Core Strategy, September 2011; and, the Dartford Development Policies Plan (DDPP), July 2017 for Dartford Borough Council. Other plans that affect the site are The Mayor's Transport Strategy 2018 and The Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR6.1.3 to 6.2.9. Other local planning guidance considered include the Mayor's Transport Strategy, 2018 and the Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031 as set out at IR 6.5
8. Other material considerations which the Secretary of State has taken into account include the National Policy Statement for National Networks and the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

Emerging plan

9. The emerging plan comprises the London Plan – The Spatial Development Strategy for Greater London outlined in the Inspectors Report at IR6.4. The Secretary of State considers that the emerging policies of most relevance to this case include LPe Policy G2, T7, and SD1.
10. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in

the Framework. While Examination in Public hearings have taken place since the inquiry closed, due to the early stage of the emerging plan only limited weight is attributed to the policies as outlined in the Inspectors Report at IR6.4.4.

Main issues

Location of site and Green Belt

11. The Secretary of State agrees with the Inspector for the reasons given in IR15.2.3 to 15.2.5 that the appeals proposal would cause substantial harm to the Green Belt (IR 15.2.6). He therefore considers that this carries substantial weight against the scheme. In accordance with paragraph 143 of the Framework, inappropriate development should not be approved except in very special circumstances.

Character and Appearance

12. For the reasons given at IR 15.3.1 to 15.3.6 the Secretary of State agrees with the Inspector that both the landscape impact and the visual impact of the appeals scheme would be substantial and adverse. Overall, he considers that it would cause significant harm to the character and appearance of the local area and he therefore attributes significant weight to this harm.

Rail issues

13. The Secretary of State acknowledges that given the locational need for effective connections for both rail and road, the number of locations suitable for Strategic Rail Freight Interchanges will be limited. He agrees with the Inspector at IR 15.4.3 that for the proposed rail link to be considered 'adequate', it would be necessary for it to be capable of accommodating 4 trains/day as a minimum. For the reasons given in IR 15.4.6 to 15.4.20, he agrees with the Inspector (15.4.20) that the likelihood of passenger service numbers having to be reduced in order to accommodate the appeals site freight traffic appears significant. The Secretary of State agrees with the Inspector's conclusion that there is significant uncertainty (15.4.21) as to whether the timetable could be flexed/amended to accommodate four trains per day to/from the appeals site either now or in the future. He agrees with the Inspector that overall this would conflict with the aims of a number of development plan policies that seek to minimize any adverse impact on the wider transport network and safeguard or improve public transport services, and that this should carry significant weight.

Highways Issues

14. For the reasons given in IR15.5.4 to 15.5.28, the Secretary of State agrees with the Inspectors findings (IR15.5.29) that, by 2031, the residual cumulative impact of the development during 'normal' (non-incident) highway conditions on the local highway network would be likely to be severe. He further agrees with the Inspector for the reasons given at IR 15.5.30 to 15.5.36 that, during incidents, the proposal would be likely to have a material, albeit limited, adverse impact, adding to severe conditions. He also agrees with the Inspector for the reasons given at IR 15.5.38 to 15.5.42 that the proposed mitigation measures do not alter this finding. The Secretary of State considers that the proposal would cause considerable harm to the convenience of highway users in Dartford. He notes that the proposal would be in conflict with the DDPP. The Secretary of State attributes significant weight to this matter.

Amenity and living conditions

15. For the reasons given in IR15.6.2 to 15.6.7, the Secretary of State agrees with the Inspector (IR15.6.8) that on balance, the appeals proposal would be unlikely to have an unacceptable material impact on living conditions in the local area, with particular reference to air quality. For the reasons given in IR15.6.9 to 15.6.11, the Secretary of State also agrees with the Inspector (IR15.6.12) that subject to mitigation secured the proposal is unlikely to cause noise and vibration that would have an unacceptable impact on living conditions. The Secretary of State therefore considers that these matters do not weigh against the scheme.

Other matters

16. For the reasons given at IR15.7.1 The Secretary of State agrees with the Inspector that the effect on Howbury Moat and a Grade II listed tithe barn would be negligible, and that their significance would not be materially harmed by the scheme, therefore the Secretary of State considers that there are no policy conflicts in this respect, or in respect of Howbury Grange. He further agrees with the Inspector for the reasons given in IR15.7.2 to 15.7.5 that there are no unacceptable impacts of the scheme in terms of the effect on living conditions of neighbouring residents, navigation and facilities along the River Cray, and flood risk.

Need for SRFIs in London and the South East

17. The Secretary of State agrees with Inspector that there is an identified need for a Strategic Rail Freight Interchange to serve London and the South East (IR15.8.7). However, given the uncertain findings in relation to both road and rail connectivity at IR15.8.10 to 15.8.15, he agrees with the Inspector's conclusion that the appeals scheme would not be well qualified to meet the identified need (IR15.8.16 and IR15.8.17).

Availability of alternative sites

18. The Secretary of State agrees with the Inspector that in the 2007 decision it was identified that there was no alternative development site, a finding which attracted considerable weight in favour of that scheme (IR4.2). However, since 2007 the London Gateway, a brownfield site not located in the Green Belt, has been developed. For the reasons given in IR15.8.18 to 15.8.24, the Secretary of State agrees with the Inspector's conclusions that the London Gateway site has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East as the appeals proposal (IR15.8.26).

Economic and Social impacts

19. The Secretary of State notes that the largest part of the appeal site lies within the Bexley Riverside Opportunity Area, and that the establishment of a SRFI at the appeals site would be consistent with that particular strategic policy direction. He agrees with the Inspector that it could provide significant benefits to the local economy creating a large amount of new employment (IR15.8.28). However, the Secretary of State notes that the Inspector found that the proposal would also be likely to have a material adverse effect on traffic congestion in the area which may have adverse impacts on the local economy (IR15.8.29). The Secretary of State also agrees with the Inspector that, given that broadly similar benefits could be obtained from the alternative, non-Green Belt site

(IR15.8.31), overall limited weight could be given to the socio-economic benefits of the scheme.

Effect on biodiversity

20. The Secretary of State notes that there are no statutory designated sites of nature conservation interest within or adjacent to the appeals site. Furthermore, he notes that the habitats that would be lost to development are of little ecological value, comprising improved and semi-improved grassland, and that an aim of the proposed landscaping along the eastern side of the site would be to enhance its ecology value, likely resulting in a net biodiversity gain overall (IR15.8.46). The Secretary of State agrees with the Inspector and attributes moderate weight to this gain.

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR15.8.47 to 15.8.62, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

22. Having had regard to the Inspector's analysis at IR 15.8.63 to 15.8.66, the planning obligation dated September 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR18.8.65 that the obligation complies with Regulation 122 and 123 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

23. The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the planning obligation overcomes his reasons for deciding that the appeal should be dismissed, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

Planning balance and overall conclusion

24. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with LP Policy 7.16, BCS Policies CS01 and CS17 as well as DCS Policies CS 1, CS 13 and DDPP Policy DP22 and LPe Policy G2 of the development plan and is not in accordance with the development plans overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

25. In this case the Secretary of State considers that the harm to the Green Belt from inappropriate development carries substantial weight against the scheme and the effect on the character and appearance of the local area carries significant weight along with

the adequacy of the proposed rail link and the effect on existing/future passenger rail services. Significant weight is also given to the effect on the convenience of highway users.

26. The Secretary of State considers that the provision of social economic benefits of the scheme has overall limited weight and the resulting net biodiversity gain has moderate weight.
27. The Secretary of State considers that the benefits of the scheme do not outweigh the harm to the Green Belt by reason of inappropriateness and any other harm, and so very special circumstances do not exist. He considers that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits. Overall, he considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
28. The Secretary of State therefore concludes that the appeal is dismissed, and planning permission is refused.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeals and refuses planning permission for a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley), and for the creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council)

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
31. A copy of this letter has been sent to London Borough of Bexley, Dartford Borough Council and the Mayor of London, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Housing, Communities and Local Government

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State

Date: 4 February 2019

**TOWN AND COUNTRY PLANNING ACT 1990
APPEALS BY ROXHILL DEVELOPMENTS LIMITED
AGAINST THE DECISIONS OF
THE LONDON BOROUGH OF BEXLEY, AS DIRECTED BY THE MAYOR OF
LONDON, AND DARTFORD BOROUGH COUNCIL**

Inquiry opened on 19 June 2018

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith

File Ref(s): APP/D5120/W/17/3184205 APP/T2215/W/17/3184206

File Ref: APP/D5120/W/17/3184205

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith, Kent, DA8 2NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Roxhill Developments Limited against the decision of the London Borough of Bexley.
- The application Ref 15/02673/OUTEA, dated 20 November 2015, was refused by notice dated 20 July 2017.
- The development proposed is a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council). All matters reserved except access.
- The appeal was recovered by the Secretary of State on 7 November 2017 for the reason that it related to proposals for significant development in the Green Belt.

Summary of Recommendation: I recommend that the appeal be dismissed.

File Ref: APP/T2215/W/17/3184206

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith, Kent, DA8 2NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Roxhill Developments Limited against the decision of Dartford Borough Council.
- The application Ref DA/15/01743/OUT, dated 20 November 2015, was refused by notice dated 21 April 2017.
- The development proposed is a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council). All matters reserved except access.
- The appeal was recovered by the Secretary of State on 7 November 2017 for the reason that it related to proposals for significant development in the Green Belt.

Summary of Recommendation: I recommend that the appeal be dismissed.

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1. PROCEDURAL MATTERS

1.1. The Inquiry

1.1.1. I have been appointed by the Secretary of State to conduct an Inquiry into 2 linked appeals made by Roxhill Developments Limited, which are associated with a development proposal that would straddle the shared boundary between planning authorities: the London Borough of Bexley (LBB); and, Dartford Borough Council (DBC). The appeals are against the decisions of LBB, as directed by the Mayor of London (MOL), and DBC to refuse to grant outline planning permission.

1.1.2. I held a pre-Inquiry meeting at DBC's Civic Centre on 23 March 2018, after which I issued to interested parties *Notes Following the Pre-Inquiry Meeting*, dated 26 March 2018, providing guidance concerning preparation for the Inquiry and the conduct of the Inquiry. The Inquiry, at DBC's Civic Centre, sat on 18 days, comprising: 19-22 June; 26-28 June; 3-5 July; 17-21 September and 25-27 September 2018. In addition to a number of unaccompanied site visits, accompanied site visits were undertaken on: 29 June 2018 to the appeals site; 6 July 2018 around the highway network; 26 September 2018 to Slade Green Station and Rail Depot; and, 28 September 2018 to Barking Rail Freight Interchange.

1.1.3. Whilst representatives of the LBB attended the Inquiry throughout its duration, it confirmed at the start that although it did not intend to present evidence, it would participate in the planning conditions/obligations session.

The National Planning Policy Framework

1.1.4. During the course of the Inquiry the *National Planning Policy Framework, 2012* was replaced by the *revised National Planning Policy Framework, 2018* (the Framework). Those who wished to do so were afforded an opportunity to comment on any implications of the revised document for their case.

1.2. Environmental Impact Assessment

1.2.1. Regulation 76 of *The Town and Country Planning (Environmental Impact Assessment) Regulations 2017* (2017 EIA Regulations) sets out the circumstances under which *The Town and Country Planning (Environmental Impact Assessment) Regulations 2011* (2011 EIA Regulations) continue to apply. These include where '*an applicant, appellant or qualifying body, as the case may be, has submitted an Environmental Statement or requested a scoping opinion*' prior to the commencement of the 2017 EIA Regulations. In the case of the subject appeals, the 2011 EIA Regulations continue to apply.

1.2.2. An Environmental Statement (November 2015)¹ and a Supplementary Environmental Statement (April 2016)² were submitted in support of the applications. Further environmental information was supplied during the

¹ CD/1.27.

² CD/1.30.

appeal process, including within the proofs of evidence and during the course of the Inquiry. In reaching my conclusions and recommendations, I have taken account of this environmental information, which I consider to be sufficient to assess the likely environmental impact of the applications.

1.3. **Planning obligations**

1.3.1. In support of the appeals proposal the appellant relies on 2 agreements pursuant to section 106 of *The Town and Country Planning Act 1990*: the first, with the London Borough of Bexley (LBB s106)³; and, the second, with Dartford Borough Council and Kent County Council (DBC s106)⁴. The final drafts of the documents were submitted before the close of the Inquiry, with copies of the formally completed documents submitted shortly thereafter, as agreed at the Inquiry. I have considered these agreements in light of the tests set out in *The Community Infrastructure Levy Regulations 2010 (as amended)* (the CIL Regs) and reflected in the Framework.

1.4. **The Report**

1.4.1. In this report, I set out the main substance of the cases for the parties who appeared at the Inquiry, summarise the main points raised in written representations submitted as well as review suggested conditions and submitted planning obligations. I then set out my conclusions and my recommendations to the Secretary of State. Appended to the report are lists of :

1. Appearances at the Inquiry;
2. Core documents, planning application drawings, proofs of evidence and documents submitted during the Inquiry;
3. Abbreviations; and,
4. Recommended conditions.

2. **THE SITE AND SURROUNDINGS**

2.1. **The site and immediate surroundings**

2.1.1. The 57.4 hectare appeals site comprises, for the most part, relatively flat fields used for grazing animals. Howbury Grange, the only building on the site, is currently vacant. The site is bounded: to the north by Moat Lane, to the northwest of which is residential development forming part of Slade Green and to the northeast Crayford Marshes; and, to the east by a restored landfill site. The southwestern boundary of the site is separated from Southeastern Trains' Slade Green Depot by a strip of land reserved for Crossrail development. To the south, beyond the depot, is the Viridor waste recycling site, a small part of which would be required to accommodate the proposed railway connection to the North Kent Line. At its southern end, the appeals site extends across the River Cray, which marks the boundary between the LBB and DBC thereabouts, to the existing roundabout at the junction of the A206/A2026.⁵

³ INQ/115.

⁴ INQ/116.

⁵ CD/6.2 section 2.

2.2. **The highway network**

- 2.2.1. The proposed main access road to the site would link in to the existing roundabout at the junction of the A206 Bob Dunn Way, to the northeast, the A206 Thames Road, to the west and leading to Slade Green, and the A2026 Burnham Road, to the southeast leading to Dartford Town Centre. Bob Dunn Way provides access to junction 1A of the A282/M25 motorway, which is approximately 3 Km to the east of the site. Junction 1B of the A282/M25, which is located around 4 Km to the southeast of the site, can be accessed via roads within Dartford town centre.
- 2.2.2. Kent County Council (KCC) is the Highway Authority for the local road network in Dartford, including: a short section of Thames Road; Burnham Road; the A206/A2026 roundabout; Bob Dunn Way; the signals at the Littlebrook Interchange junctions with the A206 adjacent to junction 1A, and the A225 Princes Road Interchange adjacent to junction 1B. The LBB is the Highway Authority for the local road network to the west of the site, including the western section of Thames Road and the associated Craymill Rail Bridge, which crosses that highway. The A282 (Dartford Crossings⁶), the M25 mainline as well as junctions 1A and 1B form part of the Strategic Road Network (SRN), for which Highways England (HE) is the Highway Authority. Whilst HE is also the Highway Authority for a stub of the A2, which leads westward from junction 2 of the M25, Transport for London (TfL) is the Highway Authority for the section further to the west within the London Borough of Bexley.⁷

2.3. **The railway network**

- 2.3.1. Slade Green Train Depot is situated alongside the North Kent Line at Crayford Creek Junction (CCJ), where lines intersect from: Plumstead to the north; Barnehurst/Bexleyheath to the west; as well as, Hither Green and Dartford to the south⁸. Slade Green Station is located a short distance to the north of CCJ. Rail access to the appeals site would be obtained through Slade Green Train Depot, off a section of the North Kent Line to the south of CCJ.

3. **THE APPEALS PROPOSAL**

- 3.1. The planning applications subject of these appeals are identical cross-boundary outline applications for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange (SRFI) comprising:
- Within the LBB, a rail freight intermodal facility; warehousing; new access arrangements from Moat Lane; associated HGV, car, cycle parking; landscaping; drainage; and, associated works; and,

⁶ The Dartford Tunnel, northbound traffic and the Queen Elizabeth II Bridge, southbound traffic.

⁷ INQ/35 and DBC/W2/1 paras 4.4-4.11.

⁸ APP/RAIL/1 page 34 Figures 11 and 12.

- Within the Dartford Borough, the creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works.

In the case of both outline planning applications, all detailed matters except access, are reserved for future consideration.

- 3.2. The scheme parameters, shown on Parameters Plan Ref. 30777-PL-101 Rev I⁹, for which approval is sought are summarised below together with the detailed site access proposals.
- 3.3. A total of 184,500 m² of rail served warehouse/distribution floorspace (Use Class B8) and associated buildings is proposed: 70,222 m² in zone A; 113,904 m² in zone B; and, 374 m² in zone C. The freight interchange facility (the intermodal area) would be located centrally within the site in zone C. The maximum build height of the proposed warehouses would be: 18 metres (27.1 metres AOD) in zone A; and, 18 metres (26.4 metres AOD) in zone B. The structures within zone C, which would include a maximum of 3 no. gantry cranes, would be up to a maximum of 18 .1 metres in height (26.7 metres AOD).
- 3.4. A new single railway track, routed via the southern part of the development site, would link the proposed intermodal facility to a former private siding connection off the Southeastern Trains Depot's southern head shunt and from there to the North Kent Line.
- 3.5. Vehicular access to the site would be via a new link road, from the existing A206/A2026 roundabout, across the River Cray. The River Cray would be crossed by a fixed, standard deck bridge that spans the river, with a viaduct on either side. That access would also provide for pedestrian and cycle access to the site. A vehicular access for a shuttle bus service and emergency vehicles only is proposed from Moat Lane to the north of the site. That access would also allow for pedestrian access to the site. In addition, the proposals include a linking road between the SRFI main access road and the adjacent Viridor waste recycling site.¹⁰
- 3.6. Following submission of the planning applications to the Councils on 20 November 2015:
 - LBB presented application Ref. 15/02673/OUTEA to Planning Committee on the 16 February 2017, with an Officer's recommendation for approval. The Committee resolved to approve the application subject to referral to the MOL, in accordance with the *Greater London Authority Acts 1999 and 2007*, and the *Town and Country Planning (Mayor of London) Order 2008*. Subsequently the MOL directed LBB to refuse the application on 17 July 2017. In accordance with that direction, LBB refused application Ref. 15/02673/OUTEA on 20 July 2017. The reason for refusal was¹¹:

⁹ CD/1.17.

¹⁰ CD/6.1-6.3 'Description of development'.

¹¹ CD/1.9.

- 1) *The proposal is inappropriate development in the Green Belt and very special circumstances have not been demonstrated which would clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm. The development is therefore contrary to Policy 7.16 of the adopted London Plan 2016 and the National Planning Policy Framework 2012.*
- An Officer's Report to the Dartford Borough Council's Development Control Board, recommending application Ref. DA/15/01743/OUT for approval, was published on 10 November 2016. However, that report was withdrawn and the minutes for the meeting show that the reason for this related to an identified requirement for additional information before any decision could be made. DBC Officers subsequently presented the application to the Development Control Board on 20 April 2017, with an Officer recommendation for refusal. The Board members supported the Officer's recommendation and the application Ref. DA/15/01743/OUT was refused on 21 April 2017. The reasons for refusal were¹²:
 - 1) *The proposal by virtue of its significant traffic generation and routing of vehicles to the development via junction 1A of the M25, will result in increased traffic on local roads and together with the reassignment of vehicles at times of congestion is likely to result in worsening air quality in the Borough, particularly in the areas designated as Air Quality Management Areas at the A282 (Dartford Tunnel Approach Road) and Dartford town centre. The proposal is therefore considered to be contrary to Policy CS1 of the adopted Dartford Core Strategy 2011, Policies DP3 and DP5 of the emerging Dartford Development Policies Plan 2015, the National Planning Policy Framework and the National Policy Statement for National Networks 2014.*
 - 2) *By virtue of significant trip generation of the proposal and its location, inside the M25 and in a heavily built up area adjacent to the A282/Dartford Crossing, it will impact on the local roads in Dartford as well as the strategic road network in Dartford, which is likely to be detrimental to the quality of life of the community in Dartford. It is not considered that the justification for a SRFI at this location, with no certainty that this will reduce long haul HGVs from the local strategic road network outweighs the harm to the local community. The proposal is therefore considered to be contrary to Policy CS1 of the adopted Dartford Core Strategy 2011, Policies DP3 and DP5 of the emerging Dartford Development Policies Plan 2015, the National Planning Policy Framework and the National Policy Statement for National Networks 2014.*

¹² CD/1.5.

3) *The proposal is considered to be inappropriate development in the Green Belt and very special circumstances have not been demonstrated which would outweigh the harm to the Green Belt. The development is therefore contrary to Policy CS13 of the adopted Dartford Core Strategy 2011, and the National Planning Policy Framework and Policy DP22 of the emerging Dartford Development Policies Plan (Modifications post Examination, Dec 2016).*

4. PLANNING HISTORY

- 4.1. A similar SRFI scheme at Howbury Park was the subject of cross boundary planning applications, submitted in 2004 (LBB Ref. 04/04384/OUTEA and DBC Ref. 04/00803/OUT). Following DBC's decision to refuse planning permission on the grounds of adverse impact on the openness and character of the Green Belt, an appeal was submitted. The LBB failed to determine the application submitted to it within the prescribed period and an appeal was submitted against non-determination of that application. A public Inquiry, considering both applications, followed.
- 4.2. In December 2007 the Secretary of State, in agreeing with the appointed Inspector's recommendation¹³, allowed the appeals¹⁴. The overall conclusions were that, although the proposal constituted inappropriate development in the Green Belt and harm would be associated with that and other matters, in that particular case, the benefits of the proposals constituted very special circumstances and were sufficient to clearly outweigh the harm. In reaching that decision, the Secretary of State agreed with the Inspector's conclusions that the ability of the proposals to meet part of London's need for 3 or 4 SRFIs was the most important consideration to which she afforded significant weight. She also afforded considerable weight to the lack of alternative sites to meet this need.
- 4.3. The outline planning permission granted was never taken forward and has since lapsed.¹⁵

5. COMMON GROUND

- 5.1. The following Statements of Common Ground, setting out matters agreed as well as differences between the parties that were signatories to them, were submitted by:
- RDL and LBB¹⁶;
 - RDL and DBC¹⁷;

¹³ CD/5.2.

¹⁴ CD/5.3.

¹⁵ CD/6.1-6.3.

¹⁶ CD/6.1.

¹⁷ CD/6.2.

- RDL and the Greater London Authority (MOL)¹⁸; and,
- RDL and Highways England¹⁹.

6. PLANNING POLICY

[The statements of Common Ground agreed by the appellant with the MOL, DBC and the LBB list the policies in the Development Plans as well as other planning policy documents and guidance which those parties consider to be relevant to the appeals. In this chapter of the report, I set out what I consider to be the most relevant to the appeals proposal.]

6.1. The LBB Development Plan

- 6.1.1. The Development Plan for the LBB comprises: *The London Plan, March 2016 (LP)*; the *Bexley Core Strategy Development Plan Document, February 2012 (BCS)*; and, saved policies of the *Bexley Unitary Development Plan, 2004 (BUDP)*.

Planning Policy Designations

- 6.1.2. The section of the appeals site within the LBB (with the exception of a small strip of land linking the main area of the site to the North Kent Line) is within the Metropolitan Green Belt²⁰ and is also within the *Crayford Landfill and Howbury Grange Site of Borough Importance for Nature Conservation Grade 1 (BxBI18)*.²¹

The London Plan²²

- 6.1.3. LP Policy 2.13 indicates that within opportunity areas, such as the Bexley Riverside Opportunity Area (BROA), development proposals should support the strategic policy directions for opportunity areas set out in Annex 1. Annex 1, which forms part of the LP, identifies, amongst other things:

'Bexley Riverside relates to parts of Erith, Crayford, Slade Green and Belvedere. Improvements in public transport accessibility, especially associated with Crossrail 1 will provide scope for intensification, particularly around Abbey Wood. Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'

- 6.1.4. LP Policy 2.14 indicates that within the areas for regeneration shown on Map 2.5 the Mayor will work with partners to coordinate their sustained renewal. The reasoned justification indicates that an objective of the Policy

¹⁸ CD/6.3.

¹⁹ CD/6.4.

²⁰ CD/3.13 BUDP Proposals Map.

²¹ ES Volume 3c Appendix H figure H1, updated APP/BIO/2 Appendix 1 and 2.

²² CD/3.1.

is to tackle spatial concentrations of deprivation, by amongst other things, delivering new growth and jobs.

- 6.1.5. LP Policy 5.3 gives encouragement to sustainable design and construction, promoting principles including minimising pollution (including noise and air).
- 6.1.6. LP Policy 6.14 identifies that the Mayor will work with all relevant partners to, amongst other things, promote movement of freight by rail. LP Policy 6.15 is supportive of SRFIs providing that the facilities:
- a) Deliver modal shift from road to rail;
 - b) Minimize any adverse impact on the wider transport network;
 - c) Are well-related to rail and road corridors capable of accommodating the anticipated level of freight movements;
 - d) Are well-related to their proposed market.
- 6.1.7. The reasoned justification for LP Policy 6.15 indicates that:
- 'The advice from the former Strategic Rail Freight Authority that there needs to be a network of SRFIs in and around London still applies. If these facilities result in modal shift from road to rail, they can offer substantial savings in CO₂ emissions. However, they are by their nature large facilities that can often only be located in the Green Belt. In addition, while reducing the overall impact on the network, they can lead to substantial increases in traffic near the interchange itself. The Mayor will need to see robust evidence that the emissions savings and overall reduction in traffic movements are sufficient to justify any loss of Green Belt, in accordance with Policy 7.16, and localised increases in traffic movements. However, planning permission has already been granted for a SRFI at Howbury Park...'*
- 6.1.8. LP Policy 7.4 indicates that development should improve an area's visual or physical connection with natural features²³.
- 6.1.9. LP Policy 7.8 seeks to ensure that development affecting heritage assets and their settings should conserve their significance.
- 6.1.10. LP Policy 7.14 requires development proposals to be at least 'air quality neutral' and not lead to further deterioration of existing poor air quality (such as areas designated as Air Quality Management Areas (AQMAs)).
- 6.1.11. LP Policy 7.15 seeks to ensure that development proposals manage noise by, amongst other things, avoiding significant adverse noise impacts on health and quality of life as a result of new development as well as mitigating and minimising potential adverse impacts of noise.
- 6.1.12. LP Policy 7.16 confirms that the Mayor strongly supports the current extent of London's Green Belt and its protection from inappropriate development. It indicates that:

²³ APP/PLAN/1 para 7.37.

'The strongest protection should be given to London's Green Belt, in accordance with national guidance. Inappropriate development should be refused, except in very special circumstances.'

- 6.1.13. LP Policy 7.19 indicates that, wherever possible, development proposals should make a positive contribution to the protection, enhancement, creation and management of biodiversity. Proposals should be resisted where they would have a significant adverse impact on the population or conservation status of a protected or priority species, or a habitat identified in a UK, London, appropriate regional or borough Biodiversity Action Plan (BAP). Strong protection should be afforded to sites of metropolitan importance for nature conservation (SMIs). When considering proposals that would affect directly or indirectly a site of recognised nature conservation interest, the following hierarchy will apply: 1) avoid adverse impact to the biodiversity interest; 2) minimise impact and seek mitigation; and, 3) only in exceptional cases where the benefits of the proposal clearly outweigh the biodiversity impacts, seek appropriate compensation. LP Policy 7.21 seeks to ensure that, wherever appropriate, the planting of additional trees should be included in new developments.

Bexley Core Strategy²⁴

- 6.1.14. In common with BCS Policy CS01, BCS Policy CS17 seeks to protect the Green Belt from inappropriate development, which the reasoned justification for the Policy indicates is defined by Government guidance. BCS Policy CS01 also aims to achieve sustainable development by, amongst other things, maximising the effective and efficient use of natural and physical resources, including land, whilst addressing pollution issues, such as noise and air quality.
- 6.1.15. BCS Policy CS09 seeks to protect, enhance and promote green infrastructure, including making open spaces, amongst other locations, an integral part of encouraging healthy lifestyles. It also identifies that the Council will maximise opportunities to improve the health of the environment, for example air quality, and reduce pollution.
- 6.1.16. BCS Policy CS04 seeks to ensure that opportunities are taken to improve the quality of the natural environment in the Erith geographic region. BCS Policy CS17 indicates that Bexley's green infrastructure, including open spaces and waterways will be protected, enhanced and promoted as valuable resources²⁵. The reasoned justification for this Policy identifies that river corridors, such as that of the Cray, are important defining features of the Borough's landscape and views. BCS Policy CS18 indicates that the Council will protect and enhance its biodiversity, whilst complying with national and regional policy and guidance by, amongst other things:
- b) Protecting, conserving and enhancing Bexley's Sites of Importance for Nature Conservation (SINC); and,

²⁴ CD/3.12.

²⁵ APP/PLAN/1 para 7.37.

- c) Resisting development that will have a significant impact on the population or conservation status of protected species and priority species as identified in the UK, London and Bexley Biodiversity Action Plans.

- 6.1.17. BCS Policy CS15 indicates that the Council will work to achieve a comprehensive, high quality, safe, integrated and sustainable transport system which makes the most of existing and proposed transport infrastructure within the Borough and seeks to ensure a much improved and expanded role for public transport through a number of identified actions. They include:
- a) Increasing the capacity, frequency, accessibility and safety of rail facilities; and,
 - h) Improving the efficiency and promoting the sustainability of freight movement in the borough and ensuring the construction and preservation of rail freight interchange facilities where this does not prejudice other objectives of the Core Strategy.

The reasoned justification for the Policy states that '*There is a planning permission for a rail freight interchange facility at Howbury Park, which has yet to be implemented*'.

- 6.1.18. BCS Policy CS13 seeks to assist in supporting a strong and stable economy by, amongst other things, supporting development proposals that diversify the local employment offer.
- 6.1.19. The aims of BCS Policy CS19 include conserving and enhancing the significance of heritage assets, their setting and the wider historic environment.

BUDP²⁶

- 6.1.20. BUDP Policy ENV4 sets out a number of criteria to be met by development within the Green Belt, including that: it should not detract from the function and appearance of the Green Belt; and, the proposed development should retain sufficient space around the building, within the site, to maintain the contribution the site makes to the character of the Green Belt by virtue of its open and spacious nature.

6.2. The DBC Development Plan

- 6.2.1. The DBC Development Plan comprises: the *Dartford Core Strategy, September 2011* (DCS); and, the *Dartford Development Policies Plan, July 2017* (DDPP).

²⁶ CD/3.13.

Planning Policy Designations

- 6.2.2. The section of the appeals site within Dartford Borough is within the Metropolitan Green Belt.

DCS²⁷

- 6.2.3. DCS Policy CS 1 indicates that in order to maximise regeneration benefits, promote sustainable patterns of development and protect less appropriate areas from development, the focus of development will be in 3 priority areas: Dartford Town Centre and Northern Gateway; Ebbsfleet to Stone; and, The Thames Waterfront. The reasoned justification for the Policy states that this approach enables greater protection for other areas where development is less appropriate, such as the Green Belt. DCS Policy CS 7 identifies the jobs target for the Borough for the period 2006-2026 and indicates that it can be met by identified sites and potential new service jobs, and it provides an indicative distribution. DCS Policy CS 8 indicates that the Council will seek a transformation of the economy by focussing on key growth sectors, such as logistics, transport and distribution.
- 6.2.4. DCS Policy CS 13 indicates that in order to protect the openness of the Green Belt the Council will resist inappropriate development, in accordance with Government guidance.
- 6.2.5. The reasoned justification for DCS Policy CS 15 explains that the successful achievement of Dartford's economic potential and the creation of cohesive and prospering communities are dependent on a transport network which, amongst other things is reliable and has sufficient capacity to meet the needs of residents and businesses. The Policy identifies the approaches the Council will take in order to reduce the need to travel, minimise car use and make the most effective use of the transport network. They include:
- e) Work in partnership with Network Rail, train operating companies and other partners to enhance capacity and journey times of train services; and,
 - h) Require that major trip generating development is supported by a travel plan containing a package of measures ensuring sustainable travel, linked to monitoring and management of targets.
- 6.2.6. DCS Policy CS 16 indicates that the Council will take a number of approaches in order to enable the transport network to respond to the pressures of new development. They include that: e) off-site transport improvements relating directly to an individual development including site access and local junction and road improvements will be required through S106 and S278 agreements in addition to any pooled payments towards the Strategic Transport Infrastructure Programme. The reasoned justification for the Policy highlights that there are particular concerns that new development will exacerbate the existing high levels of congestion at junction 1A of the M25.

²⁷ CD/3.17.

DDPP²⁸

- 6.2.7. DDPP Policy DP3 identifies that development will only be permitted where it is appropriately located and makes suitable provision to minimise and manage the arising transport impacts, in line with BCS Policies CS 15 and 16. Furthermore, development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on one or more of the following: a) road traffic congestion and air quality.
- 6.2.8. DDPP Policy DP5 indicates that development will only be permitted where it does not result in unacceptable material impacts, individually or cumulatively, on neighbouring uses, the Borough's environment or public health. Particular consideration must be given to areas and subjects of potential sensitivity and other potential amenity/safety factors, such as: air quality; and, noise disturbance or vibration. The reasoned justification for the Policy identifies that consideration should be given to the potential for development to result in additional traffic flows that may impact on AQMAs located elsewhere.
- 6.2.9. In keeping with the Framework, DDPP Policy DP22 identifies that inappropriate development, which is, by definition, harmful to the Green Belt, should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The Policy identifies that the following criteria will be used by DBC in assessing the 'other harm':
- a) The extent of intensification of use of the site;
 - b) The impact of an increase in activity and disturbance resulting from the development, both on and off site, including traffic movement and parking, light pollution and noise;
 - c) The impact on biodiversity and wildlife;
 - d) The impact on visual amenity or character taking into account the extent of screening required; and,
 - e) Impacts arising from infrastructure required by the development.

6.3. **National Policy**

The National Planning Policy Framework (the Framework)

- 6.3.1. References to relevant passages of the Framework can be found in the cases of the parties and my conclusions.

The National Policy Statement for National Networks (NPSNN)²⁹

- 6.3.2. The NPSNN is the primary basis used by the Secretary of State for making decisions on development consent applications for national networks

²⁸ CD/3.18.

²⁹ CD/2.2.

nationally significant infrastructure projects (NSIP) in England, including Strategic Rail Freight Interchanges. The appeals proposal does not comprise an NSIP, as the site is below the 60 hectare NSIP threshold. However, the NPSNN confirms that, in England, it may also be a material consideration in decision making on applications that fall under the *Town and Country Planning Act 1990*. There is no dispute that the NPSNN is a material consideration in the determination of these appeals.

6.3.3. Relevant passages of the NPSNN can be found in the cases of the parties and my conclusions.

6.4. **Emerging plans**

The London Plan-The Spatial Development Strategy for Greater London-Draft for Consultation, December 2017 (LPe)³⁰

6.4.1. LPe Policy G2 indicates that the Green Belt should be protected from inappropriate development and the reasoned justification for the Policy identifies that the National Planning Policy Framework provides clear direction for the management of development in the Green Belt.

6.4.2. LPe Policy T7 identifies that development proposals for new consolidation and distribution facilities should be supported, provided, amongst other things, they:

- 1) Deliver mode shift from road to rail without adversely impacting passenger services (existing or planned) and without generating significant increases in street based movements.

6.4.3. LPe Policy SD1 seeks to ensure that decisions support development that creates employment opportunities within Opportunity Areas and the reasoned justification identifies a growth target of 19,000 jobs in the BROA.

6.4.4. At the time of the Inquiry, the LPe Examination in Public had not commenced and so the weight attributable to these policies is limited, more so in relation to LPe Policy T7, which I understand is the subject of objection.

6.5. **Other local planning guidance**

The Mayor's Transport Strategy, 2018 (MTS)³¹

6.5.1. MTS Policy 1 identifies that, working with stakeholders, the Mayor will reduce Londoners' dependency on cars, with the central aim for 80% of all trips in London to be made on foot, by cycle or using public transport by 2041. Proposal 16 indicates that the Mayor, through TfL, and working with the boroughs and members of the Freight Forum, will improve the

³⁰ CD/3.2.

³¹ CD/3.3.

efficiency of freight and servicing trips on London's strategic transport network by, amongst other things, identifying opportunities for moving freight on to the rail network where this will not impact on passenger services and where the benefits will be seen in London.

The Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031(LTP4)³²

- 6.5.2. With respect to Dartford, the LTP4 identifies the following points, amongst others:
- a) The A282 suffers from congestion at peak times and when there are traffic incidents. This results in congestion spreading out into the town and reducing the performance of the local road network over a wide area. Incidents at the Dartford Crossing and its approach are frequent and severe;
 - b) Parts of the local road network are reaching capacity, as a result of the high levels of development taking place. A significant modal shift is needed to accommodate the projected growth;
 - c) Rail capacity on the North Kent Line is stretched and likely to be overcapacity in the near future;
 - d) The proposed SRFI interchange at Howbury would potentially remove up to 540 Heavy Goods Vehicles (HGVs) from the road network. KCC supports modal shift from road to rail, provided that it does not adversely affect peak rail passenger services and impacts on the local road network are properly mitigated.

7. THE CASE FOR THE MAYOR OF LONDON (MOL)

7.1. Policy context

Applicability of Green Belt Policy

7.1.1. It is common ground that:

- a. *London Plan* Policy 7.16 requires that the 'strongest protection' should be given to London's Green Belt³³.
- b. The *National Policy Statement for National Networks* (NPSNN) 'does not diminish the special protection given to Green Belt land'³⁴.

Materiality of the NPSNN

7.1.2. It is common ground that NPSNN is a material consideration in the determination of this application. It identifies a compelling need for an expanded network of SRFIs which should be located near the business

³² CD/4.14 page 32.

³³ as confirmed by Mr Scanlon in XX and see CD/3.1 at p.312 and CD/6.3 at para 7.20.

³⁴ as confirmed by Mr Scanlon in XX and see CD/2.2 at 5.172 and 5.178 and CD/6.3 at para 7.3.

markets which they serve³⁵. It notes the particular challenge in expanding rail freight interchanges serving London and the Southeast³⁶. It draws upon unconstrained rail freight forecasts³⁷ but cautions that 'the forecasts in themselves do not provide sufficient granularity to allow site-specific need cases to be demonstrated'.

- 7.1.3. Its expectations for Strategic Rail Freight Interchanges (SRFIs) include the prescription that '*adequate links to rail and road networks are essential*'³⁸. The need for '*effective connections for both rail and road*' is emphasised³⁹. The NPSNN directs that as a minimum a SRFI should be capable of handling four trains per day and where possible increasing the number of trains handled. There has been some debate about the meaning of this requirement at the Inquiry. The appellant's case appears to be that this is an observation only relevant to the internal design of a SRFI. The more sensible way of reading the policy as a whole is that the expectation of capability of handling 4 trains as a minimum (and increasing where possible) should inform the assessment of the adequacy of the rail links.
- 7.1.4. There is a recorded expectation that where possible SRFIs should have capacity to handle 775 metre trains⁴⁰. It is material therefore to reflect on the access issues for trains of that length even if (as here) existing line constraints do not cater for trains of that length⁴¹.
- 7.1.5. There is only one previous decision in respect of a SRFI facility around London which postdates the NSPNN. That is the Colnbrook decision⁴². It provides helpful guidance on matters of approach (as discussed further below). With reference to the NPSNN, it advocates a focus on the quality of the SRFI provision, not necessarily maximising the number of schemes⁴³.

Development Plan policies

- 7.1.6. Policy 6.15 of the *London Plan*⁴⁴ supports the provision of SRFIs in principle, but sets mandatory expectations for them (in sub-para B of the Policy). As Mr Scanlon (for the appellant) accepted, it is necessary for SRFI proposals to satisfy each of these requirements in order to comply with the Policy. The MOL is not satisfied that the facility will 'deliver modal shift from road to rail' (criterion (a)). As Mr Scanlon agreed, the focus of the Development Plan policy is on the delivery of modal shift (not merely the provision of a facility with the potential to deliver modal shift). The MOL is

³⁵ CD/2.2 at para 2.56.

³⁶ CD/2.2 at 2.58.

³⁷ CD/2.2 at 2.59.

³⁸ CD/2.2 at 4.85.

³⁹ CD/2.2 at 2.56.

⁴⁰ CD/2.2 at 4.89.

⁴¹ INQ/72 APP/RAIL/7 para 2.1.5 '*train length of 565 metres in the 2016 planning application (restated in APP/RAIL/4 para 2.3.15) was based on the then average length of domestic intermodal services*' (CD/1.25 Intermodality Rail Report, November 2015 para 5.4.6- 565 metres excluding locomotive and 586 metres including locomotive), para 2.1.5 continued '*longest train to operate on the North Kent Line to date, on which the timing analysis is based (i.e. 538 metre train +21.5 metre locomotive=559.5 rounded up to 560 metres)*'.

⁴² CD/5.4.

⁴³ CD/5.4 at 12.92.

⁴⁴ CD/3.1 at p.271.

also not satisfied that the proposal is well related to rail corridors capable of accommodating the anticipated level of freight movements (criterion (c)). This is because of the significant constraints which exist in accessing and departing from the site and also the difficult pathing across this congested and complex part of the South London network. The issues raised by DBC also bring into question the relationship of the proposal with the road network relevant to criteria (b) and (c) of this Development Plan policy. It is accepted that criterion (d) of this policy is satisfied in that Howbury Park is well-related to the London market.

- 7.1.7. The supporting text to Policy 6.15 of the *London Plan* notes that planning permission has already been granted for a SRFI at Howbury Park. This part of the plan dates back to 2011 when that permission was extant. It is descriptive only. It does not allocate the site as a SRFI, as Mr Scanlon accepted. The reference to the previous permission in the supporting text has no traction in the situation we are now in where there is no extant permission.
- 7.1.8. The Howbury Park site is located within the Bexley Riverside Opportunity Area⁴⁵. This opportunity area was identified in 2011. It applies to an area of 1,347 hectares. The 57 hectares of the site are 4% of the opportunity area. The opportunity area contains large areas of previous developed land including industrial land suitable for logistics development.
- 7.1.9. Annex 1⁴⁶ records the opportunity area's important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park⁴⁷. This part of the plan dates from 2011 when there was an extant planning permission for the site. That is no longer the case. It was accepted by Mr Scanlon that the Howbury Park site has not been allocated in the *London Plan*. It is also clear, as he accepted, that there has been no re-designation of the Green Belt boundary.
- 7.1.10. Mr Scanlon did not advance any argument that achieving the employment and growth aspirations of the Bexley Riverside Opportunity Area depends upon the delivery of the Howbury Park scheme.
- 7.1.11. The appellant's case is overstated in so far as it purports to rely upon site specific support for the Howbury Park scheme in the *London Plan*⁴⁸. It can claim with justification that its scheme is consistent with the aspirations of growth for the Bexley Riverside Opportunity Area but to seek to go further than that is misconceived. It is not the function of the *London Plan* to make site specific designations.
- 7.1.12. The true position is illuminated by an analysis of the Development Plan policy position in Bexley:
- a. Bexley's Core Strategy protects the Green Belt⁴⁹;

⁴⁵ see policy 2.13 of the *London Plan* CD/3.1 at p.65 and annex 1 at p.355.

⁴⁶ CD/3.1 annex 1 at p.355

⁴⁷ CD/3.1 at p.355.

⁴⁸ see APP/RAIL/1 at para 2.1.

⁴⁹ CS 01 and CS 17 – see GLA/NR/01 at p.8.

- b. Policy CS 15 seeks to improve the efficiency and sustainability of freight movements. It also gives encouragement to the construction and preservation of rail freight interchanges where this does not prejudice other objectives of the Core Strategy. As Mr Scanlon accepted in cross-examination, those objectives include the protection of the Green Belt;
 - c. Paragraph 4.7.13 of the Bexley Core Strategy⁵⁰ records the existence of the planning permission at Howbury Park which has yet to be implemented. As Mr Scanlon accepted, this is purely descriptive of the situation which existed in 2012. It does not allocate the site;
 - d. Appendix A of the Core Strategy contains an infrastructure delivery plan. At CD/3.12 p.122 it makes provision for '*complementary measures in the event of the Rail freight interchange facility being built*' in the Crayford and Northend Ward, but notes that: '*Rail freight interchange is not required for the delivery of the Core Strategy, however if it is not implemented, there is need to identify more sustainable freight facilities*', consistent with the aims of Policy CS15 set out above.
- 7.1.13. In summary therefore, the Development Plan position (for Bexley/London) is that:
- a. Support for SRFIs is conditional rather than absolute;
 - b. Howbury Park is not allocated as a SRFI within the Development Plan;
 - c. Despite the site's inclusion in an opportunity area, it remains in the Green Belt;
 - d. There is an explicit statement in the Bexley Core Strategy that a rail freight interchange is not required for the delivery of Bexley's Core Strategy.
- 7.1.14. The references to the previous consent in the *London Plan* are descriptive of the past planning permission. Once that permission lapsed, on a proper analysis, the Development Plan policies should be applied to the proposal on its merits (not with the pretence that the site has been allocated as a SRFI in the Development Plan). Whilst the contribution that the Howbury Park scheme would make towards meeting the objectives of the Bexley Riverside Opportunity Area is a material part of the overall assessment, it is a mistake to assert that the scheme benefits from site specific support in any part of the Development Plan. The reality is that the Green Belt constraints continue to apply to the proposed development.

Relevant emerging policies

- 7.1.15. It is common ground that the draft *London Plan* carries limited weight given that the Examination in Public has not yet occurred. Policy T7 is relevant⁵¹. Its support for freight facilities is qualified by the need to ensure

⁵⁰ CD/3.12.

⁵¹ CD/3.2 at p.431.

that they deliver modal shift and do not adversely affect passenger services. There is no mention of Howbury Park in the draft *London Plan* as Mr Scanlon accepted⁵².

Other relevant guidance

- 7.1.16. The *Mayor's Transport Strategy, 2018*, explains the very significant challenges facing London. Proposal 16 seeks to identify opportunities to move freight onto rail where these will not impact on passenger services and the benefits will be seen within London⁵³. The *Mayor's Transport Strategy, 2018*, seeks to free up paths for passenger services to meet growing passenger demand⁵⁴.
- 7.1.17. The appellant has also referred to transport guidance issued by Kent County Council. Its *Freight Action Plan*⁵⁵ notes the existence of the Howbury Park proposal. Its position is to support the provision of modal shift from road to rail 'so long as it does not adversely affect peak passenger services'. Its Transport Plan⁵⁶ notes the proposal with the same caveats.
- 7.1.18. There is a consistent theme emerging from this guidance. There is support for rail freight facilities which deliver modal shift provided that they do not have an adverse impact on passenger services. The MOL's concerns are that this specific proposal is poorly suited to deliver the desired modal shift and, given the constraints of the adjacent rail network, it would adversely affect passenger services if it managed to do so.

7.2. Approach to the 2007 Planning Permission

- 7.2.1. It is common ground that the planning permission granted in 2007 has lapsed. There is no fall-back position. The planning balance needs to be struck in the light of the circumstances as they now exist.
- 7.2.2. It is instructive to look at the basis on which planning permission was granted last time and to explore the extent to which the key factors remain unchanged or have altered.
- 7.2.3. Analysis of the planning balance struck in 2007 shows that it was a finely balanced decision.
- 7.2.4. In para 15.178 of the Inspector's report in 2007⁵⁷ the Inspector observed:
- 'Put simply, if the proposal would, for any reason, not operate as a SRFI then it would not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build road-served warehouses on open land in the Green Belt around London would not*

⁵² in XX and see para 7.125 of APP/PLAN/1.

⁵³ CD/3.3 at p.81.

⁵⁴ see CD/3.3 at p.87.

⁵⁵ CD/4.15 at p.4.

⁵⁶ CD/4.14 at p.32.

⁵⁷ CD/5.2.

come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal.'

- 7.2.5. In 2007 the Inspector regarded the issue of whether very special circumstances existed to outweigh the relevant harm to be a 'difficult balance'⁵⁸. He found it difficult to 'answer with complete certainty' whether the concerns that the proposal may end up being 'little more than a collection of road-served warehouses' were justified⁵⁹. On the evidence before him, he concluded that the Secretary of State could be 'reasonably assured' that the then proposed development would operate as a SRFI. Part of his analysis in support of that conclusion was that 'the design of the proposed warehouses at Howbury Park has been optimised to attract users committed to rail'⁶⁰. He found that the larger units proposed would be difficult to let to a road only user given their configuration⁶¹. The submission on the part of the developer which he referenced in making that finding had contended that it would be 'commercial suicide' for the warehouses as designed to have been pitched to users only interested in road access⁶². Another element of the judgement reached in 2007 was that Network Rail had '*effectively guaranteed that paths for three trains a day would be available on the opening of the terminal and they state that further paths are likely to be made available as and when required*'⁶³.
- 7.2.6. In addressing the question of whether very special circumstances existed to clearly outweigh the harm to the Green Belt and other harm, the Inspector emphasised: (a) the ability of the proposal to meet part of London's need for 3 or 4 SRFIs and (b) the agreed position that if planning permission were not granted there was no other site to the south and east of London that could meet the need. The combination of those factors was the critical part of the judgement that very special circumstances existed. The Inspector made it clear that other benefits, though potentially valuable, were less significant in the critical Green Belt balancing exercise⁶⁴. The Secretary of State adopted the same approach to the determination of very special circumstances⁶⁵.
- 7.2.7. The key changes since 2007 are as follows.
- 7.2.8. First, the configuration of what is now proposed differs materially from what was proposed in 2007. The Inspector's observations at para 15.132 of CD/5.2 are not apt for the present proposal. The configuration of what is now proposed would be attractive to road only users. As Mr Birch explained, by far the largest element of the logistics industry is road based. It certainly could not be said that it would be commercial suicide for

⁵⁸ CD/5.2 at 15.183.

⁵⁹ CD/5.2 at 15.178 and 15.179.

⁶⁰ CD/5.2 at 15.132.

⁶¹ CD/5.2 at 15.132.

⁶² CD/5.2 at para 6.123.

⁶³ CD/5.2 at 15.110.

⁶⁴ see footnote at CD/5.2 at p.167.

⁶⁵ see CD/5.3 at para 31.

a road only operator to occupy the warehouses proposed⁶⁶.

The attractiveness of the facility presently proposed to road only transport gives rise to significant concerns on the part of the MOL because (a) there is much less assurance than was the case in 2007 that the practical operation of the facility would deliver modal shift (as expected by the Development Plan policy); (b) the consent sought by the appellant does not secure any level of rail use by way of condition; (c) the consequences of additional road journeys in this locality would be particularly significant.

- 7.2.9. Second, the train length under consideration in 2007 was 420 metres. In the present case, the rail experts proceed on the basis that a train length of 560-565 metres should be considered⁶⁷. This additional train length has implications for the judgement as to whether the rail connection is adequate given the practicality of achieving access to and departure from the site across the highly congested rail network.
- 7.2.10. Third, the level of assurance as to the availability of pathing across the network is appreciably worse this time. Network Rail has not effectively guaranteed any quantum of paths. This is discussed further below.
- 7.2.11. Fourth, there has been unprecedented growth in passenger demand on the railway in London, as explained in Mr Hobbs' evidence⁶⁸ and accepted by Mr Gallop in cross-examination. As Mr Hobbs explained passenger rail capacity is critical to London's growth. London has grown exponentially in the intervening period and the challenges which it faces have 'increased markedly'⁶⁹. Passenger rail capacity, which is critical to London's economic growth, is under real and increasing pressure⁷⁰. The extent of growth in passenger rail demand in London is noted in the NPSNN at para 2.31⁷¹. This is important because jobs in central London depend on passenger rail capacity⁷². The stakes are very high if the facility cannot interact with passenger services in a way which avoids having a detrimental impact. The evidence is also clear that in this part of London further growth is expected.
- 7.2.12. Fifth, there is not a quantified policy need for 3-4 facilities in London expressed in policy⁷³. This was accepted by both Mr Gallop and Mr Scanlon in cross-examination.
- 7.2.13. Sixth, in 2007 there were no alternative sites worthy of consideration. The appellant's analysis throughout this appeal has proceeded on the basis that this remains the case⁷⁴. However, it was wrong to do so. London

⁶⁶ Re-examination of Mr Birch.

⁶⁷ MoL-INQ/63 GLA/RG/09 para 1.1.3 train length of 565 metres, RDL-INQ/72 APP/RAIL/7 para 2.1.5 train length of 560 metres.

⁶⁸ GLA/GH/01 at para 19 and 20.

⁶⁹ as Mr Hobbs explained in his oral evidence and see para 6, 16 and 19 of GLA/GH/01.

⁷⁰ see GLA/GH/01 at para 20.

⁷¹ CD/2.2 at pp.16-17.

⁷² see GLA/GH/02 at Appendix 2 p.41.

⁷³ see CD/5.4 at 12.101.

⁷⁴ see APP/PLAN/1 at paras 2.6, 2.8, 7.3, 7.24. 7.154 and CD/1.27 Volume 1-Non-Technical Summary para 3.13 '*The Howbury Park site has been identified as the only site within the catchment that has the potential to operate as an SRFI.*'

Gateway is 'capable of fulfilling a SRFI role'⁷⁵. It is proximate to the London market⁷⁶. Although it is 'primarily a port development', its capacity to develop a subsidiary SRFI role may well be on a very substantial scale (as it would be subsidiary to the huge primary development). There are no planning barriers to the expansion of this facility on brownfield land within the catchment of the alternative sites search. Yet, its potential has simply not been explored by the appellant, as Mr Scanlon accepted in cross-examination. This is a fatal defect in the very special circumstances case advanced by the appellant in the present case. There has been a marked shift in circumstances pertaining to the critical part of the judgement reached in 2007. Para 21 of the appellant's opening statement⁷⁷ impliedly recognises that the question of alternatives is of game changing significance. It states '*If...there are no preferable alternative sites to meet the nationally-identified need outside the Green Belt....*'. However, in truth there is an alternative site, which has potential to function as a SRFI proximate to the London market and that avoids development on the Green Belt, whose potential has not been properly examined by the appellant.

7.2.14. Seventh, consent has now been granted for the Radlett facility⁷⁸.

7.2.15. Eighth, some weight was placed on the MoL's support for the facility in 2007⁷⁹. Given the importance of giving the strongest protection to London's Green Belt, the concerns about the effectiveness of the facility in delivering modal shift, the potential adverse impact on passenger services and the availability of an alternative facility on brownfield land; equivalent support in 2018 is not forthcoming. The MOL remains a strong advocate of appropriately located freight facilities and economic growth but considers that this proposal fails to pass the stringent criteria for justifying development on London's Green Belt.

7.3. **Application of Green Belt Policy**

7.3.1. As confirmed in cross-examination with Mr Scanlon, there is common ground in respect of much of the Green Belt analysis.

7.3.2. The proposed development constitutes inappropriate development in the Green Belt.

7.3.3. The proposed development would cause harm to the Green Belt by reason of its inappropriateness.

7.3.4. It would also result in substantial harm to the openness and character of the Green Belt given the scale of what is proposed⁸⁰. Mr Scott conceded the impacts in cross-examination and that the characterisation of the

⁷⁵ see CD/5.4 at para 12.107.

⁷⁶ CD/5.4 at 12.105.

⁷⁷ INQ/4

⁷⁸ CD/5.5.

⁷⁹ CD/5.2 at para 15.186.

⁸⁰ see Mr Ray's proof of evidence at paras 51-57 (GLA/NR/01).

development as huge/massive⁸¹ remained apt. This harm cannot be mitigated, as Mr Scott conceded in cross-examination and the landscape is not readily capable of absorbing change⁸². As Mr Mould's cross-examination of Mr Scott established, his evidence had paid insufficient regard to the sensitivity of the site as emphasised at the previous appeal⁸³.

The Inspector's observations last time that 'there is no doubt that the character of the landscape immediately about the appeals site would be significantly changed as a result of the development. Its flat, open expansive character would be lost and replaced with massive buildings, surrounded at the northern end of the site by substantial earthworks'⁸⁴ remains apt, as Mr Scott conceded in cross-examination.

- 7.3.5. There would be harm to the purposes of including land within the Green Belt.
- a. The proposal conflicts with the purpose of safeguarding the countryside from encroachment.
 - b. It would also contribute to urban sprawl and materially weaken the function that the Green Belt serves in maintaining separation between settlements. It would diminish the gap between Slade Green and Dartford albeit that a visual gap would remain⁸⁵. Mr Scott conceded that an already narrow gap would be further reduced (see his agreement in cross-examination that the characterisation of the gap as already narrow⁸⁶ remained correct and that the impact of the present proposal was equivalent to that identified by the Inspector at the last appeal). Mr Scott confirmed that the redefinition of the urban edge was a disadvantage. It does not need redefining. Thus the proposal would impact adversely on the key purpose of maintaining separation between settlements.
- 7.3.6. The appellant rightly concedes that there is substantial harm to the Green Belt⁸⁷.
- 7.3.7. It is common ground that it is necessary for the decision maker to weigh other harm against the proposal. The MOL has not advanced any positive case in respect of any specific other harm, as his concerns in respect of this proposal are strategic in nature. The Inspector and Secretary of State will need to take account of, in their assessment of the adverse impacts which flow from the development, the submissions made by DBC and the third party participants at the Inquiry.

⁸¹ CD/5.2 at 15.7.

⁸² see CD/5.2 at 15.12.

⁸³ see CD/5.2 at 15.12 and 15.157.

⁸⁴ CD/5.2 at 15.13.

⁸⁵ see the evidence of Mr Ray in GLA/NR/01 at paras 45-50.

⁸⁶ in CD/5.2 at 15.9.

⁸⁷ see APP/PLAN 1 at para 7.30.

7.4. **Whether very special circumstances exist**

7.4.1. The focus of the MOL's case to the Inquiry has been the issue of whether very special circumstances exist that clearly outweigh the harm to the Green Belt by reason of inappropriateness and all other harm.

Overview

7.4.2. It is common ground that the onus is on the Appellant to demonstrate that very special circumstances exist.

7.4.3. The shape of the appellant's very special circumstances case is apparent from para 7.85 of Mr Scanlon's proof of evidence⁸⁸. There are three planks to the argument advanced:

- First, the overriding need for SRFIs to serve London and the Southeast;
- Second, the absence of alternative sites; and,
- Third, economic and social benefits of the scheme.

7.4.4. The shape of the MOL's response is as follows.

7.4.5. As to need:

- a. There is an accepted need for a network of SRFIs;
- b. It is also right that there is an under-provision of SRFIs in proximity to the London market;
- c. However, the support for SRFIs is predicated on the premise that they will deliver modal shift;
- d. There are very real doubts as to whether this Howbury Park proposal will do so;
 - i. This is due to the constraints of rail access in its particular location and pathing difficulties.
 - ii. In so far as it identifies a market need for rail freight, the contentions of Mr Gallop amount to little more than Howbury Park should be allowed to 'find its market'. There is a lack of any credible evidence of market demand for the facility. There are risks attached to the claim that it will attract 71% of its traffic from domestic intermodal traffic given that growth in domestic intermodal has been slow (and dominated by Tesco).
 - iii. There are real risks in the bold proposition -upon which the appellant's case depends - that forecasts based on unconstrained demand will actually deliver a modal shift through the provision of this facility in this very constrained part of the rail network.

⁸⁸ APP/PLAN/1.

- iv. The proposed as configured would be well suited for use for road based vehicles.
 - e. The Appellant's case seductively seeks to downplay expectations as to how much tangible assurances can be expected at this stage. But unlike the East Midlands decision relied upon⁸⁹, this is a Green Belt case. The Inspector and Secretary of State are urged to examine in a discerning way what the evidence suggests as to how well this particular facility is equipped to deliver the modal shift benefits expected of SRFIs. The necessary foundations for being reasonably assured that this proposal will succeed as a SRFI do not exist in this instance. The MOL is concerned that there would be severe adverse consequences
 - i. Green Belt land would be permanently lost.
 - ii. The benefits of the predicted modal shift may not be delivered.
 - iii. Train paths might not materialise.
 - iv. If they do, passenger services might be adversely affected.
 - v. The Slade Green depot's operation may be adversely affected.
- 7.4.6. As to alternatives, the appellant's case has failed to engage with the potential of London Gateway to function as a SRFI to serve 'the arc around the south and east of London'⁹⁰. This is a fatal defect in its very special circumstances analysis.
- 7.4.7. As to other benefits, whilst potentially valuable, these are not sufficiently persuasive considerations to justify the loss of Green Belt land.

Policy need

- 7.4.8. As above, the policy position is that there is a need for a network of SRFI but no longer any quantified need for 3-4 facilities around London⁹¹. Under the NPSNN, SRFIs are supported because they deliver modal shift from road to rail. Planning policy requires that modal shift should be delivered and cautions that freight facilities should not have an adverse impact on passenger services.

Market need-reliance on growth in domestic intermodal traffic

- 7.4.9. The application for planning permission assumes that the rail freight traffic at the proposed facility would comprise approximately: 71% domestic intermodal; 10% maritime intermodal; 6% Channel Tunnel intermodal; and, 13% conventional ⁹².
- 7.4.10. Table 2 on p.17 of APP/RAIL/1 shows that domestic intermodal is only currently operating from DIRFT (East Midlands) and Mossend (Glasgow).

⁸⁹ CD/5.6.

⁹⁰ para 15.177 of CD/5.2.

⁹¹ CD/5.4 at 12.101.

⁹² see CD/1.25 at 4.7.16 and APP/RAIL/1 at para 4.6.8.

It can thus be seen that the tables on page 18 of APP/RAIL/1 show that growth in domestic intermodal traffic is currently static.

- 7.4.11. The claim made by Mr Scanlon at para 7.90 that there has been 'unprecedented growth in intermodal traffic' is not apt as an observation applied to domestic intermodal traffic, at which this proposal is mainly directed, as Mr Gallop eventually accepted in cross-examination. The growth in the broader intermodal sector is dominated by maritime intermodal traffic, trains originating from the UK's deep sea ports.
- 7.4.12. The scheme therefore relies upon growth in a sector which is currently underperforming.
- 7.4.13. The forecasted growth in domestic intermodal traffic referred to in the NPSNN is 12%/annum⁹³. However, the critical point is that this forecast is based on unconstrained growth. That is, *'freight demand is considered without addressing the ability of the rail network to cater for it'*⁹⁴.
- 7.4.14. The explanation advanced by the appellant is that the underperformance in domestic intermodal is due to a lack of facilities. This is effectively the adoption of the 'chicken and egg' analogy referred to by the previous Inspector⁹⁵, that is the lack of growth is attributable to the lack of facilities.
- 7.4.15. Whilst it is accepted that a lack of facilities may be part of the story, a more discerning analysis is required.
- 7.4.16. The ability of this facility to deliver modal shift to rail needs to be assessed in the real world where constraints exist. Network Rail's *Rail Freight Study 2013* at para 3.2 identified key constraints as including (a) conflict with passenger services; (b) pinch points on the network; (c) capacity on the network⁹⁶. Howbury Park is a location that suffers from a perfect storm of such constraints. Those constraints include the current level of network capacity and the constraints involved in entering and leaving the site (given the complexity involved in crossing Crayford Creek Junction). These are addressed in detail below and are a critical part of the MOL's concerns that this facility may not succeed in delivering a modal shift of freight to rail.
- 7.4.17. The evidence shows that the domestic intermodal traffic generated is very unevenly distributed. Tesco (in partnership with Stobart) have led the way⁹⁷. Excluding local authority waste services, the domestic intermodal traffic is almost entirely generated by Tesco. This is consistent with the figures showing the take up of rail by retailers in table 1 on p.16 of APP/RAIL/1.
- 7.4.18. There is no evidence that Tesco has expressed any interest in operating from or to Howbury Park. They are currently delivering rail freight to the east of London to Barking, Tilbury and Purfleet. It was accepted by

⁹³ see table 3 at p.21 of CD/2.2.

⁹⁴ CD/4.9 page 24.

⁹⁵ CD/5.2 at 15.102.

⁹⁶ see CD/4.9 at para 3.2.

⁹⁷ see p.7 of APP/RAIL/4.

Mr Gallop that the route to Howbury Park would be pathed on a different part of the London network. It could not therefore be an extension to any of the existing Tesco paths.

- 7.4.19. Other retailers have been slower adopters of rail than Tesco. We get a sense of why from Appendix I of APP/RAIL/2. The concerns recorded there are not just about a lack of facilities but emphasise (a) the need for flexibility; and, (b) a desire for rail freight to be cost competitive with road use (see for example Marks & Spencer: *'more flexible timetables for train departures'*, *'more government grants or support to make rail cheaper or cost neutral to road'*; Asda: *'more timely and versatile services'* and *'reduced cost of rail services to make it more competitive against road'*).
- 7.4.20. So the critical issues raised by potential customers include concerns about cost and the need for operational flexibility. The emphasis on operational flexibility chimes with the points made by Mr Goldney in para 6.18 of GLA/RG/01 (see *'disadvantages'*).
- 7.4.21. As discussed further below:
- a. This proposal performs badly so far as operational flexibility is concerned; and,
 - b. Rail does not currently compete with road in economic terms.
- 7.4.22. There is a complete absence of any evidence from any retailers that they would be committed to or even interested in operating from Howbury Park.
- 7.4.23. Paragraph 4.6.6 of APP/RAIL/1 identifies distribution facilities in reasonable proximity to Howbury Park operated by Asda, Ocado and Sainsbury's. Yet on the evidence, there is no support expressed by any of these retailers; or any other retailers or any retail trade representative organisation.
- 7.4.24. The evidence of support for the scheme put forward by the appellant is limited (see Appendices A-D of APP/RAIL/2).
- a. The letter from GB Railfreight⁹⁸ identifies a need to deliver close to London and confirms the importance of cost to customers.
 - b. The letter of support from Maritime Transport Limited (Appendix B) lacks any meaningful detail.
 - c. The same is also true of the letter of support from the campaigning representative body the Rail Freight Group (Appendix C). It flags up the support for the delivery by rail into central London. Yet there is nothing tangible at all to suggest that this would be a realistic proposition if Howbury Park became operational.
 - d. The appellant stresses the support of Viridor (Appendix D) but at the Inquiry it was clear that the way in which *'spare capacity'* could be utilised to *'carry [waste] materials as backload'* had not been explored at all. Mr Gallop confirmed that this would need to be to a

⁹⁸ APP/RAIL/2 appendix A.

port such as Felixstowe. Therefore, there is no indication on the evidence that this could assist in respect of the 71% of domestic intermodal traffic that the application is projected to cater for.

- 7.4.25. There is nothing tangible put forward by the Appellant as to where the demand for the facility would in practice come from. In evidence in chief (XC) Mr Gallop asserted that Howbury Park would 'find its market'.
- 7.4.26. Such optimism is a commendable quality to possess if, like Mr Gallop, your role is to be a champion of rail freight. However, when making critical land use decisions, which would involve the permanent loss of Green Belt land, the MOL submits that it is necessary to look more critically at what the evidence suggests.
- 7.4.27. That takes us back to the 2 issues flagged by the retailers namely cost and flexibility.

Market need-cost

- 7.4.28. As to cost, Mr Goldney puts forward an analysis of the relative cost of rail against road freight⁹⁹. He explains the relative lack of flexibility in rail use and the importance of grant support which is not guaranteed. He concludes that in financial terms rail is more expensive and less flexible than road. This was based on an assumption that a train could carry 37 containers. In light of Mr Gallop's evidence that, depending on the type of wagon used, a 560 metre train may comprise between 28 and 32 wagons (plus a locomotive)¹⁰⁰, the economic case for rail is even less compelling¹⁰¹.
- 7.4.29. The MOL supports the social and environmental benefits of transferring freight to rail. But at this stage of the analysis, the question is: what degree of assurance can the decision maker have that the modal shift will in fact be delivered if this facility (which is capable of being used by road only based operation) is opened? The lack of an economic case for rail (and the positive evidence that this is something which matters to retailers) weigh against the decision maker being satisfied that a modal shift will in fact be delivered.
- 7.4.30. The appellant's evidence is strangely silent on economics. Mr Gallop's rebuttal contains a single paragraph¹⁰². That asserts that the matter was discussed at the last appeal. When the cross reference to CD/5.2 at 15.121-2 is followed up that reveals the last Inspector took it on trust that there was 'credible research to establish the demand'. It is important however to remember that those forecasts look at 'unconstrained' demand. The delivery of modal shift in the present case begs the question whether there will in fact be take up of the facility by rail users. The evidence suggests that economics are part of the real world decision making of potential operators. Mr Goldney has explained in detail why he has concerns that the case for rail does not compete well with road in commercial terms. The appellant has not answered that case. Cost is a real

⁹⁹ see section 6 at p.56 of GLA/RG/1; as clarified in GLA/RG/6.

¹⁰⁰ INQ/72 para 2.1.6.

¹⁰¹ see GLA/RG/09 at para 1.1.4 as explained by Mr Goldney in his oral evidence on 17 September 2018.

¹⁰² see APP/RAIL/4 at 2.4.1 (p.21).

world constraint that will impact on the take up of the facility. There is much to lose if this facility does not deliver modal shift, such as the unjustified loss of Green Belt¹⁰³ and the adverse effects of additional trip generation if the predicted modal shift does not materialise.

Market need-flexibility

- 7.4.31. Then there is the issue of flexibility. The constraints on access/departing the site and the network constraints (see below) are factors which tend strongly against the facility providing the operational flexibility that potential operators would seek. There are also a series of constraints which tend against operational flexibility.
- a. The proposal is based around a single shared intermodal facility. No operator will be able to have exclusive control of its own operations. This contrasts with the position on the ground at DIRFT where Tesco have control of their own operations.
 - b. The apron size is fixed and comparatively small.
 - c. No reception sidings are proposed. The site does not have the ability to hold more than 2 trains at any given time (each of which would need to be split assuming that they are over 450m in length). As Mr Goldney put it, when reflecting on limited pathing opportunities from the site¹⁰⁴, departure and arrival slots have to be hardwired into the timetable.
 - d. The facility will have to operate with a peak hours cap on HGV movements applying to the whole of the site – permitting only 32 movements (for example. 16 movements in and 16 movements out) during the am peak¹⁰⁵. A booking system is proposed in the *Freight Management Plan*. This will impact on operational flexibility and will impact on early morning arrivals. For example, if it takes 5 hrs to unload a train, HGV movements associated with a train arriving in the early morning, at say 04:00 hrs, may conflict with the cap, as acknowledged by Mr Gallop in cross-examination. Furthermore, there is no precedent of a SRFI facility operating with a cap on HGV movements, as confirmed in cross-examination by Mr Findlay and Mr Gallop. The operational implications of this have not been thought through at all by the appellant. The evidence showed that there had been no joined up thinking about the operational implications of the HGV restrictions.
 - e. It is also contemplated that in the frequently occurring abnormal highway events, there may be the need to hold HGVs on site. Mr Findlay asserted the ability to hold over 100 HGVs on site. Yet it appeared that no operational consideration had been given as to how this might work. The illustrative plan of where such vehicles might be parked attached to APP/RAIL/7 at appendix D raised more questions

¹⁰³ see CD/5.2 at para 15.178.

¹⁰⁴ Examination in chief of Mr Goldney, 17 September 2018, with reference to INQ/2 and APP/RAIL/6 Appendix I- 'Mr Kapur's analysis'.

¹⁰⁵ see APP/TRAN/1 at 4.4.1.

than it answers. The small apron area is asserted to be the main area in which this emergency HGV holding can take place. Yet this will cut across the operations of loading and unloading trains which are going to be time critical given the assertions now advanced that this can be achieved in times faster than the 5 hours which Mr Goldney considers is realistic (see CD/1.25 at para 4.7.8 – rail report produced by Mr Gallop had indicated that full length trains would take up to 6 hours to process; GLA/RG/01 at pages 9-10 concurring that 5 hours is an appropriate estimate; yet now in APP/RAIL/6 at page 15 it is being asserted that trains can be processed in 4 hours¹⁰⁶). Mr Gallop's shifting position on the issue of unloading train times revealed how little thought has been given to the practicalities of unloading trains given the many and various constraints which apply at this site.

- 7.4.32. On 26 September 2018 INQ/106, a technical note on HGV parking, was submitted. This appears to be the document referred to in paragraph 14.5.5 of the TMP to support the position that 100 HGVs could be parked within the intermodal facility. Figure 4 on page 5 shows 100 spaces right in the centre of the apron. It is impossible to see how efficient operations could co-exist there. Analysis at paragraph 1.4.1 indicates that the experience relied upon was DIRFT, *'HGV drivers will tend to arrive close to the scheduled delivery or collection time for the trains and /or containers so as to avoid unproductive down time, with most inbound HGVs being processed in under 30 minutes'*. That is a long way away from what would be possible at the appeals site if the highway network is shut down. It shows a lack of joined up thinking regarding operational constraints. That matters as the evidence indicates that operational flexibility is critical to potential customers¹⁰⁷.
- 7.4.33. The upshot of this discussion is that the proposal is particularly unsuitable for providing the flexibility in operations which retailers have identified as a practical aspiration for shifting from road to rail.
- 7.4.34. The MOL is sceptical that this proposal will appeal to rail users in the manner claimed. As identified, it does not secure any level of rail use. It is suitable for 'road only' based operators. The MOL is accordingly concerned that it will not deliver the modal shift claimed. It also appears to be common ground that it will not achieve any significant modal shift of freight movements into central London by rail¹⁰⁸.
- 7.4.35. The submissions above have concentrated on the position in respect of domestic intermodal traffic as this makes up 71% of the projected traffic.

¹⁰⁶ INQ/54 para 3.3.4. (Inspector's note: This reference is associated with a 560 metre train (28 containers), whereas CD/1.25 para 4.7.8 relates to full-length trains of 775 metres taking 6 hrs. GLA/RG/01 estimate of 5 hrs is based on 37 containers and using his method of calculation, I calculate that 28 containers would equate to 4.4 hrs).

¹⁰⁷ Para 7.4.19.

¹⁰⁸ (Inspector's note: In cross-examination of Mr Gallop, it was put to him it is not part of the appellant's case that there would be a rail route from the appeals site onwards into London. He responded, with reference to page 29 of CD/1.25, that some conventional wagon and express freight traffic travels into London and, although it represents a small element of freight traffic, it could be considered in the future.)

However, the position in respect of potential Channel Tunnel traffic is that the route is unattractive¹⁰⁹.

- 7.4.36. The route to and from Southampton is also unattractive and would not support a daily cycle of more than 1 return journey in a 24 hour period¹¹⁰.

Rail access issues

- 7.4.37. The MoL's concerns that the proposed development would be ill equipped to deliver modal shift are heightened by the rail accessibility issues which have been canvassed in detail at the Inquiry.
- 7.4.38. The site is located in a particularly difficult location within the busy South London network. The local junction arrangements are complex. In effect 3 parallel lines interconnect adjacent to the proposed entrance to the facility. Pathing across South London is "very difficult" (as Mr Goldney explained) given congestion issues and junction constraints. Access into and out of site (which involves crossing multiple lines) is even more difficult and has not been adequately assessed by the Appellant (or Network Rail on the material that has been made available to the Inquiry).

Junction occupation whitespace requirements to access or depart from the site

- 7.4.39. The primary method of accessing/departing the site will use the Barnehurst branch¹¹¹. This involves crossing the up and down lines of the North Kent lines at Crayford Creek Junction¹¹².
- 7.4.40. Paragraph 5.4.6 of the Intermodality Rail Report, November 2015 (IRR), which was submitted in support of the planning applications and in relation to which Mr Gallop was the author¹¹³, recognises that 8-10 minutes of whitespace would be required in the working timetable for a train to arrive or depart from the site. This allowance includes the time taken for a 565 metre freight train (586 metre train including the locomotive) to cross the junctions (from the controlling signal west of Perry Street Fork Junction through to clearing the main line connection at Slade Green Depot) and appropriate headways.
- 7.4.41. Mr Goldney's analysis suggests that this figure may be an under-estimate to some extent (see (a) para 5.24 of GLA/RG/01 which suggested 11 minutes whitespace requirements for arriving trains and 11½ minutes whitespace requirements for departing trains and (b) his further analysis at GLA/RG/09 at 2.1.5 which indicates junctions crossing times of 7½ minutes inbound to which 5½ -6 minutes headway is added to make 12½-13 minutes whitespace requirement inbound and 4½ minutes outbound to which 5½-6 minutes headway is added to make a whitespace requirement of 11-11½ minutes for departing trains).

¹⁰⁹ see CD/1.25 at 4.6.7 and the observations of GLA/RG/01 at pp.51-3.

¹¹⁰ the test set for viability by GB Railfreight at App A of APP/RAIL/2; see RG's observations at p.8-9 of GLA/RG/04.

¹¹¹ see 5.4.5 of CD/1.25 and INQ/54 APP/RAIL/6 para 3.2.3.

¹¹² see the schematic diagrams at p.3 of GLA/RG/08-INQ/24.

¹¹³ CD/1.25 page 2 and confirmed in cross-examination of Mr Gallop.

- 7.4.42. For present purposes (as explored in cross-examination with Mr Gallop), let's leave those differences to one side and proceed on the basis that there is a degree of corroboration between the appellant's estimates in its IRR and Mr Goldney's analysis.
- 7.4.43. The Appellant technical rail evidence to the Inquiry has come forward in the following stages:
- a. Mr Gallop's Intermodality Rail Report, November 2015, which identified that 8-10 minutes of whitespace would be required in the working timetable for a train to arrive or depart from the site¹¹⁴.
 - b. Mr Gallop's proof of evidence¹¹⁵ was silent on technical access issues.
 - c. Mr Gallop's rebuttal¹¹⁶ – pages 17-19; responded to Mr Goldney's analysis by referring to the 1½ -6 minutes timings referred to by Network Rail (2.3.28 and 2.3.3) without acknowledging (a) that these figures exclude headways (as accepted in cross-examination by Mr Gallop) and (b) that the lower end of these figures is absurd – it assumes a junction speed of 25 mph. As Mr Goldney put it, 1½ minutes is an '*amazing thing for Network Rail to say*' (i.e. amazingly improbable, not least as it assumes a speed of 25 mph, notwithstanding that the track speed limits for trains crossing Crayford Creek Junction are 15-20 mph¹¹⁷).
 - d. APP/RAIL/5¹¹⁸ which was submitted by Mr Gallop to the Inquiry after Mr Goldney had given his evidence. It was abandoned shortly afterwards on the grounds that it was not accurate¹¹⁹.
 - e. APP/RAIL/6¹²⁰ paras 3.2.7-3.2.10, focussing only on the time needed to cross Crayford Creek Junction, estimated to be 2 minutes, and then adding headway/junction margins, indicated that 6-8 minutes of whitespace would be required. It also introduced for the first time a timetable analysis undertaken by Mr Kapur, Head of Capacity Planning at GB Railfreight, which purported to show how time within the timetable was available for crossing times (analysed by Mr Gallop in that document).
 - f. APP/RAIL/7 (September 2018) included some acknowledgement by Mr Gallop of the force of some points made by Mr Goldney in GLA/RG/09 in respect of junction crossing times for accessing and departing from the site. It suggested time required to cross Crayford Creek Junction would be: 2 minutes for inbound trains; and, 2.5

¹¹⁴ CD/1.25 para 5.4.6.

¹¹⁵ APP/RAIL/1.

¹¹⁶ APP/RAIL/4.

¹¹⁷ CD/1.25 figure 15 page 34.

¹¹⁸ INQ/41 submitted on 3 July 2018.

¹¹⁹ Mr Gallop's response to Inspector's question.

¹²⁰ INQ/54 submitted on 24 July 2018.

minutes for outbound trains¹²¹. It did not contain any reworking of the timetable analysis that had been undertaken by Mr Kapur.

- 7.4.44. The MOL does not challenge the skill and expertise of Mr Kapur in analysing the timetable to identify available slots. It is safe to proceed on the basis that the best available expert, Mr Kapur, has analysed the timetable to see what is possible in this congested part of the network. That said, Mr Kapur's analysis does come with a significant health warning that it does not catch scheduled movements to and from the depot, as Mr Gallop acknowledged in cross-examination. But for now let's leave that additional constraint on potential capacity to one side.
- 7.4.45. So to recap where we are:
- a. The appellant's analysis in its rail report¹²² suggests a whitespace requirement of 8-10 minutes to access or depart the site from the Barnehurst branch (the agreed main access/departure route);
 - b. The appellant has deployed the best available expert to interrogate the timetable to look at available whitespace to meet the requirements; and,
 - c. His work comes with the health warning that it does not catch movements into the depot which would be an additional constraint but we are leaving that additional constraint out of the equation for now.
- 7.4.46. So what does Mr Kapur's exercise show? Mr Kapur's results are at APP/RAIL/6 Appendix I¹²³. If we look at what available opportunities there are in the timetable for 8-10 of whitespace the answer is:
- a. For inbound trains the figure of 43 windows in para 3.3.3 reduces to 5 windows in the period analysed; and,
 - b. For outbound trains, the figure of 13 windows reduces to 1 (the 00.36½ slot).
- 7.4.47. Mr Gallop paired up arrival and departure opportunities shown in Appendix I, as a means of showing that it would be possible to route trains on and off the site¹²⁴. However, in light of the reduction in the number of windows identified above, none of the identified trains in appendix I work. Mr Gallop accepted that this is what the analysis shows in cross-examination. It demonstrates the correctness of Mr Goldney's conclusion at para 5.28 of GLA/RG/01 that there is no opportunity to depart a train during the day. This is also demonstrated when Mr Gallop's own latest analysis for departing trains (via Barnehurst) is considered. Between APP/RAIL/6 and APP/RAIL/7 his assessment of the time taken physically to cross the junction departing increased from 2 minutes to 2 minutes 42 seconds (as a

¹²¹ INQ/72 Para 2.2.28 (Inspector's note: application of junction margin or headway allowance would be dependent on the movement of trains immediately ahead or behind the Howbury Park train, INQ/54 paras 3.2.9-3.2.10).

¹²² CD/1.25 at para 5.4.6.

¹²³ as summarised in para 3.3.3 of APP/RAIL/6.

¹²⁴ INQ/54 para 3.3.4 and Appendix I.

result of taking on board an error in his analysis that had been identified by RG – see 2.2.4 of APP/RAIL/7; revised timing in APP/RAIL/7 appendix E). So his crossing time is 2:42 minutes to which headways have to be added. There is disagreement about whether it is legitimate to round the crossing time down to 2 ½ minutes and there is some debate about whether total headways should be 5 ½ minutes or 6 minutes (i.e. 3½ + 2 or 3½ + 2½). Let's assume both of those points in Mr Gallop's favour for now. That makes the whitespace requirement 8 minutes for departing trains (2 ½ + 5½ (3½ + 2) combined headways) (as put to him and accepted in cross-examination).

- 7.4.48. So back to Mr Kapur's analysis in Appendix I of APP/RAIL/6, the critical question is where are the opportunities to depart a train that needs 8 minutes whitespace? The answer is there are none during the day; just the solitary 0036½ train. Once again, this shows that Mr Goldney was correct in his assessment at para 5.28 of GLA/RG/01 that there are no opportunities to depart trains during the day.
- 7.4.49. Mr Gallop's claim in para 3.3.8 of APP/RAIL/6 that Mr Kapur's analysis shows that 'within less than half of a 24-hour period windows exist within the current timetable to allow multiple trains to get through the door to and from Howbury Park' is wrong in just about every way that it is possible to be wrong:
- a. First, as above, it does no such thing. In fact, it proves the MOL's case that it is not possible to depart trains; and,
 - b. Second, the reference to 'less than half of a 24-hour period' is very misleading in that:
 - i. As the footnote on page 17 of APP/RAIL/6 shows, it focussed on the available opportunities in the intra peak period (05:00-07:00; 09:30—14:30; 19:00-01:00). As Mr Gallop accepted in cross-examination, these are the key periods to focus enquires on.
 - ii. Second, Network Rail's recorded position is that 'we do not generally path freight trains across London during the morning or evening peaks'; p.24 (last paragraph) of CD/1.6.
 - iii. Third, Mr Kapur's exercise (Appendix I of APP/RAIL/6) did in fact straddle the whole peak period and some of the slots identified did cut into peak periods to a degree.
 - iv. Fourth, the decision to exclude opportunities from 0100-0500 reflects Network Rail's apparent concern about the conflict in this period with engineering works during the night time period (as indicated on p.4 of INQ/3 (second bullet point)); albeit that Mr Goldney considers that these restrictions are less significant in that they occur every third week¹²⁵.

¹²⁵ see para 5.68 of GLA/RG/01.

Pathing difficulties

- 7.4.50. There has been no attempt by the appellant to match up any analysis of the whitespace requirements for getting into/out of the site with the considerable difficulties in finding paths across the congested and complex route across London. The MoL's position is that Mr Goldney is correct to characterise the necessary exercise as being combining a very difficult thing (pathing across London) with an impossible thing (finding sufficient whitespace gaps to get into the site). There is also force in Mr Hobbs' more colourful assessment that: *'the stars would need to align in a particularly improbable way to get freight in'*.
- 7.4.51. The only Network Rail train pathing study before the Inquiry, which provides an indication of the basis for Network Rail's consultation responses, is INQ/3 – the draft Network Rail *GRIP 2 Report Part 2 – Timetable analysis*¹²⁶. This is a profoundly unsatisfactory document for a number of reasons:
- a. It is on its face a draft;
 - b. It is on its face incomplete. We have Part 2: Timetable analysis. Where is part 1? What does it say?;
 - c. GRIP (Governance for Railway Investment Projects) is Network Rail's internal project management process. Mr Gallop indicated in his evidence in chief that the purpose of Network Rail's GRIP 2 stage is to establish whether a feasible solution can be found. We found out in Mr Gallop's oral evidence (in answer to the Inspector's question) that the GRIP 2 process has not in fact been completed, but rather has been put on hold for now. He indicated that the basis of the appellant's service agreement with Network Rail was that Network Rail would complete a feasibility report, with the expectation of then continuing to GRIP 3 (option assessment). However, Mr Gallop's understanding is that Network Rail still has work left to do at GRIP 2 to finalise their thoughts and so the report provided is in draft, without the level of detail the appellant would have expected;
 - d. The report indicates that consideration has been given to the availability of train paths between the main stabling yard at Wembley and Crayford Creek Junction. However, the associated data sheets contained within the report indicate that the train length considered was 342 metres. Mr Goldney is and remains concerned that this study tested the wrong train length and therefore would not have picked up on junction occupation complications of pathing a 565 metre train on the network and the potential associated need for greater headway allowances. The explanation given orally by Mr Gallop, that the reference to a 342 metre train results from an automatically generated software output but that a 775 metre train was considered, is question begging. In email correspondence between Network Rail

¹²⁶ (Inspector's note: Mr Gallop has confirmed in oral evidence that this is the only GRIP study he has seen. For LBB, Mr Kiely confirmed that this was the GRIP report before LBB when it considered the planning application and is the document referred to in the INQ/25 emails between Network Rail and LBB.)

and LBB (Thomas Caine/Martin Able dated 23 November 2016 in INQ/25) reference is made to para 2.4 of the timetable study to back this up. No document supplied to the Inquiry matches that reference or explains the discrepancy in train length in a satisfactory way. This position has not changed following the production of an email from Mr Bates of Network Rail, dated 26 September 2018 (INQ/99);

- e. The study assumes the use of an uncharacteristically powerful and rarely used class 70 locomotive;
- f. The study only analyses the position to Crayford Creek Junction, as Mr Goldney put it 'to the door' of the site not 'through the door', clear of the main line¹²⁷. Mr Gallop accepted that this was so in cross-examination. Mr Gallop's contention that it would not be possible for the pathing software used by Network Rail to path trains through the door, due an absence of existing rail infrastructure within the appeals site, is not accepted. It could have been better pathed to an identified point in the Slade Green depot as a better proxy – see, for example, signalling point SGNT&RSMD (App B, p.8 of GAL/RG/02); and,
- g. The Wembley-Crayford Creek Junction study is critically dependant on routes via Hither Green (see para 5.64 of GLA/RG/01; this is especially an issue for all of the daytime arrival paths). The Hither Green path is not one which offers tenable access opportunities into the site¹²⁸. The severing in the study of the issue of pathing (solvable but very difficult) from whitespace requirements to access the site (impossible) means that this study does not accurately reflect the sum of the constraints that face the proposed facility.

Longer trains would lead to greater constraints

- 7.4.52. It is also appropriate to contemplate (as Mr Goldney explained in answer to the Inspector's questions on 17 September 2018) that the requirements for whitespace would increase if we contemplate the manoeuvre across Crayford Creek Junction of a 775 metre train.

Whether the ability to 'flex' provides reasonable assurance

- 7.4.53. The appellant's answer to the inability to get trains into and out of site and through London is that the timetable can be 'flexed'. It contends that any exercise based on the current timetable is of limited utility. What matters, it is said, is the availability of space in an as yet unplanned future timetable that cannot reasonably be anticipated at the present time. Seductively presented as it was, this claim needs to be treated with very great care.

¹²⁷ see p.6 of GLA/RG/06.

¹²⁸ (Inspector's note: Mr Goldney conceded in cross-examination that trains up to 700 metres in length could enter and leave the site from the south via Hither Green, making use of the Slade Green Depot carriage sidings and headshunt, although he had reservations about the potential impact on Depot operations. See INQ/14 and 24 for further details).

- 7.4.54. The reality is that the passenger timetable has shown enduring stability. Recent changes are the exception to a period of great stability¹²⁹. The recent changes associated with Thameslink altered the destinations of trains rather than their slots (e.g. Thameslink trains now running through to Rainham). The reality is that this is a heavily congested area of London – described by Mr Goldney in his oral evidence as ‘South London’s tube’. There is very little slack in the system throughout the day. As Mr Goldney explained in re-examination on 17 September 2018, there is inter-dependency of services based on ‘decades of refinement’. Furthermore, he maintained that the restrictions which exist in the current timetable are a good proxy for the constraints that will exist in any future timetable. The complexity of making alterations stems from very constrained junctions, rolling stock constraints, congestion at critical junctions (for example Lewisham) and the demands at the London termini. The time taken in manoeuvring a slow and long freight train across multiple junctions during the day creates the need for gaps in services which will disrupt the rhythm of the passenger timetable even if all goes well. Mr Reynolds’ analogy was with turning right across very busy traffic. It is very difficult. If things go wrong, then the delays that will ensue will be significant given the difficulties lack of flexibility in the network.
- 7.4.55. Mr Goldney’s clock face analysis¹³⁰ illustrates the timetabling difficulties. The key point is that the whitespace requirements to access/depart from the site would fill a significant portion of the time within a notional quarter hour of the timetable. The knock on effects of this will be that passenger services in the other three quarters of the timetable will become bunched up and irregular. As Mr Goldney explained, Mr Warren’s cross examination of this exercise was based on the incorrect premise that the unused capacity was available in a single block and so passenger services could be effortlessly shifted around. This was a flawed literal analysis of what was intended to be a notional representation of how significant the demands of the freight train on the timetable are in a part of the network characterised by: multiple recurring passenger services; critical junctions; and terminal constraints, such as platform availability and turnaround requirements at London termini. The implications of flexing and rescheduling to accommodate the required block of time needed to get into and out of the site would adversely affect the passenger services on which this part of London is critically dependent¹³¹.
- 7.4.56. No comfort can be drawn from the examples of Crossrail freight trains and the BP trains, which Mr Gallop relies upon. These are examples which are solely concerned with pathing not the combined difficulties of pathing and achieving a particularly difficult site access. The Crossrail trains benefited from an exceptional degree of political will that the project’s waste would be dealt with by rail. The BP trains have encountered very considerable pathing difficulties as Mr Goldney explained.

¹²⁹ As Mr Goldney explained in Re X on 17 September 2018 and also as emphasised by Mr Reynolds in his knowledgeable explanation of timetabling restrictions in the area.

¹³⁰ GLA/RG/09 at p.13.

¹³¹ see Mr Goldney’s conclusion at 2.3.11 to 2.3.13 of GLA/RG/09.

Interface with depot movements

- 7.4.57. There is also the critical issue of how the operation of the site would interface with the use of Slade Green depot. The Appellant refers to the fact that Southeastern's franchise is due to end soon. But this is a red herring. The depot is a critical facility to the network and can reasonably be expected to remain operation whoever is operating the franchise. The critical issue is the interaction of departures and arrivals with the much used headshunt. The issues raised by this are real. There is also evidence that Mr Goldney's concern regarding conflict with the depot are in fact shared by Southeastern as reflected in their email to Councillor Borella (INQ/58) which states: 'We explained that we use the head shunt 24/7 every day, and at least 6 times an hour and have made clear that the proposals would need to make provision for an additional head shunt'.
- 7.4.58. There is a considerable lack of clarity as to what Network Rail's position is in respect of the potential conflict between the depot and the proposal. Their comments to the LBB indicate that '*a design solution has been identified which would not only provide Howbury Park with a suitable main line access, but would equip Southeastern Trains (SET) with an enhanced 12-car headshunt siding, replacing the constrained 10-car siding currently operated and avoid any internal SET depot movements conflicts with those to and from Howbury Park*'¹³².
- 7.4.59. So what is this design solution and how will it be secured? Extraordinarily, nobody knows. Mr Gallop confirmed in cross-examination that he did not know. It was not even clear that Network Rail had done the work to convert the solution into a design.
- 7.4.60. Mr Gallop is left resorting to advancing a case which is based on a gloss on what Network Rail in fact say by claiming that this design solution is not a pre-requisite for the operation of Howbury Park but just a win/win 'synergy' identified by Network Rail. Unfortunately for the appellant, that is not what the evidence suggests. The evidence suggests that movements into and out of the depot are a very relevant constraint and that the potential conflict between the Howbury Park freight facility needs to be addressed and secured in order that the competing interests can be protected. Mr Goldney's opinion, as stated in re-examination¹³³, was that a second access would be required to resolve the conflict between appeals site and depot traffic.
- 7.4.61. The appellant's case to the Inquiry invites the Secretary of State and the Inspector to shut their eyes to this conflict and assume that it will all be resolved in a way that the planning system need not concern itself with.
- 7.4.62. The MOL invites the planning decision maker to adopt a more cautious approach. The stakes are too high on this part of the network to permit movements which could conflict with passenger services and/or disrupt a facility which provides essential facilities for passenger services.

¹³² see CD/1.6 at p.21.

¹³³ 20 July 2018.

- 7.4.63. As was apparent in the cross-examination of Mr Gallop by Mr Mould (on behalf of Dartford Borough Council), there is no clarity as to the project (i.e. its physical parameters) that Network Rail contend is a viable proposition. This is a manifestly unsatisfactory position for the Inquiry to be left in. That fundamental lack of clarity remains following the late introduction of Mr Bates' email dated 26 September 2018 (INQ/99).
- 7.4.64. The position in short is:
- a. We do not know what the 'project' is that Network Rail apparently support.
 - b. We have had no explanation of the basis on which they consider it to be a 'viable prospect'¹³⁴.
 - c. There is no indication that access issues into the site have been assessed by Network Rail on a tenable basis.
 - d. The draft timetable study (INQ/3) raises more questions than it answers. It is critically dependent on pathing via Hither Green (which is not a realistic proposition given the access constraints involved in accessing that path)¹³⁵.
 - e. There can be no comfort that the conflict with the depot will be resolved unless and until the design solution is articulated and secured. This remains the case following the late introduction of Mr Bates' email dated 26 September 2018 (INQ/99).
 - f. The stakes are high. If things go wrong there will be severe and detrimental impact on passenger services which are critical to this part of London and expressly protected in the MoL's guidance as referred to above.

Differences of detail

- 7.4.65. The MoL's concerns as expressed above exist even if the points of detail on access timing that were canvassed between Mr Gallop and Mr Goldney are assumed in Mr Gallop's favour. That said, Mr Goldney's analysis of the times to access the site are to be preferred. The material differences are identified at para 2.1.2 of GLA/RG/09 and were explained by Mr Goldney in his oral evidence on 17 September 2018. The points of difference are:
- a. It is a more robust assumption to plan on the basis that arriving freight trains may need to accelerate from a stationary position at the preceding signal.
 - b. Mr Gallop's acceleration assumptions are unsafe as they are based on the use of a class 70 locomotive which is atypical for freight. He accepted that there are over 500 class 66 locomotives in use and only 17 (out of an existing stock of 27) class 70 locomotives¹³⁶.

¹³⁴ see Mr Mould's XX of Mr Gallop in respect of the quotation on p.54 of Mr Gallop's proof of evidence (APP/RAIL/1).

¹³⁵ See footnote to para 7.4.51g.

¹³⁶ see third bullet point on p.5 of GLA/RG/09 – figures accepted by Mr Gallop in XX.

To base acceleration assumptions on a class 70 locomotive as Mr Gallop has done is unsound and does not represent '*a suitably representative train accelerating from a static position*', his own test¹³⁷.

- c. Mr Goldney's approach to driver behaviour when braking is more realistic than the sudden braking assumed by Mr Gallop.
 - d. Mr Goldney's assumption as to the speed at which in practice a train could be reversed (i.e. at a modest walking pace; not at 5mph) is more prudent.
 - e. Given the complexities of the manoeuvres required, Mr Goldney's suggestion of 10% contingency is prudent. It is wrong to assert, as Mr Gallop does, that this involves double counting of time covered by the headway allowance.
- 7.4.66. These detailed points suggest that the time required to get into and out of the site will be greater than has been assumed in above submissions.

Whether modal shift will be delivered

- 7.4.67. Drawing the above threads together, the MOL has very real concerns that the proposal will not deliver modal shift. The factors which influence this concern are:
- a. Unlike the position in 2007, the proposal is configured in a way that makes it perfectly suitable for entirely road based traffic.
 - b. The proposal assumes take up from domestic intermodal – a sector which is currently underperforming.
 - c. There is no tangible evidence of market demand.
 - d. The evidence suggests that rail remains more expensive than road freight.
 - e. In operational terms, the multiuser intermodal facility is unlikely to provide the flexibility that retailers identify they seek.
 - f. This lack of flexibility is compounded by the highway constraints which impose operational restrictions which are unprecedented for SRFIs.
 - g. Rail access for a freight train into and out of the site is impossible on the current timetable.
 - h. Pathing across London is very difficult and we do not have an equivalent level of assurance to that which existed last time when Network Rail had effectively guaranteed 3 paths.
 - i. No attempt has been made to assess access difficulties and pathing difficulties together (other than by Mr Goldney who opines that it

¹³⁷ APP/RAIL/6 page12 (second bullet point).

seeks to combine an impossible thing with a *'really really difficult thing'*).

- j. Given the intensity of passenger services, there is not a sufficient level of assurance that timetables can be flexed to secure that the facility will be operational without adversely affecting passenger services. The constraints of the current timetable are a realistic proxy for what can be expected in the future¹³⁸.
- k. Network Rail's support for the project gives rise to many questions and no answers.
- l. There is a real danger of conflict with the depot.
- m. The proposal for which planning permission is sought does not secure any level of rail use or the design solution that Network Rail apparently thinks will avoid conflict with the depot.

Alternatives

- 7.4.68. At the last Inquiry, the Inspector concluded that there were no alternative sites for a SRFI 'in the arc around south and east London'¹³⁹.
- 7.4.69. The detail of the search area associated with the current appeals proposal is set out in CD/1.26 and assesses the same area as was considered on the last occasion¹⁴⁰. The Transport Assessment¹⁴¹ makes clear that the same wide area has been assumed as constituting the *'market area'*. The majority of HGV vehicles serving this market are assumed to travel to and from destinations north of the Dartford Crossing¹⁴². That this was so was confirmed in cross-examination by Mr Findlay, Mr Gallop and Mr Scanlon.
- 7.4.70. The Appellant's case that very special circumstances exist to outweigh the harm to the Green Belt and other harm has been formulated on the assertion that (like last time) no alternatives exist within the catchment area assessed¹⁴³.
- 7.4.71. Mr Scanlon purported to examine whether there is any alternative site within the catchment with the *'realistic potential to function as a SRFI'*¹⁴⁴.
- 7.4.72. The MOL agrees that this is the relevant question to ask when the loss of the Green Belt is at stake. Very special circumstances are unlikely to exist unless it can be demonstrated that alternatives have been properly explored before being discounted.

¹³⁸ Re-examination of Mr Goldney 17 September 2018.

¹³⁹ CD/5.2 at 15.177.

¹⁴⁰ as confirmed in para 7.151 of Mr Scanlon's proof of evidence APP/PLAN/1.

¹⁴¹ CD/1.27.

¹⁴² CD/1.27 see p.64 of the Transport Assessment; appendix E1 to the Environmental Statement.

¹⁴³ see paras 2.6, 2.8, 7.3, 7.24, 7.85 and 7.154 of APP/PLAN/1 and CD/1.27 Volume 1-Non-Technical Summary para 3.13 *'The Howbury Park site has been identified as the only site within the catchment that has the potential to operate as an SRFI.'*

¹⁴⁴ see para 7.154 of APP/PLAN/1.

- 7.4.73. However, it became clear beyond any doubt that the appellant's alternatives sites evaluation failed to examine the potential of London Gateway to function as a SRFI within the catchment area to serve the London market. This was effectively conceded by Mr Scanlon in cross-examination.
- 7.4.74. In the Colnbrook SRFI decision¹⁴⁵, the Inspector found:
- a. London Gateway is capable of fulfilling a SRFI role¹⁴⁶.
 - b. It was proximate to the London market¹⁴⁷.
 - c. There was an uneven distribution of potential SRFI sites around London; with the deficiency being to the west of London; not the east¹⁴⁸.
- 7.4.75. Although the Colnbrook Inspector regarded London Gateway as '*primarily a port development*' and described the capacity to develop a '*subsidiary SRFI*'; she was using the term subsidiary by comparison with the huge primary size of the port. She was not in any way suggesting that the potential for London Gateway as a SRFI was subsidiary to or less than Howbury Park (as Mr Scanlon accepted in cross-examination).
- 7.4.76. The clear position is that London Gateway has realistic potential to function as a SRFI. Given this, it is clear that the only case advanced on alternatives in the appellant's written evidence, that there are no alternatives sites within the catchment with realistic potential to function as a SRFI, collapses. The appellant was left in the uncomfortable position of having to formulate an entirely new position on alternatives in its oral evidence by asserting that there is room for both sites to co-exist and be complementary to each other. However, that case is unpersuasive given that the appellant has closed its eyes to the potential of London Gateway rather than fairly examined it.
- 7.4.77. The scale of the potential of London Gateway is apparent from the agreed statement in respect of London Gateway (INQ/39). There is strong policy support for the development of a SRFI at London Gateway¹⁴⁹. The potential exists within the port (where the rail head is already operation) and within the area outside the ports parameters where the construction of a common user siding is already permitted¹⁵⁰. It will be required to be provided when the floorspace exceeds 400,000 m² of development¹⁵¹. The overall scheme of London Gateway is encapsulated in the description of 'London Gateway Rail Services' set out on the second page of INQ/39 as follows:

'The intermodal rail terminals will serve the Port, while a Common User Siding (CUS) will be built on the eastern side of the Logistics Park.

¹⁴⁵ CD/5.4.

¹⁴⁶ CD/5.4 at 12.107; and for more detail of the basis on why this is so see CD/5.4 at 8.40.

¹⁴⁷ CD/5.4 at 12.105.

¹⁴⁸ CD/5.4 at 12.107.

¹⁴⁹ see p.1 of the INQ/39 and also CD/1.26 at 5.15

¹⁵⁰ see appendix 7 of INQ/39.

¹⁵¹ see fourth bullet point on p.2 of INQ/39.

Additionally building plots to the south of Logistics Park shall incorporate directly served rail sidings. The aim of these rail facilities will be to provide efficient movement of goods between the Port or Logistics Park and other rail freight centres within the UK. The rail terminals in the Port will primarily handle deepsea containers' (emphasis added)

- 7.4.78. The potential of this permitted floorspace is considerable as Mr Birch explained in his evidence (and see GLA/IB/01 at para 44).
- 7.4.79. Mr Scanlon accepted (in cross-examination) that there are no planning obstacles to the delivery of the rail facility on the logistics park.
- 7.4.80. London Gateway is a brownfield site. No loss of the Green Belt is required for it to achieve the potential set out in INQ/39.
- 7.4.81. There are indications as explained by Mr Birch that London Gateway (as its name suggests!) is seeking to compete with the East Midlands facility and marketing itself as the gateway to London (as Mr Goldney explained).
- 7.4.82. It was conceded by Mr Gallop and Mr Scanlon that there was no prospect of direct trains to Howbury Park from London Gateway. The route across London from the East Midlands (or other potential facilities north of London) is fundamentally different. To that extent, it is clear that the facility would be a rival serving the market to the east of London rather than a facility which would provide opportunities from linked trips. As Mr Birch put it, London Gateway and Howbury Park would broadly serve the same sector of London albeit on different sides of the river.
- 7.4.83. It was conceded by Mr Findlay and Mr Scanlon that the opening of the Lower Thames Crossing would make the road connections of London Gateway to destinations south of the Thames easier by road.
- 7.4.84. The evidence suggests that the rail links (a) from London Gateway to the East Midlands (and beyond) and (b) for crossing London are much easier than that which would exist from Howbury Park. They were described as 'night and day' by Mr Birch in his oral evidence. The superiority of the rail links to and from London Gateway when compared to Howbury Park was also stressed by Mr Goldney. The network serving London Gateway has also been earmarked by Network Rail for further capacity upgrades¹⁵². This is significant given the emphasis in the Colnbrook's Inspector's analysis on the quality of provision¹⁵³. The superiority of London Gateway's rail access was stressed by Mr Birch in his oral evidence (and see GLA/IB/01 at para 46).
- 7.4.85. Rather than acknowledge this considerable potential to operate as a SRFI, the appellant's evidence was as follows:

¹⁵² see CD/4.11 at table 1, p.5; p.28 (note at end of table), p.41 (Gospel Oak to Barking extension), p.46 (cross London flows) and p.71 (cross London freight flows – a plan which confirms how much easier the route across London is and that it has been earmarked for further upgrades) .

¹⁵³ see CD/5.4 at 12.92 on the quality of SRFI provision and in NSPNN on the need for 'effective connections' by rail – see CD/2.2 at 2.56.

- a. In his rebuttal Mr Gallop asserted that alternatives had been addressed at the last appeal¹⁵⁴. As Mr Gallop accepted in cross-examination, that is factually wrong. The potential of London Gateway as a SRFI was not analysed at the last Inquiry because the alternative sites assessment discounted it for the reasons which are clearly set out at CD/1.26 at p52 (see section entitled '*previous supplementary ASA (2006) conclusion*'). There has been a significant change of circumstances which Mr Gallop has not sufficiently acknowledged in his written evidence. The same mistake is made in the appellant's opening statement to the Inquiry which asserts wrongly that 'nothing material has changed' in respect of alternatives since 2007¹⁵⁵.
 - b. As above, Mr Scanlon discounted the 'realistic potential' of London Gateway to 'function as a SRFI' rather than fairly analyse it in his written evidence¹⁵⁶.
- 7.4.86. The flaw in the appellant's thinking can be traced back to CD/1.26 at page 21. The analysis there focuses on the fact that the primary function of London Gateway is as a container port and draws upon the recognition in para 2.48 of the NPSNN¹⁵⁷ that London Gateway will '*increase the need for SRFI development*'. The appellant's focus on this contribution that London Gateway might make to the need for a wider network of SRFIs across the country misses the critical point for present purposes that the SRFI function proximate to the London market represents an alternative within the catchment that needs to be considered in the evaluation of whether the need case for a facility in the Green Belt at Howbury Park is sufficiently compelling. In cross-examination, Mr Scanlon fairly accepted that page 21 of CD/1.26 failed to address the potential of an SRFI at London Gateway to compete with Howbury Park. As Mr Birch explained¹⁵⁸, the key issue is the implications for local need of '800,000 m²' of rail connected warehousing. That question has been ignored rather than addressed by the appellant.
- 7.4.87. In summary in respect of alternatives:
- a. The position is markedly different at this Inquiry than it was in 2007.
 - b. The appellant's analysis completely fails to acknowledge that difference.
 - c. London Gateway plainly has potential to function as a SRFI within the catchment for alternatives and proximate to the London market.
 - d. It offers some significant advantages over Howbury Park given that it does not involve any loss of the Green Belt and its rail links are superior to Howbury Park in terms of access into the facility and pathing across London.

¹⁵⁴ see 2.5.1, 2.5.6 and 3.3.1 of APP/RAIL/4.

¹⁵⁵ see INQ/4 at para 9.

¹⁵⁶ see APP/PLAN/1 at 7.154.

¹⁵⁷ CD/2.2.

¹⁵⁸ GLA/IB/01 paras 44 and 54.

Other benefits

7.4.88. The third plank of the appellant's case identifies socio-economic and ecological benefits of the scheme. The MOL would welcome the delivery of such benefits if the price for their delivery was not the loss of Green Belt land which needs to be given the 'strongest protection'. As Mr Bell put it, care must be given in weighing 'generic benefits of any large scale development' in the Green Belt balance, if the Green Belt is to be given meaningful protection. Like the Inspector and Secretary of State's approach at the last appeal, it is submitted that these benefits ought not to weigh heavily as very special circumstances. In respect of the ecological benefits, these are essentially expectations of the relevant Development Plan policies, as established by Mr Mould's cross-examination of Mr Goodwin. The economic aspirations of the *Bexley Riverside Opportunity Area* and the *Bexley Core Strategy, 2012* can and should be delivered without development on Green Belt land.

7.5. Overview and conclusions

7.5.1. London's Green Belt requires the strongest protection.

7.5.2. This proposal is inappropriate development which causes substantial harm to the Green Belt.

7.5.3. The need for an expanded network of SRFIs is acknowledged. However, there is no specific quantified need. There are reasons to doubt how attractive this facility will be given the poor rail links. As designed it will be attractive to road users and the MOL has very real concerns that it may not deliver modal shift to rail. The MOL is also very concerned that the proposal may adversely affect passenger services which are critical to London's economy.

7.5.4. The very special circumstances case advanced by the Appellant asserts that there is no alternative. This is manifestly incorrect. The potential of London Gateway to function as a SRFI serving the market has been wrongly ignored. This should be fatal to the proposition that the loss of Green Belt land is justified.

7.5.5. The other claimed benefits do not justify the permanent loss of Green Belt land.

7.5.6. The proposal is contrary to the development plan given its conflict with Green Belt policy and failure to adhere to the expectations for SRFI developments in Policy 6.15 of the *London Plan*.

7.5.7. The MOL invites the Secretary of State to protect London's Green Belt and reject the proposed development.

8. THE CASE FOR DARTFORD BOROUGH COUNCIL (DBC)

8.1. Background

- 8.1.1. The starting point is the common acceptance by all parties that the proposed development would constitute inappropriate development in the Green Belt. In order to succeed on appeal and to secure planning permission, the appellant is accordingly required to demonstrate that there are very special circumstances that clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm and so justify the grant of planning permission.
- 8.1.2. This core policy for the control of development within the Green Belt is consistent across all levels of policy including in the *revised National Planning Policy Framework, 2018* (revised Framework) and the statutory Development Plan. See paragraphs 143/144 of the revised Framework, Policy CS13 of the Dartford Core Strategy 2011(DCS)¹⁵⁹ and Policy DP22 of the DBC Development Policies Plan 2017 (DDPP)¹⁶⁰. Policy DP22 states that the assessment of any other harm to the Green Belt will use a number of criteria, including '*(b) the impact of an increase in activity and disturbance resulting from the development, both on and off the site, including traffic movement and parking, light pollution and noise*'; and '*(d) the impact on visual amenity or character taking into account the extent of screening required*'. It is agreed that these assessment criteria also embrace the impact of the proposed development on air quality¹⁶¹.
- 8.1.3. It is common ground that the core policy for the control of development within the Green Belt is not qualified in its application to proposals for SRFIs. See paragraphs 5.172 and 5.178 of the NPSNN¹⁶², which assert the special protection given to Green Belt land notwithstanding that promoters of SRFIs may find that the only viable sites for meeting the need for regional SRFIs are on Green Belt land¹⁶³. It is common ground that the NPSNN is a material consideration in these appeals.
- 8.1.4. Paragraphs 2.53 to 2.58 of the NPSNN state the Government's current policy for addressing the need for SRFIs. At the national level of assessment, paragraph 2.56 of the NPSNN identifies a compelling need for an expanded network of SRFIs. Paragraph 2.58 of the NPSNN states that there is a particular challenge in expanding rail freight interchanges serving London and the South East. It is meeting that challenge that we understand to lie at the heart of the appellant's case for very special circumstances justifying the grant of planning permission in these appeals.
- 8.1.5. Conversely, there is no current development plan policy that identifies a need for SRFI development in Dartford. It is not in dispute that the Dartford Core Strategy 2011 provides for the growth of the key logistics, transport and distribution sector in Dartford as part of the spatial pattern

¹⁵⁹ CD3.17 p.66

¹⁶⁰ CD3.18 p.103

¹⁶¹ Xx Scanlon

¹⁶² CD2.2

¹⁶³ Ibid. paragraph 5.172

of development identified in policy CS1¹⁶⁴. Policy CS8 and paragraph 3.13 of the Core Strategy provide for economic change in this key sector within the priority area focus set by policy CS1¹⁶⁵. There is no suggestion that Green Belt release may be contemplated to meet Dartford's needs in this sector of employment development. Nor does the appellant assert that the proposed development would meet any identified local need in Dartford for employment development.

- 8.1.6. It is also notable that the appeal is not supported by any attempt to quantify the likely level of need or take up of the facilities contemplated by the appeals scheme's illustrative masterplan. There is no economic forecast in evidence which seeks to analyse and demonstrate a site specific need case. Mr Gallop, in oral evidence in chief, offered the expectation that 'no doubt Howbury Park will find its market'. The appellant's case is thus founded essentially upon the policy support for expanded SRFI provision stated in paragraphs 2.53 to 2.58 of the NPS.
- 8.1.7. Planning permission was granted on appeal for the development of a SRFI at the appeals site in December 2007¹⁶⁶. In his report¹⁶⁷, the inspector stated his 'firm view' that the 'only factor of any significant weight in favour of granting the proposal stems from the Government's policy desire to increase the proportion of freight carried by rail'¹⁶⁸. He concluded¹⁶⁹ that the ability of the then proposal to meet part of London's need for three or four SRFIs was 'the only consideration of significance', it being accepted that 'if planning permission is not granted for this proposal, the evidence is that there is no other site to the south and east of London that could meet the need...a material consideration of very considerable weight and one which...constitutes very special circumstances that clearly outweigh the harm to the Green Belt and all other harm that I have identified'. The Secretary of State agreed with that analysis¹⁷⁰.
- 8.1.8. That was how the 'difficult' balance¹⁷¹ was drawn in favour of granting planning permission in the circumstances that existed in 2007. It is DBC's submission that the balance has swung, and swung clearly, against the grant of planning permission in 2018. In summary:
- a) The presumption remains strongly against inappropriate development in the Green Belt both under the revised Framework, the NPSNN notwithstanding the SRFI challenge in London and the Southeast (paragraph 2.58) and the Development Plan;
 - b) The harm caused by the proposed development to the openness and purposes of the Green Belt remains as extensive as was the case in 2007. The appeals scheme would be a massive development encroaching into the open countryside in an area of Green Belt that is

¹⁶⁴ CD3.17 page 24

¹⁶⁵ CD3.17 pages 53/54.

¹⁶⁶ CD5.3

¹⁶⁷ CD5.2

¹⁶⁸ CD5.2 paragraph 15.173

¹⁶⁹ Ibid paragraph 15.185

¹⁷⁰ CD5.3 paragraph 31

¹⁷¹ CD5.2 paragraph 15.183; CD/5.3 paragraph 31

sensitive to change and would materially weaken the separation between Slade Green/Bexley and Dartford. It would have substantial impacts on the openness of the Green Belt that cannot be mitigated¹⁷²;

- c) The impact of the appeals scheme on the landscape and its visual impact would be at least as harmful as was the case in 2007. Although the proposed design of the development has changed and notwithstanding the proposed mitigation, the landscape and visual impact would remain¹⁷³, particularly as it affects views from locations within Dartford to the south and east;
- d) The 'other harm' caused by the appeals scheme is no longer confined, as it was in 2007, to the landscape and visual impacts of the proposed development¹⁷⁴. In 2018, evaluation of the local impact of the proposed development must also weigh in the balance the considerable potential for operation of the SRFI to exacerbate existing congested conditions on the highway network in the locality of the appeals site and through Dartford Town Centre. Added to that, the concomitant potential of the operation of the SRFI to contribute to worsening air quality due to the congested highway network in the locality of the appeals site. Neither of these impacts were a cause for concern for DBC in 2007¹⁷⁵. They lie at the heart of the evidence presented by DBC to this Inquiry in support of its case against the proposed development in 2018¹⁷⁶;
- e) On the 'positive' side of the balance, policy no longer supports a quantified need for three or four SRFIs to serve London and the South East. The NPSNN now articulates a compelling need nationally for 'an expanded network of SRFIs'¹⁷⁷ and a particular challenge in expanding RFI's serving London and the South East¹⁷⁸;
- f) Since 2007, Radlett has achieved planning consent (CD5.5). In 2016, the SIFE proposal at Colnbrook was refused planning consent (CD5.4). In her report on the SIFE proposal, the Inspector succinctly articulated the way in which national policy has moved on since the publication of the NPSNN in 2014¹⁷⁹. In particular, she states that *'the attention is on quality of provision, not necessarily maximising the number [of] schemes'*. She adds that the rail freight forecasts in the NPSNN alone¹⁸⁰ *'do not provide sufficient fine grain detail to allow site specific need cases to be identified'*;

¹⁷² Scott XX, agreeing that the conclusions drawn by the Inspector in 2007 (CD5.2 paragraphs 15.5 to 15.9, 15.156 and 15.170) apply to the appeals scheme

¹⁷³ Scott XX agreeing that conclusions drawn by the Inspector in 2007 (CD5.2 paragraphs 15.12 to 15.21, 156-160 and 15.170) apply to the appeals scheme.

¹⁷⁴ CD5.2 paragraph 15.170

¹⁷⁵ CD5.2 paragraphs 15.30 and 15.52

¹⁷⁶ Peter Caneparo – highways – DBC/W2/1; Richard Maggs – air quality – DBC/W3/1

¹⁷⁷ CD2.2 paragraph 2.56

¹⁷⁸ CD2.2 paragraph 2.58

¹⁷⁹ CD5.4 inspector's report paragraphs 12.91-12.92

¹⁸⁰ CD2.2 paragraph 2.50 table 3

- g) A central qualitative requirement of a SRFI proposal is the need for 'effective connections' for road and rail, which is said in paragraph 2.56 of the NPSNN to be a limiting factor in the identification of viable alternative sites. See also paragraph 4.85 of the NPSNN, which states that '*adequate links to the rail and road networks are essential*'. This cuts both ways: the more constrained the road and/or rail connections to the posited site, the greater the significance of an alternative location which is seen to have the realistic potential to function as a SRFI;
- h) DBC's principal local objection to the appeals scheme is the fact that the proposed road connections to the facility, albeit forming part of the primary route network, are in fact already prone to frequent disruption which results in serious and prolonged traffic congestion and delays in Dartford Town Centre. That is an existing situation that the introduction of the substantial levels of SRFI traffic is likely to exacerbate, by encouraging more drivers to reassign or divert away from the primary route network and onto local roads through the Town Centre, an effect that cannot be fully mitigated. That, in a nutshell, is the advice that DBC has received from the local highway authority, Kent County Council¹⁸¹. Following cross-examination of Mr Findlay, we do not understand the reliability of KCC's assessment to be in serious dispute. Both KCC and Highways England see the solution to the root cause of the problem, i.e. the frequent breakdown of the Dartford Crossing, the A282 and the build-up of traffic on the surrounding roads, to lie in the provision of a new Thames Crossing to provide a substantial additional slug of strategic road space – the Lower Thames Crossing ('LTC'). Interventions designed to improve the performance of the existing road network, junctions 1A and 1B as well as the Crossing Approach, are judged to have been of only limited value. Furthermore, future planned interventions there are likely to only be able to smooth flows for existing traffic, as opposed to building in any significant new capacity to cater for future growth/demand. Yet were the LTC to come to fruition in future years, it would appear to offer the prospect of benefits to road users, including HGV traffic, on both sides of the River across the arc around the south and east of London;
- i) In 2007, there was no dispute that, Barking not being a realistic candidate for a SRFI, there were no viable alternative sites for SRFI development in the arc around south and east London – a matter to which the inspector and the Secretary of State attached considerable weight¹⁸². In 2018, the evidence before this Inquiry points to the opposite conclusion. This issue is central to the GLA's case, but it is no longer in dispute in evidence that London Gateway does now have the 'realistic potential' to function as a SRFI¹⁸³. Moreover, the realistic potential of London Gateway for domestic intermodal SRFI

¹⁸¹ DBC/W2/2 Appendix PC1 pages 11-13

¹⁸² CD/5.2 paragraph 15.177; CD/5.3 paragraph 22

¹⁸³ Scanlon APP/PLAN/1 paragraph 7.154 states the test and he agreed in XX (GLA) that London Gateway fulfils that test

development (the principal market for the operation of the appeals scheme advocated by Mr Gallop¹⁸⁴), is as least implicitly recognised in paragraph 2.48 of the NPS. In 2016, the SIFE/Colnbrook inspector recognised that realistic potential in the context of the NPS¹⁸⁵. The current planning policy position lends clear support to the conclusion that London Gateway has the credentials for such SRFI development¹⁸⁶; and,

- j) The presence or absence of a viable alternative site to meet the challenge of SRFI provision to the south and east of London remains as much a 'material consideration of very considerable weight' to the merits of the development of the appeals site for a SRFI as was the case in 2007¹⁸⁷. That is because the force of Green Belt policy is undiminished; and the weight to be given to the appeals site's ability to contribute towards the challenge of meeting London and the South East's need for expanded SRFI capacity must plainly be measured against the existence of another realistic potential source of supply, which would avoid the otherwise inescapable and considerable harm that results from the appeals scheme. Having heard the evidence before the Inquiry, DBC submits that London Gateway appears to have the realistic potential to fulfil that role.

8.1.9. It is essentially for these reasons that we invite the Secretary of State to draw the balance against the grant of planning permission in the present appeals: that which was, on balance, justified in 2007 is no longer justified in 2018. The strong and enduring protection vouchsafed to the Green Belt in the revised Framework, the NPSNN and the Development Plan ought now to prevail.

8.1.10. We now turn in a little more detail to summarise the position, in light of the evidence heard at the Inquiry, on the four matters that we identified in opening DBC's case on the appeal:

- a) The impact of the appeals scheme on the Green Belt;
- b) The impact of the appeals scheme on the local road network;
- c) The impact on the appeals scheme on local air quality; and,
- d) Whether the evidence put forward by the appellant justifies its contention that very special circumstances exist, which clearly outweigh the harm to the Green Belt by reason of inappropriateness and other harm (including traffic and air quality impacts) so as to justify the grant of planning permission for the appeals scheme.

¹⁸⁴ Gallop APP/RAIL/1 paragraphs 2.2.17-18 and 5.2.12; and XX (DBC)

¹⁸⁵ CD5.4 paragraph 12.105

¹⁸⁶ INQ 39 – Agreed statement

¹⁸⁷ CD5.2 paragraph 15.185

8.2. The Impact on the Green Belt

- 8.2.1. Paragraph 133 of the NPPF states that 'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.'
- 8.2.2. Paragraph 134 of the revised Framework identifies the five purposes served by the Green Belt:
- a) *To check the unrestricted sprawl of large built-up areas;*
 - b) *To prevent neighbouring towns merging into one another;*
 - c) *To assist in safeguarding the countryside from encroachment;*
 - d) *To preserve the setting and special character of historic towns; and,*
 - e) *To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*
- 8.2.3. Revised Framework policy is reflected in DDPP Policy DP22 on Green Belt. Policy CS13 of the DCS also seeks to protect the Green Belt and notes that with the significant growth in population expected through planned development, there will be an increased demand for open space.
- 8.2.4. It is not in dispute the proposed development would constitute inappropriate development in the Green Belt, that it would cause substantial harm to openness, and that it would conflict with one of the purposes of including land within the Green Belt by encroaching on the countryside.
- 8.2.5. Mr Bell gave evidence as to the nature and quality of that area of the Green Belt comprising the appeals site and its surroundings. His evidence¹⁸⁸ is that the appeals site forms part of a sensitive and strategic part of the Metropolitan Green Belt. It has the spatial function of separating not only Dartford and Bexley, but also Greater London and Kent.
- 8.2.6. The Green Belt here is a predominantly flat, low-lying landscape, covered with low-level flora. It is an area enjoyed by recreational users, who are able to experience the area as a relatively remote, urban countryside environment, notwithstanding that it is situated in a highly urbanised area. A public right of way runs under the proposed access route and viaduct. Walkers are able to enjoy the views across the marshes and such views can be experienced from the A206/Bob Dunn Way.
- 8.2.7. This is an important and sensitive part of the Green Belt, which should be kept permanently open. Mr Scanlon explained during cross-examination that he believed that the previous appellant, Prologis, had made representations seeking the release of the Howbury Park site from the Green Belt. If indeed such submissions were made, it is unsurprising that they were not accepted.

¹⁸⁸ DBC/W1/1 – paragraphs 5.9-5.33

- 8.2.8. Mr Bell explained in evidence how the appeals scheme, which will be a large group of industrial buildings with extensive plant and machinery and will require an access route and viaduct in Dartford's area, would cause harm both spatially and visually to the openness of the Green Belt. The effect of this access route and viaduct on openness would be exacerbated by its use for the operation of the proposed SRFI.
- 8.2.9. Mr Bell's judgement is that, in addition to encroaching into the countryside, the appeals scheme would also undermine two further purposes of including land within the Green Belt:
- a) To check the unrestricted sprawl of large-built-up areas; and,
 - b) To prevent neighbouring towns from merging into one another.
- 8.2.10. The proposed development would constitute a substantial extension of the built up area of Bexley into open land to the east. Although a narrow gap would remain, it would be significantly diminished as a result of the presence and operation of a vast logistics and distribution facility, whose physical and functional presence would in fact create a continuum of development from the access roundabout at Bob Dunn Way to the existing urban edge in Bexley to the northwest¹⁸⁹. Mr Scott correctly acknowledged that the protection afforded to the Green Belt should not be diminished by virtue of the fact that the area of Green Belt land for development is situated next to an existing industrial area.
- 8.2.11. The Green Belt at the appeals site and its surroundings fulfils its essential spatial function, of maintaining openness. The massive development proposed by the appeals scheme would undermine that function and thereby give rise to significant harm.
- 8.2.12. In cross-examination, Mr Scott accepted that, although there had been some changes, mainly related to the illustrative layout of the development, the appeals scheme is not materially different from the 2007 scheme:
- a) The appeals scheme proposes the same essential form of development as the 2007 appeals scheme, namely a large-scale intermodal freight facility with associated structural screening arrangements;
 - b) In terms of its scale and height, the two schemes are broadly similar;
 - c) The landscaping scheme proposed is based upon the scheme put forward as part of the previous application¹⁹⁰; and,
 - d) The appeals site itself remains in the same physical and functional form as it was in 2007, forming part of a wide area of Green Belt with an estuarine landscape, characterised by open grassland and used for grazing.
- 8.2.13. Mr Scott agreed in cross-examination that there were no material differences between the proposed development and the 2007 scheme in

¹⁸⁹ Mr Bell XX

¹⁹⁰ APP/LANVIS/1 paragraph 4.2

terms of their impact on the landscape and their visual impact. The findings and conclusions of the Inspector in relation to the 2007 scheme¹⁹¹ therefore are also applicable to the proposed development. So judged, the proposed development may confidently be found to result in substantial harm both to the openness of the Green Belt, to undermine the purposes of including land in the Green Belt, and to give rise to significant and adverse landscape and visual impacts.

8.3. **The impact on the local road network**

Existing conditions

- 8.3.1. Mr Caneparo's evidence addresses the current traffic conditions in and around Dartford Town Centre and the impacts that the appeals scheme is likely to have on the local road network. The present situation is that the local and strategic road network¹⁹² is frequently subject to periods of congestion, disruption and delay due to the occurrence of incidents or high traffic flows at the Dartford Crossing and its approach along the M25. An incident at the Dartford Crossing can have a significant and prolonged adverse impact on the operation of the local and strategic road network in Dartford. The effect of such congestion and delay on the local and strategic road network is that traffic 'reassigns' throughout the local road network, with drivers 'rat running' - diverting to try to avoid queues and taking an alternative route to their destination through the Town Centre and its approach roads.
- 8.3.2. Mr Caneparo demonstrated the various 'pinch points' on the local road network¹⁹³. He emphasised in evidence in chief that the key constraint is the Dartford Crossing itself, which is frequently over capacity. When there is an 'incident' at the Dartford Crossing, such as a lane closure, or accident, this leads to tailbacks on the A282 Tunnel Approach. This in turn leads to a significant amount of congestion and delay on the A206 Bob Dunn Way eastbound towards junction 1A, because vehicles struggle to get onto the strategic road network. The TA¹⁹⁴ shows junction 1A operating at high levels of saturation during peak times of day. In the opposite direction westbound on Bob Dunn Way, the 'pinch point' is at the Craymill Rail Bridge, immediately to the west of the roundabout junction of the A206 and the A2026, the A206 (Thames Road). Here the road narrows to one lane in each direction (two lanes in total) as it passes through the Craymill Rail Bridge. This, he observed, results in congestion, queues and delay, which encourages drivers to reassign through the Town Centre¹⁹⁵.

¹⁹¹ CD5.2 paragraphs 15.12-21

¹⁹² See section 2.2-the highway network.

¹⁹³ INQ/21.

¹⁹⁴ CD/1.27.

¹⁹⁵ DBC/W2/2 Appendix PC9 is an image of the resulting traffic conditions in Dartford Town Centre that Mr Caneparo describes.

- 8.3.3. These conditions are a matter of record, as Mr Caneparo demonstrates in his proof¹⁹⁶. KCC's *Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031)* (LTP4)¹⁹⁷ states:

The major interchange of two strategic traffic routes, the M25 and the A2(T) is located within Dartford. Both of these routes, but particularly the A282 (Dartford Crossing), suffer from congestion at peak times and when there are traffic incidents...Incidents at the Dartford Crossing and its approach are frequent and severe.

- 8.3.4. Highways England's *Lower Thames Crossing Route Consultation 2016*¹⁹⁸ states:

The existing crossing is at capacity for much of the time and is one of the least reliable sections of the UK's strategic road network of motorways and major roads. Road users regularly experience delays and unreliable journeys and, when there are incidents, the congestion at the crossing quickly causes congestion on local roads and arterial roads in and out of London.

- 8.3.5. There is evidence before the Inquiry that such traffic congestion and disruption, and its impacts on the convenience of highway users, air quality, and quality of life for residents in Dartford, is considered to be an unwelcome but inescapable fact of life in the local community. See, for example, the oral evidence of Mr Bell and of the Leader of the Council, Councillor Kite. Councillor Kite spoke of the problem taking up a significant proportion of the Council's strategic planning resources and efforts. He spoke of continuous efforts to 'shave off' traffic congestion, and the frustration when such marginal gains were reversed by unplanned development. Mr Bell stated in cross-examination that he could '*sit and talk for a long time and talk about traffic in Dartford*'.
- 8.3.6. There is no real dispute about these matters. Mr Findlay acknowledged that congestion can be particularly severe on the A282 approaching the Dartford Crossing and that this was a well-known and common occurrence. He further agreed that this made it difficult for traffic to get on and off the strategic road network and that this can result in drivers seeking alternative routes by 'rat running' along local roads through the Dartford Town Centre.
- 8.3.7. Essentially, both Mr Caneparo and Mr Findlay (in cross-examination) accepted the careful and detailed analysis of the existing conditions on the local road network set out in the local highway authority, KCC's, very thorough consultation response to DBC on the appeals scheme¹⁹⁹. Taken with the commentary in the LTP²⁰⁰, the key points are:

¹⁹⁶ DBC/W2/1 Paragraphs 4.38-4.44

¹⁹⁷ CD/4.4 paragraph 4.39 page 32

¹⁹⁸ DBC/W2/2 Appendix PC6 page 6 para 4.

¹⁹⁹ DBC/W2/2 Appendix PC1 – KCC dated 4 April 2017

²⁰⁰ CD/4.14

- a) KCC supports modal shift to rail (including Howbury Park) if it (a) doesn't adversely affect peak rail passenger services and (b) impacts on the local road network are properly mitigated;
- b) High levels of development are taking place in Dartford with the result that parts of the local road network are reaching capacity;
- c) The Dartford Crossing/A282 suffers from congestion at two distinct times: (a) at peak times and (b) when there are traffic incidents;
- d) The consequence of these two categories of events is (a) congestion spreads out into the Town and (b) the performance of the local road network reduces over a very wide area;
- e) Incidents at Dartford Crossing are frequent and severe; and result in rat running that causes further congestion. The problem of congestion and rat running through the Town Centre is pre-dominantly caused by such incidents;
- f) Dartford Crossing has been closed partially or completely for an average of 300 times per year, for a period of 30 minutes or more. It can take 3 to 5 hours for the roads to clear following a closure;
- g) Measures to improve the performance of the Dartford Crossing have been mixed in their effectiveness – KCC has made numerous changes to signal timings to try to smooth flows – but the problems lies in the tailing back of traffic on the M25 which causes exit blocking at junction 1A and other junctions to the south. What is needed is a major new slug of capacity to relieve the M25 and the existing river crossing – such as the Lower Thames Crossing.

Impact of the proposals

- 8.3.8. The modelling work submitted in support of the appeals scheme does show that during normal functioning of local highway conditions, the network has capacity to absorb the traffic generated by operation of the development, albeit that the HE cap is considered a necessary constraint on the operation of the appeals scheme during peak hours in order to provide a degree of resilience at junction 1A and junction 1B. Even during normal conditions, the introduction of the scheme traffic through junction 1A results in degrees of saturation at peak times that approach full saturation²⁰¹.
- 8.3.9. '*Normal conditions*', however, are not the focus of DBC's concern. That focus is upon the propensity of the additional traffic generated by the operation of the proposed development to add to the congestion and

²⁰¹ CD/1.27 paragraphs 9.11.3-4 and Table 9-14 '*During the AM peak period the addition of the development related trips increases the maximum DoS from 89.8% to 93.8% with the maximum DoS remaining constant during the PM peak*' (96.7% PM Peak). Table 9-15 PM Peak on the southbound off-slip increase from 86.4% baseline to 96.0%. CD/1.30 para 3.5.4 '*...the impact of the Howbury Park development is negligible, with the maximum degree of saturation (DoS) during the PM peak hour increasing from 97.0% to 98.3% on the western roundabout and reducing slightly on the eastern roundabout from 108.9% to 108.5%.*' (Inspector's note: in answer to my question, Mr Findlay confirmed that a Degree of Saturation (DoS) of 90% is the point at which the Practical Reserve Capacity has fallen to zero).

delays that already result from the incidents that frequently affect the road network in and around Dartford Town Centre.

- 8.3.10. It is not in dispute that the latter point, which is the crux of DBC's traffic objection, must be addressed primarily as a matter of judgement. It requires a qualitative rather than a quantitative assessment. As Mr Findlay acknowledges in his proof and confirmed in cross-examination, the modelling work cannot provide a reliable assessment of the performance of the road network under the conditions that result from the kind of frequent incidents that disrupt the strategic and local road network through Dartford²⁰². That was also the position as recorded in the TA itself²⁰³.
- 8.3.11. TfL has 5 strategic highway assignment models covering the London area, which are used to forecast the routes that drivers choose and the associated congestion and delay impacts. For the purposes of exploring options for a new river crossing, TfL has adapted its East London Highway Assignment Model to create a River Crossing Highway Assignment Model (RXHAM), which has a reference year of 2012 to which the model has been validated by TfL²⁰⁴. Mr Findlay exemplified the modelling limitation by explaining that the RXHAM model, to the extent that it reassigns traffic, does so by assuming a degree of foresight from a driver. The 'reassigned' route is planned from the outset of the model. However, that does not necessarily reflect driver behaviour in real life. In real life, a driver will be caught up in an incident unexpectedly. Drivers make random choices and choose random routes. Even with the aid of navigation devices, drivers do not make strictly rational decisions and will often get to the source of the congestion or delay before making a choice whether to, and if so how to, re-route. He said in cross-examination that caution should be exercised before drawing any conclusions about the traffic impacts of Howbury Park during an incident scenario from the RXHAM model. His attempt to model an incident scenario at paragraph 4.5 of APP/TRAN/1 was at best an 'indication' of the impact of an incident on the road network.
- 8.3.12. KCC's judgement, based on their long experience of the challenging conditions that often beset the local road network and the reasons that they arise, is clear. The significant increase in HGV/LGV movements associated with the operation of the proposed development will inevitably exacerbate local traffic congestion and lengthen existing traffic queues, particularly when 'incidents' occur which disrupt the flow of traffic on the approach to the Crossing and the M25 through junction 1A and junction 1B²⁰⁵. DBC relies upon that judgement and invites the Secretary of State to do so. It plainly supports the conclusion that the proposed development would give rise to other harm which should weigh in the balance in applying Green Belt policy, as summarised in paragraph 8.1.2 above.
- 8.3.13. Mr Caneparo also addressed the propensity for greater levels of traffic to divert or reassign from the A206/Bob Dunn Way/Thames Road by reason

²⁰² APP/TRAN/1 paragraphs 4.5.5, 4.5.23 and other references put in XX on this point

²⁰³ CD/1.27 paragraphs 9.13.1-3.

²⁰⁴ CD/1.27 volume 3b pages 33/34.

²⁰⁵ DBC/W2/2 Appendix PC1 pages 11-13

of the proposed access roundabout being affected by the narrowing of the A206 as it passes across the Craymill Rail Bridge to the west of the roundabout. Observation shows that this constraint can give rise to exit blocking at present caused by westbound traffic queuing back from Thames Road across the roundabout at peak times. Development traffic accessing and leaving Howbury Park, which would all access the appeals site via the Bob Dunn Way/Burnham Road/Thames Road junction and so add to existing flows, could (a) lead to reassignment of traffic away from the already congested Bob Dunn Way/A206 and (b) lengthen queues on the Bob Dunn Way/A206. This also, he suggested in evidence, raised the significant risk of worsening congestion and delays in Dartford Town Centre owing to significant reassignment of traffic.

- 8.3.14. The TA modelled the performance of the A206/A2026 roundabout, from where the site would be accessed, using ARCADY software. However, modellers were unable at the time of the TA preparation in 2015 to satisfactorily validate the peak period surveyed queues against the queues produced by the TA ARCADY model. This was due to the blocking back from Craymill Rail Bridge. In order to allow some comparison of roundabout performance with and without the appeals proposal, it was modelled on the assumption that the Craymill Rail Bridge constraint no longer existed: the results show a ratio of flow to capacity (RFC) for the roundabout above 0.85 with the development traffic²⁰⁶. However, there is no current timetable for the removal of the Craymill Rail Bridge constraint, which has been assumed by the TA²⁰⁷.
- 8.3.15. In seeking to better understand the effect of the Craymill Rail Bridge constraint on the operation of the A206/A2026 roundabout, Mr Caneparo produced an alternative site access roundabout junction model using a newer version of ARCADY (2017) than that relied upon in the TA, which introduces the ability to model the 'bottle neck on the A206 Thames Road exit from the junction. Whilst, in comparison with the 2015 observed queues from the TA, his base case model underestimates the queue on the Bob Dunn Way approach in the AM peak period (when the observed queues are highest), his queue outputs are closer to the observed in comparison with the outputs from the TA model²⁰⁸. Mr Caneparo used his alternative base case model to produce alternate models for the 2031 base case and 2031 base case plus development case (2031BCDC).²⁰⁹

²⁰⁶ CD/1.27 paragraphs 4.6.5-4.6.9 and 9.8.2. (Inspector's note: In response to my question, Mr Findlay indicated that whilst normal practice is that a RFC > 0.85 indicates that the practical capacity of a junction would be exceeded, in his view, a RFC value of 1.0 is reasonable in London, as the associated queues are likely to be acceptable due to the congested nature of the network. No evidence was provided in support of that view.)

²⁰⁷ DBC/W2/2 Appendix PC4 – email from Bexley BC dated 16 May 2018

²⁰⁸ DBC/W2/1 page 14 table 4.1.

²⁰⁹ (Inspector's note: INQ/34 and APP/TRAN/4 para 2.3.21.- On Bob Dunn Way, the 2031BCDC AM Peak model indicates that queues would increase by around 800 PCUs and delays by around 18 minutes. Mr Caneparo acknowledges that in practice, such queues would be unlikely to be realised, as vehicles would be likely to re-assign to different routes to avoid the congestion/delay at the A206/A2026 junction. However, he indicated that as there isn't a properly validated model, it is difficult to understand the future operation of the junction with and without the proposed development. He identifies that the only RXHAM model that appears to take account of the existing effect of the Craymill Rail Bridge constraint is Mr Findlay's 'sensitivity model', which suggests that, in the AM Peak, traffic passing through the junction would reduce substantially' through re-assignment, by some 1,300 pcus to around 550 pcus on the Bob Dunn Way approach.)

- 8.3.16. However, the ARCADY modelling results are unsatisfactory. Firstly, there is no current timetable for the removal of the Craymill Rail Bridge constraint, which has been assumed by the TA²¹⁰. Secondly, there is, as we submit, an unresolved debate about the correlation between observed and modelled traffic flows through the roundabout and the impact of the Craymill Rail Bridge constraint²¹¹. What may be said, however, is that the assessments point to the likelihood that the development traffic passing through the roundabout will result in a significant increase in reassignment of other traffic that would otherwise have routed through the roundabout; and that at least a substantial proportion of that traffic would be likely to divert through Dartford Town Centre²¹².
- 8.3.17. In summary, DBC invites the Secretary of State to give substantial weight to the judgement of KCC, as the local highway authority, on the likely impact of the proposed development on the local road network. Mr Caneparo shows that judgement to be well founded - the impact of the proposed development on an already congested local and strategic road network would be increased reassignment of vehicles onto the local network in and around Dartford Town Centre. Mr Caneparo's judgement was that this impact could be severe²¹³.
- 8.3.18. Dartford Core Strategy 2011 Policy CS15²¹⁴ is aimed at managing transport demand for development and advises that the successful achievement of Dartford's economic potential and the creation of cohesive and prospering communities is dependent on a good transport network. Dartford Development Policies Plan 2017 Policy DP3²¹⁵ states that development will only be permitted where it is appropriately located and makes suitable provision to minimise and manage the arising transport impacts in line with Core Strategy policies CS15 & CS16.
- 8.3.19. Notwithstanding their judgement about the *impact* of the proposed development, KCC drew back from recommending refusal on the basis that the impact was not severe and so did not meet the test for free standing refusal on highway grounds in the Framework (and see Policy DP3.2 in CD3.18). DBC took a different view on that point, as KCC acknowledged was open to them. But the overall judgement and advice of KCC that '*the residual impact of this development is likely to be characterised by additional local traffic generation and some consequent increase in congestion, which the applicant cannot fully mitigate and that may also cause a worsening in local air quality.*'²¹⁶ is a clear finding of 'other harm'. Substantial weight should be given to that other harm in the overall planning balance.

²¹⁰ DBC/W2/2 Appendix PC4 – email from Bexley BC dated 16 May 2018

²¹¹ See the detailed exchanges in xx of Caneparo and Findlay in relation to the validation results in Appendix E of CD/1.30.

²¹² DBC/W2/1 paragraph 5.36

²¹³ (Inspector's note: Regarding the appeals site roundabout, Mr Caneparo's judgement was that, as a result of growth, by 2031 queuing on the Bob Dunn Way would be likely to be severe).

²¹⁴ CD/3.17

²¹⁵ CD/3.18

²¹⁶ DBC/W2/2 Appendix PC1 page 13.

Mitigation-the Transport Management Plan

- 8.3.20. It is not in dispute that the effectiveness of the TMP is a critical factor to the judgement whether the transport impacts of operating the proposed development are acceptable. It is submitted that there remain serious doubts over the TMP's effectiveness in the light of both the evidence and the discussion of planning obligations on 25 September 2018.
- a) There is no clear evidence that further work to refine the operation of J1A is likely to achieve any significant improvement in its operation²¹⁷. We understand KCC to say that the MOVA system would not be KCC's choice (in contrast to Mr Findlay in X) and that a SCOOT system was under consideration;
 - b) The principal management tools to be deployed under the Freight Management Plan element are the HE Cap and routing restrictions which seek (a) to limit additional HGV traffic passing through junction 1A and junction 1B at peak times and (b) to confine HGV traffic to and from the proposed development to the A206 and the M25, avoiding the local roads through Dartford Town Centre;
 - c) Neither of these tools appears to have been tested in operation in relation to an existing SRFI or in a road network which displays the propensity for congestion, disruption and delay that is the case here. Mr Caneparo's account²¹⁸ of the operation of a similar regime of traffic management at Andover (the only example that is known in evidence before the Inquiry) does not give confidence that the proposed ANPR/vehicle monitoring system, a key element of the proposed traffic management regime, can be relied upon to operate effectively as a control mechanism. Evidence of very significant levels of breaches, in the region of 2000 separate incidents over a two-year period, and the high levels of penalties incurred point to the real risk that occupiers subject to such a regime will conclude that penalties are simply a business cost, and factor them into their expenditure. Although, understandably, the appellants assert that this risk will be effectively managed in the case of the proposed development, the evidence shows that realising that ambition in practice may be far from straightforward;
 - d) The degree of that risk sharpened in the light of the observations of both Highways England and KCC during the discussion on 25 September 2018. Both those highway authorities emphasised the administrative challenges involved in managing breakdowns in the vehicle monitoring system and the lack of nimbleness in resolving glitches and operational problems. The Highway Authorities may require up to 1 month notice of the need to rectify a fault before access would be granted. Yet that system is the single most critical element in the effective operation of the Freight Management Plan, since it is that system which enables the regulatory bodies to judge whether the routing controls are being complied with day to day; and,

²¹⁷ See 14.1.8.

²¹⁸ DBC/W2/1 paragraphs 5.30-5.38

e) Self-evidently, the TMP is able only to control the transport operations of the proposed development. It does not seek to and cannot to manage adverse impacts associated with the reassignment and diversion of existing or other traffic on the road network resulting from the increase in traffic flows created by the proposed development²¹⁹.

- 8.3.21. In summary, it is submitted that this complex and untested traffic management regime should be viewed with considerable scepticism. It must bear a very heavy burden of control in the context of the congested and often dysfunctional road network in which it seeks to operate. Its effective performance in practice, from Day One of operation, is critical to the appellants' own case in support of the appeals scheme. It requires, on any view, considerable operational restrictions on a complex and vast transport undertaking which plainly cut across the natural operating dynamic of that undertaking, severe peak hour traffic restrictions and a vehicle routing controls which are of questionable efficacy in practice in the case of a multi-occupancy facility. DBC invites the Secretary of State to conclude that the TMP does not give the required level of confidence that the transport impacts of operation of the proposed development on the road network in and around Dartford Town Centre are likely to be managed to an acceptable degree.
- 8.3.22. DBC maintains its argument that the section 106 agreement should spell out the key components of the TMP as minimum requirements which must be secured under any future review or edition of the TMP. This is necessary to ensure that those minimum traffic management measures which, on the appellants' case, are said to be essential to the acceptable operation of the proposed development in controlling its transport impacts, are not at risk of being adulterated through the work of the Steering Group. The requirement to secure the approval of the statutory planning and highway authorities to any subsequent review of the TMP under the aegis of the section 106 agreement is necessary to provide a further level of legal and practical assurance that those minimum requirements will remain in place and will be complied with.
- 8.3.23. In relation to DIRFT III Development Consent Obligation dated 16 December 2013²²⁰. The appellant suggested that the document submitted provides an example of steering group operation and TMP effectiveness. In fact it does the opposite and supports DBC concerns:
- a) Firstly, this document includes an express contractual obligation on the owners to procure compliance with the Travel Plan by future occupiers of the development. Plainly that obligation would be enforceable against the developers;
 - b) Secondly, the requirements of the Travel Plan are contractually bound into the section 106 agreement, by the definition of the Travel Plan in the section 106 agreement and its incorporation into the section 106 agreement as schedule 4 to the agreement;

²¹⁹ DBC/W2/1 paragraph 5.33

²²⁰ INQ/104.

c) Thirdly, the section 106 agreement does not contemplate any change by way of dilution to any of the requirements of the Travel Plan. Rather, it contemplates change to address two matters:

- a. Firstly, unforeseen traffic impacts; and,
- b. Secondly, additional highway works.

So the measures in the plan are minimum requirements and the scope of review amounts to a one way ratchet upwards.

d) Fourthly, the role of the review group is limited principally to monitoring and reviewing the operation and performance of the Travel Plan itself. It does not extend to changing its key requirements. Any change adopted by the Review Group is confined to the MILNE envelope; and,

e) Fifthly, the overall role of the Review Group within this document is advisory rather than executive in so far as the contents of the Plan are concerned. Any executive role is focused on implementing the Plan rather than changing it.

8.3.24. What we draw from that analysis, is that this document (the section 106 agreement and Travel Plan), if it is to be seen as a comparator for the arrangements sought to be achieved here, provides the clarity and enforceability that DBC seeks in the present case, and that it has consistently sought throughout the process.²²¹

8.3.25. DBC reluctantly signed up to the provisions set out in the agreed draft, reflecting those that were set out in the LBB agreement, but subject to making submissions about its remaining concerns.

8.3.26. DBC relies on the DIRFT III document as completely consistent with the concerns that it has put forward, so we are grateful for its introduction. Far from casting doubt on DBC's position, it actually reinforces it.

8.3.27. We would invite the Inspector, in order to assist the Secretary of State, to draw attention to these concerns and consider recommending to him that if he is minded to grant planning permission he requires the changes that DBC has put forward to be made to the section 106 agreement in order to address those matters.

8.4. **The impact on local air quality**

8.4.1. DBC has designated four Air Quality Management Areas ('AQMAS'). It is common ground that the purpose of these AQMAS is to bring about a reduction in pollution from NO₂, which results predominantly from traffic congestion.

²²¹ INQ/67.

- 8.4.2. It is common ground that the highest NO₂ concentrations in Dartford are consistently monitored in the 2 AQMAs which are the focus of DBC's objection: the A282 road link AQMA and Dartford Town Centre AQMA.
- 8.4.3. Adverse air quality impacts of the proposed development would constitute 'other harm' in the Green Belt policy balance, and in accordance with DP22.
- 8.4.4. Dr Maggs explained in his evidence the role that local authorities, such as Dartford, have to play in improving air quality on a local level in order to achieve national compliance with European Union (EU) air quality standards. The need to comply with air quality standards has become an increasing focus of attention in respect of environmental protection, health and compliance with EU legislation. Whilst Government is focusing on the national level to achieve EU Limit Value compliance, Dartford, like many local authorities with areas of poor air quality, is endeavouring to improve air quality at the local level. The two efforts are not mutually exclusive to each other and the Framework recognises that local authorities have a contribution to make in respect of assisting Government to achieve EU Limit Values, and that planning has a role to play in safeguarding local air quality through development control.
- 8.4.5. In terms of the existing air quality conditions in Dartford, Dr Maggs said, that in general, levels of NO₂ across the borough have shown improvements in the last couple of years, although a number of monitoring locations have shown increases in the levels of NO₂ and that recent improvements have not achieved compliance with the annual mean NO₂ objective of 40µg/m³, the pollutant which forms the key focus of concern.
- 8.4.6. Dr Maggs' evidence in relation to the impact of the appeals scheme was that, while it was common ground with the appellant that air quality improvements had been shown, his judgement was that the impact of the additional traffic congestion that would result from the operation of the proposed development created an uncertainty over whether that trend or improvement would continue or, instead, plateau out. This would thus slow the time period for achieving compliance with the annual mean NO₂ objective in Dartford and would have an impact on the amenity and quality of life of those living in Dartford.
- 8.4.7. The evidence of the appellant's *Air Quality Assessment* is that impacts of the scheme in 2021 are Moderate to Slight Adverse, but largely Negligible at the majority of the sensitive locations appraised in their modelling work²²². This assessment is based on the Transport Assessment. Cross-examination of Dr Tuckett-Jones accordingly focused on the limitations of that Transport Assessment as an evidence base for reliable air quality modelling– in particular, the likely impacts on air quality of periods of congestion and disruption in the road network in and around Dartford.
- 8.4.8. Dr Maggs' judgement is that the *exacerbation* of the existing congestion and delay on the local road network, leading to an increase in idling

²²² CD/1.27 volume 2 section G pages 23/24 and CD/1.30 pages 35/36.

emissions, calls into question the reliability of the appellants' traffic model based assessment of the potential air quality impacts of the appeals scheme in periods of congestion and disruption resulting from the frequent traffic incidents experienced on that road network²²³. Dr Tuckett-Jones accepted in cross-examination that it would be necessary in an air quality assessment to examine the effect of a development that not only has the propensity to add to the volume of vehicles on the network but to exacerbate periods of congestion on the road network. We understood Dr Tuckett-Jones's evidence in cross-examination to acknowledge that, in the light of Mr Findlay's evidence (paragraph 8.3.10 above), the Transport Assessment did not provide the basis upon which reliably to model the air quality effects of such traffic conditions. We also rely on the analysis put to Dr Tuckett-Jones in cross-examination on paragraphs 3.2.26-3.2.32 of her rebuttal²²⁴ showing that this gap in assessment cannot be reliably filled by recourse to the verification factor applied to the air quality modelling exercise. It follows, in our submission, that it is necessary to consider this risk as a matter of judgement²²⁵. The appellants' reliance on the modelled output based on the Transport Assessment does not allow for this risk.

- 8.4.9. Policy DP5 of CD3.18 states - *'Development will only be permitted where it does not result in unacceptable material impacts, individually or cumulatively, on neighbouring uses, the Borough's environment or public health. Particular consideration must be given to areas and subjects of potential sensitivity in the built and natural environment (including as highlighted on the Policies Map) and other policies, and other potential amenity/ safety factors such as...air and water quality, including groundwater source protection zones'*.
- 8.4.10. Policy DP3 provides that development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on air quality.
- 8.4.11. It is submitted that there remains a significant risk that the addition of the development traffic into the road network from the early 2020s during periods of congestion and disruption will result in increases in NO₂ emissions on local roads, including within designated AQMAs. The creation of that risk runs contrary to the tide of national and local policy and could undermine DBC's efforts to achieve local compliance with air quality standards in the quickest time possible.
- 8.5. **Whether very special circumstances exist, which clearly outweigh the harm**
- 8.5.1. In granting the 2007 planning permission, the two most important factors that were given weight by the Inspector and the Secretary of State in the previous appeal were²²⁶:

²²³ DBC/W3/1 paragraphs 7.11 and 7.20

²²⁴ APP/AQ/4

²²⁵ DBC/W3/1 paragraph 7.11 - see also the judgement of KCC at DBC/W2/2 Appendix PC1 page 13 (top)

²²⁶ CD/5.2, para 15.185 and CD/5.3, para 31.

- a) The ability of the proposal to meet part of London's need for 3 or 4 SRFIs, to which the Secretary of State afforded significant weight; and,
- b) The lack of alternative sites to meet this need, to which she afforded considerable weight.

8.5.2. We have set out our key submissions in support of DBC's case on the Green Belt planning balance in the first part of these submissions. It is necessary briefly to address some other issues that have been debated during the course of the Inquiry.

Adequate links to road and rail-paragraph 4.85 of CD/2.2

- 8.5.3. We have summarised DBC's submissions on the impact of operation of the proposed development on the road network. The GLA has taken the lead on the adequacy of the proposed connection onto the rail network, the physical and functional challenges that must be overcome in order to provide that connection and the likely limits of the operational rail capability of the proposed development given other demands on rail capacity in the Slade Green area.
- 8.5.4. We submit that paragraph 4.89 of the NPSNN does not absolve the appellant from providing sufficient evidence to give reassurance that the rail connection is able to accommodate the minimum level of train handling (4 trains per day) that policy requires of a SRFI. The policy requirements in paragraphs 4.85 and 4.89 must plainly be read together. Adequacy of rail connection between the site and the rail network is as critical a component of SRFI function as is the ability of the site itself to accommodate the required minimum train handling facilities. The distinction that Messrs Gallop and Scanlon sought to draw between the requirements of these paragraphs is unconvincing and would risk defeating the underlying policy objective of encouraging modal shift from road to rail.
- 8.5.5. In this regard, the approach of the Inspector²²⁷ in 2007 remains correct; *'Put simply, if the proposal would, for any reason, not operate as a SRFI then it should not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build road-served warehouses on open land in the Green Belt around London would not come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal'*.
- 8.5.6. It follows that the Secretary of State must consider and come to a judgement on whether the appeals scheme will in fact operate as a SRFI. We understand that the GLA will address this issue in detail in closing submissions. DBC's position is that, after hearing the evidence at the Inquiry, there is a substantial level of doubt over the physical arrangements that the appeals scheme requires in order to enable effective rail access between the railway and the site. Additionally, there is uncertainty as to whether, once such a link is provided, there will be the operational capacity to deliver the scale of rail-based operations that are

²²⁷ CD/5.2 para 15.178.

the basis for the appeals scheme. We submit that it is crucial in this context to have in mind that Howbury Park is in the Green Belt. Uncertainties in the proposed development's ability to fulfil the policy expectations for the function of a SRFI in the NPSNN go directly to diminish the weight to be given to the appellant's case, that the SRFI function provides the very special circumstances needed to justify the grant of planning permission.

- 8.5.7. In particular, there remains a lack of clarity in the position of Network Rail. Network Rail have made no direct submission to the Inquiry. The Inquiry has therefore had to proceed on the basis of Network Rail's reported consultation response to LBB and DBC. Yet those responses are conflicting, as Mr Gallop asserted²²⁸. The appellants naturally prefer the supportive response given to LBB. But there is no good reason to dismiss the email responses provided to DBC, INQ/25 in January 2016 and January 2017, the latter provided by Network Rail not only after the response to LBB (which was provided in autumn 2016²²⁹), but also following the apparently incomplete GRIP2 timetable study, INQ/3. The response to DBC is clear (email of 6 January 2017), Network Rail continues to have concerns about the proposed development. Yet neither Network Rail nor the appellants has informed the Inquiry of the nature of those concerns or whether they remain. This uncertainty adds to the weight that is due to the GLA's analysis of the likely physical and operational rail capability that would be available to the proposed development were planning permission to be granted; it fills the gap in evidence. It also lends support to the case for the tighter controls on delivery and operation that are sought in the GLA's/DBC's versions of conditions 6 and 30 and, in the case of Bexley, condition 6. Neither of the matters I have set out is resolved wholly or in part by INQ/99.

Other claimed benefits

- 8.5.8. It is submitted that the other claimed benefits of the appeals scheme should not weigh significantly in the planning balance and do not add substance to the appellant's asserted case for very special circumstances.
- a) The NPSNN makes clear²³⁰ that the applicant should show how the project has taken advantage of appropriate opportunities to conserve and enhance biodiversity and ecological conservation interests. It is a requirement of national policy that the appeals scheme should deliver ecological mitigation, including enhancements that are appropriate to and in proportion to its context and impacts on biodiversity. The Marshes Management Plan fulfils that policy requirement. Although it differs in its detail to that which was proposed in 2007, Mr Goodwin did not maintain his claim in oral evidence that it was a significant improvement on that earlier plan. It is submitted that the Plan remains a welcome element of the appeals scheme, but not one that weighs significantly in favour of the proposed development in the Green Belt balance;

²²⁸ APP/RAIL/1

²²⁹ INQ/25, see email from Guy Bates (Network Rail) to LBB dated 5 October 2016.

²³⁰ see CD/2.2 para 5.23.

- b) The contribution that SRFI development can make to modal shift and reducing CO₂ emissions is central to the Government's identification of a compelling need for such facilities: see paragraphs 2.53/54 and 2.56 of the NPSNN. It would be wrong in principle to weigh those factors in the Green Belt planning balance over and above the significance given to the ability of the proposed development to meet that compelling need. To treat CO₂ emissions savings as an additional benefit of significant weight would be 'double counting';
- c) DBC maintains the submission that the economic benefits asserted by the appellant should not attract significant weight in the Green Belt balance. It is not in dispute that there is no identified need for the proposed development to serve Dartford on economic grounds. Dartford has low unemployment. Core Strategy 2011 policies CS1 and CS7 set up a clear spatial strategy for development in Dartford to ensure future economic growth and jobs. Howbury Park is not a necessary element to the delivery of this strategy. Furthermore, there is a risk that the proposal would displace class B8 development which might otherwise come forward on non-Green Belt land²³¹. The Secretary of State is invited to take the same approach as in 2007 [CD/5.2 paragraph 15.150] and conclude that the employment benefits that would flow from the development should not weigh significantly in deciding whether planning permission should be granted.

Overall balance

- 8.5.9. DBC's submission, in the light of the evidence heard at this Inquiry, is that the appellant has not demonstrated very special circumstances to justify the grant of planning permission. The balance has shifted since 2007 in relation to the two critical considerations that tipped the case in favour of planning permission in 2007 – the ability of the proposed development to meet the identified need for SRFIs in national policy and the lack of viable alternative sites. The substantial harm to the Green Belt and other harm (landscape, visual, traffic and air quality impacts) that is likely to result from the appeals scheme is no longer clearly outweighed by those other considerations advanced by the appellants in the light of the evidence before the Inquiry. The appeals should be dismissed.

²³¹ DBC/W1/1 para 5.64.

9. THE CASES FOR OTHER OBJECTORS REPRESENTED AT THE INQUIRY

9.1. Mrs C Egan²³²(CE)

- 9.1.1. I moved to Moat Lane 22 years ago and I live opposite the fields that comprise the appeals site. I have followed the planning process since 2004. I wrote to the Council expressing my concerns in 2004, in 2006 I wrote to my Member of Parliament, in 2007 I spoke at the planning meeting and in 2015 I spoke to the planning team.
- 9.1.2. In my view, the appeals site, which I consider to be countryside, should not be touched by development, as the fields go back many centuries. The proposal would result in the loss of local Green Belt land and it would also affect the open natural outlook from properties onto the Crayford Marshes and cause a reduction in the open space for local residents' leisure time.
- 9.1.3. In and around Crayford Marshes there is an amazing amount of wildlife. The ecology of the Marshes and local farm land could be disturbed by the proposal, with serious implications for wildlife, including protected species, such as bats and water voles, birds, insects and foxes as well as wild flowers. Furthermore, the previously approved scheme, by Prologis, included reinstatement of hedgerows alongside Moat Lane, after the construction was finished. The current proposal does not. I consider that the hedgerows should be preserved for local wildlife.
- 9.1.4. Heavy rail traffic could cause vibration damage to surrounding homes. My daughter lives in Holloway and has had to have her home underpinned because of rail related vibration. Damage could also be caused by the HGVs entering the site and by on site plant and heavy machinery. There would be a great deal of mess, dust and noise around the construction site for a number of years. Construction and 24 hour operations at the site would have a detrimental impact on the everyday lives of local people. It may also have an adverse impact on the value of adjacent properties. A warehousing site with 24 hour operation could also cause light pollution, which would be a significant nuisance to wildlife and would harm local residents' health.
- 9.1.5. Local highway traffic has increased greatly over the years; causing noise and extra pollution problems on the roads. Traffic on the local dual carriageway into Slade Green, the A206, is often slow moving or jammed. It is a safety hazard even trying to cross Moat Lane, due to parked cars, which narrow the carriageway and can make it difficult for existing double decker buses to pass. Local roads would not be able to cope with heavy trucks entering and exiting the appeals site via Moat Lane.
- 9.1.6. The Marshes and fields act as a local flood defence. I am concerned that development of the appeals site may result in local roads being flooded.

²³² INQ/29.

9.2. **LA21 Traffic/Transport Forum (LA21)**²³³

- 9.2.1. The Bexley LA21Traffic/Transport Forum has around 40 members and represents the views of the membership, concerning traffic/transport matters, to the Council.
- 9.2.2. LA21 objected when a similar application was submitted by Prologis some 10 years ago. At the associated public Inquiry, those attending heard from Prologis who told the Inspector that there was an urgent need for such a development. Although LA21 acknowledges that the recession may have delayed implementation of that scheme²³⁴, since then we seem to have coped rather well without this development.

Rail

- 9.2.3. The appeal proposal involves development in the Green Belt. Special circumstances are necessary for the appeal to succeed. The special circumstance cited by the appellant is the provision of a rail freight connection.
- 9.2.4. The rail link proposed is directly across, and into, the complex passenger service network for both commuting and off peak rail travel services, with proposed freight services passing through the 2 pinch points of Crayford Creek Junction and Lewisham Junction²³⁵. Lewisham Junction is confirmed by Network Rail as being complex²³⁶.
- 9.2.5. As frequently stated by the appellant during the Inquiry, Network Rail will only determine in the future what rail services can be run, according to bids made by potential operators nearer the time²³⁷. There is no guarantee that the proposed freight services can be run, nor that as a consequence of the appeals proposal passenger services would not be reduced in quantity and the variety of destinations²³⁸. Network Rail has not presented evidence to the Inquiry to predict the future interaction between freight and passenger services. With its data and computer modelling, it could have presented a future scenario depicting a potential operating network of freight and passenger services for the Inspector to consider and examine²³⁹. No such scenario has been presented for examination. Only late assurances that 'it would be alright on the night', which is not acceptable²⁴⁰.
- 9.2.6. Should Network Rail, after a bidding process, decide to schedule the freight train slots requested by a future site operator, expansion of the passenger network would be compromised by that freight using the limited passenger infrastructure²⁴¹. If, at any time in the bidding processes, passengers on this busy section of network are deemed a priority over freight, freight slots may

²³³ Consultation response 30 November 2017 and INQ/32.

²³⁴ XX Mr I Lindon.

²³⁵ INQ/23, INQ/30, INQ/59, INQ/80.

²³⁶ INQ/79.

²³⁷ INQ/54 (APP/RAIL/6) para 3.4.5.

²³⁸ INQ/54, INQ/30, INQ78 (train 4 in, train 2 out via Lewisham), INQ/79, INQ80.

²³⁹ INQ/30, INQ/78.

²⁴⁰ INQ/99 late submission email by Network Rail.

²⁴¹ INQ/23, INQ/30, INQ/78, INQ/80.

be refused²⁴². Therefore, there is a great deal of uncertainty over the operation of the site as a true rail freight interchange in the future.

- 9.2.7. In this Dartford and Bexley rail passenger service area, there is a real risk of the direct services to London termini on each of three lines being limited to accommodate the freight service²⁴³. For example, Cannon Street only for the Bexleyheath line, and Charing Cross only for the Sidcup line. Also likely is the total loss of the Denmark Hill (for Kings Cross Hospital) and London Victoria main line service. All to release rail capacity at Lewisham junction²⁴⁴.
- 9.2.8. It has been accepted that passenger demand for rail service will increase in the future²⁴⁵. The MOL prioritises improved rail passenger services for his road traffic and pollution reduction targets²⁴⁶. Bexley Borough has no Underground, DLR, tram or Fastrack bus services. In the Borough 2 north/south rail services via Canon Street/Slade Green/Cannon Street are a future essential link to/from stations on the Sidcup and Bexleyheath lines in the south, to new housing and employment areas in the north of the Borough²⁴⁷. Just as importantly to access the new transport hub provided by Crossrail (Elizabeth Line) on the northwestern corner of the Borough at Abbey Wood.
- 9.2.9. LA21 requests that the appeal should not be allowed on the grounds of: 1) inappropriate development in the Green Belt; 2) no guarantee that the freight services proposed can be accommodated by Network Rail on the local network; and, 3) the loss of passenger train infrastructure preventing future expansion together with the potential loss of destinations served.

Road

- 9.2.10. Since the previous appeal in 2007, several large local developments have taken place within Bexley. The Dartford Tunnel and Bridge now becomes blocked every day. Furthermore, it is very noticeable that more and more lorries are using our local roads. As a result, it is normal to have to wait at traffic lights through at least 3 cycles of the lights, as lorries take so much time to get moving, thus delaying all the cars behind them. The last thing that is needed is more lorries on the already overcrowded roads.
- 9.2.11. Both the A2 and A20 are well over capacity relative to their original design. The A2 comes to a standstill on average 3 times a week, due to accidents and the volume of traffic. Heavy lorries around Erith and Queen's Road are continuously held up. If a road bridge is allowed to be built into that location, the situation will become even worse.
- 9.2.12. Furthermore, the Belvedere Incinerator has recently been granted planning permission, which is likely to add to increased HGV traffic on the A206 Thames Road, although LA21 is not sufficiently familiar with the associated

²⁴² CD/3.3 page 87 Proposal 18 and page 25 'rail service enhancement'.

²⁴³ INQ/30, INQ/78, INQ/79.

²⁴⁴ INQ/79, INQ/78, INQ/80, INQ/63 (GLA/RG/09) para 2.37.

²⁴⁵ CD/3.3 page 87 Proposal 18 and page 25 'Rail Service Enhancement, CD/3.15 Bexley Growth Strategy para 2.3.2.

²⁴⁶ CD/3.3.

²⁴⁷ INQ/23, CD/3.15.

traffic data to quantify the likely impact in the vicinity of the appeals site. In addition, the Bexley 'Growth Strategy' includes building many more homes and other development within Thamesmead and Erith.

- 9.2.13. The *London Plan* seeks to reduce congestion and encourage alternative means of travel. The major problem with development, such as that which is proposed, is that although it does remove road traffic whilst the cargo is on the train, it then concentrates heavy volumes of HGVs in a very concentrated area, which requires an excellent road network to make it feasible. Other existing rail interchanges have several major roads to the sites. For example, the Freight depot in Daventry has 5 major roads on which to distribute heavy lorries. In contrast, local to the appeals site there is only 1, the A206, which is already busy. Furthermore, the proposed local access from Moat Lane would not help the situation.
- 9.2.14. If the appeal proposal is approved, against local wishes, both in Bexley and Dartford yet more heavy lorries would lead to narrow local roads coming to a complete standstill. Car usage by site staff would increase the pressure on local roads even further.
- 9.2.15. LA21 considers that the London Gateway site represents a better alternative to the appeals site for a SRFI²⁴⁸.

Environment

- 9.2.16. The proposed warehouses, being very large, would be forever noticeable in the area, irrespective of how much shrubbery is planted. This would especially be the case for local residents with views from the south and west towards elevated areas. Freight movements at night would impact on local residents, through sleep deprivation, not only due to noise, but also vibration, notwithstanding the proposed freight interchange would be a considerable distance from residential development²⁴⁹.
- 9.2.17. The development could easily have an adverse impact on Crayford Marshes, a site of environmental significance.

9.3. Slade Green Community Forum (SGCF)

- 9.3.1. SGCF is a registered charity, the aim of which is to act as a conduit between those doing things for or to the community and the community itself. It has around 160 members, comprising for the most part residents of the former Northend ward, and an elected board of trustees.
- 9.3.2. It is of course accepted by all sides represented at this Inquiry that the proposals constitute inappropriate development of the Green Belt. For people in Slade Green and surrounding areas, it is not just inappropriate development; it also represents a loss of amenity²⁵⁰.

²⁴⁸ XX Mr I Lindon.

²⁴⁹ XX Mr I Lindon.

²⁵⁰ INQ/42b para 4.1.

The previously approved scheme vs the appeals proposal

- 9.3.3. It is important to note that the application before this Inquiry diverges in various ways from the previously-consented application. Numerous planning obligations that were in the previously-consented application, a number of which balanced the loss of amenity, are not included in the current applications. The creation of an Environmental Studies Centre at the Tithe Barn and giving that to a Trust to run is no longer in there; the multiple local employment measures that were part of the previous planning obligations are not included alongside the current applications, nor have opportunities been taken to pursue other alternatives; nor are there access improvements to Slade Green station that might increase the chances of people with disabilities being employed at the SRFI site. Instead of a large part of Crayford Marshes being taken 'in perpetuity' into independent ownership through a Trust, they are instead to be managed for 25 years. The cost to the appellant is less unless the proposed Warden's office is taken into consideration, but that would not be needed if the Tithe Barn was also developed (obviously SGCF would prefer the Tithe Barn to be developed, in which case the amount of money would be almost right).²⁵¹
- 9.3.4. There is also concern in the community that the presence of the site will result in further losses of amenity and Green Belt land by increasing the likelihood in the future of a road being constructed across Crayford Marshes joining the site to Manor Road, Erith or Wallhouse Road in Slade Green²⁵².
- 9.3.5. Also diverging from the previously-consented application, the appeals proposal does not include various measures to promote the use of the site as a SRFI through subsidy and direct promotion, nor are there suitable alternatives to those measures. This gives rise to concerns that the site may simply not attract rail freight users, and that it may end up being occupied by companies only interested in using the site for road operations.²⁵³

Highway impacts and mitigation

- 9.3.6. The impact of the proposed SRFI on roads to the west of the site is unquantified by the appellant. SGCF considers that it would be substantial and would harm its community by the resulting increase in traffic congestion. It is unquantified due to failings in the traffic modelling. The starting-point data does not actually reflect the amount of traffic heading westwards from the site projected by the appellant. Mr Findlay stated that 90% of the HGV traffic from the site would head towards or come from junction 1A of the A282/M25. As Burnham Road is not an option under the terms of the TMP, this clearly leaves 10% of the HGV traffic heading down Thames Road. Mr Findlay also illustrated this by noting that the Sainsbury's site close to junction 1A has 10% of its traffic arriving eastwards or departing westwards along the A206. And yet the data fed into the traffic modelling has a much lower percentage (2.5-2.95%) of HGVs

²⁵¹ INQ/42a section 7, INQ/42b para 1.2, INQ/42c pages 11-12, INQ/65 page 2, INQ/64 page 1.

²⁵² INQ/42b paras 4.2-4.5, INQ/42c page 12.

²⁵³ INQ/66 and 66.

using this route²⁵⁴. Furthermore, this seems not to fully account for staff employed who live to the west of the proposed SRFI and does not allow for future growth in this that may be caused by new river crossings to East London. Substantially more traffic than the model projects is likely along the A206 Thames Road/Northend Road/South Road but there is no mitigation for this.²⁵⁵

- 9.3.7. Moreover, westwards along Thames Road into Bexley Borough is the direction in which Mr Findlay admits the model fails its real-world test, with the test showing it underestimating the amount of traffic by 22%²⁵⁶. Other concerns with the modelling include it apparently allowing HGVs going along roads they cannot actually travel on, such as Maiden Lane where there is a width/height restriction²⁵⁷.
- 9.3.8. Given the real-world 10% HGV traffic heading to or arriving from the A206 west of the SRFI and the 22% fail mentioned above, we have substantial concerns about the impact of the proposed SRFI on the junction of South Road and Northend Road and subsequent junctions in Erith²⁵⁸.
- 9.3.9. Mr Findlay suggests that as the amount of traffic on the A206 is already substantial, as Thames Road gets busier with traffic from the site, traffic will re-assign to other local roads. However, each so-called re-assignment is a lengthening of someone's car journey. The local roads vehicles re-assign to will become more congested, and drivers spending more time in their cars will be exposed to more air pollution²⁵⁹.
- 9.3.10. SGCF considers that the proposed cap on HGV traffic going towards the M25 at peak times and the restrictions on Burnham Road, measures to be secured by the TMP, together would lead to HGV traffic increasing at peak times along the A206 Thames Road, substantially affecting businesses along Thames Road and local people. The only solution to this would be an additional cap on peak time HGV movements to and from the SRFI, but this has not been included in the Transport Management Plan or elsewhere, nor is it to be monitored.²⁶⁰
- 9.3.11. It is suggested by the appellant in both their road and rail evidence that Viridor may switch some of the distribution of its sorted recycled waste from road to rail. We note that under cross-examination Mr Findlay admitted that he didn't know the detail of how Viridor's business works. Whereas the implication in Mr Findlay's evidence was that this would be half of Viridor's weekly HGV movements, in reality it would be much less, as waste arrives in an uncrushed state but departs in crushed bales, so far fewer HGV movements saved.²⁶¹

²⁵⁴ (Inspector's note: Mr Findlay confirmed in XX that the remaining 10% would not just be made up by local area west traffic (2.5%/2.95%) but also traffic associated with other areas, such as central London (5.14%/4.93%) ref. CD/1.27 volume 3b pages 64 and 65).

²⁵⁵ INQ/42a paras 4.1-4.5, INQ/42c pages 3-6.

²⁵⁶ CD/1.30 Appendix E page 37 Table 2-5.

²⁵⁷ INQ/42c page 5.

²⁵⁸ INQ/42c pages 4-5.

²⁵⁹ INQ/42a paras 3.1-3.12 & 4.5-4.6, INQ/42c pages 8-9 air quality.

²⁶⁰ INQ/42c page 11, INQ/65 and 64.

²⁶¹ APP/TRAN/1 paras 3.4.6, 4.2.12 and 6.3.3, INQ/51 (APP/TRAN/5), XX Mr Findlay.

9.3.12. It is likely that some people employed at the proposed SRFI site who live to the west of Slade Green will drive to Slade Green and either walk or take the shuttle bus to work, adding to the daytime parking congestion in the areas either side of Slade Green station. Nothing in the planning obligations allows for this to be mitigated, either directly through enhancing cycle routes or by the shuttle bus being available to the public (the latter would encourage people from Dartford already parking in Slade Green to use that alternative, hopefully balancing the people from the west referred to above).²⁶²

Air quality impacts

9.3.13. Dr Tuckett-Jones agreed that her modelling of air quality was based on the traffic levels projected by the traffic modelling, and that she had every confidence in Mr Findlay's figures. However, as noted above Mr Findlay himself anticipates that 10% of the HGV traffic relating to the SRFI would arrive eastwards or depart westwards from the appeals site whereas the modelling only takes into account 2.5-2.95% of the traffic doing so, and Mr Findlay admits that the model underplays current traffic by 22%. SGCF therefore concludes that the air quality modelling is inadequate and must itself underplay the problem of air pollution as it is based on traffic modelling that underplays the amount of traffic, in particular the HGV traffic generated by the site.²⁶³

9.3.14. We also note the comment in a House of Commons committee report, which states that using modelling to assess air quality is substantially less accurate than actually testing and that there are no safe limits for NO₂. Generally the limitations of such a model combined with the underestimated traffic may mean air pollution levels greater than the appellant projects, with no monitoring planned.²⁶⁴

9.3.15. We are concerned that insufficient regard in the air quality assessment was had to the location of Peareswood School alongside the A206, because the Environmental Statement fails to identify it as a 'Sensitive Receptor', and requests for this to be included in the S106 have not been met.²⁶⁵

Alternative sites

9.3.16. SGCF agree with the case put forward by MOL that London Gateway represents a viable alternative site. It was suggested to Mr Birch under cross examination that the proposed SRFI is to serve South East London and that therefore London Gateway is in the wrong location, as to serve South East London HGVs would have to cross the River Thames via the heavily congested Dartford Crossing. However, the projected destinations or origins of the HGV traffic are essentially as much north of the Dartford Crossing as south of it, and even allowing for these figures needing to adjust for the 10% rather than 2.5-2.95% of traffic heading westwards on the A206, this still represents a substantial amount of projected destinations in East and

²⁶² INQ/42a section 6, INQ/42b para 3.9, INQ/42c page 10, INQ/65 and 66.

²⁶³ XX Dr Tuckett-Jones.

²⁶⁴ INQ/42b paras 2.1-2.4 and 2.12, INQ/42c pages 8-9 air quality.

²⁶⁵ INQ/42a para 4.7, INQ/66.

Northeast London, Essex and beyond that are on London Gateway's side of the Thames²⁶⁶. Moreover, the proximity of London Gateway to the forthcoming Lower Thames Crossing would allow it to serve destinations in Kent and to avoid using the Dartford Crossing.²⁶⁷

Rail impacts

- 9.3.17. SGCF's concerns about the rail impact of the SRFI are that the running of freight trains across the local junctions, especially Crayford Creek Junction, will interfere with existing passenger services, prevent enhancements to those services through clockface timetabling and make the introduction of new services difficult or impossible. The *Bexley Growth Strategy, December 2017* (BGS), indicates that up to 31,500 new homes can be delivered across the Borough over the period to 2050, with growth areas at locations along the North Kent Line, including 8,000 new homes in Slade Green alone²⁶⁸. Given the substantial projected growth of our community and other local communities such new passenger services will be essential. The BGS identifies priority interventions to support the identified level of growth, which include: upgrades to services on the borough's railway lines as an immediate/short term priority; and, an extension to Crossrail from Abbey Wood towards Ebbsfleet as a medium/long-term priority²⁶⁹.
- 9.3.18. The evidence of Mr Goldney for MOL leads SGCF to substantially doubt whether the proposed facility would actually run as a SRFI, but it is concerned that current and possibly future passenger services will be damaged in the attempt.²⁷⁰ Whilst Network Rail has undertaken an initial timetable study, it considers pathing across London to Crayford Creek Junction, but not from the junction into the depot. Furthermore, the quality of Network Rail's analysis should be judged in light of the suggestion it made in its consultation response to LBB that trains could cross from Crayford Creek Junction into the appeals site at a speed of 25 mph in 1.5 minutes²⁷¹, when the track speed limit ranges from 15-20 mph²⁷².
- 9.3.19. As a further illustration of the potential difficulties and disruption, under cross-examination by SGCF, Mr Gallop agreed that many of the whole series of possible gaps in the timetable that might allow a 7 minute window (at about 25½ - 32 minutes and 55½ - 02 minutes) to get a freight train into the SRFI were there to provide a time buffer that the timetable allows for a train running from Cannon Street to Cannon Street via Crayford and then Slade Green (Crayford departure 21 or 51 minutes, Slade Green departure 29 or 59 minutes) to catch up if it is running late by timetabling the train to sit in Slade Green station for a short while before departing. Mr Gallop agreed that if the Cannon Street train was running late but a freight train was waiting to get into the SRFI, it would have to take priority to keep Crayford Creek junction clear, but that the Cannon Street train then

²⁶⁶ CD/1.27 pages 63-65.

²⁶⁷ INQ42c pages 3-4.

²⁶⁸ CD/3.15 pages 29-30, SGCF email dated 19 December 2017.

²⁶⁹ CD/3.15 pages 48-49.

²⁷⁰ INQ/42c pages 6-8.

²⁷¹ CD/1.6 page 25.

²⁷² INQ/72 APP/RAIL/7 page 10 figure1.

being delayed would delay other services on the line and knock on to the timing of later departures back from London. Mr Gallop suggested, for the first time during his oral evidence, that if the timetable was flexed to allow sufficient time for freight trains to enter or depart from the SRFI, only 1.4% of services would need to be moved. However, under cross-examination by SGCF, he agreed that re-timetabling the 1.4% of services that needed to be changed would result in many other services having to be re-timed if a clockface timetable was to be achieved.²⁷³

- 9.3.20. Regrettably any response Southeastern Trains' (SET) may have provided to LBB concerning the appeals proposal are not before the Inquiry and we must rely on their recent exchange of emails with Councillor Borella. However, SET stated that for the SRFI to work without interfering with the depot they currently run in Slade Green, an extension is needed to the country end headshunt, and Network Rail state that this is part of the solution. SET also identify an upgrade to the Depot signal panel and extra staff as being required for movements in the Depot to take place safely. For its part, Network Rail state that its technical solution would permit the main line connection and associated train movements to be under direct signal control from Ashford and it makes no mention of there being any alternative to this that would allow a connection to the network that would not interfere with the running of Slade Green Depot.²⁷⁴ This evidence implies that there is only one solution. In contrast, Mr Gallop stated that the headshunt extension is not a requirement and nowhere is there a guarantee that the signalling solution referred to would be implemented. Under the circumstances, SGCF considers that conditions would be necessary to ensure that infrastructure would be in place before any other works are undertaken. That is to secure the provision of a new headshunt and to allow signalling from Network Rail Ashford, which enables trains to be pathed across Slade Green Depot access and Crayford Creek Junction without requiring intervention from Slade Green Depot staff.²⁷⁵

Consultation

- 9.3.21. The community consultation the appellant undertook was wholly inadequate, being substantially under publicised.²⁷⁶ What publicity there was could easily be misinterpreted. Mr Scanlon, claimed under cross-examination by SGCF, that the publicity material was clear that the consultation it advertised related to an entirely new planning application and that has no part in explaining the low turnout at the consultation. SGCF disagrees and considers that it was written in a way that implied a planning consent for a SRFI already existed and the application was simply a variation upon the already-consented plans.²⁷⁷
- 9.3.22. Mr Scanlon stated during cross-examination that the checks on deliveries of publicity leaflets were carried out by the company that made the deliveries rather than by himself or anyone connected with RDL. He indicated that he

²⁷³ CD/1.6 page 22, INQ/54 appendix I, INQ/31 Timetable May 2018 page 47, XX Mr Gallop.

²⁷⁴ INQ/99.

²⁷⁵ INQ/58, CD/1.6 pages 21 and 23, INQ/99 page 1.

²⁷⁶ INQ/42a section 2, INQ/42c pages 1-2, INQ/27.

²⁷⁷ CD/1.22 appendix 2, XX Mr H Scanlon..

has gone back to the delivery company since SGCF raised the issue and they confirmed that there was nothing wrong with the delivery or checking and that they had delivered in the correct area. They would hardly be likely to admit to anything else and their view is entirely un-evidenced.

Conclusion

- 9.3.23. In conclusion, SGCF believes that much of the balance between Green Belt and amenity loss, and public gain, that existed in the previous application has been lost. The certain loss of Green Belt land and the levels of uncertainty about deliverability of a SRFI, rather than warehousing, as well as road issues and air pollution would be too great. SGCF urges the Inspector and the Secretary of State to reject these appeals.

9.4. **Councillor J Kite (CK)**

- 9.4.1. I am the Leader of DBC. As well as my Council duties, I have roles within other groups, including Ebbsfleet Development Corporation due to the significant levels of development within Dartford Borough, such as the Bluewater Shopping Centre.

Plan led

- 9.4.2. DBC has a positive approach to growth and regeneration, which is inevitable given the Borough's proximity to London and range of transport infrastructure, such as the M25 and rail links to Ebbsfleet. DBC seeks to embrace and manage residential and commercial growth through the Development Plan, aimed at addressing matters such as business growth, housing, open space and transport infrastructure in a manner that delivers a whole and rounded community. Proper compliance with the *Dartford Core Strategy, 2011* (DCS) is key. The alternative would be chaos, resulting in an unbalanced economy and no objectives being achieved for the community.

Highways

- 9.4.3. Dartford River Crossing, and in particular associated queues and congestion, is a huge issue for DBC, not least as the M25 bisects the town separating east from west. The slightest trigger can have a significant effect on traffic within the town. Incidents on the M25/Dartford Crossing result in an extraordinary build-up of congestion on routes across the Borough, as people try to avoid the incident and associated problems can persist for a large part of the day. I am a governor at the University Technical College in The Bridge community, which is part way between the appeals site and the Dartford Crossing. Recently, it took me 2 hrs to complete what should be a 9 minute trip to the college and I abandoned my car after 4 hrs on the return journey. I regularly hear similar stories from others, including residents, traders, as well as NHS staff and patients trying to reach the local hospital. These events are routine. Furthermore, Dartford Town Centre is not isolated from the impact of such incidents, as drivers re-assign to the town centre when there are problems elsewhere. For example: if traffic slows on Bob Dunn Way, traffic flows within the town centre are affected within 10-15 minutes; and, problems at the Dartford Crossing impact on the town centre within around 20 minutes.

- 9.4.4. DBC is committed to realising modal shift. Evidence of that is provided by our 'Fastrack' bus transit system, which operates on its own dedicated routes over around 70% of the network. The aim being to encourage the use of public transport, thereby minimising road trips. Furthermore, DBC has committed substantial sums for town centre improvements to relieve congestion. However, only marginal gains are possible, due to the proximity and influence of the M25.
- 9.4.5. It is frustrating if, contrary to the DCS, others say there is a bit of capacity, so allow development that had not been expected, such as the appeals proposal. That approach is likely to undermine all the benefits that DBC is trying to gain. Incremental damage associated with such developments must be taken into account. The proposals would add to traffic on Bob Dunn Way. The mitigation proposed by the appellant centres around enforcement of conditions, which is difficult to manage over time. It is intolerable to have such schemes forced upon us. The appeals proposal also sits uneasily with our environmental regeneration plans.

Rail

- 9.4.6. In relation to rail use, my view is that of a layman. However, I am struck by the contrast between the appellant's conviction that the proposed rail based facility would be a sure fire success on the one hand, and its reluctance to commit to the delivery of the rail connection on the other. The evidence suggests to me that there is no certainty concerning the provision of a rail connection or its capacity. This gives rise to the suspicion that the outcome may be a collection of use Class B8 sheds and not the very special circumstances necessary to justify loss of Green Belt land.

Consultation

- 9.4.7. The Bridge community is situated part way between the appeals site and the Dartford Crossing. Many of the residents I have spoken to were unaware of the proposals during the initial stages of the scheme. Since they have been informed, they have told me that no more traffic should be added to the roadways and in particular Bob Dunn Way.

Conclusions

- 9.4.8. To sum up, Councils can be expected to encourage development. DBC has a plan in place to achieve that, so it can afford to be unimpressed by the appeals proposal. Furthermore, we have businesses here already who say that they wish they weren't, due to traffic. It affects their staff and goods movements to and from their offices and also the reputation of the business. The appeals proposal would generate a lot of new traffic, with controls only over movements in peak hours. However, if there is an incident on the local highway network, there are no non-peak conditions. Furthermore, it is easy for LBB to support development which provides them with benefits, such as increased business rates, whilst the traffic impact falls on others.
- 9.4.9. With particular reference to the uncertainty associated with the rail connection, the appellant's vague ambitions as regards modal shift risk delivering no more than road connected use Class B8 warehouses with an

associated increase in highway traffic. The appeals proposal can be characterised as being 'built on sand'.

9.5. **Councillor S Borella** (CB)

9.5.1. I am a LBB Councillor, representing the Slade Green and Northend Ward.

Residential amenity

9.5.2. The appeals proposal would have an impact on residents of Moat Lane, Oak Road and Hazel Road, some of whom have fantastic views from their properties over the appeals site, which give a lot of enjoyment. The proposed development would include features such as banking and lighting, which would diminish that enjoyment. Parts of Oak Road and Moat Lane fall within a Conservation Area.

9.5.3. The community alongside Northend Road, which is a 4 lane highway, is already blighted by traffic impacts. Traffic associated with the appeals proposal, including HGVs and potentially employee vehicles would increase that problem.

9.5.4. When there are problems on the M25 or A2, causing vehicles to re-assign to other routes, Slade Green tends to become grid locked. There are also existing issues on Bob Dunn Way. It can take 2 hours for local residents to get out of the area.

9.5.5. These factors would have an adverse impact on the quality of life of local residents.

Rail

9.5.6. The recently approved LBB Growth Strategy²⁷⁸, which seeks to manage growth, anticipates the need for additional housing and improved transport links. It is not easy to get in and out of the area by bus at present, due to congestion. In the future, additional capacity is likely to be needed on the rail network for passenger rail services²⁷⁹. The rail freight demands of the appeals proposal would conflict with the provision of those services. Southeastern Trains' staff, at the Slade Green Train Depot, have also raised concerns about the potential impact of the proposed rail freight connection on the operation of the Depot²⁸⁰.

Consultation

9.5.7. Some residents of the community around Northend Road were not included in the appellant's original public consultation. Given the potential scale of the impacts arising from the appeals scheme, the appellant could have done better.

²⁷⁸ CD/3.15.

²⁷⁹ INQ/79.

²⁸⁰ INQ/58.

Economic impact

- 9.5.8. I raised my concerns regarding the appellant's scheme at the LBB committee meeting, at which the committee voted in favour of the grant of planning permission. I disagree with that decision. In particular, I consider that substantial weight should not be given to economic benefits the appellant claims; as I understand it rail freight development has a chequered history, with some successes and some failures. In my judgement, potential economic benefits of the appeals proposal would be outweighed by harm to the local community²⁸¹.

Conclusions

- 9.5.9. In conclusion, the appeals proposal would be likely to have an adverse impact on the quality of life of local residents, highway conditions and train services, with no gain for the local community.

9.6. Bexley Natural Environment Forum (BNEF)

- 9.6.1. It has been established at the Inquiry that the application is not acceptable to LBB, DBC or MOL unless there is a credible prospect of a net biodiversity gain. Furthermore, it has been agreed in cross-examination that we are, in particular, looking for gains for particular Biodiversity Action Plan and other rarer species at Bexley, London/regional and national levels.
- 9.6.2. BNEF understands the argument made by Mr Goodwin about the current relative conservation value of the improved/semi-improved grassland and former landfill areas. However, it believes that the addition of the former to the *Crayford Agricultural and Landfill Site of Importance for Nature Conservation*, upgraded to Borough Grade 1 status and renamed *Crayford landfill and Howbury Grange*, provides geographical coherence. It cannot be said that LBB approved the extension or upgrade lightly, given that it took getting on for three years to sign off on its 2013 SINC review. BNEF has also heard in evidence and cross-examination that at least 6 Biodiversity Action Plan Species are present in this grassland area, some known to be breeding here.
- 9.6.3. *The Mayor of London's Environment Strategy* (May 2018)²⁸² states that SINC's 'are locally valued wildlife sites that provide the core framework necessary to conserve London's biodiversity'.
- 9.6.4. In the view of BNEF, the appellant's case has not fully addressed the outcome of the Government's own review '*Making space for nature: a review of England's wildlife sites, 2010*²⁸³, which states that larger, better joined up (i.e. not smaller and more fragmented) habitats are essential for conservation. The wildlife value of the appeals site grassland could easily and cheaply be improved by changes to the grazing regime and by other means and it would provide a bigger buffer between Slade Green and the

²⁸¹ XX Councillor S Borella.

²⁸² INQ/22 BNEF/W1/3 attachment 2.

²⁸³ INQ/22 BNEF/W1/3 attachment 3.

richer wildlife areas to the north and east. It is no accident that the highest-graded SINC in Bexley are also the largest, and in this case we are dealing with two relatively large high-grade sites with a long common border.

- 9.6.5. Exercises in peeling off the parts of SINC that are poorer than average would leave us with smaller sites of a Swiss cheese character, with inappropriate developments within them and at their margins. In the absence of any biological SSSIs, SINC are the best wildlife sites in the LBB, and its Grade 1 areas fall within the top half of this set of sites in terms of richness of biodiversity.
- 9.6.6. The *State of Nature* reports, most recently in 2016²⁸⁴, have highlighted serious declines in biodiversity. The very weak statuses of Skylark as a breeding species in Bexley as a whole, and that of the Corn Bunting in London, have not been quantified by the appellant, or by LBB officers at planning committee, and in our view they would be exposed to significant risk by this development. The Skylark is an iconic species of summer and a good one to engage the local public with wildlife. Mr Goodwin remarked, in response to BNEF's question as to what LBB's view is of the likely implications of the scheme for Corn Bunting numbers?, that it is difficult for LBB officers to have a handle on everything. BNEF considers that is not good enough when set against the Council's biodiversity Policy CS18 regarding protected and priority species, which in turn informs mitigation requirements, especially when we are talking about larger, more obvious species of conservation concern. In addition, the *Marshes Management Plan* (MMP)²⁸⁵ para 3.7 admits that there is an absence of contemporary, detailed, biodiversity survey data for the Crayford Marshes SMINC. You would not remove, or risk having removed, sums of money from your bank account without understanding how much was in it to start with. Or at least you wouldn't keep claiming that you're in no danger of going into the red or that the amount in it will definitely be increasing.
- 9.6.7. Managing biodiversity is not like chemistry or physics, in that you cannot rely completely on outcomes from particular practices being replicable. There are no guarantees that there will be a net increase in biodiversity, or that the numbers of species of particular conservation concern displaced from the development site will increase as a result of the MMP. Mr Goodwin's evidence in chief specifically mentions Skylarks and Corn Buntings. The MMP²⁸⁶ does not, and under a general heading of 'Birds' (paras 4.25, 4.26) is rather vague and essentially aspirational in this regard. Table 8 (point 2 page 14) of the MMP on birds makes a general point about retaining favourable conservation status, which in these particular cases ought to mean a significant population increase within Bexley. Indeed the MMP is thin on detail regarding species-specific actions and does not enumerate any predicted increases set against any defined targets. Even if there were, there would be no penalties should they not be attained. BNEF does not doubt the appellant's good intentions in this respect. Nevertheless rather more information would have inspired greater

²⁸⁴ INQ/22 BNEF/W1/3 attachment 4.

²⁸⁵ CD/1.33.

²⁸⁶ CD/1.33.

confidence in the overall claim that an increase in biodiversity will be delivered across the remainder of the combined area of the two adjacent sites. We appreciate that more detail will be added in due course, but once outline planning has been approved the chances of any permission being overturned should this be deemed inadequate are essentially non-existent.

- 9.6.8. BNEF has heard in cross-examination why the appellant prefers green walls to green or brown living roofs, but no evidence has been presented as to design and which suite of species might use such walls, or whether and why these might be better than living roofs for the rarer species identified in the area. Reference was made to Lapwing chicks falling off a green roof, but this is likely fixable through design. Meanwhile Skylarks have nested on living roofs in the UK.
- 9.6.9. BNEF remains extremely concerned that this development could become the thin end of a wedge that leads to the loss of more of the marshes area, particularly by providing justification for Bexley's mooted Slade Green 'relief road' (by-pass)²⁸⁷ and/or other roadways or widened roads that could in turn become a driver for further development. On its own a by-pass would directly impact Green Belt and damage and fragment the Crayford Marshes SMINC, itself part of the proposed mitigation area, along with the landfill immediately to the east of the development site which would also be likely to be affected given routing constraints, and increase traffic. In BNEF's view, that the local planning authority, which is to be half of the Marshes Management Board is proposing this, however 'hypothetically', does not inspire confidence in its commitment to protecting and enhancing the marshes. In BNEF's view the Prologis 'offer' to put the land into a Trust might have granted better long-term protection.
- 9.6.10. BNEF has seen no evidence to suggest that this, or any larger collection of proposed SRFIs, will result in a net reduction of HGV or LGV traffic on UK roads, including in the light of Department for Transport growth predictions, which BNEF submitted. Nor that any amount of SRFIs will do so. This must be a consideration given that appeal has been deemed to be of regional and UK-wide strategic importance and taking into account the government's carbon emissions and sustainability targets.
- 9.6.11. BNEF therefore remains of the opinion that the value of the proposals as a whole do not outweigh the loss to Green Belt and other negative consequences, and that the exceptional case test is not passed.

²⁸⁷ INQ/82.

10. THE CASES FOR OTHER OBJECTORS WHO MADE WRITTEN REPRESENTATIONS

[This section relates to the correspondence received by the Planning Inspectorate in response to the appeal notifications and the consultation responses received by the Councils in response to the applications for planning permission. The submissions reflect many of the matters raised by the main parties, which I do not repeat in detail here. I summarise the many points raised].

APPEAL STAGE REPRESENTATIONS

10.1. Royal Society for the Protection of Birds (RSPB)²⁸⁸

- 10.1.1. The development would contribute to the long-term encroachment and degradation of the Thames marshes. The Greater Thames Estuary is one of the most important wildlife sites in Europe. The adjacent inner-Thames marshes, of which Crayford Marshes is a part, are a much diminished resource and under increasing threat of fragmentation from creeping development. The development would constitute both physical loss of habitat and peripheral effects on the adjacent wet grassland.
- 10.1.2. The appeals proposal would result in a loss of breeding habitat for scarce and declining bird species, in particular Corn Bunting and Skylark. Both of these species are Red listed in the most recent revision of Birds of Conservation Concern (a multi-partner assessment of the conservation status of British birds). Like many bird species, Skylark and Corn Bunting are mobile and adaptable, so dispersal is not an issue. However, the continued loss of suitable habitat means that they have nowhere to go. Both species breed in Crayford Marshes because the habitat is ideal, but are absent from other areas around Bexley, and are generally reduced and fragmented in North Kent. This suggests that the remaining breeding sites are particularly important. Loss of suitable habitat is the main driver for declining populations in both species.
- 10.1.3. Whilst the Thames has a long history of economic development, it has an even longer history as a 'feeding hub' for migratory birds. There is a need to balance the economic and natural assets along the Thames. The remaining wetlands of the inner Marshes are particularly vulnerable to encroachment. It is vital that economic activity in the Thames works with, not against, nature. Preventing the loss of remaining green space is paramount, creating new green space the ambition. The emerging *London Plan* is clear about the benefits of green space for local communities and has ambitious targets for the creation of green space. The appeals proposal would conflict with that ambition.

10.2. Dr R Gray²⁸⁹ (Chairperson of BNEF)(DG)

- 10.2.1. The evaluation of the significance of the impacts of the development are recorded as being of moderate or little significance to the majority of factors considered in the Environmental Statement. Having worked in the

²⁸⁸ RSPB, 19 December 2017.

²⁸⁹ G.Gray, emails 21 May 2018, 11 December 2017.

construction industry for many years, it is my experience that any construction project does not produce impacts of minor significance.

- 10.2.2. From the landscape viewpoint the development will impact on the traditional openness of the marshland landscape, bringing in a new dominant feature. The overall impact of the proposed development will significantly alter views from many of the surrounding areas, and the mitigation effects only adding to the breakup of the landscape, as well as introducing features that are not characteristic of the area. Can the imposition of an unnatural building and associated construction works be said to enhance an open green landscape.
- 10.2.3. Fragmentation across the whole of the North Kent Marshes has resulted in the loss of much of the traditional open values of the landscape. This has allowed the encroachment of industry and urban development and a loss or damage to the characteristics and features of the grazing marsh. The advent of the proposed development would lead to further erosion of the grazing marsh landscape in the Inner Thames area and increasing dominance of their surroundings. The influence of the landscape and surroundings on Crayford and Dartford Marsh will help determine their future. Allowing such a large development adjacent to the sensitive marshes would severely impact on the ability of the marsh to act as an ecologically viable entity and further reduce the area of grazing marsh, not only in Greater London but throughout the UK.
- 10.2.4. As well as destroying a significant area of Green Belt the proposed development would fragment an important group of Sites of Importance for Nature Conservation, preventing species from recolonising sites that have been damaged, or extending their present ranges. To lose additional grazing marsh and to increase the possibility of further loss is in direct contravention of the UK, Kent and Bexley Biodiversity Action Plans (BAPs).
- 10.2.5. The Environmental Statement, whilst being comprehensive in its scope of how the development will affect the immediate site upon which construction will take place, seems to have been less well researched and surveyed in terms of the wider reaching impacts on the local area. From a landscape ecology viewpoint, the site needs to be considered as to how it relates to its environment and the habitats and landscapes that surround it. In this respect it can be regarded as having 4 main functions: a buffer between urban development, the landfill site and Crayford Marshes; a wildlife corridor; a refuge for wildlife associated with the grazing marshes in the future as sea levels rise due to climate change; and, a potential future contributor to the Bexley Green Grid Framework. Ratcliffe (1977), recorded that the position in the ecological unit, the potential value and intrinsic appeal of a habitat or area were just as important in evaluating a site as size, diversity and rarity. In this case it would appear that these three criteria have been badly overlooked.
- 10.2.6. To allow this development to proceed would severely limit the ability of LBB to implement its Biodiversity Action Plan, (not only in respect of grazing marshes), and to conform with the greater national need to see an overall increase in areas of grazing marsh. The proposed development would in my opinion lead to the current marshes of both Crayford and Dartford losing value and they would be threatened by processes during the construction

and operational phases that cannot be mitigated against. Their fragility rests on hydrological processes that have not been fully researched; processes that will be influenced and altered, as admitted in the proposals, by the development, and the complex relationship of the mosaic of micro habitats that comprise the grazing marsh habitat. The value of grazing marshes as a feeding, nesting and overwintering site for many bird species relies on the hydrological processes and inter-relation of the topographical features. To allow the development to proceed puts all these factors at risk and in doing so would severely reduce the value of the marshes as an important habitat, locally, regionally and nationally.

- 10.2.7. The mitigation measures provided by the Environmental Statement, whereas, on the surface would appear to be of some benefit to the local natural environment, do not go far enough and in many cases are inappropriate. To ensure the survival of grazing marsh and green space in the Crayford area is going to require long term management and have adequate funding to provide the right kind of management. We acknowledge that a draft management plan has been produced covering a period of 25 years. A fully prepared management plan, covering a longer span of time, would need to be provided, together with insurance that over the long term the effects of sea level rise and climate change can be accommodated with the provision that there will be areas onto which the grazing marsh and its ecology can retreat.
- 10.2.8. In determining the outcome of these appeals, there must be consideration of not only future sustainability of our local environment, but also the actual longer strategic need for this development. Consideration must be given to the effects that the construction of the Lower Thames crossing will have, with the aim of taking traffic, including freight away from London and the M25, in order to speed up movements to the Channel Tunnel. At this time, will this facility be a viable option for freight traffic? In this instance, would not London Gateway be a better option? Can it be guaranteed that Bexley will not be left with a white elephant or a giant lorry park?
- 10.2.9. The Framework believes that there should be enhancement and promotion of green infrastructure and biodiversity. Building on green space and removing habitat is hardly promoting it.
- 10.2.10. These appeals should be rejected as they do not meet any criteria on strategic needs that require the loss of Green Belt, neither do they make any contribution to the sustainability of local resources. Strategic and sustainability must be seen in tandem, and that means not just today, tomorrow or next week, but 20, 35, 50 years into the future.

10.3. **The Inland Waterways Association**²⁹⁰ (IWA)

- 10.3.1. The Inland Waterways Association accepts the proposed access bridge clearances to Crayford Creek shown on drawing no. 2039-STR-01 rev B.

²⁹⁰ Letters dated 28 March and 2 May 2016 and email dated 11 June 2018.

It would be sufficient to allow upstream passage of all craft able to enter Vitbe Basin. They should not be reduced by changes to the design.

- 10.3.2. Furthermore, a mooring should be provided downstream of the proposed new bridge to give safe refuge for masted boats that would otherwise have moored further upstream at the disused wharves. IWA acknowledges that the disused wharves upstream of the position of the proposed bridge have not been used for decades. However, access to the area upstream of the location of the proposed bridge for high masted craft was improved by the removal of fallen/overhanging trees in January/February 2017. In May 2018 a flotilla of craft from St Pancras Cruising Club visited, supporting the need for moorings downstream of the proposed new bridge.
- 10.3.3. A licence would be required from the Marine Management Organisation for works affecting the right of navigation of tidal waters. The IWA would oppose the grant of such a licence, if the mitigation measures we seek are not implemented.

10.4. **A.G. Thames Holdings Limited**²⁹¹ (AGT)

- 10.4.1. AGT and a sister company, Solstor Limited, run fruit packing, warehousing and distribution operations from their site, employing around 500 people. They are located on the A206 Thames Road. AGT and Solstor are therefore significant local employers. AGT's local knowledge of how the A206, local road network and associated major roads presently function has given AGT an insight into how the proposed development would adversely impact on local road conditions and the already congested M25, M2 and M20. This would in turn have an adverse impact on AGT's business and employees, local residents and businesses, and others even further afield.
- 10.4.2. COTTEE Transport Planning Ltd have been instructed by AGT to review the proposed development and the following submissions draw upon its findings.
- 10.4.3. The most recent traffic survey of key roads most likely to be affected by the appeals proposal was produced in 2015. Since then, congestion has increased substantially. Therefore, an updated survey should be produced and used as the basis for assessment. The area already suffers from extremely serious traffic congestion and the proposed development would make this situation significantly worse. The additional congestion caused by the proposed access road would have a significant adverse effect on AGT's business in terms of its ability to service customers with confidence, the financial impact of delays and AGT's ability to recruit employees due to the level of congestion.
- 10.4.4. The scarcity of existing Strategic Rail Freight Interchanges, and the fact that they are not directly comparable with this site means that they provide only a limited understanding of the potential impacts of a new SRFI in a different location to that proposed for this development. For example, a SRFI in Daventry (from which the trip generation was derived in the TA), while next to motorways, is in a rural location some distance from any major urban

²⁹¹ Letters dated 21 August 2018 and 19 December 2017.

area. The proposed site while in the proximity of the M2, M20 and M25, serves the major urban area of London. Therefore, there is a significant risk in allowing the appeals proposal as a 'guinea pig' for developing a large SRFI.

- 10.4.5. Being within the London area and the M25 with connections to the M2 and M20 and southeast ports creates a strong likelihood that the site would be more attractive than the Daventry site. Any assessment needs to allow for this potential but the current TA potentially underestimates this effect and does not make allowance for this location factor.
- 10.4.6. As raised by DBC, as well as being inside the M25, the site is located in a heavily built up area adjacent to the A282/Dartford Crossing and traffic from the site would impact on the local roads in Dartford as well as the strategic road network in Dartford. AGT has further concerns with the TA analysis which we set out below.
- 10.4.7. With regard to the A206, Thames Road, there is a historic problem (going back to about the time of a previous planning application in 2006) with Craymill Rail Bridge, which narrows the highway to a single lane in each direction. At the time of the previous planning application in 2006, the bridge was to be replaced as part of the A206 Thames Road improvement scheme. Whilst the replacement has never taken place and there is apparently no firm date for it, the TA assumes in its analysis that the Craymill Rail Bridge replacement is in place²⁹²; there is no provision in the TA that the development should only take place once the Craymill Rail Bridge is in place. Completion of the Craymill Rail Bridge improvements should be an absolute pre-requisite to the appeals proposal being approved, as without this, the increased congestion in an already congested area would be intolerable and would have a major impact on local businesses.
- 10.4.8. Furthermore, at such time as the Craymill Rail Bridge Scheme is implemented there would be likely to be a significant rise in traffic flow with the removal of the cause of congestion. The TA assessment of the impact of the development on traffic flow is on a suppressed traffic flow condition as a result of the current bottleneck and should be tested on traffic flows which relate to a congestion free route.
- 10.4.9. The TA indicates that on the Thames Road/Crayford Way roundabout, the Thames Road (east) arm had average queues of 4 vehicles recorded in 2015²⁹³. This rises to an extraordinary 166 vehicle queue in the forecast 2031 base position²⁹⁴. The reason for this is the capacity (RFC) rises from 0.804 to 1.077 taking that arm of the junction over capacity. The TA acknowledged the local network is at capacity in the 2031 base so additional traffic will cause a spread of overcapacity across the network²⁹⁵.
- 10.4.10. Congestion is already a problem, acknowledged in the TA, both in and outside peak times from the Dartford Tunnel up to the junction 1A slip road

²⁹² CD/1.27 page 41 paras 4.6.5-4.6.6.

²⁹³ CD/1.27 page 40.

²⁹⁴ CD/1.27 page 78 Table 9-9.

²⁹⁵ CD/1.27 page 78 para 9.7.2.

and the proposed SRFI would have a major impact on this junction because it is the route to and from the M25 which most HGVs will use. Major improvement to the road network would need to be made before the SRFI is introduced if it is not to have serious consequences for the M25, junction 1A.

- 10.4.11. The TMP is a substantial document, which would require significant management input and there are no examples of similar development on such a scale in this congested area being operated effectively and without congestion issues.

10.5. Other respondents

[The remaining respondents are for the most part either individuals or private companies and the matters set out in this section are not attributed to particular parties.]

- 10.5.1. I am a Community Occupational Therapist and have lived on Burnham Road for 23 years. There are times when I and colleagues are late for appointments due to traffic congestion. Near gridlock conditions can result from an accident at Dartford Crossing²⁹⁶. Part of Burnham Road lies in a flood zone and the marshes have a natural flood defence role hereabouts. During the time that I have lived in the area, I have seen the appeals site flood on numerous occasions²⁹⁷.
- 10.5.2. The marshes comprise a unique area of open space, which is accessible to Dartford and Bexley residents, and valued for leisure uses, such as walking and bird watching. This natural environment has a positive impact on the health and wellbeing of people and communities, a view supported by *The London Environment Strategy*²⁹⁸.
- 10.5.3. The proposal would harm residential property value.
- 10.5.4. Hoo Junction, to the east of the appeals site, handles a lot of container freight and has good road and rail links. It should be considered as an alternative location for the proposed use²⁹⁹.
- 10.5.5. The proposal would include the removal of elm along part of Moat Lane, to form an entrance into the site. Elm is the only habitat for White-letter Hairstreak, a protected species of butterfly of high conservation priority, which has been recorded in that area. The habitat would be harmed.
- 10.5.6. Friends of Crayford Marshes objects to the appeals proposal. In support of its view it has established an on-line petition entitled '*Save our Crayford Marshes-Don't Build on Habitat for Corn Bunting and Skylark*', which had over 2,680 signatures of objection as of December 2017.

²⁹⁶ C Campbell, 13 December 2017.

²⁹⁷ C Campbell, 13 December 2017 and others.

²⁹⁸ C Campbell, 13 December 2017, and others.

²⁹⁹ T Boulton, 12 December 2017.

PLANNING APPLICATION STAGE REPRESENTATIONS

- 10.6. **London Wildlife Trust (LWT)**
- 10.6.1. LWT estimates that the application site would take around 59 hectares of the Crayford Landfill and Howbury Grange SINC (currently some 96 hectares), although around 17 hectares would be restored as part of the scheme. The net loss of the SINC, in spatial terms, of some 49% is highly significant. There would be additional indirect impacts, most notably reducing the area of habitat would reduce the viability of the remainder of the SINC site to support populations of: breeding and roosting birds, such as Corn Bunting and Skylark; as well as small mammals and reptiles.
- 10.7. **J Lambert MEP³⁰⁰** (Green Party Member of the European Parliament for London)
- 10.7.1. The scheme would increase the amount of traffic in this part of Bexley, including worker access. However, it would not offer 'more sustainability' in terms of supplying Bexley and southeast London with goods, as the goods movements generated are expected to go in the direction of the Queen Elizabeth II Bridge, not west or southwest into Bexley and neighbouring boroughs. The proposals would contribute to the Department for Transport's prediction of increased HGV traffic on the road network, and this would cause additional carbon emissions and localised air pollution impacts.
- 10.7.2. BCS Policy CS18 requires protection and enhancement of the Borough's biodiversity. The proposed development would go against that objective. The scheme would destroy almost 50% of the Crayford agricultural and landfill Site of Importance for Nature Conservation. The appellant claims that the best part of the SINC would be left intact, that the rest is of poor value and that its landscaping work would deliver a net benefit to wildlife. However, the approach also ignores the intrinsic value of larger areas of habitat and the unmeasured plant and insect resources they would produce for more mobile species utilising this and neighbouring areas. The appeals proposal would result in the diminution in size and fragmentation of key wildlife sites, which is a problem of local, regional and national significance.
- 10.7.3. BCS Policy CS18 criteria (c) additionally identifies the need to '*resist development that will have a significant impact on the population and conservation status of protected species and priority species in the UK, London and Bexley Biodiversity Plans*'. The appeals proposal would run counter to that Policy. The scheme presents a major threat to breeding Skylark and Corn Bunting in Bexley, both red-listed species due to significant declines.

³⁰⁰ Letter dated 24 October 2016.

10.8. **G Johnson MP**³⁰¹ (for Dartford)

- 10.8.1. Whilst I recognise the large amount of jobs that could be created by the scheme, congestion on the roads around the Dartford Crossing causes a significant amount of lost revenue for the local economy. The approach to the Dartford Crossing is in my opinion the worst stretch of road in the country. Therefore, adding to an already problematic situation would have a detrimental impact on the local area.
- 10.8.2. The current road network needs only a minor issue for congestion to grip the area. If the application is successful then the traffic created would, in my estimation, lead to more regular hold ups.
- 10.8.3. I have serious concerns that the already saturated roads would be unable to cope with an additional 1,150 HGVs and numerous other vehicles a day, particularly during periods of heavy congestion.

10.9. **Save of Skylarks: Save Our Crayford Marshes**³⁰²

- 10.9.1. The southern part of Crayford Marshes is visually, geographically and, from a wildlife and ecological point of view, functionally part of the wider Crayford Marshes area. The London Wildlife Trust has said of this section '*the extensive area of the site and its proximity to two Sites of Metropolitan Importance (the northern part of Crayford Marshes and the River Thames) further increases its value*'. It has recommended that it is promoted from a Borough Grade 2 to a Grade 1 site in the SINC review, which the Council has delayed agreeing to for nearly 2 years. The proposed development would destroy a large part of it.
- 10.9.2. In conjunction with neighbouring Dartford Marshes, the area provides an expanse of open space and big skies available nowhere else in Bexley.
- 10.9.3. It is a high tide roost for several species of national conservation concern: Redshank; Curlew; as well as, Ringed Plover (red-listed) and Lapwing (red-listed). It is one of only two breeding sites for Skylark in Bexley which are fairly secure from disturbance. The other is under 'development' threat. It also has breeding Corn Bunting, of which there may now be only 20 pairs in the whole of London. The site is therefore of conservation importance at Borough, regional and national level and should not be built on as this would be contrary to Bexley Council's policy to protect and enhance biodiversity in the Borough.
- 10.9.4. Despite being rail connected, the proposed logistics hub would result in a net increase in road traffic and carbon emissions in Bexley, and has nothing to do with delivering real 'sustainability', the supposed basis of Bexley's Core Strategy.

³⁰¹ Letter dated 15 December 2015.

³⁰² CD/1.6 page 51 'a total of almost 150 individually signed letters/leaflets have been received which object to the scheme on the following grounds'.

10.10. **Dartford and Crayford Creek Restoration Trust**³⁰³ (DCCRT)

10.10.1. The Cray is navigable and interest in visiting is expected to increase following the removal of fallen/overhanging trees. DCCRT has a record of 4 yachts having navigated up the creek in 2016. Mooring pontoons should be provided downstream of the proposed bridge location to allow sailing craft to moor and be safely demasted before onward travel.

10.11. **Other respondents**

[The remaining respondents are for the most part individuals and the matters set out in this section are not attributed to particular parties.]

10.11.1. A number of residents of properties local to the site, such as on Leycroft Gardens and Oak Road, are concerned about the noise that would be generated, both in the construction of the proposal and during operation, anticipating that even with the proposed embankment, the noise from trains moving about the site would be intrusive.

³⁰³ Email dated 1 September 2016 and CD/1.6.

11. THE CASE FOR THE APPELLANT

11.1. Introduction

11.1.1. The main issues outstanding in these appeals are as follows:

- a. Would the proposed Strategic Rail Freight Interchange meet a nationally-identified need that cannot be met adequately elsewhere?
- b. What planning benefits of the proposed development can be reasonably anticipated?
- c. What are the likely adverse effects of the proposals?
- d. Are there, bearing mind all of those points, 'very special circumstances' justifying the release of the appeals site from the Green Belt.

Navigation

11.1.2. Those 4 issues emerge from a complex evidential situation driven by conflicting arguments and it seems helpful to begin with a brief guide to navigation of the matters set out below. In this introductory section I therefore make points about: the overall strength of the case for the RDL proposals; what I call the 'architecture' of the opposition cases presented to the Inquiry; and, the need to focus attention on the right questions when assessing a SRFI.

The overall strength of the case

11.1.3. There is a considerable amount of detail before the Secretary of State. However, it is perhaps salutary to recall the following key points at the outset of any summary:

- a. The appeals site lies within the Green Belt and has an ecological designation. The Green Belt and landscape impacts of the appeals proposal are very large and adverse. However, the site itself is otherwise unconstrained. It also lies in relatively close proximity to the M25 and Network Rail say it can physically connect to the mainline railway with gauges appropriate for rail freight. Nobody at the Inquiry suggests that the physical rail connection itself is incapable of being constructed and used. The use is not prohibited by proximate residential occupiers, if appropriate mitigation is employed.
- b. It was granted consent for a SRFI of comparable proportions in 2007.
- c. It lies in the Bexley Riverside Opportunity Area, which identifies logistics as a key strategic use for that area, and is protected for SRFI use in the *London Plan*.
- d. Fully operational, it would generate around 2000 jobs.
- e. The application continues to enjoy the support of Network Rail as far as access to, and pathing through, the rail network. Despite all manner of suggestions to the contrary, there is no evidence to suggest that Network Rail considers that the SRFI cannot operate satisfactorily as such; indeed it would be extraordinary for Network

Rail to have written in the detailed terms that it has, if that were its view³⁰⁴.

- f. SRFI facilities on the appeals site are supported by GB Railfreight, Maritime and an obvious potential user, the neighbouring Viridor operation.³⁰⁵
- g. The appeals proposal are being promoted by a company with specialist knowledge of SRFIs, and which is currently engaged in the delivery of such facilities at East Midlands Gateway (and Radlett, with a new Development Consent Order application having just been made in Northamptonshire). There is no basis for a negative inference that RDL's Howbury Park scheme is a 'Trojan Horse' application for a purely road-connected logistics park.
- h. The expressions of interest and the demand evidence chimes with the Government's view about the demand for SRFIs, and what it continues to see as the national need for an expanded network of SRFIs, established in the NPSNN, which also notes the particular goal of locating such uses close to London. SRFIs are of sufficient importance for their benefits to form the basis for a very special circumstances case; it is unlikely that any local plan would allocate land for a national use of this kind.
- i. It is not the subject of any highway safety or free flow objection from any of the relevant Highways Authorities: Highways England; Kent County Council; LBB; and TfL (Mr Findlay's '4HA'). DBC's air quality work does not disclose any more than negligible air quality effects.
- j. The London Borough of Bexley, in which the vast majority of the site lies, resolved to approve the proposal (only for the MOL to direct refusal).
- k. There is no technical objection from any statutory consultee in relation to ecology, which would be enhanced by the proposals.

The architecture of the cases presented to the Inquiry

- 11.1.4. A word also at the outset about the overall architecture of support and opposition to the proposals. Given the eleven summary points, it is unsurprising: (1) that the LBB (which opposed the Prologis scheme in 2006-7) resolved to grant permission and has not actively objected at this Inquiry; and, (2) that there has been, for a scheme of this size, very little local opposition and engagement, save for a handful of conscientious and able people like Mr Hillman and Mr Reynolds.
- 11.1.5. It is rather more surprising that DBC oppose the grant of permission on highways grounds, given that the relevant highways authority for the affected roads in their area, KCC, supports the grant of permission. It is odd that they maintain an air quality impact case when their own air quality

³⁰⁴ CD/1.6 page 21 onwards.

³⁰⁵ APP/RAIL/2 Appendix A.

expert, Dr Maggs, says that the proposal would have negligible effects. Furthermore, if the DBC position really is as parochial as appeared to be the case from Mr Bell's evidence to the Inquiry, then it should be treated with considerable caution. It is a source of regret that only limited weight appears to have been given to the scheme's SRFI credentials in DBC's evaluation simply because the majority of the development, with its Non-Domestic Rates revenue, jobs and economic benefits, lies within Bexley; that is obviously not an approach that should be commended to the Secretary of State when considering nationally-important infrastructure.

- 11.1.6. Finally, it is *very* surprising that the Labour MOL opposes the grant of permission for a SRFI on Green Belt land at Howbury Park. It is a proposition the then MOL supported in 2006-7; it comprises a use now protected on the site in the *London Plan*; that use is in line with a policy focus on ambitious logistics growth in the Bexley Opportunity Area; especially since the employment ambitions held by the MOL for that area are hugely increased in the emerging *London Plan*.
- 11.1.7. This point is nothing to do with the inquisitorial role of the Inspector or the overall discretion of the Secretary of State when making the decision. Those roles and powers go without saying. But the way the principal parties arrive at an Inquiry like this and the shape of their arguments should not be forgotten when reflecting on the key issues which go to whether permission should be given for RDL to take the opportunity to deliver a SRFI on the edge of London. The Secretary of State should therefore be informed clearly, and should consider carefully, the limited local opposition, the circumscribed concerns of DBC and the conflicted way that the MOL now seeks to call into question a proposal which in policy terms he should support.

Right and wrong questions

- 11.1.8. There are two points to be made here. One goes to the arguments advanced on the basis of the rail connectivity of the site in 2018 timetable; the other goes to the arguments about traffic modelling and uncertainty. These two issues have, I think it is fair to say, occupied a considerable amount of Inquiry time. RDL's case is not that the evidence is entirely irrelevant, but that it is potentially very misleading, and runs the risk of founding recommendations and the overall decision on a false basis. To use a more legal formulation, the points here go to matters of weight, but only once one has understood the policy context correctly.
- 11.1.9. Dealing first with the rail connectivity issue, the obvious point is that the site can be physically connected to the network, and is large enough for a SRFI. It lies on the edge of London and there is considerable rail traffic currently timetabled, which makes getting freight trains across London, across the Crayford Creek Junction, and into the site, a challenging and technical job for Network Rail's timetable planners. That challenging rail landscape is, in a sense, a constraint of the site for rail freight. However, it is not a constraint in the same way as a canal, or a steep gradient might be. Indeed, the nature of the constraint is only in fact *represented*, rather than *comprised in*, the 2018 timetable.

- 11.1.10. That is because the constraint may or may not be the same when the SRFI opens. If permission were granted, the development would not be fully built out and operational for some years, perhaps as many as 10 years from opening. It is therefore not realistic to expect decision-makers to assess the SRFI's effects and operation as at 2018. The traffic effects, for instance, have been assessed at design year 2031. One can see why it should not be an absolute objection (even if it were made out on the evidence) that the 2018 timetable cannot show 4 trains in and out of the site without making adjustments to the existing timetable.
- 11.1.11. Some of the pattern of movement, types of freight, wider network traffic conditions, rail timetable, and so on, will change between now and the maturing of the scheme. 'What are the effects of the scheme in 2018' is therefore the wrong question. 'Can 4 paths in and out be accommodated in the September 2018 timetable' might be a relevant question, but it is not the question that discloses the answer about the site's ability to provide 4 trains a day during its operation.
- 11.1.12. Is there a different question based on the 2018 timetable evidence? The MOL says that planning permission should be refused because the Secretary of State cannot be reasonably assured that even 4 trains a day could in the future be pathed into the site. Clearly, it is a relevant question to ask whether the Secretary of State could be reasonably assured that might be the case in the future.
- 11.1.13. I leave the detail of the evidence to later in these submissions, but make the point now that, even if it were judged (contrary to the appellant's view of the evidence) that the 2018 timetable did not show 4 paths in and out a day, should the Inspector and Secretary of State *infer* that the site is not capable of functioning as a SRFI? That is what the MOL asks to be done. However, that would require a judgement that the 2018 timetable is incapable of being, would not be, adjusted either in any event, or specifically in relation to the pathing of rail freight to Howbury Park in the future. There is no evidence from Mr Goldney to that effect. It would be a hugely tendentious judgement. It would run counter to the position of Network Rail on the appeals.
- 11.1.14. There is also a real danger of circularity here: unless Howbury Park secures its planning permission, there will be no pathing to negotiate with Network Rail, no exercise carried out to move the 14.25 from Dartford to Victoria by 5 minutes to allow a train into Howbury, and so on; one should not refuse permission on the basis that such an exercise has not yet been done and therefore that its results cannot be demonstrated.

11.2. **Would the proposed SRFI meet a nationally identified need that cannot be met adequately elsewhere?**

The role of the National Policy Statement for National Networks
(NPSNN)

- 11.2.1. The Government's national policy statements have as a primary function the establishment of the need for certain developments and facilities; they are

intended to obviate the need for the kind of interminable debate about need that bedevilled Inquiries in the past such as that into Heathrow Terminal 5.

11.2.2. Chapter 2 of the NPSNN is entitled *The need for development of the national networks and Government's policy*. There has been little if any debate at this Inquiry as to the need which exists for a network of SRFIs. The principal references are:

- a. Paragraph 2.2 *'There is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and, to provide a transport network that is capable of stimulating and supporting economic growth'*.
- b. Paragraph 2.8 *'There is also a need to improve the integration between the transport modes, including the linkages to ports and airports. Improved integration can reduce end-to-end journey times and provide users of the networks with a wider range of transport choices.'*
- c. Paragraph 2.10: *'The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system.'*
- d. Having referred to the Network Rail unconstrained rail freight forecasts 2023 to 2033, the Government in paragraph 2.50 continues: *'while the forecasts in themselves, do not provide sufficient granularity to allow site-specific need cases to be demonstrated, they confirm the need for an expanded network of large SRFIs across the regions to accommodate the long-term growth in rail freight. They also indicate that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail'*.
- e. On a different point concerning the environmental benefits of modal shift away from the roads, the NPSNN also says this, at paragraph 2.54: *'To facilitate this modal transfer, a network of SRFIs is needed across the regions, to serve regional, sub-regional and cross-regional markets.'*
- f. The concept of the particular SRFI 'network', and whether there are any differences between the regions, is explored at paragraphs 2.56 to 2.58:

2.56- *'The Government has concluded that there is a compelling need for an expanded network of SRFIs. It is important that SRFIs are located near the business markets they will serve – major urban centres, or groups of centres – and are linked to key supply chain routes. Given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites.'*

2.57- *'Existing operational SRFIs and other intermodal RFIs are situated predominantly in the Midlands and the North. Conversely, in London and the South East, away from the deep-sea ports, most intermodal RFI and rail-connected warehousing is on a small scale and/or poorly located in relation to the main urban areas.'*

2.58- *'This means that SRFI capacity needs to be provided at a wide range of locations, to provide the flexibility needed to match the changing demands of the market, particularly with traffic moving from existing RFI to new larger facilities. There is a particular challenge in expanding rail freight interchanges serving London and the South East.'*

- 11.2.3. There can be no doubt that the NPSNN as published establishes a critical or compelling need for an expanded network of SRFIs, particularly in close relation to London. That need, whilst locationally-focused, is part of a national need.

Is the NPSNN still reliable?

- 11.2.4. It is not suggested by the MOL or any party that the NPSNN is out of date, to be replaced, or unreliable for the purposes of these appeals. All the main parties refer to it and use it to judge the proposals in various ways. The only exceptions perhaps are: (1) DBC's suggestion that the NPSNN has 'moved on' in the SIFE decision to focus on quality rather than quantity, for which there is no evidential basis (and nor was the Inspector, in my submission, in SIFE purporting to move policy on from the NPSNN); and, (2) the MOL's point³⁰⁶ that the NPSNN refers to 'unconstrained' demand, which may not have been reflected in the progress made by SRFI development since 2014. However, that does not, indeed may not be intended by the MOL to, suggest that the NPSNN itself is out of date. The unconstrained demand still exists; it is a question of removing the constraints. One of those, as the NPSNN indicates, is the lack of a network of SRFIs, without which it is unsurprising that the fully unconstrained demand has not been expressed in take up of rail freight.
- 11.2.5. It follows that the Secretary of State should give substantial weight to the NPSNN, and when applying it to the appeals proposal, bear in mind that it forms part of the Government's policy, based on evidence, that if a SRFI is constructed in order to meet demand, it is likely to be taken up, particularly in areas where there is currently poor demand. This part of the country, to the south east of London, is such an area.

Would Howbury Park meet the identified need (in part)?

- 11.2.6. So the conclusion is that a compelling national need exists for an expanded network of SRFIs. Is there any force in the suggestion that Howbury Park would 'not function' as a SRFI? This became the focus of the MOL's case at the Inquiry, in support of his stated scepticism that Green Belt loss would be

³⁰⁶ See emphasis at paras 7.1.2 and 7.4.30 of the MOL's case.

justified by the benefits of a SRFI. In summary, it is said (on behalf of the MOL)³⁰⁷ that:

- a. Howbury Park has operational restrictions on site, including the allegation that the proposed multi-user intermodal facility is unlikely to provide the flexibility that retailers identify;
- b. It does not have rail-connected warehouses; and unlike in 2007 'the proposal is configured in such a way that makes it perfectly suitable for entirely road-based traffic';
- c. Demand for SRFIs is questionable or 'underperforming';
- d. Rail remains more expensive than road freight;
- e. It would suffer from restrictions due to the apron size and the need to park HGVs in large numbers during the 'HGV cap' period and/or during 'incidents' which have led to congestion, and due to road congestion in general;
- f. The current timetable is a 'realistic proxy for what can be expected in the future' and does not permit more than 2 services a day to access the site;
- g. Pathing across South London is very difficult and less 'guaranteed' than in 2007;
- h. There is '*not a sufficient level of assurance that timetables can be flexed to secure that the facility will be operation[al] without adversely affecting passenger services*';
- i. There would be conflict with the Southeastern depot;
- j. There are no conditions or s.106 obligations which 'secure any level of rail use'.

None of these points, either singly or in aggregate, indicate that Howbury Park would not operate as a SRFI, or would not meet the underpinning policy objective. Most are examples of asking the wrong question, and then seeking to rely on the answer to generate doubt. Within those points lies the answer to the concerns maintained by the MOL (and to some extent, DBC and others), and so they occupy a substantial part of these submissions.

Operational restrictions and rail-connected warehousing (points a. and b.)

11.2.7. There is no physical restriction in terms of the road access, the site size, the flexibility of the site for different kinds of warehouses or the physical room for the intermodal terminal, gantry cranes, reachstackers and lorries.

11.2.8. Mr Goldney originally suggested that the intermodal terminal suffered from size restrictions, but this has not been maintained as an objection. There was a suggestion that the outline masterplan, showing an intermodal terminal without rail-connected buildings, was disadvantageous and would

³⁰⁷ And summarised at para 7.4.67 of the MOL's case.

make Howbury Park less attractive, or even disqualify it as a SRFI. However:

- a. The outline masterplan does not dictate whether any of the buildings could or could not be rail-connected; for instance, as Mr Gallop observed it would be feasible for a single occupier to build a large unit south of the railhead, onto which one side of his facility opened, whilst keeping the intermodal terminal as an open access facility;
- b. It is not in any event necessary to have rail-connected buildings in order to qualify as a SRFI meeting part of the identified national need. That was made clear by the Secretary of State in granting powers for the East Midlands Gateway SRFI. Rejecting the conclusions of the panel, he said this³⁰⁸

'18. The Secretary of State notes that the proposed arrangement at the SRFI is that rail-borne freight would be transported between the terminal and individual warehouses by road-based tractors. He considers that this would, at the least, mean that the warehouses would be 'rail accessible' or 'rail served' even if not directly connected in terms of rail sidings being physically located in close proximity to warehousing units. He considers that the proposed form of connection between warehouses and the rail freight terminal is sufficient to satisfy the objective of this part of the NSPNN, namely to facilitate and encourage the transport of freight by rail'

- 11.2.9. It is worth bearing that last sentence in mind throughout any consideration of the rail objections advanced on behalf of the MOL in these appeals. In order for the benefits to be realised, the Government's policy is aimed at facilitating and encouraging railfreight. Refusing permission for it because it may need Network Rail to re-time some passenger trains in the Dartford area would not on the face of it conform to the Government's approach in policy.
- 11.2.10. There should be no residual concerns about getting the trains into position to be loaded and unloaded, or of unloading them through a combination of reachstackers and gantry cranes. The two work perfectly well together and Mr Goldney confirmed that setting the tracks into the concrete to facilitate that was a common practice. The combination may well be witnessed at Barking RFI on the planned site visit.
- 11.2.11. It would also be physically possible for the intermodal terminal operator to install an exchanger to facilitate the movement of locomotives within the intermodal terminal. One is not necessarily required, but it is a piece of machinery, not something that needs to be included within the terms of a planning application, and could be installed at any point.
- 11.2.12. Other than noting as relevant the planning history and the way that the principle of SRFI use on the site is protected in the current Development Plan, RDL does not say that permission should be given this time because it

³⁰⁸ CD5.6 Decision Letter page 4, paragraphs 17 to 19.

was given in 2007. Certain things have changed. They include the identification of a compelling need for an expanded network of SRFIs in national policy, rather than a quantitative approach of 3 or 4 around London.

11.2.13. For that reason, RDL has not engaged in a 'spot the difference' contest between the last decision and the current appeals. The MOL on the other hand wants to have his cake and eat it on this point, disavowing the planning balance that was struck in 2007 as no longer relevant³⁰⁹ but suggesting that it might 'instructive' to 'explore the extent to which the key factors remain unchanged or have altered.' RDL do not agree that there is anything particularly instructive in such an exercise, given that the 2007 decision was made on balance in the circumstances of the day, which are different, see for instance the national policy point, from those which currently prevail.

11.2.14. However, since the points are relied on by the MOL, RDL records the following responses:

- a. It is right to say that the decision was thought in 2007, to involve striking 'a difficult balance'³¹⁰ – that is pretty much always true in Green Belt cases, especially when balancing such incommensurables as the harm to Green Belt openness in Bexley against the achievement of part of a nationally-important network of SRFIs. It is still true;
- b. The test applied by the Secretary of State in 2007 was whether he judged that he was 'reasonably assured' that the proposal would operate as a SRFI. That remains a sensible test to apply;
- c. In 2007, the Secretary of State found that the design of the proposed warehouses had been optimised to attract users committed to rail³¹¹. Eleven years later, the SRFI market has matured and there is no need to persuade the Secretary of State that a proposal is a SRFI by designing warehouses that would be commercially suicidal for road based occupiers. The NPSNN, which post-dates the 2007 decision, strongly emphasises that SRFIs are facilities for both road and rail, an idea to which the 2007 design of Howbury Park would have been deeply inimical³¹²

'Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.'

³⁰⁹ See paras 7.2.1-7.2.15 of the MOL's case.

³¹⁰ CD5.2 paragraph 15.183, referred at para 7.2.5 of the MOL's case.

³¹¹ CD5.2 paragraph 15.132.

³¹² CD/2.2 paragraph 4.83, page 45.

The MOL submits³¹³ that the configuration now proposed would be 'attractive to road only users'. Yes, it would, in line with the national policy which has come into force since 2007. This attractiveness is said³¹⁴ to 'give rise to significant concerns on the part of the Mayor' for reasons set out, but the concerns appear to be premised incorrectly on the outdated view that SRFIs should not be attractive to road users. That is a potentially serious conceptual pitfall which the Secretary of State will no doubt avoid;

- d. Next the MOL points to the fact that the Inspector in 2007 recorded that Network Rail 'effectively guaranteed that paths for three trains a day would be available on the opening of the terminal'³¹⁵. Leaving aside whether NR in fact guaranteed or 'effectively guaranteed' anything, it is striking that there was no suggestion by the MOL or anyone else at the 2007 Inquiry that it should be a ground of objection to the proposals that insufficient whitespace or time was available to access the site itself across Crayford Creek Junction. Given the MOL's submission that 'the passenger timetable has shown enduring stability'³¹⁶, one would be forgiven for thinking the 2007 assessment undermines the current focus on the existing timetable to show whether trains can 'get through the door'. But in any event, the evidence and the views of Network Rail were given due weight in 2007 as they should be in 2018;
- e. It does not matter that Network Rail was considering a 420 metre train in 2007³¹⁷ but we are concerned with trains up to 565 metres. The Network Rail exercise reported to the local planning authorities on the current scheme took into account 750 metre plus trains at a significant trailing load³¹⁸;
- f. The MOL says that the combination of two factors was a critical part of the very special circumstances judgement reached in 2007: the ability to meet part of London's need for three or four SRFIs; and, the lack of alternatives in the south and east of London³¹⁹. The policy has changed and the way that need is identified nationally is different, something that the MOL expressly recognises in his analysis³²⁰ (although it unclear why that point should assist the MOL's case). That has a direct effect on how one approaches an alternative sites analysis. The whole of the apparatus of that issue in the 2007 decision is of no assistance now, but nothing adverse to the current proposals can be inferred;

³¹³ See para 7.2.8 of the MOL's case.

³¹⁴ Ibid para 7.2.8.

³¹⁵ CD5.2 paragraph 15.110, cited in para 7.2.5 of the MOL's case.

³¹⁶ See para 7.4.54 of the MOL's case.

³¹⁷ Ibid para 7.2.9 of the MOL's case.

³¹⁸ See, for instance, the reference in INQ/99 to that point, although it had been foreshadowed in Mr Gallop's evidence.

³¹⁹ See para 7.2.6 of the MOL's case.

³²⁰ It forms point 5 in the list of differences suggested between 2007 and 2018, para 7.2.12 of the MOL's case.

- g. The MOL says³²¹ that the balance between passenger rail and rail freight has changed since 2007³²². The demand for rail freight at Howbury Park is largely unchanged, as I come on to in a moment. There has been a growth in passenger rail, but there is no suggestion from the MOL that Mr Gallop was wrong to observe that as far as the mechanics of pathing are concerned, Network Rail has an equal obligation to facilitate the use of the network by both kinds of traffic. Again, the suggestion that somehow the railways have become *more constrained* since 2007 due to an increase in passenger rail sits uncomfortably with the MOL's submission that the timetable has an enduring quality about it. If that is wrong, as it surely is, then the balance between passenger and rail needs to be kept under review by Network Rail now and in the future. The passenger rail point is unlikely to have been much different in terms of actual pathing in 2007, but in any case it doesn't matter if it was – it is the future that really matters in that debate;
- h. The MOL also points out³²³ that consent has been granted (more than once!) for the SRFI at Radlett. That point does not assist unless the MOL suggests that somehow Radlett would reduce or remove the need for Howbury Park, which is not said.

11.2.15. From that list of responses it is evident that the MOL places rather too much weight on his compare and contrast exercise with 2007. His submissions are chiefly notable for the insight they give to the erroneous approach taken by the MOL to a modern SRFI, something which permeates his entire case.

Demand (point c. above)

11.2.16. I turn to deal with the suggestion that the Secretary of State should be concerned about Howbury Park as a SRFI because of doubts over whether there is demand for it. The Secretary of State will note that the Government has not withdrawn or modified its advice in the 2014 NPSNN³²⁴ that '*new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business.*' One of the chief constraints on the expansion of railfreight has been the difficulties of overcoming the regulatory hurdle of securing planning permission or development consent. That some of the key food retailers recognise that³²⁵ is notable.

11.2.17. However, the fact that there might be other constraints (for instance cost) which are also reflected in remarks by food retailers in relation to rail freight, does not mean that the unconstrained forecasts cease to be relevant. On the contrary, they indicate the level of likely demand were constraints removed. If the response of the industry to the NPSNN were to be that the constraints still exist, then the achievement of the NPSNN's

³²¹ See para 7.2.11 of the MOL's case.

³²² Ibid para 7.2.11.

³²³ Ibid para 7.2.14.

³²⁴ CD2.2 paragraph 2.50 page 21.

³²⁵ See the comments of retailers like Sainsburys and Marks & Spencer in the 2012 document at APP/RAIL/2 Appendix I

objectives would be indefinitely postponed. More SRFIs need to be built, to increase the resilience of the overall network, to bring costs down, and to encourage modal shift.

11.2.18. The MOL suggests that the domestic intermodal market is 'currently static'³²⁶ and 'underperforming'³²⁷, on the basis of Table 2 on page 7 of APP/RAIL/1. That submission ignores the evidence given by Mr Gallop that a new intermodal service has begun during the currency of this Inquiry, at I Port, Doncaster; it is also an unrealistic interpretation of the data presented by Mr Gallop. The tables on page 18 of APP/RAIL/1 are quite different and need to be interpreted sensibly in context:

- a. Figure 3 shows the volume of traffic through five SRFIs over time. It is notable that whereas DIRFT (the only one of the five with substantial domestic intermodal traffic) has remained broadly level since 2007, those like Hams Hall and BIFT which are reliant on maritime traffic have experienced a slight decline in volume since 2007. The change in the overall pattern occurs from 2008 onwards, which surely cannot be a surprise given the decade started with the deepest recession since before the War;
- b. Figure 4 is just about DIRFT, and actually shows the increase there in container handling activity between 2007 and 2014, from 80,000 'lifts' to 130,000 per annum³²⁸.

11.2.19. However, the MOL's notion that the 'sector' is underperforming is undefined, or at least rather slippery: if it is against the unconstrained demand figure, then it is not a reliable comparison, given that there are constraints in the real world, both macro-economic (global recession), and regulatory (failure of NPSNN to have delivered many more SRFI consents since 2014). The MOL accepts that the lack of facilities 'may be part of the story'³²⁹ but shifts attention to constraints identified in the Network Rail Freight Study 2013, saying that certain constraints in the MOL's view combine at Howbury. That is not an evidenced argument for a lack of market demand at Howbury, as it depends entirely on the proposition that the market will respond more to Mr Goldney's evidence and the MOL's qualms than to the consistent and robust support of Network Rail and the presence of RDL promoting the scheme. To be clear: it would not be a reliable inference from the market evidence on intermodal demand that Howbury will not attract rail users³³⁰.

11.2.20. There is in fact ample evidence to suggest that the Howbury Park location will be attractive to the market:

- a. RDL are promoting the site, as the country's leading SRFI developer;
- b. GB Railfreight, one of the few companies with a proven track record in operating rail freight, tell the Secretary of State that it is an attractive

³²⁶ See para 7.4.10 of the MOL's case.

³²⁷ Ibid para 7.4.12.

³²⁸ Figure 4, APP/RAIL/1, page 18.

³²⁹ See para 7.4.16 of the MOL's case.

³³⁰ Contrary to para 7.4.16 of the MOL's case.

location for a SRFI³³¹, as does Maritime, which operates a number of established intermodal facilities including that at Birch Coppice³³²;

- c. The industry body (the Rail Freight Group (RFG)) has also indicated that *'the development of suitable locations is therefore urgent and critical to unlocking rail distribution to and from, but also within the region'*, and it supports the idea of a SRFI at Howbury Park³³³. It would be very odd if the representative body was prepared to write in such terms if Howbury Park was not likely to be attractive to the companies which constitute the RFG;
- d. Viridor is on the doorstep of Howbury Park and writes³³⁴ to say that the lack of any rail freight facilities on the site means that the 'significant' potential to use rail freight is lost and HGVs will continue to be used. There was some discussion at the Inquiry about whether 'contaminated' waste from Viridor would be able to be transported in intermodal wagons, but that is not the point here – it is a major facility operated by one of the UK's largest waste management companies, and Mr Gallop identified that paper, packaging and recycle is already transported in intermodal wagons, giving DIRFT and Birch Coppice as examples. There would be no obvious restriction on Viridor taking space on the site as an extension to their business, and making use of the intermodal terminal; the co-location stems from the existing position of Viridor and represents an unusual benefit of the site.

11.2.21. It is hoped that the Secretary of State would give due weight to direct market evidence like this, and reject as unrealistic the suggestion that one would need a contractual arrangement or firmer indication before one could do so. In addition, one would not expect a food retailer like Tesco to express support for a particular site before permission is granted for it, given their aversion to involvement in contentious third-party planning³³⁵, and it would be wrong to draw such an adverse inference. The submission in the MOL's closing³³⁶ that *'there is no tangible evidence of market demand'* is plainly untenable. It is also regrettable that he chooses rather sneeringly to caricature Mr Gallop as a kind of railfreight cheerleader with *'commendable'* enthusiasm: he is by far the most experienced agent acting for promoters, owners and occupiers of SRFI and RFI facilities in the country, and has been from the very beginning of the industry. His view about the likely demand for Howbury Park should be treated with a little more respect, rather than used as a debating point as part of a 'strategic' objection by the MOL.

Economic viability of the proposals (point d. above)

11.2.22. It is true that margins for logistics, like everything else, can be tight and businesses are cost-sensitive. Similarly, where rail freight is concerned, the

³³¹ APP/RAIL/2 Appendix A

³³² Ibid, Appendix B.

³³³ Ibid, Appendix C.

³³⁴ Ibid Appendix D.

³³⁵ Mr Gallop XC.

³³⁶ See para 7.4.67 (c) of the MOL's case.

amount of profit will depend on the take-up of the services and (from an occupier's point of view) the efficiency of each train. All that goes without saying. But those very general propositions do not amount to a cogent objection to Howbury Park based on economics. The MOL makes two rather different points in support of this aspect of his objection: he says (1) that the evidence suggests that rail remains more expensive than road (and therefore Howbury Park may not be attractive as a SRFI), and (2) that there is no 'economics' case presented by RDL in support of the appeals proposal.

11.2.23. The MOL's reference to 'the evidence' is to the exercise that Mr Goldney carries out in his main proof, but very little weight should be given to that exercise³³⁷:

- a. Mr Goldney's exercise is not a cost benefit analysis, but a very high level (and tendentious) costs comparison exercise. It does not include perhaps the most important cost comparison item, which is what value or price the operators place on the reliability of the rail connection over the HGV. Mr Goldney accepted that the commercial decision as to whether to operate in part with a rail freight logistics component turns on more than the cost comparison between rail and HGV; it includes matters which are reputational (such as corporate social responsibility) as well as important issues which might be monetised but have not been in the rather crude exercise presented by Mr Goldney – the most important of which is that rail offers reliability and resilience, especially where deliveries to the London area are concerned. The traffic evidence adduced by Dartford as to numbers of 'incidents' on the M25 serve to support one of the fundamental cost benefits of railfreight, which is that one train, with a much lower risk of delay/disruption, compares with many HGVs all of which would be likely to have to travel on the M25 (and M1 if the assumption is a Daventry or Birch Coppice to Howbury movement), with vastly greater risk of delay. Mr Gallop's anecdote about the Morrisons' store in Kent, waiting in frustration for the arrival of four lorries stuck on the M25 illustrates this point. Without factoring in this key commercial aspect of rail freight, it is not possible to prove that a commercial operator would find it unviable to transport goods from Daventry to Howbury Park by rail, and the exercise is all but useless;
- b. If one turns to the contents of the exercise itself, it was based on 37 container trains which do not correspond to the evidence as to what domestic intermodal trains currently run on the network and what would be likely to run at Howbury Park;
- c. Similarly, Mr Goldney's 'cost model' is entirely based on variable costs, the input of which has a direct effect on the output of the model, and which are questionable: fuel costs, labour costs, facilities costs are all items the future cost of which is unknown.

11.2.24. It is maintained on behalf of the MOL³³⁸ that Mr Goldney's view is that rail has a relative lack of flexibility, but that rather masks the key value that

³³⁷ See GLA/RG/01 pages 56 to 61.

³³⁸ See para 7.4.28 of the MOL's case.

operators are likely to place on reliability (i.e. dependability) of rail compared to dicing with the strategic road network between the Midlands, or the ports, and Howbury. For these reasons, it would be unsafe to place any reliance on Mr Goldney's exercise as a factor in any judgement over whether operators would be attracted to use Howbury Park for intermodal freight. It is also another of the many signs in the MOL's case that he has fundamentally misunderstood how SRFIs work, and how the Secretary of State suggests that SRFI proposals are assessed.

- 11.2.25. That persistent failure also underlies the other point the MOL makes on this issue. He comments that RDL's evidence is 'strangely silent on economics'³³⁹, but there is nothing remotely strange about that. No policy (including the *London Plan*) requires a promoter of a SRFI to demonstrate its viability. No aspect of RDL's case is justified on the basis of the exigencies of a viability appraisal. No suggestion has ever been made that a viability appraisal should be included in the applications.
- 11.2.26. Most importantly, however, is that the notion that there is anything strange about not undertaking an economics case in a SRFI proposal misunderstands national policy. No such assessment was undertaken, for instance, in support of the now consented East Midlands SRFI³⁴⁰. The reason is simple – unlike a road or railway improvement scheme, for instance, where one can assess fare revenue from passengers against capital expenditure, and monetised social and environmental effects, a SRFI must be flexible when it is planned and begun.
- 11.2.27. It should not be a ground of complaint or surprise that an 'economics' case was not prepared for the Howbury Park proposals, when the NPSNN makes it clear³⁴¹ that in areas such as the southeast quadrant around London, which is 'poorly served' by rail freight, 'new rail freight interchanges ... are likely to attract substantial business, generally new to rail'. The NPSNN does require NSIP applications to be supported by a business case³⁴², but there is a specific exception made for SRFIs³⁴³

'In the case of strategic rail freight interchanges, a judgement of viability will be made within the market framework, and taking account of Government interventions such as, for instance, investment in the strategic rail freight network.'

- 11.2.28. The Secretary of State has ample evidence in this case that the market exists for a SRFI at Howbury Park. That comprises not just Mr Gallop's remark in evidence that Howbury Park 'will find its market' (much seized upon by both the MOL³⁴⁴ and DBC³⁴⁵, apparently to show that was all he relied on), which is based on having been involved in many SRFIs and RFI

³³⁹ See para 7.4.30 of the MOL's case. A similar point is raised by DBC, 8.1.6.

³⁴⁰ Although interestingly the Examining Authority sought further clarification about whether a business case should have been prepared for the two road schemes which were also included in the NSIP which was the subject of the report: see CD5.6, paragraph 4.2.5ff.

³⁴¹ CD/2.2 paragraph 2.50.

³⁴² Ibid paragraph 4.5.

³⁴³ Ibid and paragraph 4.8.

³⁴⁴ See para 7.4.25 of the MOL's case.

³⁴⁵ See para 8.1.6 of DBC's case..

projects over the past 20 years; it also comprises the underpinning rationale of the NPSNN, and the market evidence of SRFI take up generally and the support for Howbury Park specifically. He can confidently form the view that the preponderance of the evidence supports the market attractiveness of SRFI facilities on the appeals site.

Restrictions due to apron size, HGV parking and congestion (point e. above)

- 11.2.29. The MOL says that in operational terms, 'the multi-user intermodal facility is unlikely to provide the flexibility that retailers identify they seek'³⁴⁶, compounded, it is said, by 'the highway constraints which impose operational restrictions which are unprecedented for SRFIs'³⁴⁷.
- 11.2.30. Is this a point about discouraging rail use, or road use? It seems to be the MOL's concern that the site would be *too attractive*, rather than not attractive enough, for road based traffic³⁴⁸ If those whose entire business, at least at first, involves road based haulage from Howbury would be attracted to the site notwithstanding the 'unprecedented' HGV cap, why should rail-based HGV use find it so alarming? That logical inconsistency runs throughout the MOL's evidence and submissions.
- 11.2.31. In fact, Howbury Park is a huge site with ample provision for apron space, multi- or single-user buildings, and (as already submitted) the potential for a building or buildings to be rail-connected, albeit not exclusively. That is the situation for part of the DIRFT intermodal terminal, as Mr Gallop said – in addition to their own facility (which is not exactly rail-connected using the old terminology³⁴⁹), Tesco use part of the intermodal terminal which is also open-access. Tesco are not put off, and nor it would seem are the other intermodal users at DIRFT.
- 11.2.32. The MOL gathers his points on this together under the heading '*flexibility*'³⁵⁰. It is not said that a particular operator, or type of operator, would not be able to conduct his business from Howbury Park due to the apron size, the shared intermodal area, the lack of reception sidings, the HGV cap or the need at times to hold HGVs on site rather than let them out into a pre-existing road '*incident*'. All that it said is that these things would make Howbury Park '*less attractive*'. The MOL forgets, in this part of his case, the concession that he makes elsewhere³⁵¹, that Howbury Park '*is well related to the London market*'. That is more than a policy requirement – it is something which drives the entire commercial opportunity at Howbury Park. Operators who use rail want reliability and efficiency in their supply chain proximate to the end market for their goods. At the moment, there is not a single constructed SRFI serving the largest and wealthiest concentration of customers in the UK. It is fanciful for the MOL to suggest that an intermodal facility here would cease to be attractive to retailers and logistics companies

³⁴⁶ See para 7.4.67 (e) of the MOL's case.

³⁴⁷ Ibid para 7.4.67(f).

³⁴⁸ Ibid para 7.5.3 – 'As designed it will be attractive to road users'.

³⁴⁹ As Mr Gallop said, it is some way from the Tesco warehouse and up a 9m high ramp next to the rail tracks,

³⁵⁰ see paras 7.4.31-7.4.36 of the MOL's case.

³⁵¹ Ibid para 7.1.6. It is also inherent in the argument that the Mayor makes about London Gateway being an alternative to Howbury Park.

because the roads snarl up regularly in London. They probably know that – they currently have to get their lorries down the M1, round the M25 *and then through London*. The prize is big enough not to be put off by traffic.

11.2.33. Of course, the HGV cap is a constraint on the flexibility of the use, but it only applies during hours that are likely to be avoided by road hauliers anyway. Given the likelihood that some or most of the trains will be loading/unloading well away from the peak hours in traffic terms, it is hardly the operational bugbear that the MOL apparently sees it as. Similarly, the need to keep HGVs back on a 57 ha site which can be designed with large amounts of parking for HGVs³⁵² is hardly an insuperable problem.

11.2.34. The MOL is scraping the barrel for objections to the scheme at this point: Mr Goldney, it will be recalled, first misread the drawing of the gantry crane and reachstacker, then indicated he had no first-hand experience of reachstackers and cranes working together, and finally fell back on the suggestion that HGVs would prevent the unloading of the trains. That last suggestion assumes that the HGVs foul the gantry crane, which they would not. The MOL's submission at the end of that staged evidential retreat is that if there is time pressure to unload a train, lots of parked HGVs would 'cut across' the operation³⁵³. No doubt that eventuality would be factored into the detailed design of the intermodal area in due course. It has no real force as an objection to the principle of the SRFI here; the MOL should leave the design of SRFIs to those who promote and operate them.

Pathing and rail access to the site (points f., g. and h. above)-important areas of agreement

11.2.35. I note that the MOL does not allege either of the following:

- a. He does not say that Network Rail is wrong, and that paths cannot be found to the site across the congested South London network³⁵⁴. That was expressly acknowledged by Mr Goldney, whose case was that pathing is 'very difficult' but not impossible. One can readily understand why Mr Goldney was not of the view that it was impossible to path new freight services through the North Kent line, given that he has just done so himself for BP. Although at his first Inquiry appearance on 19-20 June 2018 he was rather negative about his client's prospects of securing pathing agreements with Network Rail (he spoke of 'crisis meetings' being held³⁵⁵), by the time he and Mr Gallop gave their evidence in September 2018, the service had

³⁵² The illustrative layout can be shown to yield nearly 200 spaces (see APP/RAIL/7 Appendix D), without even turning to the service yards of the warehouses themselves, or indeed imagining the final detailed design factoring in more HGV overspill parking.

³⁵³ See para 7.4.31(e) of the MOL's case.

³⁵⁴ Mr Goldney does not present an analysis purporting to show that Mr Gallop's suggested train times to and fro the SRFI at Howbury do not 'match up' with paths through South London. It is not a fair criticism of RDL or Mr Gallop that such an exercise has not been done, as the Mayor alleges (see para 7.4.50 of the MOL's case).

³⁵⁵ Mr Goldney, answer to Inspector's question, 19 June 2018.

started to run³⁵⁶. The MOL accepts that both the BP train and the Crossrail trains were examples of pathing being achieved;

- b. The MOL also does not say that pathing to the site would not, or might not, involve a degree of adjustment (so-called 'flex') to the timetable. He says instead that one should treat the ability of Network Rail to work new freight services into a future timetable 'with very great care', despite the point being 'seductively presented'³⁵⁷. Presumably, the choice of the word 'seductively' rather than 'persuasively' is intended to imply a degree of questionably emotional appeal which any right-thinking Secretary of State would immediately spot and keep well clear of, like a diplomat avoiding a honey trap. However, there is nothing seductive about the timetable flex point. It is just right:

- i. Network Rail has the power to flex the timetable, indeed (as Mr Kapur, the acknowledged industry expert³⁵⁸ points out³⁵⁹) by as much as 24 hours;
- ii. Network Rail has a duty to adjust and manage the timetable to enable growth in both passenger and freight traffic, with no preference being given to one or other³⁶⁰
- iii. The process of submitting a *Train Operator Variation Request* to Network Rail is, according to Mr Kapur³⁶¹, 'a very regular event', and he illustrates that by saying³⁶²

'...GB Railfreight will regularly bid for between 150 and 200 alterations and new services into any of the twice-yearly timetable, many of which will need to have support for altered timings from other Train Operators. At a timetabling level, GB Railfreight, and other freight & passenger operators, always work with each other to accommodate minor flexing of services to help each other accommodate desired changes to their timetables.'

- iv. This is the true position. It presents the accurate picture of flexibility and co-operation between those engaged in running the railways, in stark contrast to the position that the MOL urges the Secretary of State to adopt. In order to accept the MOL's chief submission on this point – that the access to Howbury from the mainline is 'impossible' because one cannot see an 8-10 minute whitespace gap for emerging trains in the current timetable – one would have to reject the unchallenged

³⁵⁶ Indeed, was early – Mr Gallop XC, 18 September 2018. The Mayor still refers (para 7.4.56 F of the MOL's case) to the 'very considerable pathing difficulties', but something being complicated and difficult is not a reason to refuse planning permission, especially where the service that was so difficult is actually operating.

³⁵⁷ See para 7.4.53 of the MOL's case.

³⁵⁸ See the agreement on this point from the Mayor, para 7.4.44 of the MOL's case ('the best available expert').

³⁵⁹ APP/RAIL/7, Appendix D, page 2.

³⁶⁰ As Mr Goldney acknowledged, XX September 2018.

³⁶¹ APP/RAIL/7 Appendix D, page 3.

³⁶² Ibid.

evidence of Mr Gallop and Mr Kapur that the pathing of trains into Howbury Park, whilst it might require some re-timing of some existing train times in the current 2018 timetable, is not a show-stopping objection to the grant of permission for a SRFI at Howbury Park.

- c. We are back to the right question versus the wrong question. RDL would ask the Secretary of State to bear in mind the ramifications of accepting the MOL's argument about flex and timetabling here – particularly here, in fact, around London where no SRFIs currently exist but where national policy seeks for them to be located. If it is to be a major 'trip hazard' to grant of permission that negative findings or inferences are drawn from timetabling exercises which do not relate to the relevant year (and do not take into account the powers of Network Rail and the industry practices as relayed by Messrs Gallop and Kapur) then the Secretary of State would also need to acknowledge the very serious effect that such an approach would have on the reasonable achievement of the Government's rail freight policy.

11.2.36. If one therefore accepts that pathing of Howbury Park trains should be assumed to be possible across South London and on the North Kent line, and accepts that the current timetable is not a proxy for the future timetable because there is an established industry practice to ensure that adjustments are made to enable different services, including new ones, to co-exist, then there is simply nothing substantive underlying the MOL's concerns about access to the site.

Pathing and rail access to the site (points f., g. and h. above)-two other ways of assessing the position

11.2.37. If absolutely necessary, the overall position can also be tested by referring to the final evidential tussle between Mr Gallop and Mr Goldney on this issue: one should look at Mr Gallop and Mr Kapur's timetabling exercise, and Mr Goldney's 'clockface' exercise.

11.2.38. The MOL submits with thinly veiled triumph that Mr Gallop and Mr Kapur's evidence APP/RAIL/7 simply proves that Mr Goldney is right³⁶³ that 'it is not possible to depart trains'. Unfortunately, that submission relies on making the prior assumption that a junction occupation time of 8-10 minutes is necessary to enable a Howbury Park train to cross the Crayford Creek Junction³⁶⁴. That was not Mr Gallop's evidence, and not the basis on which Mr Kapur carried out his exercise. The dispute over whether Mr Gallop or Mr Goldney is right about the length of time to cross the junction is in fact critical to resolve the actual evidential dispute between them on this point, not the adoption of the 8-10 minutes from the now-superseded (on this issue) rail report from 2016. That perhaps important distinction is not made in the MOL's submissions, where the detail of who is right about the junction crossing time is relegated to a single paragraph entitled '*[d]ifferences of*

³⁶³ See para 7.4.49 of the MOL's case.

³⁶⁴ See para 7.4.41 of the MOL's case, which contrasts Mr Goldney's 11 or 11½ minutes with the 8-10 minutes in the rail report of 2016.

*detail*³⁶⁵. It is said there that 'the MOL's concerns as expressed above exist even if the points of detail on access timing ... are assumed in Mr Gallop's favour'. That cannot be right, for the reasons just set out.

11.2.39. The 8-10 minute exercise was accepted on its face by Mr Gallop to show that, if one takes Mr Kapur's 'white spaces', then, as currently timetabled, there is no space for an emerging train during the period Mr Kapur shows. It's another example of the wrong question yielding a potentially misleading answer, though. Mr Gallop's actual evidence in APP/RAIL/7 is in his Tables 1 and 2, which work on the basis of his analysis (1) that the actual junction occupation time is substantially shorter than claimed by Mr Goldney, and (2) that access to the site can be achieved by flexing the existing timetable by only a very limited amount. For completeness, I return shortly to the technical details that underlie Mr Gallop's junction occupation times, and why they should be preferred to those Mr Goldney suggests.

11.2.40. Turning to Mr Goldney's clockface exercise³⁶⁶, it appears to show the effect on a typical hour of introducing a 12 minute junction occupation Howbury Park train. As he accepted³⁶⁷, the work illustrates the degree of timetable 'flex' that would require (assuming such a long junction occupation):

- a. It would leave three of the four passenger services able to be located in diametrically opposite half-hourly slots;
- b. It would leave 7 minutes entirely free in the hour;
- c. It would enable a train to enter or leave Howbury Park taking 12 minutes to do so each hour;
- d. It would enable the Dartford to Victoria service to continue to run 4 times an hour past the site, with slight variations in the gaps between the service;
- e. It would be possible to apply the exercise to an interpeak hour.

11.2.41. The reality is that Mr Goldney's exercise was an own goal. In submissions³⁶⁸, Mr Kolinsky runs to Mr Goldney's aid by suggesting that the exercise shows that the 'knock on effects [of inserting a 12 minute Howbury train in one quarter] will be that passenger services in the other three quarters will become bunched up and irregular'. It does not in fact show that: the majority of the services would not be bunched or irregular. The right question about the Victoria-Dartford service is whether it matters that the gaps are slightly irregular.

11.2.42. Further, it is suggested that Mr Goldney's exercise was 'intended to be a notional representation of how significant the demands of the freight train on the timetable are...'³⁶⁹ If that was the intention, then with great respect Mr Goldney has not achieved his aim. The clockface in fact suggest how

³⁶⁵ See para 7.4.65 of the MOL's case.

³⁶⁶ RG/09 page 13.

³⁶⁷ XX RG 17 September 2018

³⁶⁸ See para 7.4.55 of the MOL's case.

³⁶⁹ Ibid.

limited the effects, even of such a long junction occupation, would be. It is also a little unfair to accuse me of a 'flawed literal analysis' of Mr Goldney's clockface exercise, given that the questions were put on the basis that the exercise showed how little effect the freight train would have on regular passenger services. It was actually neither a flawed nor a literal analysis, but one which sought to show that as soon as one begins to try to show how difficult – indeed insuperable – it would be to flex the passenger services in and around the site, the more obvious it becomes that Mr Kapur is right in what he says: *'this is a very regular event ... at a timetabling level, GB Railfreight, and other freight & passenger operators, always work with each other to accommodate minor flexing of services...'*.

Why Mr Gallop is correct in his junction occupation assessment

- 11.2.43. The acceleration and deceleration curves employed are largely agreed, save for the wrangle over the evidence for acceleration (based on two pieces of footage)³⁷⁰. Mr Goldney appeared to take issue with the use of the Class 70 locomotive in Mr Gallop's footage, despite the fact (1) they are in use and may well be in use in the future, particularly in cases where speed through the network is at a premium³⁷¹, and (2) the weight of the train in Mr Gallop's footage appears to be much greater than that now agreed to be likely for a 545 metre intermodal train at Howbury Park (c.1100 t)³⁷². The important combination of the locomotive type and the weight of the trailing load is not a point grappled with in the MOL's submissions³⁷³.
- 11.2.44. Mr Goldney notably added to his assumptions about the duration of junction occupation for his later evidence, RG/09. He had not suggested before that time that the incoming Howbury trains would either have to, or may³⁷⁴, stop at a signal before the junction and then have to start from zero again on the way in. Now of course, that might have to happen if there is perturbation on the system, but as Mr Goldney accepted³⁷⁵, the clear objective would be to path and signal trains in and out of Howbury Park such that they cleared the mainline as fast as possible.
- 11.2.45. Network Rail has made it clear that it anticipates a through-signalling system which would allow the Howbury Park trains to be signalled from the Ashford box³⁷⁶, something which would also reduce the likelihood of the basic position being one where the trains would have to stop before the junction; that is an unsafe and unduly negative assumption to make, and it has a significant effect on the junction occupation time. The MOL does not explain why it is 'a more robust assumption to plan on the basis that arriving freight trains may need to accelerate from a stationary position at the preceding signal'³⁷⁷, unless 'robust' simply means 'more conservative'.

³⁷⁰ See APP/RAIL/7 paragraph 2.2.6.

³⁷¹ All of which Mr Goldney accepted, XX 17 September 2018.

³⁷² XC Gallop.

³⁷³ See para 7.4.65(b) of the MOL's case.

³⁷⁴ The further qualification he introduced in XC.

³⁷⁵ XX 17 September 2018

³⁷⁶ See INQ/99.

³⁷⁷ See para 7.4.65(a) of the MOL's case.

There is far less justification for it if one reaches an evaluative judgement, however.

- 11.2.46. Similarly, the MOL submits that Mr Goldney's novel 10% contingency is 'prudent'.³⁷⁸ The reason there is 'given the complexities of the manoeuvres required'. Actually, Mr Goldney's own evidence undermined his late introduction of this considerable additional time; he stressed on several occasions how freight drivers are trained, become familiar with the exact layout and operation they have to perform, and how there are not only visual cues but technological aids to prevent them from making mistakes. It is entirely unclear why the weather should affect the time across the junction by as much as 10%. The effect of the 10% is to compound the over-estimate of crossing times, and render the basis of the assessment less realistic and less useful to the Secretary of State. Especially if it relied on by the MOL to oppose a rail freight scheme, which he claims is a category of development which in principle he strongly supports³⁷⁹.
- 11.2.47. That leaves the deceleration – even if one assumes an earlier rather than a later start to the braking when entering the site, the difference that makes to Mr Gallop's assessment would be lost in the rounding. Mr Goldney's point about walking slowly when the train is shunting does not affect the junction occupation time.
- 11.2.48. As a result, to the extent that it is thought necessary, the Secretary of State is urged to accept the more balanced view of Mr Gallop on the time needed to enter and leave the site across the Crayford Creek Junction.
- 11.2.49. For all of these reasons, it is not the case that the future operators and occupiers of Howbury Park would be dissuaded from engaging with RDL because of pathing and access issues. As Mr Gallop recollected, the same arguments, with necessary variations, have been advanced and debated at most of the other SRFI inquiries or examinations. Howbury Park is nothing special in that regard – indeed, at Radlett (where Mr Gallop gave evidence) there was a considerable debate about the ability of the freight trains to cross a high-speed section of line occupied by frequent Thameslink services travelling at over 100 mph³⁸⁰; at Doncaster, he clarified, the East Coast mainline trains posed a similar challenge³⁸¹.

Network Rail and (in particular) the depot (point i. above)

- 11.2.50. It is relevant that NR support the scheme and do not suggest that there is any technical reason concerned with pathing, timetabling, access or the SET depot that should cause the consent sought to be refused. NR have not appeared at the Inquiry, and although that may be frustrating for all concerned, the Secretary of State should not be persuaded to give NR's view any lesser respect and status than they are usually given. NR is the custodian of the rail network, and they have engaged fully with the Howbury Park proposals, which they fully support.

³⁷⁸ Ibid para 7.4.65(e) of the MOL's case.

³⁷⁹ See for instance para 7.1.18 of the MOL's case.

³⁸⁰ Mr Gallop XC.

³⁸¹ Mr Gallop XX.

11.2.51. If there were insuperable difficulties with Howbury Park due an inability to path trains through South London, or NR felt that no amount of timetable flexing could achieve an access (or egress) for the SRFI, it is obvious that NR would have said. Indeed it is *inconceivable* that NR would have written in the terms they did to Bexley (and Dartford, see later) in 2016, or indeed for them to have written as they have done much more recently³⁸² if they had thought that the SRFI would suffer from as fundamental a defect as is now suggested.

11.2.52. Whilst they are not here to defend themselves, it is perhaps salutary to evaluate the opprobrium which the MOL heaps on them in his submissions to the Secretary of State³⁸³:

- a. The headline point made by the MOL is that 'Network Rail's support for the project gives rise to many questions and no answers'³⁸⁴;
- b. There is alleged to be 'considerable lack of clarity as to what Network Rail's position is in respect of the potential conflict between the depot and the proposal'³⁸⁵. Is there? NR do not suggest that any such conflict should result in permission being withheld, indeed their clear advice to Bexley and Dartford was that SET depot would not be affected by the proposal³⁸⁶

'Is Southeastern genuinely content about freight trains reversing in front of Slade Green train depot for operation via the Sidcup line?

Southeastern have been consulted on the project, methods of working into and out of Howbury Park for those paths running via Sidcup would not affect the day to day running of the depot. In addition, the project will enable Southeastern to extend their headshunt from 10 car to 12 car to enable more efficient working.'

- c. What is unclear about that? Consistent with evidence given by Mr Gallop to the Inquiry, there has been liaison between NR, RDL and Southeastern Trains about the project and its potential effects on the depot. It is notable that SET does not formally object to the proposals, despite a member of its staff (without, as far as one can tell, any particular authority to do so, making negative comments in an unofficial communication to Councillor Borella³⁸⁷, the MOL seeks to rely on that communication in support of the proposition³⁸⁸ that the depot issues 'are real', but it would have been better to have focused on the explanatory email from Mr Caine;

³⁸² INQ/99.

³⁸³ See para 7.4.67(k) of the MOL's case

³⁸⁴ Ibid para 7.4.67(k).

³⁸⁵ Ibid para 7.4.58.

³⁸⁶ See INQ/25, email from Thomas Caine (NR) to Martin Able (Bexley) copied to Tania Smith at Dartford BC, dated 23 November 2016.

³⁸⁷ INQ/58.

³⁸⁸ See para 7.4.57 of the MOL's case.

- d. Network Rail (NR) are also accused of being unclear about what the design solution is, and whether the 12 car headshunt for SET is a pre-condition of the acceptability of the RDL scheme. This was an example of the 'I see no ships' phenomenon witnessed on rare occasions at planning Inquiries. It is perfectly clear that the RDL scheme is viewed as an enabling device for SET/NR's depot re-organisation, rather than requiring it to happen as a precondition of the SRFI access. That is clear from (1) the 23 November 2016 email from Mr Caine of Network Rail, relevant part cited above, (2) from the formal consultation response which one finds repeated verbatim in both the Bexley committee report³⁸⁹ and in the withdrawn November 2016 Dartford committee report³⁹⁰ and (3) from the 26 September 2018 email from Guy Bates of NR³⁹¹. Mr Caines' *'in addition'* is consistent with Mr Bates' *'the design of Howbury Park's main line connection is compatible with Slade Green Depot achieving its own extended 12-car headshunt within the boundaries of the depot.'* Mr Gallop was entirely accurate in his description of the relationship between the RDL scheme and the potential depot improvement, which was consistent with the NR emails; in no sense was it (as is alleged) a 'gloss'³⁹²;
- e. Similarly, Network Rail (and by extension, RDL) are taken to task for producing a timetable study summary marked 'draft', but not the entire document. That is a matter for NR. As the email exchanges in late 2016 between NR and Bexley³⁹³ amply illustrate, NR wrote in detail and then responded to questions from Bexley including in a meeting on 19 October 2016; that then led to further emailed questions, all of which were answered in detail by Thomas Caine. That led to Bexley's committee report and their stance (maintained throughout this Inquiry, despite the Mayoral injunction that they refuse permission) that the proposal would function as a SRFI;
- f. On a small point, both DBC and the MOL query what the scheme is. The rail connection is as illustrated on the masterplan. Mr Goldney has not suggested that it cannot be provided in that form, fails any standard, or anything of that kind. Far from being 'extraordinary'³⁹⁴, it is wholly unsurprising that the NR responses and documents do not detail a possible depot improvement which is not part of the RDL scheme and is not required as its precursor. The NR emails as long ago as 2016 confirm that the design work and assessment to the end of GRIP2 have been completed³⁹⁵.

³⁸⁹ CD/1.6

³⁹⁰ CD/1.1

³⁹¹ INQ/99.

³⁹² This allegation is made in para 7.4.60 of the MOL's case.

³⁹³ INQ/17.

³⁹⁴ The Mayor's reaction, expressed at para 7.4.59 of the MOL's case.

³⁹⁵ See INQ/25, email from Guy Bates to Susan Clark of Bexley dated 5 October 2016: 'we have now completed our review of the engineering, operational and timetable aspects of the scheme through our 'GRIP' process as far as the end of Level 2 (Feasibility), a level of detail commensurate with the needs of the project at this stage of its development.' (underlining added).

Summary – why the SRFI would function as one

11.2.53. For these reasons, the attack mounted at this Inquiry on the proposals as falling outside or beneath the relevant standards for a SRFI should be rejected. RDL is the last party to make light of the practical and technical challenges facing a SRFI promoter, but a degree of overall reasonableness has to be maintained when examining whether the SRFI proposal will function as such. The Secretary of State can be reasonably assured that the proposals will function as a SRFI, delivering modal shift, employment benefits and meeting part of the identified national need. It should be given very significant weight in the assessment of whether very special circumstances exist.

London Gateway

11.2.54. The MOL says that the potential of London Gateway as a SRFI serving the east/south of London is a 'fatal defect' in the RDL case³⁹⁶. Is it? In what sense would it meet the need that Howbury Park would meet, obviating the need for a SRFI in the Green Belt at Howbury?³⁹⁷

11.2.55. The answer is that it would not remove the need that Howbury Park would meet, unless one asks the wrong question. In order to determine whether there is a need for Howbury Park, the MOL asks: could London Gateway in the future host a SRFI in the arc to the east/south of London³⁹⁸? Since the answer is obviously 'yes' to that question, the MOL then forms the view that Howbury is not needed. But the mistake is to assume that the critical need for an expanded network of SRFIs would be met by one at London Gateway (even with Radlett in place at some point).

11.2.56. London Gateway and Radlett would not constitute a network of SRFIs serving London and the South East. That is manifestly the case when one recognises that London Gateway and Howbury Park would be unlikely to interconnect directly (i.e. for rail freight to travel between them); they would actually serve different parts of the market and use different parts of the rail network. This appears to be acknowledged in the MOL's submissions³⁹⁹, albeit that it is put as London Gateway acting as a 'rival' to Howbury Park. It is not particularly clear why they would not in fact be complementary to one another, since they would be likely to serve different rail routes, with one being closer to the south London area, the other to the east.

11.2.57. But the problem with the rather simplistic case advanced on this point by the MOL is that the NPSNN does not envisage a need quantitatively framed, for 3 or 4 SRFIs around London. We are not here (thankfully) in the world of Motorway Service areas to be provided at suitable intervals around the M25 to meet needs. There is no obvious logic to the MOL's argument that a

³⁹⁶ See para 7.2.13 of the MOL's case.

³⁹⁷ I note that the Mayor does not pursue the raft of other suggested alternative sites suggested by Mr Goldney in his main proof.

³⁹⁸ His exact formulation is at para 7.4.71 of the MOL's case.

³⁹⁹ See para 7.4.82 of the MOL's case.

potential future SRFI at London Gateway would meet the need that Howbury Park would meet – they are both needed.

- 11.2.58. That is certainly the way that the NPSNN envisages the London Gateway SRFI potential; the intermodal terminal had been consented by the release of the NPSNN in 2014, and yet the Government's view has been that London Gateway is primarily a port which will increase, not diminish, the needs for SRFI facilities elsewhere⁴⁰⁰. The port-related railhead is not, as RDL understands it, being promoted by the MOL as the alternative SRFI.
- 11.2.59. Furthermore, apart from the fact that the intermodal terminal is not constructed and is not required to be so until 400,000 m² of B8 is built and occupied at London Gateway (a staggering amount, considering the size of the port already in operation), the potential SRFI is not proving to be attractive to the market due to its location. It is not close enough to London to displace locations such as Barking in the affections of Tesco, and Mr Gallop gave evidence that others had considered London Gateway as a location and rejected it.
- 11.2.60. The chief issue is that many of the Regional Distribution Centres for the big retailers are south of the river, near the many stores and customers in South London. It makes little sense for HGVs to move the additional mileage out to London Gateway and back; that would remain the case even if a new Lower Thames Crossing is in due course constructed. It would be much more convenient (and therefore much more likely to attract customers to rail) for there to be the shortest HGV trips possible to and from the SRFI. London Gateway will never be able to compete with a site as close to the urban area and RDCs as Howbury Park.
- 11.2.61. So whilst it is undoubtedly true that there are failings with the Alternative Sites Assessment⁴⁰¹, and a role for London Gateway should probably have been identified, there is no embarrassment on RDL's part in rejecting the MOL's case on this point. If London Gateway did in fact represent such a 'fatal defect' in the appellant's case, why was it not mentioned in the MOL's Statement of Case? The point has mushroomed as the MOL's case to the Inquiry developed, and now occupies an unjustifiably prominent role, mainly due to the fact that it appears (to the MOL, at least) to be the answer to the relevant question. But, as submitted already, he is wrong about that.

11.3. **What planning benefits of the proposal can be reasonably anticipated?**

- 11.3.1. It follows from the submissions already made that the Secretary of State is invited to find that sufficient assurance exists in this case for the proposals to be treated as a SRFI.

⁴⁰⁰ CD/2.2 paragraph 2.48,

⁴⁰¹ Most of the points made in paras 7.4.85-86 of the MOL's case are accepted. However it should be noted that the suggested role of London Gateway was not identified in consultation on the project, nor is the site referred to in the Mayor's Statement of Case on these appeals.

- 11.3.2. From that flow some very weighty benefits (hence of course the reason the MOL spent much of the Inquiry disputing that the proposals would be a SRFI).

Employment

- 11.3.3. First, Howbury Park would meet part of the nationally-recognised need for an expanded network of SRFIs. It would therefore bring about modal shift because it would encourage retailers, logistics companies, waste companies, to shift some of their HGV loads to rail. It would not start at 4 trains a day, or more. It would start, as all SRFIs have done, with one train⁴⁰² and some road-based traffic, and the operators would work hard to interest the on-site operators and others to make use of the rail connection. That is precisely the way that the Government approached the East Midlands SRFI⁴⁰³:

*'The Secretary of State does not agree with the Examining Authority that the fact that a proportion of the warehousing would be made available for use in the period of 3 years during which the rail link was being constructed means that the project would fail to meet the functionality requirements of the NPSNN referred to above. He appreciates that the construction of the warehousing and the construction of a new railway will involve different timescales and he considers it entirely reasonable that a commercial undertaking should seek to generate income from the warehousing facilities before the railway becomes operational. The Secretary of State considers that the interpretation of the NPSNN requirements must allow for the realities of constructing and funding major projects such as this.'*⁴⁰⁴

- 11.3.4. Here, occupation of the warehousing is proposed to be precluded until the intermodal area and the new mainline rail connection are complete⁴⁰⁵. Mr Kolinsky chastised me for my reference in the conditions session to the cost of the intermodal facility and the rail connection as involving very considerable expenditure⁴⁰⁶, but it is common sense that this scale of built facility does not come cheap. The warehousing would be on-stream with the rail connection and intermodal facility already in place here, a better and more advantageous outcome than one found acceptable by the Secretary of State at East Midlands.
- 11.3.5. The proposal would also bring with it many jobs, 2,000 at its full operation. It is acknowledged to be in accordance with the Bexley Riverside Opportunity Area in the *London Plan*⁴⁰⁷, which has a particular focus on the strategic importance of logistics⁴⁰⁸. These are important points in which the proposals accord with the Development Plan. The MOL would, it appears, welcome those benefits if he had formed a different view on the loss of the Green Belt⁴⁰⁹.

⁴⁰² See the first lone service from the new I Port, Doncaster, in its first month of operation (Gallop XC).

⁴⁰³ CD5.6 paragraph 16 of the DL.

⁴⁰⁴ The Secretary of State is referred to the full passage in CD5.6.

⁴⁰⁵ See draft condition 6, CD5.9.

⁴⁰⁶ An 'evidential vacuum' was the accusation.

⁴⁰⁷ See para 7.1.11 of the MOL's case.

⁴⁰⁸ Mr Scanlon XC.

⁴⁰⁹ See para 7.4.88 of the MOL's case.

11.3.6. The weight to be given to these jobs benefits should be substantial. Mr Scanlon identified⁴¹⁰ that in 2007 only relatively limited weight was given to the jobs and economic benefit of the proposals; he observed rightly however that things had changed:

- a. The NPSNN ties the role of SRFIs absolutely securely to the achievement of economic, as well as environmental, benefits;
- b. The jobs and employment targets in Bexley are very high and only likely to increase. The MOL again seeks to downgrade the importance of jobs in Bexley by submitting⁴¹¹ that since Appendix A of the Bexley Core Strategy contains an infrastructure delivery plan⁴¹² which says that Howbury Park 'is not required for the delivery of the Core Strategy, however, if it is not implemented, there is need to identify more sustainable freight facilities', then it follows that the SRFI is really not that important to Bexley. Despite wielding the power to override Bexley's own democratic response to the application, the MOL cannot erase Bexley's actual views about the benefits of the proposal, which appear clearly set out in its committee report⁴¹³

'These economic impacts demonstrate a significant scale of predicted benefits. The GLA notes that the proposal would make a significant positive economic impact and help support the Bexley Riverside Opportunity Area and Regeneration Area.

...

Significant harm is afforded to the environmental impacts and the identified harm to the Green Belt, however, substantial weight is also to be afforded to the economic benefits of the proposals ...'.

- c. The GLA agrees with this assessment in the Statement of Common Ground between them and RDL⁴¹⁴;
- d. Furthermore, the revised Framework has materially changed in relation to support for logistics in particular⁴¹⁵. The new national policy underlines why substantial or significant weight should be given to the employment and economic benefits that the scheme would bring.

11.3.7. In the light of those points, it is difficult to know quite what to make of the submissions by the MOL on jobs and the economy⁴¹⁶. There seems to be a failure there to grapple with the agreement in the Statement of Common

⁴¹⁰ Mr Scanlon XC.

⁴¹¹ See para 7.1.12(d) of the MOL's case.

⁴¹² CD3.12 page 122.

⁴¹³ CD1.6, pages 66-69.

⁴¹⁴ CD/6.3, paragraph 7.26.

⁴¹⁵ See new paragraph 82, and Mr Scanlon XC.

⁴¹⁶ See paras 7.1.7-12 of the MOL's case.

Ground, and there is certainly no reference to the revised Framework paragraph 82.

- 11.3.8. The MOL submits⁴¹⁷ that '*[l]ike the Inspector and Secretary of State's at the last appeal, it is submitted that these benefits ought not to weigh heavily as very special circumstances ... [t]he economic aspirations of the Bexley Riverside Opportunity Area and the Bexley Core Strategy can and should be delivered without development on Green Belt land*'. The first of those points appears to contradict the agreed statement with the GLA. The second averts its eyes from the agreement that the scheme would support the Opportunity Area. There is no reference to the NPPF or to the much higher employment target that the MOL promotes for the Opportunity Area (some 19,000 jobs) in the emerging *London Plan*⁴¹⁸.
- 11.3.9. The Secretary of State is therefore invited to give significant weight to the employment, regeneration and policy benefits of the scheme.

Ecology

- 11.3.10. It is broadly accepted, as RDL understands it, that the proposals would bring about an enhancement of the ecological value of the land adjacent to the appeals site, specifically through the implementation of the Marshes Management Plan⁴¹⁹. However, it is said that relatively little weight should be given to the ecological benefit because policy now seeks enhancement as well as conservation of ecological assets.
- 11.3.11. As Mr Goodwin said⁴²⁰, whilst that is true, a case-specific evaluation needs to be undertaken, because there is a spectrum of ecological enhancements. Not all enhancements are equally valuable⁴²¹, despite the fact that the merest enhancement would be enough to satisfy policy.
- 11.3.12. In this case, the enhancement would be significant. The marshes are viewed by local ecologists as the unpolished jewel in the crown of the LBB; this scheme would take a significant step towards improving and maintaining that improvement in the long term. As part of that assessment:
- a. The Secretary of State is asked to take account of, and give weight to, Mr Goodwin's evidence that the loss of ecological value on the appeals site itself would be minimal. The flora is of low value, since it is very largely semi-improved or improved grassland of low value; the small pockets of better successional vegetation largely lie off site on the former landfill area⁴²²;
 - b. There would be a small displacement of some breeding birds (Corn Bunting and Skylark), but neither species is dwindling markedly in numbers in this area and both would be amply provided for (not just

⁴¹⁷ See para 7.4.88 ⁴¹⁷.

⁴¹⁸ Mr Scanlon XC.

⁴¹⁹ See para 7.4.88 of the MOL's case; see para 8.5.8a) of DBC case.

⁴²⁰ XX DBC

⁴²¹ As Mr Godwin put it 'it might be 1, or it might be 10'.

⁴²² Mr Goodwin illustrated this by reference to his Appendix 6 of APP/BIO/2.

on the former landfill site, which they prefer in any event⁴²³, but on the marshes);

- c. The Marshes Management Plan would re-charge the marshes to stop them drying out, and allowing them thereby to achieve a much more favourable status and value. This will have significant benefits to biodiversity and although the drainage aspects are connected to the mitigation of the scheme, the ecological benefits of the re-charging go well beyond conservation and well up the scale of enhancement.

11.3.13. On the logic of DBC's argument, one could never attribute more than limited weight to ecological benefits, even if one were entirely restoring a SSSI or Ramsar site. As Mr Goodwin said, however, there is a spectrum of effects and the ecological benefits, which will be locally felt⁴²⁴ in this case, and that should be properly and fairly recognised in the planning balance.

11.4. **What are the likely adverse effects of the proposal?**

Green Belt

11.4.1. There is no dispute between the main parties that there would be significant harm to the openness of the Green Belt, and to the purpose of not encroaching on the countryside; because the SRFI would be inappropriate development, that also contributes an irreducible kernel of harm in line with the Framework. RDL have never suggested otherwise, and accept that significant weight must be given to this harm in the very special circumstances balance. Indeed, the policy ramifications in national, *London Plan* and Bexley policies are as set out in the MoL's final submissions⁴²⁵, and are as set out in DBC's submissions⁴²⁶ for Dartford.

11.4.2. A minor area of dispute is with DBC over the purposes of preventing unrestricted sprawl and coalescence. There is no difference in relation to the location of development in the Green Belt and the role of this parcel of Green Belt as between 2007 and 2018, and RDL do not demur from the findings of the last Inspector and the Secretary of State in that respect⁴²⁷. If the same approach is taken, that would answer the Green Belt aspect of Mr Bell's evidence⁴²⁸ which is slightly overstated on the point of importance of the Green Belt here in gap and settlement pattern terms.

Landscape

11.4.3. Similarly, RDL does not dispute that there would be significant landscape and visual harm as a result of what would be a very large development. The impacts would be capable of mitigation to some degree, but clearly not entirely given the landform and availability of views, particularly from

⁴²³ See the plan at Appendix 3 of APP/BIO/2 and Mr Goodwin's XC.

⁴²⁴ Despite the scheme not including (cp the 2007 scheme) the Tithe Barn and its learning centre, it will provide office space on the appeals site for the same purpose, and it will be tied in to local ecological and amenity groups.

⁴²⁵ At paras 7.1.1 and 7.1.12(a) of the MoL's case.

⁴²⁶ Para 8.1.2 of DBC's case.

⁴²⁷ CD5.2 paragraphs 15.8-15.9; CD/5.3 paragraph 13.

⁴²⁸ Especially his suggestion that the Green Belt here is 'sensitive and strategic' – see para 8.2.5 of DBC's case.

middle and far distance. Again, the scale and location of the proposals are broadly comparable to those in 2007, and the findings of the Inspector and Secretary of State remain relevant⁴²⁹. Weight should be given to these identified harms, which would be substantial and adverse.

Other harms-biodiversity, residential amenity

- 11.4.4. RDL does not accept any net harm to biodiversity for the reasons I have already covered. Nor is there evidence that the living conditions of neighbours would be harmed, if the mitigation (including the conditions on noise impacts) were to be imposed.

Other harms-highways and air quality

- 11.4.5. That leaves the DBC case on highways and air quality. It is important first for the Secretary of State to recognise the limits of the DBC case. It does not say that permission should be refused outright on highways and/or AQ grounds; instead it asks for a degree of harm to be taken into account under both heads as part of the very special circumstances balance.

- 11.4.6. In summary, DBC's case is:

- a. On highways, it is said that the 'crux of DBC's traffic objection'⁴³⁰ is not the 'normal conditions', which the modelling submitted in support of the planning applications shows to be unaffected by the proposal⁴³¹ but the propensity of the Howbury Park traffic to '*inevitably exacerbate local traffic congestion and lengthen existing traffic queues, particularly when 'incidents' occur*'⁴³²; it is recognised that any such points can only really be addressed as a matter of judgement⁴³³. DBC also say that the TMP would not give sufficient comfort;
- b. On air quality, that a significant risk remains that 'the addition of the development traffic into the road network from the early 2020s during periods of congestion and disruption will result in increases in No₂ emissions on local roads, including within designated Air Quality Management Areas (AQMs)'.⁴³⁴

- 11.4.7. Of course, it is accepted that due to the proximity of the M25, there are regular incidents that cause elevated levels of traffic in Dartford. It would be folly to suggest otherwise. However, as DBC recognised through the evidence of Mr Caneparo, there is no technical validity in a modelling assessment of such periods. To do so would be contrary to established practice⁴³⁵ and in any event, the modelling outputs cannot be relied upon once saturation is reached⁴³⁶.

⁴²⁹ CD/5.2 paragraphs 15.12 to 15.21; CD/5.3, paragraph 15.

⁴³⁰ See para 8.3.10 of DBC's case.

⁴³¹ DBC expressly recognise this at para 8.3.8 of its case.

⁴³² Para 8.3.12 of DBC's case

⁴³³ Ibid.

⁴³⁴ See para 8.4.11 of DBC's case.

⁴³⁵ Accepted by Mr Caneparo, XX.

⁴³⁶ Ditto.

11.4.8. It is unsurprising in the light of that measure of agreement that DBC does not in its submissions rely on any technical assessment by Mr Caneparo that purports to quantify or justify degrees of additional impact around Dartford town centre. Instead, DBC's submissions stay at a high level, and rely more on the advice of Kent County Council (KCC) as set out in their consultation response⁴³⁷:

'the residual impact of this development is likely to be characterised by additional local traffic generation and some consequent increase in congestion, which the applicant cannot fully mitigate and that may also cause a worsening in local air quality.'

11.4.9. That is fine so far as it goes, but the Secretary of State will bear in mind that KCC did not, and do not, object to the grant of permission. They have not quantified or further characterised the degree of residual impact which they consider likely 'additional local traffic generation and some consequent increase in congestion' could well be a very small amount of incremental change. Indeed, that would be consistent with KCC's evaluation: if there is congestion at times in Dartford town centre, then a certain degree of additional traffic would materially worsen an existing poor situation; and if that was KCC's view then one would have naturally expected them to recommend refusal. But they did not. That obviously undermines the submission that DBC then makes⁴³⁸ that the highways impact be given 'substantial weight'.

11.4.10. So as a result, DBC has no evidence base of its own (Mr Caneparo's exercise to quantify by modelling what numbers might reassign due to the Craymill Rail Bridge was a bogus exercise which he did not rely on⁴³⁹), and RDL would urge caution when it comes to accepting the submission⁴⁴⁰ which refers to Mr Caneparo's judgement about the degree of reassignment at times of congestion possibly ('could'⁴⁴¹) be 'severe'. In fact, Mr Caneparo accepted in terms⁴⁴² that he was not able to say that the scheme impacts would be 'severe', something which is borne out by the complete absence of any quantified amount, queue length, link capacity or junction saturation figure in the DBC closing submissions. There is no reliable evidence whatever to substantiate the submission that there would be severe harm, let alone that it should be given substantial weight.

11.4.11. Before going on to deal with the highways points, RDL notes that the air quality case advanced is also entirely unsupported by evidence. Dr Maggs' evidence, as he made clear, was that the impacts he assessed and presented are all negligible. The air quality case depends on asking the Secretary of State to speculate what might be the air quality impact if different, higher but slower traffic flows are assumed. But that poses the decision-maker some intractable problems. For a start, which figures, which links and what degree of exceedance is being alleged? Over time, as the

⁴³⁷ See DBC/W2/2 page 13 Appendix PC1.

⁴³⁸ See para 8.3.20 of DBC's case.

⁴³⁹ Mr Caneparo. XX (Inspector's note: INQ/34, issued after cross-examination, sets out Mr Caneparo's final position)

⁴⁴⁰ See para 8.3.17 of DBC's case.

⁴⁴¹ DBC case *ibid*.

⁴⁴² Mr Caneparo XX

fleet becomes less diesel based, would there be any noticeably impacts even at locations where the existing flows are higher? We don't know.

Dr Tuckett-Jones does not think so, because her view is that the existing methodology overstates the impact anyway.

Kent County Council's position

11.4.12. DBC is not the highway authority for the affected roads, and there is no KCC objection. Were the likely effects of the proposal to be seriously adverse, then (1) KCC would have said so, but did not; and (2) they would have objected to the proposals, but did not. Indeed, none of the highways authorities objects to the grant of permission.

11.4.13. DBC is therefore constrained to rely on the KCC consultation response, with its unquantified residual impact (obviously not that troubling from the highways perspective).

Highways evidence

11.4.14. The modelling undertaken by WSP on RDL's behalf is based on TfL's RXHAM model, which was developed for the modelling of a new river crossing but can be used for this purpose. There are numerous points of detail arising from the RXHAM Model Audit Report contained within the ES⁴⁴³, but one overarching point: the model is not only the best available, it was urged upon RDL by TfL, and is a model which is still used. It is a version of the other 'HAM' family of models. From a promoter or developer's point of view, as the Secretary of State will appreciate, if TfL expresses the view that one of its HAM models is to be used to assess a development proposal, then that is what tends to be used.

11.4.15. Mr Caneparo does not present any quantitative or modelling evidence on which DBC now relies for its submissions. Instead, it is asserted that the proposal gives rise to '*considerable potential for operation of the SRFI to exacerbate existing congested conditions on the highway network in the locality of the appeal site and through Dartford Town Centre*' when there has been an incident affecting the strategic road network⁴⁴⁴. The only real basis for this is a rather protean use of the KCC consultation response, which suggests that there will be reassignment onto local roads without any quantification or evaluation of the effect. The best way to get to grips with that point is to focus on the additional work that Mr Finlay presented, showing the state of play with the roads through which it is alleged reassigning traffic⁴⁴⁵would 'rat run'. That work shows that those roads perform relatively well and are not in fact overly constrained. Mr Caneparo confirmed⁴⁴⁶ that he does not allege any harm to the free flow/capacity at any junction in Dartford.

11.4.16. So, even if one bases the entire exercise on the KCC consultation response, it is extremely difficult rationally to form a view about the *degree* of harm.

⁴⁴³ CD/1.27 Volume 3b Appendix E Appendix 3.3 RXHAM Model Audit Report, July 2015 and CD/1.30 Appendix E- Revised RXHAM Model Audit Report, February 2016.

⁴⁴⁴ See para 8.1.8d) of DBC's case.

⁴⁴⁵ See the analysis of nodes, links and junctions in APP/TRAN/5

⁴⁴⁶ XX.

There is no distribution suggested, and so one cannot tell whether it is said that a particular road or roads would be over-capacity; one cannot tell whether the additional Howbury traffic would have any measurable effect over the entire area – they would obviously comprise a very small percentage of the overall flows through the area. So when DBC say⁴⁴⁷ that the crux of its objection is 'primarily a matter of judgement', that is a euphemistic way to say that it is without any obvious evidential support. Mr Finlay's work⁴⁴⁸ on the capacities of junctions, links and nodes in Dartford does, on the other hand, provide a measure of objective assessment as to the state of the network and the way in which any re-assignment might affect it.

11.4.17. It is not really appropriate for DBC to move from this evidential position to a submission that the harm could be severe or that substantial weight should be given to this notional harm. Even if one were to accede to DBC's request that the issue is approached as 'a matter of judgement', there is no reliable evidence that the scheme would make any material difference to the degree of congestion or queueing in any link. The Secretary of State should therefore give this point very limited weight.

11.4.18. DBC also makes a short string of points about the TMP⁴⁴⁹:

- a. Criticism is made of the junction 1A contribution (on the basis that SCOOT, rather than MOVA, might be implemented), but the contribution is supported by KCC in both principle and in terms of the financial contribution;
- b. It is suggested that the HE cap and routeing restrictions may not be effective. The regime, however, will depend for its effectiveness primarily on KCC and LBB, neither of whom make a complaint about the way the ANPR and monitoring system would operate. Of course, the steering group would include DBC and would be able to ratchet up fines if necessary; the s.106 binds the TMP and given that it runs with the land, would be enforceable against the occupiers as well as the owners of the site. It may be 'far from straightforward'⁴⁵⁰, but we are dealing with a major concerted effort on the part of the authorities and RDL in a relatively constrained edge of London location. There is nothing which suggests that the system is unfeasible, would not be achievable technically, or would not allow the steering group to manipulate the sanctions to make it financially painful for occupiers and operators to breach the routeing controls.

11.4.19. DBC is also critical of the failure to spell out in the s.106 agreement(s) 'the key components of the TMP as minimum requirements'⁴⁵¹. This is unnecessary because there is an overall covenant obliging the owners/occupiers to comply with the TMP.

⁴⁴⁷ See para 8.3.10 of DBC's case.

⁴⁴⁸ See APP/TRAN/2, Appendix B and XC.

⁴⁴⁹ See para 8.3.21 of DBC's case.

⁴⁵⁰ See para 8.3.20c) of DBC's case.

⁴⁵¹ See para 8.3.22 of DBC's case.

- 11.4.20. Finally, DBC's objections/submissions in relation to the Steering Group decision-making⁴⁵² are noted, but appear unfounded because there is no basis for requiring 'a further level of legal and practical assurance' that the TMP won't be stripped of key protective provisions. DBC and the other public bodies will sit on the Steering Group as statutory bodies, able to consult their constituents and take into account the full burden of the public interest in making their views known through the Steering Group. There is no likelihood of a democratic deficit in this process. That is the case in relation to the DIRFT example that Mr Mould drew attention to⁴⁵³.
- 11.4.21. For these reasons, the TMP, now bound into the final version of the s.106, would provide a comprehensive and workable mechanism for controlling certain aspects of the Howbury Park proposals.

Conclusion-harm

- 11.4.22. Significant harm to Green Belt and landscape is accepted. The other impacts would be mitigated such that they should not feature in the 'other harm' component of the very special circumstances test. In particular, it would not be an evidentially robust finding that local highways harm, let alone air quality impacts, should be factored in.

11.5. Are there very special circumstances justifying the release of the appeals site from the Green Belt?

- 11.5.1. Green Belt is not an environmental designation, but a highly restrictive brake on development in designated areas. However, at all levels of policy, even where the proposed development is 'inappropriate development', an exception arises where (in aggregate) circumstances are so unusual that the restraint policy should, in the public interest, be relaxed.
- 11.5.2. There is nothing between the main parties as to the articulation between the NPSNN and planning policy: the NPSNN does not amend or disapply the need for very special circumstances to be shown. However, that does not mean that meeting a critical national need may not amount to the key aspect of very special circumstances: of course it can. It did at Radlett (also in the Green Belt), at Howbury Park in 2007, and should again here now. Indeed, the meeting of a national need is a quintessential justification for releasing Green Belt land.
- 11.5.3. Indeed, although they fight shy of saying this, the cases for the MOL and DBC implicitly accept that if the Secretary of State finds that the need is for

⁴⁵² See para 8.3.22 of DBC's case.

⁴⁵³ DCO Obligation page 11 of Sch 4, paragraphs 4.6 to 4.9: the composition of the Transport Review Group is very similar to that here. It will be remembered that the main point being made at the s.106 session was about democratic deficit. That is exactly the same in the DIRFT case, which is why Ms Thomson referred the Inquiry to it. The other points made by Mr Mould go nowhere: (a) the obligations here would bind the occupiers as s.106 runs with the land – no obligation is needed to bind the owner to procure compliance; (b) and (c), the degree of change is more tightly defined, but plainly it is the control of the proposed group in this case – a major proposed change eg by RDL could be blocked by DBC, and adjudicated by the expert; (d), that is the answer also to whether a major change could take place – although not the same exactly, the same; (e), It is not simply an advisory group – see paragraph 4.1, 4.3 and 4.4. RDL simply doesn't accept the DBC submissions on this point.

an expanded network of SRFIs that would in part be met at Howbury Park (in a way, or to an extent, that would not be obviated by any potential SRFI at London Gateway), then very special circumstances are indeed likely to be established, even given the Green Belt and landscape harm. That is the corollary of the MoL's heavy emphasis on need and alternative sites; as the NPSNN makes clear, it is particularly difficult to meet the need for a network around the country's largest market, London, since that market is girded about with Green Belt. DBC's case on highways effects and air quality would not rebut the very substantial weight to be given to meeting national need.

- 11.5.4. Familiarity might perhaps breed contempt where this issue is concerned. A national need, particularly one which is deemed by the Government to be critical, repays careful consideration. It is a national need because to have a network of SRFIs is crucial for the country's commercial resilience, and its environmental robustness, going forward. To achieve those goals of paramount importance is more important than the preservation of the openness of the Green Belt in this location. Although certain factors are different, the need for SRFI facilities did clearly outweigh the same level of harm in 2007, so although a 'difficult balance', as the MoL would stress, it was one in which the benefits nevertheless *clearly outweighed* the harm.
- 11.5.5. Standing back from the detail of the evidence on this occasion, the big points can still be seen:
- a. London's Green Belt requires the strongest protection⁴⁵⁴;
 - b. London is the country's largest, and most important market for goods;
 - c. London and the Southeast together currently lacks any SRFI facilities. The prevailing consequences for the HGV use of the strategic road network can be imagined. The road network is frequently inoperable due to incidents, making the flows essential to our economy highly susceptible and vulnerable. London needs a network of SRFIs around it to improve the resilience of its economy;
 - d. If one is to release 57 ha of land from the Green Belt, there needs to be a justification of real strategic force. Making the metropolitan region more economically stable, and improved in environmental terms, would be an appropriate use of land currently kept free from development. That is the case even if a non-Green Belt site, at London Gateway, might have the potential to contribute to part of the network as well one day.
- 11.5.6. That is the shape of these particular appeals, if one rejects the MoL's 'concerns' about the market attractiveness of the intermodal facilities, based as they are on asking a series of questions aimed at the wrong targets. Whilst DBCs' concerns are perhaps legitimately more locally-focused, it is less easy to forgive the approach of the MoL, who frames his objection as based on strategic concerns. A truly strategic approach would have borne in mind the fact that, as Mr Kapur says, the rail industry is well used to

⁴⁵⁴ See para 7.5.1 of the MoL's case.

shaping the timetable to meet evolving and competing needs. The biggest markets in the country lie within striking distance of Howbury Park, without the need to run the gauntlet of the M25 on the way in. The site is self-evidently a good SRFI location to meet part of the identified national need.

- 11.5.7. Again, why DBC wishes to raise its points about traffic in Dartford is understandable. But perhaps it is worth reflecting, at the end of this phase of the process, why the MOL attacks the RDL scheme with such relish and in such alarmist terms. There are two clues, one might think.
- 11.5.8. The first clue, which runs throughout the evidence, is the fundamental error, identified earlier in these submissions, that because the scheme would be attractive to road as well as rail, it is somehow suspect. Another clue is the entirely bogus argument – accepted as such by Mr Hirst⁴⁵⁵ – that the scheme would do nothing for London. That is found in the Stage 1 report, and in the reason for refusal, and in the MOL’s statement of case. Unsurprisingly, it has been quietly shelved by Mr Kolinsky in submissions in favour of a central argument based on the ‘perfect storm’ of constraints that the current timetable and all the constraints make access all too difficult.
- 11.5.9. Not once throughout this process has Mr Goldney, or anyone from City Hall, picked up the phone, or written an email, to Network Rail. The MOL calls Mr Goldney as his witness to argue that it would be impossible to gain access to the site by rail (in fact, his confirmed position⁴⁵⁶ is that 2 trains a day could access the site); but Mr Goldney advises a party (BP) which has just inserted a new rail freight service into the South London network, and he accepts⁴⁵⁷ that his ex-colleague Mr Kapur’s evidence should be given substantial weight. Perhaps the MOL should have approached Mr Kapur, who would have no doubt told him that flexing and developing the timetable is a regular rail industry process.
- 11.5.10. The second clue is that the MOL calls evidence to support the primacy of passenger rail over rail freight. That is the thrust of Mr Hobbs’ evidence, and part of Mr Ray’s evidence about the policy in London. But Network Rail does not have the same approach: they must balance fairly the competing reasonable demands of rail freight and passenger rail. At the close of the evidence, the MOL is not able to submit that Howbury Park trains would lead to the loss or detrimental re-timing of any passenger service. But the idea that Howbury might prejudice passenger rail is the other loose thread that runs through the MOL’s case.

11.6. **Conditions and planning obligations**

- 11.6.1. I do not repeat here the detailed submissions made in the 106 and conditions session, other than to note:

⁴⁵⁵ In XX.

⁴⁵⁶ In XX.

⁴⁵⁷ Ibid.

- a. There is no need to restrict warehousing by condition until rail freight is taken up. That is not the Secretary of State's market-led policy approach (including at Radlett in the Green Belt) and it is unnecessary. It would be sufficient to impose draft condition 6, which would oblige RDL to pay for the installation of major rail infrastructure before the warehousing is occupied;
- b. I confirm that RDL agrees to the imposition of any of the agreed conditions which is in form of a Pre-Commencement Condition⁴⁵⁸. It does not consent to imposition of proposed Pre-Commencement Condition 6x as proposed by LBB, unless (1) the Secretary of State considers it necessary in principle, and (2) in terms of wording, 'commencement' is replaced by 'occupied' and the words 'and accepted in writing by' are removed.

11.7. Conclusions

- 11.7.1. The Secretary of State has to balance some weighty considerations in this case. But the starting point is that the SRFI which is proposed by RDL would be attractive to the market, well located for the country's largest economic agglomeration, and although challenging, will be accessed from the mainline via a well-trodden statutory process administered by Network Rail. Network Rail are the guardians of the railway network and they support the grant of permission. The SRFI would therefore meet part of a compelling national need.
- 11.7.2. Although the harm to Green Belt and landscape would be substantial, the Secretary of State is invited to find that London would benefit more from the greater economic and environmental resilience that a network of SRFIs would bring, than from the retention of the site as largely undeveloped land. Yes, it is hard to path rail freight and London's roads can be congested on a regular basis. But that is no answer to the challenge set by the NPS.
- 11.7.3. If permission is granted, RDL will deliver the scheme, and support the very ambitious employment targets in the current and emerging *London Plan*. Both DBC and the MOL fasten on a reference in the SIFE Inspector's Report⁴⁵⁹ to 'quality', which they oppose to 'quantity'. That is rather a sophisticated point of detail in the reasoning of that Inspector. The Secretary of State in these appeals will no doubt bear in mind a more basic point. There are at present no SRFIs around London. If the Government's economic (and mode shift) policies for rail freight are worth the paper they are written on, this is a site which should be consented for use a SRFI.

⁴⁵⁸ In CD/5.9.

⁴⁵⁹ CD/5.4, paragraphs 12.91 to 12.92.

12. THE CASES FOR SUPPORTERS REPRESENTED AT THE INQUIRY

12.1. The London Borough of Bexley (LBB)

Introduction

- 12.1.1. The LBB's role at the Inquiry is unusual. The LBB did not oppose the proposed development at the time of determination of the application, and, after careful consideration of the written evidence submitted on behalf of the principal parties and of representations received from the public, the LBB's position at the opening of the Inquiry remained as recorded in the officer's report to the planning committee and as endorsed by that committee's resolution, dated February 2017.
- 12.1.2. Representatives of the LBB have attended the Inquiry throughout its duration, and copies of Inquiry documents have been circulated to relevant planning and technical officers. The LBB has reviewed these documents on an ongoing basis, together with summaries of the key submissions made in oral evidence, and has considered matters raised both in respect of technical issues and those relating to the balancing of relevant planning policies.
- 12.1.3. The LBB has also given due regard to the publication of the revised Framework on 24 July 2018. Key Framework policies relevant to the determination of the appeal remain substantially unchanged.
- 12.1.4. To summarise the LBB's position, the appellant's scheme is by definition inappropriate development in the Green Belt, which would cause substantial harm to the Green Belt with the ensuing loss of openness and encroachment into the countryside. It is also likely to give rise to significant environmental impacts. However, adopted planning policies identify a regional and national need for a Strategic Rail Freight Interchange at this site, which, in the absence of appropriate alternative locations, amount to very special circumstances which clearly outweigh the identified harm to the Green Belt as well as any other harm.
- 12.1.5. At the close of the Inquiry, the LBB's position remains the same. It recommends that planning permission be granted for development, subject to appropriate conditions and planning obligations secured by way of a section 106 agreement.

Section 106 agreement and conditions

- 12.1.6. The LBB participated fully in the Inquiry sessions dealing with conditions and planning obligations. Appropriate planning conditions and obligations are essential to help mitigate the environmental impacts of the proposed development identified through the assessment of the application, and to enable the LBB, as the local planning authority for the majority of the application site, to properly control and monitor the implementation and operation of the proposed development.
- 12.1.7. In light of the sessions dealing with planning obligations and conditions, the LBB's position in relation to each is set out below.

Section 106 agreement

- 12.1.8. The LBB has agreed a form of section 106 agreement with the appellant to secure appropriate planning obligations relating to '*Bexley Obligation Land*'.⁴⁶⁰
- 12.1.9. The planning obligations sought and offered remain substantively unchanged from those agreed at the application stage and reported to the LBB planning committee. The exception to this is the financial contribution towards improvements at junction 1A of the A282/M25, which is now solely secured by the DBC section 106 agreement on the basis that the works fall wholly within the area for which Kent County Council is the Highway Authority.
- 12.1.10. The LBB's justification, both in terms of planning policy and in the context of Regulation 122 of the CIL Regs, is set out in its *Statement of Compliance*⁴⁶¹. DBC's *Statement of Compliance*⁴⁶² is complementary in respect of those planning obligations which are common to both agreements, as are the appellant's own *Position Statement*⁴⁶³ and response to the 2 *Statements of Compliance*⁴⁶⁴.
- 12.1.11. Further to the submission of INQ/48a and INQ/53, further amendments have been agreed to the form of the LBB section 106 agreement, principally to take account of amendments required by DBC to the DBC section 106 agreement and to the TMP. All parties agree that it is sensible for obligations common to both agreements to be identical, as both local planning authorities and both Highway Authorities will all need to co-operate to monitor, control and enforce the appellant's transport management obligations in the event that planning permission is granted and the development is implemented. Following the Inquiry session dealing with the section 106 agreements and the TMP, a form of common wording has been agreed which DBC has indicated it will sign. The LBB does not consider that these further amendments alter the position set out in paragraph 4.3 of INQ/48a.
- 12.1.12. The LBB is satisfied that the agreed form of the section 106 agreement will secure the obligations necessary to ensure that the development is acceptable in planning terms.

Conditions

- 12.1.13. The LBB has drafted a comprehensive set of recommended draft conditions⁴⁶⁵ for consideration by the Secretary of State. An updated version⁴⁶⁶ was discussed in the Inquiry session dealing with conditions, and

⁴⁶⁰ INQ/115 page 3.

⁴⁶¹ INQ/48a.

⁴⁶² INQ/48b.

⁴⁶³ INQ/53.

⁴⁶⁴ INQ/68.

⁴⁶⁵ CD/5.9.

⁴⁶⁶ INQ/94.

revised drafting of condition nos. 4, 6, 21 and 32 has been circulated prior to the close of the Inquiry⁴⁶⁷.

12.1.14. The suggested conditions are largely agreed by the parties. Where there are differences between the recommendations from DBC/MOL and from the appellant:

- a) In relation to condition no. 6, the DBC/MOL's wording is to be preferred, as it enables greater enforceability by the local planning authority, albeit, it is acknowledged the LBB resolved to grant planning permission on the basis of a condition(s) similar to that now recommended by the appellant;
- b) In relation to condition nos. 27 and 30, the appellant's recommended wording is to be preferred on the basis that the additional elements sought by DBC/MOL are unnecessary with regard to paragraph 55 of the Framework (test for conditions).
- c) On the question of whether conditions requiring the approval of a scheme containing a list of elements should end with the wording 'including' or 'comprising'; clearly there is a balance to be struck between (i) ensuring that conditions are precise and allow the efficient and effective delivery of development, and(ii) in ensuring that the language of a planning permission is flexible enough to enable the impacts of development to be fully mitigated. This is especially the case where the scheme proposed is in outline, where it is of substantial scale, and where development is likely to be implemented and undertaken over a long period of time. In this case, the reasoning for each condition is clearly and precisely set out, and there is no ambiguity as to the underlying purpose and justification for the need for a scheme to be submitted. Submissions were made by both the appellant and the LBB as to the respective merits of the language.
- d) If the Secretary of State is minded to grant planning permission and is persuaded by the LBB as to the need for the use of non-exhaustive lists within the suggested conditions, the recent Development Consent Order for the East Midlands Gateway SRFI⁴⁶⁸ does provide a precedent for the use of the word 'including' in such conditions, as does the decision notice on the Radlett scheme⁴⁶⁹. The Inspector's reports considering the refused Slough and Kent Gateway schemes⁴⁷⁰ also incorporate draft conditions referencing non-exhaustive lists.

Conclusions

12.1.15. The LBB remains of the view that there is a compelling regional and national need for a SRFI at this location, which is capable of amounting to very special circumstances which outweigh the substantial weight given to the

⁴⁶⁷ INQ/97 and 100.

⁴⁶⁸ CD/5.6 at schedule 2.

⁴⁶⁹ CD/5.5.

⁴⁷⁰ CD/5.4 and CD/5.7.

harm to the Metropolitan Green Belt, and to other environmental harms which are considered likely to arise as a consequence of the development.

- 12.1.16. Subject to the imposition of conditions substantively in the form considered at the Inquiry session, and to the due execution and completion of the 2 section 106 agreements, the LBB considers that the appellant's proposals do constitute very special circumstances which clearly outweigh the harms, both by definition and as identified as part of the application and appeal processes.

13. THE CASES FOR SUPPORTERS WHO MADE WRITTEN REPRESENTATIONS

APPEAL STAGE REPRESENTATIONS

13.1. Viridor Waste Management Limited⁴⁷¹ (VWML)

- 13.1.1. VWML is a recycling, renewable energy and waste management company based in the UK. If the appeals are successful, it would open the possibility to use the rail facilities at Howbury Park. VWML already uses rail elsewhere in Britain to move material in containers to and from processing points. In particular, working for the local authorities in Manchester, and previously in Edinburgh, to move residual waste by rail from inner-urban RFI to remote disposal and recovery sites. Our network of daily rail services carry up to 50 containers each way over distances as short as 30 miles, removing a considerable number of HGV trips that would otherwise operate over the inner-urban and outer-urban road networks. VWML's freight trains operate amongst busy commuter services in and out of Manchester.
- 13.1.2. VWML is aware of the wider opportunities to use rail for longer-distance movements of bulk recyclates such as glass, polymers, paper and metals from urban areas, to provide feedstock material into factories located in Britain and overseas. VWML will consider opportunities wherever they arise to provide this service.
- 13.1.3. VWML business currently operates one of the largest recycling facilities in Western Europe, off Thames Road adjacent to the application site, which handles close to 300,000 tonnes of material per year. Waste and recyclables are transported to the site by HGV, where they are processed and then exported off-site in large containers to a variety of locations, including ports for export abroad.
- 13.1.4. The lack of rail freight facilities at the Thames Road site removes any real prospect for rail use to service the current operations. The potential to transport materials from the site using rail is significant, in the order of 100,000 to 200,000 tonnes per annum. Clearly, at this stage in the planning process, it is difficult to accurately predict precise benefits in this regard. In the absence of a SRFI at Howbury Park, this material will continue to be transported by HGV on local roads to and from the Thames Road site.

⁴⁷¹ APP/RAIL/2 Appendix D and letter dated 4 February 2016 to LBB.

- 13.1.5. The creation of a multi-user, open-access rail freight interchange at Howbury Park would bring rail access to VWML's doorstep. It would also open up opportunities to work with other occupiers and companies in the hinterland of Howbury Park, to exploit any spare capacity in containers leaving the site by rail to carry VWML's material as a backload, further reducing the number of HGV movements on local roads. Based on VWML's experience in working with train operators and Network Rail elsewhere in the UK, we would not anticipate any problems in our ability to move trains to and from Howbury Park.
- 13.1.6. An additional benefit of the appeals proposal that would also greatly assist in our operation is the proposed new access to our recycling facility, with a spur from the SRFI new access road that links the A206/A2026 roundabout. This would enable HGVs to access our site directly off the strategic highway network, which would significantly improve the current situation by removing VWML traffic from the A206/B2186 roundabout.
- 13.1.7. VWML would welcome the opportunities presented by the rail freight facility, which could include occupying new premises at the Howbury Park site, to extend our existing production operations.
- 13.2. **GB Railfreight⁴⁷²** (GBR)
- 13.2.1. GBR supports the development of a new SRFI at Howbury Park.
- 13.2.2. GBR is part of the Swedish-owned Hector Rail Group, having been acquired last year as part of an ambitious and considered plan to expand rail freight services across Europe. GBR's aim is to improve the frequency, capacity, reliability, punctuality and competitiveness of rail freight services so as to provide a real and better alternative to long distance road haulage both in the UK and throughout the continent. This goal requires GBR to develop logistics solutions, as opposed to just the rail element, so that customers can have their product collected in one location and delivered to another, whether those locations have a direct rail link or not.
- 13.2.3. Whilst the environmental benefits of rail are appreciated by all our customers (rail is recognised as producing around one quarter of the CO₂ emitted by an equivalent road journey and one train can typically carry the load of between 40 and 70 trucks, some rather more) those customers also require consistent and comparable service levels. They will not pay more or accept less complete service just for the sake of moving to rail. That stance dictates that GBR seeks more efficient ways of delivering our customer's products to their point of use or sale. To be able to deliver close to London, given the current size and predicted growth of the southeastern conurbation, is an absolute necessity.
- 13.2.4. Every Government since the privatisation of the rail industry in 1994 has set out to increase the volume of rail freight. As recently as September 2016, this Government re-confirmed its commitment to growth and published its Rail Freight Strategy, particularly highlighting the scope offered by the

⁴⁷² APP/RAIL/2 Appendix A.

industry to reduce emissions and road congestion. GBR's aims parallel those of Government policy, being convinced, as investor's purchase proves, that the industry has a very positive contribution to make. That contribution can only be optimised if rail delivers the products it carries close to the final market.

- 13.2.5. Some traditional sectors of the rail freight market, notably coal for power stations and raw materials and finished products in the iron and steel sector, have declined substantially in the last three decades, but this reduction in absolute volume has been substantially offset by growth in construction materials volumes and in both the newer intermodal (container freight) and automotive sectors. Instead of carrying raw materials or fuel, rail freight has shifted towards the carriage of finished products. Those, in turn, are consumed where people live, but the industry's current infrastructure does not allow it to deliver into areas of significant growth such as London and southeast England.
- 13.2.6. The region presently has no functioning SRFIs. One has been granted consent at Radlett, to the north of London and 47 miles (or about 90 minutes in an HGV around the M25) from Erith, but construction has not yet started. In any event, its catchment area is completely different to that of the appeals proposal. GBR considers there to be no likelihood of overlap or 'cannibalism' by one on the other; there is more than enough potential traffic for both. In fact GBR would like to see at least a third SRFI in close proximity to the M25 and was profoundly disappointed when the proposal at Colnbrook was refused consent in 2016 on the basis that the site was in the Green Belt.
- 13.2.7. GBR does not accept that the appeals site is too close to the southern ports to be viable; such a statement is far too generalised. In fact the site is ideally placed to receive trains from the north and from the Channel Tunnel and to act as a regional distribution location for those arriving loads. Moreover, trains from deep-sea ports such as Southampton and Felixstowe will be viable when we are able to cycle our rolling stock more than once in 24 hours. The relatively short distances and a modern terminal will allow faster turnaround times which will, in turn, promote much better asset utilisation. Neither does GBR accept that it would impede passenger services, another general perception unfounded in fact. GBR has very substantial experience of working closely with Network Rail to make best use of the available space on the network and avoid conflicts.
- 13.2.8. GBR fully accepts that it cannot make the 'final mile' deliveries by rail and that there will be localised traffic around the site, but the ability of rail, if provided with facilities such as at Howbury Park, to remove substantial volumes of heavy traffic from the road network is undoubted.

13.3. **Maritime Transport Limited**⁴⁷³ (MTL)

- 13.3.1. Following recent discussions with the appellant as the preferred operator for the rail freight terminal at East Midlands Gateway SRFI, MTL and the appellant discussed wider opportunities for SRFI developments, including the appellant's proposal for Howbury Park. The appellant asked MTL to write a letter, which might be placed before the Inquiry, setting out its perspective, from the point of an established intermodal logistics company and operator of the SRFI at Birch Coppice, Birmingham Intermodal Freight Terminal (BIFT).
- 13.3.2. MTL is a UK based container transport and ancillary storage operator, servicing global customers that include retailers, manufacturers, logistics companies and shipping lines. The company also provides domestic distribution services, predominantly to retailers. In addition, MTL operates a number of rail freight interchanges, handling flows of intermodal and other traffic.
- 13.3.3. In 2001 MTL was the fifth largest container transport operator by road in the UK. Today, the company is the market leader in the domestic movement of containers and is the fastest growing domestic distribution operator with a growing portfolio of rail freight interchange operations in the UK.
- 13.3.4. As an evolution of MTL's origins in road transport, its involvement in rail freight has expanded on a number of fronts. Over the last 10 years, MTL has become involved in creating and planning trainload services, as well as becoming the largest provider of road haulage at either or both ends of the rail transit, moving containers between rail freight interchanges and their ultimate origins or destinations.
- 13.3.5. In 2010 MTL recognised a growing need to have a strategic stake in rail as a natural extension of our road haulage services, to secure additional transport options and exploit the benefits of rail haulage for moving large volumes of freight. We embarked on diversification into rail freight interchange operations, taking the lease on the Tilbury Riverside Rail Terminal for handling port-related traffic to and from rail freight services. In 2014, MTL acquired Roadways Container Logistics and BIFT, an open-access, purpose built rail freight interchange at Birch Coppice in the west Midlands.
- 13.3.6. As a business, MTL sees road and rail as complementary, not competing activities. With long distance road haulage services most affected by growing congestion on the motorway network there are clear benefits and opportunities for the increased use of rail in the UK for both long distance trunk hauls and shorter distance shuttle services. However, the future success of rail freight is predicated on the development of an expanded network of modern rail interchanges able to accommodate longer trains with more efficient handling, to replicate current road based distribution networks. The creation of an expanded network of SRFIs will facilitate the movement of freight by rail, providing the critical infrastructure needed to run trains from point to point to take substantial volumes from the roads.

⁴⁷³ APP/RAIL/2 Appendix B.

- 13.3.7. Taking MTL's terminal at BIFT as an example, it now receives and handles four trains a day from container ports. MTL provides the critical mass of traffic needed to underpin these services as well as handling third party traffic, all of which would otherwise have to travel by road. The interchange facility also enables MTL to store containers on site as required, prior to delivering these to their final destinations, either to occupiers of the SRFI site (e.g. Euro Car Parts, Smurfit Kappa and Volkswagen) or elsewhere, including Argos at Barton Under Needwood, JLR (various local sites) and Triumph Motorcycles at Hinckley, as required. The system also works in reverse with goods collected and delivered by train (in the case of BIFT), for export.
- 13.3.8. The principle of SRFIs located around London to service the region represents an obvious next step, given that there are no such facilities at present. The Capital is the largest single concentration of consumer demand. Currently road based distribution networks connect national distribution centres located in the Midlands, (including some on SRFI) with road based regional distribution centres serving the Capital, typically sited around the M25. There is a need to provide rail interchange facilities in the southeast in order that the motorway network between the Midlands and the southeast can be bypassed, allowing goods to be brought as close as possible to their ultimate destinations before transfer to road for their final delivery.
- 13.3.9. As far as I am aware, Howbury Park would represent the first SRFI facility of its kind to service London and the southeast. From a transport operator's perspective, the proposed site is in an excellent location to the southeast of London with immediate arterial road connectivity (A206) and motorway links (M25) as well as access to the rest of the UK and mainland Europe via the Channel Tunnel.
- 13.3.10. Howbury Park clearly provides the opportunity to maximise use of rail for manufacturers and producers based in the southeast or for those looking for a warehousing and distribution presence, as well as for retailers serving London and the surrounding areas.
- 13.3.11. The warehousing on site would be used to hold products as required prior to their next movement by road or rail. By maximising use of rail for large volume shipments, the road leg can be made as short as possible and with smaller delivery loads, bringing these within the scope of the growing fleets of electric and hybrid powered delivery vehicles.
- 13.3.12. MTL currently has a number of grocery, FMCG and parcel traffic flows, in particular, and can identify other flows that would be suited to Howbury Park and potentially representative of the goods that may be transported by rail to and from the site, including domestic and international flows in containers or conventional rail wagons which are currently moved by road. These would utilise the SRFIs in the Midlands, in particular, and other rail terminals in the UK.
- 13.3.13. MTL supports the expansion of SRFI capacity across the rest of the country, London and the southeast being one of the biggest gaps in the network at present. MTL therefore supports the proposed development at the appeals site and is confident that it would succeed. In the absence of any alternative

sites in the area south of the Thames, MTL sees it as an essential addition to the network.

13.4. **Rail Freight Group**⁴⁷⁴ (RFG)

- 13.4.1. RFG is a representative body for rail freight in the UK. It has around 120 member companies from across the rail freight sector, including train operators, logistics companies, ports, equipment suppliers, property developers and support services, as well as retailers, construction companies and other customers. RFG's aim is to increase the volume of goods moved by rail. RFG and its members strongly support the appeals proposal.
- 13.4.2. The SRFI model, supported by the associated national policy framework, has proved to be a key element in the development of sustainable movement of freight. Each of the established SRFI has delivered growth in rail freight and has enabled new customers to make use of rail as well as supporting growth for existing users.
- 13.4.3. As the culmination of a decade of Government policy evolution in this area, the NPSNN is unequivocal in its support for an expanded network of SRFIs, acknowledging the relatively small number of sites able to be developed for the purpose. The Department for Transport's latest Rail Freight Strategy 2016⁴⁷⁵ reiterates this support, noting that the key constraint to unlocking potential in this sector is the availability/construction of suitable rail-connected terminal facilities, including SRFI.
- 13.4.4. In addition to national policy, the recently published *Mayor's Transport Strategy 2018*⁴⁷⁶ also notes the challenges for freight transport and suggests measures to increase the use of rail and water freight as an alternative to road, including greater use of consolidation centres.
- 13.4.5. Yet despite the success of these policies, and the delivery of new SRFIs elsewhere in the country, none have yet been consented in London and the southeast, although there have been several applications including Howbury Park. The absence of such locations means that rail's share of distribution in London is below that of other major conurbations, and rail's ability to help decongest the trunk road network in the southeast is also hampered.
- 13.4.6. The development of suitable locations is therefore urgent and critical to unlocking rail distribution to and from, and also within the region. It is therefore particularly disappointing and concerning that, following the previously successful appeal, there is now renewed objection from DBC and the MOL, despite the LLBB voting in favour of the grant of consent.
- 13.4.7. The proposed development at the appeals site aligns both with national and regional policy for the development of rail freight, being capable of receiving long-distance freight by rail from the regions, mainland Europe and ports of

⁴⁷⁴ APP/RAIL/2 Appendix C.

⁴⁷⁵ CD/4.1.

⁴⁷⁶ CD/3.3.

entry, and of supporting use of rail to deliver into central London. With a clear absence of alternative proposals, we are concerned to ensure that this important scheme is able to proceed and deliver as a key part of rail freight growth in London and the southeast.

PLANING APPLICATION STAGE REPRESENTATIONS (for the most part)

13.5. Network Rail⁴⁷⁷

- 13.5.1. We can confirm that a design solution has been identified which would not only provide Howbury Park with a suitable main line access, but would equip Southeastern Trains (SET) with an enhanced 12-car headshunt siding, replacing the constrained 10-car siding currently operated and avoid any internal SET depot movement conflicts with those to and from Howbury Park.
- 13.5.2. Critically, the design would also allow trains to and from Howbury Park to be signalled to and from the main line directly by Network Rail, avoiding the need for SET's resources to be used to co-ordinate movements between Howbury and the main line and providing fail-safe reliability.
- 13.5.3. Freight trains routed via Bexleyheath or Blackheath⁴⁷⁸, so arriving in the 'down' direction, would access Howbury Park via the south end depot connection running directly via the connecting curve to the facility. This connecting curve is long enough to accommodate a full length (so 775 metre) freight train 'inside clear' of the main line. Freight trains routed via Hither Green, so arriving in the 'up' direction, would access Howbury Park by running into one of the Slade Green depot reception lines, drawing into the depot north end head shunt (so circa 700 metres inside clear); they would then set back round the connecting curve into the terminal. Likewise outbound trains via Bexleyheath or Blackheath would stand on the connecting curve awaiting clearance of the departure signal and trains routed via Hither Green would set back out of the terminal through one of the Depot reception lines into the north head shunt & await signal clearance to depart. For inbound trains arriving in the Up direction, it may additionally prove possible to set back directly from the Up line and onto the connecting curve and into the terminal (whilst commonplace nationwide, this option would be dependent upon prevailing service frequencies & for simplicity has not been included in the formal analysis).
- 13.5.4. As per national safe operating practice, all set back moves are conducted with a Person In Charge (PIC, in this instance one of the terminal operatives or member of freight company ground staff) observing the movement from a position of safety and in continuous radio contact with the driver.
- 13.5.5. We have identified an opportunity for the track works on the main line to be undertaken at the same time as another pre-planned maintenance possession in the Slade Green area, minimising any disruption to existing

⁴⁷⁷ As set out in LBB Officer's Report CD/1.6 pages 21-25 (Inspector's Note: broadly comparable points are made in DBC Officer's Report CD/1.1 (superseded by CD/1.2) and INQ/17, 25 and 99.)

⁴⁷⁸ CD/4.12 page 2 schematic and INQ/54 page 11 Figure 5.

passenger and freight services. To reiterate previous discussions we also see an opportunity for our own proposed depot enhancement works at Slade Green to be undertaken in parallel with those at Howbury Park, enabling us to use the Howbury site construction access, to minimise the need to bring heavy plant through residential roads in Slade Green. Beyond this, we have discussed with RDL the retention of a permanent highway access between Slade Green depot and Howbury Park, which would further reduce the need to bring depot traffic through Slade Green residential areas.

Capacity and pathing

- 13.5.6. Rail freight has an established operational footprint in the timetable in this area with the existing aggregates railheads at Greenwich Angerstein Wharf collectively generating some 4 to 5 trains in and out of the site per day. Notably, such bulk aggregates services operate in the 1,850 to 2,200 tonne range and so are significantly heavier (and so commensurately slower to accelerate & brake) than the intermodal services likely to operate to and from Howbury Park. Moreover, this same North Kent corridor recently accommodated the 4-6 daily heavy weight (up to 2600t) trains conveying cross London Crossrail construction works spoil to the reconnected bulk quay facility at Northfleet, such additional trains being timetabled without impact on the prevailing passenger service.
- 13.5.7. With regard to timetabling, our assessment has considered both off-peak daytime and overnight periods for movement of freight trains to and from Howbury Park (as we do not generally path freight trains across London during morning or evening peaks), with a particular focus on the off-peak daytime period when services are more intensive than at night. Against the longer-term objective of operating up to 7 freight trains per day to and from Howbury Park, it is a significant and positive achievement that the analysis of the off-peak daytime period has identified 7 paths during the relatively narrow window between morning and evening peaks with the timetable as it stands. Building on this 'worst-case' scenario, further investigation has identified a similar quantum of paths available overnight. We are therefore satisfied that capacity exists to allow the SRFI to achieve a meaningful level of rail traffic and associated mode shift of freight from road.
- 13.5.8. Notably the study work considered the proposals for a more intensive 'metro' style passenger service pattern along the North Kent Line during the day. Focusing on the trains accessing / egressing the Slade Green southerly connection, the analysis revealed two 7 minute slots per hour during the off-peak daytime period to allow freight trains to access or exit Howbury Park. To put this in context, the time taken for a maximum-length (775 metres) freight train to traverse the main line connection (so laddering across both main lines) would range from 6 minutes at minimum speed (5 mph / 2.2 m/s), to 1½ minutes at maximum speed (25 mph / 11.2 m/s). Obviously Down direction inbound & outbound moves entail no such laddering moves & would be quicker.
- 13.5.9. It is also worth pointing out that the timetable is not 'cast in stone' but is constantly being updated as a rolling 18-month programme, resulting in the timetables published by the train operators. The evolution of train services, whether passenger or freight, is taken into account by Network Rail when

updating the timetable. Growth in freight services from Howbury Park would be one of many stakeholder inputs that we would account for as the timetable is developed in future years.

- 13.5.10. Typical of such developments, we expect a progressive development of the traffic base building from 1-2 trains per day pathed to match available line of route capacity across the country and available slots at origin ports and terminals. Any new services are planned and monitored closely by our national freight team to avoid performance issues; a useful parallel perhaps being the recent experience of some 5-6 additional daily freight services per day (spread throughout the night and day) hauling Crossrail spoil from Paddington to Northfleet, a quantum of additional freight traffic achieved without impact on existing passenger and freight services over the North Kent line.
- 13.5.11. In summary, and in line with previous commentary on this scheme, with a proposal that works from a technical perspective and an absence of network capacity issues, we reiterate our support for development of a SRFI at Howbury Park. This facility answers a market need for rail connected facilities in the south east and it would seem there is a unique window of opportunity currently with our Infrastructure Projects team primed to deliver the relevant rail access works alongside our own Slade Green depot enhancement programme for Slade Green depot.

Market context

- 13.5.12. Howbury Park addresses a demonstrable market demand; Network Rail are aware of potential rail flows frustrated by the paucity of rail terminals in the southeast capable of handling contemporary intermodal traffics.
- 13.5.13. Nationwide, facilities such as Howbury are critical to the growth of domestic intermodal traffics, where rail is utilised by retailers and logistics operators for inland trunk haul movements, the slow pace of realisation of such facilities has been an impediment to this area of modal shift nationwide. Howbury Park will also have a geographically unique role to play in accommodating future Channel Tunnel traffic growth.
- 13.5.14. Network Rail receives numerous applications for new freight (and passenger) interchanges which are reviewed and prioritised with a view to market & network fit to make best use of our available technical resources. We therefore do not engage with new third-party projects lightly and had the Howbury Park proposals raised strategic concerns about viability or deliverability in design, construction or operation, we would not have engaged with the promoters through our GRIP process.

Crossrail extension

- 13.5.15. Our strategic planning team who work to a 30 year time horizon have long endorsed Howbury with their full visibility of future freight & passenger service development including prospects for the future eastward extension of Crossrail beyond Abbey Wood.
- 13.5.16. With electrification and signalling systems fundamentally different to those on the existing mainline, the Crossrail running lines to Abbey Wood

currently under construction feature a physically discrete alignment that sits parallel to the existing main line, on the Downside.

- 13.5.17. Whilst there are no definitive designs or timescales yet, it is understood that for Crossrail be extended east of Abbey Wood towards Dartford further dedicated additional running lines will be constructed, physically separated from existing running lines. With Slade Green depot located on the Down side of the existing mainline, such Crossrail lines will need to be configured so as to not sever access and egress between the existing mainline and Slade Green depot's north and south end connections; for this reason grade separation has been previously proposed as a solution.
- 13.5.18. Mindful then that the Howbury Park terminal connection is effectively a spur off Slade Green's southerly connection and head shunt; it is clear that Howbury Park itself poses no additional considerations or obstacles for the future Crossrail extension.
- 13.5.19. Reflecting its current development status, detailed train path planning of the future extension of Crossrail 1 beyond Abbey Wood and any implications for existing freight and passenger services (including movements to/from Howbury Park/Slade Green depot) has yet to take place. However, we are aware that the previous discussions between Crossrail and RDL raised no objections to the Howbury Park scheme.

14. OTHER WRITTEN REPRESENTATIONS

14.1. Kent County Council

Background

- 14.1.1. KCC considers it is important to highlight, that since the previously approved scheme was considered in 2007, traffic flows on the M25/A282 have increased considerably with reported 24 hour flows of vehicles in 2015 and 2016 far exceeding the design capacity of the strategic road network. Development growth across the wider area has been both significant and rapid over the last decade, with large residential and commercial developments in close proximity to the M25/A282, one local example being The Bridge commercial/residential development, which is situated off the A206 part way between the appeals site and the A282/M25.
- 14.1.2. KCC is satisfied with the overarching approach/methodologies as presented in a series of key technical documents issued in support of the proposal, including *Chapter E-Transportation of the Environment Statement, November 2015*⁴⁷⁹, the associated *Transport Assessment, November 2015* and the *Transport Assessment (Addendum), March 2016*.

Traffic flow and localised congestion

- 14.1.3. The problem of traffic congestion on the local road network and the associated impact on Dartford Town Centre, as well as the wider area, is acknowledged at both local and sub-regional level. KCC is of the view that this is predominantly caused by incidents occurring on the Highways England strategic road network, M25/A282, and the activation of the Traffic Management Cell in advance of the 2 north-bound river tunnels. Following the introduction of the free-flow system, which saw the removal of barriers/toll booths at the Dartford Crossing, the number of incidents of localised congestion associated with the crossing increased and was attributed directly to the introduction of the free-flow system and associated highway works. However, it is considered that in the last 3-6 months, conditions have improved somewhat and there has been a decrease in the frequency of local network problems.
- 14.1.4. Traffic flows around junction 1A of the A282/M25, Dartford Town Centre and A206 Bob Dunn Way are particularly sensitive to signal timings at junction 1A. KCC has made numerous changes to the traffic signals in recent history in an attempt to smooth the flow of traffic passing through the junction at different times of day. However, ultimately it is not necessarily what is happening at the junction that is the problem, it is what is happening on the M25/A282 'main line'.
- 14.1.5. For example, the extraction of an over-height vehicle triggers the Traffic Management Cell at the north-bound tunnel bore, which creates immediate delays. The north-bound tunnels can be closed due to congestion on the Essex side. Minor collisions on the approach to the tunnels (generally the result of lane changing/weaving) all exacerbate problems on the local network and very quickly, junction 1A and Bob Dunn Way suffer the

⁴⁷⁹ CD/1.27 Volume 2 Chapter E, CD/1.27 Volume 3b and CD/1.30.

consequences of such incidents, reflecting the sensitivity of the local network. Over recent years, the existing Dartford Crossing has either been partially or completely closed, for an average of 300 times per year (for 30 minutes or more). This has largely been due to vehicle height restrictions, dangerous goods vehicles, accidents, breakdowns and the need to prevent excessive queuing/traffic inside the tunnels. Typically it can take between 3 to 5 hours for roads to clear following closure. Inevitably any increase in local HGV/LGV movements associated with the proposed SRFI would exacerbate local traffic congestion and lengthen existing traffic queues, particularly when there is an incident on the local or strategic road network.

Traffic modelling

- 14.1.6. In support of the appeals proposal, computer highway modelling has been undertaken in an attempt to better understand the direct impact that the scheme might have on the local and strategic road network. Transport for London (TfL) in particular worked with the appellant in relation to the traffic modelling aspect of the application, which is a TfL area of expertise. The appellant utilised a TfL/Highways England derived highways assignment model known as RXHAM, which is fully audited and validated. RXHAM seeks to model the change in traffic capacity across the whole network as a result of the proposed SRFI development at peak times. As is similar in London and its fringes, the road network is constrained and this means that in some cases a small number of vehicles are reassigned to alternative routes. Looking towards 2031, the modelling suggests that the local road network and associated local roundabouts would be able to manage the associated increase in development related traffic.
- 14.1.7. However, as much depends on driver behaviour and local traffic conditions, there is uncertainty as to precisely where and how many vehicles would be assigned to the local highway network. Whilst computer highways models can help to 'paint a picture' of what may or may not occur on a local highways network in the future, it should only form one element of the overall professional advice presented. No computer model will ever be 100% reliable/accurate. That said, KCC is confident that the RXHAM model accurately reflects the typical traffic conditions in the local area.
- 14.1.8. TfL and Highways England concur that in the medium to long-term, physical mitigation measures are required at the M25/A282 junction 1A. As of spring 2017 KCC and Highways England are scoping/developing plans for remedial improvements to the junction. Future interventions would be most likely to focus on improving the general layout, queuing capacity, traffic signals and associated monitoring/response options. Such improvements are likely only to be able to smooth flows for existing traffic, as opposed to building in any significant new capacity to cater for future growth/demand.
- 14.1.9. Highways England has proposed a cap on HGV movements between the appeals site and junction 1A during peak periods (AM and PM peaks), in order to address anticipated congestion around that junction identified by the modelling. This is supported in principle by KCC, although the impact of the proposed cap did not form part of the original modelling and consequently, there is some uncertainty as to how it might impact on the shoulders of the associated peaks.

- 14.1.10. The proposed new access road of the A206/A2026 roundabout, offers benefits, such as removing the need for vehicles to use the current constrained access route provided under the Craymill Rail Bridge to reach the Viridor Waste Management Limited site.
- 14.1.11. KCC considers it is certain that the appeals proposal would contribute a significant amount of additional traffic in the form of HGVs, light goods vehicles and employee vehicles to both the local and sub-regional/strategic highways network. The scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local M25 junctions 1A and 1B and nearby local roads.
- 14.1.12. Having had regard to the traffic assessment as well as the current and likely future conditions on the local highway network, KCC considers that whilst the situation is likely to be worsened by the proposals, it is not able to conclude that it would result in conditions that could be described as having a severe impact on congestion or safety.

14.2. **Highways England⁴⁸⁰ (HE)**

- 14.2.1. The TfL RXHAM model is the most appropriate model to assess the strategic impact of the proposed SRFI. With reference to the documents submitted in support of the applications, the resulting traffic assignments on the highway network, and specifically the M25, A282 and the associated junctions (1A and 1B), were agreed.
- 14.2.2. HE concluded that at the time of full occupation of Howbury Park and on the basis of the current road network, the evidence presented showing queues and delays during peak periods on the M25/A282 would be severe from safety and operational viewpoints that could not be mitigated by the Howbury development. Under such circumstances HE would normally require planning conditions preventing further traffic onto the strategic road network at this location during the peak periods. However, as the Howbury development would likely remove some freight traffic off the M25/A282 an allowance was made via a recommended condition limiting the volume of Howbury Park HGVs on the M25 to 32 trips per hour (16 arrivals and 16 departures or equivalent) between the hours of 7am and 10am and 56 trips per hour (28 arrivals and departures or equivalent) between the hours of 4pm and 7pm. WSP do not agree with this limitation but RDL are prepared to accept it whilst the strategic highway network in the region remains unchanged.

14.3. **The Environment Agency⁴⁸¹ (EA)**

⁴⁸⁰ CD/6.4 section 5.

⁴⁸¹ Consultation response dated 22 January 2016 and 26 May 2016, see CD/1.6 page 31.

14.3.1. Subject to the imposition of conditions related to contamination land, drainage, construction methods and biodiversity⁴⁸², the EA does not object to the grant of planning permission. The EA has no objection to the proposal on flood risk grounds.

14.4. **Natural England**⁴⁸³ (NE)

14.4.1. Based On the information provided, NE advises that the proposal would be unlikely to affect any statutorily protected sites or landscapes.

14.5. **Historic England**⁴⁸⁴

14.5.1. Subject to the imposition of conditions related to investigation of archaeological and locally listed building investigations, Historic England does not object to the grant of planning permission.

14.6. **Port of London Authority**⁴⁸⁵ (PLA)

14.6.1. The PLA has no in principle objection to the grant of planning permission and recommends the imposition of a number of conditions.

⁴⁸² Consultation response dated 22 January 2016 and 26 May 2016, see CD/1.6 page 31.

⁴⁸³ Consultation response dated 9 December 2015 see CD/1.6 page 36.

⁴⁸⁴ Consultation response dated 23 December 2015 see CD/1.6 page 35.

⁴⁸⁵ Consultation response dated 23 December 2015, see CD/1.6 page 33.

15. INSPECTOR'S CONCLUSIONS

[In this section references in square bracket [] indicate a paragraph in which relevant material can be found.]

15.1. Introduction and main issues

- 15.1.1. The appeals site falls within the Green Belt. In the context of identifying the need for robust evidence to justify locating a SRFI in the Green Belt, the reasoned justification for LP Policy 6.15 indicates that *'... planning permission has already been granted for a SRFI at Howbury Park...'*. In 2007 the Secretary of State granted outline planning permission for a SRFI scheme at Howbury Park (the 2007 permission), which was similar in a number of respects to that which is now proposed. However, that previous permission does not amount to a fallback position, as it is no longer extant. Furthermore, the appellant has confirmed that *'RDL does not say that permission should be given this time because it was given in 2007'* and *'the 2007 decision was made on balance in the circumstances of the day, which are different...'* [7.2.1, 11.2.12-13].
- 15.1.2. The appeals site lies within the Bexley Riverside Opportunity Area (BROA) and an identified Regeneration Area within the LP. LP Policy 2.13 indicates that development proposals in the BROA should support the strategic policy directions set out in LP Annex 1. They include, amongst other things, that *'Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'*. The proposed SRFI development would be consistent with that particular strategic policy direction [7.1.11]. However, that is not the end of the matter, not least as there are other Development Plan policies with requirements relevant to SRFI development in this location.
- 15.1.3. Consistent with the Framework, LP Policy 7.16 indicates that *'The strongest protection should be given to London's Green Belt, in accordance with national guidance. Inappropriate development should be refused, except in very special circumstances.'* There is no dispute that, under the terms of the Development Plans and the Framework, the appeals proposal would constitute inappropriate development in the Green Belt [7.3.2, 8.1.1, 11.4.1].
- 15.1.4. In light of the evidence before me, I consider that the main issues are as follows:
- a) The effect of the scheme on the openness of the Green Belt and whether it is consistent with the purposes of including land within the Green Belt;
 - b) The effect on the character and appearance of the local area;
 - c) The adequacy of the proposed rail link and the effect on existing/future passenger rail services;
 - d) The effect on the convenience of highway users;
 - e) The effect on living conditions in the local area, with particular reference to air quality, noise and vibration; and,

- f) Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, such as, but not limited to:
- i. Whether the proposal would meet an identified need for SRFIs to serve London and the South East;
 - ii. The availability of alternative sites;
 - iii. The socio-economic benefits of the scheme;
 - iv. The effect on biodiversity; and,
 - v. The extent to which mitigation would be secured through planning conditions and obligations; and,

If the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, whether the very special circumstances required to justify the proposal exist.

15.1.5. In this section of the report I consider each of these matters in turn. In doing so I have had regard to the information supplied with the applications, including that contained within the *Environmental Statement (November 2015) (ES)*, the *Supplementary Environmental Statement (April 2016) (SES)* and the various technical reports and appendices attached thereto. I have also taken into account the further environmental information supplied in the proofs of evidence and elsewhere during the course of the Inquiry.

15.2. **a) The effect of the scheme on the openness of the Green Belt and whether it is consistent with the purposes of including land within the Green Belt**

15.2.1. The appeals site, with an area of around 57 hectares, comprises for the most part of grassland with some limited tree and shrub cover. The northern end of the site lies at around 5 metres above ordnance datum (AOD), rising up to around 13.5 metres AOD at Howbury Grange and then falling back down towards the River Cray at the southern end of the site and the A206 beyond⁴⁸⁶. Howbury Grange, to my mind, has the appearance of a two-storey dwelling and, according to the planning application forms, it has an internal floor area of around 800 m². I consider that the appeals site is generally characterised by open countryside, which together with a wider expanse of open landscape to the northeast and east comprises a relatively compact area of Green Belt separating Bexley, to the northwest, and Dartford, to the southeast. This area is bounded by the River Thames to the northeast⁴⁸⁷.

15.2.2. The Framework states that '*The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence*' and

⁴⁸⁶ APP/LANVIS/1 paras 3.8-3.9.

⁴⁸⁷ APP/LANVIS/1 page 25

it identifies 5 purposes served by Green Belt, of which I consider that the following are particularly pertinent [8.2.1-2, 8.2.9]:

- a) To check the unrestricted sprawl of large built up areas;
- b) To prevent neighbouring towns merging into one another; and,
- c) To assist in safeguarding the countryside from encroachment.

15.2.3. As a result of the proposed development, the largest part of the appeals site would be taken up by warehouse development, in zones A and B⁴⁸⁸, with a total floor area of around 184,500 m² and a height up to 27.1 metres AOD. A relatively narrow, centrally positioned intermodal area, zone C, would include rail sidings, an area for stacked container storage as well as gantry cranes up to 26.7 metres AOD in height. At the southern end of the site, the initial section of the access road off the A206 would be carried on a viaduct spanning the River Cray, with a length of some 280 metres and varying in height up to approximately 10 metres above the existing ground level⁴⁸⁹ [3.3-5].

15.2.4. Against this background, I consider that it is appropriate to describe the overall scale of built development proposed as 'huge' or 'massive' [7.3.4]. In my judgement, the proposed introduction of landscaping around the perimeter of the site to interrupt views of the built development, either partially or completely from some vantage points, would not mitigate its impact on the openness of the site. Furthermore, the appellant acknowledges that *'outside of the site the level of harm to the openness of the remaining Green Belt will vary relative to factors such as proximity to the site, surrounding vegetation and topography'*; *'the proposals will extend the urban fringe and reduce the depth of view'* from a number of vantage points within the wider Green Belt⁴⁹⁰. To my mind, it is clear from the appellant's photomontages illustrating the potential visual impact of the scheme, in particular viewpoints 1, 2, 7, 8, 9 and 25⁴⁹¹, that the adverse visual impact of the scheme on the openness of the Green Belt would be likely to extend well beyond the appeals site boundary. [8.2.8]

15.2.5. The proposal would have a substantial adverse effect on the openness of the Green Belt and the introduction of this massive development beyond the built limits of Slade Green would constitute urban sprawl. Although it would not be unrestricted sprawl, as the Green Belt designation of the countryside bounding the appeals site to the northeast and east would continue to apply, thereby providing a check on further development, it would amount to a significant encroachment on the countryside. Furthermore, whilst the remaining Green Belt gap between Bexley and Dartford would be sufficient in physical and visual terms to prevent those neighbouring areas from merging together, the separation between the two would be materially weakened. [8.2.5, 8.2.10, 11.4.1-2]

⁴⁸⁸ Parameters Plan dwg. no. 30777-PL-101 Rev I

⁴⁸⁹ Drawing no. 2039-RP-001 rev D at chainage 283-290 metres (11.445 metres-0.781 metres). The difference in level between the high point of the proposed bridge (12 metres AOD) and the existing footpaths at chainages 310 and 360 metres (5.5 metres AOD) would be around 6.5 metres-Mr Scott evidence in chief.

⁴⁹⁰ APP/LANVIS/1 para 9.5- 9.10.

⁴⁹¹ APP/LANVIS/2.

15.2.6. The Framework states that, when considering any planning application, substantial weight should be given to any harm to the Green Belt. The proposal would have a considerable impact on the openness of the Green Belt and would undermine a number of purposes served by Green Belt thereabouts [7.3.5, 8.2.13]. I conclude overall, that the appeals proposal would cause substantial harm to the Green Belt, an outcome acknowledged as likely by the appellant [7.3.6]. This harm weighs heavily against the scheme [8.2.4, 11.4.1]. The scale of development proposed now is broadly comparable with that associated with the 2007 scheme⁴⁹², in relation to which the Inspector reached a similar conclusion regarding the impact on the Green Belt. [8.2.12-13]

15.3. **b) The effect on the character and appearance of the local area**

15.3.1. The ES⁴⁹³ identifies the appeals site, together with the former Crayford Landfill to the east and marshland to the north, east and southeast as falling within *Character Area 1-Dartford/Crayford/Rainham Marshes* (CA1). It indicates that CA1 is: a high value landscape; characterised by its mostly flat topography and open nature, with occasional stands of trees and remnant hedgerows breaking up a largely grassed or marshy space; and, is relatively sensitive to development. To the southwest and northwest it adjoins *Character Area 3-Dartford to Erith Transport Corridor* (CA3), which is identified as: a low value landscape; relatively insensitive to development; and, local to the site, comprises a variety of residential and industrial uses as well as road and rail routes. To the south east of CA1, the predominant character of the neighbouring Character Areas is: CA7-residential; CA8-commercial/industrial; and, CA9-industrial. CA9 includes a number of large structures, such as the now closed Littlebrook Power Station and the Queen Elizabeth II Bridge Crossing, which are prominent features of the wider landscape.

15.3.2. In my judgement, due to its mostly flat topography and open nature, CA1 is not readily capable of absorbing change [7.3.4]. As a result of the proposal, the predominantly grassed appeals site would be almost entirely replaced by development, comprising, for the most part, massive buildings, the scale of which would be much greater than neighbouring existing development within the lower value landscape of CA3. Furthermore, the proposed landscaping at the northern end of the site, comprising earthwork bunding topped by planting at a density sufficient to offer a degree of visual mitigation, would not be in keeping with the predominant landscape characteristics of CA1. I consider that the landscape impact would be substantial and adverse, a view shared by the appellant [8.2.13, 11.4.3].

15.3.3. Turning to the visual impact of the scheme. Whilst the appeals site itself is not publicly accessible, large parts of the site are visible from a wide range of vantage points, including: residential properties to the north and west; public rights of way that run through other parts of CA1; and, the highway network leading to the site. The proposals include the installation of

⁴⁹² CD/1.27 Volume 2 Chapter D paras D8.8-8.9.

⁴⁹³ CD/1.27 Volume 2 Chapter D para D4.4 and Volume 3a Appendix D1 figure 6.

screening bunds and establishment of planting, with the aim of softening the impact of the structures. However, as the appellant observes '*the impacts would be capable of mitigation to some degree, but clearly not entirely given the landform and availability of views*' [11.4.3]. The ES indicates that the residual visual effect of the proposal at all of the identified viewpoints within a 2 Km radius around the site would be adverse and moderate/adverse in the case of many⁴⁹⁴.

- 15.3.4. It is apparent from the evidence of DBC and a number of individuals who have objected to the scheme, that CA1 is an area enjoyed by recreational users, not least as it provides a countryside environment which is easily accessible from a highly urbanised area [8.2.6, 10.5.2,]. Some of the greatest visual impacts would be likely in relation to views towards the site from recreational routes to the north and south of the site. For example, the footpaths alongside the northern site boundary and the section of the London Loop Long Distance Path (LLDP) to the northeast⁴⁹⁵. In my judgement, the expansive views across the appeals site from sections of those footpaths contribute significantly to a sense of being within the countryside. Those views would be lost as a result of the proposal [7.3.4]. To the south of the site, the sections of footpath passing along either side of the River Cray would be dominated by the proposed viaduct⁴⁹⁶, which in my view would also be clearly visible, where it traverses marshland and the River Cray, from Bob Dun Way. Expansive views across the appeals site would also be lost from a number of vantage points within the residential area to the north and northwest of the site, such as along Oak Road and Moat Lane. Views from those locations would initially be of the proposed substantial earth bund wrapping around the northwestern corner of the site and taller warehouses beyond. Whilst over time, bund planting would soften, if not entirely screen, views of the buildings⁴⁹⁷, in my judgement, due to its close proximity and scale, the proposed development would be likely to remain a dominating presence. I consider that the visual impact of the appeals proposal would be substantial and adverse, a view shared by the appellant [8.2.13, 11.4.3].
- 15.3.5. The proposals would not have a direct effect on the character or appearance of the Oak Road Conservation Area (ORCA)⁴⁹⁸, which lies outside, albeit immediately to the northwest, of the appeals site. The ORCA comprises a small estate of railway workers cottages built in 1900⁴⁹⁹, in relation to which Slade Green Train Depot lies to the south and the North Kent Line to the west. An area of predominantly residential development is situated to the north. In contrast the area of the appeals site immediately to the east of the ORCA comprises grassland. In my judgement, it does not contribute to the significance of the ORCA nor would the proposed development harm the significance of that Designated Heritage Asset.

⁴⁹⁴ CD/1.27 Volume 3a Appendix D1 figure 8-Viewpoint location plan, Appendix D5-Visual Effects Table,

⁴⁹⁵ CD/1.27 Volume 3a Appendix D1 figure 2, figure 5 and figure 16A.

⁴⁹⁶ CD/1.27 Volume 3a Appendix D1 figures 2 and 17B.

⁴⁹⁷ CD/1.27 Volume 3a Appendix D1 figure 11 (3 pages).

⁴⁹⁸ CD/1.27 Volume 3a Appendix D1 figure 4.

⁴⁹⁹ CD/1.27 Volume 2 para D4.16.

15.3.6. Nonetheless, I conclude overall, that the proposal would cause significant harm to the character and appearance of the local area, contrary to the aims of LP Policy 7.4, BCS Policy CS17⁵⁰⁰ and the Framework, which seeks to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape. In relation to the 2007 scheme, the Inspector reached a similar conclusion regarding landscape and visual impacts [7.3.4, 8.2.13, 11.4.3].

15.4. **c) The adequacy of the proposed rail link and the effect on existing/future passenger rail services**

15.4.1. The NPSNN paragraph 2.56 recognises that *'given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited...'*. It establishes a number of assessment principles for SRFIs, which include:

- Scale and Design-*'The initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage'* and *'As a minimum, SRFI should be capable of handling 4 trains per day'*⁵⁰¹; and,
- Transport links and locational criteria- *'Adequate links to the rail and road networks are essential. Rail access will vary between rail lines, both in number of services that can be accommodated, and the physical characteristics such as train length...'*⁵⁰².

15.4.2. The proposal includes the provision of an intermodal facility comprising rail sidings and an area for container handling, storage and vehicular access, in zone C of the site⁵⁰³. A new rail line would link the facility to the North Kent Line utilising a redundant spur within the Slade Green Train Depot. There is no dispute that either: the new rail line and connection to the spur could be constructed and used [11.1.3a.]; or, that provision of those facilities as part of the initial stages of development could be secured by condition, the details of which I will return to later. However, concerns have been raised by the MOL as to whether the proposed link would be adequate to service the needs of a SRFI, with particular reference to the number of freight services that could be accommodated, and if it would, the likely impact on passenger services.

15.4.3. In my judgement, given the requirement of the NPSNN that *'as a minimum, a SRFI should be capable of handling 4 trains per day'*, it follows that in order for the proposed rail link to be considered *'adequate'*, it would be necessary for it to be capable of accommodating 4 trains/day as a minimum [7.1.3, 8.5.4]. It seems to me, unless that would be the case, there would be no merit in requiring the facility to be capable of handling 4 trains per day.

⁵⁰⁰ APP/PLAN/1 para 7.37.

⁵⁰¹ CD/2.2 paras 4.88 and 4.89.

⁵⁰² CD/2.2 para 4.85.

⁵⁰³ Parameters plan dwg. no. 30777-PL-101 rev I.

- 15.4.4. I acknowledge that, in common with other SRFIs, the proposed facility would be unlikely to start operating with 4 trains per day [11.3.3]. *The Rail Report, November 2015*, submitted in support of the appeal planning applications, predicts that rail traffic through Howbury Park could potentially grow from 1 train per day (each way) in 2018 to 8 trains per day in 2033⁵⁰⁴. Nevertheless, I consider that in order to qualify for the full support given to SRFIs by the NPSNN, it would be necessary to be reasonably assured that the proposed rail link would have the capacity in the future to service the site with 4 trains/day, as a minimum [11.1.12].
- 15.4.5. In 2007, the Inspector indicated that Network Rail *'have effectively guaranteed that paths for 3 trains each day would be made available on opening the terminal and they state that further paths are likely to be made available as and when required'*. However, *'it has to be recognised that the implications of the emerging Kent Franchise and planned timetable changes on the North Kent Lines are not yet fully understood and have not been fully assessed'*. He concluded, *'whilst I take the view that, on the totality of the evidence available, the Secretary of State can be reasonably assured that sufficient train paths would be available to service a SRFI at Howbury Park, I do not consider this guaranteed'*.⁵⁰⁵ The supporting documents upon which those findings were based are not before me. Furthermore, there is some uncertainty as to the extent to which the timetable has altered since 2007 [7.4.54, 11.2.14.g)]. Under the circumstances, in my view, the position in 2007 is of little assistance now. In addition, an effective guarantee of paths for 3 trains each day would not meet the 4 trains per day minimum I have identified.
- 15.4.6. The evidence before me regarding Network Rail's current position with respect to the proposed development comprises for the most part correspondence between it and the Councils/appellant. On that basis, it appears that, whilst it may still have some concerns, Network Rail is generally supportive of the appeals proposal [8.5.7, 11.1.3.e., 11.2.50, 13.5.11]. Nonetheless, in my judgement, the evidence of Network Rail in the cases before me does not amount to an effective guarantee as to the number of trains that could be accommodated each day [7.2.5, 7.2.10, 7.4.67h), 9.2.5, 11.2.14.d)]. Furthermore, overall, I consider that the evidence presented at the Inquiry, which also includes analysis on behalf of the MOL and the appellant, casts serious doubts over the capacity of the network to accommodate the level of service required, for the reasons I set out below [11.2.50-52a.].
- 15.4.7. In initial consultation correspondence, Network Rail indicated that in order to address its concerns regarding the rail connection to the North Kent Line a GRIP1-2 study would be undertaken to review the likely impact, including a detailed timetable study⁵⁰⁶. In later correspondence with the LBB, Network Rail indicated that it had completed its review of timetable aspects of the scheme through to the end of its GRIP stage 2 (Feasibility)⁵⁰⁷. However, this was disputed at the Inquiry by the appellant's own rail witness, Mr Gallop,

⁵⁰⁴ CD/1.25 page 30.

⁵⁰⁵ CD/5.2 paras 15.110 and 15.112.

⁵⁰⁶ INQ/25 email from Adrian Toolan, dated 19 January 2016.

⁵⁰⁷ INQ/25 email from Guy Bates of Network Rail to Susan Clark of LBB, dated 5 October 2016.

who indicated that Network Rail still had work to do to finalise its thoughts at GRIP stage 2. Furthermore, some support for that position is provided by the only Network Rail timetable analysis report (*GRIP2 Report Part 2: Timetable analysis, 9th November 2016*) submitted to the Inquiry, which appears to be incomplete and has a 'draft' status (GRIP2 Report)⁵⁰⁸ [7.4.51, 11.2.52.e.]

- 15.4.8. The GRIP2 Report indicates that timetable analysis was undertaken in 2 steps: 1) identification of the potential opportunities to path trains across London (cross London paths), between the main stabling yard at Wembley and Crayford Creek Junction (CCJ); and, 2) identification of the potential opportunities to access the site off the main North Kent Line, the access point being just to the south of CCJ. Both steps are necessary to successfully path a train across London and into the site. The contents of the draft report are limited to an Executive Summary and a number of data sheets supporting only the step 1) analysis.
- 15.4.9. The step 1) cross London paths analysis, which Network Rail has confirmed was based on the '*timetable as it stands*' at the time [13.5.7], identified a number of opportunities to path trains across London, albeit Network Rail indicates that with any new service proposal on routes into London there are potential risks to the robustness and performance of the timetable⁵⁰⁹. The MOL, although concerned that it would be very difficult, accepts that it would not be impossible to provide cross London paths [11.2.35.a.]. Recent experience referred to by the appellant and Network Rail appears to support this position [7.4.56, 11.2.35.a., 13.5.6 & 10]. In my judgement, it is likely that cross London paths could be found to accommodate 4 trains per day between Wembley and Crayford Creek Junction, although the associated risks to the robustness and performance of the timetable have yet to be defined. However, a far greater level of uncertainty is associated with opportunities to access the site off the North Kent Line, step 2).
- 15.4.10. With reference to the step 2) analysis, the evidence from Network Rail on this matter gives rise to a number of concerns. Firstly, the GRIP2 Report indicates that based on an estimated 'metroisation' service pattern, there would be two 7 minute windows in each day-time intra-peak hour for freight trains to/from Howbury Park, the intra-peak period being 1000 hrs to 1600 hrs⁵¹⁰ [13.5.8]. However, the GRIP2 Report does not include any details of the assumed metroisation service pattern to support the finding. Secondly, Network Rail indicates in its consultation response to the LBB that the 7 minute windows should be viewed in the context that the time taken for a train to traverse the main line connection would range from 6 minutes at minimum speed (5 mph) to 1.5 minutes at maximum speed (25 mph) [13.5.8]. However, the maximum speed referred to is misleading as the speed limits across the junction range from 15-20 mph and the speed limit that would apply while any part of the train is within the Slade Green Train Depot would be 15 mph⁵¹¹. Furthermore, those crossing time estimates referred to

⁵⁰⁸ INQ/3.

⁵⁰⁹ INQ/3 page 4.

⁵¹⁰ INQ/3 page 4.

⁵¹¹ CD/1.25 page 34 figure 15.

appear not to take account of headway/junction margins [7.4.43.c.]. Under the circumstances, I consider that little reliance can be placed on the documented step 2) analysis put forward by Network Rail.

- 15.4.11. In the absence of details of the metroisation service pattern assumed by Network Rail, a reasonable starting point for the assessment of opportunities to access the site off the main North Kent Line is the current timetable, not least as the '*timetable as it stands*' appears to have been used by Network Rail as the basis for its step 1) analysis [11.1.10-11,13.5.7]. The appellant and others have given evidence regarding the available gaps or 'available whitespace' in the current timetable to allow trains in/out of the appeals site as well as the whitespace likely to be required for such manoeuvres, 'required whitespace'.
- 15.4.12. I will deal with required whitespace first. Three potential routes exist for trains to and from the appeals site: via Barnehurst, to the west; via Plumstead, to the north; and via Hither Green, to the south. The appellant has confirmed that the route over which most trains would be anticipated to travel to and from the appeals site is via Barnehurst, due to constraints associated with the use of the other two⁵¹² [7.4.39]. Therefore, this was the main focus of analysis at the Inquiry.
- 15.4.13. In the *Rail Report, November 2015*, submitted in support of the planning applications, the appellant's rail witness, Mr Gallop, estimated that whitespace of around 8-10 minutes would be required for a train to arrive at or depart from the site [7.4.43.a.]. His assessment was based on the time taken by a train travelling at 15 mph to cross from the controlling signal west of Perry Street Fork Junction, through CCJ and clearing the main line (4 minutes) as well as making an allowance for headway/junction margins before and after (2-3 minutes taken to rest signals and pointwork ready for the next train). As acknowledged by Mr Gallop, this time estimate was broadly comparable to that arising from the approach set out by Mr Goldney in GLA/RG/01 if a train length of 565 metres is used⁵¹³.
- 15.4.14. Prompted, at least in part, by Mr Goldney's evidence that a whitespace requirement of 8-10 minutes could not be met, Mr Gallop's approach to junction crossing times changed during the course of the Inquiry, lowering his estimate of required whitespace. I have a number of concerns regarding his revised approach:
- a) In APP/RAIL/6⁵¹⁴ Mr Gallop moved away from his view that the crossing time should be calculated with reference to the distance between the site and the controlling signal on the main line, to focussing only on the shorter distance across CCJ into the site [7.4.43.e.]. This is not an approach supported by Mr Goldney⁵¹⁵. Furthermore, it is

⁵¹² INQ/54 APP/RAIL/6 para 3.2.3- The route via Plumstead has W6A gauge clearance, as opposed to the W8 gauge clearance of the other two, which is preferred with reference to NPSNN para 4.85. The route via Hither Green involves trains manoeuvring within the Slade Green Train Depot sidings, potentially disrupting Depot operations [7.4.57-64, 9.5.6, 11.2.50-52].

⁵¹³ XX of Mr Gallop by the MOL (GLA/RG/01 para 5.20 method, inserting 565 metre train length = $565 / ((5 \times 1600) / 60)$ = 4.2 minutes, para 5.23 total headway = 6 minutes, Total = 4.2+6 = 10.2 minutes.

⁵¹⁴ INQ/54.

⁵¹⁵ INQ/63 para 2.1.2 bullet 1.

not clear that this revised approach was supported by Mr Kapur, a timetable analysis expert instructed by the appellant to assist with the timetabling exercise. His primary concern appears to have been related the use of blanket speeds, rather than the distance assumed⁵¹⁶. Taking account of a need to clear the signal, Mr Goldney estimates a crossing time of around 4.5 minutes (not including headway/junction margin), which is not based on blanket speeds⁵¹⁷. Whilst I share the appellant's view that his 10% contingency is not justified [7.4.65, 11.2.46], its removal is largely offset when account is taken of the 5 mph speed limit within the intermodal area, which may well have to be adhered to until the back of the train leaves that area⁵¹⁸. On that basis, and having regard to Mr Gallop's approach to acceleration, I consider that a crossing time estimate of 4+ minutes is reasonable and, even if the minimum allowance for headway/junction margin is assumed, a whitespace requirement of 8 minutes results.⁵¹⁹[11.2.43-47]

- b) In closing the appellant suggests that the position set out in tables 1 and 2 of APP/RAIL/7 should be preferred, which for an outbound train indicates a whitespace requirement of 6.5-7 minutes [11.2.39]. I do not share that view for a number of reasons. Firstly, the manner in which Mr Gallop's timetable analysis evidence changed during the Inquiry casts doubt over the reliance that can be placed upon it. Mr Gallop confirmed that his APP/RAIL/5 was replaced by APP/RAIL/6 due to errors in the timetable analysis [7.4.43.d.]. Mr Gallop's APP/RAIL/6 timetable analysis (tables 2 and 3) also differs from that in Appendix I of the same document, which was produced by the timetable analysis expert commissioned by the appellant, Mr Kapur. Mr Gallop's APP/RAIL/7 analysis (tables 1 and 2) is not entirely consistent with that in APP/RAIL/6 either. His explanation was that each analysis was based on a different version of the timetable⁵²⁰. Under the circumstances, I give greater weight to the analysis of Mr Kapur, who is acknowledged by both the appellant and the MOL to be an expert in timetable analysis [7.4.44, 11.5.9]. To my mind, these factors also cast doubt on the reliability of a number of the headway/junction margin assumptions included in APP/RAIL/7 tables 1 and 2. Secondly, in any event, Mr Gallop's final say on the matter of whitespace needed for a train departing from the appeals site, which came in cross-examination by the MOL and was not revisited in re-examination, was to confirm a crossing time of 8 minutes [7.4.47, 11.2.38-39].

15.4.15. It appears to me, with reference to the above reasons, whether taken in isolation or together, that a period of 8 minutes is a reasonable estimate of

⁵¹⁶ INQ/54 para 3.2.2.

⁵¹⁷ INQ/63 GLA/RG/09 para 2.1.5

⁵¹⁸ INQ/54 figure 5 track section 4-5 mph speed restriction, GLA/RG/09 para 2.1.2 bullet 3, INQ/72 APP/RAIL/7 para 2.2.4.

⁵¹⁹ [Inspector's note: the difference between the parties regarding assumed train length (560 metres-Mr Gallop, 565 metres- Mr Goldney) does not make a material difference to the outcome.]

⁵²⁰ In response to Inspector's question.

the likely whitespace requirement for a train departing from the appeals site.

- 15.4.16. Turning to available whitespace. The appellant appointed Mr Kapur of GB Railfreight to analyse the timetable to identify available whitespace slots, arriving/departing via Barnehurst, in the period between 05:30 and 01:03, thereby avoiding any overnight possessions that might occur⁵²¹. During the 6 hr intra-peak period referred to by Network Rail, Mr Kapur's analysis identifies only 6 opportunities of 7 minutes or more to arrive at the site and no opportunities of that duration to depart. Having regard to the whole period, he identifies 5 opportunities of 8 minutes or more to arrive at the site and one opportunity of that duration to depart⁵²²_[7.4.48-49].
- 15.4.17. Based on the evidence presented, in my judgement, the number of trains that could be pathed to/from the appeals site, having regard to the current timetable, would be likely to fall well short of 4 per day (each way), not least due to constraints on departure.
- 15.4.18. Looking forward, the NPSNN predicts that in London and the South East rail passenger kilometres will grow by around 20% between 2011 and 2020 and by a further 26% by 2033 _[7.2.11]. Locally, the Bexley Growth Strategy indicates that up to 31,500 new homes can be delivered across the Borough over the period to 2050, with growth areas at locations along the North Kent Line, including 8,000 new homes in Slade Green alone⁵²³. Furthermore, priority interventions to support the identified level of growth include: upgrades to services on the borough's railway lines as an immediate/short term priority _[9.2.8, 9.3.17]. The LTP4 indicates that rail capacity on the North Kent Line is stretched and likely to be overcapacity in the near future _[6.5.2]. I understand that, in broad terms, the metroisation concept, referred to by Network Rail in the GRIP2 Report, is expected to increase the frequency of passenger services throughout the day, increasing capacity in the southeast London suburban area by up to 25%⁵²⁴. That being the case, I consider it unlikely that future passenger timetables, such as metroisation, would be more favourable in terms of available whitespace than the current timetable, upon which the above analysis was based. Under the circumstances, the current timetable is also a reasonable starting point against which to judge potential future opportunities, in relation to which I maintain the view that the number of trains which could be pathed to/from the appeals site would be likely to fall well short of 4 per day _[7.4.54, 11.1.9-13, 11.5.9, 11.2.14.g & 36]. Furthermore, for the avoidance of doubt, in light of my finding regarding a whitespace requirement of 8 minutes, the 7 minute windows in Network Rail's estimated 'metroisation' service pattern, referred to in the GRIP 2 Report, would not be sufficient to accommodate departing trains.
- 15.4.19. However, that is not the end of the matter. There is no dispute that Network Rail has an equal obligation to facilitate the use of the network by both passenger and freight traffic _[11.2.14.g], 13.5.9] and it has certain powers to 'flex' the timing of trains within the timetable in order to accommodate new

⁵²¹ INQ/54 APP/RAIL/6 para 3.3.2.

⁵²² INQ/54 APP/RAIL/6 Appendix I.

⁵²³ CD/3.15 pages 29-30, SGCF email dated 19 December 2017.

⁵²⁴ CD/4.12 Technical Appendix section 10 page 50 para 10.6.

services. In Mr Kapur's experience, freight and passenger operators are often willing to work with each other to accommodate minor flexing of services to help each other accommodate desired changes to their timetables [11.2.35.b, 11.2.42]. Nevertheless, as observed by Mr Goldney and not disputed, there are limits. For example, Network Rail does not have the power to autonomously alter service levels specified by the Department for Transport. Furthermore, operators may object to proposed changes and there is provision for appeals to be determined by an independent body⁵²⁵.

- 15.4.20. Turning to the potential outcome of 'flexing' to accommodate the appeals proposal. Based on the timetable analysis submitted, including Mr Goldney's clockface exercise, it appears to me that the introduction of a freight service, into a typical hour of existing daytime passenger services, would be likely, at best, to result in disruption to a more even existing distribution of passenger services, with bunching of services in certain periods of the hour and significant gaps in others. When account is additionally taken of other factors, such as existing movements of passenger trains to and from the Slade Green Train Depot and the possibility of inflexibility elsewhere on the network, such as platform availability and turnaround requirements at London termini, the likelihood of passenger service numbers having to be reduced in order to accommodate appeals site freight traffic appears to me to be significant [7.4.54-55, 9.3.19, 9.5.6, 11.2.40-42, 11.5.10]. Furthermore, it seems likely that there would be little, if any, scope for future increases in passenger services, such as those envisaged by metroisation, referred to above.
- 15.4.21. I conclude that there is significant uncertainty as to whether the timetable could be flexed/amended to accommodate 4 trains per day to/from the appeals site either now or in the future [11.1.10-11, 11.1.13, 11.2.35]. At the Inquiry, I asked for the views of the parties as to whether assurance that an adequate rail link would be provided could be secured through the imposition of a Grampian type condition, the need for which I will return to later. Only the LBB confirmed that it could be done and provided suggested wording, condition no. 6x⁵²⁶. It would require evidence to be provided, prior to the commencement of development, of confirmation from Network Rail that the connection to the site is capable of handling 4 trains per day (each way). However, the appellant confirmed that it would not accept a condition requiring compliance prior to commencement [11.6.1b)]. Under the circumstances, notwithstanding Network Rail's support for the scheme, I am not reasonably assured that an adequate SRFI rail link, with reference to the NPSNN, would be provided [11.2.12, 14.d, 13.5.11]. However, if it would, I consider that it would be likely to have a material adverse effect on existing/future passenger services [7.4.55 & 67.j, 9.3.18, 13.2.7]. In this respect the appeals proposal would conflict with the aims of LP Policy 6.15, BCS Policy CS15, DCS Policy CS 15, LPe Policy T7 as well as MTS Policy 1 and Proposal 16 insofar as they seek to minimize any adverse impact on the wider transport network and safeguard or improve public transport services. I give this significant weight.
- 15.4.22. The NPSNN indicates that where possible SRFIs should have the capacity to handle 775 metre trains. Although the facilities within the appeals site would

⁵²⁵ XX of Mr Goldney by RDL, 17 September 2018.

⁵²⁶ INQ/100.

be capable of doing so, I understand that existing main line constraints do not cater for trains of that length at present [7.1.4, 13.5.3]. Therefore, whilst the whitespace necessary to manoeuvre such a train across Crayford Creek Junction would be even greater than set out above, and so more difficult to accommodate, I consider that it would not be appropriate to weigh that particular factor against the scheme [7.4.52].

15.5. d) The effect on the convenience of highway users

Background

- 15.5.1. The 4 Highway Authorities with an interest in the area most likely to be affected by the appeals proposal are: HE and TfL, who between them are responsible for the strategic highways/London Red Routes, such as the M25, A282 and A2; and, KCC and the LBB, who are responsible for the local highway network (the 4 HAs). None of them has objected to the grant of planning permission [11.1.3.i].
- 15.5.2. The main vehicular access point to the appeals site would be at a new fourth arm added to the north side of the roundabout at the intersection of: the A206 Thames Road, to the west; Burnham Road, to the south; and, A206 Bob Dunn Way, to the east, which leads to junction 1A of the A282/M25 (the appeals site roundabout). Furthermore, the DBC s106 requires adherence to the *Transport Management Plan* (TMP), which includes a number of measures associated with freight, in the *Freight Management Plan* (FMP). They include: a) limits on the number of HGVs associated with the appeals site that can use junctions 1A and 1B of the A282/M25 at peak times (HE cap); and, confining HGV traffic to and from the site to the A206, rather than through Dartford town centre using Burnham Road (with certain exceptions).
- 15.5.3. There is no dispute that there are regular incidents on the M25 that cause congestion and elevated levels of traffic in Dartford [11.4.7]. The Transport Assessment (TA) states *'it is clear that the area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels. It is impossible to undertake quantitative analyses to reflect every possible event...In order to assess the impact of Howbury Park it is appropriate to consider the 'typical' operation of the highway network...'*⁵²⁷. Mr Findlay confirmed that the traffic modelling in the TA is based on a 'typical day' avoiding 'abnormal traffic periods', such as network incidents⁵²⁸. Nonetheless, given that traffic incidents are frequent in this particular area, in my view such conditions cannot be ignored, if a robust assessment of the likely impact of the proposal is to be undertaken. The ES acknowledges that it is possible to approach that aspect on a qualitative, rather than quantitative, basis. Against this background, I have considered the likely impacts in the first instance based on 'non-incident' highway conditions and then 'incident' highway conditions.

⁵²⁷ CD/1.30 page 12 para 5.1.2, APP/TRAN/1 para 4.5.3.

⁵²⁸ APP/TRAN/1 para 4.5.3, evidence in chief and cross-examination of Mr Findlay.

Highway conditions: non-incident

- 15.5.4. TfL has adapted its *East London Highway Assignment Model* (ELHAM) to explore options for a new River Thames crossing, the *River Crossing Highway Assignment Model* (RXHAM). As part of the TA, this highway assignment model has been used to forecast the routes that drivers choose in the area and the associated flows were fed into more detailed junction specific models, such as ARCADY roundabout models, to assess junction performance.
- 15.5.5. I understand that the ELHAM model has undergone several years of development, calibration and validation and more recently RXHAM has been further enhanced and refined by TfL to improve the level of validation at the Thames Crossing points⁵²⁹. I consider it follows that the RXHAM model is likely to be reasonably reliable when it comes to modelling the strategic network immediately to the south of the Dartford crossings. However, regarding the local highway network around the appeals site, the TA acknowledges that *'as with all strategic models, when it is intended to use them to precisely assess a more local area it is necessary to undertake a local audit and validation process'*⁵³⁰. The need for this was echoed by HE and LBB⁵³¹, and in a letter to TfL, dated June 2015, WSP acknowledged that it would be necessary to *'undertake a thorough local model recalibration and validation to ensure that the model is fit for purpose for modelling the impacts of the freight interchange over its area of impact'*. Therefore, it appears to me that although there is no dispute amongst the 4HAs that the RXHAM model is the most appropriate strategic model available to assess the likely impact of the proposal on vehicle flows around the network, that support was qualified, particularly in relation to its application to the local highway network. I will return to this below, under the reliability of the appellant's RXHAM results [11.4.14].

Strategic highway network

- 15.5.6. KCC has indicated that since the previously approved scheme was considered in 2007, traffic flows on the M25/A282 have increased considerably with reported 24 hour flows of vehicles in 2015 and 2016 far exceeding the design capacity of the strategic road network [14.1.1]. Based on results from the RXHAM model, HE has concluded it is likely that, when the appeals site is fully occupied, delays and queues during peak periods on the M25/A282 would be severe from safety and operational viewpoints. Whilst accepting that the proposals may add to queuing on the strategic highway, Mr Findlay does not accept HE's argument that that would add to the safety risk. I share HE's concern, on the basis that longer queues resulting from the scheme may well take longer to disperse, extending the period during which the free flow of traffic is subject to interruptions and that this would be likely to increase safety risks⁵³².

⁵²⁹ CD/1.27 ES Volume 3b Appendix 3.3 page 45.

⁵³⁰ CD/1.27 ES Volume 3b Appendix E1 page 36 para 3.9.7.

⁵³¹ CD/1.27 ES Volume 3b Appendix 1.7-WSP letters to: TfL, dated 26 June 2015; LBB, dated 26 June 2015; and, HE, dated 26 June 2015.

⁵³² Mr Findlay's responses to Inspector's questions.

- 15.5.7. The proposed new Lower Thames Crossing (LTC) would be expected to provide some relief to the M25, although not in all circumstances, on the approach to the Dartford Crossing Tunnels (northbound traffic) due to demand which is suppressed at present⁵³³. However, it has not yet been consented and the anticipated opening date of 2027, which is some time after the estimated full occupation date for the appeals site⁵³⁴, is not guaranteed. Therefore, I give its impact little weight.
- 15.5.8. HE acknowledges it is possible that the impact of additional traffic associated with the proposals on the strategic highway network may be offset to an extent by some reduction in existing HGV traffic, through the use of rail. Against that background, HE considers that the impact of the proposal on the strategic highway network can be satisfactorily mitigated by limiting, by planning obligation, the numbers of Howbury Park HGVs joining or leaving the M25 in peak periods [14.2.1-2]. This is accepted by the appellant. I agree it is necessary.

Local highway network

- 15.5.9. I consider that key junctions on the local highway network include the following:
- a) The appeals site roundabout;
 - b) The Thames Road/B2186 Crayford Way roundabout, immediately to the west of the appeals site roundabout; and,
 - c) The signalised M25/junction 1A, to the east of the appeals site roundabout along Bob Dunn Way.
- 15.5.10. The LTP4 indicates that parts of the local road network are reaching capacity, as a result of high levels of development taking place [6.5.2]. The junction specific modelling work submitted in support of the scheme has been undertaken using ARCADY software for the above roundabouts and Linsig software for the signalised junction. The standard approach, acknowledged by Mr Findlay, is to regard the practical capacity of a roundabout as having been reached when the ARCADY predicted Ratio of Flow to Capacity (RFC) on any arm rises to 0.85⁵³⁵. For signalised junctions the reserve capacity of a junction is taken to have reduced to zero when the Linsig predicted Degree of Saturation (DoS) rises to 90%. These benchmarks allow for uncertainties inherent in the modelling. However, in this case Mr Findlay advocates setting these benchmarks to one side and the use of higher values to judge performance, based on his view that some queuing and congestion is to be expected in London. This approach is reflected in the TA, where findings as to whether junction capacity has been reached appear to be based on a RFC of 1.0 and a DoS of 100%.
- 15.5.11. Against that background, DBC and KCC take the view that the modelling work submitted in support of the appeals scheme indicates that, looking

⁵³³ APP/TRAN/1 section 5.

⁵³⁴ APP/TRAN/1 para 5.1.2.

⁵³⁵ Mr Findlay in response to Inspector's questions, see also CD/5.2 para 15.57.

beyond the estimated year of full occupation of 2025 to a forecast year of 2031, the local network would be able to manage with the development related traffic [8.3.8, 14.1.6]. I acknowledge that the modelling work suggests that the development traffic would not add greatly to problems that would exist at the Thames Road/B2186 Crayford Way roundabout and the M25/junction 1A in 2031. However, even if the relaxed benchmarks favoured by Mr Findlay are accepted, the TA results indicate that in 2031 both of those junctions would be over capacity to some degree with or without the appeals scheme [8.3.8]. Furthermore, in the case of the Thames Road/B2186 Crayford Way roundabout it predicts queue lengths on Thames Road (E) in the AM peak of 166-189 passenger car units (pcus), which in my judgement, would be likely to interfere with the free flow of traffic around the appeals site roundabout⁵³⁶ [8.3.2, 10.4.9].

- 15.5.12. Furthermore, and in any event, for the reasons set out below, I have significant concerns regarding the reliance that can be placed on the modelling work submitted in support of the appeals scheme as a means of judging the likely impact of the development, not least in relation to the appeals site roundabout.
- 15.5.13. To the west of the appeals site roundabout, Thames Road reduces from 2 lanes to a single lane, due to a width restriction at the Craymill Rail Bridge (CRB), before widening again to 2 lanes on the approach to the Thames Road/B2186 Crayford Way roundabout.
- 15.5.14. The TA indicates that, in practice, due to the CRB restriction and the associated need for traffic to merge, during the AM peak hour queues extend back to and through the appeals site roundabout, resulting in exit blocking to the Burnham Road arm, with slow moving vehicles from Bob Dunn Way making it difficult for vehicles to enter the roundabout from Burnham Road. The TA identifies that queue length surveys recorded in the AM peak hour show the average maximum queue during each 5 minute period on Bob Dunn Way was 61.2 pcus, equivalent to approximately 360 metres, and 14.8 pcus on Burnham Road, equivalent to approximately 85 metres⁵³⁷.
- 15.5.15. The TA confirms that, due to the issues set out above, it is not possible to validate an ARCADY model of the roundabout as it currently operates. Instead the roundabout has been modelled based on the assumption that the CRB constraint has been removed [8.3.14]. In stark contrast with the queue survey results referred to above, using 2015 traffic flows, the model predicts a 1 pcu queue on Bob Dunn Way in the AM peak⁵³⁸.
- 15.5.16. In 2007, when the previously approved scheme was under consideration, it was thought that replacement of the CRB was the LBB's 'no. 1 priority' and that it would be reasonable to expect it to be completed by 2025⁵³⁹. However, notwithstanding inclusion of the project in the LBB's Regulation

⁵³⁶ CD/1.27 Volume 3b Appendix E page 78 Table 9-9 and CD/1.30 supplementary Environmental Statement (2016) Appendix 3 page 8.

⁵³⁷ CD/1.27 Volume 3b Appendix E page 41 table 4-9, 1 pcu equivalent to around 5.9 metres (para 4.6.2 250m/42).

⁵³⁸ CD/1.27 Volume 3b Appendix E page 41 table 4-10.

⁵³⁹ CD/5.2 para 15.70.1.

123 List-April 2015⁵⁴⁰, I am not convinced that remains a reasonable expectation, given there is still no confirmed timetable for the removal of the CRB constraint [8.3.16, 10.4.7]. In my judgement, due to the likely scale and nature of such works, there is no prospect of those works being undertaken within the normal timescale for the commencement of development following a grant of planning permission and so it would not be appropriate to impose a Grampian type condition prohibiting development of the appeals site until those works are complete [10.4.7]. In any event, the appellant has indicated that it would not accept such a pre-commencement condition⁵⁴¹. Under these circumstances, I consider that the ARCADY modelling of this junction reported in the TA is of little assistance.

- 15.5.17. In order to investigate the potential effect of the CRB restriction on the operation of the appeals site roundabout, Mr Caneparo produced an '*Alternative Site Access Roundabout Junction Model*' (ASAM), using a version of ARCADY that allows some account to be taken of such constraints; a version not available when the TA was produced. Whilst, in comparison with the 2015 observed queues from the TA, the ASAM underestimates the queue on the Bob Dunn Way approach in the AM peak period (21 pcus, as opposed to the 61 pcus observed), its queue outputs are closer to the observed in comparison with the outputs from the TA model (1 pcu). Looking forward to 2031, the ASAM predicts significant queues on all the existing arms of the roundabout, such as queues of 800 pcus and delays of around 19 minutes in the AM peak on Bob Dunn Way [8.3.15].
- 15.5.18. Mr Caneparo and Mr Findlay agree that queues on that scale would be unlikely to be realised, as some vehicles would re-assign to different routes to avoid such levels of congestion/delay at the junction⁵⁴². To test this, Mr Findlay has run the RXHAM model using the delay predicted by the ASAM. It suggests that faced by such delays, significant numbers of vehicles would re-assign away from the roundabout to other routes through Dartford, for example a reduction in the AM peak of around 1,300 pcus to 550 pcus on Bob Dunn Way [8.3.16]. However, Mr Findlay indicates that such notable reductions are not realistic either. I share this view: firstly, as, if they were to occur, delays at the roundabout predicted by ASAM would be less and the incentive for drivers to re-assign elsewhere would also be reduced⁵⁴³; and, secondly, it appears to me that once westbound on the A206, away from junction 1A, the opportunities to re-assign to another route before reaching the appeals site roundabout are very limited.
- 15.5.19. I consider that in the absence of a validated model, future operation of the appeals site roundabout with/without the proposed development cannot be predicted accurately in numerical terms, such as Ratio of Flow to Capacity, delays or queues. However, the absence of such information neither automatically favours the scheme nor does it prevent a judgement from being reached [11.4.10, 11.4.15-17]. In this context, whilst Mr Caneparo takes the view that by 2031 conditions could be severe, even without the appeals

⁵⁴⁰ DBC/W2/2 Appendix PC4.

⁵⁴¹ During the conditions session.

⁵⁴² INQ/34, APP/TRAN/4 para 2.3.21-22.

⁵⁴³ APP/TRAN/4 paras 2.3.18-2.3.25.

scheme traffic, Mr Findlay considers that the appeals scheme would not make a material difference⁵⁴⁴ [8.3.17]. In my view, the latter argument is a poor one, as: it could be repeated often, potentially resulting in a much more significant impact in small increments; and, even if the additional contribution to existing severe conditions was small, the implication would be that the cumulative residual impact would be severe, which would be a matter of considerable concern. [11.4.9]

15.5.20. The TA identifies that in the AM peak total arrivals at /departures from the site could include around 221 cars/LGVs and 106 HGVs, with higher numbers in the inter-peak period⁵⁴⁵. With the HE cap in place, HGVs to/from the M25 would be limited to 32 per hour between 0700-1000 hours and Mr Findlay has indicated that the balance would be expected to either travel at a different time or take a different route, the only alternative being westwards, to the Thames Road/B2186 Crayford Way roundabout⁵⁴⁶. The proposal would result in additional traffic at the appeal site roundabout, with which queues are already associated. In my judgement, it would be likely to add significantly to congestion there and also exacerbate conditions at junctions to the east and west [8.3.13, 17, 11.4.10].

Reliability of the appellant's RXHAM modelling results

15.5.21. Having gained access to TfL's RXHAM model, WSP (acting for the appellant) undertook an audit, the findings of which were initially set out in the draft *River Crossing Highway Assignment Model (RXHAM) Model Audit, July 2015* (draft RXHAM Audit). The RXHAM Audit indicates that it was carried out in accordance with TfL's *Sub-regional Highway Assignment Model Guidance on Model Use (HAMG)*⁵⁴⁷. I understand that the draft RXHAM Audit was issued to the 4 HAS⁵⁴⁸ and Revision 1 of the audit, addressing TfL comments, is dated February 2016 (final RXHAM Audit). Consistent with the draft, the final RXHAM Audit states that '*Our overall conclusion...is that the RXHAM model represents ... peak hour demand and traffic conditions well across the area...Levels of congestion (e.g. V/C and blocking back), routing behaviour and journey times are also generally realistic and well matched to observed data*'.⁵⁴⁹

15.5.22. In its consultation response⁵⁵⁰, KCC indicated that it had had regard to the TA, ES and SES. It commented that: '*Transport for London (TfL) in particular worked with the appellant in relation to the traffic modelling aspect of the application, which is a TfL area of expertise*'. '*The appellant utilised a TfL/Highways England derived highways assignment model known as RXHAM, which is fully audited and validated*'; and, '*KCC is confident that the RXHAM model accurately reflects the typical traffic conditions in the local area*'.

⁵⁴⁴ Mr Caneparo and Mr Findlay in XX,

⁵⁴⁵ CD/1.27 Volume 3b Appendix E page 61, (1000-1600 hrs 280 cars/LGV per hr and 191 HGVs per hr).

⁵⁴⁶ APP/TRAN/1 paras 3.3.3 and 4.4.1-2.

⁵⁴⁷ CD/1.27 Volume 3b Appendix E Appendix 3.3 para 1.1.4.

⁵⁴⁸ CD/1.30 Appendix 3 Appendix C page 2/3 para 2.

⁵⁴⁹ CD/1.30 Appendix 3 Appendix E page 49.

⁵⁵⁰ Appeals questionnaire, email dated 4 April 2017.

15.5.23. However, it appears to me that that confidence was misplaced. The HAMG, which the audit suggests has been followed, confirms that *'users should not rely heavily on the validation of the original highway assignment models provided to them, as these were developed as strategic models, whilst a local study will require further refinement in the local area'*⁵⁵¹. It identifies the issues to be addressed in achieving a satisfactory 'local revalidation', including that network adequacy be reviewed within the vicinity of the development area, defined as within a 2 Km radius⁵⁵². In a letter to HE, dated 19 January 2016, WSP indicated that its circulation of the draft RXHAM Audit to the 4HAs *'resulted in some TfL comments, which were acknowledged. The conclusion of this work was that we could proceed with the 2031 forecasting process without the need for a validation stage'*⁵⁵³. Therefore, it appears to me that the audit was not carried out in accordance with all of the requirements of TfL's HAMG.

15.5.24. Furthermore, during the Inquiry, Mr Findlay acknowledged that a number of the findings within the RXHAM Audits contained errors and were not supported by the underlying data⁵⁵⁴ [11.4.14]. For example:

- a) Screenline and cordon performance⁵⁵⁵- Firstly, the link flows in Appendix A comprise calibration data and not validation data claimed by paragraph 2.8.3. Secondly, with reference to Appendix A, paragraphs 2.8.5 and 2.8.7 are wrong to state that all individual links have a GEH<5;
- b) Local Journey times⁵⁵⁶- Paragraph 2.9.4 is wrong to say *'the AM peak hour modelled journey times along the westbound direction were shown to be within the 15% acceptability limit prescribed by WebTAG'*. Table 2-5 indicates that the figure is 22%, not ≤15%. Furthermore, it appears to me that the relevant WebTAG Unit M3.1 test⁵⁵⁷ is failed in the AM peak, taking account of the routes that pass through the 2 km radius (not including 53/54)⁵⁵⁸ [9.3.7];
- c) Local counts-Paragraph 2.10.2 says that the majority of counts used for the RXHAM model calibration show good comparison between observed and modelled. It is silent on the relevant WebTAG Unit M3.1

⁵⁵¹ INQ/51 Appendix A para 1.1.2.

⁵⁵² INQ/51 Appendix A sections 2 & 3, CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E paras 1.1.7 and 2.2.3,

⁵⁵³ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix C page 2/3.

⁵⁵⁴ Mr Findlay responding to Inspector's questions.

⁵⁵⁵ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit Paragraph 2.8.3- *'WebTAG Unit 3.1-Highway Assignment Modelling validation acceptability criteria, screenlines modelled flows should be within 5% of observed for all, or almost all of the links'*. Paragraph 2.8.4-*'The screenline validation results for RXHAM AM peak are shown in table 2-3'*. Paragraph 2.8.5- *'observed and modelled flows match very well...(all individual links with GEH<5)'*. Paragraph 2.8.9-*'individual link flows...are tabulated in Appendix A'*.

⁵⁵⁶CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit paragraph 2.9.2-*'WebTAG Unit M3.1-Highway Assignment Modelling validation acceptability criteria, modelled journey times should be within 15% of observed times for more than 85% of the routes.*

⁵⁵⁷ INQ/77 page 20-Journey time validation criterion and acceptability guideline-modelled journey times along routes should be within 15% of surveyed times (or 1 minute if higher than 15%) for >85% of routes. The comparisons should be presented separately for each modelled period.

⁵⁵⁸ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit page 37/38-3 in 4 routes=75%.

test, which, with reference to table 2-7, is failed⁵⁵⁹. With respect to the additional counts carried out by WSP, with reference to table 2-9, the correlation between observed and modelled flows in the PM peak failed the test⁵⁶⁰.

- 15.5.25. There is no evidence before me to show that the 4HAs were aware of the misleading nature of a number of the findings upon which the audit conclusions were based. They were not picked up in the comments passed by TfL on the draft⁵⁶¹. In my judgement, they: cast doubt over the conclusion of the RXHAM Audit and, in turn, the reliability of the RXHAM model results related to the network local to the site; and, reduce the weight attributable to views expressed by the 4HAs as to the accuracy of the model in the local area, which is likely to have influenced, at least in part, their lack of objections⁵⁶².
- 15.5.26. The final RXHAM Audit indicates that the final report will be provided to TfL and model auditing progress and sign-off will be documented⁵⁶³. There is no confirmation in writing before me to show that TfL considered the model 'fit for purpose' in light of the final report. I give little weight to the appellant's suggestion that the lack of a formal objection to the appeals proposal by TfL implies acceptance. In my view, its propensity to not object may have been influenced by other factors, not least as the scheme is unlikely to have a significant impact on the section of the Red Routes in the area of particular interest to TfL⁵⁶⁴, which are some distance from the appeals site.
- 15.5.27. In my judgement, these matters cast further doubt over reliance that can be placed on the modelling work submitted in support of the scheme and reduce the weight attributable to findings of the parties who appear to have taken the results on face value [11.4.12, 14.1.12].

Conclusions

- 15.5.28. DBC and KCC have taken the view that the modelling work submitted in support of the appeals scheme suggests, looking towards the forecast year of 2031, the local network would be able to manage with the development related traffic. However, for the following reasons, I give little weight to that position:
- a) ARCADY modelling work submitted in support of the appeals scheme indicates that in 2031 key local network junctions to the east and west of the appeals site roundabout would be over capacity with and without the appeal proposal. Furthermore, it appears that in the AM peak hour west bound queues towards the Thames Road/B2186

⁵⁵⁹ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit section 2.10, INQ/77 WebTAG Unit M3.1, table 2- criterion >85% of cases meet the guideline, INQ/96-(within 2 km of the site) AM Peak 67% and PM Peak 71%.

⁵⁶⁰ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit para 2.10.6, INQ/77 table 2-9 (Tests % Diff within 15% and GEH<5 for >85% of cases).

⁵⁶¹ INQ/96.

⁵⁶² For example, CD/6.1 para 6.23.

⁵⁶³ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit para 1.1.7.

⁵⁶⁴ INQ/35.

Crayford Way roundabout would be likely to interfere with the free flow of traffic at the appeals site roundabout;

- b) ARCADY modelling of the appeals site roundabout, submitted in support of the appeals scheme, is of little assistance, as it assumes the removal of the highway constraint caused by the Craymill Rail Bridge, works for which there is no confirmed timetable. Modelling work undertaken on behalf of DBC with the aim of taking some account of the Craymill Rail Bridge constraint, predicts massive queues on Bob Dunn Way in 2031, if vehicles do not re-assign to other parts of the network. Whilst re-assignment would be likely in practice, the degree of relief it would offer is uncertain. Under the circumstances, future operation of the appeals site roundabout with/without the proposed development cannot be predicted accurately in numerical terms, such as Ratio of Flow to Capacity, delays or queues and the modelling results must be viewed with caution; and,
- c) A key input in the assessment of the likely impact on the local highway network is the data concerning traffic assignment generated by the RXHAM. The audit undertaken for the purpose of determining whether the model was fit for the purpose for which it was to be used was not undertaken in complete accordance with the HAMG and it contained a number of errors, acknowledged for the first time at the Inquiry. These circumstances cast doubt over the conclusion of the RXHAM Audit and, in turn, the reliability of the RXHAM model results related to the network local to the site; and, reduce the weight attributable to views expressed by the 4HAs as to the accuracy of the model in the local area, which is likely to have influenced, at least in part, their lack of objections.

15.5.29. For the reasons set out above, I have significant concerns with respect to the reliance that can be placed on that modelling work submitted in support of the scheme. Having regard to the modelling results provided in evidence, with due caution, and the other Inquiry evidence, I consider that, by 2031, the residual cumulative impact of the development during 'normal' (non-incident) highway conditions on the local highway network would be likely to be severe. [11.4.10, 12]

Highway conditions: incidents

15.5.30. The TA states *'it is clear that the area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels'*⁵⁶⁵. The LTP4 identifies that incidents at the Dartford Crossing and its approach are frequent and severe [6.5.2]. KCC estimates that over recent years the existing Dartford Crossing has either been partially or completely closed on average 300 times per year, for 30 minutes or more. I have no compelling reason to depart from that assessment by the local Highway Authority. In my view, the HE incident data record on its own is unlikely to provide an accurate guide to frequency,

⁵⁶⁵ CD/1.30 page 12 para 5.1.2.

as it appears not to pick up all of the Dartford crossing related incidents recognised by KCC'S Highway Management Centre as causing congestion⁵⁶⁶.

- 15.5.31. The appellant acknowledges that there is no technical validity in modelling assessments of such incidents. However, as I have indicated before, the absence of quantitative information does not automatically favour the scheme. DBC advocates a qualitative approach, which I consider to be reasonable. [8.3.10-11, 11.4.7, 11.4.6.a., 11.4.10]
- 15.5.32. KCC indicates that when such incidents occur, junction 1A and Bob Dunn Way very quickly suffer the consequences, reflecting the sensitivity of the local network. Furthermore, it estimates that typically it can take between 3 and 5 hours for roads to clear following closure [14.1.5]. This position is echoed in many respects by the Leader of DBC [9.4.3]. Whilst Mr Findlay acknowledged that such incidents can result in severe traffic conditions, his view was that the appeals proposal would not make a material difference⁵⁶⁷.
- 15.5.33. The TA indicates that the number of HGVs travelling to/from the appeals site would be around: 106 in the AM peak hour; 155 in the PM peak hour; and, 191 in inter-peak hours. In light of the HE cap, I consider it likely that a number of the peak hour trips would be displaced to the inter-peak period. Notwithstanding the view of the appellant that the biggest markets in the country lie within striking distance of Howbury Park, without the need to run the gauntlet of the M25 on the way in [11.5.6], Mr Findlay anticipates that broadly 90% of the scheme HGV traffic would arrive at/depart the appeals site roundabout along Bob Dun Way from/towards the A282/M25⁵⁶⁸.
- 15.5.34. There is no compelling evidence before me to show that departing HGV drivers faced with delays at junction 1A, due to network incidents or the proposed HE cap, and the proposed prohibition on the use of Burnham Road, would choose instead to travel west and then north towards central London as an alternative. I consider that it would be unlikely, not least in light of the trip destinations identified by the TA, such as Essex [9.3.10].
- 15.5.35. Given that incidents are not easily predictable and associated delays can be lengthy, it is likely that a significant number of HGVs associated with the appeals site would contribute to the associated build-up of traffic. Whilst I acknowledge the view of the appellant that during incidents affecting access to and along the A282/M25 some departing HGV drivers may choose to remain on site, rather than joining a queue towards junction 1A, many may not, given likely pressures to meet delivery schedules, and little control is likely to be possible over vehicles already in transit to/from the site.⁵⁶⁹ [7.4.31, 11.2.23.a), 11.2.32]
- 15.5.36. The appellant's claim that, during incidents, the apron of the intermodal area could be used to park 100 or more HGVs⁵⁷⁰ lacks credibility [7.4.31.e, 32]. It is clear from the details of potential loading arrangements, provided by

⁵⁶⁶ DBC/W2/2 Appendix PC10, APP/TRAN/4 section 2.6.

⁵⁶⁷ Evidence in chief

⁵⁶⁸ APP/TRAN/1 tables 2 and 3 A206 East (affected by the HE cap) and Mr Findlay in XX.

⁵⁶⁹ INQ/102 pages 35-36, CD/1.30 SES Appendix 3 Appendix G page 9/12 point 12.

⁵⁷⁰ INQ/72 APP/RAIL/7 para 214 and Appendix D, INQ/106.

the appellant, that the area to the side of the gantry crane would be likely to be required for manoeuvring/loading by reachstackers or for container storage⁵⁷¹. Nonetheless, whilst therefore, it would be likely to be necessary to provide HGV parking space outside the intermodal area in addition to the proposed 25 vehicle layby, given that the scheme is in outline, this could be secured through the imposition of a suitable condition [11.2.33-34].

15.5.37. Nevertheless, overall, I share the view of KCC that during incidents the scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local M25 junctions 1A and 1B and nearby local roads [8.3.9, 8.3.12]. Having had regard to Mr Findlay's estimates of flows along the route between the site and junction 1A, I consider that the proposal would be likely to have a material, albeit limited, adverse impact, adding to severe conditions.

Mitigation

Junction 1A

15.5.38. The DBC s106 secures, amongst other things, a contribution of £800,000 to be used for feasibility assessment/works to improve junction 1A. In light of the circumstances I have identified above, I consider that it meets the tests of planning obligations set out in the Framework. However, KCC has made clear that improvements are likely to be limited to smoothing traffic flow, as opposed to building in any significant new capacity to cater for future growth/demand [8.3.20.a), 11.4.18.a), 14.1.8]. In my view, its provision does not alter the findings set out above.

The Transport Management Plan (TMP)

- 15.5.39. As I have acknowledged, the Freight Management Plan (FMP) section of the TMP seeks to a) limit the number of HGVs associated with the appeals site that use junctions 1A and 1B of the A282/M25 at peak times (HE cap); and, confine HGV traffic to and from the site to the A206, rather than through Dartford town centre using Burnham Road (with certain exceptions) [8.3.20b)].
- 15.5.40. The means of monitoring compliance with these requirements would through the use of an Automatic Number Plate Recognition (ANPR) system to be installed at the site entrance as well as at a number of points around the network. I acknowledge that provision of such a system is likely to be technically feasible and I am content that the DBC s106 includes adequate safeguards to ensure that the system is maintained. The Highway Authorities have not objected to the proposed arrangements. Under the terms of the TMP, the data generated would be reported periodically by the TMP Manager to the TMP Steering Group, which would comprise LBB, DBC, KCC, HE and Howbury Park Limited (HPL). The TMP indicates that fines would be imposed for non-compliance.
- 15.5.41. I consider it is conceivable, rather than suffer delays resulting from the restrictions, an operator may determine that it would be worth breaching the restrictions and incurring the fine set out in the TMP in the interests of

⁵⁷¹ INQ/54 APP/RAIL/6 appendix C, INQ/72 APP/RAIL/7 Appendix A.

the viability of its business. For example, rather than waiting on site for frequent incidents affecting junction 1A to clear, an operator may decide to use the route along Burnham Road and through Dartford town centre to reach the M25. The only example in evidence before the Inquiry of a similar system of monitoring and fines currently in operation is at Andover, in relation to which I understand that there has been a significant number of breaches over a 2 year period [8.3.20.c)].

- 15.5.42. However, the TMP indicates that, if the penalty was ineffective, it would be open to the Steering Group to seek to increase the fine to a level which it determines would deter future breaches⁵⁷². Whilst an increase in the level of fine could be initially approved by a majority of the members, there would be a right of appeal⁵⁷³. Furthermore, in my view, it is unlikely that HPL would accept a proposed increase without appealing against it, as increased fines would be likely to make the development less attractive to occupiers⁵⁷⁴. However, the DBC s106 indicates that appeals would be determined by an independent expert and it would be open to the parties to put their respective cases. None of the Highway Authorities have taken issue with this approach. Under the circumstances, I consider that this mechanism provides sufficient safeguards in relation to this example and also the risk of dilution of other measures contained within of the TMP [8.3.21-27, 11.4.18.b), 11.4.19-20].
- 15.5.43. I consider that the TMP/DBC s106 gives the required level of confidence that the proposed traffic restriction measures it contains are likely to be managed to an acceptable degree [8.3.21]. However, its provisions do not alter my previous findings.

Conclusions

- 15.5.44. Imposition of the HE cap, secured by the terms of the TMP/DBC s106, would be likely to ensure that the proposal would not add to the severe queues/delays characteristic of the strategic M25/A282 route during normal highway conditions. However, I consider that, by 2031, the residual cumulative impact of the development during normal highway conditions on the local highway network would be likely to be severe.
- 15.5.45. The area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels, which can result in severe traffic conditions. Whilst there is no technical validity in modelling assessments of such incidents, it is appropriate to consider the implications qualitatively. I share the view of KCC that the scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local A282/M25 junction 1A and nearby local roads during 'incidents'. I consider that it would have a material adverse impact, adding to severe conditions.

⁵⁷² INQ/102 page 41 para 16.8.1.

⁵⁷³ INQ/102 para 2.4.6.

⁵⁷⁴ DBC/W2/1 para 5.32 bullet 3.

15.5.46. In my judgement, overall, having regard to both non-incident and incident related highway conditions, it is likely that the residual cumulative impact of the development on the local road network would be severe, with reference to congestion.

15.5.47. I conclude that the proposals would be likely to cause considerable harm to the convenience of highway users in Dartford. In this respect it would conflict with DDPP Policy DP3, which, in keeping with the Framework, indicates that development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on road traffic congestion. This is a view shared by DBC [3.6].

15.6. **e) The effect on living conditions in the local area, with particular reference to air quality, noise and vibration**

Air quality

15.6.1. The main focus of the air quality objections are 3 particular Air Quality Management Areas (AQMAs): the A282 road link AQMA No. 1 and Dartford Town Centre AQMA No. 3, which extends along Burnham Road to the appeals site roundabout (DBC AQMAs); and, the Bexley AQMA⁵⁷⁵. Nitrogen Dioxide (NO₂) is the key pollutant of concern and whilst, in general, levels of NO₂ across the area have improved in recent years, compliance with the annual mean NO₂ objective, 40 µg/m³, has yet to be achieved⁵⁷⁶ [8.4.5].

15.6.2. Air quality modelling reported in the ES/SES is based upon traffic flow outputs from the RXHAM, related to 'non-incident' traffic conditions⁵⁷⁷. They indicate that in 2021, the assumed year of opening, and in 2031 the overall effect of the proposed development in terms of impacts on annual mean NO₂ concentrations is not likely to be significant in the AQMAs [8.4.7].

15.6.3. For the purposes of these assessments a number of conservative assumptions have been made, including it has been assumed that background concentrations would not change over time from 2013, notwithstanding that, with reference to the Government's Air Quality Plan and Air Quality Strategy, background concentrations are expected to decrease over time⁵⁷⁸. The findings of the ES/SES were supported by LBB⁵⁷⁹. Furthermore, based on the same traffic flow outputs, DBC's own assessment relating to the DBC AQMAs reached the same conclusion regarding significance⁵⁸⁰ [11.4.11]. So did the analysis provided by the appellant to the

⁵⁷⁵ For extent of AQMAs see CD/1.27 Volume 3c Appendix G7 figures G7 and G8.

⁵⁷⁶ APP/AQ/1 section 3.2.

⁵⁷⁷ APP/TRAN/1 para 4.5.3, evidence in chief and cross-examination of Mr Findlay.

⁵⁷⁸ APP/TRAN/4 para 3.2.23, APP/AQ/1 para 4.3.42 and CD/1.27 Volume 2 Appendix G para G3.16-it was assumed that there would be no improvement in light duty vehicle emissions from 2013 in 2021 and for 2031 Emission Factor Toolkit v6.0.2 light duty vehicle emissions for 2021 have been assumed. In addition, EFT heavy duty vehicle emissions for 2021 have been assumed for 2021 and 2031.

⁵⁷⁹ CD/1.6 page 64.

⁵⁸⁰ DBC/W3/1 para 7.11 and, para 7.19, under a congestion sensitivity scenario the impact at all existing receptors was negligible.

Inquiry, reflecting new factors, such the proposed HE cap and an *Emissions Factor Toolkit v8 (December 2017)* updated from that relied on in the ES/SES⁵⁸¹. It also concluded that there would be a very low risk of impacting on compliance with the Ambient Air Quality Directive⁵⁸².

- 15.6.4. However, regarding traffic flow outputs from RXHAM, I have found that whilst they are likely to be reasonably reliable when it comes to the strategic network, such as the A282, which falls within DBC AQMA No. 1, the same cannot be said in relation to the highway network local to the site. Furthermore, abnormal highway conditions, such as the frequent network incidents that occur hereabouts were not within the scope of the TA modelling. These factors have potential implications for the reliability of the air quality modelling.
- 15.6.5. Nonetheless, as DBC put it, consideration of the associated risk is a matter of judgement [8.4.8]. In that context, whilst Dr Maggs suggests there is a possibility that the impact of the scheme would be greater than suggested by the modelling⁵⁸³ [8.4.6], Dr Tuckett-Jones suggests not, as the methodology she used overstates the impact [11.4.11]. In relation to AQMAs, I share Dr Tuckett-Jones' view for a number of reasons, including that: the air quality modelling work relied on by the appellant is based on a number of conservative assumptions, referred to above; under the terms of the TMP, HGV traffic to /from the site would generally be prohibited from using Burnham Road, part of DBC AQMA No. 3; and, the section of the local highway network in relation to which concerns regarding the accuracy of the traffic modelling results are greatest, such as Bob Dunn Way, lies almost entirely outside of the identified AQMAs [8.4.6, 9.3.13-14].
- 15.6.6. Turning to the concerns raised by SGCF. Mr Findlay indicated that around 90% of the HGV traffic from the site would head towards or come from junction 1A of the A282/M25, with the remainder arriving from/departing towards the west. It appears to me that this latter approximation is reflected in the modelling referred to in the TA when account is taken of all the areas, in addition to the local west area, from which traffic is likely to arrive at the appeals site roundabout from the west or depart it in that direction⁵⁸⁴. Furthermore, non-HGV trips, distributed in accordance with the 2011 journey to work census data and with no account taken of potential reductions due to Travel Plan initiatives⁵⁸⁵, have also been accounted for in a reasonable manner [9.3.6, 8]. Peareswood Primary School was not identified as a sensitive receptor. However, having had regard to the assessment results associated with nearby property R12 Colyers Lane (No. 192), which is closer to the A206 than the Peareswood School buildings and its main amenity areas, it appears to me that the impact of the proposal on attendees of the school would be unlikely to be significant⁵⁸⁶ [9.3.15]. Therefore, I give SGCF's concerns in relation to air quality little weight.

⁵⁸¹ APP/AQ/1 para 4.3.43.

⁵⁸² APP/AQ/1 section 4.4.

⁵⁸³ DBC/W3/1 paras 7.20 and 8.14.

⁵⁸⁴ Cross-examination of Mr Findlay- local area west, central London and some other traffic, CD/1.27 Volume 3b Appendix E1 page 64 Table 8-11.

⁵⁸⁵ CD/1.27 Volume 3b Appendix E1 pages 62-63.

⁵⁸⁶ INQ/50 page 5 and APP/AQ/2 Appendix A.

- 15.6.7. It would be possible to ensure that the potential for fugitive dust pollution to arise from construction activities on the appeals site is satisfactorily controlled through the imposition of a condition requiring an approved Construction Management Plan to be adhered to⁵⁸⁷ [9.1.4].
- 15.6.8. I conclude on balance, that the appeals proposal would be unlikely to have an unacceptable material impact on living conditions in the local area, with particular reference to air quality. In this respect it would not conflict with LP Policies 5.3 and 7.14, DDPP Policies DP3 and DP5 [8.4.9-11], BCS Policies CS01 and CS09 or the Framework.

Noise and vibration

- 15.6.9. The ES/SES concludes that, with the exception of the construction of the proposed earth bund, all of the predicted noise and vibration impacts can be adequately mitigated to avoid any significant impact. I consider that the provision of those identified mitigation measures could be ensured through a combination of the imposition of suitable conditions and funds secured by the LBB s106. The focus of that mitigation is most likely to be nearby properties on Moat Lane and Leycroft Gardens⁵⁸⁸. Properties further to the west are likely to be shielded by proposed buildings on the western side of the site, which are expected to be constructed first; phasing of construction could also be controlled through the imposition of a suitable condition⁵⁸⁹.
- 15.6.10. The ES/SES indicates that noise associated with the construction of the earth bund at the northern end of the site has the potential to have a major adverse impact on the living conditions of residents of Moat Lane and Oak Road. There would also be likely to be some minor-moderate vibration impacts, which whilst they may give rise to complaints from a small number of nearby properties, would be at a tolerable level. However, the harm would be short term. Furthermore, the ES indicates that there would be effective liaison with residents to keep them informed of work schedules and to take account of their preferences as regards working hours and practices⁵⁹⁰. Once completed, at an early stage in the development of the site, the bund would have a beneficial acoustic and visual screening effect for later construction phases and the operational phase. Under these circumstances, I consider that the impact would be acceptable. [9.1.4, 9.2.16, 10.11, 11.4.4]
- 15.6.11. Statements of Common Ground agreed between the appellant, the LBB, DBC and the MOL⁵⁹¹ conclude, with reference to the assessments of noise set out in the ES/SES together with mitigation identified there, that there is no objection to the appeals scheme on the basis of noise impact. This adds further weight to my findings.
- 15.6.12. I conclude that, subject to mitigation secured by conditions/planning obligations, the appeals proposal would be unlikely to have an unacceptable

⁵⁸⁷ APP/PLAN/1 para 7.54, CD/1.27 Volume 2 Chapter G section G8.0.

⁵⁸⁸ INQ/101, INQ/115 pages 6 and 17.

⁵⁸⁹ INQ/55 Section 2, INQ/94 condition nos. 5, 24, 25, 29, INQ/98.

⁵⁹⁰ CD/1.27 Volume 2 Chapter F para F6.8.

⁵⁹¹ CD/6.1, 6.2, 6.3.

impact on living conditions in the local area, with particular reference to noise and vibration. In this respect it would not conflict with the terms of LP Policies 5.3 and 7.15, BCS Policies CS01 and CS09, DDPP Policy DP5 or the Framework, insofar as they seek to ensure pollution is minimised and avoid unacceptable noise impacts.

15.7. Other matters

- 15.7.1. The ES indicates that the likely impact on the significance of nearby Designated Heritage Assets, Howbury Moat (a Scheduled Ancient Monument) and a Grade II listed tithe barn, both of which are situated outside and to the north of the appeals site, would be negligible⁵⁹², a finding accepted by the LBB and the MOL⁵⁹³. In my judgement, the significance of those Designated Heritage Assets would not be materially harmed by the scheme. I have already found that the scheme would not harm the significance of the Moat Lane/Oak Road Conservation Area [9.5.2]. Furthermore, the loss of the locally listed Howbury Grange would be adequately mitigated through the creation of a building record, secured by condition⁵⁹⁴. I conclude that the effect of the appeals proposal on heritage assets would be acceptable and consistent with the aims of LP Policy 7.8, BCS Policy CS19 and the Framework.
- 15.7.2. The proposed development would be likely to reduce the outlook from neighbouring residential properties that currently have views across the appeals site. However, the proposed buildings would be set well back from the appeals site boundaries and their visual impact relative to neighbouring dwellings would be softened to an extent once proposed planting is established in the intervening space. The potential for light pollution to arise from the site could be satisfactorily controlled through the imposition of a suitable condition. I conclude that the scheme would be unlikely to have a significant detrimental effect on the living conditions of neighbouring residents, with particular reference to outlook and light pollution, in keeping, in this respect, with the aims of the Framework, which seeks high standards of amenity and to limit the impact of light pollution [9.1.2, 9.1.4, 9.5.2, 11.4.4].
- 15.7.3. Turning to the potential impact of the scheme on access along the River Cray; the PLA and IWA accept the proposed bridge clearances. I understand that although the proposed bridge would restrict high masted craft from travelling upstream to a limited turning area for small craft, similar opportunities to turn exist just downstream of the proposed bridge location⁵⁹⁵. Furthermore, the evidence indicates that this section of river is infrequently used by high masted vessels, even taking account of more recent activity reported by the IWA/DCCRT, and given that wharves upstream of the proposed bridge location have been disused for a significant number of years, I consider that the absence of the provision of downstream alternatives as part of the proposed works does not weigh against the

⁵⁹² CD/1.27 Volume 2 Appendix K page 38.

⁵⁹³ CD/7.2 para 6.33 and CD/7.1 para 7.30.

⁵⁹⁴ CD/1.6 page 36.

⁵⁹⁵ CD/1.31 section 10.0.

scheme. I conclude that the impact of the appeals proposal with respect to navigation and facilities along the River Cray would be acceptable.⁵⁹⁶ [10.3, 10.10]

- 15.7.4. The ES indicates that the appeals proposal would be unlikely to give rise to any significant effects as regards flood risk⁵⁹⁷. Furthermore, the Environment Agency has confirmed that it does not object to the scheme on the basis of flood risk. I give greater weight to that evidence than the general and largely unsubstantiated concerns raised by a number of interested parties on the subject. [9.1.6, 10.5.1, 14.3.1]
- 15.7.5. I give no weight to the concern raised that the proposal would harm residential property value [10.5.3]. Planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration⁵⁹⁸.

15.8. **f) Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, and, if it would, whether the very special circumstances required to justify the proposal exist**

- 15.8.1. The Framework confirms that the very special circumstances necessary to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Whether the proposal would meet an identified need for SRFIs to serve London and the South East

Need

- 15.8.2. LP Policy 6.14 gives encouragement to the movement of freight by rail. Furthermore, the Framework indicates that planning decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for storage and distribution operations at a variety of scales and in suitably accessible locations [11.3.37].
- 15.8.3. The NPSNN indicates that '*The industry, working with Network Rail, has produced unconstrained rail forecasts to 2023 and 2033...*'. The NPSNN confirms that '*These forecasts...are considered robust and the Government has accepted them for planning purposes*'. The applications for planning permission assume that approximately 71% of the rail freight at the proposed facility would be domestic intermodal traffic, a category of rail freight predicted to grow by 12% per annum from 2011 to 2033 [7.4.9, 7.4.13]. I understand that growth has been slower than forecast in this sector [7.4.10-12, 11.2.4]. However, this is unsurprising, as the forecasts are unconstrained in

⁵⁹⁶ CD/1.31 section 10.0.

⁵⁹⁷ CD/1.27 Volume 2 Appendix J para 8.3.

⁵⁹⁸ National Planning Practice Guidance- 'what is a material planning consideration?'.

the sense that *'freight demand is considered without addressing the ability of the rail network to cater for it'* and the NPSNN makes clear that action is needed to realise the identified potential for growth [7.4.13-15].

- 15.8.4. Unlike the circumstances in 2007, there is no longer a formally identified requirement for 3 or 4 SRFIs around London [4.2, 7.2.6, 8.5.1, 11.2.12, 11.2.14.f.]. The Government approach set out in the NPSNN is to support the realisation of the forecast growth by encouraging the development of an expanded network of large SRFIs across the regions [11.2.9]. Furthermore, *'...SRFI capacity needs to be provided at a wide range of locations...There is a particular challenge in expanding rail freight interchanges serving London and the South East'*. [11.2.17-19]
- 15.8.5. The *Alternative Sites Assessment (ASA)*, submitted in support of the appeals proposal, confirms that the market to be served by the proposed facility would be London and the South East⁵⁹⁹ and there is no dispute that that area, with no operational SRFIs, is poorly served at present [7.4.5, 13.5.12]. It is the Government's view *'that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail'*[11.2.5, 11.2.16, 11.7.3]. Against that policy background, I consider that it is unnecessary for the appeals scheme to be supported by a site specific economic viability assessment. I understand that no such assessment was requested by the local planning authorities while the applications were before them and this adds further weight to that view [7.4.28-30, 8.1.6, 11.2.19, 22-28].
- 15.8.6. Furthermore, I give little weight to the current absence of any expressions of support from retailers, such as Tesco who are active in the domestic intermodal market [7.4.22]. I have no reason to doubt the view of the appellants that retailers tend not to express support for a particular site prior to the grant of planning permission, due to an aversion to involvement in contentious third-party proposals [11.2.21].
- 15.8.7. Overall, I am content that there is a need and market for SRFIs to serve London and the South East [11.2.2-3]. I turn then to consider the extent to which the appeals scheme would be likely to meet the requirements of SRFIs set out in the NPSNN.

The requirements of SRFIs

- 15.8.8. The NPSNN identifies a number of locational and physical characteristics that define SRFIs, which would be exhibited by the appeals proposal. They include:
- The NPSNN identifies *'it is important that SRFIs are located near the business markets they would serve...'*. In common with the 2006 ASA, the current ASA indicates that the proposal is intended to serve London and the South East, and more specifically defines the catchment area for site search as extending out from central London, to around 32 Km beyond the M25, in an arc from the A1(M), in the north, eastwards around to the M3 in the southwest.

⁵⁹⁹ CD/1.26 para 1.3.

In contrast, the proposed SRFI at Radlett, for which planning permission has been granted, would broadly be expected to serve the Northwest sector of London⁶⁰⁰ [7.2.14]. With reference to the ASA defined catchment area for the facility, there is no dispute that Howbury Park would be located near to the market that it would serve [7.1.6, 11.2.32]. In this respect it would be in keeping with the aims of LP Policy 6.15.

- Under the terms of a condition agreed by the appellant, occupation of the proposed warehousing would be precluded until the intermodal area and the new main line rail connection are complete [11.3.4, 11.6.1]. The necessary form of condition I will return to later. This is consistent with the requirement of the NPSNN that *'initial stages of the development must provide an operational rail network connection'*.
- In 2007, the Inspector found that the larger of the proposed warehouses in the scheme before him would be difficult to let to road only users due to their configuration, which included loading bays suitable for lorries on only one side, with the other side taken up by rail tracks. This was one of the factors which led to a finding that the Secretary of State could be 'reasonably assured' that the then proposed development would operate as a SRFI [7.2.8]. In contrast, there is no dispute that the outline configuration of the buildings now proposed would be attractive to road only users, being set apart from the intermodal terminal beyond parking/loading areas, giving rise in part to the MOL's concern that the proposal may not deliver modal shift [11.2.14c].

However, the NPSNN now makes clear that *'Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.'*

The NPSNN indicates that *'it is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be.'* Based on the Parameters Plan, whilst none of the buildings would be directly rail connected, the proposed warehouses would all be *'rail accessible'* via internal site roads. This is comparable to an arrangement accepted at the East Midlands Rail Freight Interchange [11.2.8]. Furthermore, I understand that at DIRFT, whilst Tesco has some of its own rail facilities, it also makes use of the open-access intermodal terminal [11.2.31].

Against this background, it appears likely that the proposed building layout and connection to the intermodal facility would satisfy the objective of the NPSNN to facilitate and encourage the transport of freight by rail. In my view, whilst it would not be necessary to restrict the use of the proposed warehousing until rail freight had

⁶⁰⁰ CD/5.5 Secretary of State's decision para 34.

actually been taken up [11.6.1a.], the need for the rail works to be provided before the warehouses are occupied is a separate matter that I deal with below in the 'conditions' section of this report.

- 15.8.9. However, the NPSNN also identifies a number of transport link requirements associated with SRFIs, including that *'in all cases it is essential that these (SRFIs) have good connectivity with both the road and rail networks'*. A number of the objectors to the scheme have raised concerns in relation to these matters.

Rail connectivity

- 15.8.10. The importance of 'frequent', 'flexible' and 'timely' services in facilitating the transfer of freight from road to rail is emphasised by the views of a number of retailers who contributed to a 2012 FTA study entitled *'On Track! Retailers using rail freight to make cost and carbon savings'* [7.4.19-20].
- 15.8.11. The NPSNN acknowledges that rail access will vary between lines, including in the number of services that can be accommodated⁶⁰¹ and, as a result of requirements such as the need for effective rail connections, the number of locations suitable for SRFIs will be limited⁶⁰². As I have indicated, with reference to the NPSNN, I consider that in order for the proposed rail link to be considered 'adequate', it would be necessary for it to be capable of providing a service level of 4 trains/day (each way) as a minimum. Based on the evidence presented, and having had regard to the possible use of conditions⁶⁰³, I am not reasonably assured that the network would provide this level of service.

Road connectivity

- 15.8.12. The road access to the appeals site would be likely to be characterised by:
- Restricted access to and from the A282/M25 junctions 1A and 1b, which would be likely to be part of the route taken by the majority of HGVs, due to:
 - The HE cap limiting access for HGVs during the periods from 07:00-10:00 hrs and 16:00-19:00 hrs to approximately 30-40% of the numbers that would otherwise have been expected in the peak hours⁶⁰⁴. A HE cap is unprecedented at existing SRFIs [7.4.67]; and,
 - Frequent incidents on the A282/M25 main line that quickly cause congestion on the local highway network, which can take significant periods of time to clear;

The appellant anticipates that it is likely to be necessary for some HGVs to remain on site during the course of, as a result of, the

⁶⁰¹ CD/2.2 para 4.85.

⁶⁰² CD/2.2 para 2.56.

⁶⁰³ See sections entitled 'Adequacy of the proposed rail link and the effect on existing/future passenger rail services' and 'The extent to which mitigation would be secured through planning conditions and obligations'.

⁶⁰⁴ APP/RAIL/4 tables 2 and 3- AM peak hr (16+16)/52+44)=0.33, PM peak hour (28+28)/76+66)=0.39.

restrictions, delaying their onward journeys. Whether waiting onsite or queuing on the highway, such frequent restrictions would be unlikely to be viewed as convenient by the drivers of those vehicles, their employers or the businesses they serve⁶⁰⁵ [7.4.31e., 8.3.20]. Furthermore, such circumstances contrast starkly with the 'just in time' approach experienced at other SRFIs, which according to the appellant involves drivers arriving as close as possible to scheduled delivery or collection times for containers and short turn-around times on site, in order to avoid loss of productive driving time⁶⁰⁶; and,

- Overall, having regard to both non-incident and incident related highway conditions, the residual cumulative impact of the development on the local road network would be severe, with particular reference to congestion.

15.8.13. In light of the above findings, even if the rail route to/from Howbury Park were to be considered adequate, freight would be delivered to/collected from a location where the local highway network would be prone to congestion and the route used by the majority of HGVs, to/from the north of the Dartford Crossing, would be likely to be disrupted by frequent incidents. Notwithstanding the proximity of the appeals site to the M25 and a number of major 'A' roads and contrary to the view of the appellant and the LBB⁶⁰⁷, in my judgement, the proposed facilities would not benefit from 'good road access', which the NPSNN indicates that SRFIs facilities should have in order to facilitate modal shift from road to rail.

15.8.14. Insofar as the letters of support for the appeals proposal from Maritime Transport Limited, GB Railfreight and the Rail Freight Group (RFG) express a view that the appeals site is in an attractive location for a SRFI, I give them little weight, as they do not acknowledge any of the access issues identified above [7.4.24, 11.1.3.f, 11.2.20.b-c., 13.3.9].

15.8.15. The NPSNN indicates that '*because the vast majority of freight in the UK is moved by road, the proposed new rail freight interchanges should have good road access, as this will allow rail to effectively compete with, and work alongside, road freight to achieve modal shift to rail*'. In that context, I consider it unlikely that the road links relied on by Howbury Park would encourage a significant move away from road haulage [11.2.23.a, 11.2.29-30, 32]. Against this background, I give little weight to the LTP4 assessment that a SRFI at Howbury Park would potentially remove significant numbers of HGVs from the road network [6.5.2].

Conclusions

15.8.16. I conclude that the appeals proposal would exhibit a number of the locational and physical characteristics of SRFIs, set out in the NPSNN, gaining some support from LP Policy 6.14. However, in respect of transport links, the NPSNN indicates that '*in all cases it is essential that these*

⁶⁰⁵ INQ/102 Transport Management Plan page 35 para 14.5.1-2.

⁶⁰⁶ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix G page 9/12 point 12.

⁶⁰⁷ CD/6.1 para 6.5.

(SRFIs) *have good connectivity with both the road and rail networks*'. Based on the evidence presented, I am not reasonably assured that the proposed rail links would be adequate. Furthermore, even if that assurance could be provided, the proposed facilities would be unlikely to benefit from the 'good road access', necessary to facilitate modal shift and thereby enable the facility to deliver the benefits expected of SRFIs, such as facilitating a reduction in CO₂ emissions associated with freight transport⁶⁰⁸ [8.5.8.b), 9.6.10]. In relation to transport links it would not be consistent with LP Policy 6.15 or the NPSNN.

- 15.8.17. Notwithstanding that the appellant has some experience of developing SRFIs [11.1.3.g., 11.2.20.a.], I conclude overall, that the appeals scheme would not be well qualified to meet the identified need for SRFIs to serve London and the South East [11.2.14.b., 11.2.53, 11.5.2, 13.5.12-14].

Availability of alternative sites

- 15.8.18. In its written evidence to the Inquiry, the appellant's 'very special circumstances case' included the assertion that *'no alternative development options exist for SRFIs to serve this part of London and the South East...this represents a material consideration of very considerable weight'*⁶⁰⁹ [7.4.3, 7.4.70-71]. The basis for this view was the *Alternative Sites Assessment (ASA)*, submitted in support of the appeals proposal. As I have indicated, it adopted the same search area as the 2006 ASA, accepted by the previous Inspector, which extended out from central London, to around 32 Km beyond the M25, in an arc from the A1(M), in the north, eastwards around to the M3 in the southwest. In 2007 the Inspector concluded that there were no alternative sites for a SRFI *'in the arc around south and east London'* and that was a matter which attracted considerable weight in the planning balance [7.2.13, 7.4.68]. Notwithstanding that the circumstances of London Gateway have changed in a number of respects since 2007 [7.4.85a.], such as through the upgrading of the gauge of the branch line to London Gateway⁶¹⁰, the current ASA reached the same overall conclusion as the 2006 ASA⁶¹¹. However, the appellant now accepts that *'there are failings with the ASA and a role for London Gateway should probably have been identified'* [7.4.73-76, 7.4.86, 10.2.8, 11.2.61].
- 15.8.19. The NPSNN identifies that *'the construction of London Gateway will lead to a significant increase in logistics operations. This will lead to the need for SRFI development...'*. Whilst London Gateway's primary function may be to operate as a container port, as suggested by the ASA, London Gateway comprises 2 elements, with plans for rail connections to both: the London Gateway Port; and, the London Gateway Logistics Park, which is substantial in its own right having planning permission for a total of 829,700 m² of commercial floorspace⁶¹² [7.4.74-75, 11.2.58]. Against this background, there is now no dispute that London Gateway, which is not a Green Belt site, could host a SRFI [7.2.13, 7.4.77-80, 11.2.55].

⁶⁰⁸ CD/2.2 para 2.53, APP/PLAN/1 para 7.69.

⁶⁰⁹ APP/PLAN/1 para 7.192.

⁶¹⁰ CD/1.26 page 40.

⁶¹¹ CD/1.26 page 52 see 'Rail infrastructure' and 'Previous Supplementary ASA (2006) conclusion.

⁶¹² INQ/39.

- 15.8.20. The appellant suggests that London Gateway, on the north side of the Thames, would not be able to compete with the appeals site, due to Howbury Park's proximity to: a number of Regional Distribution Centres on the south side of the Thames; as well as, some groups of stores and customers in south London, which would lead to shorter HGV trips [11.2.60]. However, the TA anticipates that the majority of HGV trips associated with the proposed facilities would be expected to travel to and from destinations to the north of the Dartford Crossing [7.4.69, 9.3.16]. There is no persuasive analysis before me to show that substituting London Gateway for the appeals site would result increased road miles overall or increased delays, not least due to the high risk of delays to traffic travelling north from Howbury Park across the Dartford Crossing [11.2.60, 11.5.6].
- 15.8.21. Furthermore, the ASA does not find fault with the road links to London Gateway⁶¹³ and its rail links appear superior in a number of respects [7.4.84, 7.4.87d), 11.2.56, 13.4.7]. It follows, a finding that rail connectivity to the appeals site would be likely to be unduly restricted for the purposes of SRFI use would not automatically apply to all sites around London [11.2.35.c.]. I give little weight to Mr Gallop's assertion that others have considered London Gateway and rejected it [11.2.59]. Whilst he cited Marks & Spencer as an example in support of his view⁶¹⁴, the reasons for rejection have not been set out and I cannot be sure that they would not apply equally to the appeals site. Similarly, whilst Tesco may prefer locations such as Barking to London Gateway, there is no evidence to show that it would relocate from such sites to Howbury Park [7.4.18, 11.2.21].
- 15.8.22. Viridor has indicated that there would be no real prospect for rail use to service its current operations at its Thames Road site without the appeals proposal. I accept that this is an unusual benefit of the appeals scheme [11.2.20d.]. However, a 7-day count identified that a total two-way flow of 569 HGVs is associated with Viridor and Mr Findlay estimated that the potential to redirect some of that traffic to rail might result in a reduction of around 200 HGVs [9.3.11]⁶¹⁵. To my mind, even if it is assumed that reduction would be over 5 days (Monday-Friday), rather than the 7 days of the count, it would be equivalent on average to only 40 HGV trips per day. By way of comparison, the TA indicates that: external HGV trips associated with the appeals site alone would be 106-155 in the peak hours and 191 in each inter-peak hour; and, a Thames Road two-way Automatic Traffic Count close to the appeals site roundabout recorded a weekday average count of 30,025 vehicles⁶¹⁶. Whilst the potential benefit referred to may be unusual, it would be small and in my view, does not weigh either for the appeals site or against London Gateway to any significant extent.
- 15.8.23. Under the present circumstances, which differ from those in 2007, I conclude that little weight is attributable to the appellant's argument that '*no alternative development options exist for SRFIs to serve this part of London and the South East*'. The same can be said in relation to the its

⁶¹³ CD/1.26 para 5.16.

⁶¹⁴ Evidence in chief of Mr Gallop.

⁶¹⁵ INQ/51 page 11- 'a total two-way weekly (7day) flow of 569 HGVs', 200 HGVs estimate provided in cross examination of Mr Findlay.

⁶¹⁶ CD/1.27 Volume 3b Appendix E1 pages 33, 61 and 62.

view that *'allowing the development would not fail to assist urban regeneration because there is no suitable urban land available that could accommodate the SRFI and meet its operational requirements'* ⁶¹⁷ [8.5.8c.]

- 15.8.24. The ASA suggests that, rather than acting as an alternative, Howbury Park would be a complementary facility to London Gateway, by forming part of a network of rail freight terminals needed to facilitate the transfer of goods to and from the port⁶¹⁸. However, as alluded to above, the ASA did not assess the ability of the London Gateway Logistics Park to meet such a need. I consider that these facilities would be more likely to be rivals in the same market, given that: the sites are relatively close together in the same catchment area⁶¹⁹; and, as now acknowledged by the appellant, there is no prospect of direct trains to Howbury Park from London Gateway. As to the potential for the appeals site to accept non-domestic intermodal trains, the IRR anticipates that it would be likely to constitute only a small proportion of Howbury Park traffic and I understand that London Gateway already receives Channel Tunnel trains⁶²⁰ [13.2.7, 13.3.9, 13.5.13]. There is no compelling evidence before me to demonstrate that they would both be needed and I give the appellant's argument to that effect little weight [7.4.82, 11.2.55-57].
- 15.8.25. As regards Hoo Junction, referred to by an objector [10.5.4]. I understand that it is an existing rail yard on the North Kent Line, which is safeguarded for Crossrail and so does not represent a suitable alternative to the appeals site⁶²¹.

Conclusions

- 15.8.26. I conclude that London Gateway, a brownfield site, has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East as the appeals proposal. Under these circumstances, even if the appeals scheme was also well qualified to meet that need, in my view, the weight attributable to this would be limited.

Economic and social impacts of the scheme

- 15.8.27. The largest part of the appeals site lies within the BROA and a Regeneration Area identified by the LP. LP Policy 2.13 indicates that development proposals in the BROA should support the strategic policy directions set out in LP Annex 1. They include, amongst other things, that *'Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'*
- 15.8.28. That reference to Howbury Park does not amount to an allocation in the LP [7.1.9, 11.1.3, 11.1.6]. Nevertheless, establishment of a SRFI at the appeals site would be consistent with that particular strategic policy direction [7.1.11].

⁶¹⁷ APP/PLAN/1 para 7.24-25.

⁶¹⁸ CD/1.26 pages 20-21.

⁶¹⁹ CD/1.26 Appendix 1 site 7.

⁶²⁰ GLA/RG/01 para 7.7.

⁶²¹ APP/PLAN/1 paras 9.2-9.4.

Furthermore, it could provide significant benefits for the local economy, such as creating a large amount of new employment, related to construction of the facility and in the order of 2,000 full time equivalent jobs once it is fully occupied [11.3.5]. It would also be consistent with the aims of: LP Policy 2.14 as regards generating new growth and jobs in the Regeneration Area, some parts of which suffer from significant levels of deprivation; it would contribute towards realising the 7,000 indicative employment capacity of the BROA, set out in the LP, which is significantly increased in the LPe (Policy SD 1); and, BCS Policy CS13, which gives support to the diversification of the local employment offer. I am also conscious the Framework indicates that significant weight should be placed on the need to support economic growth.

- 15.8.29. However, whilst DCS Policy CS 8 indicates that DBC will seek transformation of the economy by focussing on key growth sectors, including logistics, transport and distribution, the appeals site is not consistent with the spatial pattern of development set out in DCS Policy CS 1 or the provisions of DCS Policy CS 7 regarding the distribution of jobs in the Borough, where unemployment levels are already relatively low. I consider that the proposal would conflict with these aspects of the spatial strategy for Dartford and little weight is attributable to socio-economic benefits of the scheme to Dartford Borough claimed by the appellant [8.1.5]. Furthermore, I have found that the proposal would be likely to have a material adverse effect on traffic congestion in the area. In turn, this may well have an adverse impact on the local economy, as observed by a number of objectors. However, in the absence of any quantification of the likely impact on the local economy, I give that particular matter little weight⁶²² [10.4.1, 10.8].
- 15.8.30. The circumstances I have outlined are materially different from those considered in 2007, not least in terms of the Policy framework [8.5.8.c]. I conclude overall that, notwithstanding the conflicts with the DCS, significant socio-economic benefits would be likely to be attributable to the establishment of a SRFI at the appeals site, with particular reference to those likely to be realised in the LBB, consistent with LP Policies 2.13 and 2.14 as well as BCS Policy CS13 and the Framework as well as LPe Policy SD 1 [7.4.88, 8.5.8c., 11.3.8-9].
- 15.8.31. Nonetheless, in light of the shortcomings of the ASA, I cannot be sure that similar benefits would not be attributable to London Gateway. It appears to me that economic benefits broadly of the scale referred to above would be likely to be commonly attributable to SRFIs [11.3.9]. The NPSNN indicates that considerable benefits for the local economy, including creating many jobs are generally likely to be associated with SRFIs. Furthermore, with reference to London Gateway, the *Thurrock Core Strategy and Development Management Plan Policies, 2015*, sets out an expectation that there will be significant employment associated with major logistics, import-export based development at that site, which comprises brownfield land⁶²³ [7.4.80]. Under the circumstances, I give little weight to the

⁶²² DBC/W1/1 para 5.68.

⁶²³ INQ/39.

appellant's assertion that if the appeals proposal is rejected the identified job creation potential of such a scheme would be lost⁶²⁴

- 15.8.32. Against this background, I conclude overall, that the weight attributable to the potential socio-economic benefits of establishing a SRFI at the appeals site is limited.

The effect on biodiversity

- 15.8.33. The Framework seeks to ensure the protection and enhancement of sites of biodiversity value (commensurate with their statutory status or identified quality in the Development Plan).
- 15.8.34. There are no statutory designated sites of nature conservation interest within or adjacent to the appeals site. The nearest is the *Inner Thames Marshes SSSI*, which is located approximately 2.4 km to the north of the appeals site, on the other side of the Thames. The nearest European designated site is *Thames Estuary and Marshes SPA/Ramsar site/SSSI*, which is situated around 14.4 km to the east of the appeals site, at its closest point. The ES indicates that given the separation distances involved, the proposed development would be unlikely to have any effect on these designated sites, a view shared by Natural England, and I have not been provided with any compelling evidence to the contrary.
- 15.8.35. Non-statutory nature conservation sites in London are ranked in terms of their value as: Sites of Metropolitan Importance (SMI); Sites of Borough Importance (SBI); and, Sites of Local Importance⁶²⁵.
- 15.8.36. The River Cray, which forms part of the *River Thames and Tidal Tributaries SMI*, passes through a narrow strip of the appeals site at its southern end⁶²⁶. In order to facilitate access to the site, a permanent bridge would be constructed over the River, the abutments of which would not encroach on the River. The scheme has been designed and mitigation measures, secured by condition⁶²⁷, are proposed to minimise any impact on the River in terms of hydrological flow, habitats and its value as a wildlife corridor, in the context of which the ES indicates that residual impacts on the River are considered to be of negligible significance⁶²⁸. I am content that there would be no significant effects on the *River Thames and Tidal Tributaries SMI*⁶²⁹.
- 15.8.37. The *Crayford Marshes SMI*, which is situated outside of and immediately to the north of the site⁶³⁰, is designated on account of it being one of the few remaining examples of grazing marsh in Greater London supporting a range of flora, birds and invertebrate species⁶³¹. The LBB s106 would secure the implementation of a Marshes Management Plan and a drainage

⁶²⁴ APP/PLAN/1 para 7.26.

⁶²⁵ CD/1.27 Volume 2 Appendix H para 4.16.

⁶²⁶ CD/1.27 Volume 3c Appendix H figure H1.

⁶²⁷ INQ/94 condition no. 22.

⁶²⁸ CD/1.27 Volume 2 para H7.23.

⁶²⁹ CD/1.27 Volume 2 para H8.6.

⁶³⁰ CD/1.27 Volume 3c Appendix H figure H1.

⁶³¹ CD/1.27 Volume 2 Appendix H para 4.20.

scheme to assist in maintaining water levels, supported by funding, the aim of which would be the enhancement of the biodiversity value of a large part of the Crayford Marshes, insofar as the area is within the control of the appellant⁶³² [11.3.12]. The MOL acknowledges that, subject to such provisions, the proposals could result in significant improvements to the ditches and wetland in Crayford Marshes SMI⁶³³. The period over which the MMP would remain in place would be 25 years, sufficient according to Mr Goodwin to achieve its conservation objectives⁶³⁴. I have not been provided with any persuasive evidence to show that would be unlikely to be the case and consider therefore, that to require a longer period, preferred by some objectors, would not be reasonable [10.2.7].

- 15.8.38. I give little weight to the concern that the appeals proposal may increase the likelihood of future development of the neighbouring marshes, such as the provision of a mooted Slade Green 'relief road', potentially placing at risk any ecological benefits of the appeals scheme to the marshes [9.6.9]. Provision of a 'relief road' does not form part of the appeals proposal, which must be considered primarily on its own merits. Furthermore, it is not certain that such a scheme would be likely to come forward in future⁶³⁵ and in any event, if it did, I have no doubt that the local planning authority would take account of the value of the Crayford Marshes SMI, which is likely to be enhanced by the appeals proposal.
- 15.8.39. The area of the appeals site to the north of the River Cray makes up a large part of the *Crayford Landfill and Howbury Grange Site of Borough Importance-Grade 1* (BxBI18), the remainder comprising an area of former landfill that adjoins the eastern boundary of the appeals site. It appears that the features of the SBI cited in support of the designation are largely located in the east of the designated site, beyond the eastern boundary of the appeals site⁶³⁶. Furthermore, the habitats that would be lost to development are of little ecological value, comprising improved and semi-improved grassland, not grazing marsh⁶³⁷ [9.6.2, 10.1.1-3, 10.2.3, 10.2.6, 10.9.1]. The habitat which is of some ecological value relative to the rest of the appeals site is field F10, which is situated along the eastern edge of the site and the majority of that habitat would be retained as part of the development proposal⁶³⁸. Mr Goodwin explained that whilst some hedgerows would be removed along the northern side of the site to facilitate the works, they are generally species-poor and weak in structure. Replanting to be undertaken would include, amongst other things, disease resistant strains of Elm, which would benefit White-letter Hairstreak, a protected species of butterfly of high conservation priority, which has been recorded in that area⁶³⁹ [10.5.5].

⁶³² INQ/115.

⁶³³ CD/7.1 para 7.28.

⁶³⁴ Cross-examination of Mr Goodwin.

⁶³⁵ INQ/82.

⁶³⁶ CD/1.27 Volume 2 Appendix H para 8.5.

⁶³⁷ APP/BIO/1 para 7.35.

⁶³⁸ CD/1.27 Volume 2 Appendix H para 8.9, Volume 3c Appendix H figure H2.

⁶³⁹ Cross-examination of Mr Goodwin.

- 15.8.40. In relation to fauna, the ES indicates that overall, having regard to the proposed mitigation measures which could be secured by condition, the residual impacts on bats, water vole, birds, reptiles and invertebrates would be beneficial, albeit to a limited extent. The species listed within the citation for the BxBI18 as using the site as a high tide roost were not found within the part that comprises the appeals site during the ES site usage surveys⁶⁴⁰ [10.9.3]. None of the planning authorities involved maintain an objection to the development on nature conservation grounds. I consider that more weight is attributable to the detailed assessment by Ecology Solutions Limited contained within the ES than generalised and largely unsupported concerns raised by other objectors [9.1.3, 10.2.1].
- 15.8.41. I am content that from an ecology perspective the ES has had sufficient regard to the relationships between the appeals site and the wider environment within which it is situated [10.2.5]. For example, the bird breeding surveys reported in the ES included not only the appeals site but also the section of BxBI18 outside and to the east of the site. The bird species identified included, amongst others, Skylark and Corn Bunting, both of which are on the Red List of conservation concern. Skylark is also a UK, Kent and Bexley BAP species and Corn Bunting a UK and Kent BAP species⁶⁴¹ [9.6.6]. Although these species were identified within the site, in comparison with the area of BxBI18 to the east, the numbers were small. Furthermore, of the 4 identified Skylark breeding territories within the site, 3 were within field F10, on the east eastern side of the site, where suitable breeding habitat can be retained alongside the remainder of BxBI18. 2 Corn Bunting breeding territories would be lost within the site⁶⁴².
- 15.8.42. Nevertheless, the assessment of the appellant's ecologist is that the proposed landscaping and management of open space within the site in the interests of Corn Bunting and Skylark would secure habitats of better quality and provide more breeding opportunities overall. I have not been provided with any compelling evidence to show that this would not be possible and I consider that the necessary measures for those species, together with other provisions to improve the biodiversity value of the site such as green walls and nesting boxes, are matters which could be secured through the imposition of a suitable condition requiring the implementation of an approved Biodiversity Management Plan⁶⁴³. Whilst there can be no guarantee regarding the numbers of particular species that may frequent the site as a result, I am satisfied that the provision of better quality and secure habitat represents an enhancement, albeit limited. [9.6.6-8, 10.1.2, 10.5.6, 10.6.1, 10.7.3, 10.9.3, 11.3.12.b)]
- 15.8.43. In 2007 the Inspector found there was no merit in the argument that development of the appeals site should be resisted having regard to its future value as an area for the long term managed retreat of Crayford Marshes⁶⁴⁴. I share this view, not least as massive intervention would be

⁶⁴⁰ CD/1.27 Volume 2 Appendix H. para 5.87.

⁶⁴¹ CD/1.27 Volume 2 Appendix H paras 5.92-93

⁶⁴² APP/BIO/1 para 6.28-33.

⁶⁴³ CD/1.27 Volume 2 para H7.64.

⁶⁴⁴ CD/5.2 para15.37.

required, due to the significant differences in level between the two [10.2.5, 10.2.7].

- 15.8.44. Furthermore, I have indicated, an aim of the proposed landscaping along the eastern side of the site would be to enhance its ecology value. It would adjoin the remainder of BxBI18 and together they would maintain the linkage between the SMIs to the north and south [10.2.4]. The retention, creation and safeguarding of wildlife corridors through the site could be ensured through the imposition of a condition, as already referred to [10.2.5]. Against this background, I give little weight to the concerns raised regarding fragmentation of habitats, which was also considered and given little weight in 2007⁶⁴⁵ [9.6.4-5].
- 15.8.45. As to the potential impact of the scheme on the hydrology of the marshes, there is no objection from the Environment Agency or Natural England. Furthermore, the proposed works to improve the drainage of the marshes with the aim of enhancing the areas biodiversity value could be controlled by the local planning authority through the imposition of suitable conditions and the LBB s106 [10.2.6].
- 15.8.46. I conclude that the appeals proposal, including the off-site planning obligations, would be likely to result in a net biodiversity gain overall, a view shared by both local planning authorities⁶⁴⁶ [8.5.8, 9.6.1, 11.3.10-12, 11.4.4]. In this respect it would accord with the aims of LP Policies 7.19 and 7.21, BCS Policies CS04, CS09, CS17 and CS18, as well as the Framework. However, there is no guarantee that the overall net gain would be substantial and so I afford it moderate weight.

The extent to which mitigation would be secured through planning conditions and obligations

Conditions

- 15.8.47. Without prejudice to their respective cases, the appellant and the planning authorities have jointly submitted a list of 32 planning conditions (nos. (1)-(32)), INQ/94, that they consider should be imposed in the event of planning permission being granted, for the reasons set out in INQ/94 which include the requirements of the Development Plans. The included wording was agreed between the appellant, the LBB, DBC and the MOL, except: in relation to condition nos. (6), (27) and (30); and, whether lists set out in conditions should be preceded by the phrase 'to comprise' rather than 'to include', in the interests of precision. The list of conditions was discussed at the Inquiry, together with other conditions suggested by interested parties. I have had regard to those views when compiling the conditions listed in Appendix 4 of this report, which departs from INQ/94 where I consider it necessary in order to accord with the tests of conditions set out in the Framework. Should the Secretary of State be minded to grant planning permission for the proposed development, then I recommend that the conditions listed in Appendix 4 of this report be attached to the permission granted.

⁶⁴⁵ CD/5.2 para 15.39.

⁶⁴⁶ CD/1.6 page 63.

- 15.8.48. As to the conditions set out on INQ/94, in addition to the normal commencement condition (3) and conditions to secure details of reserved matters (1, 2), conditions would be required to ensure that the works would be: carried out in accordance with the principles illustrated on the Parameters Plan and other approved plans; and, phased in a manner approved by the local planning authority (4⁶⁴⁷, 5). This would be necessary in the interests of certainty as well as to ensure that the development is generally in accordance with the scheme and mitigation which was the subject of the ES/SES. For the latter reason, conditions would be necessary to secure the implementation of an approved:
- Biodiversity Action Plan as well as a demolition/tree felling/construction timetable, in the interests of protecting and enhancing biodiversity (9, 11);
 - Construction Management Plan (8), to control the impact of those activities on the surrounding environment;
 - Programme of archaeological evaluation and mitigation (12), and programme of historic building evaluation and analysis (13), in the interests of safeguarding heritage assets;
 - Set of measures to control the impact of noise and vibration, in the interests of living conditions (24, 25, 29);
 - Landscaping scheme (26), in the interests of protecting and enhancing biodiversity as well as visual amenity;
 - Building layout/footprint (31), buildings/structure base levels, heights and site levels (14), scheme for the location and use of external storage areas (18), schedule of materials/finishes for buildings and other structures (23), and gantry crane design (32), all in the interests of visual amenity; and,
 - A number of conditions would be necessary in order to satisfactorily control the risk of pollution, in the interests of human health and the wider environment (10, 15, 19, 27, 28, 33).
- 15.8.49. A condition would be necessary to ensure, through the approval and implementation of a Method Statement, that the proposed development would not prejudice the use of safeguarded land for a possible future extension of Crossrail (7) [13.5.15-19]. Conditions would also be required to ensure that: the development provides and retains appropriate facilities for its future occupiers (16, 17, 20) and is served by adequate means of access, having regard to the amenities of nearby occupiers of residential properties; and, the capacity and quality of the River Cray is safeguarded (21, 22).
- 15.8.50. In my judgement, the use of the phrase 'to include', rather than 'to comprise', preceding a list of requirements set out in a condition is normal practice and would not result in the recommended conditions failing the test of precision set out in the Framework. [12.1.14.c)-d)]

⁶⁴⁷ Amended to reflect conditions discussion in accordance with INQ/97.

Pre-commencement conditions

- 15.8.51. 4 of the 32 conditions set out in INQ/94 are identified as pre-commencement conditions, nos. (6-9). Whilst the appellant has suggested that condition no. 6 is not necessary in a pre-commencement form, in closing it confirmed that it agrees to the imposition of any of the agreed conditions which are in the form of a pre-commencement condition in INQ/94 [11.6.1.b.].
- 15.8.52. Condition no. (6)- relates to: 1) the completion of the intermodal area (zone C) rail infrastructure (as shown on the Parameters Plan: drawing no. 30777-PL-101 rev I); and, 2) the provision of an operational connection between it and the North Kent main line rail network. I indicated earlier in my conclusions, there is no dispute that a connection could be physically made and it is likely that provision of those facilities as part of the initial stages of development could be secured by condition. However, the necessary terms of such a condition are a matter in dispute, as set out in INQ/94.
- 15.8.53. Firstly, I consider that without both elements, 1) and 2), the scheme could not operate as a rail freight interchange. Furthermore, consistent with the view expressed by the Inspector in 2007, if the proposal would, for any reason, not operate as a SRFI then it would not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build purely road-served warehouses on open land in the Green Belt around London would not come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal. [7.2.4] In addition, these circumstances are materially different from those in the case of the East Midlands SRFI, which did not involve development in the Green Belt [11.3.3-4].
- 15.8.54. Secondly, it follows that the provision of these elements of the scheme, 1) and 2), are a fundamental aspect of the particular development for which planning permission is sought in the cases before me and without them planning permission would have to be refused. Furthermore, the provision of the operational connection would be within the control of Network Rail, not the appellant, and there is no formal agreement in place between those 2 parties to ensure its provision. To my mind, in these circumstances, a pre-commencement condition would be necessary to gain reasonable surety in the public interest, before Green Belt land is lost, that the necessary operational rail facilities would be provided in a timely manner.
- 15.8.55. Thirdly, following the appellant's alternative approach, set out in INQ/94, would mean allowing the development to proceed without any such assurance to the point at which the proposed warehousing would be sufficiently complete to be occupied. At that point the associated Green Belt land would have been subject to substantial development, the appellant would be likely to have invested significant sums and if it is found then that the required rail facilities cannot be delivered, it may well be

difficult to enforce the provision requiring the warehouses not to be occupied, as observed by the LBB⁶⁴⁸.

- 15.8.56. I conclude that the approach recommended by DBC and the MOL in sections 6.1, 6.2 and 6.4 of condition no. (6) in INQ/94, which is supported by the LBB⁶⁴⁹ [12.1.14a)], is reasonable and necessary. It indicates, amongst other things, that (6.1) development shall not commence until the proposed operational connection to the North Kent main line has been progressed to the end of Network Rail's GRIP Stage 5 (completion of detailed design⁶⁵⁰) and (6.2) the development shall not be occupied or brought into use until the rail works have been progressed to the end of GRIP Stage 7 (transfer of asset responsibility from the contractor to the operators⁶⁵¹). In the event Network Rail determines that a new headshunt is required at Slade Green Train Depot to facilitate the provision of the operational connection, this would also be secured by this approach⁶⁵² [11.2.52, 13.5.1-5]. Whilst I have had regard to the appellant's estimate that it may take up to 2 years to progress from GRIP Stage 2 to 5⁶⁵³, in my judgement this does not indicate that section 6.1 would be unduly onerous, particularly given the outline nature of the planning applications and that time would be needed for reserved matters approval prior to commencement in any event. In light of the safeguards provided by sections 6.1 and 6.2, I consider that section 6.3, which would require the development to be removed in the event that the Rail Works are not completed within 3 years from the commencement of development would be unduly onerous and unnecessary. I have made minor modifications to 6.1/6.2 in the interests of clarity and enforceability.
- 15.8.57. Condition no. 6x⁶⁵⁴-for the reasons set out above in relation to condition no. (6) and the NPSNN requirements of SRFI, I consider that a condition seeking to ensure that the proposed rail connection would have the capacity to serve the site with 4 trains/day would also need to be in a pre-commencement form. Although I have referred to the need for such a condition earlier in my conclusions, given the appellant's refusal to accept that form, it was not possible to include it in Appendix 4.
- 15.8.58. Condition nos. (7), (8) and (9)-There is no dispute that pre-commencement conditions are required to ensure that: the proposal proceeds in a manner which would not prejudice the possible future extension of Crossrail, with reference to the hatched area shown on the Parameters Plan; a Construction Management Plan is in place to control the impact of those activities on the surrounding environment; and, biodiversity would be adequately protected from the impacts of development.

⁶⁴⁸ During the conditions session.

⁶⁴⁹ During the conditions session.

⁶⁵⁰ INQ/38 page 1.

⁶⁵¹ INQ/38 page 1.

⁶⁵² Discussed during the conditions session.

⁶⁵³ APP/PLAN/1 para 10.23.

⁶⁵⁴ INQ/100.

- 15.8.59. Turning to the other disputed conditions: Condition no. (27)-in the context of seeking to maintain or improve air quality, I consider that it is reasonable to require a Low Emissions Strategy for the development to include an assessment of the contribution likely to be made by rail locomotives. However, given the appellant's estimate⁶⁵⁵ that a low percentage of locomotives is currently capable of meeting the standards referred to by DBC/MOL (section 27.1.1), a matter not disputed by others, it would be unduly onerous to require compliance with those standards. Furthermore, given that road vehicles arriving on site would be likely to be from a range of different locations and operators, it would be unduly onerous to require the appellant to commit to all road vehicles meeting best practice towards the cited standards [12.1.14.b)]. Instead, in relation to road vehicles, it would be reasonable to require the appellant to identify measures that would be taken to secure the use of vehicles that comply with the cited standards.
- 15.8.60. Condition no. (30)-the NPSNN indicates that '*Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.*' Against this background, with reference to the DBC/MOL recommended wording for condition no. (30), I consider that it would be unreasonable to require that all the material stored on the site must either arrive or depart by rail. In that case the appellant's recommended wording would be reasonable and necessary [12.1.14.b)].
- 15.8.61. As to other INQ/94 conditions: Condition no. (29)-requires mitigation measures to be put in place to deal with any unforeseen impacts of noise from the development on local residents. I have recommended the form set out in INQ/94, rather than the alternative proposed by the appellant in INQ/98, as the latter does not secure a timetable for approval and implementation and so would be difficult to enforce.
- 15.8.62. Condition no. (32)- amendments have been made to the position set out in INQ/94, in order to clarify the gantry crane details to be provided in the interests of visual and residential amenity. The approach reflects the position suggested at the Inquiry by the LBB in INQ/100.

Planning obligations

- 15.8.63. In support of the appeals proposal the appellant relies on 2 agreements pursuant to section 106 of the *Town and Country Planning Act 1990*: the first, with the London Borough of Bexley (LBB s106)⁶⁵⁶; and, the second, with Dartford Borough Council and Kent County Council (DBC s106)⁶⁵⁷. Each is supported by a statement from the relevant local planning authority⁶⁵⁸ setting out the justification for included planning obligations

⁶⁵⁵ APP/PLAN/1 para 10.37.

⁶⁵⁶ INQ/115.

⁶⁵⁷ INQ/116.

⁶⁵⁸ INQ/48a and 48b.

upon which the parties to the Inquiry have had an opportunity to comment⁶⁵⁹. [12.1.10-11]

- 15.8.64. The general terms of the LBB s106 include provisions related to: noise mitigation; bus stop facilities; legible London signage; local employment; community liaison; a Marshes Management Regime, a Marshes Drainage Strategy and Marshes Management Implementation; a Transport Management Plan, Bexley signage strategy and a shuttle bus. The general terms of the DBC s106 include provisions related to: cycle/footpath improvements; junction 1A improvements, in keeping with the aims of DCS Policy CS 16; a Transport Management Plan; an HGV signage strategy; air quality monitoring and management; and, a shuttle bus facility. A number of these provisions include financial contributions and some have been referred to earlier in my conclusions.
- 15.8.65. With reference to the submissions made, principally by the appellant, DBC and the LBB⁶⁶⁰, I am satisfied that the planning obligations are: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development. They would accord with the provisions of Regulations 122 and 123 of the CIL Regs and the tests for planning obligations set out in the Framework. [12.1.12]

Conclusions

- 15.8.66. I conclude that the above measures would be necessary to mitigate a number of the impacts likely to be associated with the appeals proposal and they respectively meet the tests of planning conditions and obligations set out in the Framework as well as certain requirements of the Development Plans. However, for the avoidance of doubt, in my judgement, they would not reduce the harm that I have identified in relation to the main issues to any material extent.

Other matters

- 15.8.67. I give little weight to the appellant's contention that there has been very little local opposition and engagement, save for a handful of conscientious people, who appeared at the Inquiry [11.1.4, 11.1.7]. The number of people who appeared at the Inquiry does not provide a reliable indication of the level of objection. For example, in some cases the objectors who appeared were representing groups of others, such as the representative of SGCF. Furthermore, a significant number of objections were submitted in response to the planning applications and non-attendance at the Inquiry does not preclude them from being taken into account, as the appeal notifications made clear.
- 15.8.68. The appeals relate to cross-boundary planning applications. Whilst the largest part of the appeals site lies within the London Borough of Bexley, who resolved to approve the proposal, the LBB's decision does not alter the planning merits of the appeals scheme. Nor does it follow that associated

⁶⁵⁹ For example: INQ/67, 68, 69, 70, 92 and discussions during the planning obligations session.

⁶⁶⁰ INQ/48a, 48b and 68.

impacts beyond the boundary of that particular Council would be acceptable. I consider that limited weight is attributable to the LBB resolution of itself. [11.1.3.j., 11.1.5, 12.1.1-5, 12.1.15-16]

Conclusions

Harm

- 15.8.69. There is no dispute that, under the terms of the Development Plans and the Framework, the proposed development would constitute inappropriate development in the Green Belt, which the Framework confirms is, by definition, harmful to the Green Belt. Furthermore, the introduction of this massive development beyond the built limits of Slade Green would have a considerable adverse impact on the openness of the Green Belt and would undermine a number of the purposes served by Green Belt thereabouts. I consider that overall, the appeals proposal would cause substantial harm to the Green Belt, an outcome acknowledged as likely by the appellant. With reference to the Framework, which states that substantial weight should be given to any harm to the Green Belt, this identified harm weighs heavily against the scheme. [11.7.2, 15.1-2]
- 15.8.70. In addition, the proposed development would also be likely to have a significant adverse effect on the character and appearance of the local area, contrary in this respect to the aims of the LBB Development Plan. This attracts significant weight. [15.3]
- 15.8.71. Turning to the proposed transport links. Based on the evidence before me, I am not reasonably assured that an adequate rail link for the purposes of a SRFI, with reference to the NPSNN, would be provided. However, if it would, I consider that the level of freight service involved would be likely to have a material adverse effect on existing/future passenger services, contrary in this respect to the aims of the LBB Development Plan. [15.4] As regards the likely highways impact of the scheme, I acknowledge the lack of objections from the Highway Authorities. Nonetheless, I have found that the proposal would be likely to cause considerable harm to the convenience of highway users in Dartford, contrary in this respect to the aims of the DBC Development Plan and the Framework. [15.5] These adverse impacts each attract significant weight.
- 15.8.72. As to other harm, I am satisfied that, with mitigation secured by planning conditions and obligations, the scheme would be unlikely to result in material harm to living conditions in the local area, with particular reference to air quality, noise and vibration. [15.6] Nor would it cause material harm to the significance of any Designated Heritage Assets. In these respects the proposal would not conflict with the Development Plans and these matters do not weigh against the scheme. [15.7]
- 15.8.73. Nonetheless, the Framework confirms that the very special circumstances necessary to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Other considerations

- 15.8.74. In 2007 the Secretary of State granted planning permission for a SRFI scheme at Howbury Park. However, it does not represent a fallback position, as the permission has since lapsed and the appellant acknowledges that the circumstances of that case are not directly comparable to those in the current case [11.5.4, 15.1].
- 15.8.75. I am content that there is a need and market for SRFIs to serve London and the South East. Planning permission has been granted for a SRFI at Radlett, which would be expected to serve the northwest sector of London. In contrast, the appeals proposal would be situated in an arc to the south and east of London. Establishment of a SRFI at the appeals site, whilst inconsistent with the DBC Development Plan Spatial Strategy, would be in keeping with the aims of the LBB Development Plan and the Framework regarding the generation of socio-economic benefits, to which substantial weight would ordinarily be attributable [11.3.6-9, 15.8.30].
- 15.8.76. However, whilst the appeals proposal would exhibit a number of locational and physical characteristics that define SRFIs, I consider that it would be likely to fall seriously short of the transport link requirements. Even if connectivity by rail would be likely to be adequate for the purposes of a SRFI, a matter in relation to which I am not reasonably assured, I consider that the proposed facility would be unlikely to benefit from good road access, as required by the NPSNN. Consequently, the appeals scheme would not be well qualified to meet the identified need for SRFIs to serve London and the South East, which casts significant doubt over whether the full socio-economic benefits of a SRFI would be likely to be realised and also the extent of CO₂ net savings through modal shift. [11.7.1-2, 15.8.17]
- 15.8.77. Furthermore, even if the appeals scheme would be likely to meet the NPSNN requirements of a SRFI in full, the weight attributable to that matter would be limited, as London Gateway, a brownfield site, has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East, potentially with broadly comparable socio-economic benefits.[11.5.2, 15.8.26]
- 15.8.78. Under the circumstances, I give limited weight to the potential socio-economic benefits of the appeals scheme. [15.8.32]
- 15.8.79. Whilst the appeals proposal, including the off-site works secured by planning obligations, would be likely to result in a net biodiversity gain, there is no guarantee that the overall net gain would be substantial and so I afford it moderate weight [15.8.46]. Significant weight is not attributable to the other matters raised.

Planning balance

- 15.8.80. Overall, even if reasonable assurance could be provided that the rail link to the appeals site would be adequate to service the needs of a SRFI and that it would not have an adverse impact on passenger services (neither of which I consider to be the case), in my judgement the remaining harm, associated with other identified factors, would not be clearly outweighed by

the other considerations, not least due to the absence of good road access and the existence of a possible alternative.

- 15.8.81. I conclude that the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposals, would not be clearly outweighed by other considerations. In light of this conclusion, it follows that the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. In relation to the 2007 scheme, the absence at that time of any other site in the arc to the south and east of London that could meet part of London's need for SRFIs was judged to be a very special circumstance. The circumstances are now materially different, as I have indicated above. I conclude that the scheme would conflict with LP Policy 7.16, BCS Policies CS01 and CS17 as well as DCS Policies CS 1, CS 13 and DDPP Policy DP22, and the Framework as well as LPe Policy G2. Whilst the MOL has placed some reliance on BUDP Policies ENV4, with which the proposal would conflict⁶⁶¹, it appears to me that its requirements are more stringent than those set out in the Framework and so I give that conflict little weight.
- 15.8.82. I conclude on balance, that the appeals proposal would conflict with each of the relevant Development Plans taken as a whole and it would not amount to sustainable development under the terms of the Framework.

15.9. **Conclusion**

- 15.9.1. For the reasons given above, I conclude that the appeals should be dismissed.

16. **INSPECTOR'S RECOMMENDATIONS**

- 16.1. I recommend that the appeals be dismissed.
- 16.2. If, notwithstanding the above recommendation, the Secretary of State should be minded to grant planning permission for the proposed development, then I recommend that the conditions listed in Appendix 4 of this report be attached to the permission granted.

I Jenkins

INSPECTOR

⁶⁶¹ GLA/NR/01 page 19 para 77.

APPENDIX 1-APPEARANCES

FOR THE APPELLANT:

Mr R Warren
QC

He called	
Mr N Findlay	WSP Limited
BSc CEng MICE MIHT MCILT	
Dr B Tuckett-Jones	WSP Limited
BSc PhD CEnv MIAQM	
Mr C Scott	Barry Chinn Associates Limited
BA DipLA CMLI	
Mr N Gallop	Intermodality Limited
BSc(Hons)	
Mr T Goodwin	Ecology Solutions Limited
BSc (Hons) MSc MIEEnvSc MCIEEM MIALE	
Mr H Scanlon	Litchfields
BA(Hons) MPhil MRTPI	

FOR THE MAYOR OF LONDON:

Mr D Kolinsky
QC

He called	
Mr R Goldney	Rail Freight Consulting
BSc(Hons) MBA FIMechE FCILT FICE	
Mr I Birch	Cebr
MA(Cantab) MA(Leeds)	
Mr G Hobbs	Transport for London
BA(Hons) (Econ) MSc (Econ)	
Mr N Ray	Greater London Authority
BA(Hons) MA	

FOR DARTFORD BOROUGH COUNCIL:

Mr T Mould
QC
assisted by
Ms H Gibbs
Of Counsel

He called	
Mr P Caneparo	Caneparo Associates Limited
BSc MSc MCILT MCIHT	
Dr R Maggs	Bureau Veritas UK
BSc(Hons) PhD DIC	
Mr S Bell	Dartford Borough Council
BA(Hons) DiP TP	

FOR THE LONDON BOROUGH OF BEXLEY:

Mr J Garbett
Solicitor
Mr M Kiely
BTP MBA MRTPI

Womble Bond Dickinson (UK) LLP
Mike Kiely Planning + Regeneration

INTERESTED PERSONS:

Mrs J White Member of SGCF	on behalf of Mrs C Egan, local resident
Mr I Lindon Chairman	LA21 Traffic/Transport Forum
Mr D Reynolds Member LA21	LA21 Traffic/Transport Forum
Mr R Hillman Trustee SGCF	Slade Green Community Forum
Councillor J Kite Leader of DBC and member of KCC	Dartford Borough Council
Councillor S Borella Slade Green & Northend Ward	The London Borough of Bexley
Mr C Rose BSc (Hons) MSc Vice-chair of BNEF	Bexley Natural Environment Forum

PLANNING CONDITIONS AND OBLIGATIONS SESSION only:

Miss M Thomson on behalf of RDL	Eversheds LLP
Mr M Able on behalf of the LBB	LBB
Mrs J Burgess on behalf of Highways England	HE
Mr P Harwood on behalf of Highways England	HE
Mr D Joyner on behalf of KCC	KCC

APPENDIX 2-DOCUMENTS**PRE-INQUIRY DOCUMENTS**

CD/No.	CORE DOCUMENTS (CD)
	APPLICATION DOCUMENTS
1.1	DBC Officer's Report, 10 November 2016
1.2	DBC Officer's Report, 20 April 2017
1.3	Update to DBC Officers Report, 20 April 2017
1.4	DBC Committee Resolution, 20 April 2017
1.5	DBC Decision Notice, 21 April 2017
1.6	LBB Officer's Report, 16 February 2017
1.7	LBB Addendum to Officer's Report, 16 February 2017
1.8	LBB Committee Resolution
1.9	LBB Decision Notice, 20 July 2017
1.10	MOL's Initial Representation Letter, 6 June 2016
1.11	GLA Stage 1 Referral Report, 6 June 2016
1.12	GLA Stage 2 Referral Report, 17 July 2017
1.13	GLA Stage 2 MOL's Decision Letter, 17 July 2017
1.14	Application Form and CIL Form, November 2015
1.15	Covering Letter and Document List, November 2015
1.16	Ownership and Agricultural Holdings Certificates and Notices, November 2015
1.17	Application Plans (See Planning application drawings table below)
1.18	Planning Summary, November 2015
1.19	Planning Statement, November 2015
1.20	Design and Access Statement, November 2015
1.21	Sustainability Statement, November 2015
1.22	Statement of Community Involvement, November 2015
1.23	Utilities Assessment Report, November 2015
1.24	Draft S106 Heads of Terms, November 2015
1.25	Rail Report, November 2015
1.26	Alternative Site Assessment, November 2015
1.27	Environmental Statement, November 2015, including:- Volume 1: Non-Technical Summary Volume 2: Main Technical Assessments Volume 3: Appendices to the Main Technical Assessments
1.28	Response to Consultee Comments Report, February 2016

1.29	Response to Consultee Comments Report (Update), April 2016
1.30	Supplementary Environmental Statement, April 2016 Updated Non-Technical Summary, April 2016
1.31	Response to Consultee Comments Report (Update), June 2016
1.32	Technical Notes (July 2016 and October 2016) relating to Air Quality Following Stage 1 Response
1.33	Marshes Management Plan, February 2017
1.34	Transport Management Plan, 2018
	NATIONAL POLICY
2.1	National Planning Policy Framework, March 2012
2.2	National Policy Statement for National Networks, December 2014
2.3	Draft National Planning Policy Framework for Public Consultation, March 2018
	LOCAL POLICY
3.1	London Plan, March 2016
3.2	Draft London Plan, December 2017
3.3	Mayor's Transport Strategy 2018
3.4	Green Infrastructure and Open Environments: The All London Green Grid Supplementary Planning Guidance 2012
3.5	Sustainable Design and Construction Supplementary Planning Guidance, April 2014
3.6	Character and Context Supplementary Planning Guidance, June 2014
3.7	Land for Industry and Transport Supplementary Planning Guidance, September 2012
3.8	Mayor's Draft London Environment Strategy, August 2017
3.9	Mayor's Economic Development Strategy for London, May 2010
3.10	Mayor's Draft Economic Development Strategy, December 2017
3.11	A City for all Londoners, October 2016
3.12	Bexley Core Strategy, 2012
3.13	Bexley Council Saved Unitary Development Plan, 2007
3.14	Sustainable Design and Construction Guide SPG, LBB, October 2007
3.15	Bexley Growth Strategy, December 2017
3.16	Planning Obligations Supplementary Planning Guidance, LBB, July 2008
3.17	DBC Core Strategy 2011
3.18	DBC Development Policies Plan 2017
	OTHER STATUTORY BODIES
4.1	Rail Freight Strategy: Moving Britain Ahead, DfT: September 2016

4.2	Transport Investment Strategy: Moving Britain Ahead, DfT: July 2017
4.3	Delivering A Sustainable Transport System: The Logistics Perspective, DfT: December 2008
4.4	The Logistics Growth Review – Connecting People with Goods, DfT, 2011
4.5	Rail Freight Strategy, TfL, August 2007
4.6	London Freight Plan – Sustainable Freight Distribution: A Plan for London, TfL, November 2007
4.7	Network Rail Value and Importance of Rail Freight, 2010
4.8	Network Rail Value and Importance of Rail Freight Summary Update, April 2013
4.9	Network Rail Freight Market Study, 2013
4.10	Rail Delivery Group Keeping the Lights on and the Traffic Moving: Sustaining the benefits of rail freight for the UK economy, 2014
4.11	Network Rail Freight Network Study, April 2017
4.12	Network Rail South East Route: Draft Kent Area Route Study, March 2017
4.13	Building our Industrial Strategy, Jan 2017
4.14	Kent County Council Transport Plan 4: Delivering Growth without Gridlock, 2016-2031
4.15	Kent County Council Freight Action Plan for Kent, 2017
4.16	The strategic road network and the delivery of sustainable development (DfT Circular 02/13)
	OTHER MATERIAL
5.1	Previous Howbury Park Scheme Parameters Plan, Reference: 2144/PL/49D dated 30 June 2004, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.2	Inspector’s Report for previous Howbury Park SRFI (27 September 2007), Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.3	Secretary of State’s Decision Letter for the previous Howbury Park SRFI Appeal (2007), Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.4	SIFE Secretary of State’s Decision Letter and Inspector’s Report, Appeal Reference APP/J0350/A/12/2171967
5.5	Radlett Decision Letter and Inspector’s Report, Appeal reference APP/B1930/A/09/2109433
5.6	East Midlands Gateway Rail Freight Interchange Secretary of State’s Decision Letter and Examining Authority’s Report, DCO Reference TWA

	8/1/15
5.7	Kent International Gateway Secretary of State's Decision Letter and Inspector's Report, Appeal Reference: APP/U2235/A/09/2096565
5.8	Current Draft S106 Agreements
5.9	Draft Planning Conditions
5.10	Previous Howbury Park S106: Highway Obligations, dated 1 June 2007, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.11	Previous Howbury Park S106: Non Highway Obligations, dated 1 June 2007, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
	STATEMENTS OF COMMON GROUND (SoCG)
6.1	SoCG - LBB
6.2	SoCG - DBC
6.3	SoCG - GLA
6.4	SoCG - Highways England
	STATEMENTS OF CASE (SOC)
7.1	SOC - GLA
7.2	SOC - LBB
7.3	SOC - DBC
7.4	SOC - Roxhill Developments Ltd
	AIR QUALITY
8.1	Air Quality (England) Regulations 2000
8.2	Air Quality (England) (Amendment) Regulations 2002
8.3	2017 Air Quality Annual Status Report (ASR)
8.4	Air Quality Action Plan for the Borough of Dartford (Sept 02)
8.5	Local Air Quality Management - Action Plan Dartford Town and Approach Roads Air Quality Management Area, - A226 London Road Air Quality Management Area, and - Bean Interchange Air Quality Management Area (2009)
8.6	Local Air Quality Management: Technical Guidance (TG16) - February 2018
8.7	IAQM Guidance: Land-Use Planning & Development Control: Planning For Air Quality (January 2017)
8.8	Air Quality Standards Regulations 2010
8.9	Air Quality Standards (Amendment) Regulations 2016
8.10	Air Quality Annual Status Report for Bexley for 2016 (published 2017)

8.11	UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations. An Overview
8.12	Air Quality Plan for tackling roadside nitrogen dioxide concentrations in Greater London Urban Area

PLANNING APPLICATION DRAWINGS

Drawing no.	Title
30777-PL100 rev E	Location plan, November 2015.
30777-PL-101 rev I	Parameters plan, current revision February 2017.
30777-PL-102 rev D	Illustrative masterplan, November 2015.
30777-PL103	Colour illustrative masterplan, November 2015.
30777-PL104 rev B	Existing block plan, November 2015.
30777-PL-105 rev A	Development phasing, November 2015.
30777-PL-106 rev A	Typical colour elevations (unit 2), November 2015.
30777-PL-107 rev A	Typical plans and section (unit 2), November 2015.
2039-RP-001 rev D	Site access road plan and section (sheet 1), November 2015.
2039-RP-002 rev C	Site access road plan and section (sheet 2), November 2015.
2039-RP-003 rev D	Viridor access road plan and section, November 2015.
2039-RP-004 rev B	Road 3 plan and section, November 2015.
2039-RP-005 rev B	Road 4 Plan and section (sheet 1), November 2015.
2039-RP-006 rev B	Road 4 Plan and section (sheet 2), November 2015.
2039-RP-007 rev B	Road 5 plan and section, November 2015.
2039-RP-008 rev B	Site access off-site roundabout improvements, November 2015.
2039-STR-001 rev B	Howbury viaduct general arrangement, current revision submitted February 2016.
D5.5	Indicative rail layout, November 2015.
D5.5S	Indicative section through interchange, November 2015.

PROOFS OF EVIDENCE (pre-Inquiry submissions)

Ref no.	Content
	APPELLANT
APP/TRAN/1	Proof of evidence Mr N Findlay
APP/TRAN/2	Appendices Mr N Findlay
APP/TRAN/3	Summary Mr N Findlay
APP/TRAN/4	Joint rebuttal Mr N Findlay

APP/AQ/1	Proof of evidence Dr B Tuckett-Jones
APP/AQ/2	Appendices Dr B Tuckett-Jones
APP/AQ/3	Summary Dr B Tuckett-Jones
APP/TRAN/4	Joint rebuttal Dr B Tuckett-Jones
APP/LANVIS/1	Proof of evidence Mr C Scott
APP/LANVIS/2	Appendices Mr C Scott
APP/LANVIS/3	Summary Mr C Scott
APP/RAIL/1	Proof of evidence Mr N Gallop
APP/RAIL/2	Appendices Mr N Gallop
APP/RAIL/3	Summary Mr N Gallop
APP/RAIL/4	Rebuttal Mr N Gallop
APP/BIO/1	Proof of evidence Mr T Goodwin
APP/BIO/2	Appendices Mr T Goodwin
APP/BIO/3	Summary Mr T Goodwin
APP/PLAN/1	Proof of evidence Mr H Scanlon
APP/PLAN/2	Appendices Mr H Scanlon
APP/PLAN/3	Summary Mr H Scanlon
APP/PLAN/4	Rebuttal Mr H Scanlon
	MOL
GLA/RG/01	Proof of evidence Mr R Goldney
GLA/RG/02	Appendices Mr R Goldney
GLA/RG/03	Summary Mr R Goldney
GLA/RG/04	Rebuttal Mr R Goldney
GLA/IB/01	Proof of evidence Mr I Birch
GLA/IB/02	Appendices Mr I Birch
GLA/IB/03	Summary Mr I Birch
GLA/GH/01	Proof of evidence Mr G Hobbs
GLA/GH/02	Appendices Mr G Hobbs
GLA/GH/03	Summary Mr G Hobbs
GLA/NR/01	Proof of evidence Mr N Ray
GLA/NR/02	Summary Mr N Ray
	DBC
DBC/W2/1	Proof of evidence Mr P Caneparo
DBC/W2/2	Appendices Mr P Caneparo
DBC/W2/3	Summary Mr P Caneparo
DBC/W3/1	Proof of evidence Dr R Maggs
DBC/W3/2	Appendices Dr R Maggs

DBC/W3/3	Summary Dr R Maggs
DBC/W1/1	Proof of evidence Mr S Bell
DBC/W1/2	Summary Mr S Bell
DBC/W1/3	Appendices Mr S Bell
	SGCF
SGCF/W1/1	Summary Mr R Hillman (amended INQ/42)
SGCF/W1/2	Proof of evidence Mr R Hillman (amended INQ/42)
SGCF/W1/3	Appendix 1 Mr R Hillman
SGCF/W1/4	Appendix 2 Mr R Hillman (amended INQ/47)
SGCF/W1/5	Rebuttal Mr R Hillman (amended INQ/42)
SGCF/W1/6	Rebuttal appendix 1 Mr R Hillman
SGCF/W1/7	Rebuttal appendix 2 Mr R Hillman
SGCF/W1/8	Rebuttal appendix 3 Mr R Hillman
	LA21
-	Proof of evidence Mr I Lindon (letter dated 30 November 2017)
-	Proof of evidence Mr D Reynolds, including appendices (letter dated 30 November 2017)

INQUIRY DOCUMENTS (INQ)

Doc. no.	Party	Description
INQ/1	DBC/LBB	Letters from the Council's notifying interested parties of the appeals.
INQ/2	-	Correspondence from interested parties in response to the appeal notifications.
INQ/3	MOL	Network Rail-Roxhill Developments Howbury Park SRFI GRIP2 Report Part 2: Timetable Analysis, November 2016.
INQ/4	RDL	RDL Opening statement.
INQ/5	DBC	DBC Opening statement.
INQ/6	MOL	MOL Opening statement.
INQ/7	LBB	LBB Opening statement.
INQ/8	MOL	Euro Tunnel-Fixed Link Annual Statement-2018 working timetable.
INQ/9	MOL	2018 HS1 Network Statement, March 2017.
INQ/10	MOL	Railfreight Consulting-Train arrival and departure schematic, June 2018 (GLA/RG/05).
INQ/11	MOL	Clarification points arising from cross-examination (GLA/RG/06).
INQ/12	SGCF	SGCF opening statement.
INQ/13	RDL	DIRFT layout-aerial photo.
INQ/14	MOL	Clarification points arising from cross-examination (GLA/RG/07).
INQ/15	MOL	Revised note on W10 gauge cleared routes across North London.
INQ/16	MOL	MDS Transmodal-Rail Freight Forecasts to 2023/4, 2033/4 and 2043/4, April 2013.

INQ/17	MOL	Emails from Network Rail (SB9).
INQ/18	SGCF	Mrs White-Statement on behalf of Mrs Egan.
INQ/19	MOL	Dartford lines, down signal (chainage 15.18) and wagon details.
INQ/20	MOL	Briefing note: Process for producing the published Mayor's Transport Strategy (MTS).
INQ/21	DBC	Road links plan (PC14).
INQ/22	BNEF	Mr Rose-Proof of evidence, appendices and summary.
INQ/23	LA21	Mr Reynolds-updated statement, May 2018.
INQ/24	MOL	Time intervals available for crossing Crayford Creek Junction (GLA/RG/08).
INQ/25	RDL	Emails from Network Rail.
INQ/26	RDL	Draft Transport Management Plan, June 2018.
INQ/27	SGCF	Flyer distribution and leaflet delivery checking report extracts.
INQ/28	SGCF	TfL-Bakerloo Line Extension: options assessment report, December 2015 and Bakerloo Line Extension: Background to 2017 consultation, February 2017-extracts.
INQ/29	CE	Mrs Egan-statement.
INQ/30	LA21	Mr Reynolds-updated Appendix 1A.
INQ/31	LA21	Southeastern Railway-Train Times 5.
INQ/32	LA21	Mr Lindon-objection letter, 1 May 2016.
INQ/33	RDL	Britain Runs on Rail-In partnership for Britain's Prosperity, South East London and Kent.
INQ/34	DBC	Caneparo Associates-Craymill Rail Bridge/Site access-note.
INQ/35	DBC	Highways Authorities-areas of responsibility.
INQ/36	SGCF	Mr Hillman-updated summary proof.
INQ/37	DBC/RDL	Summary table of key verification parameters across air quality monitoring work presented during Inquiry.
INQ/38	RDL/MOL	Governance of Railway Investment Projects (GRIP)-Summary Note.
INQ/39	MOL/RDL	London Gateway: Agreed statement between Roxhill Developments Limited and Greater London Authority.
INQ/40	RDL	Technical Note-Slade Green Community Forum Monitoring Locations.
INQ/41	RDL	Mr Gallop-Rebuttal evidence, Rail (APP/RAIL/5).
INQ/42	SGCF	Mr Hillman-amended: (42a) proof of evidence; (42b) rebuttal proof of evidence; and, (42c) summary (withdrawal of a number of sections related to air quality).
INQ/43	CK	Councillor Kite-points to be covered.
INQ/44	RDL	S106 plan-showing redline and green line boundaries.
INQ/45	DBC	Accompanied site visit/tour-itinerary.
INQ/46	DBC	Fastrack plan and overview.
INQ/47	SGCF	Mr Hillman-amended: proof of evidence Appendix 2.
INQ/48a	LBB	Planning obligations-Statement of Compliance (email 24 July 2018)
INQ/48b	DBC	Planning obligations-Statement of Compliance (email 24 July 2018)
INQ/49	RDL	Quarry permissions in the vicinity of the appeals site (email 24 July 2018)
INQ/50	RDL	APP/AQ/5-Information supporting judgement of overall significance of effects (email 24 July 2018)
INQ/51	RDL	APP/TRAN/5-Response to Inspector's transport questions raised during Neil Findlay's evidence (email 24 July 2018)
INQ/52	RDL	Transport Management Plan Position (email 24 July 2018)
INQ/53	RDL	S106 Agreement Position Statement (email 24 July 2018)

INQ/54	RDL	APP/RAIL/6-Rail Note (email 24 July 2018)
INQ/55	RDL	Response to Inspector's noise questions raised during Neil Findlay's evidence (email 24 July 2018)
INQ/56	RDL	Response to Inspector's landscape and visual questions raised during Craig Scott's evidence (email 24 July 2018)
INQ/57	RDL	Confirmation that APP/RAIL/6 supersedes APP/RAIL/5, which is no longer relied upon (email 9 August 2018)
INQ/58	SGCF	S106/Conditions (email 10 August 2018)
INQ/59	DR	Response to APP/RAIL/6 (letter 11 August 2018)
INQ/60	DR	Planning conditions (letter 15 August 2018)
INQ/61	DBC	WSP response to Inspector's questions-comments (email 16 August 2018)
INQ/62	SGCF	Conditions (email 20 August 2018)
INQ/63	MOL	Clarification note GLA/RG/09-Response to APP/RAIL/6 (email 20 August 2018)
INQ/64	SGCF	S106/conditions (email 21 August 2018 10:00)
INQ/65	SGCF	S106/conditions (email 21 August 2018 11:02)
INQ/66	SGCF	S106/conditions (email 21 August 2018 11:43)
INQ/67	DBC	Dartford Borough Council comment on the appellant's S106 agreement position statement dated 24 July and DBC comments on the appellant's TMP position statement submitted 24 July 2018 (email 21 August 2018)
INQ/68	RDL	S106 agreement-appellant's response to statements of compliance (email 21 August 2018)
INQ/69	AGT	S106/conditions-Lambert Smith Hampton letter of 21 August 2018 (email 21 August 2018)
INQ/70	HE	S106/conditions-Representation from Highways England (email 21 August 2018)
INQ/71	MOL	GLA/NR/03-Planning evidence clarification note-National Planning Policy Framework (email 4 September 2018)
INQ/72	RDL	APP/RAIL/7-Rail Note (email 4 September 2018)
INQ/73	DBC	National Planning Policy Framework (email 4 September 2018)
INQ/74	DR	Clarification requested regarding the train timetable referred to in APP/TRAIN/6 and 7 (email 9 September 2018)
INQ/75	RDL	Confirmation regarding the train timetable, including copies, referred to in APP/TRAIN/6 and 7 (email 10 September 2018)
INQ/76	RDL	Transport Management Plan-Rev 7, dated 10 September 2018, and tracked changes Rev 6 to 7 (email 11 September 2018)
INQ/77	RDL	ARCADY Junctions 9 User Guide, WebTAG Unit M3.1 Highway Assignment Modelling and Table 2-9 Howbury Local Counts % diff/GEH stats (email 12 September 2018)
INQ/78	DR	Supplement to INQ/59 Rail Clarification
INQ/79	DR	South Eastern Rail Franchise Public Consultation, March 2017-extract
INQ/80	DR	Lewisham junction plan
INQ/81	Inspector	TRL Software-measuring queues-is it all a waste of time?
INQ/82	LBB	Slade Green Relief Road-position statement (email 5 July 2018)
INQ/83	RDL	Definition of ecological succession
INQ/84	RDL	Response to Inspector's Transport questions raised during Neil Findlay's evidence 19/9/18
INQ/85	RDL	Appellant's proposed amendment to condition 29
INQ/86	RDL	Draft S106, inc LBB
INQ/87	RDL	Draft s106, inc DBC

INQ/88	RDL	Appellant's response to the s106 agreements received on 20 September 2018
INQ/89	DBC	Suggested Travel Plan condition
INQ/90	DBC	WSP response to Inspector's transport questions raised during Neil Findlay's evidence 19/9/18-comments
INQ/91	DBC	DBC section 106 24 September 2018 draft with outstanding points highlighted.
INQ/92	DBC	DBC comments on s106 position 24 September 2018.
INQ/93	DBC	DBC comments on the appellant's TMP position statement submitted 24 July 2018.
INQ/94	LBB	Agreed planning conditions (amended), 21 September 2018.
INQ/95	RDL	Response to Inspector's questions (Hugh Scanlon-20 September 2018).
INQ/96	RDL	Response to Caneparo Associates reply to APP/TRAN/6
INQ/97	RDL	Suggested wording for condition 4
INQ/98	RDL	WSP Briefing note-suggested wording of condition 29
INQ/99	RDL	Email from Network Rail to RDL, 26 September 2018
INQ/100	LBB	LBB suggested wording-conditions 6, 21 and 32
INQ/101	LBB	Noise affecting Leycroft Gardens (email 26 September 2018)
INQ/102	RDL	Transport Management Plan, rev 8, 10 September 2018
INQ/103	RDL	WSP Howbury additional information-Heath Lane (email 26 September 2018)
INQ/104	RDL	Steering Group examples-s106s (email 25 September 2018)
INQ/105	RDL	S106 agreement with DBC-final wording
INQ/106	RDL	Technical note on HGV parking arrangements for intermodal terminal, 19 August 2016
INQ/107	DR	Closing statement
INQ/108	BNEF	Closing statement
INQ/109	LBB	Closing statement
INQ/110	MOL	Closing statement
INQ/111	DBC	Closing statement
INQ/112	RDL	S106 agreement with LBB-final wording
INQ/113	SGCF	Closing statement
INQ/114	RDL	Closing statement
INQ/115	LBB	Formally completed agreement pursuant to section 106 (inc LBB).
INQ/116	RDL	Formally completed agreement pursuant to section 106 (inc DBC/KCC).

INSPECTOR'S INQUIRY NOTES

Document title	Dated	Description
Inquiry Note 1	9 July 2018	Adjournment actions.
Inquiry Note 2	9 July 2018	Mr Findlay's evidence-matters arising from cross-examination and Inspector's questions.

APPENDIX 3-ABBREVIATIONS

AGT	A G Thames Holdings Limited
ANPR	Automatic number plate recognition
AOD	Above ordnance datum
AQMA	Air Quality Management Area
ASA	Alternative sites assessment
ASAM	Alternative Site Access Roundabout Junction Model
BAP	Biodiversity Action Plan
BCS	Bexley Core Strategy, February 2012
BGS	Bexley Growth Strategy (CD/3.15)
BIFT	Birmingham Intermodal Freight Terminal
BNEF	Bexley Natural Environment Forum
BROA	Bexley Riverside Opportunity Area
BUDP	Bexley Unitary Development Plan, 2007
BxBI	Site of Borough Importance for Nature Conservation-Grade I
BxBII	Site of Borough Importance for Nature Conservation-Grade II
CB	Councillor S Borella
CCJ	Crayford Creek Junction
CE	Mrs C Egan
CIL Regs	Community Infrastructure Levy Regulations 2010
CK	Councillor J Kite
CRB	Craymill Rail Bridge
DBC	Dartford Borough Council
DCCRT	Dartford and Crayford Creek Restoration Trust
DBC s106	INQ/116
DCS	Dartford Core Strategy, 2011
DDPP	Dartford Development Policies Plan, July 2017
DG	Dr R Gray
DoS	Degree of saturation
DR	Mr Dave Reynolds
EA	Environment Agency
ELHAM	East London Highway Assignment Model
Emerging London Plan	The London Plan-Spatial Development Strategy for Greater London-Draft for Public Consultation, December 2017.
ES	Environmental Statement (November 2015) (CD/1.27)
EU	European Union

FMP	Freight Management Plan
the Framework	The revised National Planning Policy Framework, 2018
FTA	Freight Transport Association
GBR	GB Railfreight
GRIP	Governance of Railway Investment Projects
HAMG	TfL's <i>Sub-regional Highway Assignment Model Guidance on Model Use (INQ/51)</i>
(4) HAs	4 Highway Authorities: Highways England, Transport for London, Kent County Council and the London Borough of Bexley.
HE	Highways England
HGV	Heavy goods vehicle
IRR	Intermodality Rail Report, November 2015 (CD/1.25)
IWA	Inland Waterways Association
KCC	Kent County Council
LA21	LA21-Traffic/Transport Forum
LBB	London Borough of Bexley
LBB s106	INQ/115
LLDP	London loop long distance path
LP	The London Plan-The Spatial Development Strategy for London consolidated with alterations since 2011, March 2016.
LPe	The London Plan-The Spatial Development Strategy for Greater London-Draft for Consultation, December 2017
LTC	Lower Thames Crossing
LTP4	KCC Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031)
LWT	London Wildlife Trust
MMP	Marshes Management Plan
MOL	Mayor of London
MTL	Maritime Transport Limited
MTS	The Mayor's Transport Strategy, 2018
NE	Natural England
NPSNN	National Policy Statement for National Networks, 2014
NR	Network Rail
NSIP	Nationally significant infrastructure project
ORCA	Oak Road Conservation Area
PCU	Passenger car unit
PLA	Port of London Authority
RDL	Roxhill Developments Limited
RFC	Ratio of Flow to Capacity

RFG	The Rail Freight Group
RSPB	The Royal Society for the Protection of Birds
RXHAM	River Crossing Highway Assignment Model
SBI	Site of Borough Importance for nature conservation
SES	Supplementary Environmental Statement (April 2016) (CD/1.30)
SET	Southeastern Trains
SGCF	Slade Green Community Forum
SINC	Site of Importance for Nature Conservation
SMINC	Site of Metropolitan Importance (SMI) for Nature Conservation
SRFI	Strategic Rail Freight Interchange
SRN	Strategic road network
TA	Transport Assessment
TfL	Transport for London
TMP	Transport Management Plan
XX	Cross-examination
XC	Evidence in chief
VWML	Viridor Waste Management Limited
2007 Permission	CD/5.3
2011 EIA Regulations	The Town and Country Planning (Environmental Impact Assessment) Regulations 2011
2017 EIA Regulations	The Town and Country Planning (Environmental Impact Assessment) Regulations 2017
2031BCDC	2031 base case plus development case (ARCADY modelling)

APPENDIX 4-CONDITIONS

[The reasons for these conditions, where not explained in the text for the report, can be found in INQ/94.]

DEFINITIONS

In these conditions, the following expressions shall have the following meaning:

Local planning authority: As between the London Borough of Bexley and Dartford Borough Council means the Local Planning Authority within whose administrative area the part of the site to which the condition relates is located and where a condition relates to the whole development or any part of the development which straddles the boundary between the two local authorities, then the expression shall be taken to mean both authorities.

Environmental Statement: The Environmental Statement (November 2015) and Supplementary Environmental Statement (April 2016).

CONDITIONS

1. RESERVED MATTERS

- 1.1. Approval of the details of the proposed appearance, landscaping, layout and scale of each phase of the development (hereinafter called the reserved matters) shall be obtained in writing from the Local Planning Authority before any development is commenced for that phase.

2. APPROVAL OF RESERVED MATTERS

- 2.1. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this outline permission.

3. COMMENCEMENT OF DEVELOPMENT

- 3.1. The development shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. COMPLIANCE WITH APPROVED PLANS

- 4.1. The development shall be carried out in accordance with the principles illustrated on the Parameters Plan (dwg. no. 30777-PL-101 Rev I) and the Development Phasing Plan (dwg. no. 30777-PL-105 Rev A) and in strict accordance with the other approved plans, the subsequently approved reserved matters and the other matters approved under the conditions set out below. The other approved plans comprise the following:
 - a) Location Plan (Ref: 30777-PL-100 Rev E);
 - b) Existing Block Plan (Ref: 30777-PL-104 Rev B);
 - c) Site Access Road Plan and Section (Sheet 1 of 2) (Ref: 2039-RP-001 Rev D);

- d) Site Access Road Plan and Section (Sheet 2 of 2) (Ref: 2039-RP-002 Rev C);
- e) Viridor Access Road Plan and Section (Ref: 2039-RP-003 Rev D);
- f) Road 3 Plan and Section (Ref: 2039-RP-004 Rev B);
- g) Road 4 Plan and Section (Sheet 1 of 2) (Ref: 2039-RP-005 Rev B);
- h) Road 4 Plan and Section (Sheet 2 of 2) (Ref: 2039-RP-006 Rev B);
- i) Road 5 Plan and Section (Ref: 2039-RP-007 Rev B);
- j) Site Access Off-Site Roundabout Improvements (Ref: 2039-RP-008 Rev B); and,
- k) Howbury Viaduct General Arrangement (Ref: 2039-STR-001 Rev B).

5. DETAILS OF PHASING

- 5.1. Notwithstanding the Phasing Plan submitted with the applications, prior to the submission of any of the reserved matters detailed in condition 1, a Phasing Plan showing the phasing of development shall be submitted to and approved in writing by the Local Planning Authority. Such details to include the rationale and functioning of the phases. The development shall be implemented in accordance with the approved Phasing Plan.

6. DELIVERING THE 'RAIL WORKS'

- 6.1. The development shall not commence until the Intermodal Area (Zone C) rail infrastructure (as shown on the Parameters Plan: dwg no. 30777-PL-101 Rev I) and its operational connection to the North Kent main line rail network (the Rail Works) have been progressed to the end of GRIP Stage 5-Detailed Design (or equivalent) and the developer has informed the Local Planning Authority that it has satisfied the requirements to reach the end of GRIP Stage 5.
- 6.2. No part of the development shall be occupied or brought into use until the Rail Works have been progressed to the end of GRIP Stage 7-Scheme Handback (or equivalent), are ready to be brought into use and the developer has informed the local planning authority that it has satisfied the requirements to reach the end of GRIP Stage 7.
- 6.3. The Rail Works and any other railway line or siding provided within the site further to this permission shall not be removed, realigned or altered in any way and shall be maintained so that they remain available for use by rail traffic at all times.

7. SAFEGUARDING LAND FOR CROSSRAIL WORKS

- 7.1. The development shall not commence until a Method Statement for the treatment of the land on the boundary with the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I) has been submitted to and approved in writing by the Local Planning Authority. The Statement to include:

- 7.1.1. Arrangements to ensure the planned future construction of the extension of the Crossrail/Elizabeth Line extension eastward from Abbey Wood is not impeded by the implementation of this planning permission; and,
- 7.1.2. Details of boundary and perimeter treatments for the land on the boundary with the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I), including security measures, retaining structures and landscaping.
- 7.2. The development shall be carried out in accordance with the approved Method Statement unless otherwise agreed in writing by the Local Planning Authority.
- 7.3. Development shall not be carried out in the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I).

8. CONSTRUCTION MANAGEMENT PLAN

- 8.1. The development shall not commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan to include:
 - 8.1.1. Measures to optimise the use of river transport during construction;
 - 8.1.2. Details of vehicular and pedestrian access to the site for construction purposes;
 - 8.1.3. A scheme for the routeing, management and signage of construction traffic;
 - 8.1.4. Days/hours of work and deliveries of construction materials, to be consistent with permitted hours imposed by the borough under section 60 of the *Control of Pollution Act 1974*, which require all noisy works (i.e. those audible beyond the site boundary) to be undertaken between 08:00 and 18:00 hours Monday to Friday and 08:00 to 13:00 hours on Saturdays with no noisy works permitted on Sundays or Public Holidays;
 - 8.1.5. Demolition and construction methods and techniques, including the avoidance of burning on site;
 - 8.1.6. Means of minimising noise and vibration (including any piling), and compliance with BS 5228;
 - 8.1.7. Means of minimising dust and similar emissions, in accordance with Air Quality: Best Practice Guidance - The Control of Dust and Emissions During Construction and Demolition Supplementary Planning Guidance (published by the Greater London Authority, July 2014);
 - 8.1.8. Details of how the requirements of EU Directive 97/68/EC for both NO_x and PM II for all Non-Road Mobile Machinery (including locomotives if used) will be met;
 - 8.1.9. Details of construction site lighting;
 - 8.1.10. Details of all temporary buildings and compound areas including arrangements for their removal;

- 8.1.11. Details of the areas to be used for parking, loading and unloading of construction vehicles and for parking employees' vehicles; and,
- 8.1.12. Contact arrangements for the public, including 'out of hours' telephone numbers for named contacts.
- 8.2. The development shall be constructed in accordance with the approved Construction Management Plan unless otherwise agreed in writing by the Local Planning Authority.

9. BIO-DIVERSITY MANAGEMENT PLAN

- 9.1. The development shall not commence until a Biodiversity Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Biodiversity Management Plan to include:
 - 9.1.1. A scheme for the mitigation of any loss of biodiversity, the provision of habitat enhancements and the subsequent management of the biodiversity interests within the site;
 - 9.1.2. A plan, informed by an ecologist, showing the number, position and type of bat and bird boxes that are to be incorporated within the fabric of the bridge and attached to buildings and trees, as well as other measures to enhance the biodiversity performance of the buildings and other parts of the site as detailed in the Environmental Statement;
 - 9.1.3. The use of Green Walls for the buildings, including planting and long-term management;
 - 9.1.4. In addition to the proposed SuDS ponds, wet ditch habitat in the area adjacent to the access road; and,
 - 9.1.5. Water bodies should be designed to retain water permanently throughout the year.
- 9.2. The Biodiversity Management Plan shall be designed in conjunction with the Landscape Strategy required pursuant to condition 26.1 in order to ensure that they are not in conflict.
- 9.3. The development and management of the site thereafter shall be carried out in accordance with the approved Biodiversity Management Plan and any subsequent variations shall be agreed in writing by the Local Planning Authority pursuant to condition 9.4.
- 9.4. The Biodiversity Management Plan shall remain in place for the lifetime of the development. The ongoing management elements shall be reviewed every 5 years, with reference to the specific targets agreed in the first Biodiversity Management Plan, with each draft to be submitted to the Local Planning Authority for approval prior to the completion of a 5-year cycle from the implementation of the previous iteration of the Biodiversity Management Plan.

10. POLLUTION PROTECTION

- 10.1. Prior to the commencement of each phase of the development a Remediation Strategy for the protection of human health and groundwater of that phase

shall be submitted to and approved in writing by the Local Planning Authority. The Strategy to include:

- 10.1.1. An updated risk assessment, including relevant soil, gas and groundwater sampling data;
- 10.1.2. Details of the remediation strategy for identifying and dealing with existing contamination on the site;
- 10.1.3. Details of how piling and other penetrative foundation designs will be carried out in a way that poses no risk to subsurface water and sewerage infrastructure;
- 10.1.4. Details of how surface water drainage will be protected from infiltration into the ground where there is a risk to controlled waters; and,
- 10.1.5. A Verification Plan setting out how the development and subsequent use of the site will be carried out in a way that ensures human health and the underlying groundwater are protected from the risk of pollution.
- 10.2. The development shall be constructed in accordance with the approved Strategy and any long-term monitoring and maintenance plan shall be implemented as approved.
- 10.3. If, during the construction of the development, contamination not previously identified is found to be present at the site (including munitions), then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out in that phase until the developer has submitted to and obtained the written approval from the Local Planning Authority of a Remediation Strategy detailing how this unsuspected contamination shall be dealt with. The Strategy shall be implemented as approved.
- 10.4. Prior to occupation of each phase of the development, a Verification Report demonstrating completion of the works set out in the approved Remediation Strategy and the effectiveness of the remediation for that phase shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a plan (a 'long-term monitoring and maintenance plan') for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, if appropriate, and for the reporting of this to the Local Planning Authority.

11. TREES AND NESTING SPECIES PROTECTION

- 11.1. Prior to the commencement of each phase of the development details of a demolition, tree felling and construction timetable for that phase shall be submitted to and approved in writing by the Local Planning Authority. This timetable shall have the principal purpose of ensuring that no work takes place during a bird nesting season, unless an ecologist has provided confirmation that birds are not breeding on site at that time. This timetable will take into account the findings of all ecological survey work undertaken, both before and after approval of the outline permission.

- 11.2. Once the details are approved, the construction work on site, through all its phases shall be strictly in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

12. ARCHAEOLOGICAL PROTECTION

- 12.1. Prior to the commencement of each phase of the development (other than authorised demolition to existing ground level) a programme of archaeological evaluation site work in accordance with a Written Scheme of Investigation (WSI) for that phase shall be submitted to and approved in writing by the Local Planning Authority. The WSI shall be prepared and implemented by a suitably qualified archaeological practice in accordance with Historic England Archaeology Guidelines. The Scheme to include:
- 12.1.1. A programme of geo/archaeological investigation;
- 12.1.2. Dependent upon the results of the preceding paragraph, no development (other than authorised demolition to existing ground level) shall take place until a programme of archaeological mitigation site work in accordance with a WSI has been submitted to and approved in writing by the Local Planning Authority;
- 12.1.3. A report on the evaluation of the results of the preceding paragraph shall be submitted to and approved by the Local Planning Authority in writing; and,
- 12.1.4. The programme of archaeological mitigation recommended in the preceding paragraph shall be carried out in accordance with a WSI.
- 12.2. The site investigation and post-investigation assessment shall be completed within 12 months of the completion the development (as defined by the issuing of a Completion Certificate issued under the Building Regulations) in accordance with the programme set out in the WSI and the provision for analysis, publication and dissemination of the archaeological results and archive deposition has been secured.

13. HERITAGE PROTECTION

- 13.1. No demolition of Howbury Grange shall take place until a programme of historic building evaluation in accordance with a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. The Scheme to include:
- 13.1.1. The nomination of a competent person or organisation to undertake the investigation;
- 13.1.2. The programme and methodology of investigation and recording, which shall include the statement of significance and research objectives; and,
- 13.1.3. The programme for post-investigation assessment and subsequent analysis, publication, dissemination and deposition of resulting material.
- 13.2. The demolition of Howbury Grange shall only take place in accordance with the agreed WSI and all parts of the WSI shall be fulfilled.

14. DETAILS OF LEVELS, BUILDING DATUM AND HEIGHTS

- 14.1. Prior to the commencement of each phase of the development details of the finished site levels and base levels and heights of all buildings and other structures in that phase shall be submitted to and approved in writing by the Local Planning Authority.
- 14.2. The development shall be implemented in accordance with the approved details.

15. SUSTAINABILITY PERFORMANCE OF BUILDINGS

- 15.1. Prior to the commencement of each phase of the development details of the relevant measures set out in the Sustainability Statement (November 2015) submitted with the application to deliver energy demand minimisation for that phase shall be submitted to and approved in writing by the Local Planning Authority. The measures to include:
 - 15.1.1. A pre-construction BREEAM Assessment;
 - 15.1.2. Following completion of the development, a post-construction BREEAM Review Certificate showing that at least 'Very Good' has been achieved; and,
 - 15.1.3. An energy statement demonstrating how a 35% reduction in total CO₂ emissions from the development has been achieved. This should follow the Mayor's Guidance for Developers in Preparing Energy Assessments. The energy assessment should include: calculation of the energy demand and CO₂ emissions that are covered or not covered by Building Regulations at each stage of the energy hierarchy; proposals to reduce CO₂ through energy efficient design; proposals to further reduce CO₂ emissions through decentralised energy where feasible; and proposals to further reduce CO₂ emissions through the use of on-site renewable energy technologies.
- 15.2. The development shall be implemented in accordance with the approved measures. The renewable energy technologies and other features installed must remain for as long as the development is in use.

16. SECURE BY DESIGN

- 16.1. Prior to the commencement of each phase of development details of how that phase of the development will be designed to minimise the risk of crime and meet the specific security needs of the development in accordance with the principles and objectives of Secured by Design shall be submitted to and approved in writing by the Local Planning Authority.
- 16.2. The approved details shall be implemented with respect to each building prior to its occupation or bringing into use.

17. AREAS AROUND BUILDINGS: DETAILS OF INTERNAL ROADS, CYCLEWAYS, FOOTPATHS, PARKING ETC

- 17.1. Prior to the commencement of each phase of the development details of all vehicle and cycle parking areas and access roads and footpaths serving the buildings in that phase shall be submitted to and approved in writing by the Local Planning Authority. The details to include:

- 17.1.1. Car parking areas;
- 17.1.2. Electric Vehicle Charging Points;
- 17.1.3. Provision for the parking of cycles;
- 17.1.4. Cyclist amenity provisions;
- 17.1.5. HGV parking areas;
- 17.1.6. Servicing and manoeuvring spaces; and,
- 17.1.7. Roads, footpaths and cycleways, including details of sight lines.
- 17.2. Such details to be in accordance with the current Transport Management Plan. The details shall include a programme of implementation as well as management protocols and a maintenance specification.
- 17.3. The development shall be implemented in accordance with the approved details prior to the occupation of any building to which the approved details serve, and must remain for as long as the development is in use.

18. AREAS AROUND BUILDINGS: DETAILS OF EXTERNAL STORAGE

- 18.1. Prior to the commencement of each phase of development details of any external storage areas (including the maximum height of any such storage, which shall not exceed 12m above the ground level) in that phase shall be submitted to and approved in writing by the Local Planning Authority. No materials shall be stored outside the buildings except in the approved areas.

19. REFUSE AND RECYCLING STORAGE PROVISION

- 19.1. Prior to the commencement of each phase of development a scheme detailing the location and appearance of the refuse storage areas and recycling facilities for that phase shall be submitted to and approved in writing by the Local Planning Authority.
- 19.2. Each phase of development shall be implemented in accordance with the approved scheme, unless otherwise agreed in writing by the local planning authority, and must be maintained as approved for as long as the development is in use.

20. DETAILS OF DRIVER WELFARE FACILITIES

- 20.1. Prior to commencing development of the Intermodal Area (Zone C) rail infrastructure as shown on the Parameters Plan Ref 30777-PL-101 Rev I details of the welfare facilities available at the freight terminal for freight drivers visiting the site, including provision for freight parking/waiting areas, shall be submitted to and approved in writing by the Local Planning Authority. Such approved facilities shall be available for use by freight drivers before the use of the Intermodal Area.

21. ACCESS DETAILS

- 21.1. The development of the site's accesses shall not commence until technical details of the access points to the site and associated off-site highway works

have been submitted to and approved in writing by the Local Planning Authority. The Details to include:

- 21.1.1. Highway works on Moat Lane;
- 21.1.2. Bexley Byway 103/Footpath 25;
- 21.1.3. Diversion of KCC footpath DB85 around the access bridge piers;
- 21.1.4. The access to the site from the A206 Bob Dunn Way/Thames Road/ Burnham Road junction;
- 21.1.5. The northern access from Moat Lane;
- 21.1.6. The western access from Bexley Byway 103;
- 21.1.7. Details of measures to be introduced to ensure that only authorised vehicular traffic, cyclists and pedestrians can use the northern access from Moat Lane or the western access from Bexley Byway 103 as identified on the Parameters Plan (dwg no 30777-PL-101 Rev I). The said details shall specify the type of vehicles to be authorised and the management arrangements for the operation of those measures so that vehicles that are not authorised to use these accesses are restricted from doing so; and,
- 21.1.8. Details of all vehicular and pedestrian sight lines and visibility splays, including the height of zone within which there shall be no obstruction to visibility.
- 21.2. No part of the development shall be occupied or brought into use until the works have been completed in accordance with the approved details and they must be maintained as approved, including any management arrangements, for as long as the development is in use.

22. PROVISION OF NEW BRIDGE

- 22.1. The development of the access bridge over the River Cray shall not commence until details of the bridge have been submitted to and approved in writing by the Local Planning Authority. The details to include:
 - 22.1.1. Details of the construction method statement;
 - 22.1.2. Details of the provision to be made for access for the Environment Agency to and along both banks of the River Cray;
 - 22.1.3. Details of the works to the banks of the River Cray;
 - 22.1.4. Details of the Public Right of Way arrangements;
 - 22.1.5. If required, details of fenders and bridge protection;
 - 22.1.6. Details of guard rails and life-saving devices (such as grab chains, access ladders and life buoys);
 - 22.1.7. The materials and finishes to be used for the external surfaces of the bridge; and,
 - 22.1.8. Details of management arrangements including future maintenance specification.

- 22.2. No part of the development shall be occupied or brought into use until the bridge has been implemented in accordance with the approved details. The bridge must be managed and maintained, as approved, for as long as the development is in use.

23. EXTERNAL APPEARANCE OF BUILDINGS

- 23.1. The construction of any building or other structure above ground level shall not commence until a schedule of materials and finishes to be used for the external walls and roofs of that building or other structure has been submitted to and approved in writing by the Local Planning Authority.
- 23.2. The development shall be implemented in accordance with the approved schedule and must be maintained as approved for as long as the development is in use.

24. MITIGATE IMPACT OF NOISE OR VIBRATION FROM BUILDINGS

- 24.1. The construction of any building above ground level shall not commence until a detailed report has been prepared, by a suitably qualified acoustician, setting out how the building is expected to perform acoustically and has been submitted to and approved in writing by the Local Planning Authority. The cumulative noise rating levels from all fixed plant/machinery shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a fifteen minute period (night) or one hour (day). Measurements shall be undertaken in accordance with the methodology specified in 'BS4142: 2014: Methods for rating industrial and commercial sound'.
- 24.2. No part of the development shall be occupied or brought into use until the plant and acoustic attenuation measures have been installed in accordance with the approved details. They must be retained and maintained thereafter in accordance with the manufacturer's recommendations.

25. MITIGATE IMPACT OF PLANT etc

- 25.1. Prior to the installation of any fixed plant/machinery within or on a building a detailed report, prepared by a suitably qualified acoustician setting out how the plant/machinery to be installed are expected to perform acoustically, shall be submitted to and approved in writing by the local planning authority. The cumulative noise rating levels from all fixed plant shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a fifteen-minute period (night) or one hour (day). Measurements shall be undertaken in accordance with the methodology specified in 'BS4142: 2014: Methods for rating industrial and commercial sound'.
- 25.2. No part of the fixed plant/machinery shall be operated until the acoustic attenuation measures have been installed in accordance with the approved details. They must be retained and maintained thereafter in accordance with the manufacturer's recommendations.

26. DETAILS OF LANDSCAPING & BOUNDARY TREATMENT

- 26.1. The construction of any building above ground level shall not commence until a Landscaping Scheme for the boundaries of the site has been submitted to and approved in writing by the Local Planning Authority. The boundary scheme shall be substantially in accordance with the Landscape Strategy set out in the Environmental Statement and include:
 - 26.1.1. Details of all boundary ground modelling, re-profiling, bunding and mounding, including a comprehensive ground level survey with information relating to the existing and proposed ground levels above Ordnance Datum and cross-sections at a scale of not less than 1:200 at Moat Lane/Oak Road and 1:500 elsewhere at the boundary;
 - 26.1.2. All site boundary treatment, retaining walls, gabions, footpaths and security fencing;
 - 26.1.3. Acoustic fencing as shown on the Parameters Plan (dwg no 30777-PL-101 Rev I); and,
 - 26.1.4. A programme of implementation and a management plan.
- 26.2. Prior to the commencement of each phase of development, full details of hard and soft landscaping works for the building plots within that phase of development shall be submitted to and approved in writing by the local planning authority. These details shall comprise proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; and soft landscaping works, including planting plans, specifications, sizes, numbers and densities.
- 26.3. Landscaping shall comprise predominantly native planting designed to enhance biodiversity value, be carried out as approved and be maintained in accordance with the approved management plan for a minimum of ten years after planting. Any trees, shrubs, or other plants which die, are removed or become seriously damaged or diseased during this period shall be replaced with others of a similar type and size unless otherwise agreed by the Local Planning Authority.

27. LOW EMISSIONS STRATEGY

- 27.1. No building shall be occupied or brought into use until a Low Emissions Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy to include:
 - 27.1.1. An assessment of the emission specification for all road vehicles and rail locomotives forming part of the operation and accessing the site, which for road vehicles will include identification of measures to secure the use of vehicles that comply with Euro VI (6) standards and the Mayor of London's emerging London wide Ultra Low Emission Zone;
 - 27.1.2. An assessment of procurement policy (including planned vehicle replacement and suppliers of other goods and services);
 - 27.1.3. Measures such as eco-driving (driver training and technological aids to eco-driving), and policies regarding vehicle idling;

- 27.1.4. An assessment of low emission vehicle technology and infrastructure (e.g. electric vehicle dedicated parking and charging, gas refuelling station etc.); and,
- 27.1.5. All energy plant/space heating provision shall achieve compliance with the emissions standards specified in Appendix 7 of the GLA: Sustainable Design and Construction Supplementary Planning Guidance, April 2014.
- 27.2. The Strategy shall take into account future changing standards and available technologies and be updated accordingly in agreement with the Local Planning Authority.
- 27.3. At the end of each calendar year an implementation plan shall be submitted for approval in writing by the Local Planning Authority, which shall be fully implemented in accordance with the details and measures so approved, unless otherwise agreed in writing by the Local Planning Authority.

28. DETAILS OF EXTERNAL LIGHTING

- 28.1. No building shall be occupied or brought into use until details of all external lighting for that building have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate compliance with the Institute of Lighting Professionals (ILP) 'Guidance Notes for the Reduction of Obtrusive Light.' This scheme of lighting shall include details of how it has been designed to minimise impact on navigation and ecological interests including the river. The lighting scheme must be assessed by an ecologist and approved in writing as part of the proposed lighting scheme.
- 28.2. The development shall be implemented in accordance with the approved details and must be maintained as approved for as long as the development is in use.

29. RESIDUAL NOISE IMPACT

- 29.1. Within 12 months of each phase set out in the approved Phasing Plan referred to in condition no. 5 being occupied or brought into use a package of mitigation measures to deal with any residual noise impact from the operation of the facility over and above that set out in the Environmental Statement shall be submitted to and approved in writing by the Local Planning Authority. The package to include, as necessary:
 - 29.1.1. Additional acoustic barrier(s) to protect specific amenity/garden areas for affected properties in Moat Lane;
 - 29.1.2. Affected properties to be offered uprated acoustic glazing and ventilation treatments; and,
 - 29.1.3. A timetable for implementation.
- 29.2. The package(s) shall be implemented in accordance with the approved timetable.

30. RESTRICTING USE AS A SRFI

- 30.1. The buildings hereby permitted shall be used solely for Class B8 (storage or distribution) purposes (including uses ancillary thereto) as part of a Strategic

Rail Freight Interchange and for no other purpose, including other uses within the Classes in B to the *Town and Country Planning (Use Classes) Order 1987* (as amended), or in any provision revoking and re-enacting that Order with or without modification.

31. RESTRICT SCALE OF DEVELOPMENT

- 31.1. The total gross external area of all buildings to be erected on the site, including ancillary offices and other activities, shall not exceed 184,500 square metres, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or replacing the same), save for the addition of mezzanine floors within buildings that are used for B8 storage purposes, but not for any ancillary or incidental uses in such buildings.

32. GANTRY CRANES

- 32.1. Details of any gantry cranes to be used on the site shall be submitted to and approved in writing by the Local Planning Authority prior to their installation and first use. The details shall include:
- 32.1.1. Details of their external appearance and any associated surfaces and guide rails; and,
- 32.1.2. A detailed report, prepared by a suitably qualified acoustician, setting out the acoustic characteristics expected to be associated with the operation of gantry cranes. The cumulative noise rating levels shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a 15 minute period (night) or 1 hour (day). Measurements shall be undertaken in accordance with the methodology specified in BS4142:2014-Methods for rating industrial and commercial sound.
- 32.2. No gantry cranes shall be installed or used on the site other than as previously agreed in writing by the Local Planning Authority.

33. Travel Plan⁶⁶²

No individual warehouse and/or Intermodal Terminal shall be occupied or brought into use until the Occupier Travel Plan for that warehouse or the Intermodal Terminal (as applicable) has been submitted to and approved in writing by the Local Planning Authority. The relevant premises shall thereafter comply with the requirements of the approved Occupier Travel Plan. The Occupier Travel Plan shall be updated to reflect any change of occupier, re-submitted and approved in writing by the Local Planning Authority prior to each change of occupier.

⁶⁶² INQ/94 page 22.



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Ministry of Housing,
Communities &
Local Government

Sarah Fabes
[REDACTED]

Our ref: APP/D5120/W/17/3184205 &
APP/T2215/W/17/3184206.

Your ref: NLP-DMS.FID299507

7th May 2019

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS MADE BY ROXHILL DEVELOPMENTS LIMITED
LAND ADJACENT TO THE SOUTHEASTERN TRAIN DEPOT, MOAT LANE, SLADE
GREEN, ERITH
APPLICATION REF: 15/02673/OUTEA and DA/15/01743/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mr I Jenkins BSc CEng MICE MCIWEM who held a public local inquiry between 19 June and 27 September 2018 into your client's appeals against the decisions of London Borough of Bexley, as directed by the Mayor of London, and Dartford Borough Council to refuse your client's application for planning permission for a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council) in accordance with application ref: 15/02673/OUTEA and DA/15/01743/OUT dated 20 November 2015.
2. On 7 November 2017 these appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be dismissed, and planning permission be refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeals and refuse planning permission. A copy of the Inspector's report (IR) is

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enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the supplementary environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR1.2.2, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy and statutory considerations

6. In reaching his decision, 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.
7. In this case the development plan consists of the adopted development plans for the area which comprises The London Plan, March 2016; the Bexley Core Strategy Development Plan Document, February 2012; and, saved policies of the Bexley Unitary Development Plan, 2004 for LBB. The Dartford Core Strategy, September 2011; and, the Dartford Development Policies Plan (DDPP), July 2017 for Dartford Borough Council. Other plans that affect the site are The Mayor's Transport Strategy 2018 and The Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR6.1.3 to 6.2.9. Other local planning guidance considered include the Mayor's Transport Strategy, 2018 and the Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031 as set out at IR 6.5
8. Other material considerations which the Secretary of State has taken into account include the National Policy Statement for National Networks and the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

Emerging plan

9. The emerging plan comprises the London Plan – The Spatial Development Strategy for Greater London outlined in the Inspectors Report at IR6.4. The Secretary of State considers that the emerging policies of most relevance to this case include LPe Policy G2, T7, and SD1.
10. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in

the Framework. While Examination in Public hearings have taken place since the inquiry closed, due to the early stage of the emerging plan only limited weight is attributed to the policies as outlined in the Inspectors Report at IR6.4.4.

Main issues

Location of site and Green Belt

11. The Secretary of State agrees with the Inspector for the reasons given in IR15.2.3 to 15.2.5 that the appeals proposal would cause substantial harm to the Green Belt (IR 15.2.6). He therefore considers that this carries substantial weight against the scheme. In accordance with paragraph 143 of the Framework, inappropriate development should not be approved except in very special circumstances.

Character and Appearance

12. For the reasons given at IR 15.3.1 to 15.3.6 the Secretary of State agrees with the Inspector that both the landscape impact and the visual impact of the appeals scheme would be substantial and adverse. Overall, he considers that it would cause significant harm to the character and appearance of the local area and he therefore attributes significant weight to this harm.

Rail issues

13. The Secretary of State acknowledges that given the locational need for effective connections for both rail and road, the number of locations suitable for Strategic Rail Freight Interchanges will be limited. He agrees with the Inspector at IR 15.4.3 that for the proposed rail link to be considered 'adequate', it would be necessary for it to be capable of accommodating 4 trains/day as a minimum. For the reasons given in IR 15.4.6 to 15.4.20, he agrees with the Inspector (15.4.20) that the likelihood of passenger service numbers having to be reduced in order to accommodate the appeals site freight traffic appears significant. The Secretary of State agrees with the Inspector's conclusion that there is significant uncertainty (15.4.21) as to whether the timetable could be flexed/amended to accommodate four trains per day to/from the appeals site either now or in the future. He agrees with the Inspector that overall this would conflict with the aims of a number of development plan policies that seek to minimize any adverse impact on the wider transport network and safeguard or improve public transport services, and that this should carry significant weight.

Highways Issues

14. For the reasons given in IR15.5.4 to 15.5.28, the Secretary of State agrees with the Inspectors findings (IR15.5.29) that, by 2031, the residual cumulative impact of the development during 'normal' (non-incident) highway conditions on the local highway network would be likely to be severe. He further agrees with the Inspector for the reasons given at IR 15.5.30 to 15.5.36 that, during incidents, the proposal would be likely to have a material, albeit limited, adverse impact, adding to severe conditions. He also agrees with the Inspector for the reasons given at IR 15.5.38 to 15.5.42 that the proposed mitigation measures do not alter this finding. The Secretary of State considers that the proposal would cause considerable harm to the convenience of highway users in Dartford. He notes that the proposal would be in conflict with the DDPP. The Secretary of State attributes significant weight to this matter.

Amenity and living conditions

15. For the reasons given in IR15.6.2 to 15.6.7, the Secretary of State agrees with the Inspector (IR15.6.8) that on balance, the appeals proposal would be unlikely to have an unacceptable material impact on living conditions in the local area, with particular reference to air quality. For the reasons given in IR15.6.9 to 15.6.11, the Secretary of State also agrees with the Inspector (IR15.6.12) that subject to mitigation secured the proposal is unlikely to cause noise and vibration that would have an unacceptable impact on living conditions. The Secretary of State therefore considers that these matters do not weigh against the scheme.

Other matters

16. For the reasons given at IR15.7.1 The Secretary of State agrees with the Inspector that the effect on Howbury Moat and a Grade II listed tithe barn would be negligible, and that their significance would not be materially harmed by the scheme, therefore the Secretary of State considers that there are no policy conflicts in this respect, or in respect of Howbury Grange. He further agrees with the Inspector for the reasons given in IR15.7.2 to 15.7.5 that there are no unacceptable impacts of the scheme in terms of the effect on living conditions of neighbouring residents, navigation and facilities along the River Cray, and flood risk.

Need for SRFIs in London and the South East

17. The Secretary of State agrees with Inspector that there is an identified need for a Strategic Rail Freight Interchange to serve London and the South East (IR15.8.7). However, given the uncertain findings in relation to both road and rail connectivity at IR15.8.10 to 15.8.15, he agrees with the Inspector's conclusion that the appeals scheme would not be well qualified to meet the identified need (IR15.8.16 and IR15.8.17).

Availability of alternative sites

18. The Secretary of State agrees with the Inspector that in the 2007 decision it was identified that there was no alternative development site, a finding which attracted considerable weight in favour of that scheme (IR4.2). However, since 2007 the London Gateway, a brownfield site not located in the Green Belt, has been developed. For the reasons given in IR15.8.18 to 15.8.24, the Secretary of State agrees with the Inspector's conclusions that the London Gateway site has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East as the appeals proposal (IR15.8.26).

Economic and Social impacts

19. The Secretary of State notes that the largest part of the appeal site lies within the Bexley Riverside Opportunity Area, and that the establishment of a SRFI at the appeals site would be consistent with that particular strategic policy direction. He agrees with the Inspector that it could provide significant benefits to the local economy creating a large amount of new employment (IR15.8.28). However, the Secretary of State notes that the Inspector found that the proposal would also be likely to have a material adverse effect on traffic congestion in the area which may have adverse impacts on the local economy (IR15.8.29). The Secretary of State also agrees with the Inspector that, given that broadly similar benefits could be obtained from the alternative, non-Green Belt site

(IR15.8.31), overall limited weight could be given to the socio-economic benefits of the scheme.

Effect on biodiversity

20. The Secretary of State notes that there are no statutory designated sites of nature conservation interest within or adjacent to the appeals site. Furthermore, he notes that the habitats that would be lost to development are of little ecological value, comprising improved and semi-improved grassland, and that an aim of the proposed landscaping along the eastern side of the site would be to enhance its ecology value, likely resulting in a net biodiversity gain overall (IR15.8.46). The Secretary of State agrees with the Inspector and attributes moderate weight to this gain.

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR15.8.47 to 15.8.62, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

22. Having had regard to the Inspector's analysis at IR 15.8.63 to 15.8.66, the planning obligation dated September 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR18.8.65 that the obligation complies with Regulation 122 and 123 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

23. The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the planning obligation overcomes his reasons for deciding that the appeal should be dismissed, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

Planning balance and overall conclusion

24. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with LP Policy 7.16, BCS Policies CS01 and CS17 as well as DCS Policies CS 1, CS 13 and DDPP Policy DP22 and LPe Policy G2 of the development plan and is not in accordance with the development plans overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

25. In this case the Secretary of State considers that the harm to the Green Belt from inappropriate development carries substantial weight against the scheme and the effect on the character and appearance of the local area carries significant weight along with

the adequacy of the proposed rail link and the effect on existing/future passenger rail services. Significant weight is also given to the effect on the convenience of highway users.

26. The Secretary of State considers that the provision of social economic benefits of the scheme has overall limited weight and the resulting net biodiversity gain has moderate weight.
27. The Secretary of State considers that the benefits of the scheme do not outweigh the harm to the Green Belt by reason of inappropriateness and any other harm, and so very special circumstances do not exist. He considers that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits. Overall, he considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
28. The Secretary of State therefore concludes that the appeal is dismissed, and planning permission is refused.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeals and refuses planning permission for a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley), and for the creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council)

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
31. A copy of this letter has been sent to London Borough of Bexley, Dartford Borough Council and the Mayor of London, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Housing, Communities and Local Government

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State

Date: 4 February 2019

**TOWN AND COUNTRY PLANNING ACT 1990
APPEALS BY ROXHILL DEVELOPMENTS LIMITED
AGAINST THE DECISIONS OF
THE LONDON BOROUGH OF BEXLEY, AS DIRECTED BY THE MAYOR OF
LONDON, AND DARTFORD BOROUGH COUNCIL**

Inquiry opened on 19 June 2018

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith

File Ref(s): APP/D5120/W/17/3184205 APP/T2215/W/17/3184206

File Ref: APP/D5120/W/17/3184205

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith, Kent, DA8 2NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Roxhill Developments Limited against the decision of the London Borough of Bexley.
- The application Ref 15/02673/OUTEA, dated 20 November 2015, was refused by notice dated 20 July 2017.
- The development proposed is a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council). All matters reserved except access.
- The appeal was recovered by the Secretary of State on 7 November 2017 for the reason that it related to proposals for significant development in the Green Belt.

Summary of Recommendation: I recommend that the appeal be dismissed.

File Ref: APP/T2215/W/17/3184206

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith, Kent, DA8 2NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Roxhill Developments Limited against the decision of Dartford Borough Council.
- The application Ref DA/15/01743/OUT, dated 20 November 2015, was refused by notice dated 21 April 2017.
- The development proposed is a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council). All matters reserved except access.
- The appeal was recovered by the Secretary of State on 7 November 2017 for the reason that it related to proposals for significant development in the Green Belt.

Summary of Recommendation: I recommend that the appeal be dismissed.

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1. PROCEDURAL MATTERS

1.1. The Inquiry

1.1.1. I have been appointed by the Secretary of State to conduct an Inquiry into 2 linked appeals made by Roxhill Developments Limited, which are associated with a development proposal that would straddle the shared boundary between planning authorities: the London Borough of Bexley (LBB); and, Dartford Borough Council (DBC). The appeals are against the decisions of LBB, as directed by the Mayor of London (MOL), and DBC to refuse to grant outline planning permission.

1.1.2. I held a pre-Inquiry meeting at DBC's Civic Centre on 23 March 2018, after which I issued to interested parties *Notes Following the Pre-Inquiry Meeting*, dated 26 March 2018, providing guidance concerning preparation for the Inquiry and the conduct of the Inquiry. The Inquiry, at DBC's Civic Centre, sat on 18 days, comprising: 19-22 June; 26-28 June; 3-5 July; 17-21 September and 25-27 September 2018. In addition to a number of unaccompanied site visits, accompanied site visits were undertaken on: 29 June 2018 to the appeals site; 6 July 2018 around the highway network; 26 September 2018 to Slade Green Station and Rail Depot; and, 28 September 2018 to Barking Rail Freight Interchange.

1.1.3. Whilst representatives of the LBB attended the Inquiry throughout its duration, it confirmed at the start that although it did not intend to present evidence, it would participate in the planning conditions/obligations session.

The National Planning Policy Framework

1.1.4. During the course of the Inquiry the *National Planning Policy Framework, 2012* was replaced by the *revised National Planning Policy Framework, 2018* (the Framework). Those who wished to do so were afforded an opportunity to comment on any implications of the revised document for their case.

1.2. Environmental Impact Assessment

1.2.1. Regulation 76 of *The Town and Country Planning (Environmental Impact Assessment) Regulations 2017* (2017 EIA Regulations) sets out the circumstances under which *The Town and Country Planning (Environmental Impact Assessment) Regulations 2011* (2011 EIA Regulations) continue to apply. These include where '*an applicant, appellant or qualifying body, as the case may be, has submitted an Environmental Statement or requested a scoping opinion*' prior to the commencement of the 2017 EIA Regulations. In the case of the subject appeals, the 2011 EIA Regulations continue to apply.

1.2.2. An Environmental Statement (November 2015)¹ and a Supplementary Environmental Statement (April 2016)² were submitted in support of the applications. Further environmental information was supplied during the

¹ CD/1.27.

² CD/1.30.

appeal process, including within the proofs of evidence and during the course of the Inquiry. In reaching my conclusions and recommendations, I have taken account of this environmental information, which I consider to be sufficient to assess the likely environmental impact of the applications.

1.3. **Planning obligations**

1.3.1. In support of the appeals proposal the appellant relies on 2 agreements pursuant to section 106 of *The Town and Country Planning Act 1990*: the first, with the London Borough of Bexley (LBB s106)³; and, the second, with Dartford Borough Council and Kent County Council (DBC s106)⁴. The final drafts of the documents were submitted before the close of the Inquiry, with copies of the formally completed documents submitted shortly thereafter, as agreed at the Inquiry. I have considered these agreements in light of the tests set out in *The Community Infrastructure Levy Regulations 2010 (as amended)* (the CIL Regs) and reflected in the Framework.

1.4. **The Report**

1.4.1. In this report, I set out the main substance of the cases for the parties who appeared at the Inquiry, summarise the main points raised in written representations submitted as well as review suggested conditions and submitted planning obligations. I then set out my conclusions and my recommendations to the Secretary of State. Appended to the report are lists of :

1. Appearances at the Inquiry;
2. Core documents, planning application drawings, proofs of evidence and documents submitted during the Inquiry;
3. Abbreviations; and,
4. Recommended conditions.

2. **THE SITE AND SURROUNDINGS**

2.1. **The site and immediate surroundings**

2.1.1. The 57.4 hectare appeals site comprises, for the most part, relatively flat fields used for grazing animals. Howbury Grange, the only building on the site, is currently vacant. The site is bounded: to the north by Moat Lane, to the northwest of which is residential development forming part of Slade Green and to the northeast Crayford Marshes; and, to the east by a restored landfill site. The southwestern boundary of the site is separated from Southeastern Trains' Slade Green Depot by a strip of land reserved for Crossrail development. To the south, beyond the depot, is the Viridor waste recycling site, a small part of which would be required to accommodate the proposed railway connection to the North Kent Line. At its southern end, the appeals site extends across the River Cray, which marks the boundary between the LBB and DBC thereabouts, to the existing roundabout at the junction of the A206/A2026.⁵

³ INQ/115.

⁴ INQ/116.

⁵ CD/6.2 section 2.

2.2. **The highway network**

- 2.2.1. The proposed main access road to the site would link in to the existing roundabout at the junction of the A206 Bob Dunn Way, to the northeast, the A206 Thames Road, to the west and leading to Slade Green, and the A2026 Burnham Road, to the southeast leading to Dartford Town Centre. Bob Dunn Way provides access to junction 1A of the A282/M25 motorway, which is approximately 3 Km to the east of the site. Junction 1B of the A282/M25, which is located around 4 Km to the southeast of the site, can be accessed via roads within Dartford town centre.
- 2.2.2. Kent County Council (KCC) is the Highway Authority for the local road network in Dartford, including: a short section of Thames Road; Burnham Road; the A206/A2026 roundabout; Bob Dunn Way; the signals at the Littlebrook Interchange junctions with the A206 adjacent to junction 1A, and the A225 Princes Road Interchange adjacent to junction 1B. The LBB is the Highway Authority for the local road network to the west of the site, including the western section of Thames Road and the associated Craymill Rail Bridge, which crosses that highway. The A282 (Dartford Crossings⁶), the M25 mainline as well as junctions 1A and 1B form part of the Strategic Road Network (SRN), for which Highways England (HE) is the Highway Authority. Whilst HE is also the Highway Authority for a stub of the A2, which leads westward from junction 2 of the M25, Transport for London (TfL) is the Highway Authority for the section further to the west within the London Borough of Bexley.⁷

2.3. **The railway network**

- 2.3.1. Slade Green Train Depot is situated alongside the North Kent Line at Crayford Creek Junction (CCJ), where lines intersect from: Plumstead to the north; Barnehurst/Bexleyheath to the west; as well as, Hither Green and Dartford to the south⁸. Slade Green Station is located a short distance to the north of CCJ. Rail access to the appeals site would be obtained through Slade Green Train Depot, off a section of the North Kent Line to the south of CCJ.

3. **THE APPEALS PROPOSAL**

- 3.1. The planning applications subject of these appeals are identical cross-boundary outline applications for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange (SRFI) comprising:
- Within the LBB, a rail freight intermodal facility; warehousing; new access arrangements from Moat Lane; associated HGV, car, cycle parking; landscaping; drainage; and, associated works; and,

⁶ The Dartford Tunnel, northbound traffic and the Queen Elizabeth II Bridge, southbound traffic.

⁷ INQ/35 and DBC/W2/1 paras 4.4-4.11.

⁸ APP/RAIL/1 page 34 Figures 11 and 12.

- Within the Dartford Borough, the creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works.

In the case of both outline planning applications, all detailed matters except access, are reserved for future consideration.

- 3.2. The scheme parameters, shown on Parameters Plan Ref. 30777-PL-101 Rev I⁹, for which approval is sought are summarised below together with the detailed site access proposals.
- 3.3. A total of 184,500 m² of rail served warehouse/distribution floorspace (Use Class B8) and associated buildings is proposed: 70,222 m² in zone A; 113,904 m² in zone B; and, 374 m² in zone C. The freight interchange facility (the intermodal area) would be located centrally within the site in zone C. The maximum build height of the proposed warehouses would be: 18 metres (27.1 metres AOD) in zone A; and, 18 metres (26.4 metres AOD) in zone B. The structures within zone C, which would include a maximum of 3 no. gantry cranes, would be up to a maximum of 18 .1 metres in height (26.7 metres AOD).
- 3.4. A new single railway track, routed via the southern part of the development site, would link the proposed intermodal facility to a former private siding connection off the Southeastern Trains Depot's southern head shunt and from there to the North Kent Line.
- 3.5. Vehicular access to the site would be via a new link road, from the existing A206/A2026 roundabout, across the River Cray. The River Cray would be crossed by a fixed, standard deck bridge that spans the river, with a viaduct on either side. That access would also provide for pedestrian and cycle access to the site. A vehicular access for a shuttle bus service and emergency vehicles only is proposed from Moat Lane to the north of the site. That access would also allow for pedestrian access to the site. In addition, the proposals include a linking road between the SRFI main access road and the adjacent Viridor waste recycling site.¹⁰
- 3.6. Following submission of the planning applications to the Councils on 20 November 2015:
 - LBB presented application Ref. 15/02673/OUTEA to Planning Committee on the 16 February 2017, with an Officer's recommendation for approval. The Committee resolved to approve the application subject to referral to the MOL, in accordance with the *Greater London Authority Acts 1999 and 2007*, and the *Town and Country Planning (Mayor of London) Order 2008*. Subsequently the MOL directed LBB to refuse the application on 17 July 2017. In accordance with that direction, LBB refused application Ref. 15/02673/OUTEA on 20 July 2017. The reason for refusal was¹¹:

⁹ CD/1.17.

¹⁰ CD/6.1-6.3 'Description of development'.

¹¹ CD/1.9.

- 1) *The proposal is inappropriate development in the Green Belt and very special circumstances have not been demonstrated which would clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm. The development is therefore contrary to Policy 7.16 of the adopted London Plan 2016 and the National Planning Policy Framework 2012.*
- An Officer's Report to the Dartford Borough Council's Development Control Board, recommending application Ref. DA/15/01743/OUT for approval, was published on 10 November 2016. However, that report was withdrawn and the minutes for the meeting show that the reason for this related to an identified requirement for additional information before any decision could be made. DBC Officers subsequently presented the application to the Development Control Board on 20 April 2017, with an Officer recommendation for refusal. The Board members supported the Officer's recommendation and the application Ref. DA/15/01743/OUT was refused on 21 April 2017. The reasons for refusal were¹²:
 - 1) *The proposal by virtue of its significant traffic generation and routing of vehicles to the development via junction 1A of the M25, will result in increased traffic on local roads and together with the reassignment of vehicles at times of congestion is likely to result in worsening air quality in the Borough, particularly in the areas designated as Air Quality Management Areas at the A282 (Dartford Tunnel Approach Road) and Dartford town centre. The proposal is therefore considered to be contrary to Policy CS1 of the adopted Dartford Core Strategy 2011, Policies DP3 and DP5 of the emerging Dartford Development Policies Plan 2015, the National Planning Policy Framework and the National Policy Statement for National Networks 2014.*
 - 2) *By virtue of significant trip generation of the proposal and its location, inside the M25 and in a heavily built up area adjacent to the A282/Dartford Crossing, it will impact on the local roads in Dartford as well as the strategic road network in Dartford, which is likely to be detrimental to the quality of life of the community in Dartford. It is not considered that the justification for a SRFI at this location, with no certainty that this will reduce long haul HGVs from the local strategic road network outweighs the harm to the local community. The proposal is therefore considered to be contrary to Policy CS1 of the adopted Dartford Core Strategy 2011, Policies DP3 and DP5 of the emerging Dartford Development Policies Plan 2015, the National Planning Policy Framework and the National Policy Statement for National Networks 2014.*

¹² CD/1.5.

3) *The proposal is considered to be inappropriate development in the Green Belt and very special circumstances have not been demonstrated which would outweigh the harm to the Green Belt. The development is therefore contrary to Policy CS13 of the adopted Dartford Core Strategy 2011, and the National Planning Policy Framework and Policy DP22 of the emerging Dartford Development Policies Plan (Modifications post Examination, Dec 2016).*

4. PLANNING HISTORY

- 4.1. A similar SRFI scheme at Howbury Park was the subject of cross boundary planning applications, submitted in 2004 (LBB Ref. 04/04384/OUTEA and DBC Ref. 04/00803/OUT). Following DBC's decision to refuse planning permission on the grounds of adverse impact on the openness and character of the Green Belt, an appeal was submitted. The LBB failed to determine the application submitted to it within the prescribed period and an appeal was submitted against non-determination of that application. A public Inquiry, considering both applications, followed.
- 4.2. In December 2007 the Secretary of State, in agreeing with the appointed Inspector's recommendation¹³, allowed the appeals¹⁴. The overall conclusions were that, although the proposal constituted inappropriate development in the Green Belt and harm would be associated with that and other matters, in that particular case, the benefits of the proposals constituted very special circumstances and were sufficient to clearly outweigh the harm. In reaching that decision, the Secretary of State agreed with the Inspector's conclusions that the ability of the proposals to meet part of London's need for 3 or 4 SRFIs was the most important consideration to which she afforded significant weight. She also afforded considerable weight to the lack of alternative sites to meet this need.
- 4.3. The outline planning permission granted was never taken forward and has since lapsed.¹⁵

5. COMMON GROUND

- 5.1. The following Statements of Common Ground, setting out matters agreed as well as differences between the parties that were signatories to them, were submitted by:
- RDL and LBB¹⁶;
 - RDL and DBC¹⁷;

¹³ CD/5.2.

¹⁴ CD/5.3.

¹⁵ CD/6.1-6.3.

¹⁶ CD/6.1.

¹⁷ CD/6.2.

- RDL and the Greater London Authority (MOL)¹⁸; and,
- RDL and Highways England¹⁹.

6. PLANNING POLICY

[The statements of Common Ground agreed by the appellant with the MOL, DBC and the LBB list the policies in the Development Plans as well as other planning policy documents and guidance which those parties consider to be relevant to the appeals. In this chapter of the report, I set out what I consider to be the most relevant to the appeals proposal.]

6.1. The LBB Development Plan

- 6.1.1. The Development Plan for the LBB comprises: *The London Plan, March 2016 (LP)*; the *Bexley Core Strategy Development Plan Document, February 2012 (BCS)*; and, saved policies of the *Bexley Unitary Development Plan, 2004 (BUDP)*.

Planning Policy Designations

- 6.1.2. The section of the appeals site within the LBB (with the exception of a small strip of land linking the main area of the site to the North Kent Line) is within the Metropolitan Green Belt²⁰ and is also within the *Crayford Landfill and Howbury Grange Site of Borough Importance for Nature Conservation Grade 1 (BxBI18)*.²¹

The London Plan²²

- 6.1.3. LP Policy 2.13 indicates that within opportunity areas, such as the Bexley Riverside Opportunity Area (BROA), development proposals should support the strategic policy directions for opportunity areas set out in Annex 1. Annex 1, which forms part of the LP, identifies, amongst other things:

'Bexley Riverside relates to parts of Erith, Crayford, Slade Green and Belvedere. Improvements in public transport accessibility, especially associated with Crossrail 1 will provide scope for intensification, particularly around Abbey Wood. Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'

- 6.1.4. LP Policy 2.14 indicates that within the areas for regeneration shown on Map 2.5 the Mayor will work with partners to coordinate their sustained renewal. The reasoned justification indicates that an objective of the Policy

¹⁸ CD/6.3.

¹⁹ CD/6.4.

²⁰ CD/3.13 BUDP Proposals Map.

²¹ ES Volume 3c Appendix H figure H1, updated APP/BIO/2 Appendix 1 and 2.

²² CD/3.1.

is to tackle spatial concentrations of deprivation, by amongst other things, delivering new growth and jobs.

- 6.1.5. LP Policy 5.3 gives encouragement to sustainable design and construction, promoting principles including minimising pollution (including noise and air).
- 6.1.6. LP Policy 6.14 identifies that the Mayor will work with all relevant partners to, amongst other things, promote movement of freight by rail. LP Policy 6.15 is supportive of SRFIs providing that the facilities:
- a) Deliver modal shift from road to rail;
 - b) Minimize any adverse impact on the wider transport network;
 - c) Are well-related to rail and road corridors capable of accommodating the anticipated level of freight movements;
 - d) Are well-related to their proposed market.
- 6.1.7. The reasoned justification for LP Policy 6.15 indicates that:
- 'The advice from the former Strategic Rail Freight Authority that there needs to be a network of SRFIs in and around London still applies. If these facilities result in modal shift from road to rail, they can offer substantial savings in CO₂ emissions. However, they are by their nature large facilities that can often only be located in the Green Belt. In addition, while reducing the overall impact on the network, they can lead to substantial increases in traffic near the interchange itself. The Mayor will need to see robust evidence that the emissions savings and overall reduction in traffic movements are sufficient to justify any loss of Green Belt, in accordance with Policy 7.16, and localised increases in traffic movements. However, planning permission has already been granted for a SRFI at Howbury Park...'*
- 6.1.8. LP Policy 7.4 indicates that development should improve an area's visual or physical connection with natural features²³.
- 6.1.9. LP Policy 7.8 seeks to ensure that development affecting heritage assets and their settings should conserve their significance.
- 6.1.10. LP Policy 7.14 requires development proposals to be at least 'air quality neutral' and not lead to further deterioration of existing poor air quality (such as areas designated as Air Quality Management Areas (AQMAs)).
- 6.1.11. LP Policy 7.15 seeks to ensure that development proposals manage noise by, amongst other things, avoiding significant adverse noise impacts on health and quality of life as a result of new development as well as mitigating and minimising potential adverse impacts of noise.
- 6.1.12. LP Policy 7.16 confirms that the Mayor strongly supports the current extent of London's Green Belt and its protection from inappropriate development. It indicates that:

²³ APP/PLAN/1 para 7.37.

'The strongest protection should be given to London's Green Belt, in accordance with national guidance. Inappropriate development should be refused, except in very special circumstances.'

- 6.1.13. LP Policy 7.19 indicates that, wherever possible, development proposals should make a positive contribution to the protection, enhancement, creation and management of biodiversity. Proposals should be resisted where they would have a significant adverse impact on the population or conservation status of a protected or priority species, or a habitat identified in a UK, London, appropriate regional or borough Biodiversity Action Plan (BAP). Strong protection should be afforded to sites of metropolitan importance for nature conservation (SMIs). When considering proposals that would affect directly or indirectly a site of recognised nature conservation interest, the following hierarchy will apply: 1) avoid adverse impact to the biodiversity interest; 2) minimise impact and seek mitigation; and, 3) only in exceptional cases where the benefits of the proposal clearly outweigh the biodiversity impacts, seek appropriate compensation. LP Policy 7.21 seeks to ensure that, wherever appropriate, the planting of additional trees should be included in new developments.

Bexley Core Strategy²⁴

- 6.1.14. In common with BCS Policy CS01, BCS Policy CS17 seeks to protect the Green Belt from inappropriate development, which the reasoned justification for the Policy indicates is defined by Government guidance. BCS Policy CS01 also aims to achieve sustainable development by, amongst other things, maximising the effective and efficient use of natural and physical resources, including land, whilst addressing pollution issues, such as noise and air quality.
- 6.1.15. BCS Policy CS09 seeks to protect, enhance and promote green infrastructure, including making open spaces, amongst other locations, an integral part of encouraging healthy lifestyles. It also identifies that the Council will maximise opportunities to improve the health of the environment, for example air quality, and reduce pollution.
- 6.1.16. BCS Policy CS04 seeks to ensure that opportunities are taken to improve the quality of the natural environment in the Erith geographic region. BCS Policy CS17 indicates that Bexley's green infrastructure, including open spaces and waterways will be protected, enhanced and promoted as valuable resources²⁵. The reasoned justification for this Policy identifies that river corridors, such as that of the Cray, are important defining features of the Borough's landscape and views. BCS Policy CS18 indicates that the Council will protect and enhance its biodiversity, whilst complying with national and regional policy and guidance by, amongst other things:
- b) Protecting, conserving and enhancing Bexley's Sites of Importance for Nature Conservation (SINC); and,

²⁴ CD/3.12.

²⁵ APP/PLAN/1 para 7.37.

- c) Resisting development that will have a significant impact on the population or conservation status of protected species and priority species as identified in the UK, London and Bexley Biodiversity Action Plans.

- 6.1.17. BCS Policy CS15 indicates that the Council will work to achieve a comprehensive, high quality, safe, integrated and sustainable transport system which makes the most of existing and proposed transport infrastructure within the Borough and seeks to ensure a much improved and expanded role for public transport through a number of identified actions. They include:
- a) Increasing the capacity, frequency, accessibility and safety of rail facilities; and,
 - h) Improving the efficiency and promoting the sustainability of freight movement in the borough and ensuring the construction and preservation of rail freight interchange facilities where this does not prejudice other objectives of the Core Strategy.

The reasoned justification for the Policy states that '*There is a planning permission for a rail freight interchange facility at Howbury Park, which has yet to be implemented*'.

- 6.1.18. BCS Policy CS13 seeks to assist in supporting a strong and stable economy by, amongst other things, supporting development proposals that diversify the local employment offer.
- 6.1.19. The aims of BCS Policy CS19 include conserving and enhancing the significance of heritage assets, their setting and the wider historic environment.

BUDP²⁶

- 6.1.20. BUDP Policy ENV4 sets out a number of criteria to be met by development within the Green Belt, including that: it should not detract from the function and appearance of the Green Belt; and, the proposed development should retain sufficient space around the building, within the site, to maintain the contribution the site makes to the character of the Green Belt by virtue of its open and spacious nature.

6.2. The DBC Development Plan

- 6.2.1. The DBC Development Plan comprises: the *Dartford Core Strategy, September 2011* (DCS); and, the *Dartford Development Policies Plan, July 2017* (DDPP).

²⁶ CD/3.13.

Planning Policy Designations

6.2.2. The section of the appeals site within Dartford Borough is within the Metropolitan Green Belt.

DCS²⁷

6.2.3. DCS Policy CS 1 indicates that in order to maximise regeneration benefits, promote sustainable patterns of development and protect less appropriate areas from development, the focus of development will be in 3 priority areas: Dartford Town Centre and Northern Gateway; Ebbsfleet to Stone; and, The Thames Waterfront. The reasoned justification for the Policy states that this approach enables greater protection for other areas where development is less appropriate, such as the Green Belt. DCS Policy CS 7 identifies the jobs target for the Borough for the period 2006-2026 and indicates that it can be met by identified sites and potential new service jobs, and it provides an indicative distribution. DCS Policy CS 8 indicates that the Council will seek a transformation of the economy by focussing on key growth sectors, such as logistics, transport and distribution.

6.2.4. DCS Policy CS 13 indicates that in order to protect the openness of the Green Belt the Council will resist inappropriate development, in accordance with Government guidance.

6.2.5. The reasoned justification for DCS Policy CS 15 explains that the successful achievement of Dartford's economic potential and the creation of cohesive and prospering communities are dependent on a transport network which, amongst other things is reliable and has sufficient capacity to meet the needs of residents and businesses. The Policy identifies the approaches the Council will take in order to reduce the need to travel, minimise car use and make the most effective use of the transport network. They include:

- e) Work in partnership with Network Rail, train operating companies and other partners to enhance capacity and journey times of train services; and,
- h) Require that major trip generating development is supported by a travel plan containing a package of measures ensuring sustainable travel, linked to monitoring and management of targets.

6.2.6. DCS Policy CS 16 indicates that the Council will take a number of approaches in order to enable the transport network to respond to the pressures of new development. They include that: e) off-site transport improvements relating directly to an individual development including site access and local junction and road improvements will be required through S106 and S278 agreements in addition to any pooled payments towards the Strategic Transport Infrastructure Programme. The reasoned justification for the Policy highlights that there are particular concerns that new development will exacerbate the existing high levels of congestion at junction 1A of the M25.

²⁷ CD/3.17.

DDPP²⁸

- 6.2.7. DDPP Policy DP3 identifies that development will only be permitted where it is appropriately located and makes suitable provision to minimise and manage the arising transport impacts, in line with BCS Policies CS 15 and 16. Furthermore, development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on one or more of the following: a) road traffic congestion and air quality.
- 6.2.8. DDPP Policy DP5 indicates that development will only be permitted where it does not result in unacceptable material impacts, individually or cumulatively, on neighbouring uses, the Borough's environment or public health. Particular consideration must be given to areas and subjects of potential sensitivity and other potential amenity/safety factors, such as: air quality; and, noise disturbance or vibration. The reasoned justification for the Policy identifies that consideration should be given to the potential for development to result in additional traffic flows that may impact on AQMAs located elsewhere.
- 6.2.9. In keeping with the Framework, DDPP Policy DP22 identifies that inappropriate development, which is, by definition, harmful to the Green Belt, should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The Policy identifies that the following criteria will be used by DBC in assessing the 'other harm':
- a) The extent of intensification of use of the site;
 - b) The impact of an increase in activity and disturbance resulting from the development, both on and off site, including traffic movement and parking, light pollution and noise;
 - c) The impact on biodiversity and wildlife;
 - d) The impact on visual amenity or character taking into account the extent of screening required; and,
 - e) Impacts arising from infrastructure required by the development.

6.3. **National Policy**

The National Planning Policy Framework (the Framework)

- 6.3.1. References to relevant passages of the Framework can be found in the cases of the parties and my conclusions.

The National Policy Statement for National Networks (NPSNN)²⁹

- 6.3.2. The NPSNN is the primary basis used by the Secretary of State for making decisions on development consent applications for national networks

²⁸ CD/3.18.

²⁹ CD/2.2.

nationally significant infrastructure projects (NSIP) in England, including Strategic Rail Freight Interchanges. The appeals proposal does not comprise an NSIP, as the site is below the 60 hectare NSIP threshold. However, the NPSNN confirms that, in England, it may also be a material consideration in decision making on applications that fall under the *Town and Country Planning Act 1990*. There is no dispute that the NPSNN is a material consideration in the determination of these appeals.

6.3.3. Relevant passages of the NPSNN can be found in the cases of the parties and my conclusions.

6.4. **Emerging plans**

The London Plan-The Spatial Development Strategy for Greater London-Draft for Consultation, December 2017 (LPe)³⁰

6.4.1. LPe Policy G2 indicates that the Green Belt should be protected from inappropriate development and the reasoned justification for the Policy identifies that the National Planning Policy Framework provides clear direction for the management of development in the Green Belt.

6.4.2. LPe Policy T7 identifies that development proposals for new consolidation and distribution facilities should be supported, provided, amongst other things, they:

- 1) Deliver mode shift from road to rail without adversely impacting passenger services (existing or planned) and without generating significant increases in street based movements.

6.4.3. LPe Policy SD1 seeks to ensure that decisions support development that creates employment opportunities within Opportunity Areas and the reasoned justification identifies a growth target of 19,000 jobs in the BROA.

6.4.4. At the time of the Inquiry, the LPe Examination in Public had not commenced and so the weight attributable to these policies is limited, more so in relation to LPe Policy T7, which I understand is the subject of objection.

6.5. **Other local planning guidance**

The Mayor's Transport Strategy, 2018 (MTS)³¹

6.5.1. MTS Policy 1 identifies that, working with stakeholders, the Mayor will reduce Londoners' dependency on cars, with the central aim for 80% of all trips in London to be made on foot, by cycle or using public transport by 2041. Proposal 16 indicates that the Mayor, through TfL, and working with the boroughs and members of the Freight Forum, will improve the

³⁰ CD/3.2.

³¹ CD/3.3.

efficiency of freight and servicing trips on London's strategic transport network by, amongst other things, identifying opportunities for moving freight on to the rail network where this will not impact on passenger services and where the benefits will be seen in London.

The Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031(LTP4)³²

- 6.5.2. With respect to Dartford, the LTP4 identifies the following points, amongst others:
- a) The A282 suffers from congestion at peak times and when there are traffic incidents. This results in congestion spreading out into the town and reducing the performance of the local road network over a wide area. Incidents at the Dartford Crossing and its approach are frequent and severe;
 - b) Parts of the local road network are reaching capacity, as a result of the high levels of development taking place. A significant modal shift is needed to accommodate the projected growth;
 - c) Rail capacity on the North Kent Line is stretched and likely to be overcapacity in the near future;
 - d) The proposed SRFI interchange at Howbury would potentially remove up to 540 Heavy Goods Vehicles (HGVs) from the road network. KCC supports modal shift from road to rail, provided that it does not adversely affect peak rail passenger services and impacts on the local road network are properly mitigated.

7. THE CASE FOR THE MAYOR OF LONDON (MOL)

7.1. Policy context

Applicability of Green Belt Policy

7.1.1. It is common ground that:

- a. *London Plan* Policy 7.16 requires that the '*strongest protection*' should be given to London's Green Belt³³.
- b. The *National Policy Statement for National Networks* (NPSNN) '*does not diminish the special protection given to Green Belt land*'³⁴.

Materiality of the NPSNN

7.1.2. It is common ground that NPSNN is a material consideration in the determination of this application. It identifies a compelling need for an expanded network of SRFIs which should be located near the business

³² CD/4.14 page 32.

³³ as confirmed by Mr Scanlon in XX and see CD/3.1 at p.312 and CD/6.3 at para 7.20.

³⁴ as confirmed by Mr Scanlon in XX and see CD/2.2 at 5.172 and 5.178 and CD/6.3 at para 7.3.

markets which they serve³⁵. It notes the particular challenge in expanding rail freight interchanges serving London and the Southeast³⁶. It draws upon unconstrained rail freight forecasts³⁷ but cautions that 'the forecasts in themselves do not provide sufficient granularity to allow site-specific need cases to be demonstrated'.

- 7.1.3. Its expectations for Strategic Rail Freight Interchanges (SRFIs) include the prescription that '*adequate links to rail and road networks are essential*'³⁸. The need for '*effective connections for both rail and road*' is emphasised³⁹. The NPSNN directs that as a minimum a SRFI should be capable of handling four trains per day and where possible increasing the number of trains handled. There has been some debate about the meaning of this requirement at the Inquiry. The appellant's case appears to be that this is an observation only relevant to the internal design of a SRFI. The more sensible way of reading the policy as a whole is that the expectation of capability of handling 4 trains as a minimum (and increasing where possible) should inform the assessment of the adequacy of the rail links.
- 7.1.4. There is a recorded expectation that where possible SRFIs should have capacity to handle 775 metre trains⁴⁰. It is material therefore to reflect on the access issues for trains of that length even if (as here) existing line constraints do not cater for trains of that length⁴¹.
- 7.1.5. There is only one previous decision in respect of a SRFI facility around London which postdates the NSPNN. That is the Colnbrook decision⁴². It provides helpful guidance on matters of approach (as discussed further below). With reference to the NPSNN, it advocates a focus on the quality of the SRFI provision, not necessarily maximising the number of schemes⁴³.

Development Plan policies

- 7.1.6. Policy 6.15 of the *London Plan*⁴⁴ supports the provision of SRFIs in principle, but sets mandatory expectations for them (in sub-para B of the Policy). As Mr Scanlon (for the appellant) accepted, it is necessary for SRFI proposals to satisfy each of these requirements in order to comply with the Policy. The MOL is not satisfied that the facility will 'deliver modal shift from road to rail' (criterion (a)). As Mr Scanlon agreed, the focus of the Development Plan policy is on the delivery of modal shift (not merely the provision of a facility with the potential to deliver modal shift). The MOL is

³⁵ CD/2.2 at para 2.56.

³⁶ CD/2.2 at 2.58.

³⁷ CD/2.2 at 2.59.

³⁸ CD/2.2 at 4.85.

³⁹ CD/2.2 at 2.56.

⁴⁰ CD/2.2 at 4.89.

⁴¹ INQ/72 APP/RAIL/7 para 2.1.5 '*train length of 565 metres in the 2016 planning application (restated in APP/RAIL/4 para 2.3.15) was based on the then average length of domestic intermodal services*' (CD/1.25 Intermodality Rail Report, November 2015 para 5.4.6- 565 metres excluding locomotive and 586 metres including locomotive), para 2.1.5 continued '*longest train to operate on the North Kent Line to date, on which the timing analysis is based (i.e. 538 metre train +21.5 metre locomotive=559.5 rounded up to 560 metres)*'.

⁴² CD/5.4.

⁴³ CD/5.4 at 12.92.

⁴⁴ CD/3.1 at p.271.

also not satisfied that the proposal is well related to rail corridors capable of accommodating the anticipated level of freight movements (criterion (c)). This is because of the significant constraints which exist in accessing and departing from the site and also the difficult pathing across this congested and complex part of the South London network. The issues raised by DBC also bring into question the relationship of the proposal with the road network relevant to criteria (b) and (c) of this Development Plan policy. It is accepted that criterion (d) of this policy is satisfied in that Howbury Park is well-related to the London market.

- 7.1.7. The supporting text to Policy 6.15 of the *London Plan* notes that planning permission has already been granted for a SRFI at Howbury Park. This part of the plan dates back to 2011 when that permission was extant. It is descriptive only. It does not allocate the site as a SRFI, as Mr Scanlon accepted. The reference to the previous permission in the supporting text has no traction in the situation we are now in where there is no extant permission.
- 7.1.8. The Howbury Park site is located within the Bexley Riverside Opportunity Area⁴⁵. This opportunity area was identified in 2011. It applies to an area of 1,347 hectares. The 57 hectares of the site are 4% of the opportunity area. The opportunity area contains large areas of previous developed land including industrial land suitable for logistics development.
- 7.1.9. Annex 1⁴⁶ records the opportunity area's important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park⁴⁷. This part of the plan dates from 2011 when there was an extant planning permission for the site. That is no longer the case. It was accepted by Mr Scanlon that the Howbury Park site has not been allocated in the *London Plan*. It is also clear, as he accepted, that there has been no re-designation of the Green Belt boundary.
- 7.1.10. Mr Scanlon did not advance any argument that achieving the employment and growth aspirations of the Bexley Riverside Opportunity Area depends upon the delivery of the Howbury Park scheme.
- 7.1.11. The appellant's case is overstated in so far as it purports to rely upon site specific support for the Howbury Park scheme in the *London Plan*⁴⁸. It can claim with justification that its scheme is consistent with the aspirations of growth for the Bexley Riverside Opportunity Area but to seek to go further than that is misconceived. It is not the function of the *London Plan* to make site specific designations.
- 7.1.12. The true position is illuminated by an analysis of the Development Plan policy position in Bexley:
- a. Bexley's Core Strategy protects the Green Belt⁴⁹;

⁴⁵ see policy 2.13 of the *London Plan* CD/3.1 at p.65 and annex 1 at p.355.

⁴⁶ CD/3.1 annex 1 at p.355

⁴⁷ CD/3.1 at p.355.

⁴⁸ see APP/RAIL/1 at para 2.1.

⁴⁹ CS 01 and CS 17 – see GLA/NR/01 at p.8.

- b. Policy CS 15 seeks to improve the efficiency and sustainability of freight movements. It also gives encouragement to the construction and preservation of rail freight interchanges where this does not prejudice other objectives of the Core Strategy. As Mr Scanlon accepted in cross-examination, those objectives include the protection of the Green Belt;
 - c. Paragraph 4.7.13 of the Bexley Core Strategy⁵⁰ records the existence of the planning permission at Howbury Park which has yet to be implemented. As Mr Scanlon accepted, this is purely descriptive of the situation which existed in 2012. It does not allocate the site;
 - d. Appendix A of the Core Strategy contains an infrastructure delivery plan. At CD/3.12 p.122 it makes provision for '*complementary measures in the event of the Rail freight interchange facility being built*' in the Crayford and Northend Ward, but notes that: '*Rail freight interchange is not required for the delivery of the Core Strategy, however if it is not implemented, there is need to identify more sustainable freight facilities*', consistent with the aims of Policy CS15 set out above.
- 7.1.13. In summary therefore, the Development Plan position (for Bexley/London) is that:
- a. Support for SRFIs is conditional rather than absolute;
 - b. Howbury Park is not allocated as a SRFI within the Development Plan;
 - c. Despite the site's inclusion in an opportunity area, it remains in the Green Belt;
 - d. There is an explicit statement in the Bexley Core Strategy that a rail freight interchange is not required for the delivery of Bexley's Core Strategy.
- 7.1.14. The references to the previous consent in the *London Plan* are descriptive of the past planning permission. Once that permission lapsed, on a proper analysis, the Development Plan policies should be applied to the proposal on its merits (not with the pretence that the site has been allocated as a SRFI in the Development Plan). Whilst the contribution that the Howbury Park scheme would make towards meeting the objectives of the Bexley Riverside Opportunity Area is a material part of the overall assessment, it is a mistake to assert that the scheme benefits from site specific support in any part of the Development Plan. The reality is that the Green Belt constraints continue to apply to the proposed development.

Relevant emerging policies

- 7.1.15. It is common ground that the draft *London Plan* carries limited weight given that the Examination in Public has not yet occurred. Policy T7 is relevant⁵¹. Its support for freight facilities is qualified by the need to ensure

⁵⁰ CD/3.12.

⁵¹ CD/3.2 at p.431.

that they deliver modal shift and do not adversely affect passenger services. There is no mention of Howbury Park in the draft *London Plan* as Mr Scanlon accepted⁵².

Other relevant guidance

- 7.1.16. The *Mayor's Transport Strategy, 2018*, explains the very significant challenges facing London. Proposal 16 seeks to identify opportunities to move freight onto rail where these will not impact on passenger services and the benefits will be seen within London⁵³. The *Mayor's Transport Strategy, 2018*, seeks to free up paths for passenger services to meet growing passenger demand⁵⁴.
- 7.1.17. The appellant has also referred to transport guidance issued by Kent County Council. Its *Freight Action Plan*⁵⁵ notes the existence of the Howbury Park proposal. Its position is to support the provision of modal shift from road to rail 'so long as it does not adversely affect peak passenger services'. Its Transport Plan⁵⁶ notes the proposal with the same caveats.
- 7.1.18. There is a consistent theme emerging from this guidance. There is support for rail freight facilities which deliver modal shift provided that they do not have an adverse impact on passenger services. The MOL's concerns are that this specific proposal is poorly suited to deliver the desired modal shift and, given the constraints of the adjacent rail network, it would adversely affect passenger services if it managed to do so.

7.2. Approach to the 2007 Planning Permission

- 7.2.1. It is common ground that the planning permission granted in 2007 has lapsed. There is no fall-back position. The planning balance needs to be struck in the light of the circumstances as they now exist.
- 7.2.2. It is instructive to look at the basis on which planning permission was granted last time and to explore the extent to which the key factors remain unchanged or have altered.
- 7.2.3. Analysis of the planning balance struck in 2007 shows that it was a finely balanced decision.
- 7.2.4. In para 15.178 of the Inspector's report in 2007⁵⁷ the Inspector observed:
- 'Put simply, if the proposal would, for any reason, not operate as a SRFI then it would not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build road-served warehouses on open land in the Green Belt around London would not*

⁵² in XX and see para 7.125 of APP/PLAN/1.

⁵³ CD/3.3 at p.81.

⁵⁴ see CD/3.3 at p.87.

⁵⁵ CD/4.15 at p.4.

⁵⁶ CD/4.14 at p.32.

⁵⁷ CD/5.2.

come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal.'

- 7.2.5. In 2007 the Inspector regarded the issue of whether very special circumstances existed to outweigh the relevant harm to be a 'difficult balance'⁵⁸. He found it difficult to 'answer with complete certainty' whether the concerns that the proposal may end up being 'little more than a collection of road-served warehouses' were justified⁵⁹. On the evidence before him, he concluded that the Secretary of State could be 'reasonably assured' that the then proposed development would operate as a SRFI. Part of his analysis in support of that conclusion was that 'the design of the proposed warehouses at Howbury Park has been optimised to attract users committed to rail'⁶⁰. He found that the larger units proposed would be difficult to let to a road only user given their configuration⁶¹. The submission on the part of the developer which he referenced in making that finding had contended that it would be 'commercial suicide' for the warehouses as designed to have been pitched to users only interested in road access⁶². Another element of the judgement reached in 2007 was that Network Rail had '*effectively guaranteed that paths for three trains a day would be available on the opening of the terminal and they state that further paths are likely to be made available as and when required*'⁶³.
- 7.2.6. In addressing the question of whether very special circumstances existed to clearly outweigh the harm to the Green Belt and other harm, the Inspector emphasised: (a) the ability of the proposal to meet part of London's need for 3 or 4 SRFIs and (b) the agreed position that if planning permission were not granted there was no other site to the south and east of London that could meet the need. The combination of those factors was the critical part of the judgement that very special circumstances existed. The Inspector made it clear that other benefits, though potentially valuable, were less significant in the critical Green Belt balancing exercise⁶⁴. The Secretary of State adopted the same approach to the determination of very special circumstances⁶⁵.
- 7.2.7. The key changes since 2007 are as follows.
- 7.2.8. First, the configuration of what is now proposed differs materially from what was proposed in 2007. The Inspector's observations at para 15.132 of CD/5.2 are not apt for the present proposal. The configuration of what is now proposed would be attractive to road only users. As Mr Birch explained, by far the largest element of the logistics industry is road based. It certainly could not be said that it would be commercial suicide for

⁵⁸ CD/5.2 at 15.183.

⁵⁹ CD/5.2 at 15.178 and 15.179.

⁶⁰ CD/5.2 at 15.132.

⁶¹ CD/5.2 at 15.132.

⁶² CD/5.2 at para 6.123.

⁶³ CD/5.2 at 15.110.

⁶⁴ see footnote at CD/5.2 at p.167.

⁶⁵ see CD/5.3 at para 31.

a road only operator to occupy the warehouses proposed⁶⁶.

The attractiveness of the facility presently proposed to road only transport gives rise to significant concerns on the part of the MOL because (a) there is much less assurance than was the case in 2007 that the practical operation of the facility would deliver modal shift (as expected by the Development Plan policy); (b) the consent sought by the appellant does not secure any level of rail use by way of condition; (c) the consequences of additional road journeys in this locality would be particularly significant.

- 7.2.9. Second, the train length under consideration in 2007 was 420 metres. In the present case, the rail experts proceed on the basis that a train length of 560-565 metres should be considered⁶⁷. This additional train length has implications for the judgement as to whether the rail connection is adequate given the practicality of achieving access to and departure from the site across the highly congested rail network.
- 7.2.10. Third, the level of assurance as to the availability of pathing across the network is appreciably worse this time. Network Rail has not effectively guaranteed any quantum of paths. This is discussed further below.
- 7.2.11. Fourth, there has been unprecedented growth in passenger demand on the railway in London, as explained in Mr Hobbs' evidence⁶⁸ and accepted by Mr Gallop in cross-examination. As Mr Hobbs explained passenger rail capacity is critical to London's growth. London has grown exponentially in the intervening period and the challenges which it faces have 'increased markedly'⁶⁹. Passenger rail capacity, which is critical to London's economic growth, is under real and increasing pressure⁷⁰. The extent of growth in passenger rail demand in London is noted in the NPSNN at para 2.31⁷¹. This is important because jobs in central London depend on passenger rail capacity⁷². The stakes are very high if the facility cannot interact with passenger services in a way which avoids having a detrimental impact. The evidence is also clear that in this part of London further growth is expected.
- 7.2.12. Fifth, there is not a quantified policy need for 3-4 facilities in London expressed in policy⁷³. This was accepted by both Mr Gallop and Mr Scanlon in cross-examination.
- 7.2.13. Sixth, in 2007 there were no alternative sites worthy of consideration. The appellant's analysis throughout this appeal has proceeded on the basis that this remains the case⁷⁴. However, it was wrong to do so. London

⁶⁶ Re-examination of Mr Birch.

⁶⁷ MoL-INQ/63 GLA/RG/09 para 1.1.3 train length of 565 metres, RDL-INQ/72 APP/RAIL/7 para 2.1.5 train length of 560 metres.

⁶⁸ GLA/GH/01 at para 19 and 20.

⁶⁹ as Mr Hobbs explained in his oral evidence and see para 6, 16 and 19 of GLA/GH/01.

⁷⁰ see GLA/GH/01 at para 20.

⁷¹ CD/2.2 at pp.16-17.

⁷² see GLA/GH/02 at Appendix 2 p.41.

⁷³ see CD/5.4 at 12.101.

⁷⁴ see APP/PLAN/1 at paras 2.6, 2.8, 7.3, 7.24, 7.154 and CD/1.27 Volume 1-Non-Technical Summary para 3.13 '*The Howbury Park site has been identified as the only site within the catchment that has the potential to operate as an SRFI.*'

Gateway is 'capable of fulfilling a SRFI role'⁷⁵. It is proximate to the London market⁷⁶. Although it is 'primarily a port development', its capacity to develop a subsidiary SRFI role may well be on a very substantial scale (as it would be subsidiary to the huge primary development). There are no planning barriers to the expansion of this facility on brownfield land within the catchment of the alternative sites search. Yet, its potential has simply not been explored by the appellant, as Mr Scanlon accepted in cross-examination. This is a fatal defect in the very special circumstances case advanced by the appellant in the present case. There has been a marked shift in circumstances pertaining to the critical part of the judgement reached in 2007. Para 21 of the appellant's opening statement⁷⁷ impliedly recognises that the question of alternatives is of game changing significance. It states '*If...there are no preferable alternative sites to meet the nationally-identified need outside the Green Belt....*'. However, in truth there is an alternative site, which has potential to function as a SRFI proximate to the London market and that avoids development on the Green Belt, whose potential has not been properly examined by the appellant.

7.2.14. Seventh, consent has now been granted for the Radlett facility⁷⁸.

7.2.15. Eighth, some weight was placed on the MoL's support for the facility in 2007⁷⁹. Given the importance of giving the strongest protection to London's Green Belt, the concerns about the effectiveness of the facility in delivering modal shift, the potential adverse impact on passenger services and the availability of an alternative facility on brownfield land; equivalent support in 2018 is not forthcoming. The MOL remains a strong advocate of appropriately located freight facilities and economic growth but considers that this proposal fails to pass the stringent criteria for justifying development on London's Green Belt.

7.3. **Application of Green Belt Policy**

7.3.1. As confirmed in cross-examination with Mr Scanlon, there is common ground in respect of much of the Green Belt analysis.

7.3.2. The proposed development constitutes inappropriate development in the Green Belt.

7.3.3. The proposed development would cause harm to the Green Belt by reason of its inappropriateness.

7.3.4. It would also result in substantial harm to the openness and character of the Green Belt given the scale of what is proposed⁸⁰. Mr Scott conceded the impacts in cross-examination and that the characterisation of the

⁷⁵ see CD/5.4 at para 12.107.

⁷⁶ CD/5.4 at 12.105.

⁷⁷ INQ/4

⁷⁸ CD/5.5.

⁷⁹ CD/5.2 at para 15.186.

⁸⁰ see Mr Ray's proof of evidence at paras 51-57 (GLA/NR/01).

development as huge/massive⁸¹ remained apt. This harm cannot be mitigated, as Mr Scott conceded in cross-examination and the landscape is not readily capable of absorbing change⁸². As Mr Mould's cross-examination of Mr Scott established, his evidence had paid insufficient regard to the sensitivity of the site as emphasised at the previous appeal⁸³.

The Inspector's observations last time that 'there is no doubt that the character of the landscape immediately about the appeals site would be significantly changed as a result of the development. Its flat, open expansive character would be lost and replaced with massive buildings, surrounded at the northern end of the site by substantial earthworks'⁸⁴ remains apt, as Mr Scott conceded in cross-examination.

- 7.3.5. There would be harm to the purposes of including land within the Green Belt.
- a. The proposal conflicts with the purpose of safeguarding the countryside from encroachment.
 - b. It would also contribute to urban sprawl and materially weaken the function that the Green Belt serves in maintaining separation between settlements. It would diminish the gap between Slade Green and Dartford albeit that a visual gap would remain⁸⁵. Mr Scott conceded that an already narrow gap would be further reduced (see his agreement in cross-examination that the characterisation of the gap as already narrow⁸⁶ remained correct and that the impact of the present proposal was equivalent to that identified by the Inspector at the last appeal). Mr Scott confirmed that the redefinition of the urban edge was a disadvantage. It does not need redefining. Thus the proposal would impact adversely on the key purpose of maintaining separation between settlements.
- 7.3.6. The appellant rightly concedes that there is substantial harm to the Green Belt⁸⁷.
- 7.3.7. It is common ground that it is necessary for the decision maker to weigh other harm against the proposal. The MOL has not advanced any positive case in respect of any specific other harm, as his concerns in respect of this proposal are strategic in nature. The Inspector and Secretary of State will need to take account of, in their assessment of the adverse impacts which flow from the development, the submissions made by DBC and the third party participants at the Inquiry.

⁸¹ CD/5.2 at 15.7.

⁸² see CD/5.2 at 15.12.

⁸³ see CD/5.2 at 15.12 and 15.157.

⁸⁴ CD/5.2 at 15.13.

⁸⁵ see the evidence of Mr Ray in GLA/NR/01 at paras 45-50.

⁸⁶ in CD/5.2 at 15.9.

⁸⁷ see APP/PLAN 1 at para 7.30.

7.4. **Whether very special circumstances exist**

7.4.1. The focus of the MOL's case to the Inquiry has been the issue of whether very special circumstances exist that clearly outweigh the harm to the Green Belt by reason of inappropriateness and all other harm.

Overview

7.4.2. It is common ground that the onus is on the Appellant to demonstrate that very special circumstances exist.

7.4.3. The shape of the appellant's very special circumstances case is apparent from para 7.85 of Mr Scanlon's proof of evidence⁸⁸. There are three planks to the argument advanced:

- First, the overriding need for SRFIs to serve London and the Southeast;
- Second, the absence of alternative sites; and,
- Third, economic and social benefits of the scheme.

7.4.4. The shape of the MOL's response is as follows.

7.4.5. As to need:

- a. There is an accepted need for a network of SRFIs;
- b. It is also right that there is an under-provision of SRFIs in proximity to the London market;
- c. However, the support for SRFIs is predicated on the premise that they will deliver modal shift;
- d. There are very real doubts as to whether this Howbury Park proposal will do so;
 - i. This is due to the constraints of rail access in its particular location and pathing difficulties.
 - ii. In so far as it identifies a market need for rail freight, the contentions of Mr Gallop amount to little more than Howbury Park should be allowed to 'find its market'. There is a lack of any credible evidence of market demand for the facility. There are risks attached to the claim that it will attract 71% of its traffic from domestic intermodal traffic given that growth in domestic intermodal has been slow (and dominated by Tesco).
 - iii. There are real risks in the bold proposition -upon which the appellant's case depends - that forecasts based on unconstrained demand will actually deliver a modal shift through the provision of this facility in this very constrained part of the rail network.

⁸⁸ APP/PLAN/1.

- iv. The proposed as configured would be well suited for use for road based vehicles.
 - e. The Appellant's case seductively seeks to downplay expectations as to how much tangible assurances can be expected at this stage. But unlike the East Midlands decision relied upon⁸⁹, this is a Green Belt case. The Inspector and Secretary of State are urged to examine in a discerning way what the evidence suggests as to how well this particular facility is equipped to deliver the modal shift benefits expected of SRFIs. The necessary foundations for being reasonably assured that this proposal will succeed as a SRFI do not exist in this instance. The MOL is concerned that there would be severe adverse consequences
 - i. Green Belt land would be permanently lost.
 - ii. The benefits of the predicted modal shift may not be delivered.
 - iii. Train paths might not materialise.
 - iv. If they do, passenger services might be adversely affected.
 - v. The Slade Green depot's operation may be adversely affected.
- 7.4.6. As to alternatives, the appellant's case has failed to engage with the potential of London Gateway to function as a SRFI to serve 'the arc around the south and east of London'⁹⁰. This is a fatal defect in its very special circumstances analysis.

- 7.4.7. As to other benefits, whilst potentially valuable, these are not sufficiently persuasive considerations to justify the loss of Green Belt land.

Policy need

- 7.4.8. As above, the policy position is that there is a need for a network of SRFI but no longer any quantified need for 3-4 facilities around London⁹¹. Under the NPSNN, SRFIs are supported because they deliver modal shift from road to rail. Planning policy requires that modal shift should be delivered and cautions that freight facilities should not have an adverse impact on passenger services.

Market need-reliance on growth in domestic intermodal traffic

- 7.4.9. The application for planning permission assumes that the rail freight traffic at the proposed facility would comprise approximately: 71% domestic intermodal; 10% maritime intermodal; 6% Channel Tunnel intermodal; and, 13% conventional ⁹².
- 7.4.10. Table 2 on p.17 of APP/RAIL/1 shows that domestic intermodal is only currently operating from DIRFT (East Midlands) and Mossend (Glasgow).

⁸⁹ CD/5.6.

⁹⁰ para 15.177 of CD/5.2.

⁹¹ CD/5.4 at 12.101.

⁹² see CD/1.25 at 4.7.16 and APP/RAIL/1 at para 4.6.8.

It can thus be seen that the tables on page 18 of APP/RAIL/1 show that growth in domestic intermodal traffic is currently static.

- 7.4.11. The claim made by Mr Scanlon at para 7.90 that there has been 'unprecedented growth in intermodal traffic' is not apt as an observation applied to domestic intermodal traffic, at which this proposal is mainly directed, as Mr Gallop eventually accepted in cross-examination. The growth in the broader intermodal sector is dominated by maritime intermodal traffic, trains originating from the UK's deep sea ports.
- 7.4.12. The scheme therefore relies upon growth in a sector which is currently underperforming.
- 7.4.13. The forecasted growth in domestic intermodal traffic referred to in the NPSNN is 12%/annum⁹³. However, the critical point is that this forecast is based on unconstrained growth. That is, *'freight demand is considered without addressing the ability of the rail network to cater for it'*⁹⁴.
- 7.4.14. The explanation advanced by the appellant is that the underperformance in domestic intermodal is due to a lack of facilities. This is effectively the adoption of the 'chicken and egg' analogy referred to by the previous Inspector⁹⁵, that is the lack of growth is attributable to the lack of facilities.
- 7.4.15. Whilst it is accepted that a lack of facilities may be part of the story, a more discerning analysis is required.
- 7.4.16. The ability of this facility to deliver modal shift to rail needs to be assessed in the real world where constraints exist. Network Rail's *Rail Freight Study 2013* at para 3.2 identified key constraints as including (a) conflict with passenger services; (b) pinch points on the network; (c) capacity on the network⁹⁶. Howbury Park is a location that suffers from a perfect storm of such constraints. Those constraints include the current level of network capacity and the constraints involved in entering and leaving the site (given the complexity involved in crossing Crayford Creek Junction). These are addressed in detail below and are a critical part of the MOL's concerns that this facility may not succeed in delivering a modal shift of freight to rail.
- 7.4.17. The evidence shows that the domestic intermodal traffic generated is very unevenly distributed. Tesco (in partnership with Stobart) have led the way⁹⁷. Excluding local authority waste services, the domestic intermodal traffic is almost entirely generated by Tesco. This is consistent with the figures showing the take up of rail by retailers in table 1 on p.16 of APP/RAIL/1.
- 7.4.18. There is no evidence that Tesco has expressed any interest in operating from or to Howbury Park. They are currently delivering rail freight to the east of London to Barking, Tilbury and Purfleet. It was accepted by

⁹³ see table 3 at p.21 of CD/2.2.

⁹⁴ CD/4.9 page 24.

⁹⁵ CD/5.2 at 15.102.

⁹⁶ see CD/4.9 at para 3.2.

⁹⁷ see p.7 of APP/RAIL/4.

Mr Gallop that the route to Howbury Park would be pathed on a different part of the London network. It could not therefore be an extension to any of the existing Tesco paths.

- 7.4.19. Other retailers have been slower adopters of rail than Tesco. We get a sense of why from Appendix I of APP/RAIL/2. The concerns recorded there are not just about a lack of facilities but emphasise (a) the need for flexibility; and, (b) a desire for rail freight to be cost competitive with road use (see for example Marks & Spencer: *'more flexible timetables for train departures'*, *'more government grants or support to make rail cheaper or cost neutral to road'*; Asda: *'more timely and versatile services'* and *'reduced cost of rail services to make it more competitive against road'*).
- 7.4.20. So the critical issues raised by potential customers include concerns about cost and the need for operational flexibility. The emphasis on operational flexibility chimes with the points made by Mr Goldney in para 6.18 of GLA/RG/01 (see *'disadvantages'*).
- 7.4.21. As discussed further below:
- a. This proposal performs badly so far as operational flexibility is concerned; and,
 - b. Rail does not currently compete with road in economic terms.
- 7.4.22. There is a complete absence of any evidence from any retailers that they would be committed to or even interested in operating from Howbury Park.
- 7.4.23. Paragraph 4.6.6 of APP/RAIL/1 identifies distribution facilities in reasonable proximity to Howbury Park operated by Asda, Ocado and Sainsbury's. Yet on the evidence, there is no support expressed by any of these retailers; or any other retailers or any retail trade representative organisation.
- 7.4.24. The evidence of support for the scheme put forward by the appellant is limited (see Appendices A-D of APP/RAIL/2).
- a. The letter from GB Railfreight⁹⁸ identifies a need to deliver close to London and confirms the importance of cost to customers.
 - b. The letter of support from Maritime Transport Limited (Appendix B) lacks any meaningful detail.
 - c. The same is also true of the letter of support from the campaigning representative body the Rail Freight Group (Appendix C). It flags up the support for the delivery by rail into central London. Yet there is nothing tangible at all to suggest that this would be a realistic proposition if Howbury Park became operational.
 - d. The appellant stresses the support of Viridor (Appendix D) but at the Inquiry it was clear that the way in which *'spare capacity'* could be utilised to *'carry [waste] materials as backload'* had not been explored at all. Mr Gallop confirmed that this would need to be to a

⁹⁸ APP/RAIL/2 appendix A.

port such as Felixstowe. Therefore, there is no indication on the evidence that this could assist in respect of the 71% of domestic intermodal traffic that the application is projected to cater for.

- 7.4.25. There is nothing tangible put forward by the Appellant as to where the demand for the facility would in practice come from. In evidence in chief (XC) Mr Gallop asserted that Howbury Park would 'find its market'.
- 7.4.26. Such optimism is a commendable quality to possess if, like Mr Gallop, your role is to be a champion of rail freight. However, when making critical land use decisions, which would involve the permanent loss of Green Belt land, the MOL submits that it is necessary to look more critically at what the evidence suggests.
- 7.4.27. That takes us back to the 2 issues flagged by the retailers namely cost and flexibility.

Market need-cost

- 7.4.28. As to cost, Mr Goldney puts forward an analysis of the relative cost of rail against road freight⁹⁹. He explains the relative lack of flexibility in rail use and the importance of grant support which is not guaranteed. He concludes that in financial terms rail is more expensive and less flexible than road. This was based on an assumption that a train could carry 37 containers. In light of Mr Gallop's evidence that, depending on the type of wagon used, a 560 metre train may comprise between 28 and 32 wagons (plus a locomotive)¹⁰⁰, the economic case for rail is even less compelling¹⁰¹.
- 7.4.29. The MOL supports the social and environmental benefits of transferring freight to rail. But at this stage of the analysis, the question is: what degree of assurance can the decision maker have that the modal shift will in fact be delivered if this facility (which is capable of being used by road only based operation) is opened? The lack of an economic case for rail (and the positive evidence that this is something which matters to retailers) weigh against the decision maker being satisfied that a modal shift will in fact be delivered.
- 7.4.30. The appellant's evidence is strangely silent on economics. Mr Gallop's rebuttal contains a single paragraph¹⁰². That asserts that the matter was discussed at the last appeal. When the cross reference to CD/5.2 at 15.121-2 is followed up that reveals the last Inspector took it on trust that there was 'credible research to establish the demand'. It is important however to remember that those forecasts look at 'unconstrained' demand. The delivery of modal shift in the present case begs the question whether there will in fact be take up of the facility by rail users. The evidence suggests that economics are part of the real world decision making of potential operators. Mr Goldney has explained in detail why he has concerns that the case for rail does not compete well with road in commercial terms. The appellant has not answered that case. Cost is a real

⁹⁹ see section 6 at p.56 of GLA/RG/1; as clarified in GLA/RG/6.

¹⁰⁰ INQ/72 para 2.1.6.

¹⁰¹ see GLA/RG/09 at para 1.1.4 as explained by Mr Goldney in his oral evidence on 17 September 2018.

¹⁰² see APP/RAIL/4 at 2.4.1 (p.21).

world constraint that will impact on the take up of the facility. There is much to lose if this facility does not deliver modal shift, such as the unjustified loss of Green Belt¹⁰³ and the adverse effects of additional trip generation if the predicted modal shift does not materialise.

Market need-flexibility

- 7.4.31. Then there is the issue of flexibility. The constraints on access/departing the site and the network constraints (see below) are factors which tend strongly against the facility providing the operational flexibility that potential operators would seek. There are also a series of constraints which tend against operational flexibility.
- a. The proposal is based around a single shared intermodal facility. No operator will be able to have exclusive control of its own operations. This contrasts with the position on the ground at DIRFT where Tesco have control of their own operations.
 - b. The apron size is fixed and comparatively small.
 - c. No reception sidings are proposed. The site does not have the ability to hold more than 2 trains at any given time (each of which would need to be split assuming that they are over 450m in length). As Mr Goldney put it, when reflecting on limited pathing opportunities from the site¹⁰⁴, departure and arrival slots have to be hardwired into the timetable.
 - d. The facility will have to operate with a peak hours cap on HGV movements applying to the whole of the site – permitting only 32 movements (for example. 16 movements in and 16 movements out) during the am peak¹⁰⁵. A booking system is proposed in the *Freight Management Plan*. This will impact on operational flexibility and will impact on early morning arrivals. For example, if it takes 5 hrs to unload a train, HGV movements associated with a train arriving in the early morning, at say 04:00 hrs, may conflict with the cap, as acknowledged by Mr Gallop in cross-examination. Furthermore, there is no precedent of a SRFI facility operating with a cap on HGV movements, as confirmed in cross-examination by Mr Findlay and Mr Gallop. The operational implications of this have not been thought through at all by the appellant. The evidence showed that there had been no joined up thinking about the operational implications of the HGV restrictions.
 - e. It is also contemplated that in the frequently occurring abnormal highway events, there may be the need to hold HGVs on site. Mr Findlay asserted the ability to hold over 100 HGVs on site. Yet it appeared that no operational consideration had been given as to how this might work. The illustrative plan of where such vehicles might be parked attached to APP/RAIL/7 at appendix D raised more questions

¹⁰³ see CD/5.2 at para 15.178.

¹⁰⁴ Examination in chief of Mr Goldney, 17 September 2018, with reference to INQ/2 and APP/RAIL/6 Appendix I- 'Mr Kapur's analysis'.

¹⁰⁵ see APP/TRAN/1 at 4.4.1.

than it answers. The small apron area is asserted to be the main area in which this emergency HGV holding can take place. Yet this will cut across the operations of loading and unloading trains which are going to be time critical given the assertions now advanced that this can be achieved in times faster than the 5 hours which Mr Goldney considers is realistic (see CD/1.25 at para 4.7.8 – rail report produced by Mr Gallop had indicated that full length trains would take up to 6 hours to process; GLA/RG/01 at pages 9-10 concurring that 5 hours is an appropriate estimate; yet now in APP/RAIL/6 at page 15 it is being asserted that trains can be processed in 4 hours¹⁰⁶). Mr Gallop's shifting position on the issue of unloading train times revealed how little thought has been given to the practicalities of unloading trains given the many and various constraints which apply at this site.

- 7.4.32. On 26 September 2018 INQ/106, a technical note on HGV parking, was submitted. This appears to be the document referred to in paragraph 14.5.5 of the TMP to support the position that 100 HGVs could be parked within the intermodal facility. Figure 4 on page 5 shows 100 spaces right in the centre of the apron. It is impossible to see how efficient operations could co-exist there. Analysis at paragraph 1.4.1 indicates that the experience relied upon was DIRFT, '*HGV drivers will tend to arrive close to the scheduled delivery or collection time for the trains and /or containers so as to avoid unproductive down time, with most inbound HGVs being processed in under 30 minutes*'. That is a long way away from what would be possible at the appeals site if the highway network is shut down. It shows a lack of joined up thinking regarding operational constraints. That matters as the evidence indicates that operational flexibility is critical to potential customers¹⁰⁷.
- 7.4.33. The upshot of this discussion is that the proposal is particularly unsuitable for providing the flexibility in operations which retailers have identified as a practical aspiration for shifting from road to rail.
- 7.4.34. The MOL is sceptical that this proposal will appeal to rail users in the manner claimed. As identified, it does not secure any level of rail use. It is suitable for 'road only' based operators. The MOL is accordingly concerned that it will not deliver the modal shift claimed. It also appears to be common ground that it will not achieve any significant modal shift of freight movements into central London by rail¹⁰⁸.
- 7.4.35. The submissions above have concentrated on the position in respect of domestic intermodal traffic as this makes up 71% of the projected traffic.

¹⁰⁶ INQ/54 para 3.3.4. (Inspector's note: This reference is associated with a 560 metre train (28 containers), whereas CD/1.25 para 4.7.8 relates to full-length trains of 775 metres taking 6 hrs. GLA/RG/01 estimate of 5 hrs is based on 37 containers and using his method of calculation, I calculate that 28 containers would equate to 4.4 hrs).

¹⁰⁷ Para 7.4.19.

¹⁰⁸ (Inspector's note: In cross-examination of Mr Gallop, it was put to him it is not part of the appellant's case that there would be a rail route from the appeals site onwards into London. He responded, with reference to page 29 of CD/1.25, that some conventional wagon and express freight traffic travels into London and, although it represents a small element of freight traffic, it could be considered in the future.)

However, the position in respect of potential Channel Tunnel traffic is that the route is unattractive¹⁰⁹.

- 7.4.36. The route to and from Southampton is also unattractive and would not support a daily cycle of more than 1 return journey in a 24 hour period¹¹⁰.

Rail access issues

- 7.4.37. The MoL's concerns that the proposed development would be ill equipped to deliver modal shift are heightened by the rail accessibility issues which have been canvassed in detail at the Inquiry.
- 7.4.38. The site is located in a particularly difficult location within the busy South London network. The local junction arrangements are complex. In effect 3 parallel lines interconnect adjacent to the proposed entrance to the facility. Pathing across South London is "very difficult" (as Mr Goldney explained) given congestion issues and junction constraints. Access into and out of site (which involves crossing multiple lines) is even more difficult and has not been adequately assessed by the Appellant (or Network Rail on the material that has been made available to the Inquiry).

Junction occupation whitespace requirements to access or depart from the site

- 7.4.39. The primary method of accessing/departing the site will use the Barnehurst branch¹¹¹. This involves crossing the up and down lines of the North Kent lines at Crayford Creek Junction¹¹².
- 7.4.40. Paragraph 5.4.6 of the Intermodality Rail Report, November 2015 (IRR), which was submitted in support of the planning applications and in relation to which Mr Gallop was the author¹¹³, recognises that 8-10 minutes of whitespace would be required in the working timetable for a train to arrive or depart from the site. This allowance includes the time taken for a 565 metre freight train (586 metre train including the locomotive) to cross the junctions (from the controlling signal west of Perry Street Fork Junction through to clearing the main line connection at Slade Green Depot) and appropriate headways.
- 7.4.41. Mr Goldney's analysis suggests that this figure may be an under-estimate to some extent (see (a) para 5.24 of GLA/RG/01 which suggested 11 minutes whitespace requirements for arriving trains and 11½ minutes whitespace requirements for departing trains and (b) his further analysis at GLA/RG/09 at 2.1.5 which indicates junctions crossing times of 7½ minutes inbound to which 5½ -6 minutes headway is added to make 12½-13 minutes whitespace requirement inbound and 4½ minutes outbound to which 5½-6 minutes headway is added to make a whitespace requirement of 11-11½ minutes for departing trains).

¹⁰⁹ see CD/1.25 at 4.6.7 and the observations of GLA/RG/01 at pp.51-3.

¹¹⁰ the test set for viability by GB Railfreight at App A of APP/RAIL/2; see RG's observations at p.8-9 of GLA/RG/04.

¹¹¹ see 5.4.5 of CD/1.25 and INQ/54 APP/RAIL/6 para 3.2.3.

¹¹² see the schematic diagrams at p.3 of GLA/RG/08-INQ/24.

¹¹³ CD/1.25 page 2 and confirmed in cross-examination of Mr Gallop.

- 7.4.42. For present purposes (as explored in cross-examination with Mr Gallop), let's leave those differences to one side and proceed on the basis that there is a degree of corroboration between the appellant's estimates in its IRR and Mr Goldney's analysis.
- 7.4.43. The Appellant technical rail evidence to the Inquiry has come forward in the following stages:
- a. Mr Gallop's Intermodality Rail Report, November 2015, which identified that 8-10 minutes of whitespace would be required in the working timetable for a train to arrive or depart from the site¹¹⁴.
 - b. Mr Gallop's proof of evidence¹¹⁵ was silent on technical access issues.
 - c. Mr Gallop's rebuttal¹¹⁶ – pages 17-19; responded to Mr Goldney's analysis by referring to the 1½ -6 minutes timings referred to by Network Rail (2.3.28 and 2.3.3) without acknowledging (a) that these figures exclude headways (as accepted in cross-examination by Mr Gallop) and (b) that the lower end of these figures is absurd – it assumes a junction speed of 25 mph. As Mr Goldney put it, 1½ minutes is an '*amazing thing for Network Rail to say*' (i.e. amazingly improbable, not least as it assumes a speed of 25 mph, notwithstanding that the track speed limits for trains crossing Crayford Creek Junction are 15-20 mph¹¹⁷).
 - d. APP/RAIL/5¹¹⁸ which was submitted by Mr Gallop to the Inquiry after Mr Goldney had given his evidence. It was abandoned shortly afterwards on the grounds that it was not accurate¹¹⁹.
 - e. APP/RAIL/6¹²⁰ paras 3.2.7-3.2.10, focussing only on the time needed to cross Crayford Creek Junction, estimated to be 2 minutes, and then adding headway/junction margins, indicated that 6-8 minutes of whitespace would be required. It also introduced for the first time a timetable analysis undertaken by Mr Kapur, Head of Capacity Planning at GB Railfreight, which purported to show how time within the timetable was available for crossing times (analysed by Mr Gallop in that document).
 - f. APP/RAIL/7 (September 2018) included some acknowledgement by Mr Gallop of the force of some points made by Mr Goldney in GLA/RG/09 in respect of junction crossing times for accessing and departing from the site. It suggested time required to cross Crayford Creek Junction would be: 2 minutes for inbound trains; and, 2.5

¹¹⁴ CD/1.25 para 5.4.6.

¹¹⁵ APP/RAIL/1.

¹¹⁶ APP/RAIL/4.

¹¹⁷ CD/1.25 figure 15 page 34.

¹¹⁸ INQ/41 submitted on 3 July 2018.

¹¹⁹ Mr Gallop's response to Inspector's question.

¹²⁰ INQ/54 submitted on 24 July 2018.

minutes for outbound trains¹²¹. It did not contain any reworking of the timetable analysis that had been undertaken by Mr Kapur.

- 7.4.44. The MOL does not challenge the skill and expertise of Mr Kapur in analysing the timetable to identify available slots. It is safe to proceed on the basis that the best available expert, Mr Kapur, has analysed the timetable to see what is possible in this congested part of the network. That said, Mr Kapur's analysis does come with a significant health warning that it does not catch scheduled movements to and from the depot, as Mr Gallop acknowledged in cross-examination. But for now let's leave that additional constraint on potential capacity to one side.
- 7.4.45. So to recap where we are:
- a. The appellant's analysis in its rail report¹²² suggests a whitespace requirement of 8-10 minutes to access or depart the site from the Barnehurst branch (the agreed main access/departure route);
 - b. The appellant has deployed the best available expert to interrogate the timetable to look at available whitespace to meet the requirements; and,
 - c. His work comes with the health warning that it does not catch movements into the depot which would be an additional constraint but we are leaving that additional constraint out of the equation for now.
- 7.4.46. So what does Mr Kapur's exercise show? Mr Kapur's results are at APP/RAIL/6 Appendix I¹²³. If we look at what available opportunities there are in the timetable for 8-10 of whitespace the answer is:
- a. For inbound trains the figure of 43 windows in para 3.3.3 reduces to 5 windows in the period analysed; and,
 - b. For outbound trains, the figure of 13 windows reduces to 1 (the 00.36½ slot).
- 7.4.47. Mr Gallop paired up arrival and departure opportunities shown in Appendix I, as a means of showing that it would be possible to route trains on and off the site¹²⁴. However, in light of the reduction in the number of windows identified above, none of the identified trains in appendix I work. Mr Gallop accepted that this is what the analysis shows in cross-examination. It demonstrates the correctness of Mr Goldney's conclusion at para 5.28 of GLA/RG/01 that there is no opportunity to depart a train during the day. This is also demonstrated when Mr Gallop's own latest analysis for departing trains (via Barnehurst) is considered. Between APP/RAIL/6 and APP/RAIL/7 his assessment of the time taken physically to cross the junction departing increased from 2 minutes to 2 minutes 42 seconds (as a

¹²¹ INQ/72 Para 2.2.28 (Inspector's note: application of junction margin or headway allowance would be dependent on the movement of trains immediately ahead or behind the Howbury Park train, INQ/54 paras 3.2.9-3.2.10).

¹²² CD/1.25 at para 5.4.6.

¹²³ as summarised in para 3.3.3 of APP/RAIL/6.

¹²⁴ INQ/54 para 3.3.4 and Appendix I.

result of taking on board an error in his analysis that had been identified by RG – see 2.2.4 of APP/RAIL/7; revised timing in APP/RAIL/7 appendix E). So his crossing time is 2:42 minutes to which headways have to be added. There is disagreement about whether it is legitimate to round the crossing time down to 2 ½ minutes and there is some debate about whether total headways should be 5 ½ minutes or 6 minutes (i.e. 3½ + 2 or 3½ + 2½). Let's assume both of those points in Mr Gallop's favour for now. That makes the whitespace requirement 8 minutes for departing trains (2 ½ + 5½ (3½ + 2) combined headways) (as put to him and accepted in cross-examination).

- 7.4.48. So back to Mr Kapur's analysis in Appendix I of APP/RAIL/6, the critical question is where are the opportunities to depart a train that needs 8 minutes whitespace? The answer is there are none during the day; just the solitary 0036½ train. Once again, this shows that Mr Goldney was correct in his assessment at para 5.28 of GLA/RG/01 that there are no opportunities to depart trains during the day.
- 7.4.49. Mr Gallop's claim in para 3.3.8 of APP/RAIL/6 that Mr Kapur's analysis shows that 'within less than half of a 24-hour period windows exist within the current timetable to allow multiple trains to get through the door to and from Howbury Park' is wrong in just about every way that it is possible to be wrong:
- a. First, as above, it does no such thing. In fact, it proves the MOL's case that it is not possible to depart trains; and,
 - b. Second, the reference to 'less than half of a 24-hour period' is very misleading in that:
 - i. As the footnote on page 17 of APP/RAIL/6 shows, it focussed on the available opportunities in the intra peak period (05:00-07:00; 09:30—14:30; 19:00-01:00). As Mr Gallop accepted in cross-examination, these are the key periods to focus enquires on.
 - ii. Second, Network Rail's recorded position is that 'we do not generally path freight trains across London during the morning or evening peaks'; p.24 (last paragraph) of CD/1.6.
 - iii. Third, Mr Kapur's exercise (Appendix I of APP/RAIL/6) did in fact straddle the whole peak period and some of the slots identified did cut into peak periods to a degree.
 - iv. Fourth, the decision to exclude opportunities from 0100-0500 reflects Network Rail's apparent concern about the conflict in this period with engineering works during the night time period (as indicated on p.4 of INQ/3 (second bullet point)); albeit that Mr Goldney considers that these restrictions are less significant in that they occur every third week¹²⁵.

¹²⁵ see para 5.68 of GLA/RG/01.

Pathing difficulties

- 7.4.50. There has been no attempt by the appellant to match up any analysis of the whitespace requirements for getting into/out of the site with the considerable difficulties in finding paths across the congested and complex route across London. The MoL's position is that Mr Goldney is correct to characterise the necessary exercise as being combining a very difficult thing (pathing across London) with an impossible thing (finding sufficient whitespace gaps to get into the site). There is also force in Mr Hobbs' more colourful assessment that: *'the stars would need to align in a particularly improbable way to get freight in'*.
- 7.4.51. The only Network Rail train pathing study before the Inquiry, which provides an indication of the basis for Network Rail's consultation responses, is INQ/3 – the draft Network Rail *GRIP 2 Report Part 2 – Timetable analysis*¹²⁶. This is a profoundly unsatisfactory document for a number of reasons:
- a. It is on its face a draft;
 - b. It is on its face incomplete. We have Part 2: Timetable analysis. Where is part 1? What does it say?;
 - c. GRIP (Governance for Railway Investment Projects) is Network Rail's internal project management process. Mr Gallop indicated in his evidence in chief that the purpose of Network Rail's GRIP 2 stage is to establish whether a feasible solution can be found. We found out in Mr Gallop's oral evidence (in answer to the Inspector's question) that the GRIP 2 process has not in fact been completed, but rather has been put on hold for now. He indicated that the basis of the appellant's service agreement with Network Rail was that Network Rail would complete a feasibility report, with the expectation of then continuing to GRIP 3 (option assessment). However, Mr Gallop's understanding is that Network Rail still has work left to do at GRIP 2 to finalise their thoughts and so the report provided is in draft, without the level of detail the appellant would have expected;
 - d. The report indicates that consideration has been given to the availability of train paths between the main stabling yard at Wembley and Crayford Creek Junction. However, the associated data sheets contained within the report indicate that the train length considered was 342 metres. Mr Goldney is and remains concerned that this study tested the wrong train length and therefore would not have picked up on junction occupation complications of pathing a 565 metre train on the network and the potential associated need for greater headway allowances. The explanation given orally by Mr Gallop, that the reference to a 342 metre train results from an automatically generated software output but that a 775 metre train was considered, is question begging. In email correspondence between Network Rail

¹²⁶ (Inspector's note: Mr Gallop has confirmed in oral evidence that this is the only GRIP study he has seen. For LBB, Mr Kiely confirmed that this was the GRIP report before LBB when it considered the planning application and is the document referred to in the INQ/25 emails between Network Rail and LBB.)

and LBB (Thomas Caine/Martin Able dated 23 November 2016 in INQ/25) reference is made to para 2.4 of the timetable study to back this up. No document supplied to the Inquiry matches that reference or explains the discrepancy in train length in a satisfactory way. This position has not changed following the production of an email from Mr Bates of Network Rail, dated 26 September 2018 (INQ/99);

- e. The study assumes the use of an uncharacteristically powerful and rarely used class 70 locomotive;
- f. The study only analyses the position to Crayford Creek Junction, as Mr Goldney put it 'to the door' of the site not 'through the door', clear of the main line¹²⁷. Mr Gallop accepted that this was so in cross-examination. Mr Gallop's contention that it would not be possible for the pathing software used by Network Rail to path trains through the door, due an absence of existing rail infrastructure within the appeals site, is not accepted. It could have been better pathed to an identified point in the Slade Green depot as a better proxy – see, for example, signalling point SGNT&RSMD (App B, p.8 of GAL/RG/02); and,
- g. The Wembley-Crayford Creek Junction study is critically dependant on routes via Hither Green (see para 5.64 of GLA/RG/01; this is especially an issue for all of the daytime arrival paths). The Hither Green path is not one which offers tenable access opportunities into the site¹²⁸. The severing in the study of the issue of pathing (solvable but very difficult) from whitespace requirements to access the site (impossible) means that this study does not accurately reflect the sum of the constraints that face the proposed facility.

Longer trains would lead to greater constraints

- 7.4.52. It is also appropriate to contemplate (as Mr Goldney explained in answer to the Inspector's questions on 17 September 2018) that the requirements for whitespace would increase if we contemplate the manoeuvre across Crayford Creek Junction of a 775 metre train.

Whether the ability to 'flex' provides reasonable assurance

- 7.4.53. The appellant's answer to the inability to get trains into and out of site and through London is that the timetable can be 'flexed'. It contends that any exercise based on the current timetable is of limited utility. What matters, it is said, is the availability of space in an as yet unplanned future timetable that cannot reasonably be anticipated at the present time. Seductively presented as it was, this claim needs to be treated with very great care.

¹²⁷ see p.6 of GLA/RG/06.

¹²⁸ (Inspector's note: Mr Goldney conceded in cross-examination that trains up to 700 metres in length could enter and leave the site from the south via Hither Green, making use of the Slade Green Depot carriage sidings and headshunt, although he had reservations about the potential impact on Depot operations. See INQ/14 and 24 for further details).

- 7.4.54. The reality is that the passenger timetable has shown enduring stability. Recent changes are the exception to a period of great stability¹²⁹. The recent changes associated with Thameslink altered the destinations of trains rather than their slots (e.g. Thameslink trains now running through to Rainham). The reality is that this is a heavily congested area of London – described by Mr Goldney in his oral evidence as ‘South London’s tube’. There is very little slack in the system throughout the day. As Mr Goldney explained in re-examination on 17 September 2018, there is inter-dependency of services based on ‘decades of refinement’. Furthermore, he maintained that the restrictions which exist in the current timetable are a good proxy for the constraints that will exist in any future timetable. The complexity of making alterations stems from very constrained junctions, rolling stock constraints, congestion at critical junctions (for example Lewisham) and the demands at the London termini. The time taken in manoeuvring a slow and long freight train across multiple junctions during the day creates the need for gaps in services which will disrupt the rhythm of the passenger timetable even if all goes well. Mr Reynolds’ analogy was with turning right across very busy traffic. It is very difficult. If things go wrong, then the delays that will ensue will be significant given the difficulties lack of flexibility in the network.
- 7.4.55. Mr Goldney’s clock face analysis¹³⁰ illustrates the timetabling difficulties. The key point is that the whitespace requirements to access/depart from the site would fill a significant portion of the time within a notional quarter hour of the timetable. The knock on effects of this will be that passenger services in the other three quarters of the timetable will become bunched up and irregular. As Mr Goldney explained, Mr Warren’s cross examination of this exercise was based on the incorrect premise that the unused capacity was available in a single block and so passenger services could be effortlessly shifted around. This was a flawed literal analysis of what was intended to be a notional representation of how significant the demands of the freight train on the timetable are in a part of the network characterised by: multiple recurring passenger services; critical junctions; and terminal constraints, such as platform availability and turnaround requirements at London termini. The implications of flexing and rescheduling to accommodate the required block of time needed to get into and out of the site would adversely affect the passenger services on which this part of London is critically dependent¹³¹.
- 7.4.56. No comfort can be drawn from the examples of Crossrail freight trains and the BP trains, which Mr Gallop relies upon. These are examples which are solely concerned with pathing not the combined difficulties of pathing and achieving a particularly difficult site access. The Crossrail trains benefited from an exceptional degree of political will that the project’s waste would be dealt with by rail. The BP trains have encountered very considerable pathing difficulties as Mr Goldney explained.

¹²⁹ As Mr Goldney explained in Re X on 17 September 2018 and also as emphasised by Mr Reynolds in his knowledgeable explanation of timetabling restrictions in the area.

¹³⁰ GLA/RG/09 at p.13.

¹³¹ see Mr Goldney’s conclusion at 2.3.11 to 2.3.13 of GLA/RG/09.

Interface with depot movements

- 7.4.57. There is also the critical issue of how the operation of the site would interface with the use of Slade Green depot. The Appellant refers to the fact that Southeastern's franchise is due to end soon. But this is a red herring. The depot is a critical facility to the network and can reasonably be expected to remain operation whoever is operating the franchise. The critical issue is the interaction of departures and arrivals with the much used headshunt. The issues raised by this are real. There is also evidence that Mr Goldney's concern regarding conflict with the depot are in fact shared by Southeastern as reflected in their email to Councillor Borella (INQ/58) which states: 'We explained that we use the head shunt 24/7 every day, and at least 6 times an hour and have made clear that the proposals would need to make provision for an additional head shunt'.
- 7.4.58. There is a considerable lack of clarity as to what Network Rail's position is in respect of the potential conflict between the depot and the proposal. Their comments to the LBB indicate that '*a design solution has been identified which would not only provide Howbury Park with a suitable main line access, but would equip Southeastern Trains (SET) with an enhanced 12-car headshunt siding, replacing the constrained 10-car siding currently operated and avoid any internal SET depot movements conflicts with those to and from Howbury Park*'¹³².
- 7.4.59. So what is this design solution and how will it be secured? Extraordinarily, nobody knows. Mr Gallop confirmed in cross-examination that he did not know. It was not even clear that Network Rail had done the work to convert the solution into a design.
- 7.4.60. Mr Gallop is left resorting to advancing a case which is based on a gloss on what Network Rail in fact say by claiming that this design solution is not a pre-requisite for the operation of Howbury Park but just a win/win 'synergy' identified by Network Rail. Unfortunately for the appellant, that is not what the evidence suggests. The evidence suggests that movements into and out of the depot are a very relevant constraint and that the potential conflict between the Howbury Park freight facility needs to be addressed and secured in order that the competing interests can be protected. Mr Goldney's opinion, as stated in re-examination¹³³, was that a second access would be required to resolve the conflict between appeals site and depot traffic.
- 7.4.61. The appellant's case to the Inquiry invites the Secretary of State and the Inspector to shut their eyes to this conflict and assume that it will all be resolved in a way that the planning system need not concern itself with.
- 7.4.62. The MOL invites the planning decision maker to adopt a more cautious approach. The stakes are too high on this part of the network to permit movements which could conflict with passenger services and/or disrupt a facility which provides essential facilities for passenger services.

¹³² see CD/1.6 at p.21.

¹³³ 20 July 2018.

- 7.4.63. As was apparent in the cross-examination of Mr Gallop by Mr Mould (on behalf of Dartford Borough Council), there is no clarity as to the project (i.e. its physical parameters) that Network Rail contend is a viable proposition. This is a manifestly unsatisfactory position for the Inquiry to be left in. That fundamental lack of clarity remains following the late introduction of Mr Bates' email dated 26 September 2018 (INQ/99).
- 7.4.64. The position in short is:
- a. We do not know what the 'project' is that Network Rail apparently support.
 - b. We have had no explanation of the basis on which they consider it to be a 'viable prospect'¹³⁴.
 - c. There is no indication that access issues into the site have been assessed by Network Rail on a tenable basis.
 - d. The draft timetable study (INQ/3) raises more questions than it answers. It is critically dependent on pathing via Hither Green (which is not a realistic proposition given the access constraints involved in accessing that path)¹³⁵.
 - e. There can be no comfort that the conflict with the depot will be resolved unless and until the design solution is articulated and secured. This remains the case following the late introduction of Mr Bates' email dated 26 September 2018 (INQ/99).
 - f. The stakes are high. If things go wrong there will be severe and detrimental impact on passenger services which are critical to this part of London and expressly protected in the MoL's guidance as referred to above.

Differences of detail

- 7.4.65. The MoL's concerns as expressed above exist even if the points of detail on access timing that were canvassed between Mr Gallop and Mr Goldney are assumed in Mr Gallop's favour. That said, Mr Goldney's analysis of the times to access the site are to be preferred. The material differences are identified at para 2.1.2 of GLA/RG/09 and were explained by Mr Goldney in his oral evidence on 17 September 2018. The points of difference are:
- a. It is a more robust assumption to plan on the basis that arriving freight trains may need to accelerate from a stationary position at the preceding signal.
 - b. Mr Gallop's acceleration assumptions are unsafe as they are based on the use of a class 70 locomotive which is atypical for freight. He accepted that there are over 500 class 66 locomotives in use and only 17 (out of an existing stock of 27) class 70 locomotives¹³⁶.

¹³⁴ see Mr Mould's XX of Mr Gallop in respect of the quotation on p.54 of Mr Gallop's proof of evidence (APP/RAIL/1).

¹³⁵ See footnote to para 7.4.51g.

¹³⁶ see third bullet point on p.5 of GLA/RG/09 – figures accepted by Mr Gallop in XX.

To base acceleration assumptions on a class 70 locomotive as Mr Gallop has done is unsound and does not represent '*a suitably representative train accelerating from a static position*', his own test¹³⁷.

- c. Mr Goldney's approach to driver behaviour when braking is more realistic than the sudden braking assumed by Mr Gallop.
 - d. Mr Goldney's assumption as to the speed at which in practice a train could be reversed (i.e. at a modest walking pace; not at 5mph) is more prudent.
 - e. Given the complexities of the manoeuvres required, Mr Goldney's suggestion of 10% contingency is prudent. It is wrong to assert, as Mr Gallop does, that this involves double counting of time covered by the headway allowance.
- 7.4.66. These detailed points suggest that the time required to get into and out of the site will be greater than has been assumed in above submissions.

Whether modal shift will be delivered

- 7.4.67. Drawing the above threads together, the MOL has very real concerns that the proposal will not deliver modal shift. The factors which influence this concern are:
- a. Unlike the position in 2007, the proposal is configured in a way that makes it perfectly suitable for entirely road based traffic.
 - b. The proposal assumes take up from domestic intermodal – a sector which is currently underperforming.
 - c. There is no tangible evidence of market demand.
 - d. The evidence suggests that rail remains more expensive than road freight.
 - e. In operational terms, the multiuser intermodal facility is unlikely to provide the flexibility that retailers identify they seek.
 - f. This lack of flexibility is compounded by the highway constraints which impose operational restrictions which are unprecedented for SRFIs.
 - g. Rail access for a freight train into and out of the site is impossible on the current timetable.
 - h. Pathing across London is very difficult and we do not have an equivalent level of assurance to that which existed last time when Network Rail had effectively guaranteed 3 paths.
 - i. No attempt has been made to assess access difficulties and pathing difficulties together (other than by Mr Goldney who opines that it

¹³⁷ APP/RAIL/6 page12 (second bullet point).

seeks to combine an impossible thing with a *'really really difficult thing'*).

- j. Given the intensity of passenger services, there is not a sufficient level of assurance that timetables can be flexed to secure that the facility will be operational without adversely affecting passenger services. The constraints of the current timetable are a realistic proxy for what can be expected in the future¹³⁸.
- k. Network Rail's support for the project gives rise to many questions and no answers.
- l. There is a real danger of conflict with the depot.
- m. The proposal for which planning permission is sought does not secure any level of rail use or the design solution that Network Rail apparently thinks will avoid conflict with the depot.

Alternatives

- 7.4.68. At the last Inquiry, the Inspector concluded that there were no alternative sites for a SRFI 'in the arc around south and east London'¹³⁹.
- 7.4.69. The detail of the search area associated with the current appeals proposal is set out in CD/1.26 and assesses the same area as was considered on the last occasion¹⁴⁰. The Transport Assessment¹⁴¹ makes clear that the same wide area has been assumed as constituting the *'market area'*. The majority of HGV vehicles serving this market are assumed to travel to and from destinations north of the Dartford Crossing¹⁴². That this was so was confirmed in cross-examination by Mr Findlay, Mr Gallop and Mr Scanlon.
- 7.4.70. The Appellant's case that very special circumstances exist to outweigh the harm to the Green Belt and other harm has been formulated on the assertion that (like last time) no alternatives exist within the catchment area assessed¹⁴³.
- 7.4.71. Mr Scanlon purported to examine whether there is any alternative site within the catchment with the *'realistic potential to function as a SRFI'*¹⁴⁴.
- 7.4.72. The MOL agrees that this is the relevant question to ask when the loss of the Green Belt is at stake. Very special circumstances are unlikely to exist unless it can be demonstrated that alternatives have been properly explored before being discounted.

¹³⁸ Re-examination of Mr Goldney 17 September 2018.

¹³⁹ CD/5.2 at 15.177.

¹⁴⁰ as confirmed in para 7.151 of Mr Scanlon's proof of evidence APP/PLAN/1.

¹⁴¹ CD/1.27.

¹⁴² CD/1.27 see p.64 of the Transport Assessment; appendix E1 to the Environmental Statement.

¹⁴³ see paras 2.6, 2.8, 7.3, 7.24, 7.85 and 7.154 of APP/PLAN/1 and CD/1.27 Volume 1-Non-Technical Summary para 3.13 *'The Howbury Park site has been identified as the only site within the catchment that has the potential to operate as an SRFI.'*

¹⁴⁴ see para 7.154 of APP/PLAN/1.

- 7.4.73. However, it became clear beyond any doubt that the appellant's alternatives sites evaluation failed to examine the potential of London Gateway to function as a SRFI within the catchment area to serve the London market. This was effectively conceded by Mr Scanlon in cross-examination.
- 7.4.74. In the Colnbrook SRFI decision¹⁴⁵, the Inspector found:
- a. London Gateway is capable of fulfilling a SRFI role¹⁴⁶.
 - b. It was proximate to the London market¹⁴⁷.
 - c. There was an uneven distribution of potential SRFI sites around London; with the deficiency being to the west of London; not the east¹⁴⁸.
- 7.4.75. Although the Colnbrook Inspector regarded London Gateway as '*primarily a port development*' and described the capacity to develop a '*subsidiary SRFI*'; she was using the term subsidiary by comparison with the huge primary size of the port. She was not in any way suggesting that the potential for London Gateway as a SRFI was subsidiary to or less than Howbury Park (as Mr Scanlon accepted in cross-examination).
- 7.4.76. The clear position is that London Gateway has realistic potential to function as a SRFI. Given this, it is clear that the only case advanced on alternatives in the appellant's written evidence, that there are no alternatives sites within the catchment with realistic potential to function as a SRFI, collapses. The appellant was left in the uncomfortable position of having to formulate an entirely new position on alternatives in its oral evidence by asserting that there is room for both sites to co-exist and be complementary to each other. However, that case is unpersuasive given that the appellant has closed its eyes to the potential of London Gateway rather than fairly examined it.
- 7.4.77. The scale of the potential of London Gateway is apparent from the agreed statement in respect of London Gateway (INQ/39). There is strong policy support for the development of a SRFI at London Gateway¹⁴⁹. The potential exists within the port (where the rail head is already operation) and within the area outside the ports parameters where the construction of a common user siding is already permitted¹⁵⁰. It will be required to be provided when the floorspace exceeds 400,000 m² of development¹⁵¹. The overall scheme of London Gateway is encapsulated in the description of 'London Gateway Rail Services' set out on the second page of INQ/39 as follows:

'The intermodal rail terminals will serve the Port, while a Common User Siding (CUS) will be built on the eastern side of the Logistics Park.

¹⁴⁵ CD/5.4.

¹⁴⁶ CD/5.4 at 12.107; and for more detail of the basis on why this is so see CD/5.4 at 8.40.

¹⁴⁷ CD/5.4 at 12.105.

¹⁴⁸ CD/5.4 at 12.107.

¹⁴⁹ see p.1 of the INQ/39 and also CD/1.26 at 5.15

¹⁵⁰ see appendix 7 of INQ/39.

¹⁵¹ see fourth bullet point on p.2 of INQ/39.

Additionally building plots to the south of Logistics Park shall incorporate directly served rail sidings. The aim of these rail facilities will be to provide efficient movement of goods between the Port or Logistics Park and other rail freight centres within the UK. The rail terminals in the Port will primarily handle deepsea containers' (emphasis added)

- 7.4.78. The potential of this permitted floorspace is considerable as Mr Birch explained in his evidence (and see GLA/IB/01 at para 44).
- 7.4.79. Mr Scanlon accepted (in cross-examination) that there are no planning obstacles to the delivery of the rail facility on the logistics park.
- 7.4.80. London Gateway is a brownfield site. No loss of the Green Belt is required for it to achieve the potential set out in INQ/39.
- 7.4.81. There are indications as explained by Mr Birch that London Gateway (as its name suggests!) is seeking to compete with the East Midlands facility and marketing itself as the gateway to London (as Mr Goldney explained).
- 7.4.82. It was conceded by Mr Gallop and Mr Scanlon that there was no prospect of direct trains to Howbury Park from London Gateway. The route across London from the East Midlands (or other potential facilities north of London) is fundamentally different. To that extent, it is clear that the facility would be a rival serving the market to the east of London rather than a facility which would provide opportunities from linked trips. As Mr Birch put it, London Gateway and Howbury Park would broadly serve the same sector of London albeit on different sides of the river.
- 7.4.83. It was conceded by Mr Findlay and Mr Scanlon that the opening of the Lower Thames Crossing would make the road connections of London Gateway to destinations south of the Thames easier by road.
- 7.4.84. The evidence suggests that the rail links (a) from London Gateway to the East Midlands (and beyond) and (b) for crossing London are much easier than that which would exist from Howbury Park. They were described as 'night and day' by Mr Birch in his oral evidence. The superiority of the rail links to and from London Gateway when compared to Howbury Park was also stressed by Mr Goldney. The network serving London Gateway has also been earmarked by Network Rail for further capacity upgrades¹⁵². This is significant given the emphasis in the Colnbrook's Inspector's analysis on the quality of provision¹⁵³. The superiority of London Gateway's rail access was stressed by Mr Birch in his oral evidence (and see GLA/IB/01 at para 46).
- 7.4.85. Rather than acknowledge this considerable potential to operate as a SRFI, the appellant's evidence was as follows:

¹⁵² see CD/4.11 at table 1, p.5; p.28 (note at end of table), p.41 (Gospel Oak to Barking extension), p.46 (cross London flows) and p.71 (cross London freight flows – a plan which confirms how much easier the route across London is and that it has been earmarked for further upgrades) .

¹⁵³ see CD/5.4 at 12.92 on the quality of SRFI provision and in NSPNN on the need for 'effective connections' by rail – see CD/2.2 at 2.56.

- a. In his rebuttal Mr Gallop asserted that alternatives had been addressed at the last appeal¹⁵⁴. As Mr Gallop accepted in cross-examination, that is factually wrong. The potential of London Gateway as a SRFI was not analysed at the last Inquiry because the alternative sites assessment discounted it for the reasons which are clearly set out at CD/1.26 at p52 (see section entitled '*previous supplementary ASA (2006) conclusion*'). There has been a significant change of circumstances which Mr Gallop has not sufficiently acknowledged in his written evidence. The same mistake is made in the appellant's opening statement to the Inquiry which asserts wrongly that 'nothing material has changed' in respect of alternatives since 2007¹⁵⁵.
 - b. As above, Mr Scanlon discounted the 'realistic potential' of London Gateway to 'function as a SRFI' rather than fairly analyse it in his written evidence¹⁵⁶.
- 7.4.86. The flaw in the appellant's thinking can be traced back to CD/1.26 at page 21. The analysis there focuses on the fact that the primary function of London Gateway is as a container port and draws upon the recognition in para 2.48 of the NPSNN¹⁵⁷ that London Gateway will '*increase the need for SRFI development*'. The appellant's focus on this contribution that London Gateway might make to the need for a wider network of SRFIs across the country misses the critical point for present purposes that the SRFI function proximate to the London market represents an alternative within the catchment that needs to be considered in the evaluation of whether the need case for a facility in the Green Belt at Howbury Park is sufficiently compelling. In cross-examination, Mr Scanlon fairly accepted that page 21 of CD/1.26 failed to address the potential of an SRFI at London Gateway to compete with Howbury Park. As Mr Birch explained¹⁵⁸, the key issue is the implications for local need of '800,000 m²' of rail connected warehousing. That question has been ignored rather than addressed by the appellant.
- 7.4.87. In summary in respect of alternatives:
- a. The position is markedly different at this Inquiry than it was in 2007.
 - b. The appellant's analysis completely fails to acknowledge that difference.
 - c. London Gateway plainly has potential to function as a SRFI within the catchment for alternatives and proximate to the London market.
 - d. It offers some significant advantages over Howbury Park given that it does not involve any loss of the Green Belt and its rail links are superior to Howbury Park in terms of access into the facility and pathing across London.

¹⁵⁴ see 2.5.1, 2.5.6 and 3.3.1 of APP/RAIL/4.

¹⁵⁵ see INQ/4 at para 9.

¹⁵⁶ see APP/PLAN/1 at 7.154.

¹⁵⁷ CD/2.2.

¹⁵⁸ GLA/IB/01 paras 44 and 54.

Other benefits

7.4.88. The third plank of the appellant's case identifies socio-economic and ecological benefits of the scheme. The MOL would welcome the delivery of such benefits if the price for their delivery was not the loss of Green Belt land which needs to be given the 'strongest protection'. As Mr Bell put it, care must be given in weighing 'generic benefits of any large scale development' in the Green Belt balance, if the Green Belt is to be given meaningful protection. Like the Inspector and Secretary of State's approach at the last appeal, it is submitted that these benefits ought not to weigh heavily as very special circumstances. In respect of the ecological benefits, these are essentially expectations of the relevant Development Plan policies, as established by Mr Mould's cross-examination of Mr Goodwin. The economic aspirations of the *Bexley Riverside Opportunity Area* and the *Bexley Core Strategy, 2012* can and should be delivered without development on Green Belt land.

7.5. Overview and conclusions

7.5.1. London's Green Belt requires the strongest protection.

7.5.2. This proposal is inappropriate development which causes substantial harm to the Green Belt.

7.5.3. The need for an expanded network of SRFIs is acknowledged. However, there is no specific quantified need. There are reasons to doubt how attractive this facility will be given the poor rail links. As designed it will be attractive to road users and the MOL has very real concerns that it may not deliver modal shift to rail. The MOL is also very concerned that the proposal may adversely affect passenger services which are critical to London's economy.

7.5.4. The very special circumstances case advanced by the Appellant asserts that there is no alternative. This is manifestly incorrect. The potential of London Gateway to function as a SRFI serving the market has been wrongly ignored. This should be fatal to the proposition that the loss of Green Belt land is justified.

7.5.5. The other claimed benefits do not justify the permanent loss of Green Belt land.

7.5.6. The proposal is contrary to the development plan given its conflict with Green Belt policy and failure to adhere to the expectations for SRFI developments in Policy 6.15 of the *London Plan*.

7.5.7. The MOL invites the Secretary of State to protect London's Green Belt and reject the proposed development.

8. THE CASE FOR DARTFORD BOROUGH COUNCIL (DBC)

8.1. Background

- 8.1.1. The starting point is the common acceptance by all parties that the proposed development would constitute inappropriate development in the Green Belt. In order to succeed on appeal and to secure planning permission, the appellant is accordingly required to demonstrate that there are very special circumstances that clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm and so justify the grant of planning permission.
- 8.1.2. This core policy for the control of development within the Green Belt is consistent across all levels of policy including in the *revised National Planning Policy Framework, 2018* (revised Framework) and the statutory Development Plan. See paragraphs 143/144 of the revised Framework, Policy CS13 of the Dartford Core Strategy 2011(DCS)¹⁵⁹ and Policy DP22 of the DBC Development Policies Plan 2017 (DDPP)¹⁶⁰. Policy DP22 states that the assessment of any other harm to the Green Belt will use a number of criteria, including '(b) the impact of an increase in activity and disturbance resulting from the development, both on and off the site, including traffic movement and parking, light pollution and noise'; and '(d) the impact on visual amenity or character taking into account the extent of screening required'. It is agreed that these assessment criteria also embrace the impact of the proposed development on air quality¹⁶¹.
- 8.1.3. It is common ground that the core policy for the control of development within the Green Belt is not qualified in its application to proposals for SRFIs. See paragraphs 5.172 and 5.178 of the NPSNN¹⁶², which assert the special protection given to Green Belt land notwithstanding that promoters of SRFIs may find that the only viable sites for meeting the need for regional SRFIs are on Green Belt land¹⁶³. It is common ground that the NPSNN is a material consideration in these appeals.
- 8.1.4. Paragraphs 2.53 to 2.58 of the NPSNN state the Government's current policy for addressing the need for SRFIs. At the national level of assessment, paragraph 2.56 of the NPSNN identifies a compelling need for an expanded network of SRFIs. Paragraph 2.58 of the NPSNN states that there is a particular challenge in expanding rail freight interchanges serving London and the South East. It is meeting that challenge that we understand to lie at the heart of the appellant's case for very special circumstances justifying the grant of planning permission in these appeals.
- 8.1.5. Conversely, there is no current development plan policy that identifies a need for SRFI development in Dartford. It is not in dispute that the Dartford Core Strategy 2011 provides for the growth of the key logistics, transport and distribution sector in Dartford as part of the spatial pattern

¹⁵⁹ CD3.17 p.66

¹⁶⁰ CD3.18 p.103

¹⁶¹ Xx Scanlon

¹⁶² CD2.2

¹⁶³ Ibid. paragraph 5.172

of development identified in policy CS1¹⁶⁴. Policy CS8 and paragraph 3.13 of the Core Strategy provide for economic change in this key sector within the priority area focus set by policy CS1¹⁶⁵. There is no suggestion that Green Belt release may be contemplated to meet Dartford's needs in this sector of employment development. Nor does the appellant assert that the proposed development would meet any identified local need in Dartford for employment development.

- 8.1.6. It is also notable that the appeal is not supported by any attempt to quantify the likely level of need or take up of the facilities contemplated by the appeals scheme's illustrative masterplan. There is no economic forecast in evidence which seeks to analyse and demonstrate a site specific need case. Mr Gallop, in oral evidence in chief, offered the expectation that 'no doubt Howbury Park will find its market'. The appellant's case is thus founded essentially upon the policy support for expanded SRFI provision stated in paragraphs 2.53 to 2.58 of the NPS.
- 8.1.7. Planning permission was granted on appeal for the development of a SRFI at the appeals site in December 2007¹⁶⁶. In his report¹⁶⁷, the inspector stated his 'firm view' that the 'only factor of any significant weight in favour of granting the proposal stems from the Government's policy desire to increase the proportion of freight carried by rail'¹⁶⁸. He concluded¹⁶⁹ that the ability of the then proposal to meet part of London's need for three or four SRFIs was 'the only consideration of significance', it being accepted that 'if planning permission is not granted for this proposal, the evidence is that there is no other site to the south and east of London that could meet the need...a material consideration of very considerable weight and one which...constitutes very special circumstances that clearly outweigh the harm to the Green Belt and all other harm that I have identified'. The Secretary of State agreed with that analysis¹⁷⁰.
- 8.1.8. That was how the 'difficult' balance¹⁷¹ was drawn in favour of granting planning permission in the circumstances that existed in 2007. It is DBC's submission that the balance has swung, and swung clearly, against the grant of planning permission in 2018. In summary:
- a) The presumption remains strongly against inappropriate development in the Green Belt both under the revised Framework, the NPSNN notwithstanding the SRFI challenge in London and the Southeast (paragraph 2.58) and the Development Plan;
 - b) The harm caused by the proposed development to the openness and purposes of the Green Belt remains as extensive as was the case in 2007. The appeals scheme would be a massive development encroaching into the open countryside in an area of Green Belt that is

¹⁶⁴ CD3.17 page 24

¹⁶⁵ CD3.17 pages 53/54.

¹⁶⁶ CD5.3

¹⁶⁷ CD5.2

¹⁶⁸ CD5.2 paragraph 15.173

¹⁶⁹ Ibid paragraph 15.185

¹⁷⁰ CD5.3 paragraph 31

¹⁷¹ CD5.2 paragraph 15.183; CD/5.3 paragraph 31

sensitive to change and would materially weaken the separation between Slade Green/Bexley and Dartford. It would have substantial impacts on the openness of the Green Belt that cannot be mitigated¹⁷²;

- c) The impact of the appeals scheme on the landscape and its visual impact would be at least as harmful as was the case in 2007. Although the proposed design of the development has changed and notwithstanding the proposed mitigation, the landscape and visual impact would remain¹⁷³, particularly as it affects views from locations within Dartford to the south and east;
- d) The 'other harm' caused by the appeals scheme is no longer confined, as it was in 2007, to the landscape and visual impacts of the proposed development¹⁷⁴. In 2018, evaluation of the local impact of the proposed development must also weigh in the balance the considerable potential for operation of the SRFI to exacerbate existing congested conditions on the highway network in the locality of the appeals site and through Dartford Town Centre. Added to that, the concomitant potential of the operation of the SRFI to contribute to worsening air quality due to the congested highway network in the locality of the appeals site. Neither of these impacts were a cause for concern for DBC in 2007¹⁷⁵. They lie at the heart of the evidence presented by DBC to this Inquiry in support of its case against the proposed development in 2018¹⁷⁶;
- e) On the 'positive' side of the balance, policy no longer supports a quantified need for three or four SRFIs to serve London and the South East. The NPSNN now articulates a compelling need nationally for 'an expanded network of SRFIs'¹⁷⁷ and a particular challenge in expanding RFI's serving London and the South East¹⁷⁸;
- f) Since 2007, Radlett has achieved planning consent (CD5.5). In 2016, the SIFE proposal at Colnbrook was refused planning consent (CD5.4). In her report on the SIFE proposal, the Inspector succinctly articulated the way in which national policy has moved on since the publication of the NPSNN in 2014¹⁷⁹. In particular, she states that *'the attention is on quality of provision, not necessarily maximising the number [of] schemes'*. She adds that the rail freight forecasts in the NPSNN alone¹⁸⁰ *'do not provide sufficient fine grain detail to allow site specific need cases to be identified'*;

¹⁷² Scott XX, agreeing that the conclusions drawn by the Inspector in 2007 (CD5.2 paragraphs 15.5 to 15.9, 15.156 and 15.170) apply to the appeals scheme

¹⁷³ Scott XX agreeing that conclusions drawn by the Inspector in 2007 (CD5.2 paragraphs 15.12 to 15.21, 156-160 and 15.170) apply to the appeals scheme.

¹⁷⁴ CD5.2 paragraph 15.170

¹⁷⁵ CD5.2 paragraphs 15.30 and 15.52

¹⁷⁶ Peter Caneparo – highways – DBC/W2/1; Richard Maggs – air quality – DBC/W3/1

¹⁷⁷ CD2.2 paragraph 2.56

¹⁷⁸ CD2.2 paragraph 2.58

¹⁷⁹ CD5.4 inspector's report paragraphs 12.91-12.92

¹⁸⁰ CD2.2 paragraph 2.50 table 3

- g) A central qualitative requirement of a SRFI proposal is the need for 'effective connections' for road and rail, which is said in paragraph 2.56 of the NPSNN to be a limiting factor in the identification of viable alternative sites. See also paragraph 4.85 of the NPSNN, which states that '*adequate links to the rail and road networks are essential*'. This cuts both ways: the more constrained the road and/or rail connections to the posited site, the greater the significance of an alternative location which is seen to have the realistic potential to function as a SRFI;
- h) DBC's principal local objection to the appeals scheme is the fact that the proposed road connections to the facility, albeit forming part of the primary route network, are in fact already prone to frequent disruption which results in serious and prolonged traffic congestion and delays in Dartford Town Centre. That is an existing situation that the introduction of the substantial levels of SRFI traffic is likely to exacerbate, by encouraging more drivers to reassign or divert away from the primary route network and onto local roads through the Town Centre, an effect that cannot be fully mitigated. That, in a nutshell, is the advice that DBC has received from the local highway authority, Kent County Council¹⁸¹. Following cross-examination of Mr Findlay, we do not understand the reliability of KCC's assessment to be in serious dispute. Both KCC and Highways England see the solution to the root cause of the problem, i.e. the frequent breakdown of the Dartford Crossing, the A282 and the build-up of traffic on the surrounding roads, to lie in the provision of a new Thames Crossing to provide a substantial additional slug of strategic road space – the Lower Thames Crossing ('LTC'). Interventions designed to improve the performance of the existing road network, junctions 1A and 1B as well as the Crossing Approach, are judged to have been of only limited value. Furthermore, future planned interventions there are likely to only be able to smooth flows for existing traffic, as opposed to building in any significant new capacity to cater for future growth/demand. Yet were the LTC to come to fruition in future years, it would appear to offer the prospect of benefits to road users, including HGV traffic, on both sides of the River across the arc around the south and east of London;
- i) In 2007, there was no dispute that, Barking not being a realistic candidate for a SRFI, there were no viable alternative sites for SRFI development in the arc around south and east London – a matter to which the inspector and the Secretary of State attached considerable weight¹⁸². In 2018, the evidence before this Inquiry points to the opposite conclusion. This issue is central to the GLA's case, but it is no longer in dispute in evidence that London Gateway does now have the 'realistic potential' to function as a SRFI¹⁸³. Moreover, the realistic potential of London Gateway for domestic intermodal SRFI

¹⁸¹ DBC/W2/2 Appendix PC1 pages 11-13

¹⁸² CD/5.2 paragraph 15.177; CD/5.3 paragraph 22

¹⁸³ Scanlon APP/PLAN/1 paragraph 7.154 states the test and he agreed in XX (GLA) that London Gateway fulfils that test

development (the principal market for the operation of the appeals scheme advocated by Mr Gallop¹⁸⁴), is as least implicitly recognised in paragraph 2.48 of the NPS. In 2016, the SIFE/Colnbrook inspector recognised that realistic potential in the context of the NPS¹⁸⁵. The current planning policy position lends clear support to the conclusion that London Gateway has the credentials for such SRFI development¹⁸⁶; and,

- j) The presence or absence of a viable alternative site to meet the challenge of SRFI provision to the south and east of London remains as much a 'material consideration of very considerable weight' to the merits of the development of the appeals site for a SRFI as was the case in 2007¹⁸⁷. That is because the force of Green Belt policy is undiminished; and the weight to be given to the appeals site's ability to contribute towards the challenge of meeting London and the South East's need for expanded SRFI capacity must plainly be measured against the existence of another realistic potential source of supply, which would avoid the otherwise inescapable and considerable harm that results from the appeals scheme. Having heard the evidence before the Inquiry, DBC submits that London Gateway appears to have the realistic potential to fulfil that role.

8.1.9. It is essentially for these reasons that we invite the Secretary of State to draw the balance against the grant of planning permission in the present appeals: that which was, on balance, justified in 2007 is no longer justified in 2018. The strong and enduring protection vouchsafed to the Green Belt in the revised Framework, the NPSNN and the Development Plan ought now to prevail.

8.1.10. We now turn in a little more detail to summarise the position, in light of the evidence heard at the Inquiry, on the four matters that we identified in opening DBC's case on the appeal:

- a) The impact of the appeals scheme on the Green Belt;
- b) The impact of the appeals scheme on the local road network;
- c) The impact on the appeals scheme on local air quality; and,
- d) Whether the evidence put forward by the appellant justifies its contention that very special circumstances exist, which clearly outweigh the harm to the Green Belt by reason of inappropriateness and other harm (including traffic and air quality impacts) so as to justify the grant of planning permission for the appeals scheme.

¹⁸⁴ Gallop APP/RAIL/1 paragraphs 2.2.17-18 and 5.2.12; and XX (DBC)

¹⁸⁵ CD5.4 paragraph 12.105

¹⁸⁶ INQ 39 – Agreed statement

¹⁸⁷ CD5.2 paragraph 15.185

8.2. The Impact on the Green Belt

- 8.2.1. Paragraph 133 of the NPPF states that 'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.'
- 8.2.2. Paragraph 134 of the revised Framework identifies the five purposes served by the Green Belt:
- a) *To check the unrestricted sprawl of large built-up areas;*
 - b) *To prevent neighbouring towns merging into one another;*
 - c) *To assist in safeguarding the countryside from encroachment;*
 - d) *To preserve the setting and special character of historic towns; and,*
 - e) *To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*
- 8.2.3. Revised Framework policy is reflected in DDPP Policy DP22 on Green Belt. Policy CS13 of the DCS also seeks to protect the Green Belt and notes that with the significant growth in population expected through planned development, there will be an increased demand for open space.
- 8.2.4. It is not in dispute the proposed development would constitute inappropriate development in the Green Belt, that it would cause substantial harm to openness, and that it would conflict with one of the purposes of including land within the Green Belt by encroaching on the countryside.
- 8.2.5. Mr Bell gave evidence as to the nature and quality of that area of the Green Belt comprising the appeals site and its surroundings. His evidence¹⁸⁸ is that the appeals site forms part of a sensitive and strategic part of the Metropolitan Green Belt. It has the spatial function of separating not only Dartford and Bexley, but also Greater London and Kent.
- 8.2.6. The Green Belt here is a predominantly flat, low-lying landscape, covered with low-level flora. It is an area enjoyed by recreational users, who are able to experience the area as a relatively remote, urban countryside environment, notwithstanding that it is situated in a highly urbanised area. A public right of way runs under the proposed access route and viaduct. Walkers are able to enjoy the views across the marshes and such views can be experienced from the A206/Bob Dunn Way.
- 8.2.7. This is an important and sensitive part of the Green Belt, which should be kept permanently open. Mr Scanlon explained during cross-examination that he believed that the previous appellant, Prologis, had made representations seeking the release of the Howbury Park site from the Green Belt. If indeed such submissions were made, it is unsurprising that they were not accepted.

¹⁸⁸ DBC/W1/1 – paragraphs 5.9-5.33

- 8.2.8. Mr Bell explained in evidence how the appeals scheme, which will be a large group of industrial buildings with extensive plant and machinery and will require an access route and viaduct in Dartford's area, would cause harm both spatially and visually to the openness of the Green Belt. The effect of this access route and viaduct on openness would be exacerbated by its use for the operation of the proposed SRFI.
- 8.2.9. Mr Bell's judgement is that, in addition to encroaching into the countryside, the appeals scheme would also undermine two further purposes of including land within the Green Belt:
- a) To check the unrestricted sprawl of large-built-up areas; and,
 - b) To prevent neighbouring towns from merging into one another.
- 8.2.10. The proposed development would constitute a substantial extension of the built up area of Bexley into open land to the east. Although a narrow gap would remain, it would be significantly diminished as a result of the presence and operation of a vast logistics and distribution facility, whose physical and functional presence would in fact create a continuum of development from the access roundabout at Bob Dunn Way to the existing urban edge in Bexley to the northwest¹⁸⁹. Mr Scott correctly acknowledged that the protection afforded to the Green Belt should not be diminished by virtue of the fact that the area of Green Belt land for development is situated next to an existing industrial area.
- 8.2.11. The Green Belt at the appeals site and its surroundings fulfils its essential spatial function, of maintaining openness. The massive development proposed by the appeals scheme would undermine that function and thereby give rise to significant harm.
- 8.2.12. In cross-examination, Mr Scott accepted that, although there had been some changes, mainly related to the illustrative layout of the development, the appeals scheme is not materially different from the 2007 scheme:
- a) The appeals scheme proposes the same essential form of development as the 2007 appeals scheme, namely a large-scale intermodal freight facility with associated structural screening arrangements;
 - b) In terms of its scale and height, the two schemes are broadly similar;
 - c) The landscaping scheme proposed is based upon the scheme put forward as part of the previous application¹⁹⁰; and,
 - d) The appeals site itself remains in the same physical and functional form as it was in 2007, forming part of a wide area of Green Belt with an estuarine landscape, characterised by open grassland and used for grazing.
- 8.2.13. Mr Scott agreed in cross-examination that there were no material differences between the proposed development and the 2007 scheme in

¹⁸⁹ Mr Bell XX

¹⁹⁰ APP/LANVIS/1 paragraph 4.2

terms of their impact on the landscape and their visual impact. The findings and conclusions of the Inspector in relation to the 2007 scheme¹⁹¹ therefore are also applicable to the proposed development. So judged, the proposed development may confidently be found to result in substantial harm both to the openness of the Green Belt, to undermine the purposes of including land in the Green Belt, and to give rise to significant and adverse landscape and visual impacts.

8.3. **The impact on the local road network**

Existing conditions

- 8.3.1. Mr Caneparo's evidence addresses the current traffic conditions in and around Dartford Town Centre and the impacts that the appeals scheme is likely to have on the local road network. The present situation is that the local and strategic road network¹⁹² is frequently subject to periods of congestion, disruption and delay due to the occurrence of incidents or high traffic flows at the Dartford Crossing and its approach along the M25. An incident at the Dartford Crossing can have a significant and prolonged adverse impact on the operation of the local and strategic road network in Dartford. The effect of such congestion and delay on the local and strategic road network is that traffic 'reassigns' throughout the local road network, with drivers 'rat running' - diverting to try to avoid queues and taking an alternative route to their destination through the Town Centre and its approach roads.
- 8.3.2. Mr Caneparo demonstrated the various 'pinch points' on the local road network¹⁹³. He emphasised in evidence in chief that the key constraint is the Dartford Crossing itself, which is frequently over capacity. When there is an 'incident' at the Dartford Crossing, such as a lane closure, or accident, this leads to tailbacks on the A282 Tunnel Approach. This in turn leads to a significant amount of congestion and delay on the A206 Bob Dunn Way eastbound towards junction 1A, because vehicles struggle to get onto the strategic road network. The TA¹⁹⁴ shows junction 1A operating at high levels of saturation during peak times of day. In the opposite direction westbound on Bob Dunn Way, the 'pinch point' is at the Craymill Rail Bridge, immediately to the west of the roundabout junction of the A206 and the A2026, the A206 (Thames Road). Here the road narrows to one lane in each direction (two lanes in total) as it passes through the Craymill Rail Bridge. This, he observed, results in congestion, queues and delay, which encourages drivers to reassign through the Town Centre¹⁹⁵.

¹⁹¹ CD5.2 paragraphs 15.12-21

¹⁹² See section 2.2-the highway network.

¹⁹³ INQ/21.

¹⁹⁴ CD/1.27.

¹⁹⁵ DBC/W2/2 Appendix PC9 is an image of the resulting traffic conditions in Dartford Town Centre that Mr Caneparo describes.

- 8.3.3. These conditions are a matter of record, as Mr Caneparo demonstrates in his proof¹⁹⁶. KCC's *Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031)* (LTP4)¹⁹⁷ states:

The major interchange of two strategic traffic routes, the M25 and the A2(T) is located within Dartford. Both of these routes, but particularly the A282 (Dartford Crossing), suffer from congestion at peak times and when there are traffic incidents...Incidents at the Dartford Crossing and its approach are frequent and severe.

- 8.3.4. Highways England's *Lower Thames Crossing Route Consultation 2016*¹⁹⁸ states:

The existing crossing is at capacity for much of the time and is one of the least reliable sections of the UK's strategic road network of motorways and major roads. Road users regularly experience delays and unreliable journeys and, when there are incidents, the congestion at the crossing quickly causes congestion on local roads and arterial roads in and out of London.

- 8.3.5. There is evidence before the Inquiry that such traffic congestion and disruption, and its impacts on the convenience of highway users, air quality, and quality of life for residents in Dartford, is considered to be an unwelcome but inescapable fact of life in the local community. See, for example, the oral evidence of Mr Bell and of the Leader of the Council, Councillor Kite. Councillor Kite spoke of the problem taking up a significant proportion of the Council's strategic planning resources and efforts. He spoke of continuous efforts to 'shave off' traffic congestion, and the frustration when such marginal gains were reversed by unplanned development. Mr Bell stated in cross-examination that he could '*sit and talk for a long time and talk about traffic in Dartford*'.
- 8.3.6. There is no real dispute about these matters. Mr Findlay acknowledged that congestion can be particularly severe on the A282 approaching the Dartford Crossing and that this was a well-known and common occurrence. He further agreed that this made it difficult for traffic to get on and off the strategic road network and that this can result in drivers seeking alternative routes by 'rat running' along local roads through the Dartford Town Centre.
- 8.3.7. Essentially, both Mr Caneparo and Mr Findlay (in cross-examination) accepted the careful and detailed analysis of the existing conditions on the local road network set out in the local highway authority, KCC's, very thorough consultation response to DBC on the appeals scheme¹⁹⁹. Taken with the commentary in the LTP²⁰⁰, the key points are:

¹⁹⁶ DBC/W2/1 Paragraphs 4.38-4.44

¹⁹⁷ CD/4.4 paragraph 4.39 page 32

¹⁹⁸ DBC/W2/2 Appendix PC6 page 6 para 4.

¹⁹⁹ DBC/W2/2 Appendix PC1 – KCC dated 4 April 2017

²⁰⁰ CD/4.14

- a) KCC supports modal shift to rail (including Howbury Park) if it (a) doesn't adversely affect peak rail passenger services and (b) impacts on the local road network are properly mitigated;
- b) High levels of development are taking place in Dartford with the result that parts of the local road network are reaching capacity;
- c) The Dartford Crossing/A282 suffers from congestion at two distinct times: (a) at peak times and (b) when there are traffic incidents;
- d) The consequence of these two categories of events is (a) congestion spreads out into the Town and (b) the performance of the local road network reduces over a very wide area;
- e) Incidents at Dartford Crossing are frequent and severe; and result in rat running that causes further congestion. The problem of congestion and rat running through the Town Centre is pre-dominantly caused by such incidents;
- f) Dartford Crossing has been closed partially or completely for an average of 300 times per year, for a period of 30 minutes or more. It can take 3 to 5 hours for the roads to clear following a closure;
- g) Measures to improve the performance of the Dartford Crossing have been mixed in their effectiveness – KCC has made numerous changes to signal timings to try to smooth flows – but the problems lies in the tailing back of traffic on the M25 which causes exit blocking at junction 1A and other junctions to the south. What is needed is a major new slug of capacity to relieve the M25 and the existing river crossing – such as the Lower Thames Crossing.

Impact of the proposals

- 8.3.8. The modelling work submitted in support of the appeals scheme does show that during normal functioning of local highway conditions, the network has capacity to absorb the traffic generated by operation of the development, albeit that the HE cap is considered a necessary constraint on the operation of the appeals scheme during peak hours in order to provide a degree of resilience at junction 1A and junction 1B. Even during normal conditions, the introduction of the scheme traffic through junction 1A results in degrees of saturation at peak times that approach full saturation²⁰¹.
- 8.3.9. '*Normal conditions*', however, are not the focus of DBC's concern. That focus is upon the propensity of the additional traffic generated by the operation of the proposed development to add to the congestion and

²⁰¹ CD/1.27 paragraphs 9.11.3-4 and Table 9-14 '*During the AM peak period the addition of the development related trips increases the maximum DoS from 89.8% to 93.8% with the maximum DoS remaining constant during the PM peak*' (96.7% PM Peak). Table 9-15 PM Peak on the southbound off-slip increase from 86.4% baseline to 96.0%. CD/1.30 para 3.5.4 '*...the impact of the Howbury Park development is negligible, with the maximum degree of saturation (DoS) during the PM peak hour increasing from 97.0% to 98.3% on the western roundabout and reducing slightly on the eastern roundabout from 108.9% to 108.5%.*' (Inspector's note: in answer to my question, Mr Findlay confirmed that a Degree of Saturation (DoS) of 90% is the point at which the Practical Reserve Capacity has fallen to zero).

delays that already result from the incidents that frequently affect the road network in and around Dartford Town Centre.

- 8.3.10. It is not in dispute that the latter point, which is the crux of DBC's traffic objection, must be addressed primarily as a matter of judgement. It requires a qualitative rather than a quantitative assessment. As Mr Findlay acknowledges in his proof and confirmed in cross-examination, the modelling work cannot provide a reliable assessment of the performance of the road network under the conditions that result from the kind of frequent incidents that disrupt the strategic and local road network through Dartford²⁰². That was also the position as recorded in the TA itself²⁰³.
- 8.3.11. TfL has 5 strategic highway assignment models covering the London area, which are used to forecast the routes that drivers choose and the associated congestion and delay impacts. For the purposes of exploring options for a new river crossing, TfL has adapted its East London Highway Assignment Model to create a River Crossing Highway Assignment Model (RXHAM), which has a reference year of 2012 to which the model has been validated by TfL²⁰⁴. Mr Findlay exemplified the modelling limitation by explaining that the RXHAM model, to the extent that it reassigns traffic, does so by assuming a degree of foresight from a driver. The 'reassigned' route is planned from the outset of the model. However, that does not necessarily reflect driver behaviour in real life. In real life, a driver will be caught up in an incident unexpectedly. Drivers make random choices and choose random routes. Even with the aid of navigation devices, drivers do not make strictly rational decisions and will often get to the source of the congestion or delay before making a choice whether to, and if so how to, re-route. He said in cross-examination that caution should be exercised before drawing any conclusions about the traffic impacts of Howbury Park during an incident scenario from the RXHAM model. His attempt to model an incident scenario at paragraph 4.5 of APP/TRAN/1 was at best an 'indication' of the impact of an incident on the road network.
- 8.3.12. KCC's judgement, based on their long experience of the challenging conditions that often beset the local road network and the reasons that they arise, is clear. The significant increase in HGV/LGV movements associated with the operation of the proposed development will inevitably exacerbate local traffic congestion and lengthen existing traffic queues, particularly when 'incidents' occur which disrupt the flow of traffic on the approach to the Crossing and the M25 through junction 1A and junction 1B²⁰⁵. DBC relies upon that judgement and invites the Secretary of State to do so. It plainly supports the conclusion that the proposed development would give rise to other harm which should weigh in the balance in applying Green Belt policy, as summarised in paragraph 8.1.2 above.
- 8.3.13. Mr Caneparo also addressed the propensity for greater levels of traffic to divert or reassign from the A206/Bob Dunn Way/Thames Road by reason

²⁰² APP/TRAN/1 paragraphs 4.5.5, 4.5.23 and other references put in XX on this point

²⁰³ CD/1.27 paragraphs 9.13.1-3.

²⁰⁴ CD/1.27 volume 3b pages 33/34.

²⁰⁵ DBC/W2/2 Appendix PC1 pages 11-13

of the proposed access roundabout being affected by the narrowing of the A206 as it passes across the Craymill Rail Bridge to the west of the roundabout. Observation shows that this constraint can give rise to exit blocking at present caused by westbound traffic queuing back from Thames Road across the roundabout at peak times. Development traffic accessing and leaving Howbury Park, which would all access the appeals site via the Bob Dunn Way/Burnham Road/Thames Road junction and so add to existing flows, could (a) lead to reassignment of traffic away from the already congested Bob Dunn Way/A206 and (b) lengthen queues on the Bob Dunn Way/A206. This also, he suggested in evidence, raised the significant risk of worsening congestion and delays in Dartford Town Centre owing to significant reassignment of traffic.

- 8.3.14. The TA modelled the performance of the A206/A2026 roundabout, from where the site would be accessed, using ARCADY software. However, modellers were unable at the time of the TA preparation in 2015 to satisfactorily validate the peak period surveyed queues against the queues produced by the TA ARCADY model. This was due to the blocking back from Craymill Rail Bridge. In order to allow some comparison of roundabout performance with and without the appeals proposal, it was modelled on the assumption that the Craymill Rail Bridge constraint no longer existed: the results show a ratio of flow to capacity (RFC) for the roundabout above 0.85 with the development traffic²⁰⁶. However, there is no current timetable for the removal of the Craymill Rail Bridge constraint, which has been assumed by the TA²⁰⁷.
- 8.3.15. In seeking to better understand the effect of the Craymill Rail Bridge constraint on the operation of the A206/A2026 roundabout, Mr Caneparo produced an alternative site access roundabout junction model using a newer version of ARCADY (2017) than that relied upon in the TA, which introduces the ability to model the 'bottle neck on the A206 Thames Road exit from the junction. Whilst, in comparison with the 2015 observed queues from the TA, his base case model underestimates the queue on the Bob Dunn Way approach in the AM peak period (when the observed queues are highest), his queue outputs are closer to the observed in comparison with the outputs from the TA model²⁰⁸. Mr Caneparo used his alternative base case model to produce alternate models for the 2031 base case and 2031 base case plus development case (2031BCDC).²⁰⁹

²⁰⁶ CD/1.27 paragraphs 4.6.5-4.6.9 and 9.8.2. (Inspector's note: In response to my question, Mr Findlay indicated that whilst normal practice is that a RFC > 0.85 indicates that the practical capacity of a junction would be exceeded, in his view, a RFC value of 1.0 is reasonable in London, as the associated queues are likely to be acceptable due to the congested nature of the network. No evidence was provided in support of that view.)

²⁰⁷ DBC/W2/2 Appendix PC4 – email from Bexley BC dated 16 May 2018

²⁰⁸ DBC/W2/1 page 14 table 4.1.

²⁰⁹ (Inspector's note: INQ/34 and APP/TRAN/4 para 2.3.21.- On Bob Dunn Way, the 2031BCDC AM Peak model indicates that queues would increase by around 800 PCUs and delays by around 18 minutes. Mr Caneparo acknowledges that in practice, such queues would be unlikely to be realised, as vehicles would be likely to re-assign to different routes to avoid the congestion/delay at the A206/A2026 junction. However, he indicated that as there isn't a properly validated model, it is difficult to understand the future operation of the junction with and without the proposed development. He identifies that the only RXHAM model that appears to take account of the existing effect of the Craymill Rail Bridge constraint is Mr Findlay's 'sensitivity model', which suggests that, in the AM Peak, traffic passing through the junction would reduce substantially' through re-assignment, by some 1,300 pcus to around 550 pcus on the Bob Dunn Way approach.)

- 8.3.16. However, the ARCADY modelling results are unsatisfactory. Firstly, there is no current timetable for the removal of the Craymill Rail Bridge constraint, which has been assumed by the TA²¹⁰. Secondly, there is, as we submit, an unresolved debate about the correlation between observed and modelled traffic flows through the roundabout and the impact of the Craymill Rail Bridge constraint²¹¹. What may be said, however, is that the assessments point to the likelihood that the development traffic passing through the roundabout will result in a significant increase in reassignment of other traffic that would otherwise have routed through the roundabout; and that at least a substantial proportion of that traffic would be likely to divert through Dartford Town Centre²¹².
- 8.3.17. In summary, DBC invites the Secretary of State to give substantial weight to the judgement of KCC, as the local highway authority, on the likely impact of the proposed development on the local road network. Mr Caneparo shows that judgement to be well founded - the impact of the proposed development on an already congested local and strategic road network would be increased reassignment of vehicles onto the local network in and around Dartford Town Centre. Mr Caneparo's judgement was that this impact could be severe²¹³.
- 8.3.18. Dartford Core Strategy 2011 Policy CS15²¹⁴ is aimed at managing transport demand for development and advises that the successful achievement of Dartford's economic potential and the creation of cohesive and prospering communities is dependent on a good transport network. Dartford Development Policies Plan 2017 Policy DP3²¹⁵ states that development will only be permitted where it is appropriately located and makes suitable provision to minimise and manage the arising transport impacts in line with Core Strategy policies CS15 & CS16.
- 8.3.19. Notwithstanding their judgement about the *impact* of the proposed development, KCC drew back from recommending refusal on the basis that the impact was not severe and so did not meet the test for free standing refusal on highway grounds in the Framework (and see Policy DP3.2 in CD3.18). DBC took a different view on that point, as KCC acknowledged was open to them. But the overall judgement and advice of KCC that '*the residual impact of this development is likely to be characterised by additional local traffic generation and some consequent increase in congestion, which the applicant cannot fully mitigate and that may also cause a worsening in local air quality.*'²¹⁶ is a clear finding of 'other harm'. Substantial weight should be given to that other harm in the overall planning balance.

²¹⁰ DBC/W2/2 Appendix PC4 – email from Bexley BC dated 16 May 2018

²¹¹ See the detailed exchanges in xx of Caneparo and Findlay in relation to the validation results in Appendix E of CD/1.30.

²¹² DBC/W2/1 paragraph 5.36

²¹³ (Inspector's note: Regarding the appeals site roundabout, Mr Caneparo's judgement was that, as a result of growth, by 2031 queuing on the Bob Dunn Way would be likely to be severe).

²¹⁴ CD/3.17

²¹⁵ CD/3.18

²¹⁶ DBC/W2/2 Appendix PC1 page 13.

Mitigation-the Transport Management Plan

- 8.3.20. It is not in dispute that the effectiveness of the TMP is a critical factor to the judgement whether the transport impacts of operating the proposed development are acceptable. It is submitted that there remain serious doubts over the TMP's effectiveness in the light of both the evidence and the discussion of planning obligations on 25 September 2018.
- a) There is no clear evidence that further work to refine the operation of J1A is likely to achieve any significant improvement in its operation²¹⁷. We understand KCC to say that the MOVA system would not be KCC's choice (in contrast to Mr Findlay in X) and that a SCOOT system was under consideration;
 - b) The principal management tools to be deployed under the Freight Management Plan element are the HE Cap and routing restrictions which seek (a) to limit additional HGV traffic passing through junction 1A and junction 1B at peak times and (b) to confine HGV traffic to and from the proposed development to the A206 and the M25, avoiding the local roads through Dartford Town Centre;
 - c) Neither of these tools appears to have been tested in operation in relation to an existing SRFI or in a road network which displays the propensity for congestion, disruption and delay that is the case here. Mr Caneparo's account²¹⁸ of the operation of a similar regime of traffic management at Andover (the only example that is known in evidence before the Inquiry) does not give confidence that the proposed ANPR/vehicle monitoring system, a key element of the proposed traffic management regime, can be relied upon to operate effectively as a control mechanism. Evidence of very significant levels of breaches, in the region of 2000 separate incidents over a two-year period, and the high levels of penalties incurred point to the real risk that occupiers subject to such a regime will conclude that penalties are simply a business cost, and factor them into their expenditure. Although, understandably, the appellants assert that this risk will be effectively managed in the case of the proposed development, the evidence shows that realising that ambition in practice may be far from straightforward;
 - d) The degree of that risk sharpened in the light of the observations of both Highways England and KCC during the discussion on 25 September 2018. Both those highway authorities emphasised the administrative challenges involved in managing breakdowns in the vehicle monitoring system and the lack of nimbleness in resolving glitches and operational problems. The Highway Authorities may require up to 1 month notice of the need to rectify a fault before access would be granted. Yet that system is the single most critical element in the effective operation of the Freight Management Plan, since it is that system which enables the regulatory bodies to judge whether the routing controls are being complied with day to day; and,

²¹⁷ See 14.1.8.

²¹⁸ DBC/W2/1 paragraphs 5.30-5.38

e) Self-evidently, the TMP is able only to control the transport operations of the proposed development. It does not seek to and cannot to manage adverse impacts associated with the reassignment and diversion of existing or other traffic on the road network resulting from the increase in traffic flows created by the proposed development²¹⁹.

- 8.3.21. In summary, it is submitted that this complex and untested traffic management regime should be viewed with considerable scepticism. It must bear a very heavy burden of control in the context of the congested and often dysfunctional road network in which it seeks to operate. Its effective performance in practice, from Day One of operation, is critical to the appellants' own case in support of the appeals scheme. It requires, on any view, considerable operational restrictions on a complex and vast transport undertaking which plainly cut across the natural operating dynamic of that undertaking, severe peak hour traffic restrictions and a vehicle routing controls which are of questionable efficacy in practice in the case of a multi-occupancy facility. DBC invites the Secretary of State to conclude that the TMP does not give the required level of confidence that the transport impacts of operation of the proposed development on the road network in and around Dartford Town Centre are likely to be managed to an acceptable degree.
- 8.3.22. DBC maintains its argument that the section 106 agreement should spell out the key components of the TMP as minimum requirements which must be secured under any future review or edition of the TMP. This is necessary to ensure that those minimum traffic management measures which, on the appellants' case, are said to be essential to the acceptable operation of the proposed development in controlling its transport impacts, are not at risk of being adulterated through the work of the Steering Group. The requirement to secure the approval of the statutory planning and highway authorities to any subsequent review of the TMP under the aegis of the section 106 agreement is necessary to provide a further level of legal and practical assurance that those minimum requirements will remain in place and will be complied with.
- 8.3.23. In relation to DIRFT III Development Consent Obligation dated 16 December 2013²²⁰. The appellant suggested that the document submitted provides an example of steering group operation and TMP effectiveness. In fact it does the opposite and supports DBC concerns:
- a) Firstly, this document includes an express contractual obligation on the owners to procure compliance with the Travel Plan by future occupiers of the development. Plainly that obligation would be enforceable against the developers;
 - b) Secondly, the requirements of the Travel Plan are contractually bound into the section 106 agreement, by the definition of the Travel Plan in the section 106 agreement and its incorporation into the section 106 agreement as schedule 4 to the agreement;

²¹⁹ DBC/W2/1 paragraph 5.33

²²⁰ INQ/104.

c) Thirdly, the section 106 agreement does not contemplate any change by way of dilution to any of the requirements of the Travel Plan. Rather, it contemplates change to address two matters:

- a. Firstly, unforeseen traffic impacts; and,
- b. Secondly, additional highway works.

So the measures in the plan are minimum requirements and the scope of review amounts to a one way ratchet upwards.

d) Fourthly, the role of the review group is limited principally to monitoring and reviewing the operation and performance of the Travel Plan itself. It does not extend to changing its key requirements. Any change adopted by the Review Group is confined to the MILNE envelope; and,

e) Fifthly, the overall role of the Review Group within this document is advisory rather than executive in so far as the contents of the Plan are concerned. Any executive role is focused on implementing the Plan rather than changing it.

8.3.24. What we draw from that analysis, is that this document (the section 106 agreement and Travel Plan), if it is to be seen as a comparator for the arrangements sought to be achieved here, provides the clarity and enforceability that DBC seeks in the present case, and that it has consistently sought throughout the process.²²¹

8.3.25. DBC reluctantly signed up to the provisions set out in the agreed draft, reflecting those that were set out in the LBB agreement, but subject to making submissions about its remaining concerns.

8.3.26. DBC relies on the DIRFT III document as completely consistent with the concerns that it has put forward, so we are grateful for its introduction. Far from casting doubt on DBC's position, it actually reinforces it.

8.3.27. We would invite the Inspector, in order to assist the Secretary of State, to draw attention to these concerns and consider recommending to him that if he is minded to grant planning permission he requires the changes that DBC has put forward to be made to the section 106 agreement in order to address those matters.

8.4. **The impact on local air quality**

8.4.1. DBC has designated four Air Quality Management Areas ('AQMAS'). It is common ground that the purpose of these AQMAS is to bring about a reduction in pollution from NO₂, which results predominantly from traffic congestion.

²²¹ INQ/67.

- 8.4.2. It is common ground that the highest NO₂ concentrations in Dartford are consistently monitored in the 2 AQMAs which are the focus of DBC's objection: the A282 road link AQMA and Dartford Town Centre AQMA.
- 8.4.3. Adverse air quality impacts of the proposed development would constitute 'other harm' in the Green Belt policy balance, and in accordance with DP22.
- 8.4.4. Dr Maggs explained in his evidence the role that local authorities, such as Dartford, have to play in improving air quality on a local level in order to achieve national compliance with European Union (EU) air quality standards. The need to comply with air quality standards has become an increasing focus of attention in respect of environmental protection, health and compliance with EU legislation. Whilst Government is focusing on the national level to achieve EU Limit Value compliance, Dartford, like many local authorities with areas of poor air quality, is endeavouring to improve air quality at the local level. The two efforts are not mutually exclusive to each other and the Framework recognises that local authorities have a contribution to make in respect of assisting Government to achieve EU Limit Values, and that planning has a role to play in safeguarding local air quality through development control.
- 8.4.5. In terms of the existing air quality conditions in Dartford, Dr Maggs said, that in general, levels of NO₂ across the borough have shown improvements in the last couple of years, although a number of monitoring locations have shown increases in the levels of NO₂ and that recent improvements have not achieved compliance with the annual mean NO₂ objective of 40µg/m³, the pollutant which forms the key focus of concern.
- 8.4.6. Dr Maggs' evidence in relation to the impact of the appeals scheme was that, while it was common ground with the appellant that air quality improvements had been shown, his judgement was that the impact of the additional traffic congestion that would result from the operation of the proposed development created an uncertainty over whether that trend or improvement would continue or, instead, plateau out. This would thus slow the time period for achieving compliance with the annual mean NO₂ objective in Dartford and would have an impact on the amenity and quality of life of those living in Dartford.
- 8.4.7. The evidence of the appellant's *Air Quality Assessment* is that impacts of the scheme in 2021 are Moderate to Slight Adverse, but largely Negligible at the majority of the sensitive locations appraised in their modelling work²²². This assessment is based on the Transport Assessment. Cross-examination of Dr Tuckett-Jones accordingly focused on the limitations of that Transport Assessment as an evidence base for reliable air quality modelling– in particular, the likely impacts on air quality of periods of congestion and disruption in the road network in and around Dartford.
- 8.4.8. Dr Maggs' judgement is that the *exacerbation* of the existing congestion and delay on the local road network, leading to an increase in idling

²²² CD/1.27 volume 2 section G pages 23/24 and CD/1.30 pages 35/36.

emissions, calls into question the reliability of the appellants' traffic model based assessment of the potential air quality impacts of the appeals scheme in periods of congestion and disruption resulting from the frequent traffic incidents experienced on that road network²²³. Dr Tuckett-Jones accepted in cross-examination that it would be necessary in an air quality assessment to examine the effect of a development that not only has the propensity to add to the volume of vehicles on the network but to exacerbate periods of congestion on the road network. We understood Dr Tuckett-Jones's evidence in cross-examination to acknowledge that, in the light of Mr Findlay's evidence (paragraph 8.3.10 above), the Transport Assessment did not provide the basis upon which reliably to model the air quality effects of such traffic conditions. We also rely on the analysis put to Dr Tuckett-Jones in cross-examination on paragraphs 3.2.26-3.2.32 of her rebuttal²²⁴ showing that this gap in assessment cannot be reliably filled by recourse to the verification factor applied to the air quality modelling exercise. It follows, in our submission, that it is necessary to consider this risk as a matter of judgement²²⁵. The appellants' reliance on the modelled output based on the Transport Assessment does not allow for this risk.

- 8.4.9. Policy DP5 of CD3.18 states - *'Development will only be permitted where it does not result in unacceptable material impacts, individually or cumulatively, on neighbouring uses, the Borough's environment or public health. Particular consideration must be given to areas and subjects of potential sensitivity in the built and natural environment (including as highlighted on the Policies Map) and other policies, and other potential amenity/ safety factors such as...air and water quality, including groundwater source protection zones'*.
- 8.4.10. Policy DP3 provides that development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on air quality.
- 8.4.11. It is submitted that there remains a significant risk that the addition of the development traffic into the road network from the early 2020s during periods of congestion and disruption will result in increases in NO₂ emissions on local roads, including within designated AQMAs. The creation of that risk runs contrary to the tide of national and local policy and could undermine DBC's efforts to achieve local compliance with air quality standards in the quickest time possible.
- 8.5. **Whether very special circumstances exist, which clearly outweigh the harm**
- 8.5.1. In granting the 2007 planning permission, the two most important factors that were given weight by the Inspector and the Secretary of State in the previous appeal were²²⁶:

²²³ DBC/W3/1 paragraphs 7.11 and 7.20

²²⁴ APP/AQ/4

²²⁵ DBC/W3/1 paragraph 7.11 - see also the judgement of KCC at DBC/W2/2 Appendix PC1 page 13 (top)

²²⁶ CD/5.2, para 15.185 and CD/5.3, para 31.

- a) The ability of the proposal to meet part of London's need for 3 or 4 SRFIs, to which the Secretary of State afforded significant weight; and,
- b) The lack of alternative sites to meet this need, to which she afforded considerable weight.

8.5.2. We have set out our key submissions in support of DBC's case on the Green Belt planning balance in the first part of these submissions. It is necessary briefly to address some other issues that have been debated during the course of the Inquiry.

Adequate links to road and rail-paragraph 4.85 of CD/2.2

- 8.5.3. We have summarised DBC's submissions on the impact of operation of the proposed development on the road network. The GLA has taken the lead on the adequacy of the proposed connection onto the rail network, the physical and functional challenges that must be overcome in order to provide that connection and the likely limits of the operational rail capability of the proposed development given other demands on rail capacity in the Slade Green area.
- 8.5.4. We submit that paragraph 4.89 of the NPSNN does not absolve the appellant from providing sufficient evidence to give reassurance that the rail connection is able to accommodate the minimum level of train handling (4 trains per day) that policy requires of a SRFI. The policy requirements in paragraphs 4.85 and 4.89 must plainly be read together. Adequacy of rail connection between the site and the rail network is as critical a component of SRFI function as is the ability of the site itself to accommodate the required minimum train handling facilities. The distinction that Messrs Gallop and Scanlon sought to draw between the requirements of these paragraphs is unconvincing and would risk defeating the underlying policy objective of encouraging modal shift from road to rail.
- 8.5.5. In this regard, the approach of the Inspector²²⁷ in 2007 remains correct; *'Put simply, if the proposal would, for any reason, not operate as a SRFI then it should not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build road-served warehouses on open land in the Green Belt around London would not come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal'*.
- 8.5.6. It follows that the Secretary of State must consider and come to a judgement on whether the appeals scheme will in fact operate as a SRFI. We understand that the GLA will address this issue in detail in closing submissions. DBC's position is that, after hearing the evidence at the Inquiry, there is a substantial level of doubt over the physical arrangements that the appeals scheme requires in order to enable effective rail access between the railway and the site. Additionally, there is uncertainty as to whether, once such a link is provided, there will be the operational capacity to deliver the scale of rail-based operations that are

²²⁷ CD/5.2 para 15.178.

the basis for the appeals scheme. We submit that it is crucial in this context to have in mind that Howbury Park is in the Green Belt. Uncertainties in the proposed development's ability to fulfil the policy expectations for the function of a SRFI in the NPSNN go directly to diminish the weight to be given to the appellant's case, that the SRFI function provides the very special circumstances needed to justify the grant of planning permission.

- 8.5.7. In particular, there remains a lack of clarity in the position of Network Rail. Network Rail have made no direct submission to the Inquiry. The Inquiry has therefore had to proceed on the basis of Network Rail's reported consultation response to LBB and DBC. Yet those responses are conflicting, as Mr Gallop asserted²²⁸. The appellants naturally prefer the supportive response given to LBB. But there is no good reason to dismiss the email responses provided to DBC, INQ/25 in January 2016 and January 2017, the latter provided by Network Rail not only after the response to LBB (which was provided in autumn 2016²²⁹), but also following the apparently incomplete GRIP2 timetable study, INQ/3. The response to DBC is clear (email of 6 January 2017), Network Rail continues to have concerns about the proposed development. Yet neither Network Rail nor the appellants has informed the Inquiry of the nature of those concerns or whether they remain. This uncertainty adds to the weight that is due to the GLA's analysis of the likely physical and operational rail capability that would be available to the proposed development were planning permission to be granted; it fills the gap in evidence. It also lends support to the case for the tighter controls on delivery and operation that are sought in the GLA's/DBC's versions of conditions 6 and 30 and, in the case of Bexley, condition 6. Neither of the matters I have set out is resolved wholly or in part by INQ/99.

Other claimed benefits

- 8.5.8. It is submitted that the other claimed benefits of the appeals scheme should not weigh significantly in the planning balance and do not add substance to the appellant's asserted case for very special circumstances.
- a) The NPSNN makes clear²³⁰ that the applicant should show how the project has taken advantage of appropriate opportunities to conserve and enhance biodiversity and ecological conservation interests. It is a requirement of national policy that the appeals scheme should deliver ecological mitigation, including enhancements that are appropriate to and in proportion to its context and impacts on biodiversity. The Marshes Management Plan fulfils that policy requirement. Although it differs in its detail to that which was proposed in 2007, Mr Goodwin did not maintain his claim in oral evidence that it was a significant improvement on that earlier plan. It is submitted that the Plan remains a welcome element of the appeals scheme, but not one that weighs significantly in favour of the proposed development in the Green Belt balance;

²²⁸ APP/RAIL/1

²²⁹ INQ/25, see email from Guy Bates (Network Rail) to LBB dated 5 October 2016.

²³⁰ see CD/2.2 para 5.23.

- b) The contribution that SRFI development can make to modal shift and reducing CO₂ emissions is central to the Government's identification of a compelling need for such facilities: see paragraphs 2.53/54 and 2.56 of the NPSNN. It would be wrong in principle to weigh those factors in the Green Belt planning balance over and above the significance given to the ability of the proposed development to meet that compelling need. To treat CO₂ emissions savings as an additional benefit of significant weight would be 'double counting';
- c) DBC maintains the submission that the economic benefits asserted by the appellant should not attract significant weight in the Green Belt balance. It is not in dispute that there is no identified need for the proposed development to serve Dartford on economic grounds. Dartford has low unemployment. Core Strategy 2011 policies CS1 and CS7 set up a clear spatial strategy for development in Dartford to ensure future economic growth and jobs. Howbury Park is not a necessary element to the delivery of this strategy. Furthermore, there is a risk that the proposal would displace class B8 development which might otherwise come forward on non-Green Belt land²³¹. The Secretary of State is invited to take the same approach as in 2007 [CD/5.2 paragraph 15.150] and conclude that the employment benefits that would flow from the development should not weigh significantly in deciding whether planning permission should be granted.

Overall balance

- 8.5.9. DBC's submission, in the light of the evidence heard at this Inquiry, is that the appellant has not demonstrated very special circumstances to justify the grant of planning permission. The balance has shifted since 2007 in relation to the two critical considerations that tipped the case in favour of planning permission in 2007 – the ability of the proposed development to meet the identified need for SRFIs in national policy and the lack of viable alternative sites. The substantial harm to the Green Belt and other harm (landscape, visual, traffic and air quality impacts) that is likely to result from the appeals scheme is no longer clearly outweighed by those other considerations advanced by the appellants in the light of the evidence before the Inquiry. The appeals should be dismissed.

²³¹ DBC/W1/1 para 5.64.

9. THE CASES FOR OTHER OBJECTORS REPRESENTED AT THE INQUIRY

9.1. Mrs C Egan²³²(CE)

- 9.1.1. I moved to Moat Lane 22 years ago and I live opposite the fields that comprise the appeals site. I have followed the planning process since 2004. I wrote to the Council expressing my concerns in 2004, in 2006 I wrote to my Member of Parliament, in 2007 I spoke at the planning meeting and in 2015 I spoke to the planning team.
- 9.1.2. In my view, the appeals site, which I consider to be countryside, should not be touched by development, as the fields go back many centuries. The proposal would result in the loss of local Green Belt land and it would also affect the open natural outlook from properties onto the Crayford Marshes and cause a reduction in the open space for local residents' leisure time.
- 9.1.3. In and around Crayford Marshes there is an amazing amount of wildlife. The ecology of the Marshes and local farm land could be disturbed by the proposal, with serious implications for wildlife, including protected species, such as bats and water voles, birds, insects and foxes as well as wild flowers. Furthermore, the previously approved scheme, by Prologis, included reinstatement of hedgerows alongside Moat Lane, after the construction was finished. The current proposal does not. I consider that the hedgerows should be preserved for local wildlife.
- 9.1.4. Heavy rail traffic could cause vibration damage to surrounding homes. My daughter lives in Holloway and has had to have her home underpinned because of rail related vibration. Damage could also be caused by the HGVs entering the site and by on site plant and heavy machinery. There would be a great deal of mess, dust and noise around the construction site for a number of years. Construction and 24 hour operations at the site would have a detrimental impact on the everyday lives of local people. It may also have an adverse impact on the value of adjacent properties. A warehousing site with 24 hour operation could also cause light pollution, which would be a significant nuisance to wildlife and would harm local residents' health.
- 9.1.5. Local highway traffic has increased greatly over the years; causing noise and extra pollution problems on the roads. Traffic on the local dual carriageway into Slade Green, the A206, is often slow moving or jammed. It is a safety hazard even trying to cross Moat Lane, due to parked cars, which narrow the carriageway and can make it difficult for existing double decker buses to pass. Local roads would not be able to cope with heavy trucks entering and exiting the appeals site via Moat Lane.
- 9.1.6. The Marshes and fields act as a local flood defence. I am concerned that development of the appeals site may result in local roads being flooded.

²³² INQ/29.

9.2. **LA21 Traffic/Transport Forum (LA21)**²³³

- 9.2.1. The Bexley LA21Traffic/Transport Forum has around 40 members and represents the views of the membership, concerning traffic/transport matters, to the Council.
- 9.2.2. LA21 objected when a similar application was submitted by Prologis some 10 years ago. At the associated public Inquiry, those attending heard from Prologis who told the Inspector that there was an urgent need for such a development. Although LA21 acknowledges that the recession may have delayed implementation of that scheme²³⁴, since then we seem to have coped rather well without this development.

Rail

- 9.2.3. The appeal proposal involves development in the Green Belt. Special circumstances are necessary for the appeal to succeed. The special circumstance cited by the appellant is the provision of a rail freight connection.
- 9.2.4. The rail link proposed is directly across, and into, the complex passenger service network for both commuting and off peak rail travel services, with proposed freight services passing through the 2 pinch points of Crayford Creek Junction and Lewisham Junction²³⁵. Lewisham Junction is confirmed by Network Rail as being complex²³⁶.
- 9.2.5. As frequently stated by the appellant during the Inquiry, Network Rail will only determine in the future what rail services can be run, according to bids made by potential operators nearer the time²³⁷. There is no guarantee that the proposed freight services can be run, nor that as a consequence of the appeals proposal passenger services would not be reduced in quantity and the variety of destinations²³⁸. Network Rail has not presented evidence to the Inquiry to predict the future interaction between freight and passenger services. With its data and computer modelling, it could have presented a future scenario depicting a potential operating network of freight and passenger services for the Inspector to consider and examine²³⁹. No such scenario has been presented for examination. Only late assurances that 'it would be alright on the night', which is not acceptable²⁴⁰.
- 9.2.6. Should Network Rail, after a bidding process, decide to schedule the freight train slots requested by a future site operator, expansion of the passenger network would be compromised by that freight using the limited passenger infrastructure²⁴¹. If, at any time in the bidding processes, passengers on this busy section of network are deemed a priority over freight, freight slots may

²³³ Consultation response 30 November 2017 and INQ/32.

²³⁴ XX Mr I Lindon.

²³⁵ INQ/23, INQ/30, INQ/59, INQ/80.

²³⁶ INQ/79.

²³⁷ INQ/54 (APP/RAIL/6) para 3.4.5.

²³⁸ INQ/54, INQ/30, INQ78 (train 4 in, train 2 out via Lewisham), INQ/79, INQ80.

²³⁹ INQ/30, INQ/78.

²⁴⁰ INQ/99 late submission email by Network Rail.

²⁴¹ INQ/23, INQ/30, INQ/78, INQ/80.

be refused²⁴². Therefore, there is a great deal of uncertainty over the operation of the site as a true rail freight interchange in the future.

- 9.2.7. In this Dartford and Bexley rail passenger service area, there is a real risk of the direct services to London termini on each of three lines being limited to accommodate the freight service²⁴³. For example, Cannon Street only for the Bexleyheath line, and Charing Cross only for the Sidcup line. Also likely is the total loss of the Denmark Hill (for Kings Cross Hospital) and London Victoria main line service. All to release rail capacity at Lewisham junction²⁴⁴.
- 9.2.8. It has been accepted that passenger demand for rail service will increase in the future²⁴⁵. The MOL prioritises improved rail passenger services for his road traffic and pollution reduction targets²⁴⁶. Bexley Borough has no Underground, DLR, tram or Fastrack bus services. In the Borough 2 north/south rail services via Canon Street/Slade Green/Cannon Street are a future essential link to/from stations on the Sidcup and Bexleyheath lines in the south, to new housing and employment areas in the north of the Borough²⁴⁷. Just as importantly to access the new transport hub provided by Crossrail (Elizabeth Line) on the northwestern corner of the Borough at Abbey Wood.
- 9.2.9. LA21 requests that the appeal should not be allowed on the grounds of: 1) inappropriate development in the Green Belt; 2) no guarantee that the freight services proposed can be accommodated by Network Rail on the local network; and, 3) the loss of passenger train infrastructure preventing future expansion together with the potential loss of destinations served.

Road

- 9.2.10. Since the previous appeal in 2007, several large local developments have taken place within Bexley. The Dartford Tunnel and Bridge now becomes blocked every day. Furthermore, it is very noticeable that more and more lorries are using our local roads. As a result, it is normal to have to wait at traffic lights through at least 3 cycles of the lights, as lorries take so much time to get moving, thus delaying all the cars behind them. The last thing that is needed is more lorries on the already overcrowded roads.
- 9.2.11. Both the A2 and A20 are well over capacity relative to their original design. The A2 comes to a standstill on average 3 times a week, due to accidents and the volume of traffic. Heavy lorries around Erith and Queen's Road are continuously held up. If a road bridge is allowed to be built into that location, the situation will become even worse.
- 9.2.12. Furthermore, the Belvedere Incinerator has recently been granted planning permission, which is likely to add to increased HGV traffic on the A206 Thames Road, although LA21 is not sufficiently familiar with the associated

²⁴² CD/3.3 page 87 Proposal 18 and page 25 'rail service enhancement'.

²⁴³ INQ/30, INQ/78, INQ/79.

²⁴⁴ INQ/79, INQ/78, INQ/80, INQ/63 (GLA/RG/09) para 2.37.

²⁴⁵ CD/3.3 page 87 Proposal 18 and page 25 'Rail Service Enhancement, CD/3.15 Bexley Growth Strategy para 2.3.2.

²⁴⁶ CD/3.3.

²⁴⁷ INQ/23, CD/3.15.

traffic data to quantify the likely impact in the vicinity of the appeals site. In addition, the Bexley 'Growth Strategy' includes building many more homes and other development within Thamesmead and Erith.

- 9.2.13. The *London Plan* seeks to reduce congestion and encourage alternative means of travel. The major problem with development, such as that which is proposed, is that although it does remove road traffic whilst the cargo is on the train, it then concentrates heavy volumes of HGVs in a very concentrated area, which requires an excellent road network to make it feasible. Other existing rail interchanges have several major roads to the sites. For example, the Freight depot in Daventry has 5 major roads on which to distribute heavy lorries. In contrast, local to the appeals site there is only 1, the A206, which is already busy. Furthermore, the proposed local access from Moat Lane would not help the situation.
- 9.2.14. If the appeal proposal is approved, against local wishes, both in Bexley and Dartford yet more heavy lorries would lead to narrow local roads coming to a complete standstill. Car usage by site staff would increase the pressure on local roads even further.
- 9.2.15. LA21 considers that the London Gateway site represents a better alternative to the appeals site for a SRFI²⁴⁸.

Environment

- 9.2.16. The proposed warehouses, being very large, would be forever noticeable in the area, irrespective of how much shrubbery is planted. This would especially be the case for local residents with views from the south and west towards elevated areas. Freight movements at night would impact on local residents, through sleep deprivation, not only due to noise, but also vibration, notwithstanding the proposed freight interchange would be a considerable distance from residential development²⁴⁹.
- 9.2.17. The development could easily have an adverse impact on Crayford Marshes, a site of environmental significance.

9.3. Slade Green Community Forum (SGCF)

- 9.3.1. SGCF is a registered charity, the aim of which is to act as a conduit between those doing things for or to the community and the community itself. It has around 160 members, comprising for the most part residents of the former Northend ward, and an elected board of trustees.
- 9.3.2. It is of course accepted by all sides represented at this Inquiry that the proposals constitute inappropriate development of the Green Belt. For people in Slade Green and surrounding areas, it is not just inappropriate development; it also represents a loss of amenity²⁵⁰.

²⁴⁸ XX Mr I Lindon.

²⁴⁹ XX Mr I Lindon.

²⁵⁰ INQ/42b para 4.1.

The previously approved scheme vs the appeals proposal

- 9.3.3. It is important to note that the application before this Inquiry diverges in various ways from the previously-consented application. Numerous planning obligations that were in the previously-consented application, a number of which balanced the loss of amenity, are not included in the current applications. The creation of an Environmental Studies Centre at the Tithe Barn and giving that to a Trust to run is no longer in there; the multiple local employment measures that were part of the previous planning obligations are not included alongside the current applications, nor have opportunities been taken to pursue other alternatives; nor are there access improvements to Slade Green station that might increase the chances of people with disabilities being employed at the SRFI site. Instead of a large part of Crayford Marshes being taken 'in perpetuity' into independent ownership through a Trust, they are instead to be managed for 25 years. The cost to the appellant is less unless the proposed Warden's office is taken into consideration, but that would not be needed if the Tithe Barn was also developed (obviously SGCF would prefer the Tithe Barn to be developed, in which case the amount of money would be almost right).²⁵¹
- 9.3.4. There is also concern in the community that the presence of the site will result in further losses of amenity and Green Belt land by increasing the likelihood in the future of a road being constructed across Crayford Marshes joining the site to Manor Road, Erith or Wallhouse Road in Slade Green²⁵².
- 9.3.5. Also diverging from the previously-consented application, the appeals proposal does not include various measures to promote the use of the site as a SRFI through subsidy and direct promotion, nor are there suitable alternatives to those measures. This gives rise to concerns that the site may simply not attract rail freight users, and that it may end up being occupied by companies only interested in using the site for road operations.²⁵³

Highway impacts and mitigation

- 9.3.6. The impact of the proposed SRFI on roads to the west of the site is unquantified by the appellant. SGCF considers that it would be substantial and would harm its community by the resulting increase in traffic congestion. It is unquantified due to failings in the traffic modelling. The starting-point data does not actually reflect the amount of traffic heading westwards from the site projected by the appellant. Mr Findlay stated that 90% of the HGV traffic from the site would head towards or come from junction 1A of the A282/M25. As Burnham Road is not an option under the terms of the TMP, this clearly leaves 10% of the HGV traffic heading down Thames Road. Mr Findlay also illustrated this by noting that the Sainsbury's site close to junction 1A has 10% of its traffic arriving eastwards or departing westwards along the A206. And yet the data fed into the traffic modelling has a much lower percentage (2.5-2.95%) of HGVs

²⁵¹ INQ/42a section 7, INQ/42b para 1.2, INQ/42c pages 11-12, INQ/65 page 2, INQ/64 page 1.

²⁵² INQ/42b paras 4.2-4.5, INQ/42c page 12.

²⁵³ INQ/66 and 66.

using this route²⁵⁴. Furthermore, this seems not to fully account for staff employed who live to the west of the proposed SRFI and does not allow for future growth in this that may be caused by new river crossings to East London. Substantially more traffic than the model projects is likely along the A206 Thames Road/Northend Road/South Road but there is no mitigation for this.²⁵⁵

- 9.3.7. Moreover, westwards along Thames Road into Bexley Borough is the direction in which Mr Findlay admits the model fails its real-world test, with the test showing it underestimating the amount of traffic by 22%²⁵⁶. Other concerns with the modelling include it apparently allowing HGVs going along roads they cannot actually travel on, such as Maiden Lane where there is a width/height restriction²⁵⁷.
- 9.3.8. Given the real-world 10% HGV traffic heading to or arriving from the A206 west of the SRFI and the 22% fail mentioned above, we have substantial concerns about the impact of the proposed SRFI on the junction of South Road and Northend Road and subsequent junctions in Erith²⁵⁸.
- 9.3.9. Mr Findlay suggests that as the amount of traffic on the A206 is already substantial, as Thames Road gets busier with traffic from the site, traffic will re-assign to other local roads. However, each so-called re-assignment is a lengthening of someone's car journey. The local roads vehicles re-assign to will become more congested, and drivers spending more time in their cars will be exposed to more air pollution²⁵⁹.
- 9.3.10. SGCF considers that the proposed cap on HGV traffic going towards the M25 at peak times and the restrictions on Burnham Road, measures to be secured by the TMP, together would lead to HGV traffic increasing at peak times along the A206 Thames Road, substantially affecting businesses along Thames Road and local people. The only solution to this would be an additional cap on peak time HGV movements to and from the SRFI, but this has not been included in the Transport Management Plan or elsewhere, nor is it to be monitored.²⁶⁰
- 9.3.11. It is suggested by the appellant in both their road and rail evidence that Viridor may switch some of the distribution of its sorted recycled waste from road to rail. We note that under cross-examination Mr Findlay admitted that he didn't know the detail of how Viridor's business works. Whereas the implication in Mr Findlay's evidence was that this would be half of Viridor's weekly HGV movements, in reality it would be much less, as waste arrives in an uncrushed state but departs in crushed bales, so far fewer HGV movements saved.²⁶¹

²⁵⁴ (Inspector's note: Mr Findlay confirmed in XX that the remaining 10% would not just be made up by local area west traffic (2.5%/2.95%) but also traffic associated with other areas, such as central London (5.14%/4.93%) ref. CD/1.27 volume 3b pages 64 and 65).

²⁵⁵ INQ/42a paras 4.1-4.5, INQ/42c pages 3-6.

²⁵⁶ CD/1.30 Appendix E page 37 Table 2-5.

²⁵⁷ INQ/42c page 5.

²⁵⁸ INQ/42c pages 4-5.

²⁵⁹ INQ/42a paras 3.1-3.12 & 4.5-4.6, INQ/42c pages 8-9 air quality.

²⁶⁰ INQ/42c page 11, INQ/65 and 64.

²⁶¹ APP/TRAN/1 paras 3.4.6, 4.2.12 and 6.3.3, INQ/51 (APP/TRAN/5), XX Mr Findlay.

9.3.12. It is likely that some people employed at the proposed SRFI site who live to the west of Slade Green will drive to Slade Green and either walk or take the shuttle bus to work, adding to the daytime parking congestion in the areas either side of Slade Green station. Nothing in the planning obligations allows for this to be mitigated, either directly through enhancing cycle routes or by the shuttle bus being available to the public (the latter would encourage people from Dartford already parking in Slade Green to use that alternative, hopefully balancing the people from the west referred to above).²⁶²

Air quality impacts

9.3.13. Dr Tuckett-Jones agreed that her modelling of air quality was based on the traffic levels projected by the traffic modelling, and that she had every confidence in Mr Findlay's figures. However, as noted above Mr Findlay himself anticipates that 10% of the HGV traffic relating to the SRFI would arrive eastwards or depart westwards from the appeals site whereas the modelling only takes into account 2.5-2.95% of the traffic doing so, and Mr Findlay admits that the model underplays current traffic by 22%. SGCF therefore concludes that the air quality modelling is inadequate and must itself underplay the problem of air pollution as it is based on traffic modelling that underplays the amount of traffic, in particular the HGV traffic generated by the site.²⁶³

9.3.14. We also note the comment in a House of Commons committee report, which states that using modelling to assess air quality is substantially less accurate than actually testing and that there are no safe limits for NO₂. Generally the limitations of such a model combined with the underestimated traffic may mean air pollution levels greater than the appellant projects, with no monitoring planned.²⁶⁴

9.3.15. We are concerned that insufficient regard in the air quality assessment was had to the location of Peareswood School alongside the A206, because the Environmental Statement fails to identify it as a 'Sensitive Receptor', and requests for this to be included in the S106 have not been met.²⁶⁵

Alternative sites

9.3.16. SGCF agree with the case put forward by MOL that London Gateway represents a viable alternative site. It was suggested to Mr Birch under cross examination that the proposed SRFI is to serve South East London and that therefore London Gateway is in the wrong location, as to serve South East London HGVs would have to cross the River Thames via the heavily congested Dartford Crossing. However, the projected destinations or origins of the HGV traffic are essentially as much north of the Dartford Crossing as south of it, and even allowing for these figures needing to adjust for the 10% rather than 2.5-2.95% of traffic heading westwards on the A206, this still represents a substantial amount of projected destinations in East and

²⁶² INQ/42a section 6, INQ/42b para 3.9, INQ/42c page 10, INQ/65 and 66.

²⁶³ XX Dr Tuckett-Jones.

²⁶⁴ INQ/42b paras 2.1-2.4 and 2.12, INQ/42c pages 8-9 air quality.

²⁶⁵ INQ/42a para 4.7, INQ/66.

Northeast London, Essex and beyond that are on London Gateway's side of the Thames²⁶⁶. Moreover, the proximity of London Gateway to the forthcoming Lower Thames Crossing would allow it to serve destinations in Kent and to avoid using the Dartford Crossing.²⁶⁷

Rail impacts

- 9.3.17. SGCF's concerns about the rail impact of the SRFI are that the running of freight trains across the local junctions, especially Crayford Creek Junction, will interfere with existing passenger services, prevent enhancements to those services through clockface timetabling and make the introduction of new services difficult or impossible. The *Bexley Growth Strategy, December 2017* (BGS), indicates that up to 31,500 new homes can be delivered across the Borough over the period to 2050, with growth areas at locations along the North Kent Line, including 8,000 new homes in Slade Green alone²⁶⁸. Given the substantial projected growth of our community and other local communities such new passenger services will be essential. The BGS identifies priority interventions to support the identified level of growth, which include: upgrades to services on the borough's railway lines as an immediate/short term priority; and, an extension to Crossrail from Abbey Wood towards Ebbsfleet as a medium/long-term priority²⁶⁹.
- 9.3.18. The evidence of Mr Goldney for MOL leads SGCF to substantially doubt whether the proposed facility would actually run as a SRFI, but it is concerned that current and possibly future passenger services will be damaged in the attempt.²⁷⁰ Whilst Network Rail has undertaken an initial timetable study, it considers pathing across London to Crayford Creek Junction, but not from the junction into the depot. Furthermore, the quality of Network Rail's analysis should be judged in light of the suggestion it made in its consultation response to LBB that trains could cross from Crayford Creek Junction into the appeals site at a speed of 25 mph in 1.5 minutes²⁷¹, when the track speed limit ranges from 15-20 mph²⁷².
- 9.3.19. As a further illustration of the potential difficulties and disruption, under cross-examination by SGCF, Mr Gallop agreed that many of the whole series of possible gaps in the timetable that might allow a 7 minute window (at about 25½ - 32 minutes and 55½ - 02 minutes) to get a freight train into the SRFI were there to provide a time buffer that the timetable allows for a train running from Cannon Street to Cannon Street via Crayford and then Slade Green (Crayford departure 21 or 51 minutes, Slade Green departure 29 or 59 minutes) to catch up if it is running late by timetabling the train to sit in Slade Green station for a short while before departing. Mr Gallop agreed that if the Cannon Street train was running late but a freight train was waiting to get into the SRFI, it would have to take priority to keep Crayford Creek junction clear, but that the Cannon Street train then

²⁶⁶ CD/1.27 pages 63-65.

²⁶⁷ INQ42c pages 3-4.

²⁶⁸ CD/3.15 pages 29-30, SGCF email dated 19 December 2017.

²⁶⁹ CD/3.15 pages 48-49.

²⁷⁰ INQ/42c pages 6-8.

²⁷¹ CD/1.6 page 25.

²⁷² INQ/72 APP/RAIL/7 page 10 figure1.

being delayed would delay other services on the line and knock on to the timing of later departures back from London. Mr Gallop suggested, for the first time during his oral evidence, that if the timetable was flexed to allow sufficient time for freight trains to enter or depart from the SRFI, only 1.4% of services would need to be moved. However, under cross-examination by SGCF, he agreed that re-timetabling the 1.4% of services that needed to be changed would result in many other services having to be re-timed if a clockface timetable was to be achieved.²⁷³

- 9.3.20. Regrettably any response Southeastern Trains' (SET) may have provided to LBB concerning the appeals proposal are not before the Inquiry and we must rely on their recent exchange of emails with Councillor Borella. However, SET stated that for the SRFI to work without interfering with the depot they currently run in Slade Green, an extension is needed to the country end headshunt, and Network Rail state that this is part of the solution. SET also identify an upgrade to the Depot signal panel and extra staff as being required for movements in the Depot to take place safely. For its part, Network Rail state that its technical solution would permit the main line connection and associated train movements to be under direct signal control from Ashford and it makes no mention of there being any alternative to this that would allow a connection to the network that would not interfere with the running of Slade Green Depot.²⁷⁴ This evidence implies that there is only one solution. In contrast, Mr Gallop stated that the headshunt extension is not a requirement and nowhere is there a guarantee that the signalling solution referred to would be implemented. Under the circumstances, SGCF considers that conditions would be necessary to ensure that infrastructure would be in place before any other works are undertaken. That is to secure the provision of a new headshunt and to allow signalling from Network Rail Ashford, which enables trains to be pathed across Slade Green Depot access and Crayford Creek Junction without requiring intervention from Slade Green Depot staff.²⁷⁵

Consultation

- 9.3.21. The community consultation the appellant undertook was wholly inadequate, being substantially under publicised.²⁷⁶ What publicity there was could easily be misinterpreted. Mr Scanlon, claimed under cross-examination by SGCF, that the publicity material was clear that the consultation it advertised related to an entirely new planning application and that has no part in explaining the low turnout at the consultation. SGCF disagrees and considers that it was written in a way that implied a planning consent for a SRFI already existed and the application was simply a variation upon the already-consented plans.²⁷⁷
- 9.3.22. Mr Scanlon stated during cross-examination that the checks on deliveries of publicity leaflets were carried out by the company that made the deliveries rather than by himself or anyone connected with RDL. He indicated that he

²⁷³ CD/1.6 page 22, INQ/54 appendix I, INQ/31 Timetable May 2018 page 47, XX Mr Gallop.

²⁷⁴ INQ/99.

²⁷⁵ INQ/58, CD/1.6 pages 21 and 23, INQ/99 page 1.

²⁷⁶ INQ/42a section 2, INQ/42c pages 1-2, INQ/27.

²⁷⁷ CD/1.22 appendix 2, XX Mr H Scanlon..

has gone back to the delivery company since SGCF raised the issue and they confirmed that there was nothing wrong with the delivery or checking and that they had delivered in the correct area. They would hardly be likely to admit to anything else and their view is entirely un-evidenced.

Conclusion

- 9.3.23. In conclusion, SGCF believes that much of the balance between Green Belt and amenity loss, and public gain, that existed in the previous application has been lost. The certain loss of Green Belt land and the levels of uncertainty about deliverability of a SRFI, rather than warehousing, as well as road issues and air pollution would be too great. SGCF urges the Inspector and the Secretary of State to reject these appeals.

9.4. **Councillor J Kite (CK)**

- 9.4.1. I am the Leader of DBC. As well as my Council duties, I have roles within other groups, including Ebbsfleet Development Corporation due to the significant levels of development within Dartford Borough, such as the Bluewater Shopping Centre.

Plan led

- 9.4.2. DBC has a positive approach to growth and regeneration, which is inevitable given the Borough's proximity to London and range of transport infrastructure, such as the M25 and rail links to Ebbsfleet. DBC seeks to embrace and manage residential and commercial growth through the Development Plan, aimed at addressing matters such as business growth, housing, open space and transport infrastructure in a manner that delivers a whole and rounded community. Proper compliance with the *Dartford Core Strategy, 2011* (DCS) is key. The alternative would be chaos, resulting in an unbalanced economy and no objectives being achieved for the community.

Highways

- 9.4.3. Dartford River Crossing, and in particular associated queues and congestion, is a huge issue for DBC, not least as the M25 bisects the town separating east from west. The slightest trigger can have a significant effect on traffic within the town. Incidents on the M25/Dartford Crossing result in an extraordinary build-up of congestion on routes across the Borough, as people try to avoid the incident and associated problems can persist for a large part of the day. I am a governor at the University Technical College in The Bridge community, which is part way between the appeals site and the Dartford Crossing. Recently, it took me 2 hrs to complete what should be a 9 minute trip to the college and I abandoned my car after 4 hrs on the return journey. I regularly hear similar stories from others, including residents, traders, as well as NHS staff and patients trying to reach the local hospital. These events are routine. Furthermore, Dartford Town Centre is not isolated from the impact of such incidents, as drivers re-assign to the town centre when there are problems elsewhere. For example: if traffic slows on Bob Dunn Way, traffic flows within the town centre are affected within 10-15 minutes; and, problems at the Dartford Crossing impact on the town centre within around 20 minutes.

- 9.4.4. DBC is committed to realising modal shift. Evidence of that is provided by our 'Fastrack' bus transit system, which operates on its own dedicated routes over around 70% of the network. The aim being to encourage the use of public transport, thereby minimising road trips. Furthermore, DBC has committed substantial sums for town centre improvements to relieve congestion. However, only marginal gains are possible, due to the proximity and influence of the M25.
- 9.4.5. It is frustrating if, contrary to the DCS, others say there is a bit of capacity, so allow development that had not been expected, such as the appeals proposal. That approach is likely to undermine all the benefits that DBC is trying to gain. Incremental damage associated with such developments must be taken into account. The proposals would add to traffic on Bob Dunn Way. The mitigation proposed by the appellant centres around enforcement of conditions, which is difficult to manage over time. It is intolerable to have such schemes forced upon us. The appeals proposal also sits uneasily with our environmental regeneration plans.

Rail

- 9.4.6. In relation to rail use, my view is that of a layman. However, I am struck by the contrast between the appellant's conviction that the proposed rail based facility would be a sure fire success on the one hand, and its reluctance to commit to the delivery of the rail connection on the other. The evidence suggests to me that there is no certainty concerning the provision of a rail connection or its capacity. This gives rise to the suspicion that the outcome may be a collection of use Class B8 sheds and not the very special circumstances necessary to justify loss of Green Belt land.

Consultation

- 9.4.7. The Bridge community is situated part way between the appeals site and the Dartford Crossing. Many of the residents I have spoken to were unaware of the proposals during the initial stages of the scheme. Since they have been informed, they have told me that no more traffic should be added to the roadways and in particular Bob Dunn Way.

Conclusions

- 9.4.8. To sum up, Councils can be expected to encourage development. DBC has a plan in place to achieve that, so it can afford to be unimpressed by the appeals proposal. Furthermore, we have businesses here already who say that they wish they weren't, due to traffic. It affects their staff and goods movements to and from their offices and also the reputation of the business. The appeals proposal would generate a lot of new traffic, with controls only over movements in peak hours. However, if there is an incident on the local highway network, there are no non-peak conditions. Furthermore, it is easy for LBB to support development which provides them with benefits, such as increased business rates, whilst the traffic impact falls on others.
- 9.4.9. With particular reference to the uncertainty associated with the rail connection, the appellant's vague ambitions as regards modal shift risk delivering no more than road connected use Class B8 warehouses with an

associated increase in highway traffic. The appeals proposal can be characterised as being 'built on sand'.

9.5. **Councillor S Borella** (CB)

9.5.1. I am a LBB Councillor, representing the Slade Green and Northend Ward.

Residential amenity

9.5.2. The appeals proposal would have an impact on residents of Moat Lane, Oak Road and Hazel Road, some of whom have fantastic views from their properties over the appeals site, which give a lot of enjoyment. The proposed development would include features such as banking and lighting, which would diminish that enjoyment. Parts of Oak Road and Moat Lane fall within a Conservation Area.

9.5.3. The community alongside Northend Road, which is a 4 lane highway, is already blighted by traffic impacts. Traffic associated with the appeals proposal, including HGVs and potentially employee vehicles would increase that problem.

9.5.4. When there are problems on the M25 or A2, causing vehicles to re-assign to other routes, Slade Green tends to become grid locked. There are also existing issues on Bob Dunn Way. It can take 2 hours for local residents to get out of the area.

9.5.5. These factors would have an adverse impact on the quality of life of local residents.

Rail

9.5.6. The recently approved LBB Growth Strategy²⁷⁸, which seeks to manage growth, anticipates the need for additional housing and improved transport links. It is not easy to get in and out of the area by bus at present, due to congestion. In the future, additional capacity is likely to be needed on the rail network for passenger rail services²⁷⁹. The rail freight demands of the appeals proposal would conflict with the provision of those services. Southeastern Trains' staff, at the Slade Green Train Depot, have also raised concerns about the potential impact of the proposed rail freight connection on the operation of the Depot²⁸⁰.

Consultation

9.5.7. Some residents of the community around Northend Road were not included in the appellant's original public consultation. Given the potential scale of the impacts arising from the appeals scheme, the appellant could have done better.

²⁷⁸ CD/3.15.

²⁷⁹ INQ/79.

²⁸⁰ INQ/58.

Economic impact

- 9.5.8. I raised my concerns regarding the appellant's scheme at the LBB committee meeting, at which the committee voted in favour of the grant of planning permission. I disagree with that decision. In particular, I consider that substantial weight should not be given to economic benefits the appellant claims; as I understand it rail freight development has a chequered history, with some successes and some failures. In my judgement, potential economic benefits of the appeals proposal would be outweighed by harm to the local community²⁸¹.

Conclusions

- 9.5.9. In conclusion, the appeals proposal would be likely to have an adverse impact on the quality of life of local residents, highway conditions and train services, with no gain for the local community.

9.6. Bexley Natural Environment Forum (BNEF)

- 9.6.1. It has been established at the Inquiry that the application is not acceptable to LBB, DBC or MOL unless there is a credible prospect of a net biodiversity gain. Furthermore, it has been agreed in cross-examination that we are, in particular, looking for gains for particular Biodiversity Action Plan and other rarer species at Bexley, London/regional and national levels.
- 9.6.2. BNEF understands the argument made by Mr Goodwin about the current relative conservation value of the improved/semi-improved grassland and former landfill areas. However, it believes that the addition of the former to the *Crayford Agricultural and Landfill Site of Importance for Nature Conservation*, upgraded to Borough Grade 1 status and renamed *Crayford landfill and Howbury Grange*, provides geographical coherence. It cannot be said that LBB approved the extension or upgrade lightly, given that it took getting on for three years to sign off on its 2013 SINC review. BNEF has also heard in evidence and cross-examination that at least 6 Biodiversity Action Plan Species are present in this grassland area, some known to be breeding here.
- 9.6.3. *The Mayor of London's Environment Strategy* (May 2018)²⁸² states that SINC's 'are locally valued wildlife sites that provide the core framework necessary to conserve London's biodiversity'.
- 9.6.4. In the view of BNEF, the appellant's case has not fully addressed the outcome of the Government's own review '*Making space for nature: a review of England's wildlife sites, 2010*²⁸³, which states that larger, better joined up (i.e. not smaller and more fragmented) habitats are essential for conservation. The wildlife value of the appeals site grassland could easily and cheaply be improved by changes to the grazing regime and by other means and it would provide a bigger buffer between Slade Green and the

²⁸¹ XX Councillor S Borella.

²⁸² INQ/22 BNEF/W1/3 attachment 2.

²⁸³ INQ/22 BNEF/W1/3 attachment 3.

richer wildlife areas to the north and east. It is no accident that the highest-graded SINC in Bexley are also the largest, and in this case we are dealing with two relatively large high-grade sites with a long common border.

- 9.6.5. Exercises in peeling off the parts of SINC that are poorer than average would leave us with smaller sites of a Swiss cheese character, with inappropriate developments within them and at their margins. In the absence of any biological SSSIs, SINC are the best wildlife sites in the LBB, and its Grade 1 areas fall within the top half of this set of sites in terms of richness of biodiversity.
- 9.6.6. The *State of Nature* reports, most recently in 2016²⁸⁴, have highlighted serious declines in biodiversity. The very weak statuses of Skylark as a breeding species in Bexley as a whole, and that of the Corn Bunting in London, have not been quantified by the appellant, or by LBB officers at planning committee, and in our view they would be exposed to significant risk by this development. The Skylark is an iconic species of summer and a good one to engage the local public with wildlife. Mr Goodwin remarked, in response to BNEF's question as to what LBB's view is of the likely implications of the scheme for Corn Bunting numbers?, that it is difficult for LBB officers to have a handle on everything. BNEF considers that is not good enough when set against the Council's biodiversity Policy CS18 regarding protected and priority species, which in turn informs mitigation requirements, especially when we are talking about larger, more obvious species of conservation concern. In addition, the *Marshes Management Plan* (MMP)²⁸⁵ para 3.7 admits that there is an absence of contemporary, detailed, biodiversity survey data for the Crayford Marshes SMINC. You would not remove, or risk having removed, sums of money from your bank account without understanding how much was in it to start with. Or at least you wouldn't keep claiming that you're in no danger of going into the red or that the amount in it will definitely be increasing.
- 9.6.7. Managing biodiversity is not like chemistry or physics, in that you cannot rely completely on outcomes from particular practices being replicable. There are no guarantees that there will be a net increase in biodiversity, or that the numbers of species of particular conservation concern displaced from the development site will increase as a result of the MMP. Mr Goodwin's evidence in chief specifically mentions Skylarks and Corn Buntings. The MMP²⁸⁶ does not, and under a general heading of 'Birds' (paras 4.25, 4.26) is rather vague and essentially aspirational in this regard. Table 8 (point 2 page 14) of the MMP on birds makes a general point about retaining favourable conservation status, which in these particular cases ought to mean a significant population increase within Bexley. Indeed the MMP is thin on detail regarding species-specific actions and does not enumerate any predicted increases set against any defined targets. Even if there were, there would be no penalties should they not be attained. BNEF does not doubt the appellant's good intentions in this respect. Nevertheless rather more information would have inspired greater

²⁸⁴ INQ/22 BNEF/W1/3 attachment 4.

²⁸⁵ CD/1.33.

²⁸⁶ CD/1.33.

confidence in the overall claim that an increase in biodiversity will be delivered across the remainder of the combined area of the two adjacent sites. We appreciate that more detail will be added in due course, but once outline planning has been approved the chances of any permission being overturned should this be deemed inadequate are essentially non-existent.

- 9.6.8. BNEF has heard in cross-examination why the appellant prefers green walls to green or brown living roofs, but no evidence has been presented as to design and which suite of species might use such walls, or whether and why these might be better than living roofs for the rarer species identified in the area. Reference was made to Lapwing chicks falling off a green roof, but this is likely fixable through design. Meanwhile Skylarks have nested on living roofs in the UK.
- 9.6.9. BNEF remains extremely concerned that this development could become the thin end of a wedge that leads to the loss of more of the marshes area, particularly by providing justification for Bexley's mooted Slade Green 'relief road' (by-pass)²⁸⁷ and/or other roadways or widened roads that could in turn become a driver for further development. On its own a by-pass would directly impact Green Belt and damage and fragment the Crayford Marshes SMINC, itself part of the proposed mitigation area, along with the landfill immediately to the east of the development site which would also be likely to be affected given routing constraints, and increase traffic. In BNEF's view, that the local planning authority, which is to be half of the Marshes Management Board is proposing this, however 'hypothetically', does not inspire confidence in its commitment to protecting and enhancing the marshes. In BNEF's view the Prologis 'offer' to put the land into a Trust might have granted better long-term protection.
- 9.6.10. BNEF has seen no evidence to suggest that this, or any larger collection of proposed SRFIs, will result in a net reduction of HGV or LGV traffic on UK roads, including in the light of Department for Transport growth predictions, which BNEF submitted. Nor that any amount of SRFIs will do so. This must be a consideration given that appeal has been deemed to be of regional and UK-wide strategic importance and taking into account the government's carbon emissions and sustainability targets.
- 9.6.11. BNEF therefore remains of the opinion that the value of the proposals as a whole do not outweigh the loss to Green Belt and other negative consequences, and that the exceptional case test is not passed.

²⁸⁷ INQ/82.

10. THE CASES FOR OTHER OBJECTORS WHO MADE WRITTEN REPRESENTATIONS

[This section relates to the correspondence received by the Planning Inspectorate in response to the appeal notifications and the consultation responses received by the Councils in response to the applications for planning permission. The submissions reflect many of the matters raised by the main parties, which I do not repeat in detail here. I summarise the many points raised].

APPEAL STAGE REPRESENTATIONS

10.1. Royal Society for the Protection of Birds (RSPB)²⁸⁸

- 10.1.1. The development would contribute to the long-term encroachment and degradation of the Thames marshes. The Greater Thames Estuary is one of the most important wildlife sites in Europe. The adjacent inner-Thames marshes, of which Crayford Marshes is a part, are a much diminished resource and under increasing threat of fragmentation from creeping development. The development would constitute both physical loss of habitat and peripheral effects on the adjacent wet grassland.
- 10.1.2. The appeals proposal would result in a loss of breeding habitat for scarce and declining bird species, in particular Corn Bunting and Skylark. Both of these species are Red listed in the most recent revision of Birds of Conservation Concern (a multi-partner assessment of the conservation status of British birds). Like many bird species, Skylark and Corn Bunting are mobile and adaptable, so dispersal is not an issue. However, the continued loss of suitable habitat means that they have nowhere to go. Both species breed in Crayford Marshes because the habitat is ideal, but are absent from other areas around Bexley, and are generally reduced and fragmented in North Kent. This suggests that the remaining breeding sites are particularly important. Loss of suitable habitat is the main driver for declining populations in both species.
- 10.1.3. Whilst the Thames has a long history of economic development, it has an even longer history as a 'feeding hub' for migratory birds. There is a need to balance the economic and natural assets along the Thames. The remaining wetlands of the inner Marshes are particularly vulnerable to encroachment. It is vital that economic activity in the Thames works with, not against, nature. Preventing the loss of remaining green space is paramount, creating new green space the ambition. The emerging *London Plan* is clear about the benefits of green space for local communities and has ambitious targets for the creation of green space. The appeals proposal would conflict with that ambition.

10.2. Dr R Gray²⁸⁹ (Chairperson of BNEF)(DG)

- 10.2.1. The evaluation of the significance of the impacts of the development are recorded as being of moderate or little significance to the majority of factors considered in the Environmental Statement. Having worked in the

²⁸⁸ RSPB, 19 December 2017.

²⁸⁹ G.Gray, emails 21 May 2018, 11 December 2017.

construction industry for many years, it is my experience that any construction project does not produce impacts of minor significance.

- 10.2.2. From the landscape viewpoint the development will impact on the traditional openness of the marshland landscape, bringing in a new dominant feature. The overall impact of the proposed development will significantly alter views from many of the surrounding areas, and the mitigation effects only adding to the breakup of the landscape, as well as introducing features that are not characteristic of the area. Can the imposition of an unnatural building and associated construction works be said to enhance an open green landscape.
- 10.2.3. Fragmentation across the whole of the North Kent Marshes has resulted in the loss of much of the traditional open values of the landscape. This has allowed the encroachment of industry and urban development and a loss or damage to the characteristics and features of the grazing marsh. The advent of the proposed development would lead to further erosion of the grazing marsh landscape in the Inner Thames area and increasing dominance of their surroundings. The influence of the landscape and surroundings on Crayford and Dartford Marsh will help determine their future. Allowing such a large development adjacent to the sensitive marshes would severely impact on the ability of the marsh to act as an ecologically viable entity and further reduce the area of grazing marsh, not only in Greater London but throughout the UK.
- 10.2.4. As well as destroying a significant area of Green Belt the proposed development would fragment an important group of Sites of Importance for Nature Conservation, preventing species from recolonising sites that have been damaged, or extending their present ranges. To lose additional grazing marsh and to increase the possibility of further loss is in direct contravention of the UK, Kent and Bexley Biodiversity Action Plans (BAPs).
- 10.2.5. The Environmental Statement, whilst being comprehensive in its scope of how the development will affect the immediate site upon which construction will take place, seems to have been less well researched and surveyed in terms of the wider reaching impacts on the local area. From a landscape ecology viewpoint, the site needs to be considered as to how it relates to its environment and the habitats and landscapes that surround it. In this respect it can be regarded as having 4 main functions: a buffer between urban development, the landfill site and Crayford Marshes; a wildlife corridor; a refuge for wildlife associated with the grazing marshes in the future as sea levels rise due to climate change; and, a potential future contributor to the Bexley Green Grid Framework. Ratcliffe (1977), recorded that the position in the ecological unit, the potential value and intrinsic appeal of a habitat or area were just as important in evaluating a site as size, diversity and rarity. In this case it would appear that these three criteria have been badly overlooked.
- 10.2.6. To allow this development to proceed would severely limit the ability of LBB to implement its Biodiversity Action Plan, (not only in respect of grazing marshes), and to conform with the greater national need to see an overall increase in areas of grazing marsh. The proposed development would in my opinion lead to the current marshes of both Crayford and Dartford losing value and they would be threatened by processes during the construction

and operational phases that cannot be mitigated against. Their fragility rests on hydrological processes that have not been fully researched; processes that will be influenced and altered, as admitted in the proposals, by the development, and the complex relationship of the mosaic of micro habitats that comprise the grazing marsh habitat. The value of grazing marshes as a feeding, nesting and overwintering site for many bird species relies on the hydrological processes and inter-relation of the topographical features. To allow the development to proceed puts all these factors at risk and in doing so would severely reduce the value of the marshes as an important habitat, locally, regionally and nationally.

- 10.2.7. The mitigation measures provided by the Environmental Statement, whereas, on the surface would appear to be of some benefit to the local natural environment, do not go far enough and in many cases are inappropriate. To ensure the survival of grazing marsh and green space in the Crayford area is going to require long term management and have adequate funding to provide the right kind of management. We acknowledge that a draft management plan has been produced covering a period of 25 years. A fully prepared management plan, covering a longer span of time, would need to be provided, together with insurance that over the long term the effects of sea level rise and climate change can be accommodated with the provision that there will be areas onto which the grazing marsh and its ecology can retreat.
- 10.2.8. In determining the outcome of these appeals, there must be consideration of not only future sustainability of our local environment, but also the actual longer strategic need for this development. Consideration must be given to the effects that the construction of the Lower Thames crossing will have, with the aim of taking traffic, including freight away from London and the M25, in order to speed up movements to the Channel Tunnel. At this time, will this facility be a viable option for freight traffic? In this instance, would not London Gateway be a better option? Can it be guaranteed that Bexley will not be left with a white elephant or a giant lorry park?
- 10.2.9. The Framework believes that there should be enhancement and promotion of green infrastructure and biodiversity. Building on green space and removing habitat is hardly promoting it.
- 10.2.10. These appeals should be rejected as they do not meet any criteria on strategic needs that require the loss of Green Belt, neither do they make any contribution to the sustainability of local resources. Strategic and sustainability must be seen in tandem, and that means not just today, tomorrow or next week, but 20, 35, 50 years into the future.

10.3. **The Inland Waterways Association**²⁹⁰ (IWA)

- 10.3.1. The Inland Waterways Association accepts the proposed access bridge clearances to Crayford Creek shown on drawing no. 2039-STR-01 rev B.

²⁹⁰ Letters dated 28 March and 2 May 2016 and email dated 11 June 2018.

It would be sufficient to allow upstream passage of all craft able to enter Vitbe Basin. They should not be reduced by changes to the design.

- 10.3.2. Furthermore, a mooring should be provided downstream of the proposed new bridge to give safe refuge for masted boats that would otherwise have moored further upstream at the disused wharves. IWA acknowledges that the disused wharves upstream of the position of the proposed bridge have not been used for decades. However, access to the area upstream of the location of the proposed bridge for high masted craft was improved by the removal of fallen/overhanging trees in January/February 2017. In May 2018 a flotilla of craft from St Pancras Cruising Club visited, supporting the need for moorings downstream of the proposed new bridge.
- 10.3.3. A licence would be required from the Marine Management Organisation for works affecting the right of navigation of tidal waters. The IWA would oppose the grant of such a licence, if the mitigation measures we seek are not implemented.

10.4. **A.G. Thames Holdings Limited²⁹¹** (AGT)

- 10.4.1. AGT and a sister company, Solstor Limited, run fruit packing, warehousing and distribution operations from their site, employing around 500 people. They are located on the A206 Thames Road. AGT and Solstor are therefore significant local employers. AGT's local knowledge of how the A206, local road network and associated major roads presently function has given AGT an insight into how the proposed development would adversely impact on local road conditions and the already congested M25, M2 and M20. This would in turn have an adverse impact on AGT's business and employees, local residents and businesses, and others even further afield.
- 10.4.2. COTTEE Transport Planning Ltd have been instructed by AGT to review the proposed development and the following submissions draw upon its findings.
- 10.4.3. The most recent traffic survey of key roads most likely to be affected by the appeals proposal was produced in 2015. Since then, congestion has increased substantially. Therefore, an updated survey should be produced and used as the basis for assessment. The area already suffers from extremely serious traffic congestion and the proposed development would make this situation significantly worse. The additional congestion caused by the proposed access road would have a significant adverse effect on AGT's business in terms of its ability to service customers with confidence, the financial impact of delays and AGT's ability to recruit employees due to the level of congestion.
- 10.4.4. The scarcity of existing Strategic Rail Freight Interchanges, and the fact that they are not directly comparable with this site means that they provide only a limited understanding of the potential impacts of a new SRFI in a different location to that proposed for this development. For example, a SRFI in Daventry (from which the trip generation was derived in the TA), while next to motorways, is in a rural location some distance from any major urban

²⁹¹ Letters dated 21 August 2018 and 19 December 2017.

area. The proposed site while in the proximity of the M2, M20 and M25, serves the major urban area of London. Therefore, there is a significant risk in allowing the appeals proposal as a 'guinea pig' for developing a large SRFI.

- 10.4.5. Being within the London area and the M25 with connections to the M2 and M20 and southeast ports creates a strong likelihood that the site would be more attractive than the Daventry site. Any assessment needs to allow for this potential but the current TA potentially underestimates this effect and does not make allowance for this location factor.
- 10.4.6. As raised by DBC, as well as being inside the M25, the site is located in a heavily built up area adjacent to the A282/Dartford Crossing and traffic from the site would impact on the local roads in Dartford as well as the strategic road network in Dartford. AGT has further concerns with the TA analysis which we set out below.
- 10.4.7. With regard to the A206, Thames Road, there is a historic problem (going back to about the time of a previous planning application in 2006) with Craymill Rail Bridge, which narrows the highway to a single lane in each direction. At the time of the previous planning application in 2006, the bridge was to be replaced as part of the A206 Thames Road improvement scheme. Whilst the replacement has never taken place and there is apparently no firm date for it, the TA assumes in its analysis that the Craymill Rail Bridge replacement is in place²⁹²; there is no provision in the TA that the development should only take place once the Craymill Rail Bridge is in place. Completion of the Craymill Rail Bridge improvements should be an absolute pre-requisite to the appeals proposal being approved, as without this, the increased congestion in an already congested area would be intolerable and would have a major impact on local businesses.
- 10.4.8. Furthermore, at such time as the Craymill Rail Bridge Scheme is implemented there would be likely to be a significant rise in traffic flow with the removal of the cause of congestion. The TA assessment of the impact of the development on traffic flow is on a suppressed traffic flow condition as a result of the current bottleneck and should be tested on traffic flows which relate to a congestion free route.
- 10.4.9. The TA indicates that on the Thames Road/Crayford Way roundabout, the Thames Road (east) arm had average queues of 4 vehicles recorded in 2015²⁹³. This rises to an extraordinary 166 vehicle queue in the forecast 2031 base position²⁹⁴. The reason for this is the capacity (RFC) rises from 0.804 to 1.077 taking that arm of the junction over capacity. The TA acknowledged the local network is at capacity in the 2031 base so additional traffic will cause a spread of overcapacity across the network²⁹⁵.
- 10.4.10. Congestion is already a problem, acknowledged in the TA, both in and outside peak times from the Dartford Tunnel up to the junction 1A slip road

²⁹² CD/1.27 page 41 paras 4.6.5-4.6.6.

²⁹³ CD/1.27 page 40.

²⁹⁴ CD/1.27 page 78 Table 9-9.

²⁹⁵ CD/1.27 page 78 para 9.7.2.

and the proposed SRFI would have a major impact on this junction because it is the route to and from the M25 which most HGVs will use. Major improvement to the road network would need to be made before the SRFI is introduced if it is not to have serious consequences for the M25, junction 1A.

- 10.4.11. The TMP is a substantial document, which would require significant management input and there are no examples of similar development on such a scale in this congested area being operated effectively and without congestion issues.

10.5. Other respondents

[The remaining respondents are for the most part either individuals or private companies and the matters set out in this section are not attributed to particular parties.]

- 10.5.1. I am a Community Occupational Therapist and have lived on Burnham Road for 23 years. There are times when I and colleagues are late for appointments due to traffic congestion. Near gridlock conditions can result from an accident at Dartford Crossing²⁹⁶. Part of Burnham Road lies in a flood zone and the marshes have a natural flood defence role hereabouts. During the time that I have lived in the area, I have seen the appeals site flood on numerous occasions²⁹⁷.
- 10.5.2. The marshes comprise a unique area of open space, which is accessible to Dartford and Bexley residents, and valued for leisure uses, such as walking and bird watching. This natural environment has a positive impact on the health and wellbeing of people and communities, a view supported by *The London Environment Strategy*²⁹⁸.
- 10.5.3. The proposal would harm residential property value.
- 10.5.4. Hoo Junction, to the east of the appeals site, handles a lot of container freight and has good road and rail links. It should be considered as an alternative location for the proposed use²⁹⁹.
- 10.5.5. The proposal would include the removal of elm along part of Moat Lane, to form an entrance into the site. Elm is the only habitat for White-letter Hairstreak, a protected species of butterfly of high conservation priority, which has been recorded in that area. The habitat would be harmed.
- 10.5.6. Friends of Crayford Marshes objects to the appeals proposal. In support of its view it has established an on-line petition entitled '*Save our Crayford Marshes-Don't Build on Habitat for Corn Bunting and Skylark*', which had over 2,680 signatures of objection as of December 2017.

²⁹⁶ C Campbell, 13 December 2017.

²⁹⁷ C Campbell, 13 December 2017 and others.

²⁹⁸ C Campbell, 13 December 2017, and others.

²⁹⁹ T Boulton, 12 December 2017.

PLANNING APPLICATION STAGE REPRESENTATIONS

- 10.6. **London Wildlife Trust (LWT)**
- 10.6.1. LWT estimates that the application site would take around 59 hectares of the Crayford Landfill and Howbury Grange SINC (currently some 96 hectares), although around 17 hectares would be restored as part of the scheme. The net loss of the SINC, in spatial terms, of some 49% is highly significant. There would be additional indirect impacts, most notably reducing the area of habitat would reduce the viability of the remainder of the SINC site to support populations of: breeding and roosting birds, such as Corn Bunting and Skylark; as well as small mammals and reptiles.
- 10.7. **J Lambert MEP³⁰⁰** (Green Party Member of the European Parliament for London)
- 10.7.1. The scheme would increase the amount of traffic in this part of Bexley, including worker access. However, it would not offer 'more sustainability' in terms of supplying Bexley and southeast London with goods, as the goods movements generated are expected to go in the direction of the Queen Elizabeth II Bridge, not west or southwest into Bexley and neighbouring boroughs. The proposals would contribute to the Department for Transport's prediction of increased HGV traffic on the road network, and this would cause additional carbon emissions and localised air pollution impacts.
- 10.7.2. BCS Policy CS18 requires protection and enhancement of the Borough's biodiversity. The proposed development would go against that objective. The scheme would destroy almost 50% of the Crayford agricultural and landfill Site of Importance for Nature Conservation. The appellant claims that the best part of the SINC would be left intact, that the rest is of poor value and that its landscaping work would deliver a net benefit to wildlife. However, the approach also ignores the intrinsic value of larger areas of habitat and the unmeasured plant and insect resources they would produce for more mobile species utilising this and neighbouring areas. The appeals proposal would result in the diminution in size and fragmentation of key wildlife sites, which is a problem of local, regional and national significance.
- 10.7.3. BCS Policy CS18 criteria (c) additionally identifies the need to '*resist development that will have a significant impact on the population and conservation status of protected species and priority species in the UK, London and Bexley Biodiversity Plans*'. The appeals proposal would run counter to that Policy. The scheme presents a major threat to breeding Skylark and Corn Bunting in Bexley, both red-listed species due to significant declines.

³⁰⁰ Letter dated 24 October 2016.

10.8. G Johnson MP³⁰¹ (for Dartford)

- 10.8.1. Whilst I recognise the large amount of jobs that could be created by the scheme, congestion on the roads around the Dartford Crossing causes a significant amount of lost revenue for the local economy. The approach to the Dartford Crossing is in my opinion the worst stretch of road in the country. Therefore, adding to an already problematic situation would have a detrimental impact on the local area.
- 10.8.2. The current road network needs only a minor issue for congestion to grip the area. If the application is successful then the traffic created would, in my estimation, lead to more regular hold ups.
- 10.8.3. I have serious concerns that the already saturated roads would be unable to cope with an additional 1,150 HGVs and numerous other vehicles a day, particularly during periods of heavy congestion.

10.9. Save of Skylarks: Save Our Crayford Marshes³⁰²

- 10.9.1. The southern part of Crayford Marshes is visually, geographically and, from a wildlife and ecological point of view, functionally part of the wider Crayford Marshes area. The London Wildlife Trust has said of this section '*the extensive area of the site and its proximity to two Sites of Metropolitan Importance (the northern part of Crayford Marshes and the River Thames) further increases its value*'. It has recommended that it is promoted from a Borough Grade 2 to a Grade 1 site in the SINC review, which the Council has delayed agreeing to for nearly 2 years. The proposed development would destroy a large part of it.
- 10.9.2. In conjunction with neighbouring Dartford Marshes, the area provides an expanse of open space and big skies available nowhere else in Bexley.
- 10.9.3. It is a high tide roost for several species of national conservation concern: Redshank; Curlew; as well as, Ringed Plover (red-listed) and Lapwing (red-listed). It is one of only two breeding sites for Skylark in Bexley which are fairly secure from disturbance. The other is under 'development' threat. It also has breeding Corn Bunting, of which there may now be only 20 pairs in the whole of London. The site is therefore of conservation importance at Borough, regional and national level and should not be built on as this would be contrary to Bexley Council's policy to protect and enhance biodiversity in the Borough.
- 10.9.4. Despite being rail connected, the proposed logistics hub would result in a net increase in road traffic and carbon emissions in Bexley, and has nothing to do with delivering real 'sustainability', the supposed basis of Bexley's Core Strategy.

³⁰¹ Letter dated 15 December 2015.

³⁰² CD/1.6 page 51 'a total of almost 150 individually signed letters/leaflets have been received which object to the scheme on the following grounds'.

10.10. **Dartford and Crayford Creek Restoration Trust**³⁰³ (DCCRT)

10.10.1. The Cray is navigable and interest in visiting is expected to increase following the removal of fallen/overhanging trees. DCCRT has a record of 4 yachts having navigated up the creek in 2016. Mooring pontoons should be provided downstream of the proposed bridge location to allow sailing craft to moor and be safely demasted before onward travel.

10.11. **Other respondents**

[The remaining respondents are for the most part individuals and the matters set out in this section are not attributed to particular parties.]

10.11.1. A number of residents of properties local to the site, such as on Leycroft Gardens and Oak Road, are concerned about the noise that would be generated, both in the construction of the proposal and during operation, anticipating that even with the proposed embankment, the noise from trains moving about the site would be intrusive.

³⁰³ Email dated 1 September 2016 and CD/1.6.

11. THE CASE FOR THE APPELLANT

11.1. Introduction

11.1.1. The main issues outstanding in these appeals are as follows:

- a. Would the proposed Strategic Rail Freight Interchange meet a nationally-identified need that cannot be met adequately elsewhere?
- b. What planning benefits of the proposed development can be reasonably anticipated?
- c. What are the likely adverse effects of the proposals?
- d. Are there, bearing mind all of those points, 'very special circumstances' justifying the release of the appeals site from the Green Belt.

Navigation

11.1.2. Those 4 issues emerge from a complex evidential situation driven by conflicting arguments and it seems helpful to begin with a brief guide to navigation of the matters set out below. In this introductory section I therefore make points about: the overall strength of the case for the RDL proposals; what I call the 'architecture' of the opposition cases presented to the Inquiry; and, the need to focus attention on the right questions when assessing a SRFI.

The overall strength of the case

11.1.3. There is a considerable amount of detail before the Secretary of State. However, it is perhaps salutary to recall the following key points at the outset of any summary:

- a. The appeals site lies within the Green Belt and has an ecological designation. The Green Belt and landscape impacts of the appeals proposal are very large and adverse. However, the site itself is otherwise unconstrained. It also lies in relatively close proximity to the M25 and Network Rail say it can physically connect to the mainline railway with gauges appropriate for rail freight. Nobody at the Inquiry suggests that the physical rail connection itself is incapable of being constructed and used. The use is not prohibited by proximate residential occupiers, if appropriate mitigation is employed.
- b. It was granted consent for a SRFI of comparable proportions in 2007.
- c. It lies in the Bexley Riverside Opportunity Area, which identifies logistics as a key strategic use for that area, and is protected for SRFI use in the *London Plan*.
- d. Fully operational, it would generate around 2000 jobs.
- e. The application continues to enjoy the support of Network Rail as far as access to, and pathing through, the rail network. Despite all manner of suggestions to the contrary, there is no evidence to suggest that Network Rail considers that the SRFI cannot operate satisfactorily as such; indeed it would be extraordinary for Network

Rail to have written in the detailed terms that it has, if that were its view³⁰⁴.

- f. SRFI facilities on the appeals site are supported by GB Railfreight, Maritime and an obvious potential user, the neighbouring Viridor operation.³⁰⁵
- g. The appeals proposal are being promoted by a company with specialist knowledge of SRFIs, and which is currently engaged in the delivery of such facilities at East Midlands Gateway (and Radlett, with a new Development Consent Order application having just been made in Northamptonshire). There is no basis for a negative inference that RDL's Howbury Park scheme is a 'Trojan Horse' application for a purely road-connected logistics park.
- h. The expressions of interest and the demand evidence chimes with the Government's view about the demand for SRFIs, and what it continues to see as the national need for an expanded network of SRFIs, established in the NPSNN, which also notes the particular goal of locating such uses close to London. SRFIs are of sufficient importance for their benefits to form the basis for a very special circumstances case; it is unlikely that any local plan would allocate land for a national use of this kind.
- i. It is not the subject of any highway safety or free flow objection from any of the relevant Highways Authorities: Highways England; Kent County Council; LBB; and TfL (Mr Findlay's '4HA'). DBC's air quality work does not disclose any more than negligible air quality effects.
- j. The London Borough of Bexley, in which the vast majority of the site lies, resolved to approve the proposal (only for the MOL to direct refusal).
- k. There is no technical objection from any statutory consultee in relation to ecology, which would be enhanced by the proposals.

The architecture of the cases presented to the Inquiry

- 11.1.4. A word also at the outset about the overall architecture of support and opposition to the proposals. Given the eleven summary points, it is unsurprising: (1) that the LBB (which opposed the Prologis scheme in 2006-7) resolved to grant permission and has not actively objected at this Inquiry; and, (2) that there has been, for a scheme of this size, very little local opposition and engagement, save for a handful of conscientious and able people like Mr Hillman and Mr Reynolds.
- 11.1.5. It is rather more surprising that DBC oppose the grant of permission on highways grounds, given that the relevant highways authority for the affected roads in their area, KCC, supports the grant of permission. It is odd that they maintain an air quality impact case when their own air quality

³⁰⁴ CD/1.6 page 21 onwards.

³⁰⁵ APP/RAIL/2 Appendix A.

expert, Dr Maggs, says that the proposal would have negligible effects. Furthermore, if the DBC position really is as parochial as appeared to be the case from Mr Bell's evidence to the Inquiry, then it should be treated with considerable caution. It is a source of regret that only limited weight appears to have been given to the scheme's SRFI credentials in DBC's evaluation simply because the majority of the development, with its Non-Domestic Rates revenue, jobs and economic benefits, lies within Bexley; that is obviously not an approach that should be commended to the Secretary of State when considering nationally-important infrastructure.

- 11.1.6. Finally, it is *very* surprising that the Labour MOL opposes the grant of permission for a SRFI on Green Belt land at Howbury Park. It is a proposition the then MOL supported in 2006-7; it comprises a use now protected on the site in the *London Plan*; that use is in line with a policy focus on ambitious logistics growth in the Bexley Opportunity Area; especially since the employment ambitions held by the MOL for that area are hugely increased in the emerging *London Plan*.
- 11.1.7. This point is nothing to do with the inquisitorial role of the Inspector or the overall discretion of the Secretary of State when making the decision. Those roles and powers go without saying. But the way the principal parties arrive at an Inquiry like this and the shape of their arguments should not be forgotten when reflecting on the key issues which go to whether permission should be given for RDL to take the opportunity to deliver a SRFI on the edge of London. The Secretary of State should therefore be informed clearly, and should consider carefully, the limited local opposition, the circumscribed concerns of DBC and the conflicted way that the MOL now seeks to call into question a proposal which in policy terms he should support.

Right and wrong questions

- 11.1.8. There are two points to be made here. One goes to the arguments advanced on the basis of the rail connectivity of the site in 2018 timetable; the other goes to the arguments about traffic modelling and uncertainty. These two issues have, I think it is fair to say, occupied a considerable amount of Inquiry time. RDL's case is not that the evidence is entirely irrelevant, but that it is potentially very misleading, and runs the risk of founding recommendations and the overall decision on a false basis. To use a more legal formulation, the points here go to matters of weight, but only once one has understood the policy context correctly.
- 11.1.9. Dealing first with the rail connectivity issue, the obvious point is that the site can be physically connected to the network, and is large enough for a SRFI. It lies on the edge of London and there is considerable rail traffic currently timetabled, which makes getting freight trains across London, across the Crayford Creek Junction, and into the site, a challenging and technical job for Network Rail's timetable planners. That challenging rail landscape is, in a sense, a constraint of the site for rail freight. However, it is not a constraint in the same way as a canal, or a steep gradient might be. Indeed, the nature of the constraint is only in fact *represented*, rather than *comprised in*, the 2018 timetable.

- 11.1.10. That is because the constraint may or may not be the same when the SRFI opens. If permission were granted, the development would not be fully built out and operational for some years, perhaps as many as 10 years from opening. It is therefore not realistic to expect decision-makers to assess the SRFI's effects and operation as at 2018. The traffic effects, for instance, have been assessed at design year 2031. One can see why it should not be an absolute objection (even if it were made out on the evidence) that the 2018 timetable cannot show 4 trains in and out of the site without making adjustments to the existing timetable.
- 11.1.11. Some of the pattern of movement, types of freight, wider network traffic conditions, rail timetable, and so on, will change between now and the maturing of the scheme. 'What are the effects of the scheme in 2018' is therefore the wrong question. 'Can 4 paths in and out be accommodated in the September 2018 timetable' might be a relevant question, but it is not the question that discloses the answer about the site's ability to provide 4 trains a day during its operation.
- 11.1.12. Is there a different question based on the 2018 timetable evidence? The MOL says that planning permission should be refused because the Secretary of State cannot be reasonably assured that even 4 trains a day could in the future be pathed into the site. Clearly, it is a relevant question to ask whether the Secretary of State could be reasonably assured that might be the case in the future.
- 11.1.13. I leave the detail of the evidence to later in these submissions, but make the point now that, even if it were judged (contrary to the appellant's view of the evidence) that the 2018 timetable did not show 4 paths in and out a day, should the Inspector and Secretary of State *infer* that the site is not capable of functioning as a SRFI? That is what the MOL asks to be done. However, that would require a judgement that the 2018 timetable is incapable of being, would not be, adjusted either in any event, or specifically in relation to the pathing of rail freight to Howbury Park in the future. There is no evidence from Mr Goldney to that effect. It would be a hugely tendentious judgement. It would run counter to the position of Network Rail on the appeals.
- 11.1.14. There is also a real danger of circularity here: unless Howbury Park secures its planning permission, there will be no pathing to negotiate with Network Rail, no exercise carried out to move the 14.25 from Dartford to Victoria by 5 minutes to allow a train into Howbury, and so on; one should not refuse permission on the basis that such an exercise has not yet been done and therefore that its results cannot be demonstrated.

11.2. **Would the proposed SRFI meet a nationally identified need that cannot be met adequately elsewhere?**

The role of the National Policy Statement for National Networks
(NPSNN)

- 11.2.1. The Government's national policy statements have as a primary function the establishment of the need for certain developments and facilities; they are

intended to obviate the need for the kind of interminable debate about need that bedevilled Inquiries in the past such as that into Heathrow Terminal 5.

11.2.2. Chapter 2 of the NPSNN is entitled *The need for development of the national networks and Government's policy*. There has been little if any debate at this Inquiry as to the need which exists for a network of SRFIs. The principal references are:

- a. Paragraph 2.2 *'There is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and, to provide a transport network that is capable of stimulating and supporting economic growth'*.
- b. Paragraph 2.8 *'There is also a need to improve the integration between the transport modes, including the linkages to ports and airports. Improved integration can reduce end-to-end journey times and provide users of the networks with a wider range of transport choices.'*
- c. Paragraph 2.10: *'The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system.'*
- d. Having referred to the Network Rail unconstrained rail freight forecasts 2023 to 2033, the Government in paragraph 2.50 continues: *'while the forecasts in themselves, do not provide sufficient granularity to allow site-specific need cases to be demonstrated, they confirm the need for an expanded network of large SRFIs across the regions to accommodate the long-term growth in rail freight. They also indicate that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail'*.
- e. On a different point concerning the environmental benefits of modal shift away from the roads, the NPSNN also says this, at paragraph 2.54: *'To facilitate this modal transfer, a network of SRFIs is needed across the regions, to serve regional, sub-regional and cross-regional markets.'*
- f. The concept of the particular SRFI 'network', and whether there are any differences between the regions, is explored at paragraphs 2.56 to 2.58:

2.56- *'The Government has concluded that there is a compelling need for an expanded network of SRFIs. It is important that SRFIs are located near the business markets they will serve – major urban centres, or groups of centres – and are linked to key supply chain routes. Given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites.'*

2.57- *'Existing operational SRFIs and other intermodal RFIs are situated predominantly in the Midlands and the North. Conversely, in London and the South East, away from the deep-sea ports, most intermodal RFI and rail-connected warehousing is on a small scale and/or poorly located in relation to the main urban areas.'*

2.58- *'This means that SRFI capacity needs to be provided at a wide range of locations, to provide the flexibility needed to match the changing demands of the market, particularly with traffic moving from existing RFI to new larger facilities. There is a particular challenge in expanding rail freight interchanges serving London and the South East.'*

- 11.2.3. There can be no doubt that the NPSNN as published establishes a critical or compelling need for an expanded network of SRFIs, particularly in close relation to London. That need, whilst locationally-focused, is part of a national need.

Is the NPSNN still reliable?

- 11.2.4. It is not suggested by the MOL or any party that the NPSNN is out of date, to be replaced, or unreliable for the purposes of these appeals. All the main parties refer to it and use it to judge the proposals in various ways. The only exceptions perhaps are: (1) DBC's suggestion that the NPSNN has 'moved on' in the SIFE decision to focus on quality rather than quantity, for which there is no evidential basis (and nor was the Inspector, in my submission, in SIFE purporting to move policy on from the NPSNN); and, (2) the MOL's point³⁰⁶ that the NPSNN refers to 'unconstrained' demand, which may not have been reflected in the progress made by SRFI development since 2014. However, that does not, indeed may not be intended by the MOL to, suggest that the NPSNN itself is out of date. The unconstrained demand still exists; it is a question of removing the constraints. One of those, as the NPSNN indicates, is the lack of a network of SRFIs, without which it is unsurprising that the fully unconstrained demand has not been expressed in take up of rail freight.
- 11.2.5. It follows that the Secretary of State should give substantial weight to the NPSNN, and when applying it to the appeals proposal, bear in mind that it forms part of the Government's policy, based on evidence, that if a SRFI is constructed in order to meet demand, it is likely to be taken up, particularly in areas where there is currently poor demand. This part of the country, to the south east of London, is such an area.

Would Howbury Park meet the identified need (in part)?

- 11.2.6. So the conclusion is that a compelling national need exists for an expanded network of SRFIs. Is there any force in the suggestion that Howbury Park would 'not function' as a SRFI? This became the focus of the MOL's case at the Inquiry, in support of his stated scepticism that Green Belt loss would be

³⁰⁶ See emphasis at paras 7.1.2 and 7.4.30 of the MOL's case.

justified by the benefits of a SRFI. In summary, it is said (on behalf of the MOL)³⁰⁷ that:

- a. Howbury Park has operational restrictions on site, including the allegation that the proposed multi-user intermodal facility is unlikely to provide the flexibility that retailers identify;
- b. It does not have rail-connected warehouses; and unlike in 2007 'the proposal is configured in such a way that makes it perfectly suitable for entirely road-based traffic';
- c. Demand for SRFIs is questionable or 'underperforming';
- d. Rail remains more expensive than road freight;
- e. It would suffer from restrictions due to the apron size and the need to park HGVs in large numbers during the 'HGV cap' period and/or during 'incidents' which have led to congestion, and due to road congestion in general;
- f. The current timetable is a 'realistic proxy for what can be expected in the future' and does not permit more than 2 services a day to access the site;
- g. Pathing across South London is very difficult and less 'guaranteed' than in 2007;
- h. There is '*not a sufficient level of assurance that timetables can be flexed to secure that the facility will be operation[al] without adversely affecting passenger services*';
- i. There would be conflict with the Southeastern depot;
- j. There are no conditions or s.106 obligations which 'secure any level of rail use'.

None of these points, either singly or in aggregate, indicate that Howbury Park would not operate as a SRFI, or would not meet the underpinning policy objective. Most are examples of asking the wrong question, and then seeking to rely on the answer to generate doubt. Within those points lies the answer to the concerns maintained by the MOL (and to some extent, DBC and others), and so they occupy a substantial part of these submissions.

Operational restrictions and rail-connected warehousing (points a. and b.)

11.2.7. There is no physical restriction in terms of the road access, the site size, the flexibility of the site for different kinds of warehouses or the physical room for the intermodal terminal, gantry cranes, reachstackers and lorries.

11.2.8. Mr Goldney originally suggested that the intermodal terminal suffered from size restrictions, but this has not been maintained as an objection. There was a suggestion that the outline masterplan, showing an intermodal terminal without rail-connected buildings, was disadvantageous and would

³⁰⁷ And summarised at para 7.4.67 of the MOL's case.

make Howbury Park less attractive, or even disqualify it as a SRFI. However:

- a. The outline masterplan does not dictate whether any of the buildings could or could not be rail-connected; for instance, as Mr Gallop observed it would be feasible for a single occupier to build a large unit south of the railhead, onto which one side of his facility opened, whilst keeping the intermodal terminal as an open access facility;
- b. It is not in any event necessary to have rail-connected buildings in order to qualify as a SRFI meeting part of the identified national need. That was made clear by the Secretary of State in granting powers for the East Midlands Gateway SRFI. Rejecting the conclusions of the panel, he said this³⁰⁸

'18. The Secretary of State notes that the proposed arrangement at the SRFI is that rail-borne freight would be transported between the terminal and individual warehouses by road-based tractors. He considers that this would, at the least, mean that the warehouses would be 'rail accessible' or 'rail served' even if not directly connected in terms of rail sidings being physically located in close proximity to warehousing units. He considers that the proposed form of connection between warehouses and the rail freight terminal is sufficient to satisfy the objective of this part of the NSPNN, namely to facilitate and encourage the transport of freight by rail'

- 11.2.9. It is worth bearing that last sentence in mind throughout any consideration of the rail objections advanced on behalf of the MOL in these appeals. In order for the benefits to be realised, the Government's policy is aimed at facilitating and encouraging railfreight. Refusing permission for it because it may need Network Rail to re-time some passenger trains in the Dartford area would not on the face of it conform to the Government's approach in policy.
- 11.2.10. There should be no residual concerns about getting the trains into position to be loaded and unloaded, or of unloading them through a combination of reachstackers and gantry cranes. The two work perfectly well together and Mr Goldney confirmed that setting the tracks into the concrete to facilitate that was a common practice. The combination may well be witnessed at Barking RFI on the planned site visit.
- 11.2.11. It would also be physically possible for the intermodal terminal operator to install an exchanger to facilitate the movement of locomotives within the intermodal terminal. One is not necessarily required, but it is a piece of machinery, not something that needs to be included within the terms of a planning application, and could be installed at any point.
- 11.2.12. Other than noting as relevant the planning history and the way that the principle of SRFI use on the site is protected in the current Development Plan, RDL does not say that permission should be given this time because it

³⁰⁸ CD5.6 Decision Letter page 4, paragraphs 17 to 19.

was given in 2007. Certain things have changed. They include the identification of a compelling need for an expanded network of SRFIs in national policy, rather than a quantitative approach of 3 or 4 around London.

11.2.13. For that reason, RDL has not engaged in a 'spot the difference' contest between the last decision and the current appeals. The MOL on the other hand wants to have his cake and eat it on this point, disavowing the planning balance that was struck in 2007 as no longer relevant³⁰⁹ but suggesting that it might 'instructive' to 'explore the extent to which the key factors remain unchanged or have altered.' RDL do not agree that there is anything particularly instructive in such an exercise, given that the 2007 decision was made on balance in the circumstances of the day, which are different, see for instance the national policy point, from those which currently prevail.

11.2.14. However, since the points are relied on by the MOL, RDL records the following responses:

- a. It is right to say that the decision was thought in 2007, to involve striking 'a difficult balance'³¹⁰ – that is pretty much always true in Green Belt cases, especially when balancing such incommensurables as the harm to Green Belt openness in Bexley against the achievement of part of a nationally-important network of SRFIs. It is still true;
- b. The test applied by the Secretary of State in 2007 was whether he judged that he was 'reasonably assured' that the proposal would operate as a SRFI. That remains a sensible test to apply;
- c. In 2007, the Secretary of State found that the design of the proposed warehouses had been optimised to attract users committed to rail³¹¹. Eleven years later, the SRFI market has matured and there is no need to persuade the Secretary of State that a proposal is a SRFI by designing warehouses that would be commercially suicidal for road based occupiers. The NPSNN, which post-dates the 2007 decision, strongly emphasises that SRFIs are facilities for both road and rail, an idea to which the 2007 design of Howbury Park would have been deeply inimical³¹²

'Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.'

³⁰⁹ See paras 7.2.1-7.2.15 of the MOL's case.

³¹⁰ CD5.2 paragraph 15.183, referred at para 7.2.5 of the MOL's case.

³¹¹ CD5.2 paragraph 15.132.

³¹² CD/2.2 paragraph 4.83, page 45.

The MOL submits³¹³ that the configuration now proposed would be 'attractive to road only users'. Yes, it would, in line with the national policy which has come into force since 2007. This attractiveness is said³¹⁴ to 'give rise to significant concerns on the part of the Mayor' for reasons set out, but the concerns appear to be premised incorrectly on the outdated view that SRFIs should not be attractive to road users. That is a potentially serious conceptual pitfall which the Secretary of State will no doubt avoid;

- d. Next the MOL points to the fact that the Inspector in 2007 recorded that Network Rail 'effectively guaranteed that paths for three trains a day would be available on the opening of the terminal'³¹⁵. Leaving aside whether NR in fact guaranteed or 'effectively guaranteed' anything, it is striking that there was no suggestion by the MOL or anyone else at the 2007 Inquiry that it should be a ground of objection to the proposals that insufficient whitespace or time was available to access the site itself across Crayford Creek Junction. Given the MOL's submission that 'the passenger timetable has shown enduring stability'³¹⁶, one would be forgiven for thinking the 2007 assessment undermines the current focus on the existing timetable to show whether trains can 'get through the door'. But in any event, the evidence and the views of Network Rail were given due weight in 2007 as they should be in 2018;
- e. It does not matter that Network Rail was considering a 420 metre train in 2007³¹⁷ but we are concerned with trains up to 565 metres. The Network Rail exercise reported to the local planning authorities on the current scheme took into account 750 metre plus trains at a significant trailing load³¹⁸;
- f. The MOL says that the combination of two factors was a critical part of the very special circumstances judgement reached in 2007: the ability to meet part of London's need for three or four SRFIs; and, the lack of alternatives in the south and east of London³¹⁹. The policy has changed and the way that need is identified nationally is different, something that the MOL expressly recognises in his analysis³²⁰ (although it unclear why that point should assist the MOL's case). That has a direct effect on how one approaches an alternative sites analysis. The whole of the apparatus of that issue in the 2007 decision is of no assistance now, but nothing adverse to the current proposals can be inferred;

³¹³ See para 7.2.8 of the MOL's case.

³¹⁴ Ibid para 7.2.8.

³¹⁵ CD5.2 paragraph 15.110, cited in para 7.2.5 of the MOL's case.

³¹⁶ See para 7.4.54 of the MOL's case.

³¹⁷ Ibid para 7.2.9 of the MOL's case.

³¹⁸ See, for instance, the reference in INQ/99 to that point, although it had been foreshadowed in Mr Gallop's evidence.

³¹⁹ See para 7.2.6 of the MOL's case.

³²⁰ It forms point 5 in the list of differences suggested between 2007 and 2018, para 7.2.12 of the MOL's case.

- g. The MOL says³²¹ that the balance between passenger rail and rail freight has changed since 2007³²². The demand for rail freight at Howbury Park is largely unchanged, as I come on to in a moment. There has been a growth in passenger rail, but there is no suggestion from the MOL that Mr Gallop was wrong to observe that as far as the mechanics of pathing are concerned, Network Rail has an equal obligation to facilitate the use of the network by both kinds of traffic. Again, the suggestion that somehow the railways have become *more constrained* since 2007 due to an increase in passenger rail sits uncomfortably with the MOL's submission that the timetable has an enduring quality about it. If that is wrong, as it surely is, then the balance between passenger and rail needs to be kept under review by Network Rail now and in the future. The passenger rail point is unlikely to have been much different in terms of actual pathing in 2007, but in any case it doesn't matter if it was – it is the future that really matters in that debate;
- h. The MOL also points out³²³ that consent has been granted (more than once!) for the SRFI at Radlett. That point does not assist unless the MOL suggests that somehow Radlett would reduce or remove the need for Howbury Park, which is not said.

11.2.15. From that list of responses it is evident that the MOL places rather too much weight on his compare and contrast exercise with 2007. His submissions are chiefly notable for the insight they give to the erroneous approach taken by the MOL to a modern SRFI, something which permeates his entire case.

Demand (point c. above)

11.2.16. I turn to deal with the suggestion that the Secretary of State should be concerned about Howbury Park as a SRFI because of doubts over whether there is demand for it. The Secretary of State will note that the Government has not withdrawn or modified its advice in the 2014 NPSNN³²⁴ that '*new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business.*' One of the chief constraints on the expansion of railfreight has been the difficulties of overcoming the regulatory hurdle of securing planning permission or development consent. That some of the key food retailers recognise that³²⁵ is notable.

11.2.17. However, the fact that there might be other constraints (for instance cost) which are also reflected in remarks by food retailers in relation to rail freight, does not mean that the unconstrained forecasts cease to be relevant. On the contrary, they indicate the level of likely demand were constraints removed. If the response of the industry to the NPSNN were to be that the constraints still exist, then the achievement of the NPSNN's

³²¹ See para 7.2.11 of the MOL's case.

³²² Ibid para 7.2.11.

³²³ Ibid para 7.2.14.

³²⁴ CD2.2 paragraph 2.50 page 21.

³²⁵ See the comments of retailers like Sainsburys and Marks & Spencer in the 2012 document at APP/RAIL/2 Appendix I

objectives would be indefinitely postponed. More SRFIs need to be built, to increase the resilience of the overall network, to bring costs down, and to encourage modal shift.

11.2.18. The MOL suggests that the domestic intermodal market is 'currently static'³²⁶ and 'underperforming'³²⁷, on the basis of Table 2 on page 7 of APP/RAIL/1. That submission ignores the evidence given by Mr Gallop that a new intermodal service has begun during the currency of this Inquiry, at I Port, Doncaster; it is also an unrealistic interpretation of the data presented by Mr Gallop. The tables on page 18 of APP/RAIL/1 are quite different and need to be interpreted sensibly in context:

- a. Figure 3 shows the volume of traffic through five SRFIs over time. It is notable that whereas DIRFT (the only one of the five with substantial domestic intermodal traffic) has remained broadly level since 2007, those like Hams Hall and BIFT which are reliant on maritime traffic have experienced a slight decline in volume since 2007. The change in the overall pattern occurs from 2008 onwards, which surely cannot be a surprise given the decade started with the deepest recession since before the War;
- b. Figure 4 is just about DIRFT, and actually shows the increase there in container handling activity between 2007 and 2014, from 80,000 'lifts' to 130,000 per annum³²⁸.

11.2.19. However, the MOL's notion that the 'sector' is underperforming is undefined, or at least rather slippery: if it is against the unconstrained demand figure, then it is not a reliable comparison, given that there are constraints in the real world, both macro-economic (global recession), and regulatory (failure of NPSNN to have delivered many more SRFI consents since 2014). The MOL accepts that the lack of facilities 'may be part of the story'³²⁹ but shifts attention to constraints identified in the Network Rail Freight Study 2013, saying that certain constraints in the MOL's view combine at Howbury. That is not an evidenced argument for a lack of market demand at Howbury, as it depends entirely on the proposition that the market will respond more to Mr Goldney's evidence and the MOL's qualms than to the consistent and robust support of Network Rail and the presence of RDL promoting the scheme. To be clear: it would not be a reliable inference from the market evidence on intermodal demand that Howbury will not attract rail users³³⁰.

11.2.20. There is in fact ample evidence to suggest that the Howbury Park location will be attractive to the market:

- a. RDL are promoting the site, as the country's leading SRFI developer;
- b. GB Railfreight, one of the few companies with a proven track record in operating rail freight, tell the Secretary of State that it is an attractive

³²⁶ See para 7.4.10 of the MOL's case.

³²⁷ Ibid para 7.4.12.

³²⁸ Figure 4, APP/RAIL/1, page 18.

³²⁹ See para 7.4.16 of the MOL's case.

³³⁰ Contrary to para 7.4.16 of the MOL's case.

location for a SRFI³³¹, as does Maritime, which operates a number of established intermodal facilities including that at Birch Coppice³³²;

- c. The industry body (the Rail Freight Group (RFG)) has also indicated that *'the development of suitable locations is therefore urgent and critical to unlocking rail distribution to and from, but also within the region'*, and it supports the idea of a SRFI at Howbury Park³³³. It would be very odd if the representative body was prepared to write in such terms if Howbury Park was not likely to be attractive to the companies which constitute the RFG;
- d. Viridor is on the doorstep of Howbury Park and writes³³⁴ to say that the lack of any rail freight facilities on the site means that the 'significant' potential to use rail freight is lost and HGVs will continue to be used. There was some discussion at the Inquiry about whether 'contaminated' waste from Viridor would be able to be transported in intermodal wagons, but that is not the point here – it is a major facility operated by one of the UK's largest waste management companies, and Mr Gallop identified that paper, packaging and recycle is already transported in intermodal wagons, giving DIRFT and Birch Coppice as examples. There would be no obvious restriction on Viridor taking space on the site as an extension to their business, and making use of the intermodal terminal; the co-location stems from the existing position of Viridor and represents an unusual benefit of the site.

11.2.21. It is hoped that the Secretary of State would give due weight to direct market evidence like this, and reject as unrealistic the suggestion that one would need a contractual arrangement or firmer indication before one could do so. In addition, one would not expect a food retailer like Tesco to express support for a particular site before permission is granted for it, given their aversion to involvement in contentious third-party planning³³⁵, and it would be wrong to draw such an adverse inference. The submission in the MOL's closing³³⁶ that *'there is no tangible evidence of market demand'* is plainly untenable. It is also regrettable that he chooses rather sneeringly to caricature Mr Gallop as a kind of railfreight cheerleader with *'commendable'* enthusiasm: he is by far the most experienced agent acting for promoters, owners and occupiers of SRFI and RFI facilities in the country, and has been from the very beginning of the industry. His view about the likely demand for Howbury Park should be treated with a little more respect, rather than used as a debating point as part of a 'strategic' objection by the MOL.

Economic viability of the proposals (point d. above)

11.2.22. It is true that margins for logistics, like everything else, can be tight and businesses are cost-sensitive. Similarly, where rail freight is concerned, the

³³¹ APP/RAIL/2 Appendix A

³³² Ibid, Appendix B.

³³³ Ibid, Appendix C.

³³⁴ Ibid Appendix D.

³³⁵ Mr Gallop XC.

³³⁶ See para 7.4.67 (c) of the MOL's case.

amount of profit will depend on the take-up of the services and (from an occupier's point of view) the efficiency of each train. All that goes without saying. But those very general propositions do not amount to a cogent objection to Howbury Park based on economics. The MOL makes two rather different points in support of this aspect of his objection: he says (1) that the evidence suggests that rail remains more expensive than road (and therefore Howbury Park may not be attractive as a SRFI), and (2) that there is no 'economics' case presented by RDL in support of the appeals proposal.

11.2.23. The MOL's reference to 'the evidence' is to the exercise that Mr Goldney carries out in his main proof, but very little weight should be given to that exercise³³⁷:

- a. Mr Goldney's exercise is not a cost benefit analysis, but a very high level (and tendentious) costs comparison exercise. It does not include perhaps the most important cost comparison item, which is what value or price the operators place on the reliability of the rail connection over the HGV. Mr Goldney accepted that the commercial decision as to whether to operate in part with a rail freight logistics component turns on more than the cost comparison between rail and HGV; it includes matters which are reputational (such as corporate social responsibility) as well as important issues which might be monetised but have not been in the rather crude exercise presented by Mr Goldney – the most important of which is that rail offers reliability and resilience, especially where deliveries to the London area are concerned. The traffic evidence adduced by Dartford as to numbers of 'incidents' on the M25 serve to support one of the fundamental cost benefits of railfreight, which is that one train, with a much lower risk of delay/disruption, compares with many HGVs all of which would be likely to have to travel on the M25 (and M1 if the assumption is a Daventry or Birch Coppice to Howbury movement), with vastly greater risk of delay. Mr Gallop's anecdote about the Morrisons' store in Kent, waiting in frustration for the arrival of four lorries stuck on the M25 illustrates this point. Without factoring in this key commercial aspect of rail freight, it is not possible to prove that a commercial operator would find it unviable to transport goods from Daventry to Howbury Park by rail, and the exercise is all but useless;
- b. If one turns to the contents of the exercise itself, it was based on 37 container trains which do not correspond to the evidence as to what domestic intermodal trains currently run on the network and what would be likely to run at Howbury Park;
- c. Similarly, Mr Goldney's 'cost model' is entirely based on variable costs, the input of which has a direct effect on the output of the model, and which are questionable: fuel costs, labour costs, facilities costs are all items the future cost of which is unknown.

11.2.24. It is maintained on behalf of the MOL³³⁸ that Mr Goldney's view is that rail has a relative lack of flexibility, but that rather masks the key value that

³³⁷ See GLA/RG/01 pages 56 to 61.

³³⁸ See para 7.4.28 of the MOL's case.

operators are likely to place on reliability (i.e. dependability) of rail compared to dicing with the strategic road network between the Midlands, or the ports, and Howbury. For these reasons, it would be unsafe to place any reliance on Mr Goldney's exercise as a factor in any judgement over whether operators would be attracted to use Howbury Park for intermodal freight. It is also another of the many signs in the MOL's case that he has fundamentally misunderstood how SRFIs work, and how the Secretary of State suggests that SRFI proposals are assessed.

- 11.2.25. That persistent failure also underlies the other point the MOL makes on this issue. He comments that RDL's evidence is 'strangely silent on economics'³³⁹, but there is nothing remotely strange about that. No policy (including the *London Plan*) requires a promoter of a SRFI to demonstrate its viability. No aspect of RDL's case is justified on the basis of the exigencies of a viability appraisal. No suggestion has ever been made that a viability appraisal should be included in the applications.
- 11.2.26. Most importantly, however, is that the notion that there is anything strange about not undertaking an economics case in a SRFI proposal misunderstands national policy. No such assessment was undertaken, for instance, in support of the now consented East Midlands SRFI³⁴⁰. The reason is simple – unlike a road or railway improvement scheme, for instance, where one can assess fare revenue from passengers against capital expenditure, and monetised social and environmental effects, a SRFI must be flexible when it is planned and begun.
- 11.2.27. It should not be a ground of complaint or surprise that an 'economics' case was not prepared for the Howbury Park proposals, when the NPSNN makes it clear³⁴¹ that in areas such as the southeast quadrant around London, which is 'poorly served' by rail freight, 'new rail freight interchanges ... are likely to attract substantial business, generally new to rail'. The NPSNN does require NSIP applications to be supported by a business case³⁴², but there is a specific exception made for SRFIs³⁴³

'In the case of strategic rail freight interchanges, a judgement of viability will be made within the market framework, and taking account of Government interventions such as, for instance, investment in the strategic rail freight network.'

- 11.2.28. The Secretary of State has ample evidence in this case that the market exists for a SRFI at Howbury Park. That comprises not just Mr Gallop's remark in evidence that Howbury Park 'will find its market' (much seized upon by both the MOL³⁴⁴ and DBC³⁴⁵, apparently to show that was all he relied on), which is based on having been involved in many SRFIs and RFI

³³⁹ See para 7.4.30 of the MOL's case. A similar point is raised by DBC, 8.1.6.

³⁴⁰ Although interestingly the Examining Authority sought further clarification about whether a business case should have been prepared for the two road schemes which were also included in the NSIP which was the subject of the report: see CD5.6, paragraph 4.2.5ff.

³⁴¹ CD/2.2 paragraph 2.50.

³⁴² Ibid paragraph 4.5.

³⁴³ Ibid and paragraph 4.8.

³⁴⁴ See para 7.4.25 of the MOL's case.

³⁴⁵ See para 8.1.6 of DBC's case..

projects over the past 20 years; it also comprises the underpinning rationale of the NPSNN, and the market evidence of SRFI take up generally and the support for Howbury Park specifically. He can confidently form the view that the preponderance of the evidence supports the market attractiveness of SRFI facilities on the appeals site.

Restrictions due to apron size, HGV parking and congestion (point e. above)

- 11.2.29. The MOL says that in operational terms, 'the multi-user intermodal facility is unlikely to provide the flexibility that retailers identify they seek'³⁴⁶, compounded, it is said, by 'the highway constraints which impose operational restrictions which are unprecedented for SRFIs'³⁴⁷.
- 11.2.30. Is this a point about discouraging rail use, or road use? It seems to be the MOL's concern that the site would be *too attractive*, rather than not attractive enough, for road based traffic³⁴⁸ If those whose entire business, at least at first, involves road based haulage from Howbury would be attracted to the site notwithstanding the 'unprecedented' HGV cap, why should rail-based HGV use find it so alarming? That logical inconsistency runs throughout the MOL's evidence and submissions.
- 11.2.31. In fact, Howbury Park is a huge site with ample provision for apron space, multi- or single-user buildings, and (as already submitted) the potential for a building or buildings to be rail-connected, albeit not exclusively. That is the situation for part of the DIRFT intermodal terminal, as Mr Gallop said – in addition to their own facility (which is not exactly rail-connected using the old terminology³⁴⁹), Tesco use part of the intermodal terminal which is also open-access. Tesco are not put off, and nor it would seem are the other intermodal users at DIRFT.
- 11.2.32. The MOL gathers his points on this together under the heading '*flexibility*'³⁵⁰. It is not said that a particular operator, or type of operator, would not be able to conduct his business from Howbury Park due to the apron size, the shared intermodal area, the lack of reception sidings, the HGV cap or the need at times to hold HGVs on site rather than let them out into a pre-existing road '*incident*'. All that it said is that these things would make Howbury Park '*less attractive*'. The MOL forgets, in this part of his case, the concession that he makes elsewhere³⁵¹, that Howbury Park '*is well related to the London market*'. That is more than a policy requirement – it is something which drives the entire commercial opportunity at Howbury Park. Operators who use rail want reliability and efficiency in their supply chain proximate to the end market for their goods. At the moment, there is not a single constructed SRFI serving the largest and wealthiest concentration of customers in the UK. It is fanciful for the MOL to suggest that an intermodal facility here would cease to be attractive to retailers and logistics companies

³⁴⁶ See para 7.4.67 (e) of the MOL's case.

³⁴⁷ Ibid para 7.4.67(f).

³⁴⁸ Ibid para 7.5.3 – 'As designed it will be attractive to road users'.

³⁴⁹ As Mr Gallop said, it is some way from the Tesco warehouse and up a 9m high ramp next to the rail tracks,

³⁵⁰ see paras 7.4.31-7.4.36 of the MOL's case.

³⁵¹ Ibid para 7.1.6. It is also inherent in the argument that the Mayor makes about London Gateway being an alternative to Howbury Park.

because the roads snarl up regularly in London. They probably know that – they currently have to get their lorries down the M1, round the M25 *and then through London*. The prize is big enough not to be put off by traffic.

11.2.33. Of course, the HGV cap is a constraint on the flexibility of the use, but it only applies during hours that are likely to be avoided by road hauliers anyway. Given the likelihood that some or most of the trains will be loading/unloading well away from the peak hours in traffic terms, it is hardly the operational bugbear that the MOL apparently sees it as. Similarly, the need to keep HGVs back on a 57 ha site which can be designed with large amounts of parking for HGVs³⁵² is hardly an insuperable problem.

11.2.34. The MOL is scraping the barrel for objections to the scheme at this point: Mr Goldney, it will be recalled, first misread the drawing of the gantry crane and reachstacker, then indicated he had no first-hand experience of reachstackers and cranes working together, and finally fell back on the suggestion that HGVs would prevent the unloading of the trains. That last suggestion assumes that the HGVs foul the gantry crane, which they would not. The MOL's submission at the end of that staged evidential retreat is that if there is time pressure to unload a train, lots of parked HGVs would 'cut across' the operation³⁵³. No doubt that eventuality would be factored into the detailed design of the intermodal area in due course. It has no real force as an objection to the principle of the SRFI here; the MOL should leave the design of SRFIs to those who promote and operate them.

Pathing and rail access to the site (points f., g. and h. above)-important areas of agreement

11.2.35. I note that the MOL does not allege either of the following:

- a. He does not say that Network Rail is wrong, and that paths cannot be found to the site across the congested South London network³⁵⁴. That was expressly acknowledged by Mr Goldney, whose case was that pathing is 'very difficult' but not impossible. One can readily understand why Mr Goldney was not of the view that it was impossible to path new freight services through the North Kent line, given that he has just done so himself for BP. Although at his first Inquiry appearance on 19-20 June 2018 he was rather negative about his client's prospects of securing pathing agreements with Network Rail (he spoke of 'crisis meetings' being held³⁵⁵), by the time he and Mr Gallop gave their evidence in September 2018, the service had

³⁵² The illustrative layout can be shown to yield nearly 200 spaces (see APP/RAIL/7 Appendix D), without even turning to the service yards of the warehouses themselves, or indeed imagining the final detailed design factoring in more HGV overspill parking.

³⁵³ See para 7.4.31(e) of the MOL's case.

³⁵⁴ Mr Goldney does not present an analysis purporting to show that Mr Gallop's suggested train times to and fro the SRFI at Howbury do not 'match up' with paths through South London. It is not a fair criticism of RDL or Mr Gallop that such an exercise has not been done, as the Mayor alleges (see para 7.4.50 of the MOL's case).

³⁵⁵ Mr Goldney, answer to Inspector's question, 19 June 2018.

started to run³⁵⁶. The MOL accepts that both the BP train and the Crossrail trains were examples of pathing being achieved;

- b. The MOL also does not say that pathing to the site would not, or might not, involve a degree of adjustment (so-called 'flex') to the timetable. He says instead that one should treat the ability of Network Rail to work new freight services into a future timetable 'with very great care', despite the point being 'seductively presented'³⁵⁷. Presumably, the choice of the word 'seductively' rather than 'persuasively' is intended to imply a degree of questionably emotional appeal which any right-thinking Secretary of State would immediately spot and keep well clear of, like a diplomat avoiding a honey trap. However, there is nothing seductive about the timetable flex point. It is just right:

- i. Network Rail has the power to flex the timetable, indeed (as Mr Kapur, the acknowledged industry expert³⁵⁸ points out³⁵⁹) by as much as 24 hours;
- ii. Network Rail has a duty to adjust and manage the timetable to enable growth in both passenger and freight traffic, with no preference being given to one or other³⁶⁰
- iii. The process of submitting a *Train Operator Variation Request* to Network Rail is, according to Mr Kapur³⁶¹, 'a very regular event', and he illustrates that by saying³⁶²

'...GB Railfreight will regularly bid for between 150 and 200 alterations and new services into any of the twice-yearly timetable, many of which will need to have support for altered timings from other Train Operators. At a timetabling level, GB Railfreight, and other freight & passenger operators, always work with each other to accommodate minor flexing of services to help each other accommodate desired changes to their timetables.'

- iv. This is the true position. It presents the accurate picture of flexibility and co-operation between those engaged in running the railways, in stark contrast to the position that the MOL urges the Secretary of State to adopt. In order to accept the MOL's chief submission on this point – that the access to Howbury from the mainline is 'impossible' because one cannot see an 8-10 minute whitespace gap for emerging trains in the current timetable – one would have to reject the unchallenged

³⁵⁶ Indeed, was early – Mr Gallop XC, 18 September 2018. The Mayor still refers (para 7.4.56 F of the MOL's case) to the 'very considerable pathing difficulties', but something being complicated and difficult is not a reason to refuse planning permission, especially where the service that was so difficult is actually operating.

³⁵⁷ See para 7.4.53 of the MOL's case.

³⁵⁸ See the agreement on this point from the Mayor, para 7.4.44 of the MOL's case ('the best available expert').

³⁵⁹ APP/RAIL/7, Appendix D, page 2.

³⁶⁰ As Mr Goldney acknowledged, XX September 2018.

³⁶¹ APP/RAIL/7 Appendix D, page 3.

³⁶² Ibid.

evidence of Mr Gallop and Mr Kapur that the pathing of trains into Howbury Park, whilst it might require some re-timing of some existing train times in the current 2018 timetable, is not a show-stopping objection to the grant of permission for a SRFI at Howbury Park.

- c. We are back to the right question versus the wrong question. RDL would ask the Secretary of State to bear in mind the ramifications of accepting the MOL's argument about flex and timetabling here – particularly here, in fact, around London where no SRFIs currently exist but where national policy seeks for them to be located. If it is to be a major 'trip hazard' to grant of permission that negative findings or inferences are drawn from timetabling exercises which do not relate to the relevant year (and do not take into account the powers of Network Rail and the industry practices as relayed by Messrs Gallop and Kapur) then the Secretary of State would also need to acknowledge the very serious effect that such an approach would have on the reasonable achievement of the Government's rail freight policy.

11.2.36. If one therefore accepts that pathing of Howbury Park trains should be assumed to be possible across South London and on the North Kent line, and accepts that the current timetable is not a proxy for the future timetable because there is an established industry practice to ensure that adjustments are made to enable different services, including new ones, to co-exist, then there is simply nothing substantive underlying the MOL's concerns about access to the site.

Pathing and rail access to the site (points f., g. and h. above)-two other ways of assessing the position

11.2.37. If absolutely necessary, the overall position can also be tested by referring to the final evidential tussle between Mr Gallop and Mr Goldney on this issue: one should look at Mr Gallop and Mr Kapur's timetabling exercise, and Mr Goldney's 'clockface' exercise.

11.2.38. The MOL submits with thinly veiled triumph that Mr Gallop and Mr Kapur's evidence APP/RAIL/7 simply proves that Mr Goldney is right³⁶³ that 'it is not possible to depart trains'. Unfortunately, that submission relies on making the prior assumption that a junction occupation time of 8-10 minutes is necessary to enable a Howbury Park train to cross the Crayford Creek Junction³⁶⁴. That was not Mr Gallop's evidence, and not the basis on which Mr Kapur carried out his exercise. The dispute over whether Mr Gallop or Mr Goldney is right about the length of time to cross the junction is in fact critical to resolve the actual evidential dispute between them on this point, not the adoption of the 8-10 minutes from the now-superseded (on this issue) rail report from 2016. That perhaps important distinction is not made in the MOL's submissions, where the detail of who is right about the junction crossing time is relegated to a single paragraph entitled '*[d]ifferences of*

³⁶³ See para 7.4.49 of the MOL's case.

³⁶⁴ See para 7.4.41 of the MOL's case, which contrasts Mr Goldney's 11 or 11½ minutes with the 8-10 minutes in the rail report of 2016.

*detail*³⁶⁵. It is said there that 'the MOL's concerns as expressed above exist even if the points of detail on access timing ... are assumed in Mr Gallop's favour'. That cannot be right, for the reasons just set out.

11.2.39. The 8-10 minute exercise was accepted on its face by Mr Gallop to show that, if one takes Mr Kapur's 'white spaces', then, as currently timetabled, there is no space for an emerging train during the period Mr Kapur shows. It's another example of the wrong question yielding a potentially misleading answer, though. Mr Gallop's actual evidence in APP/RAIL/7 is in his Tables 1 and 2, which work on the basis of his analysis (1) that the actual junction occupation time is substantially shorter than claimed by Mr Goldney, and (2) that access to the site can be achieved by flexing the existing timetable by only a very limited amount. For completeness, I return shortly to the technical details that underlie Mr Gallop's junction occupation times, and why they should be preferred to those Mr Goldney suggests.

11.2.40. Turning to Mr Goldney's clockface exercise³⁶⁶, it appears to show the effect on a typical hour of introducing a 12 minute junction occupation Howbury Park train. As he accepted³⁶⁷, the work illustrates the degree of timetable 'flex' that would require (assuming such a long junction occupation):

- a. It would leave three of the four passenger services able to be located in diametrically opposite half-hourly slots;
- b. It would leave 7 minutes entirely free in the hour;
- c. It would enable a train to enter or leave Howbury Park taking 12 minutes to do so each hour;
- d. It would enable the Dartford to Victoria service to continue to run 4 times an hour past the site, with slight variations in the gaps between the service;
- e. It would be possible to apply the exercise to an interpeak hour.

11.2.41. The reality is that Mr Goldney's exercise was an own goal. In submissions³⁶⁸, Mr Kolinsky runs to Mr Goldney's aid by suggesting that the exercise shows that the 'knock on effects [of inserting a 12 minute Howbury train in one quarter] will be that passenger services in the other three quarters will become bunched up and irregular'. It does not in fact show that: the majority of the services would not be bunched or irregular. The right question about the Victoria-Dartford service is whether it matters that the gaps are slightly irregular.

11.2.42. Further, it is suggested that Mr Goldney's exercise was 'intended to be a notional representation of how significant the demands of the freight train on the timetable are...'³⁶⁹ If that was the intention, then with great respect Mr Goldney has not achieved his aim. The clockface in fact suggest how

³⁶⁵ See para 7.4.65 of the MOL's case.

³⁶⁶ RG/09 page 13.

³⁶⁷ XX RG 17 September 2018

³⁶⁸ See para 7.4.55 of the MOL's case.

³⁶⁹ Ibid.

limited the effects, even of such a long junction occupation, would be. It is also a little unfair to accuse me of a 'flawed literal analysis' of Mr Goldney's clockface exercise, given that the questions were put on the basis that the exercise showed how little effect the freight train would have on regular passenger services. It was actually neither a flawed nor a literal analysis, but one which sought to show that as soon as one begins to try to show how difficult – indeed insuperable – it would be to flex the passenger services in and around the site, the more obvious it becomes that Mr Kapur is right in what he says: *'this is a very regular event ... at a timetabling level, GB Railfreight, and other freight & passenger operators, always work with each other to accommodate minor flexing of services...'*.

Why Mr Gallop is correct in his junction occupation assessment

- 11.2.43. The acceleration and deceleration curves employed are largely agreed, save for the wrangle over the evidence for acceleration (based on two pieces of footage)³⁷⁰. Mr Goldney appeared to take issue with the use of the Class 70 locomotive in Mr Gallop's footage, despite the fact (1) they are in use and may well be in use in the future, particularly in cases where speed through the network is at a premium³⁷¹, and (2) the weight of the train in Mr Gallop's footage appears to be much greater than that now agreed to be likely for a 545 metre intermodal train at Howbury Park (c.1100 t)³⁷². The important combination of the locomotive type and the weight of the trailing load is not a point grappled with in the MOL's submissions³⁷³.
- 11.2.44. Mr Goldney notably added to his assumptions about the duration of junction occupation for his later evidence, RG/09. He had not suggested before that time that the incoming Howbury trains would either have to, or may³⁷⁴, stop at a signal before the junction and then have to start from zero again on the way in. Now of course, that might have to happen if there is perturbation on the system, but as Mr Goldney accepted³⁷⁵, the clear objective would be to path and signal trains in and out of Howbury Park such that they cleared the mainline as fast as possible.
- 11.2.45. Network Rail has made it clear that it anticipates a through-signalling system which would allow the Howbury Park trains to be signalled from the Ashford box³⁷⁶, something which would also reduce the likelihood of the basic position being one where the trains would have to stop before the junction; that is an unsafe and unduly negative assumption to make, and it has a significant effect on the junction occupation time. The MOL does not explain why it is 'a more robust assumption to plan on the basis that arriving freight trains may need to accelerate from a stationary position at the preceding signal'³⁷⁷, unless 'robust' simply means 'more conservative'.

³⁷⁰ See APP/RAIL/7 paragraph 2.2.6.

³⁷¹ All of which Mr Goldney accepted, XX 17 September 2018.

³⁷² XC Gallop.

³⁷³ See para 7.4.65(b) of the MOL's case.

³⁷⁴ The further qualification he introduced in XC.

³⁷⁵ XX 17 September 2018

³⁷⁶ See INQ/99.

³⁷⁷ See para 7.4.65(a) of the MOL's case.

There is far less justification for it if one reaches an evaluative judgement, however.

- 11.2.46. Similarly, the MOL submits that Mr Goldney's novel 10% contingency is 'prudent'.³⁷⁸ The reason there is 'given the complexities of the manoeuvres required'. Actually, Mr Goldney's own evidence undermined his late introduction of this considerable additional time; he stressed on several occasions how freight drivers are trained, become familiar with the exact layout and operation they have to perform, and how there are not only visual cues but technological aids to prevent them from making mistakes. It is entirely unclear why the weather should affect the time across the junction by as much as 10%. The effect of the 10% is to compound the over-estimate of crossing times, and render the basis of the assessment less realistic and less useful to the Secretary of State. Especially if it relied on by the MOL to oppose a rail freight scheme, which he claims is a category of development which in principle he strongly supports³⁷⁹.
- 11.2.47. That leaves the deceleration – even if one assumes an earlier rather than a later start to the braking when entering the site, the difference that makes to Mr Gallop's assessment would be lost in the rounding. Mr Goldney's point about walking slowly when the train is shunting does not affect the junction occupation time.
- 11.2.48. As a result, to the extent that it is thought necessary, the Secretary of State is urged to accept the more balanced view of Mr Gallop on the time needed to enter and leave the site across the Crayford Creek Junction.
- 11.2.49. For all of these reasons, it is not the case that the future operators and occupiers of Howbury Park would be dissuaded from engaging with RDL because of pathing and access issues. As Mr Gallop recollected, the same arguments, with necessary variations, have been advanced and debated at most of the other SRFI inquiries or examinations. Howbury Park is nothing special in that regard – indeed, at Radlett (where Mr Gallop gave evidence) there was a considerable debate about the ability of the freight trains to cross a high-speed section of line occupied by frequent Thameslink services travelling at over 100 mph³⁸⁰; at Doncaster, he clarified, the East Coast mainline trains posed a similar challenge³⁸¹.

Network Rail and (in particular) the depot (point i. above)

- 11.2.50. It is relevant that NR support the scheme and do not suggest that there is any technical reason concerned with pathing, timetabling, access or the SET depot that should cause the consent sought to be refused. NR have not appeared at the Inquiry, and although that may be frustrating for all concerned, the Secretary of State should not be persuaded to give NR's view any lesser respect and status than they are usually given. NR is the custodian of the rail network, and they have engaged fully with the Howbury Park proposals, which they fully support.

³⁷⁸ Ibid para 7.4.65(e) of the MOL's case.

³⁷⁹ See for instance para 7.1.18 of the MOL's case.

³⁸⁰ Mr Gallop XC.

³⁸¹ Mr Gallop XX.

11.2.51. If there were insuperable difficulties with Howbury Park due an inability to path trains through South London, or NR felt that no amount of timetable flexing could achieve an access (or egress) for the SRFI, it is obvious that NR would have said. Indeed it is *inconceivable* that NR would have written in the terms they did to Bexley (and Dartford, see later) in 2016, or indeed for them to have written as they have done much more recently³⁸² if they had thought that the SRFI would suffer from as fundamental a defect as is now suggested.

11.2.52. Whilst they are not here to defend themselves, it is perhaps salutary to evaluate the opprobrium which the MOL heaps on them in his submissions to the Secretary of State³⁸³:

- a. The headline point made by the MOL is that 'Network Rail's support for the project gives rise to many questions and no answers'³⁸⁴;
- b. There is alleged to be 'considerable lack of clarity as to what Network Rail's position is in respect of the potential conflict between the depot and the proposal'³⁸⁵. Is there? NR do not suggest that any such conflict should result in permission being withheld, indeed their clear advice to Bexley and Dartford was that SET depot would not be affected by the proposal³⁸⁶

'Is Southeastern genuinely content about freight trains reversing in front of Slade Green train depot for operation via the Sidcup line?

Southeastern have been consulted on the project, methods of working into and out of Howbury Park for those paths running via Sidcup would not affect the day to day running of the depot. In addition, the project will enable Southeastern to extend their headshunt from 10 car to 12 car to enable more efficient working.'

- c. What is unclear about that? Consistent with evidence given by Mr Gallop to the Inquiry, there has been liaison between NR, RDL and Southeastern Trains about the project and its potential effects on the depot. It is notable that SET does not formally object to the proposals, despite a member of its staff (without, as far as one can tell, any particular authority to do so, making negative comments in an unofficial communication to Councillor Borella³⁸⁷, the MOL seeks to rely on that communication in support of the proposition³⁸⁸ that the depot issues 'are real', but it would have been better to have focused on the explanatory email from Mr Caine;

³⁸² INQ/99.

³⁸³ See para 7.4.67(k) of the MOL's case

³⁸⁴ Ibid para 7.4.67(k).

³⁸⁵ Ibid para 7.4.58.

³⁸⁶ See INQ/25, email from Thomas Caine (NR) to Martin Able (Bexley) copied to Tania Smith at Dartford BC, dated 23 November 2016.

³⁸⁷ INQ/58.

³⁸⁸ See para 7.4.57 of the MOL's case.

- d. Network Rail (NR) are also accused of being unclear about what the design solution is, and whether the 12 car headshunt for SET is a pre-condition of the acceptability of the RDL scheme. This was an example of the 'I see no ships' phenomenon witnessed on rare occasions at planning Inquiries. It is perfectly clear that the RDL scheme is viewed as an enabling device for SET/NR's depot re-organisation, rather than requiring it to happen as a precondition of the SRFI access. That is clear from (1) the 23 November 2016 email from Mr Caine of Network Rail, relevant part cited above, (2) from the formal consultation response which one finds repeated verbatim in both the Bexley committee report³⁸⁹ and in the withdrawn November 2016 Dartford committee report³⁹⁰ and (3) from the 26 September 2018 email from Guy Bates of NR³⁹¹. Mr Caines' *'in addition'* is consistent with Mr Bates' *'the design of Howbury Park's main line connection is compatible with Slade Green Depot achieving its own extended 12-car headshunt within the boundaries of the depot.'* Mr Gallop was entirely accurate in his description of the relationship between the RDL scheme and the potential depot improvement, which was consistent with the NR emails; in no sense was it (as is alleged) a 'gloss'³⁹²;
- e. Similarly, Network Rail (and by extension, RDL) are taken to task for producing a timetable study summary marked 'draft', but not the entire document. That is a matter for NR. As the email exchanges in late 2016 between NR and Bexley³⁹³ amply illustrate, NR wrote in detail and then responded to questions from Bexley including in a meeting on 19 October 2016; that then led to further emailed questions, all of which were answered in detail by Thomas Caine. That led to Bexley's committee report and their stance (maintained throughout this Inquiry, despite the Mayoral injunction that they refuse permission) that the proposal would function as a SRFI;
- f. On a small point, both DBC and the MOL query what the scheme is. The rail connection is as illustrated on the masterplan. Mr Goldney has not suggested that it cannot be provided in that form, fails any standard, or anything of that kind. Far from being 'extraordinary'³⁹⁴, it is wholly unsurprising that the NR responses and documents do not detail a possible depot improvement which is not part of the RDL scheme and is not required as its precursor. The NR emails as long ago as 2016 confirm that the design work and assessment to the end of GRIP2 have been completed³⁹⁵.

³⁸⁹ CD/1.6

³⁹⁰ CD/1.1

³⁹¹ INQ/99.

³⁹² This allegation is made in para 7.4.60 of the MOL's case.

³⁹³ INQ/17.

³⁹⁴ The Mayor's reaction, expressed at para 7.4.59 of the MOL's case.

³⁹⁵ See INQ/25, email from Guy Bates to Susan Clark of Bexley dated 5 October 2016: 'we have now completed our review of the engineering, operational and timetable aspects of the scheme through our 'GRIP' process as far as the end of Level 2 (Feasibility), a level of detail commensurate with the needs of the project at this stage of its development.' (underlining added).

Summary – why the SRFI would function as one

11.2.53. For these reasons, the attack mounted at this Inquiry on the proposals as falling outside or beneath the relevant standards for a SRFI should be rejected. RDL is the last party to make light of the practical and technical challenges facing a SRFI promoter, but a degree of overall reasonableness has to be maintained when examining whether the SRFI proposal will function as such. The Secretary of State can be reasonably assured that the proposals will function as a SRFI, delivering modal shift, employment benefits and meeting part of the identified national need. It should be given very significant weight in the assessment of whether very special circumstances exist.

London Gateway

11.2.54. The MOL says that the potential of London Gateway as a SRFI serving the east/south of London is a 'fatal defect' in the RDL case³⁹⁶. Is it? In what sense would it meet the need that Howbury Park would meet, obviating the need for a SRFI in the Green Belt at Howbury?³⁹⁷

11.2.55. The answer is that it would not remove the need that Howbury Park would meet, unless one asks the wrong question. In order to determine whether there is a need for Howbury Park, the MOL asks: could London Gateway in the future host a SRFI in the arc to the east/south of London³⁹⁸? Since the answer is obviously 'yes' to that question, the MOL then forms the view that Howbury is not needed. But the mistake is to assume that the critical need for an expanded network of SRFIs would be met by one at London Gateway (even with Radlett in place at some point).

11.2.56. London Gateway and Radlett would not constitute a network of SRFIs serving London and the South East. That is manifestly the case when one recognises that London Gateway and Howbury Park would be unlikely to interconnect directly (i.e. for rail freight to travel between them); they would actually serve different parts of the market and use different parts of the rail network. This appears to be acknowledged in the MOL's submissions³⁹⁹, albeit that it is put as London Gateway acting as a 'rival' to Howbury Park. It is not particularly clear why they would not in fact be complementary to one another, since they would be likely to serve different rail routes, with one being closer to the south London area, the other to the east.

11.2.57. But the problem with the rather simplistic case advanced on this point by the MOL is that the NPSNN does not envisage a need quantitatively framed, for 3 or 4 SRFIs around London. We are not here (thankfully) in the world of Motorway Service areas to be provided at suitable intervals around the M25 to meet needs. There is no obvious logic to the MOL's argument that a

³⁹⁶ See para 7.2.13 of the MOL's case.

³⁹⁷ I note that the Mayor does not pursue the raft of other suggested alternative sites suggested by Mr Goldney in his main proof.

³⁹⁸ His exact formulation is at para 7.4.71 of the MOL's case.

³⁹⁹ See para 7.4.82 of the MOL's case.

potential future SRFI at London Gateway would meet the need that Howbury Park would meet – they are both needed.

- 11.2.58. That is certainly the way that the NPSNN envisages the London Gateway SRFI potential; the intermodal terminal had been consented by the release of the NPSNN in 2014, and yet the Government's view has been that London Gateway is primarily a port which will increase, not diminish, the needs for SRFI facilities elsewhere⁴⁰⁰. The port-related railhead is not, as RDL understands it, being promoted by the MOL as the alternative SRFI.
- 11.2.59. Furthermore, apart from the fact that the intermodal terminal is not constructed and is not required to be so until 400,000 m² of B8 is built and occupied at London Gateway (a staggering amount, considering the size of the port already in operation), the potential SRFI is not proving to be attractive to the market due to its location. It is not close enough to London to displace locations such as Barking in the affections of Tesco, and Mr Gallop gave evidence that others had considered London Gateway as a location and rejected it.
- 11.2.60. The chief issue is that many of the Regional Distribution Centres for the big retailers are south of the river, near the many stores and customers in South London. It makes little sense for HGVs to move the additional mileage out to London Gateway and back; that would remain the case even if a new Lower Thames Crossing is in due course constructed. It would be much more convenient (and therefore much more likely to attract customers to rail) for there to be the shortest HGV trips possible to and from the SRFI. London Gateway will never be able to compete with a site as close to the urban area and RDCs as Howbury Park.
- 11.2.61. So whilst it is undoubtedly true that there are failings with the Alternative Sites Assessment⁴⁰¹, and a role for London Gateway should probably have been identified, there is no embarrassment on RDL's part in rejecting the MOL's case on this point. If London Gateway did in fact represent such a 'fatal defect' in the appellant's case, why was it not mentioned in the MOL's Statement of Case? The point has mushroomed as the MOL's case to the Inquiry developed, and now occupies an unjustifiably prominent role, mainly due to the fact that it appears (to the MOL, at least) to be the answer to the relevant question. But, as submitted already, he is wrong about that.

11.3. **What planning benefits of the proposal can be reasonably anticipated?**

- 11.3.1. It follows from the submissions already made that the Secretary of State is invited to find that sufficient assurance exists in this case for the proposals to be treated as a SRFI.

⁴⁰⁰ CD/2.2 paragraph 2.48,

⁴⁰¹ Most of the points made in paras 7.4.85-86 of the MOL's case are accepted. However it should be noted that the suggested role of London Gateway was not identified in consultation on the project, nor is the site referred to in the Mayor's Statement of Case on these appeals.

- 11.3.2. From that flow some very weighty benefits (hence of course the reason the MOL spent much of the Inquiry disputing that the proposals would be a SRFI).

Employment

- 11.3.3. First, Howbury Park would meet part of the nationally-recognised need for an expanded network of SRFIs. It would therefore bring about modal shift because it would encourage retailers, logistics companies, waste companies, to shift some of their HGV loads to rail. It would not start at 4 trains a day, or more. It would start, as all SRFIs have done, with one train⁴⁰² and some road-based traffic, and the operators would work hard to interest the on-site operators and others to make use of the rail connection. That is precisely the way that the Government approached the East Midlands SRFI⁴⁰³:

*'The Secretary of State does not agree with the Examining Authority that the fact that a proportion of the warehousing would be made available for use in the period of 3 years during which the rail link was being constructed means that the project would fail to meet the functionality requirements of the NPSNN referred to above. He appreciates that the construction of the warehousing and the construction of a new railway will involve different timescales and he considers it entirely reasonable that a commercial undertaking should seek to generate income from the warehousing facilities before the railway becomes operational. The Secretary of State considers that the interpretation of the NPSNN requirements must allow for the realities of constructing and funding major projects such as this.'*⁴⁰⁴

- 11.3.4. Here, occupation of the warehousing is proposed to be precluded until the intermodal area and the new mainline rail connection are complete⁴⁰⁵. Mr Kolinsky chastised me for my reference in the conditions session to the cost of the intermodal facility and the rail connection as involving very considerable expenditure⁴⁰⁶, but it is common sense that this scale of built facility does not come cheap. The warehousing would be on-stream with the rail connection and intermodal facility already in place here, a better and more advantageous outcome than one found acceptable by the Secretary of State at East Midlands.
- 11.3.5. The proposal would also bring with it many jobs, 2,000 at its full operation. It is acknowledged to be in accordance with the Bexley Riverside Opportunity Area in the *London Plan*⁴⁰⁷, which has a particular focus on the strategic importance of logistics⁴⁰⁸. These are important points in which the proposals accord with the Development Plan. The MOL would, it appears, welcome those benefits if he had formed a different view on the loss of the Green Belt⁴⁰⁹.

⁴⁰² See the first lone service from the new I Port, Doncaster, in its first month of operation (Gallop XC).

⁴⁰³ CD5.6 paragraph 16 of the DL.

⁴⁰⁴ The Secretary of State is referred to the full passage in CD5.6.

⁴⁰⁵ See draft condition 6, CD5.9.

⁴⁰⁶ An 'evidential vacuum' was the accusation.

⁴⁰⁷ See para 7.1.11 of the MOL's case.

⁴⁰⁸ Mr Scanlon XC.

⁴⁰⁹ See para 7.4.88 of the MOL's case.

11.3.6. The weight to be given to these jobs benefits should be substantial. Mr Scanlon identified⁴¹⁰ that in 2007 only relatively limited weight was given to the jobs and economic benefit of the proposals; he observed rightly however that things had changed:

- a. The NPSNN ties the role of SRFIs absolutely securely to the achievement of economic, as well as environmental, benefits;
- b. The jobs and employment targets in Bexley are very high and only likely to increase. The MOL again seeks to downgrade the importance of jobs in Bexley by submitting⁴¹¹ that since Appendix A of the Bexley Core Strategy contains an infrastructure delivery plan⁴¹² which says that Howbury Park 'is not required for the delivery of the Core Strategy, however, if it is not implemented, there is need to identify more sustainable freight facilities', then it follows that the SRFI is really not that important to Bexley. Despite wielding the power to override Bexley's own democratic response to the application, the MOL cannot erase Bexley's actual views about the benefits of the proposal, which appear clearly set out in its committee report⁴¹³

'These economic impacts demonstrate a significant scale of predicted benefits. The GLA notes that the proposal would make a significant positive economic impact and help support the Bexley Riverside Opportunity Area and Regeneration Area.

...

Significant harm is afforded to the environmental impacts and the identified harm to the Green Belt, however, substantial weight is also to be afforded to the economic benefits of the proposals ...'.

- c. The GLA agrees with this assessment in the Statement of Common Ground between them and RDL⁴¹⁴;
- d. Furthermore, the revised Framework has materially changed in relation to support for logistics in particular⁴¹⁵. The new national policy underlines why substantial or significant weight should be given to the employment and economic benefits that the scheme would bring.

11.3.7. In the light of those points, it is difficult to know quite what to make of the submissions by the MOL on jobs and the economy⁴¹⁶. There seems to be a failure there to grapple with the agreement in the Statement of Common

⁴¹⁰ Mr Scanlon XC.

⁴¹¹ See para 7.1.12(d) of the MOL's case.

⁴¹² CD3.12 page 122.

⁴¹³ CD1.6, pages 66-69.

⁴¹⁴ CD/6.3, paragraph 7.26.

⁴¹⁵ See new paragraph 82, and Mr Scanlon XC.

⁴¹⁶ See paras 7.1.7-12 of the MOL's case.

Ground, and there is certainly no reference to the revised Framework paragraph 82.

- 11.3.8. The MOL submits⁴¹⁷ that '*[l]ike the Inspector and Secretary of State's at the last appeal, it is submitted that these benefits ought not to weigh heavily as very special circumstances ... [t]he economic aspirations of the Bexley Riverside Opportunity Area and the Bexley Core Strategy can and should be delivered without development on Green Belt land*'. The first of those points appears to contradict the agreed statement with the GLA. The second averts its eyes from the agreement that the scheme would support the Opportunity Area. There is no reference to the NPPF or to the much higher employment target that the MOL promotes for the Opportunity Area (some 19,000 jobs) in the emerging *London Plan*⁴¹⁸.
- 11.3.9. The Secretary of State is therefore invited to give significant weight to the employment, regeneration and policy benefits of the scheme.

Ecology

- 11.3.10. It is broadly accepted, as RDL understands it, that the proposals would bring about an enhancement of the ecological value of the land adjacent to the appeals site, specifically through the implementation of the Marshes Management Plan⁴¹⁹. However, it is said that relatively little weight should be given to the ecological benefit because policy now seeks enhancement as well as conservation of ecological assets.
- 11.3.11. As Mr Goodwin said⁴²⁰, whilst that is true, a case-specific evaluation needs to be undertaken, because there is a spectrum of ecological enhancements. Not all enhancements are equally valuable⁴²¹, despite the fact that the merest enhancement would be enough to satisfy policy.
- 11.3.12. In this case, the enhancement would be significant. The marshes are viewed by local ecologists as the unpolished jewel in the crown of the LBB; this scheme would take a significant step towards improving and maintaining that improvement in the long term. As part of that assessment:
- a. The Secretary of State is asked to take account of, and give weight to, Mr Goodwin's evidence that the loss of ecological value on the appeals site itself would be minimal. The flora is of low value, since it is very largely semi-improved or improved grassland of low value; the small pockets of better successional vegetation largely lie off site on the former landfill area⁴²²;
 - b. There would be a small displacement of some breeding birds (Corn Bunting and Skylark), but neither species is dwindling markedly in numbers in this area and both would be amply provided for (not just

⁴¹⁷ See para 7.4.88 ⁴¹⁷.

⁴¹⁸ Mr Scanlon XC.

⁴¹⁹ See para 7.4.88 of the MOL's case; see para 8.5.8a) of DBC case.

⁴²⁰ XX DBC

⁴²¹ As Mr Godwin put it 'it might be 1, or it might be 10'.

⁴²² Mr Goodwin illustrated this by reference to his Appendix 6 of APP/BIO/2.

on the former landfill site, which they prefer in any event⁴²³, but on the marshes);

- c. The Marshes Management Plan would re-charge the marshes to stop them drying out, and allowing them thereby to achieve a much more favourable status and value. This will have significant benefits to biodiversity and although the drainage aspects are connected to the mitigation of the scheme, the ecological benefits of the re-charging go well beyond conservation and well up the scale of enhancement.

11.3.13. On the logic of DBC's argument, one could never attribute more than limited weight to ecological benefits, even if one were entirely restoring a SSSI or Ramsar site. As Mr Goodwin said, however, there is a spectrum of effects and the ecological benefits, which will be locally felt⁴²⁴ in this case, and that should be properly and fairly recognised in the planning balance.

11.4. **What are the likely adverse effects of the proposal?**

Green Belt

11.4.1. There is no dispute between the main parties that there would be significant harm to the openness of the Green Belt, and to the purpose of not encroaching on the countryside; because the SRFI would be inappropriate development, that also contributes an irreducible kernel of harm in line with the Framework. RDL have never suggested otherwise, and accept that significant weight must be given to this harm in the very special circumstances balance. Indeed, the policy ramifications in national, *London Plan* and Bexley policies are as set out in the MoL's final submissions⁴²⁵, and are as set out in DBC's submissions⁴²⁶ for Dartford.

11.4.2. A minor area of dispute is with DBC over the purposes of preventing unrestricted sprawl and coalescence. There is no difference in relation to the location of development in the Green Belt and the role of this parcel of Green Belt as between 2007 and 2018, and RDL do not demur from the findings of the last Inspector and the Secretary of State in that respect⁴²⁷. If the same approach is taken, that would answer the Green Belt aspect of Mr Bell's evidence⁴²⁸ which is slightly overstated on the point of importance of the Green Belt here in gap and settlement pattern terms.

Landscape

11.4.3. Similarly, RDL does not dispute that there would be significant landscape and visual harm as a result of what would be a very large development. The impacts would be capable of mitigation to some degree, but clearly not entirely given the landform and availability of views, particularly from

⁴²³ See the plan at Appendix 3 of APP/BIO/2 and Mr Goodwin's XC.

⁴²⁴ Despite the scheme not including (cp the 2007 scheme) the Tithe Barn and its learning centre, it will provide office space on the appeals site for the same purpose, and it will be tied in to local ecological and amenity groups.

⁴²⁵ At paras 7.1.1 and 7.1.12(a) of the MoL's case.

⁴²⁶ Para 8.1.2 of DBC's case.

⁴²⁷ CD5.2 paragraphs 15.8-15.9; CD/5.3 paragraph 13.

⁴²⁸ Especially his suggestion that the Green Belt here is 'sensitive and strategic' – see para 8.2.5 of DBC's case.

middle and far distance. Again, the scale and location of the proposals are broadly comparable to those in 2007, and the findings of the Inspector and Secretary of State remain relevant⁴²⁹. Weight should be given to these identified harms, which would be substantial and adverse.

Other harms-biodiversity, residential amenity

- 11.4.4. RDL does not accept any net harm to biodiversity for the reasons I have already covered. Nor is there evidence that the living conditions of neighbours would be harmed, if the mitigation (including the conditions on noise impacts) were to be imposed.

Other harms-highways and air quality

- 11.4.5. That leaves the DBC case on highways and air quality. It is important first for the Secretary of State to recognise the limits of the DBC case. It does not say that permission should be refused outright on highways and/or AQ grounds; instead it asks for a degree of harm to be taken into account under both heads as part of the very special circumstances balance.

- 11.4.6. In summary, DBC's case is:

- a. On highways, it is said that the 'crux of DBC's traffic objection'⁴³⁰ is not the 'normal conditions', which the modelling submitted in support of the planning applications shows to be unaffected by the proposal⁴³¹ but the propensity of the Howbury Park traffic to '*inevitably exacerbate local traffic congestion and lengthen existing traffic queues, particularly when 'incidents' occur*'⁴³²; it is recognised that any such points can only really be addressed as a matter of judgement⁴³³. DBC also say that the TMP would not give sufficient comfort;
- b. On air quality, that a significant risk remains that 'the addition of the development traffic into the road network from the early 2020s during periods of congestion and disruption will result in increases in No₂ emissions on local roads, including within designated Air Quality Management Areas (AQMs)'.⁴³⁴

- 11.4.7. Of course, it is accepted that due to the proximity of the M25, there are regular incidents that cause elevated levels of traffic in Dartford. It would be folly to suggest otherwise. However, as DBC recognised through the evidence of Mr Caneparo, there is no technical validity in a modelling assessment of such periods. To do so would be contrary to established practice⁴³⁵ and in any event, the modelling outputs cannot be relied upon once saturation is reached⁴³⁶.

⁴²⁹ CD/5.2 paragraphs 15.12 to 15.21; CD/5.3, paragraph 15.

⁴³⁰ See para 8.3.10 of DBC's case.

⁴³¹ DBC expressly recognise this at para 8.3.8 of its case.

⁴³² Para 8.3.12 of DBC's case

⁴³³ Ibid.

⁴³⁴ See para 8.4.11 of DBC's case.

⁴³⁵ Accepted by Mr Caneparo, XX.

⁴³⁶ Ditto.

11.4.8. It is unsurprising in the light of that measure of agreement that DBC does not in its submissions rely on any technical assessment by Mr Caneparo that purports to quantify or justify degrees of additional impact around Dartford town centre. Instead, DBC's submissions stay at a high level, and rely more on the advice of Kent County Council (KCC) as set out in their consultation response⁴³⁷:

'the residual impact of this development is likely to be characterised by additional local traffic generation and some consequent increase in congestion, which the applicant cannot fully mitigate and that may also cause a worsening in local air quality.'

11.4.9. That is fine so far as it goes, but the Secretary of State will bear in mind that KCC did not, and do not, object to the grant of permission. They have not quantified or further characterised the degree of residual impact which they consider likely 'additional local traffic generation and some consequent increase in congestion' could well be a very small amount of incremental change. Indeed, that would be consistent with KCC's evaluation: if there is congestion at times in Dartford town centre, then a certain degree of additional traffic would materially worsen an existing poor situation; and if that was KCC's view then one would have naturally expected them to recommend refusal. But they did not. That obviously undermines the submission that DBC then makes⁴³⁸ that the highways impact be given 'substantial weight'.

11.4.10. So as a result, DBC has no evidence base of its own (Mr Caneparo's exercise to quantify by modelling what numbers might reassign due to the Craymill Rail Bridge was a bogus exercise which he did not rely on⁴³⁹), and RDL would urge caution when it comes to accepting the submission⁴⁴⁰ which refers to Mr Caneparo's judgement about the degree of reassignment at times of congestion possibly ('could'⁴⁴¹) be 'severe'. In fact, Mr Caneparo accepted in terms⁴⁴² that he was not able to say that the scheme impacts would be 'severe', something which is borne out by the complete absence of any quantified amount, queue length, link capacity or junction saturation figure in the DBC closing submissions. There is no reliable evidence whatever to substantiate the submission that there would be severe harm, let alone that it should be given substantial weight.

11.4.11. Before going on to deal with the highways points, RDL notes that the air quality case advanced is also entirely unsupported by evidence. Dr Maggs' evidence, as he made clear, was that the impacts he assessed and presented are all negligible. The air quality case depends on asking the Secretary of State to speculate what might be the air quality impact if different, higher but slower traffic flows are assumed. But that poses the decision-maker some intractable problems. For a start, which figures, which links and what degree of exceedance is being alleged? Over time, as the

⁴³⁷ See DBC/W2/2 page 13 Appendix PC1.

⁴³⁸ See para 8.3.20 of DBC's case.

⁴³⁹ Mr Caneparo. XX (Inspector's note: INQ/34, issued after cross-examination, sets out Mr Caneparo's final position)

⁴⁴⁰ See para 8.3.17 of DBC's case.

⁴⁴¹ DBC case *ibid*.

⁴⁴² Mr Caneparo XX

fleet becomes less diesel based, would there be any noticeably impacts even at locations where the existing flows are higher? We don't know.

Dr Tuckett-Jones does not think so, because her view is that the existing methodology overstates the impact anyway.

Kent County Council's position

11.4.12. DBC is not the highway authority for the affected roads, and there is no KCC objection. Were the likely effects of the proposal to be seriously adverse, then (1) KCC would have said so, but did not; and (2) they would have objected to the proposals, but did not. Indeed, none of the highways authorities objects to the grant of permission.

11.4.13. DBC is therefore constrained to rely on the KCC consultation response, with its unquantified residual impact (obviously not that troubling from the highways perspective).

Highways evidence

11.4.14. The modelling undertaken by WSP on RDL's behalf is based on TfL's RXHAM model, which was developed for the modelling of a new river crossing but can be used for this purpose. There are numerous points of detail arising from the RXHAM Model Audit Report contained within the ES⁴⁴³, but one overarching point: the model is not only the best available, it was urged upon RDL by TfL, and is a model which is still used. It is a version of the other 'HAM' family of models. From a promoter or developer's point of view, as the Secretary of State will appreciate, if TfL expresses the view that one of its HAM models is to be used to assess a development proposal, then that is what tends to be used.

11.4.15. Mr Caneparo does not present any quantitative or modelling evidence on which DBC now relies for its submissions. Instead, it is asserted that the proposal gives rise to '*considerable potential for operation of the SRFI to exacerbate existing congested conditions on the highway network in the locality of the appeal site and through Dartford Town Centre*' when there has been an incident affecting the strategic road network⁴⁴⁴. The only real basis for this is a rather protean use of the KCC consultation response, which suggests that there will be reassignment onto local roads without any quantification or evaluation of the effect. The best way to get to grips with that point is to focus on the additional work that Mr Finlay presented, showing the state of play with the roads through which it is alleged reassigning traffic⁴⁴⁵would 'rat run'. That work shows that those roads perform relatively well and are not in fact overly constrained. Mr Caneparo confirmed⁴⁴⁶ that he does not allege any harm to the free flow/capacity at any junction in Dartford.

11.4.16. So, even if one bases the entire exercise on the KCC consultation response, it is extremely difficult rationally to form a view about the *degree* of harm.

⁴⁴³ CD/1.27 Volume 3b Appendix E Appendix 3.3 RXHAM Model Audit Report, July 2015 and CD/1.30 Appendix E- Revised RXHAM Model Audit Report, February 2016.

⁴⁴⁴ See para 8.1.8d) of DBC's case.

⁴⁴⁵ See the analysis of nodes, links and junctions in APP/TRAN/5

⁴⁴⁶ XX.

There is no distribution suggested, and so one cannot tell whether it is said that a particular road or roads would be over-capacity; one cannot tell whether the additional Howbury traffic would have any measurable effect over the entire area – they would obviously comprise a very small percentage of the overall flows through the area. So when DBC say⁴⁴⁷ that the crux of its objection is 'primarily a matter of judgement', that is a euphemistic way to say that it is without any obvious evidential support. Mr Finlay's work⁴⁴⁸ on the capacities of junctions, links and nodes in Dartford does, on the other hand, provide a measure of objective assessment as to the state of the network and the way in which any re-assignment might affect it.

11.4.17. It is not really appropriate for DBC to move from this evidential position to a submission that the harm could be severe or that substantial weight should be given to this notional harm. Even if one were to accede to DBC's request that the issue is approached as 'a matter of judgement', there is no reliable evidence that the scheme would make any material difference to the degree of congestion or queueing in any link. The Secretary of State should therefore give this point very limited weight.

11.4.18. DBC also makes a short string of points about the TMP⁴⁴⁹:

- a. Criticism is made of the junction 1A contribution (on the basis that SCOOT, rather than MOVA, might be implemented), but the contribution is supported by KCC in both principle and in terms of the financial contribution;
- b. It is suggested that the HE cap and routeing restrictions may not be effective. The regime, however, will depend for its effectiveness primarily on KCC and LBB, neither of whom make a complaint about the way the ANPR and monitoring system would operate. Of course, the steering group would include DBC and would be able to ratchet up fines if necessary; the s.106 binds the TMP and given that it runs with the land, would be enforceable against the occupiers as well as the owners of the site. It may be 'far from straightforward'⁴⁵⁰, but we are dealing with a major concerted effort on the part of the authorities and RDL in a relatively constrained edge of London location. There is nothing which suggests that the system is unfeasible, would not be achievable technically, or would not allow the steering group to manipulate the sanctions to make it financially painful for occupiers and operators to breach the routeing controls.

11.4.19. DBC is also critical of the failure to spell out in the s.106 agreement(s) 'the key components of the TMP as minimum requirements'⁴⁵¹. This is unnecessary because there is an overall covenant obliging the owners/occupiers to comply with the TMP.

⁴⁴⁷ See para 8.3.10 of DBC's case.

⁴⁴⁸ See APP/TRAN/2, Appendix B and XC.

⁴⁴⁹ See para 8.3.21 of DBC's case.

⁴⁵⁰ See para 8.3.20c) of DBC's case.

⁴⁵¹ See para 8.3.22 of DBC's case.

- 11.4.20. Finally, DBC's objections/submissions in relation to the Steering Group decision-making⁴⁵² are noted, but appear unfounded because there is no basis for requiring 'a further level of legal and practical assurance' that the TMP won't be stripped of key protective provisions. DBC and the other public bodies will sit on the Steering Group as statutory bodies, able to consult their constituents and take into account the full burden of the public interest in making their views known through the Steering Group. There is no likelihood of a democratic deficit in this process. That is the case in relation to the DIRFT example that Mr Mould drew attention to⁴⁵³.
- 11.4.21. For these reasons, the TMP, now bound into the final version of the s.106, would provide a comprehensive and workable mechanism for controlling certain aspects of the Howbury Park proposals.

Conclusion-harm

- 11.4.22. Significant harm to Green Belt and landscape is accepted. The other impacts would be mitigated such that they should not feature in the 'other harm' component of the very special circumstances test. In particular, it would not be an evidentially robust finding that local highways harm, let alone air quality impacts, should be factored in.

11.5. Are there very special circumstances justifying the release of the appeals site from the Green Belt?

- 11.5.1. Green Belt is not an environmental designation, but a highly restrictive brake on development in designated areas. However, at all levels of policy, even where the proposed development is 'inappropriate development', an exception arises where (in aggregate) circumstances are so unusual that the restraint policy should, in the public interest, be relaxed.
- 11.5.2. There is nothing between the main parties as to the articulation between the NPSNN and planning policy: the NPSNN does not amend or disapply the need for very special circumstances to be shown. However, that does not mean that meeting a critical national need may not amount to the key aspect of very special circumstances: of course it can. It did at Radlett (also in the Green Belt), at Howbury Park in 2007, and should again here now. Indeed, the meeting of a national need is a quintessential justification for releasing Green Belt land.
- 11.5.3. Indeed, although they fight shy of saying this, the cases for the MOL and DBC implicitly accept that if the Secretary of State finds that the need is for

⁴⁵² See para 8.3.22 of DBC's case.

⁴⁵³ DCO Obligation page 11 of Sch 4, paragraphs 4.6 to 4.9: the composition of the Transport Review Group is very similar to that here. It will be remembered that the main point being made at the s.106 session was about democratic deficit. That is exactly the same in the DIRFT case, which is why Ms Thomson referred the Inquiry to it. The other points made by Mr Mould go nowhere: (a) the obligations here would bind the occupiers as s.106 runs with the land – no obligation is needed to bind the owner to procure compliance; (b) and (c), the degree of change is more tightly defined, but plainly it is the control of the proposed group in this case – a major proposed change eg by RDL could be blocked by DBC, and adjudicated by the expert; (d), that is the answer also to whether a major change could take place – although not the same exactly, the same; (e), It is not simply an advisory group – see paragraph 4.1, 4.3 and 4.4. RDL simply doesn't accept the DBC submissions on this point.

an expanded network of SRFIs that would in part be met at Howbury Park (in a way, or to an extent, that would not be obviated by any potential SRFI at London Gateway), then very special circumstances are indeed likely to be established, even given the Green Belt and landscape harm. That is the corollary of the MoL's heavy emphasis on need and alternative sites; as the NPSNN makes clear, it is particularly difficult to meet the need for a network around the country's largest market, London, since that market is girded about with Green Belt. DBC's case on highways effects and air quality would not rebut the very substantial weight to be given to meeting national need.

- 11.5.4. Familiarity might perhaps breed contempt where this issue is concerned. A national need, particularly one which is deemed by the Government to be critical, repays careful consideration. It is a national need because to have a network of SRFIs is crucial for the country's commercial resilience, and its environmental robustness, going forward. To achieve those goals of paramount importance is more important than the preservation of the openness of the Green Belt in this location. Although certain factors are different, the need for SRFI facilities did clearly outweigh the same level of harm in 2007, so although a 'difficult balance', as the MoL would stress, it was one in which the benefits nevertheless *clearly outweighed* the harm.
- 11.5.5. Standing back from the detail of the evidence on this occasion, the big points can still be seen:
- a. London's Green Belt requires the strongest protection⁴⁵⁴;
 - b. London is the country's largest, and most important market for goods;
 - c. London and the Southeast together currently lacks any SRFI facilities. The prevailing consequences for the HGV use of the strategic road network can be imagined. The road network is frequently inoperable due to incidents, making the flows essential to our economy highly susceptible and vulnerable. London needs a network of SRFIs around it to improve the resilience of its economy;
 - d. If one is to release 57 ha of land from the Green Belt, there needs to be a justification of real strategic force. Making the metropolitan region more economically stable, and improved in environmental terms, would be an appropriate use of land currently kept free from development. That is the case even if a non-Green Belt site, at London Gateway, might have the potential to contribute to part of the network as well one day.
- 11.5.6. That is the shape of these particular appeals, if one rejects the MoL's 'concerns' about the market attractiveness of the intermodal facilities, based as they are on asking a series of questions aimed at the wrong targets. Whilst DBCs' concerns are perhaps legitimately more locally-focused, it is less easy to forgive the approach of the MoL, who frames his objection as based on strategic concerns. A truly strategic approach would have borne in mind the fact that, as Mr Kapur says, the rail industry is well used to

⁴⁵⁴ See para 7.5.1 of the MoL's case.

shaping the timetable to meet evolving and competing needs. The biggest markets in the country lie within striking distance of Howbury Park, without the need to run the gauntlet of the M25 on the way in. The site is self-evidently a good SRFI location to meet part of the identified national need.

- 11.5.7. Again, why DBC wishes to raise its points about traffic in Dartford is understandable. But perhaps it is worth reflecting, at the end of this phase of the process, why the MOL attacks the RDL scheme with such relish and in such alarmist terms. There are two clues, one might think.
- 11.5.8. The first clue, which runs throughout the evidence, is the fundamental error, identified earlier in these submissions, that because the scheme would be attractive to road as well as rail, it is somehow suspect. Another clue is the entirely bogus argument – accepted as such by Mr Hirst⁴⁵⁵ – that the scheme would do nothing for London. That is found in the Stage 1 report, and in the reason for refusal, and in the MOL’s statement of case. Unsurprisingly, it has been quietly shelved by Mr Kolinsky in submissions in favour of a central argument based on the ‘perfect storm’ of constraints that the current timetable and all the constraints make access all too difficult.
- 11.5.9. Not once throughout this process has Mr Goldney, or anyone from City Hall, picked up the phone, or written an email, to Network Rail. The MOL calls Mr Goldney as his witness to argue that it would be impossible to gain access to the site by rail (in fact, his confirmed position⁴⁵⁶ is that 2 trains a day could access the site); but Mr Goldney advises a party (BP) which has just inserted a new rail freight service into the South London network, and he accepts⁴⁵⁷ that his ex-colleague Mr Kapur’s evidence should be given substantial weight. Perhaps the MOL should have approached Mr Kapur, who would have no doubt told him that flexing and developing the timetable is a regular rail industry process.
- 11.5.10. The second clue is that the MOL calls evidence to support the primacy of passenger rail over rail freight. That is the thrust of Mr Hobbs’ evidence, and part of Mr Ray’s evidence about the policy in London. But Network Rail does not have the same approach: they must balance fairly the competing reasonable demands of rail freight and passenger rail. At the close of the evidence, the MOL is not able to submit that Howbury Park trains would lead to the loss or detrimental re-timing of any passenger service. But the idea that Howbury might prejudice passenger rail is the other loose thread that runs through the MOL’s case.

11.6. **Conditions and planning obligations**

- 11.6.1. I do not repeat here the detailed submissions made in the 106 and conditions session, other than to note:

⁴⁵⁵ In XX.

⁴⁵⁶ In XX.

⁴⁵⁷ Ibid.

- a. There is no need to restrict warehousing by condition until rail freight is taken up. That is not the Secretary of State's market-led policy approach (including at Radlett in the Green Belt) and it is unnecessary. It would be sufficient to impose draft condition 6, which would oblige RDL to pay for the installation of major rail infrastructure before the warehousing is occupied;
- b. I confirm that RDL agrees to the imposition of any of the agreed conditions which is in form of a Pre-Commencement Condition⁴⁵⁸. It does not consent to imposition of proposed Pre-Commencement Condition 6x as proposed by LBB, unless (1) the Secretary of State considers it necessary in principle, and (2) in terms of wording, 'commencement' is replaced by 'occupied' and the words 'and accepted in writing by' are removed.

11.7. Conclusions

- 11.7.1. The Secretary of State has to balance some weighty considerations in this case. But the starting point is that the SRFI which is proposed by RDL would be attractive to the market, well located for the country's largest economic agglomeration, and although challenging, will be accessed from the mainline via a well-trodden statutory process administered by Network Rail. Network Rail are the guardians of the railway network and they support the grant of permission. The SRFI would therefore meet part of a compelling national need.
- 11.7.2. Although the harm to Green Belt and landscape would be substantial, the Secretary of State is invited to find that London would benefit more from the greater economic and environmental resilience that a network of SRFIs would bring, than from the retention of the site as largely undeveloped land. Yes, it is hard to path rail freight and London's roads can be congested on a regular basis. But that is no answer to the challenge set by the NPS.
- 11.7.3. If permission is granted, RDL will deliver the scheme, and support the very ambitious employment targets in the current and emerging *London Plan*. Both DBC and the MOL fasten on a reference in the SIFE Inspector's Report⁴⁵⁹ to 'quality', which they oppose to 'quantity'. That is rather a sophisticated point of detail in the reasoning of that Inspector. The Secretary of State in these appeals will no doubt bear in mind a more basic point. There are at present no SRFIs around London. If the Government's economic (and mode shift) policies for rail freight are worth the paper they are written on, this is a site which should be consented for use a SRFI.

⁴⁵⁸ In CD/5.9.

⁴⁵⁹ CD/5.4, paragraphs 12.91 to 12.92.

12. THE CASES FOR SUPPORTERS REPRESENTED AT THE INQUIRY

12.1. The London Borough of Bexley (LBB)

Introduction

- 12.1.1. The LBB's role at the Inquiry is unusual. The LBB did not oppose the proposed development at the time of determination of the application, and, after careful consideration of the written evidence submitted on behalf of the principal parties and of representations received from the public, the LBB's position at the opening of the Inquiry remained as recorded in the officer's report to the planning committee and as endorsed by that committee's resolution, dated February 2017.
- 12.1.2. Representatives of the LBB have attended the Inquiry throughout its duration, and copies of Inquiry documents have been circulated to relevant planning and technical officers. The LBB has reviewed these documents on an ongoing basis, together with summaries of the key submissions made in oral evidence, and has considered matters raised both in respect of technical issues and those relating to the balancing of relevant planning policies.
- 12.1.3. The LBB has also given due regard to the publication of the revised Framework on 24 July 2018. Key Framework policies relevant to the determination of the appeal remain substantially unchanged.
- 12.1.4. To summarise the LBB's position, the appellant's scheme is by definition inappropriate development in the Green Belt, which would cause substantial harm to the Green Belt with the ensuing loss of openness and encroachment into the countryside. It is also likely to give rise to significant environmental impacts. However, adopted planning policies identify a regional and national need for a Strategic Rail Freight Interchange at this site, which, in the absence of appropriate alternative locations, amount to very special circumstances which clearly outweigh the identified harm to the Green Belt as well as any other harm.
- 12.1.5. At the close of the Inquiry, the LBB's position remains the same. It recommends that planning permission be granted for development, subject to appropriate conditions and planning obligations secured by way of a section 106 agreement.

Section 106 agreement and conditions

- 12.1.6. The LBB participated fully in the Inquiry sessions dealing with conditions and planning obligations. Appropriate planning conditions and obligations are essential to help mitigate the environmental impacts of the proposed development identified through the assessment of the application, and to enable the LBB, as the local planning authority for the majority of the application site, to properly control and monitor the implementation and operation of the proposed development.
- 12.1.7. In light of the sessions dealing with planning obligations and conditions, the LBB's position in relation to each is set out below.

Section 106 agreement

- 12.1.8. The LBB has agreed a form of section 106 agreement with the appellant to secure appropriate planning obligations relating to '*Bexley Obligation Land*'.⁴⁶⁰
- 12.1.9. The planning obligations sought and offered remain substantively unchanged from those agreed at the application stage and reported to the LBB planning committee. The exception to this is the financial contribution towards improvements at junction 1A of the A282/M25, which is now solely secured by the DBC section 106 agreement on the basis that the works fall wholly within the area for which Kent County Council is the Highway Authority.
- 12.1.10. The LBB's justification, both in terms of planning policy and in the context of Regulation 122 of the CIL Regs, is set out in its *Statement of Compliance*⁴⁶¹. DBC's *Statement of Compliance*⁴⁶² is complementary in respect of those planning obligations which are common to both agreements, as are the appellant's own *Position Statement*⁴⁶³ and response to the 2 *Statements of Compliance*⁴⁶⁴.
- 12.1.11. Further to the submission of INQ/48a and INQ/53, further amendments have been agreed to the form of the LBB section 106 agreement, principally to take account of amendments required by DBC to the DBC section 106 agreement and to the TMP. All parties agree that it is sensible for obligations common to both agreements to be identical, as both local planning authorities and both Highway Authorities will all need to co-operate to monitor, control and enforce the appellant's transport management obligations in the event that planning permission is granted and the development is implemented. Following the Inquiry session dealing with the section 106 agreements and the TMP, a form of common wording has been agreed which DBC has indicated it will sign. The LBB does not consider that these further amendments alter the position set out in paragraph 4.3 of INQ/48a.
- 12.1.12. The LBB is satisfied that the agreed form of the section 106 agreement will secure the obligations necessary to ensure that the development is acceptable in planning terms.

Conditions

- 12.1.13. The LBB has drafted a comprehensive set of recommended draft conditions⁴⁶⁵ for consideration by the Secretary of State. An updated version⁴⁶⁶ was discussed in the Inquiry session dealing with conditions, and

⁴⁶⁰ INQ/115 page 3.

⁴⁶¹ INQ/48a.

⁴⁶² INQ/48b.

⁴⁶³ INQ/53.

⁴⁶⁴ INQ/68.

⁴⁶⁵ CD/5.9.

⁴⁶⁶ INQ/94.

revised drafting of condition nos. 4, 6, 21 and 32 has been circulated prior to the close of the Inquiry⁴⁶⁷.

12.1.14. The suggested conditions are largely agreed by the parties. Where there are differences between the recommendations from DBC/MOL and from the appellant:

- a) In relation to condition no. 6, the DBC/MOL's wording is to be preferred, as it enables greater enforceability by the local planning authority, albeit, it is acknowledged the LBB resolved to grant planning permission on the basis of a condition(s) similar to that now recommended by the appellant;
- b) In relation to condition nos. 27 and 30, the appellant's recommended wording is to be preferred on the basis that the additional elements sought by DBC/MOL are unnecessary with regard to paragraph 55 of the Framework (test for conditions).
- c) On the question of whether conditions requiring the approval of a scheme containing a list of elements should end with the wording 'including' or 'comprising'; clearly there is a balance to be struck between (i) ensuring that conditions are precise and allow the efficient and effective delivery of development, and(ii) in ensuring that the language of a planning permission is flexible enough to enable the impacts of development to be fully mitigated. This is especially the case where the scheme proposed is in outline, where it is of substantial scale, and where development is likely to be implemented and undertaken over a long period of time. In this case, the reasoning for each condition is clearly and precisely set out, and there is no ambiguity as to the underlying purpose and justification for the need for a scheme to be submitted. Submissions were made by both the appellant and the LBB as to the respective merits of the language.
- d) If the Secretary of State is minded to grant planning permission and is persuaded by the LBB as to the need for the use of non-exhaustive lists within the suggested conditions, the recent Development Consent Order for the East Midlands Gateway SRFI⁴⁶⁸ does provide a precedent for the use of the word 'including' in such conditions, as does the decision notice on the Radlett scheme⁴⁶⁹. The Inspector's reports considering the refused Slough and Kent Gateway schemes⁴⁷⁰ also incorporate draft conditions referencing non-exhaustive lists.

Conclusions

12.1.15. The LBB remains of the view that there is a compelling regional and national need for a SRFI at this location, which is capable of amounting to very special circumstances which outweigh the substantial weight given to the

⁴⁶⁷ INQ/97 and 100.

⁴⁶⁸ CD/5.6 at schedule 2.

⁴⁶⁹ CD/5.5.

⁴⁷⁰ CD/5.4 and CD/5.7.

harm to the Metropolitan Green Belt, and to other environmental harms which are considered likely to arise as a consequence of the development.

- 12.1.16. Subject to the imposition of conditions substantively in the form considered at the Inquiry session, and to the due execution and completion of the 2 section 106 agreements, the LBB considers that the appellant's proposals do constitute very special circumstances which clearly outweigh the harms, both by definition and as identified as part of the application and appeal processes.

13. THE CASES FOR SUPPORTERS WHO MADE WRITTEN REPRESENTATIONS

APPEAL STAGE REPRESENTATIONS

13.1. Viridor Waste Management Limited⁴⁷¹ (VWML)

- 13.1.1. VWML is a recycling, renewable energy and waste management company based in the UK. If the appeals are successful, it would open the possibility to use the rail facilities at Howbury Park. VWML already uses rail elsewhere in Britain to move material in containers to and from processing points. In particular, working for the local authorities in Manchester, and previously in Edinburgh, to move residual waste by rail from inner-urban RFI to remote disposal and recovery sites. Our network of daily rail services carry up to 50 containers each way over distances as short as 30 miles, removing a considerable number of HGV trips that would otherwise operate over the inner-urban and outer-urban road networks. VWML's freight trains operate amongst busy commuter services in and out of Manchester.
- 13.1.2. VWML is aware of the wider opportunities to use rail for longer-distance movements of bulk recyclates such as glass, polymers, paper and metals from urban areas, to provide feedstock material into factories located in Britain and overseas. VWML will consider opportunities wherever they arise to provide this service.
- 13.1.3. VWML business currently operates one of the largest recycling facilities in Western Europe, off Thames Road adjacent to the application site, which handles close to 300,000 tonnes of material per year. Waste and recyclables are transported to the site by HGV, where they are processed and then exported off-site in large containers to a variety of locations, including ports for export abroad.
- 13.1.4. The lack of rail freight facilities at the Thames Road site removes any real prospect for rail use to service the current operations. The potential to transport materials from the site using rail is significant, in the order of 100,000 to 200,000 tonnes per annum. Clearly, at this stage in the planning process, it is difficult to accurately predict precise benefits in this regard. In the absence of a SRFI at Howbury Park, this material will continue to be transported by HGV on local roads to and from the Thames Road site.

⁴⁷¹ APP/RAIL/2 Appendix D and letter dated 4 February 2016 to LBB.

- 13.1.5. The creation of a multi-user, open-access rail freight interchange at Howbury Park would bring rail access to VWML's doorstep. It would also open up opportunities to work with other occupiers and companies in the hinterland of Howbury Park, to exploit any spare capacity in containers leaving the site by rail to carry VWML's material as a backload, further reducing the number of HGV movements on local roads. Based on VWML's experience in working with train operators and Network Rail elsewhere in the UK, we would not anticipate any problems in our ability to move trains to and from Howbury Park.
- 13.1.6. An additional benefit of the appeals proposal that would also greatly assist in our operation is the proposed new access to our recycling facility, with a spur from the SRFI new access road that links the A206/A2026 roundabout. This would enable HGVs to access our site directly off the strategic highway network, which would significantly improve the current situation by removing VWML traffic from the A206/B2186 roundabout.
- 13.1.7. VWML would welcome the opportunities presented by the rail freight facility, which could include occupying new premises at the Howbury Park site, to extend our existing production operations.
- 13.2. **GB Railfreight⁴⁷²** (GBR)
- 13.2.1. GBR supports the development of a new SRFI at Howbury Park.
- 13.2.2. GBR is part of the Swedish-owned Hector Rail Group, having been acquired last year as part of an ambitious and considered plan to expand rail freight services across Europe. GBR's aim is to improve the frequency, capacity, reliability, punctuality and competitiveness of rail freight services so as to provide a real and better alternative to long distance road haulage both in the UK and throughout the continent. This goal requires GBR to develop logistics solutions, as opposed to just the rail element, so that customers can have their product collected in one location and delivered to another, whether those locations have a direct rail link or not.
- 13.2.3. Whilst the environmental benefits of rail are appreciated by all our customers (rail is recognised as producing around one quarter of the CO₂ emitted by an equivalent road journey and one train can typically carry the load of between 40 and 70 trucks, some rather more) those customers also require consistent and comparable service levels. They will not pay more or accept less complete service just for the sake of moving to rail. That stance dictates that GBR seeks more efficient ways of delivering our customer's products to their point of use or sale. To be able to deliver close to London, given the current size and predicted growth of the southeastern conurbation, is an absolute necessity.
- 13.2.4. Every Government since the privatisation of the rail industry in 1994 has set out to increase the volume of rail freight. As recently as September 2016, this Government re-confirmed its commitment to growth and published its Rail Freight Strategy, particularly highlighting the scope offered by the

⁴⁷² APP/RAIL/2 Appendix A.

industry to reduce emissions and road congestion. GBR's aims parallel those of Government policy, being convinced, as investor's purchase proves, that the industry has a very positive contribution to make. That contribution can only be optimised if rail delivers the products it carries close to the final market.

- 13.2.5. Some traditional sectors of the rail freight market, notably coal for power stations and raw materials and finished products in the iron and steel sector, have declined substantially in the last three decades, but this reduction in absolute volume has been substantially offset by growth in construction materials volumes and in both the newer intermodal (container freight) and automotive sectors. Instead of carrying raw materials or fuel, rail freight has shifted towards the carriage of finished products. Those, in turn, are consumed where people live, but the industry's current infrastructure does not allow it to deliver into areas of significant growth such as London and southeast England.
- 13.2.6. The region presently has no functioning SRFIs. One has been granted consent at Radlett, to the north of London and 47 miles (or about 90 minutes in an HGV around the M25) from Erith, but construction has not yet started. In any event, its catchment area is completely different to that of the appeals proposal. GBR considers there to be no likelihood of overlap or 'cannibalism' by one on the other; there is more than enough potential traffic for both. In fact GBR would like to see at least a third SRFI in close proximity to the M25 and was profoundly disappointed when the proposal at Colnbrook was refused consent in 2016 on the basis that the site was in the Green Belt.
- 13.2.7. GBR does not accept that the appeals site is too close to the southern ports to be viable; such a statement is far too generalised. In fact the site is ideally placed to receive trains from the north and from the Channel Tunnel and to act as a regional distribution location for those arriving loads. Moreover, trains from deep-sea ports such as Southampton and Felixstowe will be viable when we are able to cycle our rolling stock more than once in 24 hours. The relatively short distances and a modern terminal will allow faster turnaround times which will, in turn, promote much better asset utilisation. Neither does GBR accept that it would impede passenger services, another general perception unfounded in fact. GBR has very substantial experience of working closely with Network Rail to make best use of the available space on the network and avoid conflicts.
- 13.2.8. GBR fully accepts that it cannot make the 'final mile' deliveries by rail and that there will be localised traffic around the site, but the ability of rail, if provided with facilities such as at Howbury Park, to remove substantial volumes of heavy traffic from the road network is undoubted.

13.3. **Maritime Transport Limited**⁴⁷³ (MTL)

- 13.3.1. Following recent discussions with the appellant as the preferred operator for the rail freight terminal at East Midlands Gateway SRFI, MTL and the appellant discussed wider opportunities for SRFI developments, including the appellant's proposal for Howbury Park. The appellant asked MTL to write a letter, which might be placed before the Inquiry, setting out its perspective, from the point of an established intermodal logistics company and operator of the SRFI at Birch Coppice, Birmingham Intermodal Freight Terminal (BIFT).
- 13.3.2. MTL is a UK based container transport and ancillary storage operator, servicing global customers that include retailers, manufacturers, logistics companies and shipping lines. The company also provides domestic distribution services, predominantly to retailers. In addition, MTL operates a number of rail freight interchanges, handling flows of intermodal and other traffic.
- 13.3.3. In 2001 MTL was the fifth largest container transport operator by road in the UK. Today, the company is the market leader in the domestic movement of containers and is the fastest growing domestic distribution operator with a growing portfolio of rail freight interchange operations in the UK.
- 13.3.4. As an evolution of MTL's origins in road transport, its involvement in rail freight has expanded on a number of fronts. Over the last 10 years, MTL has become involved in creating and planning trainload services, as well as becoming the largest provider of road haulage at either or both ends of the rail transit, moving containers between rail freight interchanges and their ultimate origins or destinations.
- 13.3.5. In 2010 MTL recognised a growing need to have a strategic stake in rail as a natural extension of our road haulage services, to secure additional transport options and exploit the benefits of rail haulage for moving large volumes of freight. We embarked on diversification into rail freight interchange operations, taking the lease on the Tilbury Riverside Rail Terminal for handling port-related traffic to and from rail freight services. In 2014, MTL acquired Roadways Container Logistics and BIFT, an open-access, purpose built rail freight interchange at Birch Coppice in the west Midlands.
- 13.3.6. As a business, MTL sees road and rail as complementary, not competing activities. With long distance road haulage services most affected by growing congestion on the motorway network there are clear benefits and opportunities for the increased use of rail in the UK for both long distance trunk hauls and shorter distance shuttle services. However, the future success of rail freight is predicated on the development of an expanded network of modern rail interchanges able to accommodate longer trains with more efficient handling, to replicate current road based distribution networks. The creation of an expanded network of SRFIs will facilitate the movement of freight by rail, providing the critical infrastructure needed to run trains from point to point to take substantial volumes from the roads.

⁴⁷³ APP/RAIL/2 Appendix B.

- 13.3.7. Taking MTL's terminal at BIFT as an example, it now receives and handles four trains a day from container ports. MTL provides the critical mass of traffic needed to underpin these services as well as handling third party traffic, all of which would otherwise have to travel by road. The interchange facility also enables MTL to store containers on site as required, prior to delivering these to their final destinations, either to occupiers of the SRFI site (e.g. Euro Car Parts, Smurfit Kappa and Volkswagen) or elsewhere, including Argos at Barton Under Needwood, JLR (various local sites) and Triumph Motorcycles at Hinckley, as required. The system also works in reverse with goods collected and delivered by train (in the case of BIFT), for export.
- 13.3.8. The principle of SRFIs located around London to service the region represents an obvious next step, given that there are no such facilities at present. The Capital is the largest single concentration of consumer demand. Currently road based distribution networks connect national distribution centres located in the Midlands, (including some on SRFI) with road based regional distribution centres serving the Capital, typically sited around the M25. There is a need to provide rail interchange facilities in the southeast in order that the motorway network between the Midlands and the southeast can be bypassed, allowing goods to be brought as close as possible to their ultimate destinations before transfer to road for their final delivery.
- 13.3.9. As far as I am aware, Howbury Park would represent the first SRFI facility of its kind to service London and the southeast. From a transport operator's perspective, the proposed site is in an excellent location to the southeast of London with immediate arterial road connectivity (A206) and motorway links (M25) as well as access to the rest of the UK and mainland Europe via the Channel Tunnel.
- 13.3.10. Howbury Park clearly provides the opportunity to maximise use of rail for manufacturers and producers based in the southeast or for those looking for a warehousing and distribution presence, as well as for retailers serving London and the surrounding areas.
- 13.3.11. The warehousing on site would be used to hold products as required prior to their next movement by road or rail. By maximising use of rail for large volume shipments, the road leg can be made as short as possible and with smaller delivery loads, bringing these within the scope of the growing fleets of electric and hybrid powered delivery vehicles.
- 13.3.12. MTL currently has a number of grocery, FMCG and parcel traffic flows, in particular, and can identify other flows that would be suited to Howbury Park and potentially representative of the goods that may be transported by rail to and from the site, including domestic and international flows in containers or conventional rail wagons which are currently moved by road. These would utilise the SRFIs in the Midlands, in particular, and other rail terminals in the UK.
- 13.3.13. MTL supports the expansion of SRFI capacity across the rest of the country, London and the southeast being one of the biggest gaps in the network at present. MTL therefore supports the proposed development at the appeals site and is confident that it would succeed. In the absence of any alternative

sites in the area south of the Thames, MTL sees it as an essential addition to the network.

13.4. **Rail Freight Group**⁴⁷⁴ (RFG)

- 13.4.1. RFG is a representative body for rail freight in the UK. It has around 120 member companies from across the rail freight sector, including train operators, logistics companies, ports, equipment suppliers, property developers and support services, as well as retailers, construction companies and other customers. RFG's aim is to increase the volume of goods moved by rail. RFG and its members strongly support the appeals proposal.
- 13.4.2. The SRFI model, supported by the associated national policy framework, has proved to be a key element in the development of sustainable movement of freight. Each of the established SRFI has delivered growth in rail freight and has enabled new customers to make use of rail as well as supporting growth for existing users.
- 13.4.3. As the culmination of a decade of Government policy evolution in this area, the NPSNN is unequivocal in its support for an expanded network of SRFIs, acknowledging the relatively small number of sites able to be developed for the purpose. The Department for Transport's latest Rail Freight Strategy 2016⁴⁷⁵ reiterates this support, noting that the key constraint to unlocking potential in this sector is the availability/construction of suitable rail-connected terminal facilities, including SRFI.
- 13.4.4. In addition to national policy, the recently published *Mayor's Transport Strategy 2018*⁴⁷⁶ also notes the challenges for freight transport and suggests measures to increase the use of rail and water freight as an alternative to road, including greater use of consolidation centres.
- 13.4.5. Yet despite the success of these policies, and the delivery of new SRFIs elsewhere in the country, none have yet been consented in London and the southeast, although there have been several applications including Howbury Park. The absence of such locations means that rail's share of distribution in London is below that of other major conurbations, and rail's ability to help decongest the trunk road network in the southeast is also hampered.
- 13.4.6. The development of suitable locations is therefore urgent and critical to unlocking rail distribution to and from, and also within the region. It is therefore particularly disappointing and concerning that, following the previously successful appeal, there is now renewed objection from DBC and the MOL, despite the LLBB voting in favour of the grant of consent.
- 13.4.7. The proposed development at the appeals site aligns both with national and regional policy for the development of rail freight, being capable of receiving long-distance freight by rail from the regions, mainland Europe and ports of

⁴⁷⁴ APP/RAIL/2 Appendix C.

⁴⁷⁵ CD/4.1.

⁴⁷⁶ CD/3.3.

entry, and of supporting use of rail to deliver into central London. With a clear absence of alternative proposals, we are concerned to ensure that this important scheme is able to proceed and deliver as a key part of rail freight growth in London and the southeast.

PLANING APPLICATION STAGE REPRESENTATIONS (for the most part)

13.5. Network Rail⁴⁷⁷

- 13.5.1. We can confirm that a design solution has been identified which would not only provide Howbury Park with a suitable main line access, but would equip Southeastern Trains (SET) with an enhanced 12-car headshunt siding, replacing the constrained 10-car siding currently operated and avoid any internal SET depot movement conflicts with those to and from Howbury Park.
- 13.5.2. Critically, the design would also allow trains to and from Howbury Park to be signalled to and from the main line directly by Network Rail, avoiding the need for SET's resources to be used to co-ordinate movements between Howbury and the main line and providing fail-safe reliability.
- 13.5.3. Freight trains routed via Bexleyheath or Blackheath⁴⁷⁸, so arriving in the 'down' direction, would access Howbury Park via the south end depot connection running directly via the connecting curve to the facility. This connecting curve is long enough to accommodate a full length (so 775 metre) freight train 'inside clear' of the main line. Freight trains routed via Hither Green, so arriving in the 'up' direction, would access Howbury Park by running into one of the Slade Green depot reception lines, drawing into the depot north end head shunt (so circa 700 metres inside clear); they would then set back round the connecting curve into the terminal. Likewise outbound trains via Bexleyheath or Blackheath would stand on the connecting curve awaiting clearance of the departure signal and trains routed via Hither Green would set back out of the terminal through one of the Depot reception lines into the north head shunt & await signal clearance to depart. For inbound trains arriving in the Up direction, it may additionally prove possible to set back directly from the Up line and onto the connecting curve and into the terminal (whilst commonplace nationwide, this option would be dependent upon prevailing service frequencies & for simplicity has not been included in the formal analysis).
- 13.5.4. As per national safe operating practice, all set back moves are conducted with a Person In Charge (PIC, in this instance one of the terminal operatives or member of freight company ground staff) observing the movement from a position of safety and in continuous radio contact with the driver.
- 13.5.5. We have identified an opportunity for the track works on the main line to be undertaken at the same time as another pre-planned maintenance possession in the Slade Green area, minimising any disruption to existing

⁴⁷⁷ As set out in LBB Officer's Report CD/1.6 pages 21-25 (Inspector's Note: broadly comparable points are made in DBC Officer's Report CD/1.1 (superseded by CD/1.2) and INQ/17, 25 and 99.)

⁴⁷⁸ CD/4.12 page 2 schematic and INQ/54 page 11 Figure 5.

passenger and freight services. To reiterate previous discussions we also see an opportunity for our own proposed depot enhancement works at Slade Green to be undertaken in parallel with those at Howbury Park, enabling us to use the Howbury site construction access, to minimise the need to bring heavy plant through residential roads in Slade Green. Beyond this, we have discussed with RDL the retention of a permanent highway access between Slade Green depot and Howbury Park, which would further reduce the need to bring depot traffic through Slade Green residential areas.

Capacity and pathing

- 13.5.6. Rail freight has an established operational footprint in the timetable in this area with the existing aggregates railheads at Greenwich Angerstein Wharf collectively generating some 4 to 5 trains in and out of the site per day. Notably, such bulk aggregates services operate in the 1,850 to 2,200 tonne range and so are significantly heavier (and so commensurately slower to accelerate & brake) than the intermodal services likely to operate to and from Howbury Park. Moreover, this same North Kent corridor recently accommodated the 4-6 daily heavy weight (up to 2600t) trains conveying cross London Crossrail construction works spoil to the reconnected bulk quay facility at Northfleet, such additional trains being timetabled without impact on the prevailing passenger service.
- 13.5.7. With regard to timetabling, our assessment has considered both off-peak daytime and overnight periods for movement of freight trains to and from Howbury Park (as we do not generally path freight trains across London during morning or evening peaks), with a particular focus on the off-peak daytime period when services are more intensive than at night. Against the longer-term objective of operating up to 7 freight trains per day to and from Howbury Park, it is a significant and positive achievement that the analysis of the off-peak daytime period has identified 7 paths during the relatively narrow window between morning and evening peaks with the timetable as it stands. Building on this 'worst-case' scenario, further investigation has identified a similar quantum of paths available overnight. We are therefore satisfied that capacity exists to allow the SRFI to achieve a meaningful level of rail traffic and associated mode shift of freight from road.
- 13.5.8. Notably the study work considered the proposals for a more intensive 'metro' style passenger service pattern along the North Kent Line during the day. Focusing on the trains accessing / egressing the Slade Green southerly connection, the analysis revealed two 7 minute slots per hour during the off-peak daytime period to allow freight trains to access or exit Howbury Park. To put this in context, the time taken for a maximum-length (775 metres) freight train to traverse the main line connection (so laddering across both main lines) would range from 6 minutes at minimum speed (5 mph / 2.2 m/s), to 1½ minutes at maximum speed (25 mph / 11.2 m/s). Obviously Down direction inbound & outbound moves entail no such laddering moves & would be quicker.
- 13.5.9. It is also worth pointing out that the timetable is not 'cast in stone' but is constantly being updated as a rolling 18-month programme, resulting in the timetables published by the train operators. The evolution of train services, whether passenger or freight, is taken into account by Network Rail when

updating the timetable. Growth in freight services from Howbury Park would be one of many stakeholder inputs that we would account for as the timetable is developed in future years.

- 13.5.10. Typical of such developments, we expect a progressive development of the traffic base building from 1-2 trains per day pathed to match available line of route capacity across the country and available slots at origin ports and terminals. Any new services are planned and monitored closely by our national freight team to avoid performance issues; a useful parallel perhaps being the recent experience of some 5-6 additional daily freight services per day (spread throughout the night and day) hauling Crossrail spoil from Paddington to Northfleet, a quantum of additional freight traffic achieved without impact on existing passenger and freight services over the North Kent line.
- 13.5.11. In summary, and in line with previous commentary on this scheme, with a proposal that works from a technical perspective and an absence of network capacity issues, we reiterate our support for development of a SRFI at Howbury Park. This facility answers a market need for rail connected facilities in the south east and it would seem there is a unique window of opportunity currently with our Infrastructure Projects team primed to deliver the relevant rail access works alongside our own Slade Green depot enhancement programme for Slade Green depot.

Market context

- 13.5.12. Howbury Park addresses a demonstrable market demand; Network Rail are aware of potential rail flows frustrated by the paucity of rail terminals in the southeast capable of handling contemporary intermodal traffics.
- 13.5.13. Nationwide, facilities such as Howbury are critical to the growth of domestic intermodal traffics, where rail is utilised by retailers and logistics operators for inland trunk haul movements, the slow pace of realisation of such facilities has been an impediment to this area of modal shift nationwide. Howbury Park will also have a geographically unique role to play in accommodating future Channel Tunnel traffic growth.
- 13.5.14. Network Rail receives numerous applications for new freight (and passenger) interchanges which are reviewed and prioritised with a view to market & network fit to make best use of our available technical resources. We therefore do not engage with new third-party projects lightly and had the Howbury Park proposals raised strategic concerns about viability or deliverability in design, construction or operation, we would not have engaged with the promoters through our GRIP process.

Crossrail extension

- 13.5.15. Our strategic planning team who work to a 30 year time horizon have long endorsed Howbury with their full visibility of future freight & passenger service development including prospects for the future eastward extension of Crossrail beyond Abbey Wood.
- 13.5.16. With electrification and signalling systems fundamentally different to those on the existing mainline, the Crossrail running lines to Abbey Wood

currently under construction feature a physically discrete alignment that sits parallel to the existing main line, on the Downside.

- 13.5.17. Whilst there are no definitive designs or timescales yet, it is understood that for Crossrail be extended east of Abbey Wood towards Dartford further dedicated additional running lines will be constructed, physically separated from existing running lines. With Slade Green depot located on the Down side of the existing mainline, such Crossrail lines will need to be configured so as to not sever access and egress between the existing mainline and Slade Green depot's north and south end connections; for this reason grade separation has been previously proposed as a solution.
- 13.5.18. Mindful then that the Howbury Park terminal connection is effectively a spur off Slade Green's southerly connection and head shunt; it is clear that Howbury Park itself poses no additional considerations or obstacles for the future Crossrail extension.
- 13.5.19. Reflecting its current development status, detailed train path planning of the future extension of Crossrail 1 beyond Abbey Wood and any implications for existing freight and passenger services (including movements to/from Howbury Park/Slade Green depot) has yet to take place. However, we are aware that the previous discussions between Crossrail and RDL raised no objections to the Howbury Park scheme.

14. OTHER WRITTEN REPRESENTATIONS

14.1. Kent County Council

Background

- 14.1.1. KCC considers it is important to highlight, that since the previously approved scheme was considered in 2007, traffic flows on the M25/A282 have increased considerably with reported 24 hour flows of vehicles in 2015 and 2016 far exceeding the design capacity of the strategic road network. Development growth across the wider area has been both significant and rapid over the last decade, with large residential and commercial developments in close proximity to the M25/A282, one local example being The Bridge commercial/residential development, which is situated off the A206 part way between the appeals site and the A282/M25.
- 14.1.2. KCC is satisfied with the overarching approach/methodologies as presented in a series of key technical documents issued in support of the proposal, including *Chapter E-Transportation of the Environment Statement, November 2015*⁴⁷⁹, the associated *Transport Assessment, November 2015* and the *Transport Assessment (Addendum), March 2016*.

Traffic flow and localised congestion

- 14.1.3. The problem of traffic congestion on the local road network and the associated impact on Dartford Town Centre, as well as the wider area, is acknowledged at both local and sub-regional level. KCC is of the view that this is predominantly caused by incidents occurring on the Highways England strategic road network, M25/A282, and the activation of the Traffic Management Cell in advance of the 2 north-bound river tunnels. Following the introduction of the free-flow system, which saw the removal of barriers/toll booths at the Dartford Crossing, the number of incidents of localised congestion associated with the crossing increased and was attributed directly to the introduction of the free-flow system and associated highway works. However, it is considered that in the last 3-6 months, conditions have improved somewhat and there has been a decrease in the frequency of local network problems.
- 14.1.4. Traffic flows around junction 1A of the A282/M25, Dartford Town Centre and A206 Bob Dunn Way are particularly sensitive to signal timings at junction 1A. KCC has made numerous changes to the traffic signals in recent history in an attempt to smooth the flow of traffic passing through the junction at different times of day. However, ultimately it is not necessarily what is happening at the junction that is the problem, it is what is happening on the M25/A282 'main line'.
- 14.1.5. For example, the extraction of an over-height vehicle triggers the Traffic Management Cell at the north-bound tunnel bore, which creates immediate delays. The north-bound tunnels can be closed due to congestion on the Essex side. Minor collisions on the approach to the tunnels (generally the result of lane changing/weaving) all exacerbate problems on the local network and very quickly, junction 1A and Bob Dunn Way suffer the

⁴⁷⁹ CD/1.27 Volume 2 Chapter E, CD/1.27 Volume 3b and CD/1.30.

consequences of such incidents, reflecting the sensitivity of the local network. Over recent years, the existing Dartford Crossing has either been partially or completely closed, for an average of 300 times per year (for 30 minutes or more). This has largely been due to vehicle height restrictions, dangerous goods vehicles, accidents, breakdowns and the need to prevent excessive queuing/traffic inside the tunnels. Typically it can take between 3 to 5 hours for roads to clear following closure. Inevitably any increase in local HGV/LGV movements associated with the proposed SRFI would exacerbate local traffic congestion and lengthen existing traffic queues, particularly when there is an incident on the local or strategic road network.

Traffic modelling

- 14.1.6. In support of the appeals proposal, computer highway modelling has been undertaken in an attempt to better understand the direct impact that the scheme might have on the local and strategic road network. Transport for London (TfL) in particular worked with the appellant in relation to the traffic modelling aspect of the application, which is a TfL area of expertise. The appellant utilised a TfL/Highways England derived highways assignment model known as RXHAM, which is fully audited and validated. RXHAM seeks to model the change in traffic capacity across the whole network as a result of the proposed SRFI development at peak times. As is similar in London and its fringes, the road network is constrained and this means that in some cases a small number of vehicles are reassigned to alternative routes. Looking towards 2031, the modelling suggests that the local road network and associated local roundabouts would be able to manage the associated increase in development related traffic.
- 14.1.7. However, as much depends on driver behaviour and local traffic conditions, there is uncertainty as to precisely where and how many vehicles would be assigned to the local highway network. Whilst computer highways models can help to 'paint a picture' of what may or may not occur on a local highways network in the future, it should only form one element of the overall professional advice presented. No computer model will ever be 100% reliable/accurate. That said, KCC is confident that the RXHAM model accurately reflects the typical traffic conditions in the local area.
- 14.1.8. TfL and Highways England concur that in the medium to long-term, physical mitigation measures are required at the M25/A282 junction 1A. As of spring 2017 KCC and Highways England are scoping/developing plans for remedial improvements to the junction. Future interventions would be most likely to focus on improving the general layout, queuing capacity, traffic signals and associated monitoring/response options. Such improvements are likely only to be able to smooth flows for existing traffic, as opposed to building in any significant new capacity to cater for future growth/demand.
- 14.1.9. Highways England has proposed a cap on HGV movements between the appeals site and junction 1A during peak periods (AM and PM peaks), in order to address anticipated congestion around that junction identified by the modelling. This is supported in principle by KCC, although the impact of the proposed cap did not form part of the original modelling and consequently, there is some uncertainty as to how it might impact on the shoulders of the associated peaks.

- 14.1.10. The proposed new access road of the A206/A2026 roundabout, offers benefits, such as removing the need for vehicles to use the current constrained access route provided under the Craymill Rail Bridge to reach the Viridor Waste Management Limited site.
- 14.1.11. KCC considers it is certain that the appeals proposal would contribute a significant amount of additional traffic in the form of HGVs, light goods vehicles and employee vehicles to both the local and sub-regional/strategic highways network. The scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local M25 junctions 1A and 1B and nearby local roads.
- 14.1.12. Having had regard to the traffic assessment as well as the current and likely future conditions on the local highway network, KCC considers that whilst the situation is likely to be worsened by the proposals, it is not able to conclude that it would result in conditions that could be described as having a severe impact on congestion or safety.

14.2. **Highways England⁴⁸⁰ (HE)**

- 14.2.1. The TfL RXHAM model is the most appropriate model to assess the strategic impact of the proposed SRFI. With reference to the documents submitted in support of the applications, the resulting traffic assignments on the highway network, and specifically the M25, A282 and the associated junctions (1A and 1B), were agreed.
- 14.2.2. HE concluded that at the time of full occupation of Howbury Park and on the basis of the current road network, the evidence presented showing queues and delays during peak periods on the M25/A282 would be severe from safety and operational viewpoints that could not be mitigated by the Howbury development. Under such circumstances HE would normally require planning conditions preventing further traffic onto the strategic road network at this location during the peak periods. However, as the Howbury development would likely remove some freight traffic off the M25/A282 an allowance was made via a recommended condition limiting the volume of Howbury Park HGVs on the M25 to 32 trips per hour (16 arrivals and 16 departures or equivalent) between the hours of 7am and 10am and 56 trips per hour (28 arrivals and departures or equivalent) between the hours of 4pm and 7pm. WSP do not agree with this limitation but RDL are prepared to accept it whilst the strategic highway network in the region remains unchanged.

14.3. **The Environment Agency⁴⁸¹ (EA)**

⁴⁸⁰ CD/6.4 section 5.

⁴⁸¹ Consultation response dated 22 January 2016 and 26 May 2016, see CD/1.6 page 31.

14.3.1. Subject to the imposition of conditions related to contamination land, drainage, construction methods and biodiversity⁴⁸², the EA does not object to the grant of planning permission. The EA has no objection to the proposal on flood risk grounds.

14.4. **Natural England**⁴⁸³ (NE)

14.4.1. Based On the information provided, NE advises that the proposal would be unlikely to affect any statutorily protected sites or landscapes.

14.5. **Historic England**⁴⁸⁴

14.5.1. Subject to the imposition of conditions related to investigation of archaeological and locally listed building investigations, Historic England does not object to the grant of planning permission.

14.6. **Port of London Authority**⁴⁸⁵ (PLA)

14.6.1. The PLA has no in principle objection to the grant of planning permission and recommends the imposition of a number of conditions.

⁴⁸² Consultation response dated 22 January 2016 and 26 May 2016, see CD/1.6 page 31.

⁴⁸³ Consultation response dated 9 December 2015 see CD/1.6 page 36.

⁴⁸⁴ Consultation response dated 23 December 2015 see CD/1.6 page 35.

⁴⁸⁵ Consultation response dated 23 December 2015, see CD/1.6 page 33.

15. INSPECTOR'S CONCLUSIONS

[In this section references in square bracket [] indicate a paragraph in which relevant material can be found.]

15.1. Introduction and main issues

- 15.1.1. The appeals site falls within the Green Belt. In the context of identifying the need for robust evidence to justify locating a SRFI in the Green Belt, the reasoned justification for LP Policy 6.15 indicates that *'... planning permission has already been granted for a SRFI at Howbury Park...'*. In 2007 the Secretary of State granted outline planning permission for a SRFI scheme at Howbury Park (the 2007 permission), which was similar in a number of respects to that which is now proposed. However, that previous permission does not amount to a fallback position, as it is no longer extant. Furthermore, the appellant has confirmed that *'RDL does not say that permission should be given this time because it was given in 2007'* and *'the 2007 decision was made on balance in the circumstances of the day, which are different...'* [7.2.1, 11.2.12-13].
- 15.1.2. The appeals site lies within the Bexley Riverside Opportunity Area (BROA) and an identified Regeneration Area within the LP. LP Policy 2.13 indicates that development proposals in the BROA should support the strategic policy directions set out in LP Annex 1. They include, amongst other things, that *'Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'*. The proposed SRFI development would be consistent with that particular strategic policy direction [7.1.11]. However, that is not the end of the matter, not least as there are other Development Plan policies with requirements relevant to SRFI development in this location.
- 15.1.3. Consistent with the Framework, LP Policy 7.16 indicates that *'The strongest protection should be given to London's Green Belt, in accordance with national guidance. Inappropriate development should be refused, except in very special circumstances.'* There is no dispute that, under the terms of the Development Plans and the Framework, the appeals proposal would constitute inappropriate development in the Green Belt [7.3.2, 8.1.1, 11.4.1].
- 15.1.4. In light of the evidence before me, I consider that the main issues are as follows:
- a) The effect of the scheme on the openness of the Green Belt and whether it is consistent with the purposes of including land within the Green Belt;
 - b) The effect on the character and appearance of the local area;
 - c) The adequacy of the proposed rail link and the effect on existing/future passenger rail services;
 - d) The effect on the convenience of highway users;
 - e) The effect on living conditions in the local area, with particular reference to air quality, noise and vibration; and,

- f) Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, such as, but not limited to:
- i. Whether the proposal would meet an identified need for SRFIs to serve London and the South East;
 - ii. The availability of alternative sites;
 - iii. The socio-economic benefits of the scheme;
 - iv. The effect on biodiversity; and,
 - v. The extent to which mitigation would be secured through planning conditions and obligations; and,

If the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, whether the very special circumstances required to justify the proposal exist.

15.1.5. In this section of the report I consider each of these matters in turn. In doing so I have had regard to the information supplied with the applications, including that contained within the *Environmental Statement (November 2015) (ES)*, the *Supplementary Environmental Statement (April 2016) (SES)* and the various technical reports and appendices attached thereto. I have also taken into account the further environmental information supplied in the proofs of evidence and elsewhere during the course of the Inquiry.

15.2. a) The effect of the scheme on the openness of the Green Belt and whether it is consistent with the purposes of including land within the Green Belt

15.2.1. The appeals site, with an area of around 57 hectares, comprises for the most part of grassland with some limited tree and shrub cover. The northern end of the site lies at around 5 metres above ordnance datum (AOD), rising up to around 13.5 metres AOD at Howbury Grange and then falling back down towards the River Cray at the southern end of the site and the A206 beyond⁴⁸⁶. Howbury Grange, to my mind, has the appearance of a two-storey dwelling and, according to the planning application forms, it has an internal floor area of around 800 m². I consider that the appeals site is generally characterised by open countryside, which together with a wider expanse of open landscape to the northeast and east comprises a relatively compact area of Green Belt separating Bexley, to the northwest, and Dartford, to the southeast. This area is bounded by the River Thames to the northeast⁴⁸⁷.

15.2.2. The Framework states that '*The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence*' and

⁴⁸⁶ APP/LANVIS/1 paras 3.8-3.9.

⁴⁸⁷ APP/LANVIS/1 page 25

it identifies 5 purposes served by Green Belt, of which I consider that the following are particularly pertinent [8.2.1-2, 8.2.9]:

- a) To check the unrestricted sprawl of large built up areas;
- b) To prevent neighbouring towns merging into one another; and,
- c) To assist in safeguarding the countryside from encroachment.

15.2.3. As a result of the proposed development, the largest part of the appeals site would be taken up by warehouse development, in zones A and B⁴⁸⁸, with a total floor area of around 184,500 m² and a height up to 27.1 metres AOD. A relatively narrow, centrally positioned intermodal area, zone C, would include rail sidings, an area for stacked container storage as well as gantry cranes up to 26.7 metres AOD in height. At the southern end of the site, the initial section of the access road off the A206 would be carried on a viaduct spanning the River Cray, with a length of some 280 metres and varying in height up to approximately 10 metres above the existing ground level⁴⁸⁹ [3.3-5].

15.2.4. Against this background, I consider that it is appropriate to describe the overall scale of built development proposed as 'huge' or 'massive' [7.3.4]. In my judgement, the proposed introduction of landscaping around the perimeter of the site to interrupt views of the built development, either partially or completely from some vantage points, would not mitigate its impact on the openness of the site. Furthermore, the appellant acknowledges that *'outside of the site the level of harm to the openness of the remaining Green Belt will vary relative to factors such as proximity to the site, surrounding vegetation and topography'*; *'the proposals will extend the urban fringe and reduce the depth of view'* from a number of vantage points within the wider Green Belt⁴⁹⁰. To my mind, it is clear from the appellant's photomontages illustrating the potential visual impact of the scheme, in particular viewpoints 1, 2, 7, 8, 9 and 25⁴⁹¹, that the adverse visual impact of the scheme on the openness of the Green Belt would be likely to extend well beyond the appeals site boundary. [8.2.8]

15.2.5. The proposal would have a substantial adverse effect on the openness of the Green Belt and the introduction of this massive development beyond the built limits of Slade Green would constitute urban sprawl. Although it would not be unrestricted sprawl, as the Green Belt designation of the countryside bounding the appeals site to the northeast and east would continue to apply, thereby providing a check on further development, it would amount to a significant encroachment on the countryside. Furthermore, whilst the remaining Green Belt gap between Bexley and Dartford would be sufficient in physical and visual terms to prevent those neighbouring areas from merging together, the separation between the two would be materially weakened. [8.2.5, 8.2.10, 11.4.1-2]

⁴⁸⁸ Parameters Plan dwg. no. 30777-PL-101 Rev I

⁴⁸⁹ Drawing no. 2039-RP-001 rev D at chainage 283-290 metres (11.445 metres-0.781 metres). The difference in level between the high point of the proposed bridge (12 metres AOD) and the existing footpaths at chainages 310 and 360 metres (5.5 metres AOD) would be around 6.5 metres-Mr Scott evidence in chief.

⁴⁹⁰ APP/LANVIS/1 para 9.5- 9.10.

⁴⁹¹ APP/LANVIS/2.

15.2.6. The Framework states that, when considering any planning application, substantial weight should be given to any harm to the Green Belt. The proposal would have a considerable impact on the openness of the Green Belt and would undermine a number of purposes served by Green Belt thereabouts [7.3.5, 8.2.13]. I conclude overall, that the appeals proposal would cause substantial harm to the Green Belt, an outcome acknowledged as likely by the appellant [7.3.6]. This harm weighs heavily against the scheme [8.2.4, 11.4.1]. The scale of development proposed now is broadly comparable with that associated with the 2007 scheme⁴⁹², in relation to which the Inspector reached a similar conclusion regarding the impact on the Green Belt. [8.2.12-13]

15.3. **b) The effect on the character and appearance of the local area**

15.3.1. The ES⁴⁹³ identifies the appeals site, together with the former Crayford Landfill to the east and marshland to the north, east and southeast as falling within *Character Area 1-Dartford/Crayford/Rainham Marshes* (CA1). It indicates that CA1 is: a high value landscape; characterised by its mostly flat topography and open nature, with occasional stands of trees and remnant hedgerows breaking up a largely grassed or marshy space; and, is relatively sensitive to development. To the southwest and northwest it adjoins *Character Area 3-Dartford to Erith Transport Corridor* (CA3), which is identified as: a low value landscape; relatively insensitive to development; and, local to the site, comprises a variety of residential and industrial uses as well as road and rail routes. To the south east of CA1, the predominant character of the neighbouring Character Areas is: CA7-residential; CA8-commercial/industrial; and, CA9-industrial. CA9 includes a number of large structures, such as the now closed Littlebrook Power Station and the Queen Elizabeth II Bridge Crossing, which are prominent features of the wider landscape.

15.3.2. In my judgement, due to its mostly flat topography and open nature, CA1 is not readily capable of absorbing change [7.3.4]. As a result of the proposal, the predominantly grassed appeals site would be almost entirely replaced by development, comprising, for the most part, massive buildings, the scale of which would be much greater than neighbouring existing development within the lower value landscape of CA3. Furthermore, the proposed landscaping at the northern end of the site, comprising earthwork bunding topped by planting at a density sufficient to offer a degree of visual mitigation, would not be in keeping with the predominant landscape characteristics of CA1. I consider that the landscape impact would be substantial and adverse, a view shared by the appellant [8.2.13, 11.4.3].

15.3.3. Turning to the visual impact of the scheme. Whilst the appeals site itself is not publicly accessible, large parts of the site are visible from a wide range of vantage points, including: residential properties to the north and west; public rights of way that run through other parts of CA1; and, the highway network leading to the site. The proposals include the installation of

⁴⁹² CD/1.27 Volume 2 Chapter D paras D8.8-8.9.

⁴⁹³ CD/1.27 Volume 2 Chapter D para D4.4 and Volume 3a Appendix D1 figure 6.

screening bunds and establishment of planting, with the aim of softening the impact of the structures. However, as the appellant observes '*the impacts would be capable of mitigation to some degree, but clearly not entirely given the landform and availability of views*' [11.4.3]. The ES indicates that the residual visual effect of the proposal at all of the identified viewpoints within a 2 Km radius around the site would be adverse and moderate/adverse in the case of many⁴⁹⁴.

- 15.3.4. It is apparent from the evidence of DBC and a number of individuals who have objected to the scheme, that CA1 is an area enjoyed by recreational users, not least as it provides a countryside environment which is easily accessible from a highly urbanised area [8.2.6, 10.5.2,]. Some of the greatest visual impacts would be likely in relation to views towards the site from recreational routes to the north and south of the site. For example, the footpaths alongside the northern site boundary and the section of the London Loop Long Distance Path (LLLDP) to the northeast⁴⁹⁵. In my judgement, the expansive views across the appeals site from sections of those footpaths contribute significantly to a sense of being within the countryside. Those views would be lost as a result of the proposal [7.3.4]. To the south of the site, the sections of footpath passing along either side of the River Cray would be dominated by the proposed viaduct⁴⁹⁶, which in my view would also be clearly visible, where it traverses marshland and the River Cray, from Bob Dun Way. Expansive views across the appeals site would also be lost from a number of vantage points within the residential area to the north and northwest of the site, such as along Oak Road and Moat Lane. Views from those locations would initially be of the proposed substantial earth bund wrapping around the northwestern corner of the site and taller warehouses beyond. Whilst over time, bund planting would soften, if not entirely screen, views of the buildings⁴⁹⁷, in my judgement, due to its close proximity and scale, the proposed development would be likely to remain a dominating presence. I consider that the visual impact of the appeals proposal would be substantial and adverse, a view shared by the appellant [8.2.13, 11.4.3].
- 15.3.5. The proposals would not have a direct effect on the character or appearance of the Oak Road Conservation Area (ORCA)⁴⁹⁸, which lies outside, albeit immediately to the northwest, of the appeals site. The ORCA comprises a small estate of railway workers cottages built in 1900⁴⁹⁹, in relation to which Slade Green Train Depot lies to the south and the North Kent Line to the west. An area of predominantly residential development is situated to the north. In contrast the area of the appeals site immediately to the east of the ORCA comprises grassland. In my judgement, it does not contribute to the significance of the ORCA nor would the proposed development harm the significance of that Designated Heritage Asset.

⁴⁹⁴ CD/1.27 Volume 3a Appendix D1 figure 8-Viewpoint location plan, Appendix D5-Visual Effects Table,

⁴⁹⁵ CD/1.27 Volume 3a Appendix D1 figure 2, figure 5 and figure 16A.

⁴⁹⁶ CD/1.27 Volume 3a Appendix D1 figures 2 and 17B.

⁴⁹⁷ CD/1.27 Volume 3a Appendix D1 figure 11 (3 pages).

⁴⁹⁸ CD/1.27 Volume 3a Appendix D1 figure 4.

⁴⁹⁹ CD/1.27 Volume 2 para D4.16.

15.3.6. Nonetheless, I conclude overall, that the proposal would cause significant harm to the character and appearance of the local area, contrary to the aims of LP Policy 7.4, BCS Policy CS17⁵⁰⁰ and the Framework, which seeks to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape. In relation to the 2007 scheme, the Inspector reached a similar conclusion regarding landscape and visual impacts [7.3.4, 8.2.13, 11.4.3].

15.4. **c) The adequacy of the proposed rail link and the effect on existing/future passenger rail services**

15.4.1. The NPSNN paragraph 2.56 recognises that *'given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited...'*. It establishes a number of assessment principles for SRFIs, which include:

- Scale and Design-*'The initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage'* and *'As a minimum, SRFI should be capable of handling 4 trains per day'*⁵⁰¹; and,
- Transport links and locational criteria- *'Adequate links to the rail and road networks are essential. Rail access will vary between rail lines, both in number of services that can be accommodated, and the physical characteristics such as train length...'*⁵⁰².

15.4.2. The proposal includes the provision of an intermodal facility comprising rail sidings and an area for container handling, storage and vehicular access, in zone C of the site⁵⁰³. A new rail line would link the facility to the North Kent Line utilising a redundant spur within the Slade Green Train Depot. There is no dispute that either: the new rail line and connection to the spur could be constructed and used [11.1.3a.]; or, that provision of those facilities as part of the initial stages of development could be secured by condition, the details of which I will return to later. However, concerns have been raised by the MOL as to whether the proposed link would be adequate to service the needs of a SRFI, with particular reference to the number of freight services that could be accommodated, and if it would, the likely impact on passenger services.

15.4.3. In my judgement, given the requirement of the NPSNN that *'as a minimum, a SRFI should be capable of handling 4 trains per day'*, it follows that in order for the proposed rail link to be considered *'adequate'*, it would be necessary for it to be capable of accommodating 4 trains/day as a minimum [7.1.3, 8.5.4]. It seems to me, unless that would be the case, there would be no merit in requiring the facility to be capable of handling 4 trains per day.

⁵⁰⁰ APP/PLAN/1 para 7.37.

⁵⁰¹ CD/2.2 paras 4.88 and 4.89.

⁵⁰² CD/2.2 para 4.85.

⁵⁰³ Parameters plan dwg. no. 30777-PL-101 rev I.

- 15.4.4. I acknowledge that, in common with other SRFIs, the proposed facility would be unlikely to start operating with 4 trains per day [11.3.3]. *The Rail Report, November 2015*, submitted in support of the appeal planning applications, predicts that rail traffic through Howbury Park could potentially grow from 1 train per day (each way) in 2018 to 8 trains per day in 2033⁵⁰⁴. Nevertheless, I consider that in order to qualify for the full support given to SRFIs by the NPSNN, it would be necessary to be reasonably assured that the proposed rail link would have the capacity in the future to service the site with 4 trains/day, as a minimum [11.1.12].
- 15.4.5. In 2007, the Inspector indicated that Network Rail *'have effectively guaranteed that paths for 3 trains each day would be made available on opening the terminal and they state that further paths are likely to be made available as and when required'*. However, *'it has to be recognised that the implications of the emerging Kent Franchise and planned timetable changes on the North Kent Lines are not yet fully understood and have not been fully assessed'*. He concluded, *'whilst I take the view that, on the totality of the evidence available, the Secretary of State can be reasonably assured that sufficient train paths would be available to service a SRFI at Howbury Park, I do not consider this guaranteed'*.⁵⁰⁵ The supporting documents upon which those findings were based are not before me. Furthermore, there is some uncertainty as to the extent to which the timetable has altered since 2007 [7.4.54, 11.2.14.g)]. Under the circumstances, in my view, the position in 2007 is of little assistance now. In addition, an effective guarantee of paths for 3 trains each day would not meet the 4 trains per day minimum I have identified.
- 15.4.6. The evidence before me regarding Network Rail's current position with respect to the proposed development comprises for the most part correspondence between it and the Councils/appellant. On that basis, it appears that, whilst it may still have some concerns, Network Rail is generally supportive of the appeals proposal [8.5.7, 11.1.3.e., 11.2.50, 13.5.11]. Nonetheless, in my judgement, the evidence of Network Rail in the cases before me does not amount to an effective guarantee as to the number of trains that could be accommodated each day [7.2.5, 7.2.10, 7.4.67h), 9.2.5, 11.2.14.d)]. Furthermore, overall, I consider that the evidence presented at the Inquiry, which also includes analysis on behalf of the MOL and the appellant, casts serious doubts over the capacity of the network to accommodate the level of service required, for the reasons I set out below [11.2.50-52a.].
- 15.4.7. In initial consultation correspondence, Network Rail indicated that in order to address its concerns regarding the rail connection to the North Kent Line a GRIP1-2 study would be undertaken to review the likely impact, including a detailed timetable study⁵⁰⁶. In later correspondence with the LBB, Network Rail indicated that it had completed its review of timetable aspects of the scheme through to the end of its GRIP stage 2 (Feasibility)⁵⁰⁷. However, this was disputed at the Inquiry by the appellant's own rail witness, Mr Gallop,

⁵⁰⁴ CD/1.25 page 30.

⁵⁰⁵ CD/5.2 paras 15.110 and 15.112.

⁵⁰⁶ INQ/25 email from Adrian Toolan, dated 19 January 2016.

⁵⁰⁷ INQ/25 email from Guy Bates of Network Rail to Susan Clark of LBB, dated 5 October 2016.

who indicated that Network Rail still had work to do to finalise its thoughts at GRIP stage 2. Furthermore, some support for that position is provided by the only Network Rail timetable analysis report (*GRIP2 Report Part 2: Timetable analysis, 9th November 2016*) submitted to the Inquiry, which appears to be incomplete and has a 'draft' status (GRIP2 Report)⁵⁰⁸ [7.4.51, 11.2.52.e.]

- 15.4.8. The GRIP2 Report indicates that timetable analysis was undertaken in 2 steps: 1) identification of the potential opportunities to path trains across London (cross London paths), between the main stabling yard at Wembley and Crayford Creek Junction (CCJ); and, 2) identification of the potential opportunities to access the site off the main North Kent Line, the access point being just to the south of CCJ. Both steps are necessary to successfully path a train across London and into the site. The contents of the draft report are limited to an Executive Summary and a number of data sheets supporting only the step 1) analysis.
- 15.4.9. The step 1) cross London paths analysis, which Network Rail has confirmed was based on the '*timetable as it stands*' at the time [13.5.7], identified a number of opportunities to path trains across London, albeit Network Rail indicates that with any new service proposal on routes into London there are potential risks to the robustness and performance of the timetable⁵⁰⁹. The MOL, although concerned that it would be very difficult, accepts that it would not be impossible to provide cross London paths [11.2.35.a.]. Recent experience referred to by the appellant and Network Rail appears to support this position [7.4.56, 11.2.35.a., 13.5.6 & 10]. In my judgement, it is likely that cross London paths could be found to accommodate 4 trains per day between Wembley and Crayford Creek Junction, although the associated risks to the robustness and performance of the timetable have yet to be defined. However, a far greater level of uncertainty is associated with opportunities to access the site off the North Kent Line, step 2).
- 15.4.10. With reference to the step 2) analysis, the evidence from Network Rail on this matter gives rise to a number of concerns. Firstly, the GRIP2 Report indicates that based on an estimated 'metroisation' service pattern, there would be two 7 minute windows in each day-time intra-peak hour for freight trains to/from Howbury Park, the intra-peak period being 1000 hrs to 1600 hrs⁵¹⁰ [13.5.8]. However, the GRIP2 Report does not include any details of the assumed metroisation service pattern to support the finding. Secondly, Network Rail indicates in its consultation response to the LBB that the 7 minute windows should be viewed in the context that the time taken for a train to traverse the main line connection would range from 6 minutes at minimum speed (5 mph) to 1.5 minutes at maximum speed (25 mph) [13.5.8]. However, the maximum speed referred to is misleading as the speed limits across the junction range from 15-20 mph and the speed limit that would apply while any part of the train is within the Slade Green Train Depot would be 15 mph⁵¹¹. Furthermore, those crossing time estimates referred to

⁵⁰⁸ INQ/3.

⁵⁰⁹ INQ/3 page 4.

⁵¹⁰ INQ/3 page 4.

⁵¹¹ CD/1.25 page 34 figure 15.

appear not to take account of headway/junction margins [7.4.43.c.]. Under the circumstances, I consider that little reliance can be placed on the documented step 2) analysis put forward by Network Rail.

- 15.4.11. In the absence of details of the metroisation service pattern assumed by Network Rail, a reasonable starting point for the assessment of opportunities to access the site off the main North Kent Line is the current timetable, not least as the '*timetable as it stands*' appears to have been used by Network Rail as the basis for its step 1) analysis [11.1.10-11,13.5.7]. The appellant and others have given evidence regarding the available gaps or 'available whitespace' in the current timetable to allow trains in/out of the appeals site as well as the whitespace likely to be required for such manoeuvres, 'required whitespace'.
- 15.4.12. I will deal with required whitespace first. Three potential routes exist for trains to and from the appeals site: via Barnehurst, to the west; via Plumstead, to the north; and via Hither Green, to the south. The appellant has confirmed that the route over which most trains would be anticipated to travel to and from the appeals site is via Barnehurst, due to constraints associated with the use of the other two⁵¹² [7.4.39]. Therefore, this was the main focus of analysis at the Inquiry.
- 15.4.13. In the *Rail Report, November 2015*, submitted in support of the planning applications, the appellant's rail witness, Mr Gallop, estimated that whitespace of around 8-10 minutes would be required for a train to arrive at or depart from the site [7.4.43.a.]. His assessment was based on the time taken by a train travelling at 15 mph to cross from the controlling signal west of Perry Street Fork Junction, through CCJ and clearing the main line (4 minutes) as well as making an allowance for headway/junction margins before and after (2-3 minutes taken to rest signals and pointwork ready for the next train). As acknowledged by Mr Gallop, this time estimate was broadly comparable to that arising from the approach set out by Mr Goldney in GLA/RG/01 if a train length of 565 metres is used⁵¹³.
- 15.4.14. Prompted, at least in part, by Mr Goldney's evidence that a whitespace requirement of 8-10 minutes could not be met, Mr Gallop's approach to junction crossing times changed during the course of the Inquiry, lowering his estimate of required whitespace. I have a number of concerns regarding his revised approach:
- a) In APP/RAIL/6⁵¹⁴ Mr Gallop moved away from his view that the crossing time should be calculated with reference to the distance between the site and the controlling signal on the main line, to focussing only on the shorter distance across CCJ into the site [7.4.43.e.]. This is not an approach supported by Mr Goldney⁵¹⁵. Furthermore, it is

⁵¹² INQ/54 APP/RAIL/6 para 3.2.3- The route via Plumstead has W6A gauge clearance, as opposed to the W8 gauge clearance of the other two, which is preferred with reference to NPSNN para 4.85. The route via Hither Green involves trains manoeuvring within the Slade Green Train Depot sidings, potentially disrupting Depot operations [7.4.57-64, 9.5.6, 11.2.50-52].

⁵¹³ XX of Mr Gallop by the MOL (GLA/RG/01 para 5.20 method, inserting 565 metre train length = $565 / ((5 \times 1600) / 60)$ = 4.2 minutes, para 5.23 total headway = 6 minutes, Total = 4.2+6 = 10.2 minutes.

⁵¹⁴ INQ/54.

⁵¹⁵ INQ/63 para 2.1.2 bullet 1.

not clear that this revised approach was supported by Mr Kapur, a timetable analysis expert instructed by the appellant to assist with the timetabling exercise. His primary concern appears to have been related to the use of blanket speeds, rather than the distance assumed⁵¹⁶. Taking account of a need to clear the signal, Mr Goldney estimates a crossing time of around 4.5 minutes (not including headway/junction margin), which is not based on blanket speeds⁵¹⁷. Whilst I share the appellant's view that his 10% contingency is not justified [7.4.65, 11.2.46], its removal is largely offset when account is taken of the 5 mph speed limit within the intermodal area, which may well have to be adhered to until the back of the train leaves that area⁵¹⁸. On that basis, and having regard to Mr Gallop's approach to acceleration, I consider that a crossing time estimate of 4+ minutes is reasonable and, even if the minimum allowance for headway/junction margin is assumed, a whitespace requirement of 8 minutes results.⁵¹⁹ [11.2.43-47]

- b) In closing the appellant suggests that the position set out in tables 1 and 2 of APP/RAIL/7 should be preferred, which for an outbound train indicates a whitespace requirement of 6.5-7 minutes [11.2.39]. I do not share that view for a number of reasons. Firstly, the manner in which Mr Gallop's timetable analysis evidence changed during the Inquiry casts doubt over the reliance that can be placed upon it. Mr Gallop confirmed that his APP/RAIL/5 was replaced by APP/RAIL/6 due to errors in the timetable analysis [7.4.43.d.]. Mr Gallop's APP/RAIL/6 timetable analysis (tables 2 and 3) also differs from that in Appendix I of the same document, which was produced by the timetable analysis expert commissioned by the appellant, Mr Kapur. Mr Gallop's APP/RAIL/7 analysis (tables 1 and 2) is not entirely consistent with that in APP/RAIL/6 either. His explanation was that each analysis was based on a different version of the timetable⁵²⁰. Under the circumstances, I give greater weight to the analysis of Mr Kapur, who is acknowledged by both the appellant and the MOL to be an expert in timetable analysis [7.4.44, 11.5.9]. To my mind, these factors also cast doubt on the reliability of a number of the headway/junction margin assumptions included in APP/RAIL/7 tables 1 and 2. Secondly, in any event, Mr Gallop's final say on the matter of whitespace needed for a train departing from the appeals site, which came in cross-examination by the MOL and was not revisited in re-examination, was to confirm a crossing time of 8 minutes [7.4.47, 11.2.38-39].

15.4.15. It appears to me, with reference to the above reasons, whether taken in isolation or together, that a period of 8 minutes is a reasonable estimate of

⁵¹⁶ INQ/54 para 3.2.2.

⁵¹⁷ INQ/63 GLA/RG/09 para 2.1.5

⁵¹⁸ INQ/54 figure 5 track section 4-5 mph speed restriction, GLA/RG/09 para 2.1.2 bullet 3, INQ/72 APP/RAIL/7 para 2.2.4.

⁵¹⁹ [Inspector's note: the difference between the parties regarding assumed train length (560 metres-Mr Gallop, 565 metres- Mr Goldney) does not make a material difference to the outcome.]

⁵²⁰ In response to Inspector's question.

the likely whitespace requirement for a train departing from the appeals site.

- 15.4.16. Turning to available whitespace. The appellant appointed Mr Kapur of GB Railfreight to analyse the timetable to identify available whitespace slots, arriving/departing via Barnehurst, in the period between 05:30 and 01:03, thereby avoiding any overnight possessions that might occur⁵²¹. During the 6 hr intra-peak period referred to by Network Rail, Mr Kapur's analysis identifies only 6 opportunities of 7 minutes or more to arrive at the site and no opportunities of that duration to depart. Having regard to the whole period, he identifies 5 opportunities of 8 minutes or more to arrive at the site and one opportunity of that duration to depart⁵²²_[7.4.48-49].
- 15.4.17. Based on the evidence presented, in my judgement, the number of trains that could be pathed to/from the appeals site, having regard to the current timetable, would be likely to fall well short of 4 per day (each way), not least due to constraints on departure.
- 15.4.18. Looking forward, the NPSNN predicts that in London and the South East rail passenger kilometres will grow by around 20% between 2011 and 2020 and by a further 26% by 2033 _[7.2.11]. Locally, the Bexley Growth Strategy indicates that up to 31,500 new homes can be delivered across the Borough over the period to 2050, with growth areas at locations along the North Kent Line, including 8,000 new homes in Slade Green alone⁵²³. Furthermore, priority interventions to support the identified level of growth include: upgrades to services on the borough's railway lines as an immediate/short term priority _[9.2.8, 9.3.17]. The LTP4 indicates that rail capacity on the North Kent Line is stretched and likely to be overcapacity in the near future _[6.5.2]. I understand that, in broad terms, the metroisation concept, referred to by Network Rail in the GRIP2 Report, is expected to increase the frequency of passenger services throughout the day, increasing capacity in the southeast London suburban area by up to 25%⁵²⁴. That being the case, I consider it unlikely that future passenger timetables, such as metroisation, would be more favourable in terms of available whitespace than the current timetable, upon which the above analysis was based. Under the circumstances, the current timetable is also a reasonable starting point against which to judge potential future opportunities, in relation to which I maintain the view that the number of trains which could be pathed to/from the appeals site would be likely to fall well short of 4 per day _[7.4.54, 11.1.9-13, 11.5.9, 11.2.14.g & 36]. Furthermore, for the avoidance of doubt, in light of my finding regarding a whitespace requirement of 8 minutes, the 7 minute windows in Network Rail's estimated 'metroisation' service pattern, referred to in the GRIP 2 Report, would not be sufficient to accommodate departing trains.
- 15.4.19. However, that is not the end of the matter. There is no dispute that Network Rail has an equal obligation to facilitate the use of the network by both passenger and freight traffic _[11.2.14.g], 13.5.9] and it has certain powers to 'flex' the timing of trains within the timetable in order to accommodate new

⁵²¹ INQ/54 APP/RAIL/6 para 3.3.2.

⁵²² INQ/54 APP/RAIL/6 Appendix I.

⁵²³ CD/3.15 pages 29-30, SGCF email dated 19 December 2017.

⁵²⁴ CD/4.12 Technical Appendix section 10 page 50 para 10.6.

services. In Mr Kapur's experience, freight and passenger operators are often willing to work with each other to accommodate minor flexing of services to help each other accommodate desired changes to their timetables [11.2.35.b, 11.2.42]. Nevertheless, as observed by Mr Goldney and not disputed, there are limits. For example, Network Rail does not have the power to autonomously alter service levels specified by the Department for Transport. Furthermore, operators may object to proposed changes and there is provision for appeals to be determined by an independent body⁵²⁵.

- 15.4.20. Turning to the potential outcome of 'flexing' to accommodate the appeals proposal. Based on the timetable analysis submitted, including Mr Goldney's clockface exercise, it appears to me that the introduction of a freight service, into a typical hour of existing daytime passenger services, would be likely, at best, to result in disruption to a more even existing distribution of passenger services, with bunching of services in certain periods of the hour and significant gaps in others. When account is additionally taken of other factors, such as existing movements of passenger trains to and from the Slade Green Train Depot and the possibility of inflexibility elsewhere on the network, such as platform availability and turnaround requirements at London termini, the likelihood of passenger service numbers having to be reduced in order to accommodate appeals site freight traffic appears to me to be significant [7.4.54-55, 9.3.19, 9.5.6, 11.2.40-42, 11.5.10]. Furthermore, it seems likely that there would be little, if any, scope for future increases in passenger services, such as those envisaged by metroisation, referred to above.
- 15.4.21. I conclude that there is significant uncertainty as to whether the timetable could be flexed/amended to accommodate 4 trains per day to/from the appeals site either now or in the future [11.1.10-11, 11.1.13, 11.2.35]. At the Inquiry, I asked for the views of the parties as to whether assurance that an adequate rail link would be provided could be secured through the imposition of a Grampian type condition, the need for which I will return to later. Only the LBB confirmed that it could be done and provided suggested wording, condition no. 6x⁵²⁶. It would require evidence to be provided, prior to the commencement of development, of confirmation from Network Rail that the connection to the site is capable of handling 4 trains per day (each way). However, the appellant confirmed that it would not accept a condition requiring compliance prior to commencement [11.6.1b)]. Under the circumstances, notwithstanding Network Rail's support for the scheme, I am not reasonably assured that an adequate SRFI rail link, with reference to the NPSNN, would be provided [11.2.12, 14.d, 13.5.11]. However, if it would, I consider that it would be likely to have a material adverse effect on existing/future passenger services [7.4.55 & 67.j, 9.3.18, 13.2.7]. In this respect the appeals proposal would conflict with the aims of LP Policy 6.15, BCS Policy CS15, DCS Policy CS 15, LPe Policy T7 as well as MTS Policy 1 and Proposal 16 insofar as they seek to minimize any adverse impact on the wider transport network and safeguard or improve public transport services. I give this significant weight.
- 15.4.22. The NPSNN indicates that where possible SRFIs should have the capacity to handle 775 metre trains. Although the facilities within the appeals site would

⁵²⁵ XX of Mr Goldney by RDL, 17 September 2018.

⁵²⁶ INQ/100.

be capable of doing so, I understand that existing main line constraints do not cater for trains of that length at present [7.1.4, 13.5.3]. Therefore, whilst the whitespace necessary to manoeuvre such a train across Crayford Creek Junction would be even greater than set out above, and so more difficult to accommodate, I consider that it would not be appropriate to weigh that particular factor against the scheme [7.4.52].

15.5. d) The effect on the convenience of highway users

Background

- 15.5.1. The 4 Highway Authorities with an interest in the area most likely to be affected by the appeals proposal are: HE and TfL, who between them are responsible for the strategic highways/London Red Routes, such as the M25, A282 and A2; and, KCC and the LBB, who are responsible for the local highway network (the 4 HAs). None of them has objected to the grant of planning permission [11.1.3.i.].
- 15.5.2. The main vehicular access point to the appeals site would be at a new fourth arm added to the north side of the roundabout at the intersection of: the A206 Thames Road, to the west; Burnham Road, to the south; and, A206 Bob Dunn Way, to the east, which leads to junction 1A of the A282/M25 (the appeals site roundabout). Furthermore, the DBC s106 requires adherence to the *Transport Management Plan* (TMP), which includes a number of measures associated with freight, in the *Freight Management Plan* (FMP). They include: a) limits on the number of HGVs associated with the appeals site that can use junctions 1A and 1B of the A282/M25 at peak times (HE cap); and, confining HGV traffic to and from the site to the A206, rather than through Dartford town centre using Burnham Road (with certain exceptions).
- 15.5.3. There is no dispute that there are regular incidents on the M25 that cause congestion and elevated levels of traffic in Dartford [11.4.7]. The Transport Assessment (TA) states *'it is clear that the area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels. It is impossible to undertake quantitative analyses to reflect every possible event...In order to assess the impact of Howbury Park it is appropriate to consider the 'typical' operation of the highway network...'*⁵²⁷. Mr Findlay confirmed that the traffic modelling in the TA is based on a 'typical day' avoiding 'abnormal traffic periods', such as network incidents⁵²⁸. Nonetheless, given that traffic incidents are frequent in this particular area, in my view such conditions cannot be ignored, if a robust assessment of the likely impact of the proposal is to be undertaken. The ES acknowledges that it is possible to approach that aspect on a qualitative, rather than quantitative, basis. Against this background, I have considered the likely impacts in the first instance based on 'non-incident' highway conditions and then 'incident' highway conditions.

⁵²⁷ CD/1.30 page 12 para 5.1.2, APP/TRAN/1 para 4.5.3.

⁵²⁸ APP/TRAN/1 para 4.5.3, evidence in chief and cross-examination of Mr Findlay.

Highway conditions: non-incident

- 15.5.4. TfL has adapted its *East London Highway Assignment Model* (ELHAM) to explore options for a new River Thames crossing, the *River Crossing Highway Assignment Model* (RXHAM). As part of the TA, this highway assignment model has been used to forecast the routes that drivers choose in the area and the associated flows were fed into more detailed junction specific models, such as ARCADY roundabout models, to assess junction performance.
- 15.5.5. I understand that the ELHAM model has undergone several years of development, calibration and validation and more recently RXHAM has been further enhanced and refined by TfL to improve the level of validation at the Thames Crossing points⁵²⁹. I consider it follows that the RXHAM model is likely to be reasonably reliable when it comes to modelling the strategic network immediately to the south of the Dartford crossings. However, regarding the local highway network around the appeals site, the TA acknowledges that *'as with all strategic models, when it is intended to use them to precisely assess a more local area it is necessary to undertake a local audit and validation process'*⁵³⁰. The need for this was echoed by HE and LBB⁵³¹, and in a letter to TfL, dated June 2015, WSP acknowledged that it would be necessary to *'undertake a thorough local model recalibration and validation to ensure that the model is fit for purpose for modelling the impacts of the freight interchange over its area of impact'*. Therefore, it appears to me that although there is no dispute amongst the 4HAs that the RXHAM model is the most appropriate strategic model available to assess the likely impact of the proposal on vehicle flows around the network, that support was qualified, particularly in relation to its application to the local highway network. I will return to this below, under the reliability of the appellant's RXHAM results [11.4.14].

Strategic highway network

- 15.5.6. KCC has indicated that since the previously approved scheme was considered in 2007, traffic flows on the M25/A282 have increased considerably with reported 24 hour flows of vehicles in 2015 and 2016 far exceeding the design capacity of the strategic road network [14.1.1]. Based on results from the RXHAM model, HE has concluded it is likely that, when the appeals site is fully occupied, delays and queues during peak periods on the M25/A282 would be severe from safety and operational viewpoints. Whilst accepting that the proposals may add to queuing on the strategic highway, Mr Findlay does not accept HE's argument that that would add to the safety risk. I share HE's concern, on the basis that longer queues resulting from the scheme may well take longer to disperse, extending the period during which the free flow of traffic is subject to interruptions and that this would be likely to increase safety risks⁵³².

⁵²⁹ CD/1.27 ES Volume 3b Appendix 3.3 page 45.

⁵³⁰ CD/1.27 ES Volume 3b Appendix E1 page 36 para 3.9.7.

⁵³¹ CD/1.27 ES Volume 3b Appendix 1.7-WSP letters to: TfL, dated 26 June 2015; LBB, dated 26 June 2015; and, HE, dated 26 June 2015.

⁵³² Mr Findlay's responses to Inspector's questions.

- 15.5.7. The proposed new Lower Thames Crossing (LTC) would be expected to provide some relief to the M25, although not in all circumstances, on the approach to the Dartford Crossing Tunnels (northbound traffic) due to demand which is suppressed at present⁵³³. However, it has not yet been consented and the anticipated opening date of 2027, which is some time after the estimated full occupation date for the appeals site⁵³⁴, is not guaranteed. Therefore, I give its impact little weight.
- 15.5.8. HE acknowledges it is possible that the impact of additional traffic associated with the proposals on the strategic highway network may be offset to an extent by some reduction in existing HGV traffic, through the use of rail. Against that background, HE considers that the impact of the proposal on the strategic highway network can be satisfactorily mitigated by limiting, by planning obligation, the numbers of Howbury Park HGVs joining or leaving the M25 in peak periods [14.2.1-2]. This is accepted by the appellant. I agree it is necessary.

Local highway network

- 15.5.9. I consider that key junctions on the local highway network include the following:
- a) The appeals site roundabout;
 - b) The Thames Road/B2186 Crayford Way roundabout, immediately to the west of the appeals site roundabout; and,
 - c) The signalised M25/junction 1A, to the east of the appeals site roundabout along Bob Dunn Way.
- 15.5.10. The LTP4 indicates that parts of the local road network are reaching capacity, as a result of high levels of development taking place [6.5.2]. The junction specific modelling work submitted in support of the scheme has been undertaken using ARCADY software for the above roundabouts and Linsig software for the signalised junction. The standard approach, acknowledged by Mr Findlay, is to regard the practical capacity of a roundabout as having been reached when the ARCADY predicted Ratio of Flow to Capacity (RFC) on any arm rises to 0.85⁵³⁵. For signalised junctions the reserve capacity of a junction is taken to have reduced to zero when the Linsig predicted Degree of Saturation (DoS) rises to 90%. These benchmarks allow for uncertainties inherent in the modelling. However, in this case Mr Findlay advocates setting these benchmarks to one side and the use of higher values to judge performance, based on his view that some queuing and congestion is to be expected in London. This approach is reflected in the TA, where findings as to whether junction capacity has been reached appear to be based on a RFC of 1.0 and a DoS of 100%.
- 15.5.11. Against that background, DBC and KCC take the view that the modelling work submitted in support of the appeals scheme indicates that, looking

⁵³³ APP/TRAN/1 section 5.

⁵³⁴ APP/TRAN/1 para 5.1.2.

⁵³⁵ Mr Findlay in response to Inspector's questions, see also CD/5.2 para 15.57.

beyond the estimated year of full occupation of 2025 to a forecast year of 2031, the local network would be able to manage with the development related traffic [8.3.8, 14.1.6]. I acknowledge that the modelling work suggests that the development traffic would not add greatly to problems that would exist at the Thames Road/B2186 Crayford Way roundabout and the M25/junction 1A in 2031. However, even if the relaxed benchmarks favoured by Mr Findlay are accepted, the TA results indicate that in 2031 both of those junctions would be over capacity to some degree with or without the appeals scheme [8.3.8]. Furthermore, in the case of the Thames Road/B2186 Crayford Way roundabout it predicts queue lengths on Thames Road (E) in the AM peak of 166-189 passenger car units (pcus), which in my judgement, would be likely to interfere with the free flow of traffic around the appeals site roundabout⁵³⁶ [8.3.2, 10.4.9].

- 15.5.12. Furthermore, and in any event, for the reasons set out below, I have significant concerns regarding the reliance that can be placed on the modelling work submitted in support of the appeals scheme as a means of judging the likely impact of the development, not least in relation to the appeals site roundabout.
- 15.5.13. To the west of the appeals site roundabout, Thames Road reduces from 2 lanes to a single lane, due to a width restriction at the Craymill Rail Bridge (CRB), before widening again to 2 lanes on the approach to the Thames Road/B2186 Crayford Way roundabout.
- 15.5.14. The TA indicates that, in practice, due to the CRB restriction and the associated need for traffic to merge, during the AM peak hour queues extend back to and through the appeals site roundabout, resulting in exit blocking to the Burnham Road arm, with slow moving vehicles from Bob Dunn Way making it difficult for vehicles to enter the roundabout from Burnham Road. The TA identifies that queue length surveys recorded in the AM peak hour show the average maximum queue during each 5 minute period on Bob Dunn Way was 61.2 pcus, equivalent to approximately 360 metres, and 14.8 pcus on Burnham Road, equivalent to approximately 85 metres⁵³⁷.
- 15.5.15. The TA confirms that, due to the issues set out above, it is not possible to validate an ARCADY model of the roundabout as it currently operates. Instead the roundabout has been modelled based on the assumption that the CRB constraint has been removed [8.3.14]. In stark contrast with the queue survey results referred to above, using 2015 traffic flows, the model predicts a 1 pcu queue on Bob Dunn Way in the AM peak⁵³⁸.
- 15.5.16. In 2007, when the previously approved scheme was under consideration, it was thought that replacement of the CRB was the LBB's 'no. 1 priority' and that it would be reasonable to expect it to be completed by 2025⁵³⁹. However, notwithstanding inclusion of the project in the LBB's Regulation

⁵³⁶ CD/1.27 Volume 3b Appendix E page 78 Table 9-9 and CD/1.30 supplementary Environmental Statement (2016) Appendix 3 page 8.

⁵³⁷ CD/1.27 Volume 3b Appendix E page 41 table 4-9, 1 pcu equivalent to around 5.9 metres (para 4.6.2 250m/42).

⁵³⁸ CD/1.27 Volume 3b Appendix E page 41 table 4-10.

⁵³⁹ CD/5.2 para 15.70.1.

123 List-April 2015⁵⁴⁰, I am not convinced that remains a reasonable expectation, given there is still no confirmed timetable for the removal of the CRB constraint [8.3.16, 10.4.7]. In my judgement, due to the likely scale and nature of such works, there is no prospect of those works being undertaken within the normal timescale for the commencement of development following a grant of planning permission and so it would not be appropriate to impose a Grampian type condition prohibiting development of the appeals site until those works are complete [10.4.7]. In any event, the appellant has indicated that it would not accept such a pre-commencement condition⁵⁴¹. Under these circumstances, I consider that the ARCADY modelling of this junction reported in the TA is of little assistance.

- 15.5.17. In order to investigate the potential effect of the CRB restriction on the operation of the appeals site roundabout, Mr Caneparo produced an '*Alternative Site Access Roundabout Junction Model*' (ASAM), using a version of ARCADY that allows some account to be taken of such constraints; a version not available when the TA was produced. Whilst, in comparison with the 2015 observed queues from the TA, the ASAM underestimates the queue on the Bob Dunn Way approach in the AM peak period (21 pcus, as opposed to the 61 pcus observed), its queue outputs are closer to the observed in comparison with the outputs from the TA model (1 pcu). Looking forward to 2031, the ASAM predicts significant queues on all the existing arms of the roundabout, such as queues of 800 pcus and delays of around 19 minutes in the AM peak on Bob Dunn Way [8.3.15].
- 15.5.18. Mr Caneparo and Mr Findlay agree that queues on that scale would be unlikely to be realised, as some vehicles would re-assign to different routes to avoid such levels of congestion/delay at the junction⁵⁴². To test this, Mr Findlay has run the RXHAM model using the delay predicted by the ASAM. It suggests that faced by such delays, significant numbers of vehicles would re-assign away from the roundabout to other routes through Dartford, for example a reduction in the AM peak of around 1,300 pcus to 550 pcus on Bob Dunn Way [8.3.16]. However, Mr Findlay indicates that such notable reductions are not realistic either. I share this view: firstly, as, if they were to occur, delays at the roundabout predicted by ASAM would be less and the incentive for drivers to re-assign elsewhere would also be reduced⁵⁴³; and, secondly, it appears to me that once westbound on the A206, away from junction 1A, the opportunities to re-assign to another route before reaching the appeals site roundabout are very limited.
- 15.5.19. I consider that in the absence of a validated model, future operation of the appeals site roundabout with/without the proposed development cannot be predicted accurately in numerical terms, such as Ratio of Flow to Capacity, delays or queues. However, the absence of such information neither automatically favours the scheme nor does it prevent a judgement from being reached [11.4.10, 11.4.15-17]. In this context, whilst Mr Caneparo takes the view that by 2031 conditions could be severe, even without the appeals

⁵⁴⁰ DBC/W2/2 Appendix PC4.

⁵⁴¹ During the conditions session.

⁵⁴² INQ/34, APP/TRAN/4 para 2.3.21-22.

⁵⁴³ APP/TRAN/4 paras 2.3.18-2.3.25.

scheme traffic, Mr Findlay considers that the appeals scheme would not make a material difference⁵⁴⁴ [8.3.17]. In my view, the latter argument is a poor one, as: it could be repeated often, potentially resulting in a much more significant impact in small increments; and, even if the additional contribution to existing severe conditions was small, the implication would be that the cumulative residual impact would be severe, which would be a matter of considerable concern. [11.4.9]

15.5.20. The TA identifies that in the AM peak total arrivals at /departures from the site could include around 221 cars/LGVs and 106 HGVs, with higher numbers in the inter-peak period⁵⁴⁵. With the HE cap in place, HGVs to/from the M25 would be limited to 32 per hour between 0700-1000 hours and Mr Findlay has indicated that the balance would be expected to either travel at a different time or take a different route, the only alternative being westwards, to the Thames Road/B2186 Crayford Way roundabout⁵⁴⁶. The proposal would result in additional traffic at the appeal site roundabout, with which queues are already associated. In my judgement, it would be likely to add significantly to congestion there and also exacerbate conditions at junctions to the east and west [8.3.13, 17, 11.4.10].

Reliability of the appellant's RXHAM modelling results

15.5.21. Having gained access to TfL's RXHAM model, WSP (acting for the appellant) undertook an audit, the findings of which were initially set out in the draft *River Crossing Highway Assignment Model (RXHAM) Model Audit, July 2015* (draft RXHAM Audit). The RXHAM Audit indicates that it was carried out in accordance with TfL's *Sub-regional Highway Assignment Model Guidance on Model Use (HAMG)*⁵⁴⁷. I understand that the draft RXHAM Audit was issued to the 4 HAS⁵⁴⁸ and Revision 1 of the audit, addressing TfL comments, is dated February 2016 (final RXHAM Audit). Consistent with the draft, the final RXHAM Audit states that '*Our overall conclusion...is that the RXHAM model represents ... peak hour demand and traffic conditions well across the area...Levels of congestion (e.g. V/C and blocking back), routing behaviour and journey times are also generally realistic and well matched to observed data*'.⁵⁴⁹

15.5.22. In its consultation response⁵⁵⁰, KCC indicated that it had had regard to the TA, ES and SES. It commented that: '*Transport for London (TfL) in particular worked with the appellant in relation to the traffic modelling aspect of the application, which is a TfL area of expertise*'. '*The appellant utilised a TfL/Highways England derived highways assignment model known as RXHAM, which is fully audited and validated*'; and, '*KCC is confident that the RXHAM model accurately reflects the typical traffic conditions in the local area*'.

⁵⁴⁴ Mr Caneparo and Mr Findlay in XX,

⁵⁴⁵ CD/1.27 Volume 3b Appendix E page 61, (1000-1600 hrs 280 cars/LGV per hr and 191 HGVs per hr).

⁵⁴⁶ APP/TRAN/1 paras 3.3.3 and 4.4.1-2.

⁵⁴⁷ CD/1.27 Volume 3b Appendix E Appendix 3.3 para 1.1.4.

⁵⁴⁸ CD/1.30 Appendix 3 Appendix C page 2/3 para 2.

⁵⁴⁹ CD/1.30 Appendix 3 Appendix E page 49.

⁵⁵⁰ Appeals questionnaire, email dated 4 April 2017.

15.5.23. However, it appears to me that that confidence was misplaced. The HAMG, which the audit suggests has been followed, confirms that *'users should not rely heavily on the validation of the original highway assignment models provided to them, as these were developed as strategic models, whilst a local study will require further refinement in the local area'*⁵⁵¹. It identifies the issues to be addressed in achieving a satisfactory 'local revalidation', including that network adequacy be reviewed within the vicinity of the development area, defined as within a 2 Km radius⁵⁵². In a letter to HE, dated 19 January 2016, WSP indicated that its circulation of the draft RXHAM Audit to the 4HAs *'resulted in some TfL comments, which were acknowledged. The conclusion of this work was that we could proceed with the 2031 forecasting process without the need for a validation stage'*⁵⁵³. Therefore, it appears to me that the audit was not carried out in accordance with all of the requirements of TfL's HAMG.

15.5.24. Furthermore, during the Inquiry, Mr Findlay acknowledged that a number of the findings within the RXHAM Audits contained errors and were not supported by the underlying data⁵⁵⁴ [11.4.14]. For example:

- a) Screenline and cordon performance⁵⁵⁵- Firstly, the link flows in Appendix A comprise calibration data and not validation data claimed by paragraph 2.8.3. Secondly, with reference to Appendix A, paragraphs 2.8.5 and 2.8.7 are wrong to state that all individual links have a GEH<5;
- b) Local Journey times⁵⁵⁶- Paragraph 2.9.4 is wrong to say *'the AM peak hour modelled journey times along the westbound direction were shown to be within the 15% acceptability limit prescribed by WebTAG'*. Table 2-5 indicates that the figure is 22%, not ≤15%. Furthermore, it appears to me that the relevant WebTAG Unit M3.1 test⁵⁵⁷ is failed in the AM peak, taking account of the routes that pass through the 2 km radius (not including 53/54)⁵⁵⁸ [9.3.7];
- c) Local counts-Paragraph 2.10.2 says that the majority of counts used for the RXHAM model calibration show good comparison between observed and modelled. It is silent on the relevant WebTAG Unit M3.1

⁵⁵¹ INQ/51 Appendix A para 1.1.2.

⁵⁵² INQ/51 Appendix A sections 2 & 3, CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E paras 1.1.7 and 2.2.3,

⁵⁵³ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix C page 2/3.

⁵⁵⁴ Mr Findlay responding to Inspector's questions.

⁵⁵⁵ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit Paragraph 2.8.3- *'WebTAG Unit 3.1-Highway Assignment Modelling validation acceptability criteria, screenlines modelled flows should be within 5% of observed for all, or almost all of the links'*. Paragraph 2.8.4-*'The screenline validation results for RXHAM AM peak are shown in table 2-3'*. Paragraph 2.8.5- *'observed and modelled flows match very well...(all individual links with GEH<5)'*. Paragraph 2.8.9-*'individual link flows...are tabulated in Appendix A'*.

⁵⁵⁶CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit paragraph 2.9.2-*'WebTAG Unit M3.1-Highway Assignment Modelling validation acceptability criteria, modelled journey times should be within 15% of observed times for more than 85% of the routes.*

⁵⁵⁷ INQ/77 page 20-Journey time validation criterion and acceptability guideline-modelled journey times along routes should be within 15% of surveyed times (or 1 minute if higher than 15%) for >85% of routes. The comparisons should be presented separately for each modelled period.

⁵⁵⁸ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit page 37/38-3 in 4 routes=75%.

test, which, with reference to table 2-7, is failed⁵⁵⁹. With respect to the additional counts carried out by WSP, with reference to table 2-9, the correlation between observed and modelled flows in the PM peak failed the test⁵⁶⁰.

- 15.5.25. There is no evidence before me to show that the 4HAs were aware of the misleading nature of a number of the findings upon which the audit conclusions were based. They were not picked up in the comments passed by TfL on the draft⁵⁶¹. In my judgement, they: cast doubt over the conclusion of the RXHAM Audit and, in turn, the reliability of the RXHAM model results related to the network local to the site; and, reduce the weight attributable to views expressed by the 4HAs as to the accuracy of the model in the local area, which is likely to have influenced, at least in part, their lack of objections⁵⁶².
- 15.5.26. The final RXHAM Audit indicates that the final report will be provided to TfL and model auditing progress and sign-off will be documented⁵⁶³. There is no confirmation in writing before me to show that TfL considered the model 'fit for purpose' in light of the final report. I give little weight to the appellant's suggestion that the lack of a formal objection to the appeals proposal by TfL implies acceptance. In my view, its propensity to not object may have been influenced by other factors, not least as the scheme is unlikely to have a significant impact on the section of the Red Routes in the area of particular interest to TfL⁵⁶⁴, which are some distance from the appeals site.
- 15.5.27. In my judgement, these matters cast further doubt over reliance that can be placed on the modelling work submitted in support of the scheme and reduce the weight attributable to findings of the parties who appear to have taken the results on face value [11.4.12, 14.1.12].

Conclusions

- 15.5.28. DBC and KCC have taken the view that the modelling work submitted in support of the appeals scheme suggests, looking towards the forecast year of 2031, the local network would be able to manage with the development related traffic. However, for the following reasons, I give little weight to that position:
- a) ARCADY modelling work submitted in support of the appeals scheme indicates that in 2031 key local network junctions to the east and west of the appeals site roundabout would be over capacity with and without the appeal proposal. Furthermore, it appears that in the AM peak hour west bound queues towards the Thames Road/B2186

⁵⁵⁹ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit section 2.10, INQ/77 WebTAG Unit M3.1, table 2- criterion >85% of cases meet the guideline, INQ/96-(within 2 km of the site) AM Peak 67% and PM Peak 71%.

⁵⁶⁰ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit para 2.10.6, INQ/77 table 2-9 (Tests % Diff within 15% and GEH<5 for >85% of cases).

⁵⁶¹ INQ/96.

⁵⁶² For example, CD/6.1 para 6.23.

⁵⁶³ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit para 1.1.7.

⁵⁶⁴ INQ/35.

Crayford Way roundabout would be likely to interfere with the free flow of traffic at the appeals site roundabout;

- b) ARCADY modelling of the appeals site roundabout, submitted in support of the appeals scheme, is of little assistance, as it assumes the removal of the highway constraint caused by the Craymill Rail Bridge, works for which there is no confirmed timetable. Modelling work undertaken on behalf of DBC with the aim of taking some account of the Craymill Rail Bridge constraint, predicts massive queues on Bob Dunn Way in 2031, if vehicles do not re-assign to other parts of the network. Whilst re-assignment would be likely in practice, the degree of relief it would offer is uncertain. Under the circumstances, future operation of the appeals site roundabout with/without the proposed development cannot be predicted accurately in numerical terms, such as Ratio of Flow to Capacity, delays or queues and the modelling results must be viewed with caution; and,
- c) A key input in the assessment of the likely impact on the local highway network is the data concerning traffic assignment generated by the RXHAM. The audit undertaken for the purpose of determining whether the model was fit for the purpose for which it was to be used was not undertaken in complete accordance with the HAMG and it contained a number of errors, acknowledged for the first time at the Inquiry. These circumstances cast doubt over the conclusion of the RXHAM Audit and, in turn, the reliability of the RXHAM model results related to the network local to the site; and, reduce the weight attributable to views expressed by the 4HAs as to the accuracy of the model in the local area, which is likely to have influenced, at least in part, their lack of objections.

15.5.29. For the reasons set out above, I have significant concerns with respect to the reliance that can be placed on that modelling work submitted in support of the scheme. Having regard to the modelling results provided in evidence, with due caution, and the other Inquiry evidence, I consider that, by 2031, the residual cumulative impact of the development during 'normal' (non-incident) highway conditions on the local highway network would be likely to be severe. [11.4.10, 12]

Highway conditions: incidents

15.5.30. The TA states *'it is clear that the area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels'*⁵⁶⁵. The LTP4 identifies that incidents at the Dartford Crossing and its approach are frequent and severe [6.5.2]. KCC estimates that over recent years the existing Dartford Crossing has either been partially or completely closed on average 300 times per year, for 30 minutes or more. I have no compelling reason to depart from that assessment by the local Highway Authority. In my view, the HE incident data record on its own is unlikely to provide an accurate guide to frequency,

⁵⁶⁵ CD/1.30 page 12 para 5.1.2.

as it appears not to pick up all of the Dartford crossing related incidents recognised by KCC'S Highway Management Centre as causing congestion⁵⁶⁶.

- 15.5.31. The appellant acknowledges that there is no technical validity in modelling assessments of such incidents. However, as I have indicated before, the absence of quantitative information does not automatically favour the scheme. DBC advocates a qualitative approach, which I consider to be reasonable. [8.3.10-11, 11.4.7, 11.4.6.a., 11.4.10]
- 15.5.32. KCC indicates that when such incidents occur, junction 1A and Bob Dunn Way very quickly suffer the consequences, reflecting the sensitivity of the local network. Furthermore, it estimates that typically it can take between 3 and 5 hours for roads to clear following closure [14.1.5]. This position is echoed in many respects by the Leader of DBC [9.4.3]. Whilst Mr Findlay acknowledged that such incidents can result in severe traffic conditions, his view was that the appeals proposal would not make a material difference⁵⁶⁷.
- 15.5.33. The TA indicates that the number of HGVs travelling to/from the appeals site would be around: 106 in the AM peak hour; 155 in the PM peak hour; and, 191 in inter-peak hours. In light of the HE cap, I consider it likely that a number of the peak hour trips would be displaced to the inter-peak period. Notwithstanding the view of the appellant that the biggest markets in the country lie within striking distance of Howbury Park, without the need to run the gauntlet of the M25 on the way in [11.5.6], Mr Findlay anticipates that broadly 90% of the scheme HGV traffic would arrive at/depart the appeals site roundabout along Bob Dun Way from/towards the A282/M25⁵⁶⁸.
- 15.5.34. There is no compelling evidence before me to show that departing HGV drivers faced with delays at junction 1A, due to network incidents or the proposed HE cap, and the proposed prohibition on the use of Burnham Road, would choose instead to travel west and then north towards central London as an alternative. I consider that it would be unlikely, not least in light of the trip destinations identified by the TA, such as Essex [9.3.10].
- 15.5.35. Given that incidents are not easily predictable and associated delays can be lengthy, it is likely that a significant number of HGVs associated with the appeals site would contribute to the associated build-up of traffic. Whilst I acknowledge the view of the appellant that during incidents affecting access to and along the A282/M25 some departing HGV drivers may choose to remain on site, rather than joining a queue towards junction 1A, many may not, given likely pressures to meet delivery schedules, and little control is likely to be possible over vehicles already in transit to/from the site.⁵⁶⁹ [7.4.31, 11.2.23.a), 11.2.32]
- 15.5.36. The appellant's claim that, during incidents, the apron of the intermodal area could be used to park 100 or more HGVs⁵⁷⁰ lacks credibility [7.4.31.e, 32]. It is clear from the details of potential loading arrangements, provided by

⁵⁶⁶ DBC/W2/2 Appendix PC10, APP/TRAN/4 section 2.6.

⁵⁶⁷ Evidence in chief

⁵⁶⁸ APP/TRAN/1 tables 2 and 3 A206 East (affected by the HE cap) and Mr Findlay in XX.

⁵⁶⁹ INQ/102 pages 35-36, CD/1.30 SES Appendix 3 Appendix G page 9/12 point 12.

⁵⁷⁰ INQ/72 APP/RAIL/7 para 214 and Appendix D, INQ/106.

the appellant, that the area to the side of the gantry crane would be likely to be required for manoeuvring/loading by reachstackers or for container storage⁵⁷¹. Nonetheless, whilst therefore, it would be likely to be necessary to provide HGV parking space outside the intermodal area in addition to the proposed 25 vehicle layby, given that the scheme is in outline, this could be secured through the imposition of a suitable condition [11.2.33-34].

15.5.37. Nevertheless, overall, I share the view of KCC that during incidents the scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local M25 junctions 1A and 1B and nearby local roads [8.3.9, 8.3.12]. Having had regard to Mr Findlay's estimates of flows along the route between the site and junction 1A, I consider that the proposal would be likely to have a material, albeit limited, adverse impact, adding to severe conditions.

Mitigation

Junction 1A

15.5.38. The DBC s106 secures, amongst other things, a contribution of £800,000 to be used for feasibility assessment/works to improve junction 1A. In light of the circumstances I have identified above, I consider that it meets the tests of planning obligations set out in the Framework. However, KCC has made clear that improvements are likely to be limited to smoothing traffic flow, as opposed to building in any significant new capacity to cater for future growth/demand [8.3.20.a), 11.4.18.a), 14.1.8]. In my view, its provision does not alter the findings set out above.

The Transport Management Plan (TMP)

- 15.5.39. As I have acknowledged, the Freight Management Plan (FMP) section of the TMP seeks to a) limit the number of HGVs associated with the appeals site that use junctions 1A and 1B of the A282/M25 at peak times (HE cap); and, confine HGV traffic to and from the site to the A206, rather than through Dartford town centre using Burnham Road (with certain exceptions) [8.3.20b)].
- 15.5.40. The means of monitoring compliance with these requirements would through the use of an Automatic Number Plate Recognition (ANPR) system to be installed at the site entrance as well as at a number of points around the network. I acknowledge that provision of such a system is likely to be technically feasible and I am content that the DBC s106 includes adequate safeguards to ensure that the system is maintained. The Highway Authorities have not objected to the proposed arrangements. Under the terms of the TMP, the data generated would be reported periodically by the TMP Manager to the TMP Steering Group, which would comprise LBB, DBC, KCC, HE and Howbury Park Limited (HPL). The TMP indicates that fines would be imposed for non-compliance.
- 15.5.41. I consider it is conceivable, rather than suffer delays resulting from the restrictions, an operator may determine that it would be worth breaching the restrictions and incurring the fine set out in the TMP in the interests of

⁵⁷¹ INQ/54 APP/RAIL/6 appendix C, INQ/72 APP/RAIL/7 Appendix A.

the viability of its business. For example, rather than waiting on site for frequent incidents affecting junction 1A to clear, an operator may decide to use the route along Burnham Road and through Dartford town centre to reach the M25. The only example in evidence before the Inquiry of a similar system of monitoring and fines currently in operation is at Andover, in relation to which I understand that there has been a significant number of breaches over a 2 year period [8.3.20.c)].

- 15.5.42. However, the TMP indicates that, if the penalty was ineffective, it would be open to the Steering Group to seek to increase the fine to a level which it determines would deter future breaches⁵⁷². Whilst an increase in the level of fine could be initially approved by a majority of the members, there would be a right of appeal⁵⁷³. Furthermore, in my view, it is unlikely that HPL would accept a proposed increase without appealing against it, as increased fines would be likely to make the development less attractive to occupiers⁵⁷⁴. However, the DBC s106 indicates that appeals would be determined by an independent expert and it would be open to the parties to put their respective cases. None of the Highway Authorities have taken issue with this approach. Under the circumstances, I consider that this mechanism provides sufficient safeguards in relation to this example and also the risk of dilution of other measures contained within of the TMP [8.3.21-27, 11.4.18.b), 11.4.19-20].
- 15.5.43. I consider that the TMP/DBC s106 gives the required level of confidence that the proposed traffic restriction measures it contains are likely to be managed to an acceptable degree [8.3.21]. However, its provisions do not alter my previous findings.

Conclusions

- 15.5.44. Imposition of the HE cap, secured by the terms of the TMP/DBC s106, would be likely to ensure that the proposal would not add to the severe queues/delays characteristic of the strategic M25/A282 route during normal highway conditions. However, I consider that, by 2031, the residual cumulative impact of the development during normal highway conditions on the local highway network would be likely to be severe.
- 15.5.45. The area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels, which can result in severe traffic conditions. Whilst there is no technical validity in modelling assessments of such incidents, it is appropriate to consider the implications qualitatively. I share the view of KCC that the scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local A282/M25 junction 1A and nearby local roads during 'incidents'. I consider that it would have a material adverse impact, adding to severe conditions.

⁵⁷² INQ/102 page 41 para 16.8.1.

⁵⁷³ INQ/102 para 2.4.6.

⁵⁷⁴ DBC/W2/1 para 5.32 bullet 3.

15.5.46. In my judgement, overall, having regard to both non-incident and incident related highway conditions, it is likely that the residual cumulative impact of the development on the local road network would be severe, with reference to congestion.

15.5.47. I conclude that the proposals would be likely to cause considerable harm to the convenience of highway users in Dartford. In this respect it would conflict with DDPP Policy DP3, which, in keeping with the Framework, indicates that development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on road traffic congestion. This is a view shared by DBC [3.6].

15.6. **e) The effect on living conditions in the local area, with particular reference to air quality, noise and vibration**

Air quality

15.6.1. The main focus of the air quality objections are 3 particular Air Quality Management Areas (AQMAs): the A282 road link AQMA No. 1 and Dartford Town Centre AQMA No. 3, which extends along Burnham Road to the appeals site roundabout (DBC AQMAs); and, the Bexley AQMA⁵⁷⁵. Nitrogen Dioxide (NO₂) is the key pollutant of concern and whilst, in general, levels of NO₂ across the area have improved in recent years, compliance with the annual mean NO₂ objective, 40 µg/m³, has yet to be achieved⁵⁷⁶ [8.4.5].

15.6.2. Air quality modelling reported in the ES/SES is based upon traffic flow outputs from the RXHAM, related to 'non-incident' traffic conditions⁵⁷⁷. They indicate that in 2021, the assumed year of opening, and in 2031 the overall effect of the proposed development in terms of impacts on annual mean NO₂ concentrations is not likely to be significant in the AQMAs [8.4.7].

15.6.3. For the purposes of these assessments a number of conservative assumptions have been made, including it has been assumed that background concentrations would not change over time from 2013, notwithstanding that, with reference to the Government's Air Quality Plan and Air Quality Strategy, background concentrations are expected to decrease over time⁵⁷⁸. The findings of the ES/SES were supported by LBB⁵⁷⁹. Furthermore, based on the same traffic flow outputs, DBC's own assessment relating to the DBC AQMAs reached the same conclusion regarding significance⁵⁸⁰ [11.4.11]. So did the analysis provided by the appellant to the

⁵⁷⁵ For extent of AQMAs see CD/1.27 Volume 3c Appendix G7 figures G7 and G8.

⁵⁷⁶ APP/AQ/1 section 3.2.

⁵⁷⁷ APP/TRAN/1 para 4.5.3, evidence in chief and cross-examination of Mr Findlay.

⁵⁷⁸ APP/TRAN/4 para 3.2.23, APP/AQ/1 para 4.3.42 and CD/1.27 Volume 2 Appendix G para G3.16-it was assumed that there would be no improvement in light duty vehicle emissions from 2013 in 2021 and for 2031 Emission Factor Toolkit v6.0.2 light duty vehicle emissions for 2021 have been assumed. In addition, EFT heavy duty vehicle emissions for 2021 have been assumed for 2021 and 2031.

⁵⁷⁹ CD/1.6 page 64.

⁵⁸⁰ DBC/W3/1 para 7.11 and, para 7.19, under a congestion sensitivity scenario the impact at all existing receptors was negligible.

Inquiry, reflecting new factors, such the proposed HE cap and an *Emissions Factor Toolkit v8 (December 2017)* updated from that relied on in the ES/SES⁵⁸¹. It also concluded that there would be a very low risk of impacting on compliance with the Ambient Air Quality Directive⁵⁸².

- 15.6.4. However, regarding traffic flow outputs from RXHAM, I have found that whilst they are likely to be reasonably reliable when it comes to the strategic network, such as the A282, which falls within DBC AQMA No. 1, the same cannot be said in relation to the highway network local to the site. Furthermore, abnormal highway conditions, such as the frequent network incidents that occur hereabouts were not within the scope of the TA modelling. These factors have potential implications for the reliability of the air quality modelling.
- 15.6.5. Nonetheless, as DBC put it, consideration of the associated risk is a matter of judgement [8.4.8]. In that context, whilst Dr Maggs suggests there is a possibility that the impact of the scheme would be greater than suggested by the modelling⁵⁸³ [8.4.6], Dr Tuckett-Jones suggests not, as the methodology she used overstates the impact [11.4.11]. In relation to AQMAs, I share Dr Tuckett-Jones' view for a number of reasons, including that: the air quality modelling work relied on by the appellant is based on a number of conservative assumptions, referred to above; under the terms of the TMP, HGV traffic to /from the site would generally be prohibited from using Burnham Road, part of DBC AQMA No. 3; and, the section of the local highway network in relation to which concerns regarding the accuracy of the traffic modelling results are greatest, such as Bob Dunn Way, lies almost entirely outside of the identified AQMAs [8.4.6, 9.3.13-14].
- 15.6.6. Turning to the concerns raised by SGCF. Mr Findlay indicated that around 90% of the HGV traffic from the site would head towards or come from junction 1A of the A282/M25, with the remainder arriving from/departing towards the west. It appears to me that this latter approximation is reflected in the modelling referred to in the TA when account is taken of all the areas, in addition to the local west area, from which traffic is likely to arrive at the appeals site roundabout from the west or depart it in that direction⁵⁸⁴. Furthermore, non-HGV trips, distributed in accordance with the 2011 journey to work census data and with no account taken of potential reductions due to Travel Plan initiatives⁵⁸⁵, have also been accounted for in a reasonable manner [9.3.6, 8]. Peareswood Primary School was not identified as a sensitive receptor. However, having had regard to the assessment results associated with nearby property R12 Colyers Lane (No. 192), which is closer to the A206 than the Peareswood School buildings and its main amenity areas, it appears to me that the impact of the proposal on attendees of the school would be unlikely to be significant⁵⁸⁶ [9.3.15]. Therefore, I give SGCF's concerns in relation to air quality little weight.

⁵⁸¹ APP/AQ/1 para 4.3.43.

⁵⁸² APP/AQ/1 section 4.4.

⁵⁸³ DBC/W3/1 paras 7.20 and 8.14.

⁵⁸⁴ Cross-examination of Mr Findlay- local area west, central London and some other traffic, CD/1.27 Volume 3b Appendix E1 page 64 Table 8-11.

⁵⁸⁵ CD/1.27 Volume 3b Appendix E1 pages 62-63.

⁵⁸⁶ INQ/50 page 5 and APP/AQ/2 Appendix A.

- 15.6.7. It would be possible to ensure that the potential for fugitive dust pollution to arise from construction activities on the appeals site is satisfactorily controlled through the imposition of a condition requiring an approved Construction Management Plan to be adhered to⁵⁸⁷ [9.1.4].
- 15.6.8. I conclude on balance, that the appeals proposal would be unlikely to have an unacceptable material impact on living conditions in the local area, with particular reference to air quality. In this respect it would not conflict with LP Policies 5.3 and 7.14, DDPP Policies DP3 and DP5 [8.4.9-11], BCS Policies CS01 and CS09 or the Framework.

Noise and vibration

- 15.6.9. The ES/SES concludes that, with the exception of the construction of the proposed earth bund, all of the predicted noise and vibration impacts can be adequately mitigated to avoid any significant impact. I consider that the provision of those identified mitigation measures could be ensured through a combination of the imposition of suitable conditions and funds secured by the LBB s106. The focus of that mitigation is most likely to be nearby properties on Moat Lane and Leycroft Gardens⁵⁸⁸. Properties further to the west are likely to be shielded by proposed buildings on the western side of the site, which are expected to be constructed first; phasing of construction could also be controlled through the imposition of a suitable condition⁵⁸⁹.
- 15.6.10. The ES/SES indicates that noise associated with the construction of the earth bund at the northern end of the site has the potential to have a major adverse impact on the living conditions of residents of Moat Lane and Oak Road. There would also be likely to be some minor-moderate vibration impacts, which whilst they may give rise to complaints from a small number of nearby properties, would be at a tolerable level. However, the harm would be short term. Furthermore, the ES indicates that there would be effective liaison with residents to keep them informed of work schedules and to take account of their preferences as regards working hours and practices⁵⁹⁰. Once completed, at an early stage in the development of the site, the bund would have a beneficial acoustic and visual screening effect for later construction phases and the operational phase. Under these circumstances, I consider that the impact would be acceptable. [9.1.4, 9.2.16, 10.11, 11.4.4]
- 15.6.11. Statements of Common Ground agreed between the appellant, the LBB, DBC and the MOL⁵⁹¹ conclude, with reference to the assessments of noise set out in the ES/SES together with mitigation identified there, that there is no objection to the appeals scheme on the basis of noise impact. This adds further weight to my findings.
- 15.6.12. I conclude that, subject to mitigation secured by conditions/planning obligations, the appeals proposal would be unlikely to have an unacceptable

⁵⁸⁷ APP/PLAN/1 para 7.54, CD/1.27 Volume 2 Chapter G section G8.0.

⁵⁸⁸ INQ/101, INQ/115 pages 6 and 17.

⁵⁸⁹ INQ/55 Section 2, INQ/94 condition nos. 5, 24, 25, 29, INQ/98.

⁵⁹⁰ CD/1.27 Volume 2 Chapter F para F6.8.

⁵⁹¹ CD/6.1, 6.2, 6.3.

impact on living conditions in the local area, with particular reference to noise and vibration. In this respect it would not conflict with the terms of LP Policies 5.3 and 7.15, BCS Policies CS01 and CS09, DDPP Policy DP5 or the Framework, insofar as they seek to ensure pollution is minimised and avoid unacceptable noise impacts.

15.7. **Other matters**

- 15.7.1. The ES indicates that the likely impact on the significance of nearby Designated Heritage Assets, Howbury Moat (a Scheduled Ancient Monument) and a Grade II listed tithe barn, both of which are situated outside and to the north of the appeals site, would be negligible⁵⁹², a finding accepted by the LBB and the MOL⁵⁹³. In my judgement, the significance of those Designated Heritage Assets would not be materially harmed by the scheme. I have already found that the scheme would not harm the significance of the Moat Lane/Oak Road Conservation Area [9.5.2]. Furthermore, the loss of the locally listed Howbury Grange would be adequately mitigated through the creation of a building record, secured by condition⁵⁹⁴. I conclude that the effect of the appeals proposal on heritage assets would be acceptable and consistent with the aims of LP Policy 7.8, BCS Policy CS19 and the Framework.
- 15.7.2. The proposed development would be likely to reduce the outlook from neighbouring residential properties that currently have views across the appeals site. However, the proposed buildings would be set well back from the appeals site boundaries and their visual impact relative to neighbouring dwellings would be softened to an extent once proposed planting is established in the intervening space. The potential for light pollution to arise from the site could be satisfactorily controlled through the imposition of a suitable condition. I conclude that the scheme would be unlikely to have a significant detrimental effect on the living conditions of neighbouring residents, with particular reference to outlook and light pollution, in keeping, in this respect, with the aims of the Framework, which seeks high standards of amenity and to limit the impact of light pollution [9.1.2, 9.1.4, 9.5.2, 11.4.4].
- 15.7.3. Turning to the potential impact of the scheme on access along the River Cray; the PLA and IWA accept the proposed bridge clearances. I understand that although the proposed bridge would restrict high masted craft from travelling upstream to a limited turning area for small craft, similar opportunities to turn exist just downstream of the proposed bridge location⁵⁹⁵. Furthermore, the evidence indicates that this section of river is infrequently used by high masted vessels, even taking account of more recent activity reported by the IWA/DCCRT, and given that wharves upstream of the proposed bridge location have been disused for a significant number of years, I consider that the absence of the provision of downstream alternatives as part of the proposed works does not weigh against the

⁵⁹² CD/1.27 Volume 2 Appendix K page 38.

⁵⁹³ CD/7.2 para 6.33 and CD/7.1 para 7.30.

⁵⁹⁴ CD/1.6 page 36.

⁵⁹⁵ CD/1.31 section 10.0.

scheme. I conclude that the impact of the appeals proposal with respect to navigation and facilities along the River Cray would be acceptable.⁵⁹⁶ [10.3, 10.10]

15.7.4. The ES indicates that the appeals proposal would be unlikely to give rise to any significant effects as regards flood risk⁵⁹⁷. Furthermore, the Environment Agency has confirmed that it does not object to the scheme on the basis of flood risk. I give greater weight to that evidence than the general and largely unsubstantiated concerns raised by a number of interested parties on the subject. [9.1.6, 10.5.1, 14.3.1]

15.7.5. I give no weight to the concern raised that the proposal would harm residential property value [10.5.3]. Planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration⁵⁹⁸.

15.8. **f) Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, and, if it would, whether the very special circumstances required to justify the proposal exist**

15.8.1. The Framework confirms that the very special circumstances necessary to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Whether the proposal would meet an identified need for SRFIs to serve London and the South East

Need

15.8.2. LP Policy 6.14 gives encouragement to the movement of freight by rail. Furthermore, the Framework indicates that planning decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for storage and distribution operations at a variety of scales and in suitably accessible locations [11.3.37].

15.8.3. The NPSNN indicates that '*The industry, working with Network Rail, has produced unconstrained rail forecasts to 2023 and 2033...*'. The NPSNN confirms that '*These forecasts...are considered robust and the Government has accepted them for planning purposes*'. The applications for planning permission assume that approximately 71% of the rail freight at the proposed facility would be domestic intermodal traffic, a category of rail freight predicted to grow by 12% per annum from 2011 to 2033 [7.4.9, 7.4.13]. I understand that growth has been slower than forecast in this sector [7.4.10-12, 11.2.4]. However, this is unsurprising, as the forecasts are unconstrained in

⁵⁹⁶ CD/1.31 section 10.0.

⁵⁹⁷ CD/1.27 Volume 2 Appendix J para 8.3.

⁵⁹⁸ National Planning Practice Guidance- 'what is a material planning consideration?'.

the sense that *'freight demand is considered without addressing the ability of the rail network to cater for it'* and the NPSNN makes clear that action is needed to realise the identified potential for growth [7.4.13-15].

- 15.8.4. Unlike the circumstances in 2007, there is no longer a formally identified requirement for 3 or 4 SRFIs around London [4.2, 7.2.6, 8.5.1, 11.2.12, 11.2.14.f.]. The Government approach set out in the NPSNN is to support the realisation of the forecast growth by encouraging the development of an expanded network of large SRFIs across the regions [11.2.9]. Furthermore, *'...SRFI capacity needs to be provided at a wide range of locations...There is a particular challenge in expanding rail freight interchanges serving London and the South East'*. [11.2.17-19]
- 15.8.5. The *Alternative Sites Assessment (ASA)*, submitted in support of the appeals proposal, confirms that the market to be served by the proposed facility would be London and the South East⁵⁹⁹ and there is no dispute that that area, with no operational SRFIs, is poorly served at present [7.4.5, 13.5.12]. It is the Government's view *'that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail'*[11.2.5, 11.2.16, 11.7.3]. Against that policy background, I consider that it is unnecessary for the appeals scheme to be supported by a site specific economic viability assessment. I understand that no such assessment was requested by the local planning authorities while the applications were before them and this adds further weight to that view [7.4.28-30, 8.1.6, 11.2.19, 22-28].
- 15.8.6. Furthermore, I give little weight to the current absence of any expressions of support from retailers, such as Tesco who are active in the domestic intermodal market [7.4.22]. I have no reason to doubt the view of the appellants that retailers tend not to express support for a particular site prior to the grant of planning permission, due to an aversion to involvement in contentious third-party proposals [11.2.21].
- 15.8.7. Overall, I am content that there is a need and market for SRFIs to serve London and the South East [11.2.2-3]. I turn then to consider the extent to which the appeals scheme would be likely to meet the requirements of SRFIs set out in the NPSNN.

The requirements of SRFIs

- 15.8.8. The NPSNN identifies a number of locational and physical characteristics that define SRFIs, which would be exhibited by the appeals proposal. They include:
- The NPSNN identifies *'it is important that SRFIs are located near the business markets they would serve...'*. In common with the 2006 ASA, the current ASA indicates that the proposal is intended to serve London and the South East, and more specifically defines the catchment area for site search as extending out from central London, to around 32 Km beyond the M25, in an arc from the A1(M), in the north, eastwards around to the M3 in the southwest.

⁵⁹⁹ CD/1.26 para 1.3.

In contrast, the proposed SRFI at Radlett, for which planning permission has been granted, would broadly be expected to serve the Northwest sector of London⁶⁰⁰ [7.2.14]. With reference to the ASA defined catchment area for the facility, there is no dispute that Howbury Park would be located near to the market that it would serve [7.1.6, 11.2.32]. In this respect it would be in keeping with the aims of LP Policy 6.15.

- Under the terms of a condition agreed by the appellant, occupation of the proposed warehousing would be precluded until the intermodal area and the new main line rail connection are complete [11.3.4, 11.6.1]. The necessary form of condition I will return to later. This is consistent with the requirement of the NPSNN that *'initial stages of the development must provide an operational rail network connection'*.
- In 2007, the Inspector found that the larger of the proposed warehouses in the scheme before him would be difficult to let to road only users due to their configuration, which included loading bays suitable for lorries on only one side, with the other side taken up by rail tracks. This was one of the factors which led to a finding that the Secretary of State could be 'reasonably assured' that the then proposed development would operate as a SRFI [7.2.8]. In contrast, there is no dispute that the outline configuration of the buildings now proposed would be attractive to road only users, being set apart from the intermodal terminal beyond parking/loading areas, giving rise in part to the MOL's concern that the proposal may not deliver modal shift [11.2.14c].

However, the NPSNN now makes clear that *'Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.'*

The NPSNN indicates that *'it is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be.'* Based on the Parameters Plan, whilst none of the buildings would be directly rail connected, the proposed warehouses would all be *'rail accessible'* via internal site roads. This is comparable to an arrangement accepted at the East Midlands Rail Freight Interchange [11.2.8]. Furthermore, I understand that at DIRFT, whilst Tesco has some of its own rail facilities, it also makes use of the open-access intermodal terminal [11.2.31].

Against this background, it appears likely that the proposed building layout and connection to the intermodal facility would satisfy the objective of the NPSNN to facilitate and encourage the transport of freight by rail. In my view, whilst it would not be necessary to restrict the use of the proposed warehousing until rail freight had

⁶⁰⁰ CD/5.5 Secretary of State's decision para 34.

actually been taken up [11.6.1a.], the need for the rail works to be provided before the warehouses are occupied is a separate matter that I deal with below in the 'conditions' section of this report.

- 15.8.9. However, the NPSNN also identifies a number of transport link requirements associated with SRFIs, including that *'in all cases it is essential that these (SRFIs) have good connectivity with both the road and rail networks'*. A number of the objectors to the scheme have raised concerns in relation to these matters.

Rail connectivity

- 15.8.10. The importance of 'frequent', 'flexible' and 'timely' services in facilitating the transfer of freight from road to rail is emphasised by the views of a number of retailers who contributed to a 2012 FTA study entitled *'On Track! Retailers using rail freight to make cost and carbon savings'* [7.4.19-20].

- 15.8.11. The NPSNN acknowledges that rail access will vary between lines, including in the number of services that can be accommodated⁶⁰¹ and, as a result of requirements such as the need for effective rail connections, the number of locations suitable for SRFIs will be limited⁶⁰². As I have indicated, with reference to the NPSNN, I consider that in order for the proposed rail link to be considered 'adequate', it would be necessary for it to be capable of providing a service level of 4 trains/day (each way) as a minimum. Based on the evidence presented, and having had regard to the possible use of conditions⁶⁰³, I am not reasonably assured that the network would provide this level of service.

Road connectivity

- 15.8.12. The road access to the appeals site would be likely to be characterised by:

- Restricted access to and from the A282/M25 junctions 1A and 1b, which would be likely to be part of the route taken by the majority of HGVs, due to:
 - The HE cap limiting access for HGVs during the periods from 07:00-10:00 hrs and 16:00-19:00 hrs to approximately 30-40% of the numbers that would otherwise have been expected in the peak hours⁶⁰⁴. A HE cap is unprecedented at existing SRFIs [7.4.67]; and,
 - Frequent incidents on the A282/M25 main line that quickly cause congestion on the local highway network, which can take significant periods of time to clear;

The appellant anticipates that it is likely to be necessary for some HGVs to remain on site during the course of, as a result of, the

⁶⁰¹ CD/2.2 para 4.85.

⁶⁰² CD/2.2 para 2.56.

⁶⁰³ See sections entitled 'Adequacy of the proposed rail link and the effect on existing/future passenger rail services' and 'The extent to which mitigation would be secured through planning conditions and obligations'.

⁶⁰⁴ APP/RAIL/4 tables 2 and 3- AM peak hr (16+16)/52+44)=0.33, PM peak hour (28+28)/76+66)=0.39.

restrictions, delaying their onward journeys. Whether waiting onsite or queuing on the highway, such frequent restrictions would be unlikely to be viewed as convenient by the drivers of those vehicles, their employers or the businesses they serve⁶⁰⁵ [7.4.31e., 8.3.20]. Furthermore, such circumstances contrast starkly with the 'just in time' approach experienced at other SRFIs, which according to the appellant involves drivers arriving as close as possible to scheduled delivery or collection times for containers and short turn-around times on site, in order to avoid loss of productive driving time⁶⁰⁶; and,

- Overall, having regard to both non-incident and incident related highway conditions, the residual cumulative impact of the development on the local road network would be severe, with particular reference to congestion.

15.8.13. In light of the above findings, even if the rail route to/from Howbury Park were to be considered adequate, freight would be delivered to/collected from a location where the local highway network would be prone to congestion and the route used by the majority of HGVs, to/from the north of the Dartford Crossing, would be likely to be disrupted by frequent incidents. Notwithstanding the proximity of the appeals site to the M25 and a number of major 'A' roads and contrary to the view of the appellant and the LBB⁶⁰⁷, in my judgement, the proposed facilities would not benefit from 'good road access', which the NPSNN indicates that SRFIs facilities should have in order to facilitate modal shift from road to rail.

15.8.14. Insofar as the letters of support for the appeals proposal from Maritime Transport Limited, GB Railfreight and the Rail Freight Group (RFG) express a view that the appeals site is in an attractive location for a SRFI, I give them little weight, as they do not acknowledge any of the access issues identified above [7.4.24, 11.1.3.f, 11.2.20.b-c., 13.3.9].

15.8.15. The NPSNN indicates that '*because the vast majority of freight in the UK is moved by road, the proposed new rail freight interchanges should have good road access, as this will allow rail to effectively compete with, and work alongside, road freight to achieve modal shift to rail*'. In that context, I consider it unlikely that the road links relied on by Howbury Park would encourage a significant move away from road haulage [11.2.23.a, 11.2.29-30, 32]. Against this background, I give little weight to the LTP4 assessment that a SRFI at Howbury Park would potentially remove significant numbers of HGVs from the road network [6.5.2].

Conclusions

15.8.16. I conclude that the appeals proposal would exhibit a number of the locational and physical characteristics of SRFIs, set out in the NPSNN, gaining some support from LP Policy 6.14. However, in respect of transport links, the NPSNN indicates that '*in all cases it is essential that these*

⁶⁰⁵ INQ/102 Transport Management Plan page 35 para 14.5.1-2.

⁶⁰⁶ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix G page 9/12 point 12.

⁶⁰⁷ CD/6.1 para 6.5.

(SRFIs) *have good connectivity with both the road and rail networks*'. Based on the evidence presented, I am not reasonably assured that the proposed rail links would be adequate. Furthermore, even if that assurance could be provided, the proposed facilities would be unlikely to benefit from the 'good road access', necessary to facilitate modal shift and thereby enable the facility to deliver the benefits expected of SRFIs, such as facilitating a reduction in CO₂ emissions associated with freight transport⁶⁰⁸ [8.5.8.b), 9.6.10]. In relation to transport links it would not be consistent with LP Policy 6.15 or the NPSNN.

- 15.8.17. Notwithstanding that the appellant has some experience of developing SRFIs [11.1.3.g., 11.2.20.a.], I conclude overall, that the appeals scheme would not be well qualified to meet the identified need for SRFIs to serve London and the South East [11.2.14.b., 11.2.53, 11.5.2, 13.5.12-14].

Availability of alternative sites

- 15.8.18. In its written evidence to the Inquiry, the appellant's 'very special circumstances case' included the assertion that *'no alternative development options exist for SRFIs to serve this part of London and the South East...this represents a material consideration of very considerable weight'*⁶⁰⁹ [7.4.3, 7.4.70-71]. The basis for this view was the *Alternative Sites Assessment (ASA)*, submitted in support of the appeals proposal. As I have indicated, it adopted the same search area as the 2006 ASA, accepted by the previous Inspector, which extended out from central London, to around 32 Km beyond the M25, in an arc from the A1(M), in the north, eastwards around to the M3 in the southwest. In 2007 the Inspector concluded that there were no alternative sites for a SRFI *'in the arc around south and east London'* and that was a matter which attracted considerable weight in the planning balance [7.2.13, 7.4.68]. Notwithstanding that the circumstances of London Gateway have changed in a number of respects since 2007 [7.4.85a.], such as through the upgrading of the gauge of the branch line to London Gateway⁶¹⁰, the current ASA reached the same overall conclusion as the 2006 ASA⁶¹¹. However, the appellant now accepts that *'there are failings with the ASA and a role for London Gateway should probably have been identified'* [7.4.73-76, 7.4.86, 10.2.8, 11.2.61].

- 15.8.19. The NPSNN identifies that *'the construction of London Gateway will lead to a significant increase in logistics operations. This will lead to the need for SRFI development...'* Whilst London Gateway's primary function may be to operate as a container port, as suggested by the ASA, London Gateway comprises 2 elements, with plans for rail connections to both: the London Gateway Port; and, the London Gateway Logistics Park, which is substantial in its own right having planning permission for a total of 829,700 m² of commercial floorspace⁶¹² [7.4.74-75, 11.2.58]. Against this background, there is now no dispute that London Gateway, which is not a Green Belt site, could host a SRFI [7.2.13, 7.4.77-80, 11.2.55].

⁶⁰⁸ CD/2.2 para 2.53, APP/PLAN/1 para 7.69.

⁶⁰⁹ APP/PLAN/1 para 7.192.

⁶¹⁰ CD/1.26 page 40.

⁶¹¹ CD/1.26 page 52 see 'Rail infrastructure' and 'Previous Supplementary ASA (2006) conclusion.

⁶¹² INQ/39.

- 15.8.20. The appellant suggests that London Gateway, on the north side of the Thames, would not be able to compete with the appeals site, due to Howbury Park's proximity to: a number of Regional Distribution Centres on the south side of the Thames; as well as, some groups of stores and customers in south London, which would lead to shorter HGV trips [11.2.60]. However, the TA anticipates that the majority of HGV trips associated with the proposed facilities would be expected to travel to and from destinations to the north of the Dartford Crossing [7.4.69, 9.3.16]. There is no persuasive analysis before me to show that substituting London Gateway for the appeals site would result increased road miles overall or increased delays, not least due to the high risk of delays to traffic travelling north from Howbury Park across the Dartford Crossing [11.2.60, 11.5.6].
- 15.8.21. Furthermore, the ASA does not find fault with the road links to London Gateway⁶¹³ and its rail links appear superior in a number of respects [7.4.84, 7.4.87d), 11.2.56, 13.4.7]. It follows, a finding that rail connectivity to the appeals site would be likely to be unduly restricted for the purposes of SRFI use would not automatically apply to all sites around London [11.2.35.c.]. I give little weight to Mr Gallop's assertion that others have considered London Gateway and rejected it [11.2.59]. Whilst he cited Marks & Spencer as an example in support of his view⁶¹⁴, the reasons for rejection have not been set out and I cannot be sure that they would not apply equally to the appeals site. Similarly, whilst Tesco may prefer locations such as Barking to London Gateway, there is no evidence to show that it would relocate from such sites to Howbury Park [7.4.18, 11.2.21].
- 15.8.22. Viridor has indicated that there would be no real prospect for rail use to service its current operations at its Thames Road site without the appeals proposal. I accept that this is an unusual benefit of the appeals scheme [11.2.20d.]. However, a 7-day count identified that a total two-way flow of 569 HGVs is associated with Viridor and Mr Findlay estimated that the potential to redirect some of that traffic to rail might result in a reduction of around 200 HGVs [9.3.11]⁶¹⁵. To my mind, even if it is assumed that reduction would be over 5 days (Monday-Friday), rather than the 7 days of the count, it would be equivalent on average to only 40 HGV trips per day. By way of comparison, the TA indicates that: external HGV trips associated with the appeals site alone would be 106-155 in the peak hours and 191 in each inter-peak hour; and, a Thames Road two-way Automatic Traffic Count close to the appeals site roundabout recorded a weekday average count of 30,025 vehicles⁶¹⁶. Whilst the potential benefit referred to may be unusual, it would be small and in my view, does not weigh either for the appeals site or against London Gateway to any significant extent.
- 15.8.23. Under the present circumstances, which differ from those in 2007, I conclude that little weight is attributable to the appellant's argument that '*no alternative development options exist for SRFIs to serve this part of London and the South East*'. The same can be said in relation to the its

⁶¹³ CD/1.26 para 5.16.

⁶¹⁴ Evidence in chief of Mr Gallop.

⁶¹⁵ INQ/51 page 11- 'a total two-way weekly (7day) flow of 569 HGVs', 200 HGVs estimate provided in cross examination of Mr Findlay.

⁶¹⁶ CD/1.27 Volume 3b Appendix E1 pages 33, 61 and 62.

view that *'allowing the development would not fail to assist urban regeneration because there is no suitable urban land available that could accommodate the SRFI and meet its operational requirements'* ⁶¹⁷ [8.5.8c.]

- 15.8.24. The ASA suggests that, rather than acting as an alternative, Howbury Park would be a complementary facility to London Gateway, by forming part of a network of rail freight terminals needed to facilitate the transfer of goods to and from the port⁶¹⁸. However, as alluded to above, the ASA did not assess the ability of the London Gateway Logistics Park to meet such a need. I consider that these facilities would be more likely to be rivals in the same market, given that: the sites are relatively close together in the same catchment area⁶¹⁹; and, as now acknowledged by the appellant, there is no prospect of direct trains to Howbury Park from London Gateway. As to the potential for the appeals site to accept non-domestic intermodal trains, the IRR anticipates that it would be likely to constitute only a small proportion of Howbury Park traffic and I understand that London Gateway already receives Channel Tunnel trains⁶²⁰ [13.2.7, 13.3.9, 13.5.13]. There is no compelling evidence before me to demonstrate that they would both be needed and I give the appellant's argument to that effect little weight [7.4.82, 11.2.55-57].
- 15.8.25. As regards Hoo Junction, referred to by an objector [10.5.4]. I understand that it is an existing rail yard on the North Kent Line, which is safeguarded for Crossrail and so does not represent a suitable alternative to the appeals site⁶²¹.

Conclusions

- 15.8.26. I conclude that London Gateway, a brownfield site, has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East as the appeals proposal. Under these circumstances, even if the appeals scheme was also well qualified to meet that need, in my view, the weight attributable to this would be limited.

Economic and social impacts of the scheme

- 15.8.27. The largest part of the appeals site lies within the BROA and a Regeneration Area identified by the LP. LP Policy 2.13 indicates that development proposals in the BROA should support the strategic policy directions set out in LP Annex 1. They include, amongst other things, that *'Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'*
- 15.8.28. That reference to Howbury Park does not amount to an allocation in the LP [7.1.9, 11.1.3, 11.1.6]. Nevertheless, establishment of a SRFI at the appeals site would be consistent with that particular strategic policy direction [7.1.11].

⁶¹⁷ APP/PLAN/1 para 7.24-25.

⁶¹⁸ CD/1.26 pages 20-21.

⁶¹⁹ CD/1.26 Appendix 1 site 7.

⁶²⁰ GLA/RG/01 para 7.7.

⁶²¹ APP/PLAN/1 paras 9.2-9.4.

Furthermore, it could provide significant benefits for the local economy, such as creating a large amount of new employment, related to construction of the facility and in the order of 2,000 full time equivalent jobs once it is fully occupied [11.3.5]. It would also be consistent with the aims of: LP Policy 2.14 as regards generating new growth and jobs in the Regeneration Area, some parts of which suffer from significant levels of deprivation; it would contribute towards realising the 7,000 indicative employment capacity of the BROA, set out in the LP, which is significantly increased in the LPe (Policy SD 1); and, BCS Policy CS13, which gives support to the diversification of the local employment offer. I am also conscious the Framework indicates that significant weight should be placed on the need to support economic growth.

- 15.8.29. However, whilst DCS Policy CS 8 indicates that DBC will seek transformation of the economy by focussing on key growth sectors, including logistics, transport and distribution, the appeals site is not consistent with the spatial pattern of development set out in DCS Policy CS 1 or the provisions of DCS Policy CS 7 regarding the distribution of jobs in the Borough, where unemployment levels are already relatively low. I consider that the proposal would conflict with these aspects of the spatial strategy for Dartford and little weight is attributable to socio-economic benefits of the scheme to Dartford Borough claimed by the appellant [8.1.5]. Furthermore, I have found that the proposal would be likely to have a material adverse effect on traffic congestion in the area. In turn, this may well have an adverse impact on the local economy, as observed by a number of objectors. However, in the absence of any quantification of the likely impact on the local economy, I give that particular matter little weight⁶²² [10.4.1, 10.8].
- 15.8.30. The circumstances I have outlined are materially different from those considered in 2007, not least in terms of the Policy framework [8.5.8.c]. I conclude overall that, notwithstanding the conflicts with the DCS, significant socio-economic benefits would be likely to be attributable to the establishment of a SRFI at the appeals site, with particular reference to those likely to be realised in the LBB, consistent with LP Policies 2.13 and 2.14 as well as BCS Policy CS13 and the Framework as well as LPe Policy SD 1 [7.4.88, 8.5.8c., 11.3.8-9].
- 15.8.31. Nonetheless, in light of the shortcomings of the ASA, I cannot be sure that similar benefits would not be attributable to London Gateway. It appears to me that economic benefits broadly of the scale referred to above would be likely to be commonly attributable to SRFIs [11.3.9]. The NPSNN indicates that considerable benefits for the local economy, including creating many jobs are generally likely to be associated with SRFIs. Furthermore, with reference to London Gateway, the *Thurrock Core Strategy and Development Management Plan Policies, 2015*, sets out an expectation that there will be significant employment associated with major logistics, import-export based development at that site, which comprises brownfield land⁶²³ [7.4.80]. Under the circumstances, I give little weight to the

⁶²² DBC/W1/1 para 5.68.

⁶²³ INQ/39.

appellant's assertion that if the appeals proposal is rejected the identified job creation potential of such a scheme would be lost⁶²⁴

- 15.8.32. Against this background, I conclude overall, that the weight attributable to the potential socio-economic benefits of establishing a SRFI at the appeals site is limited.

The effect on biodiversity

- 15.8.33. The Framework seeks to ensure the protection and enhancement of sites of biodiversity value (commensurate with their statutory status or identified quality in the Development Plan).
- 15.8.34. There are no statutory designated sites of nature conservation interest within or adjacent to the appeals site. The nearest is the *Inner Thames Marshes SSSI*, which is located approximately 2.4 km to the north of the appeals site, on the other side of the Thames. The nearest European designated site is *Thames Estuary and Marshes SPA/Ramsar site/SSSI*, which is situated around 14.4 km to the east of the appeals site, at its closest point. The ES indicates that given the separation distances involved, the proposed development would be unlikely to have any effect on these designated sites, a view shared by Natural England, and I have not been provided with any compelling evidence to the contrary.
- 15.8.35. Non-statutory nature conservation sites in London are ranked in terms of their value as: Sites of Metropolitan Importance (SMI); Sites of Borough Importance (SBI); and, Sites of Local Importance⁶²⁵.
- 15.8.36. The River Cray, which forms part of the *River Thames and Tidal Tributaries SMI*, passes through a narrow strip of the appeals site at its southern end⁶²⁶. In order to facilitate access to the site, a permanent bridge would be constructed over the River, the abutments of which would not encroach on the River. The scheme has been designed and mitigation measures, secured by condition⁶²⁷, are proposed to minimise any impact on the River in terms of hydrological flow, habitats and its value as a wildlife corridor, in the context of which the ES indicates that residual impacts on the River are considered to be of negligible significance⁶²⁸. I am content that there would be no significant effects on the *River Thames and Tidal Tributaries SMI*⁶²⁹.
- 15.8.37. The *Crayford Marshes SMI*, which is situated outside of and immediately to the north of the site⁶³⁰, is designated on account of it being one of the few remaining examples of grazing marsh in Greater London supporting a range of flora, birds and invertebrate species⁶³¹. The LBB s106 would secure the implementation of a Marshes Management Plan and a drainage

⁶²⁴ APP/PLAN/1 para 7.26.

⁶²⁵ CD/1.27 Volume 2 Appendix H para 4.16.

⁶²⁶ CD/1.27 Volume 3c Appendix H figure H1.

⁶²⁷ INQ/94 condition no. 22.

⁶²⁸ CD/1.27 Volume 2 para H7.23.

⁶²⁹ CD/1.27 Volume 2 para H8.6.

⁶³⁰ CD/1.27 Volume 3c Appendix H figure H1.

⁶³¹ CD/1.27 Volume 2 Appendix H para 4.20.

scheme to assist in maintaining water levels, supported by funding, the aim of which would be the enhancement of the biodiversity value of a large part of the Crayford Marshes, insofar as the area is within the control of the appellant⁶³² [11.3.12]. The MOL acknowledges that, subject to such provisions, the proposals could result in significant improvements to the ditches and wetland in Crayford Marshes SMI⁶³³. The period over which the MMP would remain in place would be 25 years, sufficient according to Mr Goodwin to achieve its conservation objectives⁶³⁴. I have not been provided with any persuasive evidence to show that would be unlikely to be the case and consider therefore, that to require a longer period, preferred by some objectors, would not be reasonable [10.2.7].

- 15.8.38. I give little weight to the concern that the appeals proposal may increase the likelihood of future development of the neighbouring marshes, such as the provision of a mooted Slade Green 'relief road', potentially placing at risk any ecological benefits of the appeals scheme to the marshes [9.6.9]. Provision of a 'relief road' does not form part of the appeals proposal, which must be considered primarily on its own merits. Furthermore, it is not certain that such a scheme would be likely to come forward in future⁶³⁵ and in any event, if it did, I have no doubt that the local planning authority would take account of the value of the Crayford Marshes SMI, which is likely to be enhanced by the appeals proposal.
- 15.8.39. The area of the appeals site to the north of the River Cray makes up a large part of the *Crayford Landfill and Howbury Grange Site of Borough Importance-Grade 1* (BxBI18), the remainder comprising an area of former landfill that adjoins the eastern boundary of the appeals site. It appears that the features of the SBI cited in support of the designation are largely located in the east of the designated site, beyond the eastern boundary of the appeals site⁶³⁶. Furthermore, the habitats that would be lost to development are of little ecological value, comprising improved and semi-improved grassland, not grazing marsh⁶³⁷ [9.6.2, 10.1.1-3, 10.2.3, 10.2.6, 10.9.1]. The habitat which is of some ecological value relative to the rest of the appeals site is field F10, which is situated along the eastern edge of the site and the majority of that habitat would be retained as part of the development proposal⁶³⁸. Mr Goodwin explained that whilst some hedgerows would be removed along the northern side of the site to facilitate the works, they are generally species-poor and weak in structure. Replanting to be undertaken would include, amongst other things, disease resistant strains of Elm, which would benefit White-letter Hairstreak, a protected species of butterfly of high conservation priority, which has been recorded in that area⁶³⁹ [10.5.5].

⁶³² INQ/115.

⁶³³ CD/7.1 para 7.28.

⁶³⁴ Cross-examination of Mr Goodwin.

⁶³⁵ INQ/82.

⁶³⁶ CD/1.27 Volume 2 Appendix H para 8.5.

⁶³⁷ APP/BIO/1 para 7.35.

⁶³⁸ CD/1.27 Volume 2 Appendix H para 8.9, Volume 3c Appendix H figure H2.

⁶³⁹ Cross-examination of Mr Goodwin.

- 15.8.40. In relation to fauna, the ES indicates that overall, having regard to the proposed mitigation measures which could be secured by condition, the residual impacts on bats, water vole, birds, reptiles and invertebrates would be beneficial, albeit to a limited extent. The species listed within the citation for the BxBI18 as using the site as a high tide roost were not found within the part that comprises the appeals site during the ES site usage surveys⁶⁴⁰ [10.9.3]. None of the planning authorities involved maintain an objection to the development on nature conservation grounds. I consider that more weight is attributable to the detailed assessment by Ecology Solutions Limited contained within the ES than generalised and largely unsupported concerns raised by other objectors [9.1.3, 10.2.1].
- 15.8.41. I am content that from an ecology perspective the ES has had sufficient regard to the relationships between the appeals site and the wider environment within which it is situated [10.2.5]. For example, the bird breeding surveys reported in the ES included not only the appeals site but also the section of BxBI18 outside and to the east of the site. The bird species identified included, amongst others, Skylark and Corn Bunting, both of which are on the Red List of conservation concern. Skylark is also a UK, Kent and Bexley BAP species and Corn Bunting a UK and Kent BAP species⁶⁴¹ [9.6.6]. Although these species were identified within the site, in comparison with the area of BxBI18 to the east, the numbers were small. Furthermore, of the 4 identified Skylark breeding territories within the site, 3 were within field F10, on the east eastern side of the site, where suitable breeding habitat can be retained alongside the remainder of BxBI18. 2 Corn Bunting breeding territories would be lost within the site⁶⁴².
- 15.8.42. Nevertheless, the assessment of the appellant's ecologist is that the proposed landscaping and management of open space within the site in the interests of Corn Bunting and Skylark would secure habitats of better quality and provide more breeding opportunities overall. I have not been provided with any compelling evidence to show that this would not be possible and I consider that the necessary measures for those species, together with other provisions to improve the biodiversity value of the site such as green walls and nesting boxes, are matters which could be secured through the imposition of a suitable condition requiring the implementation of an approved Biodiversity Management Plan⁶⁴³. Whilst there can be no guarantee regarding the numbers of particular species that may frequent the site as a result, I am satisfied that the provision of better quality and secure habitat represents an enhancement, albeit limited. [9.6.6-8, 10.1.2, 10.5.6, 10.6.1, 10.7.3, 10.9.3, 11.3.12.b)]
- 15.8.43. In 2007 the Inspector found there was no merit in the argument that development of the appeals site should be resisted having regard to its future value as an area for the long term managed retreat of Crayford Marshes⁶⁴⁴. I share this view, not least as massive intervention would be

⁶⁴⁰ CD/1.27 Volume 2 Appendix H. para 5.87.

⁶⁴¹ CD/1.27 Volume 2 Appendix H paras 5.92-93

⁶⁴² APP/BIO/1 para 6.28-33.

⁶⁴³ CD/1.27 Volume 2 para H7.64.

⁶⁴⁴ CD/5.2 para15.37.

required, due to the significant differences in level between the two [10.2.5, 10.2.7].

- 15.8.44. Furthermore, I have indicated, an aim of the proposed landscaping along the eastern side of the site would be to enhance its ecology value. It would adjoin the remainder of BxBI18 and together they would maintain the linkage between the SMIs to the north and south [10.2.4]. The retention, creation and safeguarding of wildlife corridors through the site could be ensured through the imposition of a condition, as already referred to [10.2.5]. Against this background, I give little weight to the concerns raised regarding fragmentation of habitats, which was also considered and given little weight in 2007⁶⁴⁵ [9.6.4-5].
- 15.8.45. As to the potential impact of the scheme on the hydrology of the marshes, there is no objection from the Environment Agency or Natural England. Furthermore, the proposed works to improve the drainage of the marshes with the aim of enhancing the areas biodiversity value could be controlled by the local planning authority through the imposition of suitable conditions and the LBB s106 [10.2.6].
- 15.8.46. I conclude that the appeals proposal, including the off-site planning obligations, would be likely to result in a net biodiversity gain overall, a view shared by both local planning authorities⁶⁴⁶ [8.5.8, 9.6.1, 11.3.10-12, 11.4.4]. In this respect it would accord with the aims of LP Policies 7.19 and 7.21, BCS Policies CS04, CS09, CS17 and CS18, as well as the Framework. However, there is no guarantee that the overall net gain would be substantial and so I afford it moderate weight.

The extent to which mitigation would be secured through planning conditions and obligations

Conditions

- 15.8.47. Without prejudice to their respective cases, the appellant and the planning authorities have jointly submitted a list of 32 planning conditions (nos. (1)-(32)), INQ/94, that they consider should be imposed in the event of planning permission being granted, for the reasons set out in INQ/94 which include the requirements of the Development Plans. The included wording was agreed between the appellant, the LBB, DBC and the MOL, except: in relation to condition nos. (6), (27) and (30); and, whether lists set out in conditions should be preceded by the phrase 'to comprise' rather than 'to include', in the interests of precision. The list of conditions was discussed at the Inquiry, together with other conditions suggested by interested parties. I have had regard to those views when compiling the conditions listed in Appendix 4 of this report, which departs from INQ/94 where I consider it necessary in order to accord with the tests of conditions set out in the Framework. Should the Secretary of State be minded to grant planning permission for the proposed development, then I recommend that the conditions listed in Appendix 4 of this report be attached to the permission granted.

⁶⁴⁵ CD/5.2 para 15.39.

⁶⁴⁶ CD/1.6 page 63.

- 15.8.48. As to the conditions set out on INQ/94, in addition to the normal commencement condition (3) and conditions to secure details of reserved matters (1, 2), conditions would be required to ensure that the works would be: carried out in accordance with the principles illustrated on the Parameters Plan and other approved plans; and, phased in a manner approved by the local planning authority (4⁶⁴⁷, 5). This would be necessary in the interests of certainty as well as to ensure that the development is generally in accordance with the scheme and mitigation which was the subject of the ES/SES. For the latter reason, conditions would be necessary to secure the implementation of an approved:
- Biodiversity Action Plan as well as a demolition/tree felling/construction timetable, in the interests of protecting and enhancing biodiversity (9, 11);
 - Construction Management Plan (8), to control the impact of those activities on the surrounding environment;
 - Programme of archaeological evaluation and mitigation (12), and programme of historic building evaluation and analysis (13), in the interests of safeguarding heritage assets;
 - Set of measures to control the impact of noise and vibration, in the interests of living conditions (24, 25, 29);
 - Landscaping scheme (26), in the interests of protecting and enhancing biodiversity as well as visual amenity;
 - Building layout/footprint (31), buildings/structure base levels, heights and site levels (14), scheme for the location and use of external storage areas (18), schedule of materials/finishes for buildings and other structures (23), and gantry crane design (32), all in the interests of visual amenity; and,
 - A number of conditions would be necessary in order to satisfactorily control the risk of pollution, in the interests of human health and the wider environment (10, 15, 19, 27, 28, 33).
- 15.8.49. A condition would be necessary to ensure, through the approval and implementation of a Method Statement, that the proposed development would not prejudice the use of safeguarded land for a possible future extension of Crossrail (7) [13.5.15-19]. Conditions would also be required to ensure that: the development provides and retains appropriate facilities for its future occupiers (16, 17, 20) and is served by adequate means of access, having regard to the amenities of nearby occupiers of residential properties; and, the capacity and quality of the River Cray is safeguarded (21, 22).
- 15.8.50. In my judgement, the use of the phrase 'to include', rather than 'to comprise', preceding a list of requirements set out in a condition is normal practice and would not result in the recommended conditions failing the test of precision set out in the Framework. [12.1.14.c)-d)]

⁶⁴⁷ Amended to reflect conditions discussion in accordance with INQ/97.

Pre-commencement conditions

- 15.8.51. 4 of the 32 conditions set out in INQ/94 are identified as pre-commencement conditions, nos. (6-9). Whilst the appellant has suggested that condition no. 6 is not necessary in a pre-commencement form, in closing it confirmed that it agrees to the imposition of any of the agreed conditions which are in the form of a pre-commencement condition in INQ/94 [11.6.1.b.].
- 15.8.52. Condition no. (6)- relates to: 1) the completion of the intermodal area (zone C) rail infrastructure (as shown on the Parameters Plan: drawing no. 30777-PL-101 rev I); and, 2) the provision of an operational connection between it and the North Kent main line rail network. I indicated earlier in my conclusions, there is no dispute that a connection could be physically made and it is likely that provision of those facilities as part of the initial stages of development could be secured by condition. However, the necessary terms of such a condition are a matter in dispute, as set out in INQ/94.
- 15.8.53. Firstly, I consider that without both elements, 1) and 2), the scheme could not operate as a rail freight interchange. Furthermore, consistent with the view expressed by the Inspector in 2007, if the proposal would, for any reason, not operate as a SRFI then it would not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build purely road-served warehouses on open land in the Green Belt around London would not come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal. [7.2.4] In addition, these circumstances are materially different from those in the case of the East Midlands SRFI, which did not involve development in the Green Belt [11.3.3-4].
- 15.8.54. Secondly, it follows that the provision of these elements of the scheme, 1) and 2), are a fundamental aspect of the particular development for which planning permission is sought in the cases before me and without them planning permission would have to be refused. Furthermore, the provision of the operational connection would be within the control of Network Rail, not the appellant, and there is no formal agreement in place between those 2 parties to ensure its provision. To my mind, in these circumstances, a pre-commencement condition would be necessary to gain reasonable surety in the public interest, before Green Belt land is lost, that the necessary operational rail facilities would be provided in a timely manner.
- 15.8.55. Thirdly, following the appellant's alternative approach, set out in INQ/94, would mean allowing the development to proceed without any such assurance to the point at which the proposed warehousing would be sufficiently complete to be occupied. At that point the associated Green Belt land would have been subject to substantial development, the appellant would be likely to have invested significant sums and if it is found then that the required rail facilities cannot be delivered, it may well be

difficult to enforce the provision requiring the warehouses not to be occupied, as observed by the LBB⁶⁴⁸.

- 15.8.56. I conclude that the approach recommended by DBC and the MOL in sections 6.1, 6.2 and 6.4 of condition no. (6) in INQ/94, which is supported by the LBB⁶⁴⁹ [12.1.14a)], is reasonable and necessary. It indicates, amongst other things, that (6.1) development shall not commence until the proposed operational connection to the North Kent main line has been progressed to the end of Network Rail's GRIP Stage 5 (completion of detailed design⁶⁵⁰) and (6.2) the development shall not be occupied or brought into use until the rail works have been progressed to the end of GRIP Stage 7 (transfer of asset responsibility from the contractor to the operators⁶⁵¹). In the event Network Rail determines that a new headshunt is required at Slade Green Train Depot to facilitate the provision of the operational connection, this would also be secured by this approach⁶⁵² [11.2.52, 13.5.1-5]. Whilst I have had regard to the appellant's estimate that it may take up to 2 years to progress from GRIP Stage 2 to 5⁶⁵³, in my judgement this does not indicate that section 6.1 would be unduly onerous, particularly given the outline nature of the planning applications and that time would be needed for reserved matters approval prior to commencement in any event. In light of the safeguards provided by sections 6.1 and 6.2, I consider that section 6.3, which would require the development to be removed in the event that the Rail Works are not completed within 3 years from the commencement of development would be unduly onerous and unnecessary. I have made minor modifications to 6.1/6.2 in the interests of clarity and enforceability.
- 15.8.57. Condition no. 6x⁶⁵⁴-for the reasons set out above in relation to condition no. (6) and the NPSNN requirements of SRFI, I consider that a condition seeking to ensure that the proposed rail connection would have the capacity to serve the site with 4 trains/day would also need to be in a pre-commencement form. Although I have referred to the need for such a condition earlier in my conclusions, given the appellant's refusal to accept that form, it was not possible to include it in Appendix 4.
- 15.8.58. Condition nos. (7), (8) and (9)-There is no dispute that pre-commencement conditions are required to ensure that: the proposal proceeds in a manner which would not prejudice the possible future extension of Crossrail, with reference to the hatched area shown on the Parameters Plan; a Construction Management Plan is in place to control the impact of those activities on the surrounding environment; and, biodiversity would be adequately protected from the impacts of development.

⁶⁴⁸ During the conditions session.

⁶⁴⁹ During the conditions session.

⁶⁵⁰ INQ/38 page 1.

⁶⁵¹ INQ/38 page 1.

⁶⁵² Discussed during the conditions session.

⁶⁵³ APP/PLAN/1 para 10.23.

⁶⁵⁴ INQ/100.

- 15.8.59. Turning to the other disputed conditions: Condition no. (27)-in the context of seeking to maintain or improve air quality, I consider that it is reasonable to require a Low Emissions Strategy for the development to include an assessment of the contribution likely to be made by rail locomotives. However, given the appellant's estimate⁶⁵⁵ that a low percentage of locomotives is currently capable of meeting the standards referred to by DBC/MOL (section 27.1.1), a matter not disputed by others, it would be unduly onerous to require compliance with those standards. Furthermore, given that road vehicles arriving on site would be likely to be from a range of different locations and operators, it would be unduly onerous to require the appellant to commit to all road vehicles meeting best practice towards the cited standards [12.1.14.b)]. Instead, in relation to road vehicles, it would be reasonable to require the appellant to identify measures that would be taken to secure the use of vehicles that comply with the cited standards.
- 15.8.60. Condition no. (30)-the NPSNN indicates that '*Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.*' Against this background, with reference to the DBC/MOL recommended wording for condition no. (30), I consider that it would be unreasonable to require that all the material stored on the site must either arrive or depart by rail. In that case the appellant's recommended wording would be reasonable and necessary [12.1.14.b)].
- 15.8.61. As to other INQ/94 conditions: Condition no. (29)-requires mitigation measures to be put in place to deal with any unforeseen impacts of noise from the development on local residents. I have recommended the form set out in INQ/94, rather than the alternative proposed by the appellant in INQ/98, as the latter does not secure a timetable for approval and implementation and so would be difficult to enforce.
- 15.8.62. Condition no. (32)- amendments have been made to the position set out in INQ/94, in order to clarify the gantry crane details to be provided in the interests of visual and residential amenity. The approach reflects the position suggested at the Inquiry by the LBB in INQ/100.

Planning obligations

- 15.8.63. In support of the appeals proposal the appellant relies on 2 agreements pursuant to section 106 of the *Town and Country Planning Act 1990*: the first, with the London Borough of Bexley (LBB s106)⁶⁵⁶; and, the second, with Dartford Borough Council and Kent County Council (DBC s106)⁶⁵⁷. Each is supported by a statement from the relevant local planning authority⁶⁵⁸ setting out the justification for included planning obligations

⁶⁵⁵ APP/PLAN/1 para 10.37.

⁶⁵⁶ INQ/115.

⁶⁵⁷ INQ/116.

⁶⁵⁸ INQ/48a and 48b.

upon which the parties to the Inquiry have had an opportunity to comment⁶⁵⁹. [12.1.10-11]

- 15.8.64. The general terms of the LBB s106 include provisions related to: noise mitigation; bus stop facilities; legible London signage; local employment; community liaison; a Marshes Management Regime, a Marshes Drainage Strategy and Marshes Management Implementation; a Transport Management Plan, Bexley signage strategy and a shuttle bus. The general terms of the DBC s106 include provisions related to: cycle/footpath improvements; junction 1A improvements, in keeping with the aims of DCS Policy CS 16; a Transport Management Plan; an HGV signage strategy; air quality monitoring and management; and, a shuttle bus facility. A number of these provisions include financial contributions and some have been referred to earlier in my conclusions.
- 15.8.65. With reference to the submissions made, principally by the appellant, DBC and the LBB⁶⁶⁰, I am satisfied that the planning obligations are: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development. They would accord with the provisions of Regulations 122 and 123 of the CIL Regs and the tests for planning obligations set out in the Framework. [12.1.12]

Conclusions

- 15.8.66. I conclude that the above measures would be necessary to mitigate a number of the impacts likely to be associated with the appeals proposal and they respectively meet the tests of planning conditions and obligations set out in the Framework as well as certain requirements of the Development Plans. However, for the avoidance of doubt, in my judgement, they would not reduce the harm that I have identified in relation to the main issues to any material extent.

Other matters

- 15.8.67. I give little weight to the appellant's contention that there has been very little local opposition and engagement, save for a handful of conscientious people, who appeared at the Inquiry [11.1.4, 11.1.7]. The number of people who appeared at the Inquiry does not provide a reliable indication of the level of objection. For example, in some cases the objectors who appeared were representing groups of others, such as the representative of SGCF. Furthermore, a significant number of objections were submitted in response to the planning applications and non-attendance at the Inquiry does not preclude them from being taken into account, as the appeal notifications made clear.
- 15.8.68. The appeals relate to cross-boundary planning applications. Whilst the largest part of the appeals site lies within the London Borough of Bexley, who resolved to approve the proposal, the LBB's decision does not alter the planning merits of the appeals scheme. Nor does it follow that associated

⁶⁵⁹ For example: INQ/67, 68, 69, 70, 92 and discussions during the planning obligations session.

⁶⁶⁰ INQ/48a, 48b and 68.

impacts beyond the boundary of that particular Council would be acceptable. I consider that limited weight is attributable to the LBB resolution of itself. [11.1.3.j., 11.1.5, 12.1.1-5, 12.1.15-16]

Conclusions

Harm

- 15.8.69. There is no dispute that, under the terms of the Development Plans and the Framework, the proposed development would constitute inappropriate development in the Green Belt, which the Framework confirms is, by definition, harmful to the Green Belt. Furthermore, the introduction of this massive development beyond the built limits of Slade Green would have a considerable adverse impact on the openness of the Green Belt and would undermine a number of the purposes served by Green Belt thereabouts. I consider that overall, the appeals proposal would cause substantial harm to the Green Belt, an outcome acknowledged as likely by the appellant. With reference to the Framework, which states that substantial weight should be given to any harm to the Green Belt, this identified harm weighs heavily against the scheme. [11.7.2, 15.1-2]
- 15.8.70. In addition, the proposed development would also be likely to have a significant adverse effect on the character and appearance of the local area, contrary in this respect to the aims of the LBB Development Plan. This attracts significant weight. [15.3]
- 15.8.71. Turning to the proposed transport links. Based on the evidence before me, I am not reasonably assured that an adequate rail link for the purposes of a SRFI, with reference to the NPSNN, would be provided. However, if it would, I consider that the level of freight service involved would be likely to have a material adverse effect on existing/future passenger services, contrary in this respect to the aims of the LBB Development Plan. [15.4] As regards the likely highways impact of the scheme, I acknowledge the lack of objections from the Highway Authorities. Nonetheless, I have found that the proposal would be likely to cause considerable harm to the convenience of highway users in Dartford, contrary in this respect to the aims of the DBC Development Plan and the Framework. [15.5] These adverse impacts each attract significant weight.
- 15.8.72. As to other harm, I am satisfied that, with mitigation secured by planning conditions and obligations, the scheme would be unlikely to result in material harm to living conditions in the local area, with particular reference to air quality, noise and vibration. [15.6] Nor would it cause material harm to the significance of any Designated Heritage Assets. In these respects the proposal would not conflict with the Development Plans and these matters do not weigh against the scheme. [15.7]
- 15.8.73. Nonetheless, the Framework confirms that the very special circumstances necessary to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Other considerations

- 15.8.74. In 2007 the Secretary of State granted planning permission for a SRFI scheme at Howbury Park. However, it does not represent a fallback position, as the permission has since lapsed and the appellant acknowledges that the circumstances of that case are not directly comparable to those in the current case [11.5.4, 15.1].
- 15.8.75. I am content that there is a need and market for SRFIs to serve London and the South East. Planning permission has been granted for a SRFI at Radlett, which would be expected to serve the northwest sector of London. In contrast, the appeals proposal would be situated in an arc to the south and east of London. Establishment of a SRFI at the appeals site, whilst inconsistent with the DBC Development Plan Spatial Strategy, would be in keeping with the aims of the LBB Development Plan and the Framework regarding the generation of socio-economic benefits, to which substantial weight would ordinarily be attributable [11.3.6-9, 15.8.30].
- 15.8.76. However, whilst the appeals proposal would exhibit a number of locational and physical characteristics that define SRFIs, I consider that it would be likely to fall seriously short of the transport link requirements. Even if connectivity by rail would be likely to be adequate for the purposes of a SRFI, a matter in relation to which I am not reasonably assured, I consider that the proposed facility would be unlikely to benefit from good road access, as required by the NPSNN. Consequently, the appeals scheme would not be well qualified to meet the identified need for SRFIs to serve London and the South East, which casts significant doubt over whether the full socio-economic benefits of a SRFI would be likely to be realised and also the extent of CO₂ net savings through modal shift. [11.7.1-2, 15.8.17]
- 15.8.77. Furthermore, even if the appeals scheme would be likely to meet the NPSNN requirements of a SRFI in full, the weight attributable to that matter would be limited, as London Gateway, a brownfield site, has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East, potentially with broadly comparable socio-economic benefits.[11.5.2, 15.8.26]
- 15.8.78. Under the circumstances, I give limited weight to the potential socio-economic benefits of the appeals scheme. [15.8.32]
- 15.8.79. Whilst the appeals proposal, including the off-site works secured by planning obligations, would be likely to result in a net biodiversity gain, there is no guarantee that the overall net gain would be substantial and so I afford it moderate weight [15.8.46]. Significant weight is not attributable to the other matters raised.

Planning balance

- 15.8.80. Overall, even if reasonable assurance could be provided that the rail link to the appeals site would be adequate to service the needs of a SRFI and that it would not have an adverse impact on passenger services (neither of which I consider to be the case), in my judgement the remaining harm, associated with other identified factors, would not be clearly outweighed by

the other considerations, not least due to the absence of good road access and the existence of a possible alternative.

- 15.8.81. I conclude that the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposals, would not be clearly outweighed by other considerations. In light of this conclusion, it follows that the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. In relation to the 2007 scheme, the absence at that time of any other site in the arc to the south and east of London that could meet part of London's need for SRFIs was judged to be a very special circumstance. The circumstances are now materially different, as I have indicated above. I conclude that the scheme would conflict with LP Policy 7.16, BCS Policies CS01 and CS17 as well as DCS Policies CS 1, CS 13 and DDPP Policy DP22, and the Framework as well as LPe Policy G2. Whilst the MOL has placed some reliance on BUDP Policies ENV4, with which the proposal would conflict⁶⁶¹, it appears to me that its requirements are more stringent than those set out in the Framework and so I give that conflict little weight.
- 15.8.82. I conclude on balance, that the appeals proposal would conflict with each of the relevant Development Plans taken as a whole and it would not amount to sustainable development under the terms of the Framework.

15.9. **Conclusion**

- 15.9.1. For the reasons given above, I conclude that the appeals should be dismissed.

16. INSPECTOR'S RECOMMENDATIONS

- 16.1. I recommend that the appeals be dismissed.
- 16.2. If, notwithstanding the above recommendation, the Secretary of State should be minded to grant planning permission for the proposed development, then I recommend that the conditions listed in Appendix 4 of this report be attached to the permission granted.

I Jenkins

INSPECTOR

⁶⁶¹ GLA/NR/01 page 19 para 77.

APPENDIX 1-APPEARANCES

FOR THE APPELLANT:

Mr R Warren
QC

He called	
Mr N Findlay	WSP Limited
BSc CEng MICE MIHT MCILT	
Dr B Tuckett-Jones	WSP Limited
BSc PhD CEnv MIAQM	
Mr C Scott	Barry Chinn Associates Limited
BA DipLA CMLI	
Mr N Gallop	Intermodality Limited
BSc(Hons)	
Mr T Goodwin	Ecology Solutions Limited
BSc (Hons) MSc MIEEnvSc MCIEEM MIALE	
Mr H Scanlon	Litchfields
BA(Hons) MPhil MRTPI	

FOR THE MAYOR OF LONDON:

Mr D Kolinsky
QC

He called	
Mr R Goldney	Rail Freight Consulting
BSc(Hons) MBA FIMechE FCILT FICE	
Mr I Birch	Cebr
MA(Cantab) MA(Leeds)	
Mr G Hobbs	Transport for London
BA(Hons) (Econ) MSc (Econ)	
Mr N Ray	Greater London Authority
BA(Hons) MA	

FOR DARTFORD BOROUGH COUNCIL:

Mr T Mould
QC
assisted by
Ms H Gibbs
Of Counsel

He called	
Mr P Caneparo	Caneparo Associates Limited
BSc MSc MCILT MCIHT	
Dr R Maggs	Bureau Veritas UK
BSc(Hons) PhD DIC	
Mr S Bell	Dartford Borough Council
BA(Hons) DiP TP	

FOR THE LONDON BOROUGH OF BEXLEY:

Mr J Garbett
Solicitor
Mr M Kiely
BTP MBA MRTPI

Womble Bond Dickinson (UK) LLP
Mike Kiely Planning + Regeneration

INTERESTED PERSONS:

Mrs J White Member of SGCF	on behalf of Mrs C Egan, local resident
Mr I Lindon Chairman	LA21 Traffic/Transport Forum
Mr D Reynolds Member LA21	LA21 Traffic/Transport Forum
Mr R Hillman Trustee SGCF	Slade Green Community Forum
Councillor J Kite Leader of DBC and member of KCC	Dartford Borough Council
Councillor S Borella Slade Green & Northend Ward	The London Borough of Bexley
Mr C Rose BSc (Hons) MSc Vice-chair of BNEF	Bexley Natural Environment Forum

PLANNING CONDITIONS AND OBLIGATIONS SESSION only:

Miss M Thomson on behalf of RDL	Eversheds LLP
Mr M Able on behalf of the LBB	LBB
Mrs J Burgess on behalf of Highways England	HE
Mr P Harwood on behalf of Highways England	HE
Mr D Joyner on behalf of KCC	KCC

APPENDIX 2-DOCUMENTS**PRE-INQUIRY DOCUMENTS**

CD/No.	CORE DOCUMENTS (CD)
	APPLICATION DOCUMENTS
1.1	DBC Officer's Report, 10 November 2016
1.2	DBC Officer's Report, 20 April 2017
1.3	Update to DBC Officers Report, 20 April 2017
1.4	DBC Committee Resolution, 20 April 2017
1.5	DBC Decision Notice, 21 April 2017
1.6	LBB Officer's Report, 16 February 2017
1.7	LBB Addendum to Officer's Report, 16 February 2017
1.8	LBB Committee Resolution
1.9	LBB Decision Notice, 20 July 2017
1.10	MOL's Initial Representation Letter, 6 June 2016
1.11	GLA Stage 1 Referral Report, 6 June 2016
1.12	GLA Stage 2 Referral Report, 17 July 2017
1.13	GLA Stage 2 MOL's Decision Letter, 17 July 2017
1.14	Application Form and CIL Form, November 2015
1.15	Covering Letter and Document List, November 2015
1.16	Ownership and Agricultural Holdings Certificates and Notices, November 2015
1.17	Application Plans (See Planning application drawings table below)
1.18	Planning Summary, November 2015
1.19	Planning Statement, November 2015
1.20	Design and Access Statement, November 2015
1.21	Sustainability Statement, November 2015
1.22	Statement of Community Involvement, November 2015
1.23	Utilities Assessment Report, November 2015
1.24	Draft S106 Heads of Terms, November 2015
1.25	Rail Report, November 2015
1.26	Alternative Site Assessment, November 2015
1.27	Environmental Statement, November 2015, including:- Volume 1: Non-Technical Summary Volume 2: Main Technical Assessments Volume 3: Appendices to the Main Technical Assessments
1.28	Response to Consultee Comments Report, February 2016

1.29	Response to Consultee Comments Report (Update), April 2016
1.30	Supplementary Environmental Statement, April 2016 Updated Non-Technical Summary, April 2016
1.31	Response to Consultee Comments Report (Update), June 2016
1.32	Technical Notes (July 2016 and October 2016) relating to Air Quality Following Stage 1 Response
1.33	Marshes Management Plan, February 2017
1.34	Transport Management Plan, 2018
	NATIONAL POLICY
2.1	National Planning Policy Framework, March 2012
2.2	National Policy Statement for National Networks, December 2014
2.3	Draft National Planning Policy Framework for Public Consultation, March 2018
	LOCAL POLICY
3.1	London Plan, March 2016
3.2	Draft London Plan, December 2017
3.3	Mayor's Transport Strategy 2018
3.4	Green Infrastructure and Open Environments: The All London Green Grid Supplementary Planning Guidance 2012
3.5	Sustainable Design and Construction Supplementary Planning Guidance, April 2014
3.6	Character and Context Supplementary Planning Guidance, June 2014
3.7	Land for Industry and Transport Supplementary Planning Guidance, September 2012
3.8	Mayor's Draft London Environment Strategy, August 2017
3.9	Mayor's Economic Development Strategy for London, May 2010
3.10	Mayor's Draft Economic Development Strategy, December 2017
3.11	A City for all Londoners, October 2016
3.12	Bexley Core Strategy, 2012
3.13	Bexley Council Saved Unitary Development Plan, 2007
3.14	Sustainable Design and Construction Guide SPG, LBB, October 2007
3.15	Bexley Growth Strategy, December 2017
3.16	Planning Obligations Supplementary Planning Guidance, LBB, July 2008
3.17	DBC Core Strategy 2011
3.18	DBC Development Policies Plan 2017
	OTHER STATUTORY BODIES
4.1	Rail Freight Strategy: Moving Britain Ahead, DfT: September 2016

4.2	Transport Investment Strategy: Moving Britain Ahead, DfT: July 2017
4.3	Delivering A Sustainable Transport System: The Logistics Perspective, DfT: December 2008
4.4	The Logistics Growth Review – Connecting People with Goods, DfT, 2011
4.5	Rail Freight Strategy, TfL, August 2007
4.6	London Freight Plan – Sustainable Freight Distribution: A Plan for London, TfL, November 2007
4.7	Network Rail Value and Importance of Rail Freight, 2010
4.8	Network Rail Value and Importance of Rail Freight Summary Update, April 2013
4.9	Network Rail Freight Market Study, 2013
4.10	Rail Delivery Group Keeping the Lights on and the Traffic Moving: Sustaining the benefits of rail freight for the UK economy, 2014
4.11	Network Rail Freight Network Study, April 2017
4.12	Network Rail South East Route: Draft Kent Area Route Study, March 2017
4.13	Building our Industrial Strategy, Jan 2017
4.14	Kent County Council Transport Plan 4: Delivering Growth without Gridlock, 2016-2031
4.15	Kent County Council Freight Action Plan for Kent, 2017
4.16	The strategic road network and the delivery of sustainable development (DfT Circular 02/13)
	OTHER MATERIAL
5.1	Previous Howbury Park Scheme Parameters Plan, Reference: 2144/PL/49D dated 30 June 2004, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.2	Inspector’s Report for previous Howbury Park SRFI (27 September 2007), Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.3	Secretary of State’s Decision Letter for the previous Howbury Park SRFI Appeal (2007), Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.4	SIFE Secretary of State’s Decision Letter and Inspector’s Report, Appeal Reference APP/J0350/A/12/2171967
5.5	Radlett Decision Letter and Inspector’s Report, Appeal reference APP/B1930/A/09/2109433
5.6	East Midlands Gateway Rail Freight Interchange Secretary of State’s Decision Letter and Examining Authority’s Report, DCO Reference TWA

	8/1/15
5.7	Kent International Gateway Secretary of State's Decision Letter and Inspector's Report, Appeal Reference: APP/U2235/A/09/2096565
5.8	Current Draft S106 Agreements
5.9	Draft Planning Conditions
5.10	Previous Howbury Park S106: Highway Obligations, dated 1 June 2007, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.11	Previous Howbury Park S106: Non Highway Obligations, dated 1 June 2007, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
	STATEMENTS OF COMMON GROUND (SoCG)
6.1	SoCG - LBB
6.2	SoCG - DBC
6.3	SoCG - GLA
6.4	SoCG - Highways England
	STATEMENTS OF CASE (SOC)
7.1	SOC - GLA
7.2	SOC - LBB
7.3	SOC - DBC
7.4	SOC - Roxhill Developments Ltd
	AIR QUALITY
8.1	Air Quality (England) Regulations 2000
8.2	Air Quality (England) (Amendment) Regulations 2002
8.3	2017 Air Quality Annual Status Report (ASR)
8.4	Air Quality Action Plan for the Borough of Dartford (Sept 02)
8.5	Local Air Quality Management - Action Plan Dartford Town and Approach Roads Air Quality Management Area, - A226 London Road Air Quality Management Area, and - Bean Interchange Air Quality Management Area (2009)
8.6	Local Air Quality Management: Technical Guidance (TG16) - February 2018
8.7	IAQM Guidance: Land-Use Planning & Development Control: Planning For Air Quality (January 2017)
8.8	Air Quality Standards Regulations 2010
8.9	Air Quality Standards (Amendment) Regulations 2016
8.10	Air Quality Annual Status Report for Bexley for 2016 (published 2017)

8.11	UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations. An Overview
8.12	Air Quality Plan for tackling roadside nitrogen dioxide concentrations in Greater London Urban Area

PLANNING APPLICATION DRAWINGS

Drawing no.	Title
30777-PL100 rev E	Location plan, November 2015.
30777-PL-101 rev I	Parameters plan, current revision February 2017.
30777-PL-102 rev D	Illustrative masterplan, November 2015.
30777-PL103	Colour illustrative masterplan, November 2015.
30777-PL104 rev B	Existing block plan, November 2015.
30777-PL-105 rev A	Development phasing, November 2015.
30777-PL-106 rev A	Typical colour elevations (unit 2), November 2015.
30777-PL-107 rev A	Typical plans and section (unit 2), November 2015.
2039-RP-001 rev D	Site access road plan and section (sheet 1), November 2015.
2039-RP-002 rev C	Site access road plan and section (sheet 2), November 2015.
2039-RP-003 rev D	Viridor access road plan and section, November 2015.
2039-RP-004 rev B	Road 3 plan and section, November 2015.
2039-RP-005 rev B	Road 4 Plan and section (sheet 1), November 2015.
2039-RP-006 rev B	Road 4 Plan and section (sheet 2), November 2015.
2039-RP-007 rev B	Road 5 plan and section, November 2015.
2039-RP-008 rev B	Site access off-site roundabout improvements, November 2015.
2039-STR-001 rev B	Howbury viaduct general arrangement, current revision submitted February 2016.
D5.5	Indicative rail layout, November 2015.
D5.5S	Indicative section through interchange, November 2015.

PROOFS OF EVIDENCE (pre-Inquiry submissions)

Ref no.	Content
	APPELLANT
APP/TRAN/1	Proof of evidence Mr N Findlay
APP/TRAN/2	Appendices Mr N Findlay
APP/TRAN/3	Summary Mr N Findlay
APP/TRAN/4	Joint rebuttal Mr N Findlay

APP/AQ/1	Proof of evidence Dr B Tuckett-Jones
APP/AQ/2	Appendices Dr B Tuckett-Jones
APP/AQ/3	Summary Dr B Tuckett-Jones
APP/TRAN/4	Joint rebuttal Dr B Tuckett-Jones
APP/LANVIS/1	Proof of evidence Mr C Scott
APP/LANVIS/2	Appendices Mr C Scott
APP/LANVIS/3	Summary Mr C Scott
APP/RAIL/1	Proof of evidence Mr N Gallop
APP/RAIL/2	Appendices Mr N Gallop
APP/RAIL/3	Summary Mr N Gallop
APP/RAIL/4	Rebuttal Mr N Gallop
APP/BIO/1	Proof of evidence Mr T Goodwin
APP/BIO/2	Appendices Mr T Goodwin
APP/BIO/3	Summary Mr T Goodwin
APP/PLAN/1	Proof of evidence Mr H Scanlon
APP/PLAN/2	Appendices Mr H Scanlon
APP/PLAN/3	Summary Mr H Scanlon
APP/PLAN/4	Rebuttal Mr H Scanlon
	MOL
GLA/RG/01	Proof of evidence Mr R Goldney
GLA/RG/02	Appendices Mr R Goldney
GLA/RG/03	Summary Mr R Goldney
GLA/RG/04	Rebuttal Mr R Goldney
GLA/IB/01	Proof of evidence Mr I Birch
GLA/IB/02	Appendices Mr I Birch
GLA/IB/03	Summary Mr I Birch
GLA/GH/01	Proof of evidence Mr G Hobbs
GLA/GH/02	Appendices Mr G Hobbs
GLA/GH/03	Summary Mr G Hobbs
GLA/NR/01	Proof of evidence Mr N Ray
GLA/NR/02	Summary Mr N Ray
	DBC
DBC/W2/1	Proof of evidence Mr P Caneparo
DBC/W2/2	Appendices Mr P Caneparo
DBC/W2/3	Summary Mr P Caneparo
DBC/W3/1	Proof of evidence Dr R Maggs
DBC/W3/2	Appendices Dr R Maggs

DBC/W3/3	Summary Dr R Maggs
DBC/W1/1	Proof of evidence Mr S Bell
DBC/W1/2	Summary Mr S Bell
DBC/W1/3	Appendices Mr S Bell
	SGCF
SGCF/W1/1	Summary Mr R Hillman (amended INQ/42)
SGCF/W1/2	Proof of evidence Mr R Hillman (amended INQ/42)
SGCF/W1/3	Appendix 1 Mr R Hillman
SGCF/W1/4	Appendix 2 Mr R Hillman (amended INQ/47)
SGCF/W1/5	Rebuttal Mr R Hillman (amended INQ/42)
SGCF/W1/6	Rebuttal appendix 1 Mr R Hillman
SGCF/W1/7	Rebuttal appendix 2 Mr R Hillman
SGCF/W1/8	Rebuttal appendix 3 Mr R Hillman
	LA21
-	Proof of evidence Mr I Lindon (letter dated 30 November 2017)
-	Proof of evidence Mr D Reynolds, including appendices (letter dated 30 November 2017)

INQUIRY DOCUMENTS (INQ)

Doc. no.	Party	Description
INQ/1	DBC/LBB	Letters from the Council's notifying interested parties of the appeals.
INQ/2	-	Correspondence from interested parties in response to the appeal notifications.
INQ/3	MOL	Network Rail-Roxhill Developments Howbury Park SRFI GRIP2 Report Part 2: Timetable Analysis, November 2016.
INQ/4	RDL	RDL Opening statement.
INQ/5	DBC	DBC Opening statement.
INQ/6	MOL	MOL Opening statement.
INQ/7	LBB	LBB Opening statement.
INQ/8	MOL	Euro Tunnel-Fixed Link Annual Statement-2018 working timetable.
INQ/9	MOL	2018 HS1 Network Statement, March 2017.
INQ/10	MOL	Railfreight Consulting-Train arrival and departure schematic, June 2018 (GLA/RG/05).
INQ/11	MOL	Clarification points arising from cross-examination (GLA/RG/06).
INQ/12	SGCF	SGCF opening statement.
INQ/13	RDL	DIRFT layout-aerial photo.
INQ/14	MOL	Clarification points arising from cross-examination (GLA/RG/07).
INQ/15	MOL	Revised note on W10 gauge cleared routes across North London.
INQ/16	MOL	MDS Transmodal-Rail Freight Forecasts to 2023/4, 2033/4 and 2043/4, April 2013.

INQ/17	MOL	Emails from Network Rail (SB9).
INQ/18	SGCF	Mrs White-Statement on behalf of Mrs Egan.
INQ/19	MOL	Dartford lines, down signal (chainage 15.18) and wagon details.
INQ/20	MOL	Briefing note: Process for producing the published Mayor's Transport Strategy (MTS).
INQ/21	DBC	Road links plan (PC14).
INQ/22	BNEF	Mr Rose-Proof of evidence, appendices and summary.
INQ/23	LA21	Mr Reynolds-updated statement, May 2018.
INQ/24	MOL	Time intervals available for crossing Crayford Creek Junction (GLA/RG/08).
INQ/25	RDL	Emails from Network Rail.
INQ/26	RDL	Draft Transport Management Plan, June 2018.
INQ/27	SGCF	Flyer distribution and leaflet delivery checking report extracts.
INQ/28	SGCF	TfL-Bakerloo Line Extension: options assessment report, December 2015 and Bakerloo Line Extension: Background to 2017 consultation, February 2017-extracts.
INQ/29	CE	Mrs Egan-statement.
INQ/30	LA21	Mr Reynolds-updated Appendix 1A.
INQ/31	LA21	Southeastern Railway-Train Times 5.
INQ/32	LA21	Mr Lindon-objection letter, 1 May 2016.
INQ/33	RDL	Britain Runs on Rail-In partnership for Britain's Prosperity, South East London and Kent.
INQ/34	DBC	Caneparo Associates-Craymill Rail Bridge/Site access-note.
INQ/35	DBC	Highways Authorities-areas of responsibility.
INQ/36	SGCF	Mr Hillman-updated summary proof.
INQ/37	DBC/RDL	Summary table of key verification parameters across air quality monitoring work presented during Inquiry.
INQ/38	RDL/MOL	Governance of Railway Investment Projects (GRIP)-Summary Note.
INQ/39	MOL/RDL	London Gateway: Agreed statement between Roxhill Developments Limited and Greater London Authority.
INQ/40	RDL	Technical Note-Slade Green Community Forum Monitoring Locations.
INQ/41	RDL	Mr Gallop-Rebuttal evidence, Rail (APP/RAIL/5).
INQ/42	SGCF	Mr Hillman-amended: (42a) proof of evidence; (42b) rebuttal proof of evidence; and, (42c) summary (withdrawal of a number of sections related to air quality).
INQ/43	CK	Councillor Kite-points to be covered.
INQ/44	RDL	S106 plan-showing redline and green line boundaries.
INQ/45	DBC	Accompanied site visit/tour-itinerary.
INQ/46	DBC	Fastrack plan and overview.
INQ/47	SGCF	Mr Hillman-amended: proof of evidence Appendix 2.
INQ/48a	LBB	Planning obligations-Statement of Compliance (email 24 July 2018)
INQ/48b	DBC	Planning obligations-Statement of Compliance (email 24 July 2018)
INQ/49	RDL	Quarry permissions in the vicinity of the appeals site (email 24 July 2018)
INQ/50	RDL	APP/AQ/5-Information supporting judgement of overall significance of effects (email 24 July 2018)
INQ/51	RDL	APP/TRAN/5-Response to Inspector's transport questions raised during Neil Findlay's evidence (email 24 July 2018)
INQ/52	RDL	Transport Management Plan Position (email 24 July 2018)
INQ/53	RDL	S106 Agreement Position Statement (email 24 July 2018)

INQ/54	RDL	APP/RAIL/6-Rail Note (email 24 July 2018)
INQ/55	RDL	Response to Inspector's noise questions raised during Neil Findlay's evidence (email 24 July 2018)
INQ/56	RDL	Response to Inspector's landscape and visual questions raised during Craig Scott's evidence (email 24 July 2018)
INQ/57	RDL	Confirmation that APP/RAIL/6 supersedes APP/RAIL/5, which is no longer relied upon (email 9 August 2018)
INQ/58	SGCF	S106/Conditions (email 10 August 2018)
INQ/59	DR	Response to APP/RAIL/6 (letter 11 August 2018)
INQ/60	DR	Planning conditions (letter 15 August 2018)
INQ/61	DBC	WSP response to Inspector's questions-comments (email 16 August 2018)
INQ/62	SGCF	Conditions (email 20 August 2018)
INQ/63	MOL	Clarification note GLA/RG/09-Response to APP/RAIL/6 (email 20 August 2018)
INQ/64	SGCF	S106/conditions (email 21 August 2018 10:00)
INQ/65	SGCF	S106/conditions (email 21 August 2018 11:02)
INQ/66	SGCF	S106/conditions (email 21 August 2018 11:43)
INQ/67	DBC	Dartford Borough Council comment on the appellant's S106 agreement position statement dated 24 July and DBC comments on the appellant's TMP position statement submitted 24 July 2018 (email 21 August 2018)
INQ/68	RDL	S106 agreement-appellant's response to statements of compliance (email 21 August 2018)
INQ/69	AGT	S106/conditions-Lambert Smith Hampton letter of 21 August 2018 (email 21 August 2018)
INQ/70	HE	S106/conditions-Representation from Highways England (email 21 August 2018)
INQ/71	MOL	GLA/NR/03-Planning evidence clarification note-National Planning Policy Framework (email 4 September 2018)
INQ/72	RDL	APP/RAIL/7-Rail Note (email 4 September 2018)
INQ/73	DBC	National Planning Policy Framework (email 4 September 2018)
INQ/74	DR	Clarification requested regarding the train timetable referred to in APP/TRAIN/6 and 7 (email 9 September 2018)
INQ/75	RDL	Confirmation regarding the train timetable, including copies, referred to in APP/TRAIN/6 and 7 (email 10 September 2018)
INQ/76	RDL	Transport Management Plan-Rev 7, dated 10 September 2018, and tracked changes Rev 6 to 7 (email 11 September 2018)
INQ/77	RDL	ARCADY Junctions 9 User Guide, WebTAG Unit M3.1 Highway Assignment Modelling and Table 2-9 Howbury Local Counts % diff/GEH stats (email 12 September 2018)
INQ/78	DR	Supplement to INQ/59 Rail Clarification
INQ/79	DR	South Eastern Rail Franchise Public Consultation, March 2017-extract
INQ/80	DR	Lewisham junction plan
INQ/81	Inspector	TRL Software-measuring queues-is it all a waste of time?
INQ/82	LBB	Slade Green Relief Road-position statement (email 5 July 2018)
INQ/83	RDL	Definition of ecological succession
INQ/84	RDL	Response to Inspector's Transport questions raised during Neil Findlay's evidence 19/9/18
INQ/85	RDL	Appellant's proposed amendment to condition 29
INQ/86	RDL	Draft S106, inc LBB
INQ/87	RDL	Draft s106, inc DBC

INQ/88	RDL	Appellant's response to the s106 agreements received on 20 September 2018
INQ/89	DBC	Suggested Travel Plan condition
INQ/90	DBC	WSP response to Inspector's transport questions raised during Neil Findlay's evidence 19/9/18-comments
INQ/91	DBC	DBC section 106 24 September 2018 draft with outstanding points highlighted.
INQ/92	DBC	DBC comments on s106 position 24 September 2018.
INQ/93	DBC	DBC comments on the appellant's TMP position statement submitted 24 July 2018.
INQ/94	LBB	Agreed planning conditions (amended), 21 September 2018.
INQ/95	RDL	Response to Inspector's questions (Hugh Scanlon-20 September 2018).
INQ/96	RDL	Response to Caneparo Associates reply to APP/TRAN/6
INQ/97	RDL	Suggested wording for condition 4
INQ/98	RDL	WSP Briefing note-suggested wording of condition 29
INQ/99	RDL	Email from Network Rail to RDL, 26 September 2018
INQ/100	LBB	LBB suggested wording-conditions 6, 21 and 32
INQ/101	LBB	Noise affecting Leycroft Gardens (email 26 September 2018)
INQ/102	RDL	Transport Management Plan, rev 8, 10 September 2018
INQ/103	RDL	WSP Howbury additional information-Heath Lane (email 26 September 2018)
INQ/104	RDL	Steering Group examples-s106s (email 25 September 2018)
INQ/105	RDL	S106 agreement with DBC-final wording
INQ/106	RDL	Technical note on HGV parking arrangements for intermodal terminal, 19 August 2016
INQ/107	DR	Closing statement
INQ/108	BNEF	Closing statement
INQ/109	LBB	Closing statement
INQ/110	MOL	Closing statement
INQ/111	DBC	Closing statement
INQ/112	RDL	S106 agreement with LBB-final wording
INQ/113	SGCF	Closing statement
INQ/114	RDL	Closing statement
INQ/115	LBB	Formally completed agreement pursuant to section 106 (inc LBB).
INQ/116	RDL	Formally completed agreement pursuant to section 106 (inc DBC/KCC).

INSPECTOR'S INQUIRY NOTES

Document title	Dated	Description
Inquiry Note 1	9 July 2018	Adjournment actions.
Inquiry Note 2	9 July 2018	Mr Findlay's evidence-matters arising from cross-examination and Inspector's questions.

APPENDIX 3-ABBREVIATIONS

AGT	A G Thames Holdings Limited
ANPR	Automatic number plate recognition
AOD	Above ordnance datum
AQMA	Air Quality Management Area
ASA	Alternative sites assessment
ASAM	Alternative Site Access Roundabout Junction Model
BAP	Biodiversity Action Plan
BCS	Bexley Core Strategy, February 2012
BGS	Bexley Growth Strategy (CD/3.15)
BIFT	Birmingham Intermodal Freight Terminal
BNEF	Bexley Natural Environment Forum
BROA	Bexley Riverside Opportunity Area
BUDP	Bexley Unitary Development Plan, 2007
BxBI	Site of Borough Importance for Nature Conservation-Grade I
BxBII	Site of Borough Importance for Nature Conservation-Grade II
CB	Councillor S Borella
CCJ	Crayford Creek Junction
CE	Mrs C Egan
CIL Regs	Community Infrastructure Levy Regulations 2010
CK	Councillor J Kite
CRB	Craymill Rail Bridge
DBC	Dartford Borough Council
DCCRT	Dartford and Crayford Creek Restoration Trust
DBC s106	INQ/116
DCS	Dartford Core Strategy, 2011
DDPP	Dartford Development Policies Plan, July 2017
DG	Dr R Gray
DoS	Degree of saturation
DR	Mr Dave Reynolds
EA	Environment Agency
ELHAM	East London Highway Assignment Model
Emerging London Plan	The London Plan-Spatial Development Strategy for Greater London-Draft for Public Consultation, December 2017.
ES	Environmental Statement (November 2015) (CD/1.27)
EU	European Union

FMP	Freight Management Plan
the Framework	The revised National Planning Policy Framework, 2018
FTA	Freight Transport Association
GBR	GB Railfreight
GRIP	Governance of Railway Investment Projects
HAMG	TfL's <i>Sub-regional Highway Assignment Model Guidance on Model Use (INQ/51)</i>
(4) HAs	4 Highway Authorities: Highways England, Transport for London, Kent County Council and the London Borough of Bexley.
HE	Highways England
HGV	Heavy goods vehicle
IRR	Intermodality Rail Report, November 2015 (CD/1.25)
IWA	Inland Waterways Association
KCC	Kent County Council
LA21	LA21-Traffic/Transport Forum
LBB	London Borough of Bexley
LBB s106	INQ/115
LLDP	London loop long distance path
LP	The London Plan-The Spatial Development Strategy for London consolidated with alterations since 2011, March 2016.
LPe	The London Plan-The Spatial Development Strategy for Greater London-Draft for Consultation, December 2017
LTC	Lower Thames Crossing
LTP4	KCC Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031)
LWT	London Wildlife Trust
MMP	Marshes Management Plan
MOL	Mayor of London
MTL	Maritime Transport Limited
MTS	The Mayor's Transport Strategy, 2018
NE	Natural England
NPSNN	National Policy Statement for National Networks, 2014
NR	Network Rail
NSIP	Nationally significant infrastructure project
ORCA	Oak Road Conservation Area
PCU	Passenger car unit
PLA	Port of London Authority
RDL	Roxhill Developments Limited
RFC	Ratio of Flow to Capacity

RFG	The Rail Freight Group
RSPB	The Royal Society for the Protection of Birds
RXHAM	River Crossing Highway Assignment Model
SBI	Site of Borough Importance for nature conservation
SES	Supplementary Environmental Statement (April 2016) (CD/1.30)
SET	Southeastern Trains
SGCF	Slade Green Community Forum
SINC	Site of Importance for Nature Conservation
SMINC	Site of Metropolitan Importance (SMI) for Nature Conservation
SRFI	Strategic Rail Freight Interchange
SRN	Strategic road network
TA	Transport Assessment
TfL	Transport for London
TMP	Transport Management Plan
XX	Cross-examination
XC	Evidence in chief
VWML	Viridor Waste Management Limited
2007 Permission	CD/5.3
2011 EIA Regulations	The Town and Country Planning (Environmental Impact Assessment) Regulations 2011
2017 EIA Regulations	The Town and Country Planning (Environmental Impact Assessment) Regulations 2017
2031BCDC	2031 base case plus development case (ARCADY modelling)

APPENDIX 4-CONDITIONS

[The reasons for these conditions, where not explained in the text for the report, can be found in INQ/94.]

DEFINITIONS

In these conditions, the following expressions shall have the following meaning:

Local planning authority: As between the London Borough of Bexley and Dartford Borough Council means the Local Planning Authority within whose administrative area the part of the site to which the condition relates is located and where a condition relates to the whole development or any part of the development which straddles the boundary between the two local authorities, then the expression shall be taken to mean both authorities.

Environmental Statement: The Environmental Statement (November 2015) and Supplementary Environmental Statement (April 2016).

CONDITIONS

1. RESERVED MATTERS

- 1.1. Approval of the details of the proposed appearance, landscaping, layout and scale of each phase of the development (hereinafter called the reserved matters) shall be obtained in writing from the Local Planning Authority before any development is commenced for that phase.

2. APPROVAL OF RESERVED MATTERS

- 2.1. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this outline permission.

3. COMMENCEMENT OF DEVELOPMENT

- 3.1. The development shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. COMPLIANCE WITH APPROVED PLANS

- 4.1. The development shall be carried out in accordance with the principles illustrated on the Parameters Plan (dwg. no. 30777-PL-101 Rev I) and the Development Phasing Plan (dwg. no. 30777-PL-105 Rev A) and in strict accordance with the other approved plans, the subsequently approved reserved matters and the other matters approved under the conditions set out below. The other approved plans comprise the following:

- a) Location Plan (Ref: 30777-PL-100 Rev E);
- b) Existing Block Plan (Ref: 30777-PL-104 Rev B);
- c) Site Access Road Plan and Section (Sheet 1 of 2) (Ref: 2039-RP-001 Rev D);

- d) Site Access Road Plan and Section (Sheet 2 of 2) (Ref: 2039-RP-002 Rev C);
- e) Viridor Access Road Plan and Section (Ref: 2039-RP-003 Rev D);
- f) Road 3 Plan and Section (Ref: 2039-RP-004 Rev B);
- g) Road 4 Plan and Section (Sheet 1 of 2) (Ref: 2039-RP-005 Rev B);
- h) Road 4 Plan and Section (Sheet 2 of 2) (Ref: 2039-RP-006 Rev B);
- i) Road 5 Plan and Section (Ref: 2039-RP-007 Rev B);
- j) Site Access Off-Site Roundabout Improvements (Ref: 2039-RP-008 Rev B); and,
- k) Howbury Viaduct General Arrangement (Ref: 2039-STR-001 Rev B).

5. DETAILS OF PHASING

- 5.1. Notwithstanding the Phasing Plan submitted with the applications, prior to the submission of any of the reserved matters detailed in condition 1, a Phasing Plan showing the phasing of development shall be submitted to and approved in writing by the Local Planning Authority. Such details to include the rationale and functioning of the phases. The development shall be implemented in accordance with the approved Phasing Plan.

6. DELIVERING THE 'RAIL WORKS'

- 6.1. The development shall not commence until the Intermodal Area (Zone C) rail infrastructure (as shown on the Parameters Plan: dwg no. 30777-PL-101 Rev I) and its operational connection to the North Kent main line rail network (the Rail Works) have been progressed to the end of GRIP Stage 5-Detailed Design (or equivalent) and the developer has informed the Local Planning Authority that it has satisfied the requirements to reach the end of GRIP Stage 5.
- 6.2. No part of the development shall be occupied or brought into use until the Rail Works have been progressed to the end of GRIP Stage 7-Scheme Handback (or equivalent), are ready to be brought into use and the developer has informed the local planning authority that it has satisfied the requirements to reach the end of GRIP Stage 7.
- 6.3. The Rail Works and any other railway line or siding provided within the site further to this permission shall not be removed, realigned or altered in any way and shall be maintained so that they remain available for use by rail traffic at all times.

7. SAFEGUARDING LAND FOR CROSSRAIL WORKS

- 7.1. The development shall not commence until a Method Statement for the treatment of the land on the boundary with the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I) has been submitted to and approved in writing by the Local Planning Authority. The Statement to include:

- 7.1.1. Arrangements to ensure the planned future construction of the extension of the Crossrail/Elizabeth Line extension eastward from Abbey Wood is not impeded by the implementation of this planning permission; and,
- 7.1.2. Details of boundary and perimeter treatments for the land on the boundary with the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I), including security measures, retaining structures and landscaping.
- 7.2. The development shall be carried out in accordance with the approved Method Statement unless otherwise agreed in writing by the Local Planning Authority.
- 7.3. Development shall not be carried out in the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I).

8. CONSTRUCTION MANAGEMENT PLAN

- 8.1. The development shall not commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan to include:
 - 8.1.1. Measures to optimise the use of river transport during construction;
 - 8.1.2. Details of vehicular and pedestrian access to the site for construction purposes;
 - 8.1.3. A scheme for the routeing, management and signage of construction traffic;
 - 8.1.4. Days/hours of work and deliveries of construction materials, to be consistent with permitted hours imposed by the borough under section 60 of the *Control of Pollution Act 1974*, which require all noisy works (i.e. those audible beyond the site boundary) to be undertaken between 08:00 and 18:00 hours Monday to Friday and 08:00 to 13:00 hours on Saturdays with no noisy works permitted on Sundays or Public Holidays;
 - 8.1.5. Demolition and construction methods and techniques, including the avoidance of burning on site;
 - 8.1.6. Means of minimising noise and vibration (including any piling), and compliance with BS 5228;
 - 8.1.7. Means of minimising dust and similar emissions, in accordance with Air Quality: Best Practice Guidance - The Control of Dust and Emissions During Construction and Demolition Supplementary Planning Guidance (published by the Greater London Authority, July 2014);
 - 8.1.8. Details of how the requirements of EU Directive 97/68/EC for both NO_x and PM II for all Non-Road Mobile Machinery (including locomotives if used) will be met;
 - 8.1.9. Details of construction site lighting;
 - 8.1.10. Details of all temporary buildings and compound areas including arrangements for their removal;

- 8.1.11. Details of the areas to be used for parking, loading and unloading of construction vehicles and for parking employees' vehicles; and,
- 8.1.12. Contact arrangements for the public, including 'out of hours' telephone numbers for named contacts.
- 8.2. The development shall be constructed in accordance with the approved Construction Management Plan unless otherwise agreed in writing by the Local Planning Authority.

9. BIO-DIVERSITY MANAGEMENT PLAN

- 9.1. The development shall not commence until a Biodiversity Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Biodiversity Management Plan to include:
 - 9.1.1. A scheme for the mitigation of any loss of biodiversity, the provision of habitat enhancements and the subsequent management of the biodiversity interests within the site;
 - 9.1.2. A plan, informed by an ecologist, showing the number, position and type of bat and bird boxes that are to be incorporated within the fabric of the bridge and attached to buildings and trees, as well as other measures to enhance the biodiversity performance of the buildings and other parts of the site as detailed in the Environmental Statement;
 - 9.1.3. The use of Green Walls for the buildings, including planting and long-term management;
 - 9.1.4. In addition to the proposed SuDS ponds, wet ditch habitat in the area adjacent to the access road; and,
 - 9.1.5. Water bodies should be designed to retain water permanently throughout the year.
- 9.2. The Biodiversity Management Plan shall be designed in conjunction with the Landscape Strategy required pursuant to condition 26.1 in order to ensure that they are not in conflict.
- 9.3. The development and management of the site thereafter shall be carried out in accordance with the approved Biodiversity Management Plan and any subsequent variations shall be agreed in writing by the Local Planning Authority pursuant to condition 9.4.
- 9.4. The Biodiversity Management Plan shall remain in place for the lifetime of the development. The ongoing management elements shall be reviewed every 5 years, with reference to the specific targets agreed in the first Biodiversity Management Plan, with each draft to be submitted to the Local Planning Authority for approval prior to the completion of a 5-year cycle from the implementation of the previous iteration of the Biodiversity Management Plan.

10. POLLUTION PROTECTION

- 10.1. Prior to the commencement of each phase of the development a Remediation Strategy for the protection of human health and groundwater of that phase

shall be submitted to and approved in writing by the Local Planning Authority. The Strategy to include:

- 10.1.1. An updated risk assessment, including relevant soil, gas and groundwater sampling data;
- 10.1.2. Details of the remediation strategy for identifying and dealing with existing contamination on the site;
- 10.1.3. Details of how piling and other penetrative foundation designs will be carried out in a way that poses no risk to subsurface water and sewerage infrastructure;
- 10.1.4. Details of how surface water drainage will be protected from infiltration into the ground where there is a risk to controlled waters; and,
- 10.1.5. A Verification Plan setting out how the development and subsequent use of the site will be carried out in a way that ensures human health and the underlying groundwater are protected from the risk of pollution.
- 10.2. The development shall be constructed in accordance with the approved Strategy and any long-term monitoring and maintenance plan shall be implemented as approved.
- 10.3. If, during the construction of the development, contamination not previously identified is found to be present at the site (including munitions), then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out in that phase until the developer has submitted to and obtained the written approval from the Local Planning Authority of a Remediation Strategy detailing how this unsuspected contamination shall be dealt with. The Strategy shall be implemented as approved.
- 10.4. Prior to occupation of each phase of the development, a Verification Report demonstrating completion of the works set out in the approved Remediation Strategy and the effectiveness of the remediation for that phase shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a plan (a 'long-term monitoring and maintenance plan') for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, if appropriate, and for the reporting of this to the Local Planning Authority.

11. TREES AND NESTING SPECIES PROTECTION

- 11.1. Prior to the commencement of each phase of the development details of a demolition, tree felling and construction timetable for that phase shall be submitted to and approved in writing by the Local Planning Authority. This timetable shall have the principal purpose of ensuring that no work takes place during a bird nesting season, unless an ecologist has provided confirmation that birds are not breeding on site at that time. This timetable will take into account the findings of all ecological survey work undertaken, both before and after approval of the outline permission.

- 11.2. Once the details are approved, the construction work on site, through all its phases shall be strictly in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

12. ARCHAEOLOGICAL PROTECTION

- 12.1. Prior to the commencement of each phase of the development (other than authorised demolition to existing ground level) a programme of archaeological evaluation site work in accordance with a Written Scheme of Investigation (WSI) for that phase shall be submitted to and approved in writing by the Local Planning Authority. The WSI shall be prepared and implemented by a suitably qualified archaeological practice in accordance with Historic England Archaeology Guidelines. The Scheme to include:
- 12.1.1. A programme of geo/archaeological investigation;
- 12.1.2. Dependent upon the results of the preceding paragraph, no development (other than authorised demolition to existing ground level) shall take place until a programme of archaeological mitigation site work in accordance with a WSI has been submitted to and approved in writing by the Local Planning Authority;
- 12.1.3. A report on the evaluation of the results of the preceding paragraph shall be submitted to and approved by the Local Planning Authority in writing; and,
- 12.1.4. The programme of archaeological mitigation recommended in the preceding paragraph shall be carried out in accordance with a WSI.
- 12.2. The site investigation and post-investigation assessment shall be completed within 12 months of the completion the development (as defined by the issuing of a Completion Certificate issued under the Building Regulations) in accordance with the programme set out in the WSI and the provision for analysis, publication and dissemination of the archaeological results and archive deposition has been secured.

13. HERITAGE PROTECTION

- 13.1. No demolition of Howbury Grange shall take place until a programme of historic building evaluation in accordance with a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. The Scheme to include:
- 13.1.1. The nomination of a competent person or organisation to undertake the investigation;
- 13.1.2. The programme and methodology of investigation and recording, which shall include the statement of significance and research objectives; and,
- 13.1.3. The programme for post-investigation assessment and subsequent analysis, publication, dissemination and deposition of resulting material.
- 13.2. The demolition of Howbury Grange shall only take place in accordance with the agreed WSI and all parts of the WSI shall be fulfilled.

14. DETAILS OF LEVELS, BUILDING DATUM AND HEIGHTS

- 14.1. Prior to the commencement of each phase of the development details of the finished site levels and base levels and heights of all buildings and other structures in that phase shall be submitted to and approved in writing by the Local Planning Authority.
- 14.2. The development shall be implemented in accordance with the approved details.

15. SUSTAINABILITY PERFORMANCE OF BUILDINGS

- 15.1. Prior to the commencement of each phase of the development details of the relevant measures set out in the Sustainability Statement (November 2015) submitted with the application to deliver energy demand minimisation for that phase shall be submitted to and approved in writing by the Local Planning Authority. The measures to include:
 - 15.1.1. A pre-construction BREEAM Assessment;
 - 15.1.2. Following completion of the development, a post-construction BREEAM Review Certificate showing that at least 'Very Good' has been achieved; and,
 - 15.1.3. An energy statement demonstrating how a 35% reduction in total CO₂ emissions from the development has been achieved. This should follow the Mayor's Guidance for Developers in Preparing Energy Assessments. The energy assessment should include: calculation of the energy demand and CO₂ emissions that are covered or not covered by Building Regulations at each stage of the energy hierarchy; proposals to reduce CO₂ through energy efficient design; proposals to further reduce CO₂ emissions through decentralised energy where feasible; and proposals to further reduce CO₂ emissions through the use of on-site renewable energy technologies.
- 15.2. The development shall be implemented in accordance with the approved measures. The renewable energy technologies and other features installed must remain for as long as the development is in use.

16. SECURE BY DESIGN

- 16.1. Prior to the commencement of each phase of development details of how that phase of the development will be designed to minimise the risk of crime and meet the specific security needs of the development in accordance with the principles and objectives of Secured by Design shall be submitted to and approved in writing by the Local Planning Authority.
- 16.2. The approved details shall be implemented with respect to each building prior to its occupation or bringing into use.

17. AREAS AROUND BUILDINGS: DETAILS OF INTERNAL ROADS, CYCLEWAYS, FOOTPATHS, PARKING ETC

- 17.1. Prior to the commencement of each phase of the development details of all vehicle and cycle parking areas and access roads and footpaths serving the buildings in that phase shall be submitted to and approved in writing by the Local Planning Authority. The details to include:

- 17.1.1. Car parking areas;
- 17.1.2. Electric Vehicle Charging Points;
- 17.1.3. Provision for the parking of cycles;
- 17.1.4. Cyclist amenity provisions;
- 17.1.5. HGV parking areas;
- 17.1.6. Servicing and manoeuvring spaces; and,
- 17.1.7. Roads, footpaths and cycleways, including details of sight lines.
- 17.2. Such details to be in accordance with the current Transport Management Plan. The details shall include a programme of implementation as well as management protocols and a maintenance specification.
- 17.3. The development shall be implemented in accordance with the approved details prior to the occupation of any building to which the approved details serve, and must remain for as long as the development is in use.

18. AREAS AROUND BUILDINGS: DETAILS OF EXTERNAL STORAGE

- 18.1. Prior to the commencement of each phase of development details of any external storage areas (including the maximum height of any such storage, which shall not exceed 12m above the ground level) in that phase shall be submitted to and approved in writing by the Local Planning Authority. No materials shall be stored outside the buildings except in the approved areas.

19. REFUSE AND RECYCLING STORAGE PROVISION

- 19.1. Prior to the commencement of each phase of development a scheme detailing the location and appearance of the refuse storage areas and recycling facilities for that phase shall be submitted to and approved in writing by the Local Planning Authority.
- 19.2. Each phase of development shall be implemented in accordance with the approved scheme, unless otherwise agreed in writing by the local planning authority, and must be maintained as approved for as long as the development is in use.

20. DETAILS OF DRIVER WELFARE FACILITIES

- 20.1. Prior to commencing development of the Intermodal Area (Zone C) rail infrastructure as shown on the Parameters Plan Ref 30777-PL-101 Rev I details of the welfare facilities available at the freight terminal for freight drivers visiting the site, including provision for freight parking/waiting areas, shall be submitted to and approved in writing by the Local Planning Authority. Such approved facilities shall be available for use by freight drivers before the use of the Intermodal Area.

21. ACCESS DETAILS

- 21.1. The development of the site's accesses shall not commence until technical details of the access points to the site and associated off-site highway works

have been submitted to and approved in writing by the Local Planning Authority. The Details to include:

- 21.1.1. Highway works on Moat Lane;
- 21.1.2. Bexley Byway 103/Footpath 25;
- 21.1.3. Diversion of KCC footpath DB85 around the access bridge piers;
- 21.1.4. The access to the site from the A206 Bob Dunn Way/Thames Road/ Burnham Road junction;
- 21.1.5. The northern access from Moat Lane;
- 21.1.6. The western access from Bexley Byway 103;
- 21.1.7. Details of measures to be introduced to ensure that only authorised vehicular traffic, cyclists and pedestrians can use the northern access from Moat Lane or the western access from Bexley Byway 103 as identified on the Parameters Plan (dwg no 30777-PL-101 Rev I). The said details shall specify the type of vehicles to be authorised and the management arrangements for the operation of those measures so that vehicles that are not authorised to use these accesses are restricted from doing so; and,
- 21.1.8. Details of all vehicular and pedestrian sight lines and visibility splays, including the height of zone within which there shall be no obstruction to visibility.
- 21.2. No part of the development shall be occupied or brought into use until the works have been completed in accordance with the approved details and they must be maintained as approved, including any management arrangements, for as long as the development is in use.

22. PROVISION OF NEW BRIDGE

- 22.1. The development of the access bridge over the River Cray shall not commence until details of the bridge have been submitted to and approved in writing by the Local Planning Authority. The details to include:
 - 22.1.1. Details of the construction method statement;
 - 22.1.2. Details of the provision to be made for access for the Environment Agency to and along both banks of the River Cray;
 - 22.1.3. Details of the works to the banks of the River Cray;
 - 22.1.4. Details of the Public Right of Way arrangements;
 - 22.1.5. If required, details of fenders and bridge protection;
 - 22.1.6. Details of guard rails and life-saving devices (such as grab chains, access ladders and life buoys);
 - 22.1.7. The materials and finishes to be used for the external surfaces of the bridge; and,
 - 22.1.8. Details of management arrangements including future maintenance specification.

- 22.2. No part of the development shall be occupied or brought into use until the bridge has been implemented in accordance with the approved details. The bridge must be managed and maintained, as approved, for as long as the development is in use.

23. EXTERNAL APPEARANCE OF BUILDINGS

- 23.1. The construction of any building or other structure above ground level shall not commence until a schedule of materials and finishes to be used for the external walls and roofs of that building or other structure has been submitted to and approved in writing by the Local Planning Authority.
- 23.2. The development shall be implemented in accordance with the approved schedule and must be maintained as approved for as long as the development is in use.

24. MITIGATE IMPACT OF NOISE OR VIBRATION FROM BUILDINGS

- 24.1. The construction of any building above ground level shall not commence until a detailed report has been prepared, by a suitably qualified acoustician, setting out how the building is expected to perform acoustically and has been submitted to and approved in writing by the Local Planning Authority. The cumulative noise rating levels from all fixed plant/machinery shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a fifteen minute period (night) or one hour (day). Measurements shall be undertaken in accordance with the methodology specified in 'BS4142: 2014: Methods for rating industrial and commercial sound'.
- 24.2. No part of the development shall be occupied or brought into use until the plant and acoustic attenuation measures have been installed in accordance with the approved details. They must be retained and maintained thereafter in accordance with the manufacturer's recommendations.

25. MITIGATE IMPACT OF PLANT etc

- 25.1. Prior to the installation of any fixed plant/machinery within or on a building a detailed report, prepared by a suitably qualified acoustician setting out how the plant/machinery to be installed are expected to perform acoustically, shall be submitted to and approved in writing by the local planning authority. The cumulative noise rating levels from all fixed plant shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a fifteen-minute period (night) or one hour (day). Measurements shall be undertaken in accordance with the methodology specified in 'BS4142: 2014: Methods for rating industrial and commercial sound'.
- 25.2. No part of the fixed plant/machinery shall be operated until the acoustic attenuation measures have been installed in accordance with the approved details. They must be retained and maintained thereafter in accordance with the manufacturer's recommendations.

26. DETAILS OF LANDSCAPING & BOUNDARY TREATMENT

- 26.1. The construction of any building above ground level shall not commence until a Landscaping Scheme for the boundaries of the site has been submitted to and approved in writing by the Local Planning Authority. The boundary scheme shall be substantially in accordance with the Landscape Strategy set out in the Environmental Statement and include:
 - 26.1.1. Details of all boundary ground modelling, re-profiling, bunding and mounding, including a comprehensive ground level survey with information relating to the existing and proposed ground levels above Ordnance Datum and cross-sections at a scale of not less than 1:200 at Moat Lane/Oak Road and 1:500 elsewhere at the boundary;
 - 26.1.2. All site boundary treatment, retaining walls, gabions, footpaths and security fencing;
 - 26.1.3. Acoustic fencing as shown on the Parameters Plan (dwg no 30777-PL-101 Rev I); and,
 - 26.1.4. A programme of implementation and a management plan.
- 26.2. Prior to the commencement of each phase of development, full details of hard and soft landscaping works for the building plots within that phase of development shall be submitted to and approved in writing by the local planning authority. These details shall comprise proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; and soft landscaping works, including planting plans, specifications, sizes, numbers and densities.
- 26.3. Landscaping shall comprise predominantly native planting designed to enhance biodiversity value, be carried out as approved and be maintained in accordance with the approved management plan for a minimum of ten years after planting. Any trees, shrubs, or other plants which die, are removed or become seriously damaged or diseased during this period shall be replaced with others of a similar type and size unless otherwise agreed by the Local Planning Authority.

27. LOW EMISSIONS STRATEGY

- 27.1. No building shall be occupied or brought into use until a Low Emissions Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy to include:
 - 27.1.1. An assessment of the emission specification for all road vehicles and rail locomotives forming part of the operation and accessing the site, which for road vehicles will include identification of measures to secure the use of vehicles that comply with Euro VI (6) standards and the Mayor of London's emerging London wide Ultra Low Emission Zone;
 - 27.1.2. An assessment of procurement policy (including planned vehicle replacement and suppliers of other goods and services);
 - 27.1.3. Measures such as eco-driving (driver training and technological aids to eco-driving), and policies regarding vehicle idling;

- 27.1.4. An assessment of low emission vehicle technology and infrastructure (e.g. electric vehicle dedicated parking and charging, gas refuelling station etc.); and,
- 27.1.5. All energy plant/space heating provision shall achieve compliance with the emissions standards specified in Appendix 7 of the GLA: Sustainable Design and Construction Supplementary Planning Guidance, April 2014.
- 27.2. The Strategy shall take into account future changing standards and available technologies and be updated accordingly in agreement with the Local Planning Authority.
- 27.3. At the end of each calendar year an implementation plan shall be submitted for approval in writing by the Local Planning Authority, which shall be fully implemented in accordance with the details and measures so approved, unless otherwise agreed in writing by the Local Planning Authority.

28. DETAILS OF EXTERNAL LIGHTING

- 28.1. No building shall be occupied or brought into use until details of all external lighting for that building have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate compliance with the Institute of Lighting Professionals (ILP) 'Guidance Notes for the Reduction of Obtrusive Light.' This scheme of lighting shall include details of how it has been designed to minimise impact on navigation and ecological interests including the river. The lighting scheme must be assessed by an ecologist and approved in writing as part of the proposed lighting scheme.
- 28.2. The development shall be implemented in accordance with the approved details and must be maintained as approved for as long as the development is in use.

29. RESIDUAL NOISE IMPACT

- 29.1. Within 12 months of each phase set out in the approved Phasing Plan referred to in condition no. 5 being occupied or brought into use a package of mitigation measures to deal with any residual noise impact from the operation of the facility over and above that set out in the Environmental Statement shall be submitted to and approved in writing by the Local Planning Authority. The package to include, as necessary:
 - 29.1.1. Additional acoustic barrier(s) to protect specific amenity/garden areas for affected properties in Moat Lane;
 - 29.1.2. Affected properties to be offered uprated acoustic glazing and ventilation treatments; and,
 - 29.1.3. A timetable for implementation.
- 29.2. The package(s) shall be implemented in accordance with the approved timetable.

30. RESTRICTING USE AS A SRFI

- 30.1. The buildings hereby permitted shall be used solely for Class B8 (storage or distribution) purposes (including uses ancillary thereto) as part of a Strategic

Rail Freight Interchange and for no other purpose, including other uses within the Classes in B to the *Town and Country Planning (Use Classes) Order 1987* (as amended), or in any provision revoking and re-enacting that Order with or without modification.

31. RESTRICT SCALE OF DEVELOPMENT

31.1. The total gross external area of all buildings to be erected on the site, including ancillary offices and other activities, shall not exceed 184,500 square metres, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or replacing the same), save for the addition of mezzanine floors within buildings that are used for B8 storage purposes, but not for any ancillary or incidental uses in such buildings.

32. GANTRY CRANES

32.1. Details of any gantry cranes to be used on the site shall be submitted to and approved in writing by the Local Planning Authority prior to their installation and first use. The details shall include:

32.1.1. Details of their external appearance and any associated surfaces and guide rails; and,

32.1.2. A detailed report, prepared by a suitably qualified acoustician, setting out the acoustic characteristics expected to be associated with the operation of gantry cranes. The cumulative noise rating levels shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a 15 minute period (night) or 1 hour (day). Measurements shall be undertaken in accordance with the methodology specified in BS4142:2014-Methods for rating industrial and commercial sound.

32.2. No gantry cranes shall be installed or used on the site other than as previously agreed in writing by the Local Planning Authority.

33. Travel Plan⁶⁶²

No individual warehouse and/or Intermodal Terminal shall be occupied or brought into use until the Occupier Travel Plan for that warehouse or the Intermodal Terminal (as applicable) has been submitted to and approved in writing by the Local Planning Authority. The relevant premises shall thereafter comply with the requirements of the approved Occupier Travel Plan. The Occupier Travel Plan shall be updated to reflect any change of occupier, re-submitted and approved in writing by the Local Planning Authority prior to each change of occupier.

⁶⁶² INQ/94 page 22.



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.