Claim no:

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

B E T W E E N:

THE QUEEN ON THE APPLICATION OF

CITY AND DISTRICT COUNCIL OF ST ALBANS

Council

-and-

(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Defendant

(1) HELIOSLOUGH LTD
(2) GOODMAN LOGISTICS DEVLOPMENT (UK) Ltd
(3) SLOUGH BOROUGH COUNCIL

Interested Parties

THE COUNCIL'S DETAILED STATEMENT OF GROUNDS

Introduction

1. This is an application for judicial review of the decision of the Secretary of State for Communities and Local Government ("the Secretary of State") dated 14th December 2012 not to reopen the local inquiry into the proposed Strategic Rail Freight Interchange ("SRFI") at Radlett (Appeal Ref: APP/B1930/A/09/2109433) ("the Radlett Appeal") and conjoin it with the forthcoming local inquiry into a proposed Strategic Railfreight Interchange ("SRFI") at Colnbrook, Slough (appeal Ref: APP/JO350/A/12/2171967) ("the Colnbrook Appeal").

2. The Council contends that in coming to this decision the Secretary of State failed to give any or any adequate reasons for his decision and/or acted irrationally and/or failed to take into account material considerations.

Factual Background

The First Appeal

3. An application for planning permission had been made by the First Interested Party, Helioslough Ltd, in respect of a SRFI the Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire ("Radlett) in 2007 which had been the subject of an appeal and an inquiry (again in 2007).

4. The Radlett site falls within the Green Belt. A primary issue at the inquiry was whether the proposal complied with the relevant local and national policies which required the harm to the Green Belt and any other harm to be clearly outweighed by other considerations so as to amount to very special circumstances justifying the grant of planning permission.

5. The Secretary of State decided to dismiss that appeal by a decision letter dated 1 October 2008. The basis of the Secretary of State's decision was that (see paragraph 59 of the decision letter) "the Secretary of State is not satisfied that the appellant has demonstrated that no other sites

would come forward to meet the need for further SRFIs to serve London and the South East, and she is unable to conclude that the harm to the Green Belt would be outweighed by the need to develop a SRFI at Radlett". This was because of the defects in the alternative sites assessment undertaken by Helioslough. The Secretary of State did state, however, that, "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, had the appellant demonstrated that there was no 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" (see paragraph 49 of the decision letter).

The Second Appeal

6. Following that decision, a second application for planning permission for the same development at Radlett was submitted to the Council by Helioslough in April 2009.

7. Following the refusal of the application by the Council, Helioslough appealed to the Secretary of State. The Secretary of State recovered the determination of the appeal on 29 July 2009. A Planning Inspector, Mr A. Mead, was appointed and an inquiry was held between 24 November and 19 December 2009. Helioslough had prepared a new alternatives sites assessment under the application in respect of an area known as the 'North West Sector' in order to show that there were no other suitable sites which could meet the need for an SRFI in a way which caused less harm to the Green Belt than the Radlett site. The availability of alternative sites to meet the need in a less harmful way than the Radlett proposal was a principal issue at the inquiry. At the inquiry, the Council called several witnesses in support of its case and argued, amongst other matters, that it had not been demonstrated that no better sites existed.

8. The second interested party, Goodman Logistics Development Ltd ("Goodman") submitted written representations setting out evidence as to the merits of its site at Colnbrook ("Colnbrook"), which is located in Slough Borough. At the time of the inquiry there was no live application for planning permission for the development of an SRFI at Colnbrook although Goodman's representations (to which Helioslough responded) set out details of an emerging proposal by Goodman for the development of an SRFI at Colnbrook of a substantially smaller scale than that proposed by Helioslough. The Council's evidence at the inquiry also presented evidence to the effect that Colnbrook was a better site than Radlett. The alternative site assessment was, it was later found by the High Court, conducted on the basis of a scheme on the Colnbrook site which was equivalent in size to the Radlett proposal. It is accepted that the opportunity to set out the relative merits of Radlett and Colnbrook had then been offered. However, at that stage, the proposals in respect of Colnbrook were not fixed, an application had not been made and the detail was limited to the written representations submitted by Goodman.

9. Following the inquiry, the Inspector issued his report to the Secretary of State on 19 March 2010. Inspector Mead recommended that planning permission should be granted.

10. In his report to the Secretary of State, the Inspector took into consideration the fact that the Colnbrook site was designated as part of a 'Strategic Gap' within the Green Belt under a saved policy in the Slough Local Plan and the adopted Core Strategy. In the relevant parts of his report he stated that:

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 a 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 a 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.

11. At paragraph 13.103 he stated:

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 a SRFI in a less harmful way than the appeal site.

12. At paragraph 13.111 he stated:

On a general basis, there is no dispute about the need for a SRFI. It is stated and restate 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.

13. At paragraph 13.115 he stated:

At Harlington, although the harm to the Green Belt might be broadly similar to that at Radlett, I consider that the visual impact of a 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 sit as an alternative location for a 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.

14. On 7July 2010, the Secretary of State decided, contrary to the Inspector's recommendations, that planning permission should be refused.

15. In reaching this conclusion the Secretary of State disagreed with the Inspector's conclusion that the designation of the Colnbrook site as part of a 'Strategic Gap' was determinative of the question of whether the development of an SRFI at Colnbrook would meet the need for an SRFI in

a way that caused less harm to the Green Belt than the Radlett proposal. The Secretary of State also took into account the fact that the emerging plans for an SRFI at Colnbrook were of a smaller scale than that proposed at Radlett. His conclusions were stated in his decision letter as follows:

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

23. In reaching his conclusions above, the Secretary of State has borne in mind the more recent Slough Core Strategy 2006 – 2026, adopted in December 2008. He observes that paragraph 2.29 of the Slough Core Strategy specifically mentions a proposal for an SRFI. Read in conjunction with those paragraphs, the Secretary of State considers that Slough Core Strategy Policy 2 does not necessarily bar inappropriate Green Belt development such as an SRFI in the Strategic Gap. Whilst no application has yet been made at Colnbrook, the Secretary of State has taken into account the documentation presented to the Radlett inquiry about an emerging SRFI proposal at Colnbrook (Radlett inquiry document 9/G/1.1). This indicates that a substantially smaller scale of rail-connected warehousing is envisaged at Colnbrook compared with the appeal proposal. The Secretary of State considers that if an application were to be made for a SRFI at Colnbrook of about the size indicated in evidence to the Radlett inquiry, then harm to the Green Belt might, subject to testing in an alternative sites assessment, be found to be significantly less than the harm caused by the Radlett proposal. He also notes the Inspector's observations that an SRFI at Colnbrook could, in common with the Radlett proposal, offer other benefits which in the case of Colnbrook would be opportunities for improvements to the footpath and bridleway network, biodiversity and landscape (IR13.101).

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

25. For the reasons given above and having regard to the evidence before him, the Secretary of State is not satisfied that the appraisal of alternatives sites has clearly demonstrated that there would be no other suitable location in the North West Sector that would meet the need for an SRFI in the foreseeable future in significantly less harmful way than the appeal site. He therefore disagrees with the Inspector's opinion that it cannot be rationally concluded that the Colnbrook site would meet the needs for an SRFI in a less harmful way than the appeal site.

...

29. ... For the reasons set out above, the Secretary of State is not satisfied that there are no other sites in the north west area of search which would be likely to come forward in the foreseeable future which would cause less harm to the Green Belt. He disagrees with the Inspector that the location of Colnbrook within the Green Belt in a Strategic Gap between Slough and London Weighs heavily against preferring it to the appeal site as an alternative location for an SRFI (IR13.155). he has also had regard to the Inspector's opinion that, in the event a proposal was brought forward for scrutiny in the same way as the appeal proposal, then it is possible that the differences between the two locations would, other than the Green Belt issue, be marginal (IR13.115). However, given that he does not accept the Strategic Gap designation at Colnbrook weighs heavily against that location and bearing in mind it appears a substantially smaller development is currently envisaged at Colnbrook, he considers it is possible that a proposal for an SRFI at Colnbrook could be less harmful.

The Quashing of the Secretary of State's Decision

16. This decision was subsequently quashed by the High Court and remitted to the Secretary of State on the basis that he had failed to give adequate reasons for disagreeing with the Inspector's conclusions on the 'Strategic Gap' policy applicable at Colnbrook (*Helioslough Ltd. v Secretary of State for Communities and Local Government* [2011] EWHC 2054 (admin)).

17. The decision was quashed on the basis of a lack of reasons in respect of the Secretary of State's assessment of the weight to be attached to the strategic gap policy applicable to the Colnbrook proposal (policy CP2 of the Slough Borough Core Strategy). The judge stated at paragraph 83 – 86:

83 Further, submits Helioslough, the letter does not show the Secretary of State recognised that the strategic gap policy was formulated because of the special sensitivity of this tightly defined area and to prevent coalescence between Slough and Greater London. Although the Core Strategy 2 is referred to, the requirement to show that the development in that location is essential is not. Instead, the main factor relied upon in justifying applying less weight to the strategic gap policy was a text in the context chapter. That text refers to "other strategic planning objections" which plainly include the strategic gap policy in CP2. The Secretary of State was required to apply CP2 and not to downplay its significance by reference to text in so far as that was in conflict. Having regard to the fact there is no strategic gap at Radlett and no coalescence issue there, there is no rational explanation given as to the basis upon which even a smaller development might be found to cause less harm to the Green Belt than Radlett.

84. CP2 it is further submitted has to be construed consistently with section 17(5) of the 2004 Act. Thus any new development in the strategy gap has to show very special circumstances and be essential in that location.

85. Against this the Secretary of State, supported by the other parties, submits that this ground of challenge amounts to no more than a claim that the Secretary of State did not attach sufficient gap to the strategic gap policies. He was entitled to have regard to the relevant passages which were inserted to ensure a flexible response to regional transportation needs, and also to provide helpful guidance to prospective developers. The decision letter was aimed at informed readers and should be read in a straightforward way. It expressly says that very serious consideration has been given to the relevant parts of the inspector's report and the Secretary of State was entitled to conclude that the core strategy was not a bar.

86. In my judgment Helioslough's submissions are to be preferred on this ground of challenge which is accordingly made out. I appreciate that this conclusion may not be readily drawn. In my judgment, the decision letter gives rise to a substantial doubt whether the Secretary of State did properly understand the inspector's reasoning on this crucial part of his recommendation or the additional restraint imposed by policy, namely that it must be shown that the development is essential in that location. It is of course not an absolute bar but it in my judgment a very high bar. In my judgment, the decision letter does not adequately display how it might be shown that it is essential to have a SRFI at Colnbrook as opposed to any other location. It is not adequate to explain to the informed reader why the Secretary of State has arrived at the conclusion, which the inspector held could not rationally be drawn.

18. On 27 September 2010, during the course of the High Court proceedings, Goodman submitted a planning application for the development of an SRFI at Colnbrook. This application was refused by Slough Borough Council on a number of grounds on 8September 2011.

Redetermination of the Second Appeal

19. Following the quashing of the decision in July 2011, the Secretary of State called on the parties to the appeal to make written representations upon certain specific matters set out in a letter dated 15 September 2011, which included the following:

    a) The views expressed by the Secretary of State in paragraph 33 of the Decision letter and the weight to be given to the planning obligation in the form submitted by the appellant.

    b) Whether Hertfordshire County Council is prepared to join as a party to the undertaking or whether any amendments may be made to it which might overcome his concerns as to enforceability.

    c) Any new matters or changes in circumstances which the parties consider to be material.

20. Representations were made on the appeal by a number of parties.

21. Goodman submitted representations by a letter dated 14 October 2011. The substance of the letter was that Colnbrook was being progressed through an application and an appeal in due course and that, while Helioslough had made representations in respect of the Colnbrook, those representations were disputed by Goodman and were yet to be examined in the context of a future planning appeal in respect of Goodman's proposal at Colnbrook.

22. Strife submitted representations on 14 October 2011. In that letter, the general point was made on the issue of alternatives, that while the strategic gap constituted an additional policy requirement, that was more than compensated for by the lesser scale of the Colnbrook proposal, its greater efficiency and the additional advantages presented by the proposal.

23. Helioslough submitted representations on 12 October 2011. The representations dealt with the first two matters identified by the Secretary of State (related to the obligations). In respect of material changes in circumstances, the following points were made:

    a) Given that there have been two decisions of two separate Inspectors following two inquiries, it is inconceivable that the Secretary of State could now rationally reach contrary conclusions to those already expressed on the merits of the proposals (paragraph 24).

    b) The Secretary of State has concluded that it is only a "significantly smaller scale" of development at Colnbrook which might cause significantly less harm to the Green Belt and the Secretary of State is clear that there is no alternative site for an SRFI of the scale of the Proposal which would cause significantly less harm to the Green Belt (paragraph 30).

    c) Had the Secretary of State properly understood the up to date Strategic Gap policy applicable at Colnbrook, recognised that the Colnbrook Strategic Gap policy had been recently endorsed through the statutory processes and recognised the fundamental underlying rationale for the policy, he would not have been able to give less weight to the Strategic Gap policy than did the Inspector and/or to rationally conclude that Colnbrook might meet the need for an SRFI in a less harmful way than Radlett (paragraph 42).

    d) The basis of the 2010 decision was that a much smaller site at Colnbrook might cause significantly less harm to the Green Belt than Radlett. The question for the Secretary of State was whether there was an alternative location for development of the scale of the proposal which would cause less harm to the Green Belt; it was not to establish whether there might be a much smaller site elsewhere which could deliver a much smaller SRFI with less harm to the Green Belt albeit with much lesser environmental

and economic benefits (paragraph 49). Therefore, the Secretary of State's refusal of permission in 2010 was based on asking himself the wrong question and it was and would be irrational to seek to compare the possible impacts of a development of half the size with the impacts of Radlett (paragraph 50).

e) The Colnbrook proposals, in its Alternative Sites Assessment, seriously misstated and misapplied Green Belt policy and ignored the conclusions of the Secretary of State in respect of Green Belt harm at Radlett and ignored the correct thrust of Strategic Gap policy as explained in the High Court judgment (paragraph 66).

f) The Goodman alternative sites assessment has been undertaken and it has patently failed to demonstrate that the Colnbrook proposal might be shown to cause less harm to the Green Belt than the Radlett proposals (paragraph 67).

24. St Albans District Council submitted its representations by a letter dated 14 October 2011. In a report of Woods Hardwick, the Council stated, in relation to the issue of the Strategic Gap policy at Colnbrook, that even if the Strategic Gap policy was to be accorded significant weight, the size of the Colnbrook proposal is such that it is capable of being a better site and one which is less harmful than Radlett.

25. Further representations were made by some of the parties in response to these submissions, following an invitation to do so by the Secretary of State by a letter dated 19 October 2011. It was stated in that letter that the Secretary of State did "not propose to allow a lengthy series of cross representations". It was also stated that the Secretary of State "would accept representations on any other material changes in circumstances". Representations were required to be made by 11 November 2011; neither the Council nor any other party asked for the appeal to be re-opened.

26. By a letter dated 10 November 2011, Goodman stated that it was apparent that Goodman and Helioslough disagree as to which site performs better as an SRFI and that it is not that there is a difficulty in showing compliance with the policy but rather that this is not the proper forum for a determination in respect of Goodman's specific proposal. It was also stated, in any event, that Goodman contended that even if CP2 was not met, then planning permission should be granted as a result of the need for an SRFI and the overriding benefits of the scheme which amount not only to very special circumstances to outweigh the Green Belt but also any other harm, including impact (if found) on the strategic gap. It was stated that the Secretary of State was entitled to have regard to the fact that Colnbrook would deliver an SRFI of a smaller scale than Radlett and that the scale of Radlett had been confirmed by the submission of a planning application described in Goodman's representations of 14 October 2011.

27. Helioslough submitted its representations on 11 November 2011. It stated that, in respect of Goodman's case, they misunderstood strategic gap policy and the effect of the strategic gap policies at Colnbrook and that it was not correct to claim that these matters could be put off to a later consideration. It was also stated that there was no attempt in the Goodman representations to demonstrate that Colnbrook was better on a like for like basis or event that, applying strategic gap and Green Belt policy correctly, a smaller Colnbrook was better than a larger Radlett.

28. The Council's response was dated 10 November 2011. It was stated (at paragraph 13) that the Secretary of State had previously reached a conclusion about Colnbrook and there were no changes of circumstances which should alter that decision. It was also stated that the previous decision of the Secretary of State was quashed only on the basis of a lack of reasons and it only fell to the Secretary of State to provide a further explanation as to why Colnbrook might cause less harm than Radlett in spite of the strategic gap policy (paragraph 15). It was stated that the application of a strategic gap policy, even if it does add a further layer of policy to Green Belt, did not prevent the previous conclusion of the Secretary of State being reached (paragraph 16). It was pointed out that Helioslough's claim that there had been a misapplication and misstatement

in Goodman's alternative sites assessment was made without any basis and nothing is specifically relied upon.

29. By a letter dated 29 November 2011, the Secretary of State included these (and other) letters and offered an opportunity to make further limited representations. An opportunity was also given to respond to three Department for Transport guidance documents.

30. The Council provided a response by a letter dated 22 December 2011. The guidance documents were referred to by the Council. It was pointed out that the approach which had been taken by Steer Davies Gleeve ("SDG") in their report appended to the previous set of Council representations was that the Great Western Mainline had advantages over the Midland Mainline.

31. Goodman's representations were included in a letter dated 23 December 2011. It was stated that the points which it had made in the 10 November 2011 letter were relied upon. It was also stated that it was not considered appropriate to treat the redetermination of the Radlett appeal as if it were the appropriate forum for considering the merits of Goodman's forthcoming appeal and that only the most striking errors were set out. The matters that were relied upon related to the rail connectivity of Colnbrook and Radlett.

32. Helioslough produced representations dated 20 December 2011. The representations stated that Helioslough's detailed critique of the Goodman alternative sites assessment was subject to rigorous analysis by Slough Borough Council and was largely adopted by it in deciding to refuse permission. Goodman, it was stated, made no attempt to explain why Helioslough's conclusions in respect of their Alternative Sites Assessment were wrong and this was their chance to do so. There was, therefore, no evidential basis upon which the Secretary of State could conclude that Colnbrook might be better. Helioslough's critique of the Colnbrook alternative sites assessment was not presented in evidence by Helioslough (see paragraph 12). So far as the Council is aware, neither the Goodman alternative sites analysis nor critique of the Goodman Site Assessment were included in the papers to the Radlett appeal.

33. Neither the Council, nor any other party, requested the Secretary of State to re-open the appeal. It is accepted that it was open to the Council to seek the re-opening of the appeal.

34. Helioslough, in its response to the Council's letter before claim has indicated that three rounds of written representations on a redetermination is unprecedented. The Council does not know whether that is the case. It is clear, however, that the Secretary of State wished to be fully informed of the issues before him at each stage when he was aware of a potential material change of circumstances.

35. The representations referred to above were circulated by a letter dated 1 February 2012. In that letter, the Secretary of State stated that he was of the view that, on the basis of the submissions received, there were no substantive issues which required the Inquiry to be re-opened and that he had decided that he was in a position to re-determine the appeal on the basis of all the evidence and representations then before him. He therefore set a timetable pursuant to paragraph 4 of Schedule 2 of the Planning and Compulsory Purchase Act 2004 to reach a decision on the appeal by 5 April 2012.

36. On 5 March 2012 Goodman appealed against Slough Borough Council's refusal of planning permission for the proposed SRFI at Colnbrook. The Secretary of State recovered the appeal for his determination on 14 March 2012.

37. On 29 March 2012 the Secretary of State varied the timetable previously set for the determination of the appeal to allow for further representations from interested parties on the impact of the National Planning Policy Framework which came into force on 27 March 2012. As a result, the new deadline for the determination of the appeal was set for 13 June 2012.

38. The Council's representations were dated 16 April 2012. It was stated that it was clear from the evidence presented by Goodman and referred to by the Council already that the Colnbrook proposal was an alternative to the Radlett scheme and the granting of permission at Radlett would prevent the development of a more appropriate and less damaging scheme at Colnbrook (paragraph 14). It was pointed out that the absence of reference to local landscape designations meant that the Strategic Gap policy CP2 was put in conflict with the Framework.

39. Helioslough submitted representations by a letter dated 11 April 2012. It was stated that the Strategic Gap policies were to be given full weight as a result of paragraph 214 of the Framework.

40. The above representations were circulated to the parties by way of a further letter dated 16 April 2012.

41. On 7 June 2012 the Secretary of State informed Helioslough that a decision would not be reached by 13 June as previously indicated.

42. On 20 August 2012, a pre-inquiry meeting into the Colnbrook appeal, chaired by a planning Inspector, was held. At the meeting, Goodman requested that the inquiry be postponed until the decision on the Radlett appeal was issued by the Secretary of State. Following the pre-inquiry meeting, the Inspector decided that he had no jurisdiction to postpone the inquiry. Subsequently, following correspondence from Goodman to the Secretary of State, the Inspectorate determined, by a letter dated 7 September 2012, to postpone the inquiry because of the implications which the Radlett appeal, when it was issued, may have on the Colnbrook inquiry.

43. By a letter dated 19 September 2012, the Secretary of State then wrote to the parties to the Radlett appeal as follows:

The Secretary of State has given careful consideration to all the representations he has received on the Radlett appeal since his letter of 15 September 2011.

He has also had regard to the fact that, in March 2012, an appeal against the refusal of planning permission was submitted for a Rail/Road Freight Interchange at Colnbrook, Slough (Appeal Reference: APP/J0350/A/12/2171967). The Colnbrook appeal was recovered for determination by the Secretary of State and, on 7 September 2012, the Planning Inspectorate agreed to postpone the planning inquiry into it which had been due to open in October 2012.

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

In the light of this, the Secretary of State no longer considers that it is appropriate for him to determine the Radlett appeal on the basis of the evidence and representations which are currently before him. Your views on this proposed approach are invited by no later than 3 October 2012, as are the views of those to whom this letter is being copied. [emphasis added]

44. The parties submitted further representations following that letter.

45. Helioslough submitted representations dated 27 September 2012. In those representations, it was stated:

a) That the parties had had a full opportunity to put their cases as to whether there was a better site than Radlett and the Inspector had reached an unequivocal decision (see paragraph 12).

b) It was also stated that detailed site specific conclusions on the Radlett proposals had been reached and there were no material adverse changes in circumstances in respect of Radlett; whether there was a better site than Radlett had already been the key subject matter of a major public inquiry at which all parties had a full opportunity to put their case and in which very clear conclusions had been reached in the Inspector's report which stands; the Secretary of State's decision was quashed because of his approach to the comparative merits of Colnbrook and Radlett; on the redetermination the Secretary of State and all parties opted for the written representations issue; Goodman is very carefully not seeking to compete with Radlett and is not contending that it is a better site than Radlett (see paragraph 21).

c) It was contended that there was no power to revisit the decision to proceed by the written representations route.

d) It was stated that there was no rational reason for re-opening the inquiry to consider the comparative merits since (see paragraph 22):

   i) The appeal is in respect of Radlett and the statutory duty is to determine that appeal. A report has addressed the question of Colnbrook and nothing has changed.

   ii) Goodman are not claiming to be better than Radlett.

   iii) It is plain that Goodman is not prepared to pursue an inquiry until Radlett is determined.

   iv) Helioslough has gone to very considerable expense over a prolonged period of time to secure a decision on its appeal.

e) Helioslough also asked for clarification that it is not part of the Secretary of State's intention to re-open consideration of the site specific issues on Radlett; that the scope of the conjoined inquiry will be to consider the comparative merits of the site with factual conclusions being reached in respect of Colnbrook; and that Inspector Mead will hear the re-opened inquiry.

46. Goodman's representations dated 28 September 2012 stated that:

a) Goodman were vehemently opposed to the co-joining of the two appeals and does not accept that it is likely to lead to a more coherent and consistent decision making process overall.

b) Goodman had sought the adjournment of the inquiry so that the Secretary of State's decision on the Radlett appeal could inform the participants to it.

c) There is a need and role for SRFIs at Colnbrook and Radlett.

d) The premise for co-joining the appeal - that there is a need to compare the relative merits of the proposals - is misplaced.

e) If the two appeals were to be co-joined, Goodman were not clear as to how the Secretary of State envisaged that they would be dealt with in practical terms, including whether a separate Inspector should be appointed.

f) There were practical and evidential issues including as to how proofs of evidence at the earlier Radlett inquiry would be dealt with.

g) The co-joining of the two appeals inevitably introduces unprecedented complexity.

h) Against the pressing and acknowledged need for SRFIs, the cost, delay and uncertainty of a further public inquiry and inevitable High Court challenge is counter to the Secretary of State's stated policy.

i) It could be that, given the various serious concerns raised in the letter, that Goodman would feel obliged to withdraw its appeal in the evident that the appeal is co-joined.

47. The Council submitted its representations by a letter dated 2 October 2012. In that document, it stated a conjoined inquiry was "both appropriate and necessary" and that "a conjoined inquiry which seeks to establish the relative merits of the two schemes is an important means of determining fully and adequately the variety of issues which will be of relevance in deciding whether either scheme should be developed". It was also stated that a "conjoined inquiry presents a proper opportunity to address the merits of the two schemes and for an appropriate decision to be made on both sites taking into account the relative policy positions of both".

48. Slough Borough Council made representations by a letter dated 3 October 2013 but it did not make any substantive representations on the relative merits of the two proposals.

49. Following that round of consultations, the Secretary of State issued a further letter dated 12 October 2012 by which those representations were circulated. He also stated as follows:

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

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

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

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

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

50. Further representations were made in response to that letter.

51. Helioslough's solicitor submitted a letter dated 18 October 2012. The representations dealt with the request for clarification on the scope and nature of a conjoined inquiry contained in its letter of 27 September and that, if Helioslough's understanding as expressed in that letter was not correct, then Helioslough needed further time to respond. The response did not raise any further substantive issues in respect of the comparison to be drawn between Colnbrook and Radlett. A further representation was made on 25 October 2012 when it was indicated that there would need to be a good planning reason for treating Inspector Mead's report as only a material consideration. Again, no substantive issues were raised on the comparison between Colnbrook and Radlett.

52. Goodman's response dated 26 October 2012 referred to the suggestion made by Helioslough and Slough Borough Council that the scope of the appeal should be limited. Goodman indicated that the inquiry should be heard by an Inspector who is able to report to the Secretary of State on both appeals. Goodman indicated that it was not satisfactory for a decision to conjoin to be made in advance of a decision as to the scope of the inquiry.

53. The Council indicated, in response to the representations of Helioslough, that any decision to conjoin would be lawful; it was also indicated that the approach towards Inspector Mead's decision would be a pragmatic, sensible and lawful approach.

54. On 14 December 2012, the Secretary of State reached the decision not to conjoin the two inquiries. He stated:

The Secretary of State observes that objections to the proposed approach were raised on behalf of your client, the Colnbrook appellant and Slough Borough Council. In contrast St Albans Borough Council, STRIFE and a number of other parties who had previously submitted representations on the Radlett appeal supported the proposed approach.

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

55. On 20 December 2012, the Secretary of State issued a letter stating that he was minded to grant the Radlett appeal.

56. He considered the question of alternatives in paragraphs 30 – 32. In respect of Colnbrook, he stated as follows:

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.

57. When dealing with the planning balance, he stated as follows:

38. The Secretary of State agrees with the Inspector's analysis at IR123.112 – 13.115. He agrees with the Inspector that the assessment of alternative location 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 be come forward in the foreseeable future which would cause less harm to the Green Belt (IR13.114).

58. In addition to the above matters, the Secretary of State also decided on the following points. At paragraph 8, the Secretary of State stated in part that:

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.

59. At paragraphs 44, it was stated:

45. 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.

60. The Council issued a letter before claim dated 18 January 2013 and a further letter of the same date relating to the Secretary of State's letter dated 20 December 2012.

61. A substantive letter in response to the letter before claim was received from the Treasury Solicitor dated 7 February 2013. A response from Helioslough's solicitor was received by a letter dated 8 February 2013.

<u>Relevant Law</u>

62. The procedural powers and duties of the Secretary of State when re-determining an appeal following the quashing of an earlier decision are set out in Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 ("the 2000 Rules"):

19.— Procedure following quashing of decision

(1) Where a decision of the Secretary of State on an application or appeal in respect of which an inquiry has been held is quashed in proceedings before any court, the Secretary of State–

> *(a) shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further representations are invited for the purposes of his further consideration of the application or appeal;*
>
> *(b) shall afford to those persons the opportunity of making written representations to him in respect of those matters or of asking for the re-opening of the inquiry; and*

(c) may, as he thinks fit, cause the inquiry to be re-opened (whether by the same or a different inspector) and if he does so paragraphs (3) to (8) of the rule 10 shall apply as if the references to an inquiry were references to a re-opened inquiry.

(2) Those persons making representations or asking for the inquiry to be re-opened under paragraph (1)(b) shall ensure that such representations or requests are received by the Secretary of State within 3 weeks of the date of the written statement sent under paragraph (1)(a).[emphasis added]

63. The materiality of conclusions reached within a previous quashed decision to subsequent decisions relating to the same subject matter was considered in *Land Development Ltd v First Secretary of State* [2003] EWHC 2200, at [22], where it was stated:

It is right, in my judgment, that the decision of an inspector which is quashed is of no effect. That is why upon a remitted question being the subject of a renewed reopened inquiry, except by agreement the parties start again with a clean sheet. But it does not mean that that which an inspector has previously decided after evidence, after having a view and after applying his planning judgment, is not at least potentially a material consideration. The weight to be given to such other judgment is a matter for the decision-maker on any reopened inquiry. But it is, if it is a matter of planning judgment in identical circumstances, in my judgment at least desirable to explain why the second judgment differs from the first. It is at least convenient for the parties to be able to start at the second inquiry from the stage that had been reached at the first, so that any attempt to alter the basis of judgment at least has regard to the earlier judgment; and that indeed is the course which was followed by this appellant in this appeal in at least one and I think at least two separate matters.

64. The relevant legal principles to be applied when considering the adequacy of reasons given for decisions in the planning context have been summarised by the House of Lords in *South Bucks DC and Another v Porter (No 2)* [2004] UKHL 33 at [36] in which Lord Brown stated as follows:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.[emphasis added]

65. In relation to taking into account material considerations, a decision maker ought to take into account a matter which might cause him to reach a different conclusion to that which he would reach if he did not take it into account. "Might" in such circumstances means a "real possibility" that the decision maker would reach a different conclusion if he did take that consideration into account: *Bolton Metropolitan Borough Council v Secretary of State for the Environment* (1991) 61 P. & C.R. 343, 352.

66. If the judge concludes that the matter in question was "fundamental to the decision" or that it is clear that there is a real possibility that the consideration of the matter would have made a difference to the decision then the judge may hold that the decision was not validly made. If the judge is uncertain whether or not the matter in question was fundamental to the decision, then the judge may not be able to conclude that the decision was invalid. Even if the judge does conclude that he could hold the decision to have been invalid, in exceptional circumstances, he is entitled in the exercise of his discretion, not to grant relief: *Bolton*, supra.

67. A perverse decision is one which may be described as "unreasonable" or "irrational" and is one which either defies comprehension or which has proceeded from a flawed logic. It is one which no sensible person who had applied his mind to it could have arrived at: *Council for Civil Service Unions v Minister for the Civil Service* [1985] AC 374, the speech of Lord Diplock at pages 410 and 411 and see *Fenton v Secretary of State for the Environment, Transport and the Regions*, Transcript, 30 March 2000, para 16.

<u>Grounds of Application</u>

68. The Secretary of State's letter of 19 September 2012 inviting views on conjoining the Radlett and Colnbrook inquiries made clear his position that the comparative merits of the Colnbrook and Radlett proposals would be a significant material consideration in the determination of the Radlett appeal. The essence of his approach at that stage was that, given that the Colnbrook appeal had reached inquiry stage, it was necessary, in order to reach a more coherent and consistent decision as to the appropriate location for an SRFI, to conjoin the two appeals.

69. That approach was consistent with the approach previously adopted by the Secretary of State in the quashed decision of 7 July 2010 in which the Secretary of State considered that the strategic gap designation was not determinative of the question of relative harm and that the scale and other benefits associated with the emerging Colnbrook proposal indicated that the Colnbrook site might meet the need for an SRFI in a less harmful way than the Radlett proposal.

70. Although that decision was quashed, the challenge succeeded on the sole ground that the Secretary of State had not provided sufficient reasons for disagreeing with the Inspector as to the significance of the strategic gap.

71. It is to be noted that the Court found no error in the Secretary of State's decision to have regard to the evidence before the inquiry of an emerging proposal for a smaller scale SRFI at Colnbrook when considering the question of whether the Radlett proposals had established very special circumstances. The reasoning contained within that 7 July 2010 is admissible to understand the Secretary of State's rationale at that time.

72. The Secretary of State's position as at 19 September 2012 was, therefore, that the scale and other benefits associated with the proposed SRFI at Colnbrook continued to be relevant considerations in his determination of the Radlett appeal and that the question of relative harm between the two sites was not determined conclusively by the strategic gap policy which applied to the Colnbrook site. His decision was that it was important and necessary to conjoin in order to have a full and proper understanding of the two proposals.

73. That is unsurprising given that the significance of the strategic gap designation could only be judged in the light of the relative harm in visual and other terms of the Colnbrook development.

74. In the light of the fact that the Colnbrook proposal had progressed from an emerging plan to a fully developed proposal which was imminently to be the subject of an Inquiry, the Secretary of State specifically took the view that the evidence and representations then before him were

insufficient to reach a conclusion on whether the need for an SRFI could be met in a less harmful way at Colnbrook. The Secretary of State had reached the position at that stage that, irrespective of the information which he then had, it was necessary to conjoin the two inquiries.

75. The Secretary of State specifically took that view in spite of the fact that at an earlier stage (notably, as Helioslough has stated in its letter before claim, the 1 February 2012) he considered that the information which he had then received was sufficient to reach that conclusion.

76. The Secretary of State's position as at 12 October 2012 was clearly no different from that expressed in September. His responses to the various representations which had been made by Helioslough, Goodman and Slough Borough Council as to the appropriateness of conjoining the two appeals explained how the various issues relating to appropriateness and practicality could be dealt with. His approach was plainly to seek to explain why he remained of the view that reopening and conjoining the inquiry was an appropriate step to take. That is why he then stated that the Secretary of State was "inviting representations on his view that considering the two schemes at conjoined inquiries would lead to be [sic] a more coherent and consistent decision making process".

77. Through the letters of 19 September 2012 and 12 October 2012, the Secretary of State had explained the reasoning which had led him to reach the position that it was appropriate in his mind to conjoin the inquiries.

78. The Council accepts that the Secretary of State was not expressing a fixed position at this stage and the Secretary of State was inviting views upon the appropriateness of taking the step which he proposed.

79. Nevertheless, at the point of these letters, it was clear that the Secretary of State had:

a) Taken the view that the conjoining of the two inquiries would lead to a more coherent and consistent decision making process.

b) The information before him was not sufficient on which to reach a conclusion as to the merits of the two proposals.

c) It was likely that the comparative merits of the two proposals would be a significant material consideration in his determination of the Radlett proposal.

d) A decision on the Radlett proposal and the reasoning for that decision may have a significant bearing on his determination of the Colnbrook proposal.

e) That it was no longer appropriate to determine the Radlett appeal on the evidence and representations were currently before him.

80. Despite this, on 14 December 2012, the Secretary of State decided not to conjoin the inquiries.

81. The Secretary of State stated that it was unnecessary to re-open the inquiry. The single reason given is that he was satisfied that he could determine the Radlett proposal on the basis of the evidence before him.

82. The Secretary of State's reasoning on the face of this letter was that he concluded that the evidence which he had hitherto received was the proper basis for reaching a conclusion on the relative merits of Colnbrook and Radlett. In reaching that conclusion, the Secretary of State did not explain, at all, why:

a) Conjoining the inquiries would not lead to a more coherent decision or why, if it would, it was nevertheless no longer a matter of significant weight to him.

b) The comparative merits of the two schemes would not be a significant material consideration in his determination of the Radlett proposals or, if it would, why it was considered that this matter was no longer of any significant weight.

c) A decision on the Radlett proposal and the reasoning for that decision may have a significant bearing on his determination of the Colnbrook proposal or, if it would, why that was a matter of no significant weight.

d) Why the information before him was sufficient.

e) Why it was, in spite of those matters, appropriate to determine the Radlett decision on the basis of the information before him.

83. Given the series of reasons that had been given by the Secretary of State to explain why it was his view at the stage that he should conjoin the inquiries, it was incumbent on the Secretary of State to provide proper reasons to explain his revised position. As it was, he gave no explanation on these matters at all.

84. The explanation given was that the evidence before him was sufficient; this, on the face of it, related to the evidence in the Radlett appeal of a comparison between the Colnbrook and Radlett schemes being sufficient. That view was apparently reached, however, in spite of the fact that none of the representations received in response to the letter of 19 September 2012 provided any significant further evidence relating to the comparative merits of the SFRI scheme being promoted at Colnbrook beyond that which was already before the Secretary of State when he initially proposed conjoining the inquiries. Moreover, nothing had changed substantively between the earlier stage of his assessment on 19 September 2012– when he reached the view that the information was not sufficient - and the final stage of his determination of this issue.

85. While Helioslough in its letter before claim contends that the Secretary of State had earlier indicated on 1 February 2012 that the Secretary of State had sufficient information to reach a conclusion on the appeal, the Secretary of State had specifically decided that it was not sufficient as at 19 September 2012. There needed to be some explanation for the change of view. It was a view that was consistent with the position he had taken at the start of the process in July 2010.

86. The representations of Helioslough and Goodman in September 2012 suggested that, given there was a need for both SRFI proposals, the inquiry would serve no purpose. The Secretary of State gave no indication in his decision of 14 December 2012 (and nor did he do so in his letter dated 20 December 2012 that he was minded to grant permission for Radlett, which is dealt with further below) that the comparative merits would no longer be a significant material consideration in his determination; as at 20 December 2012, it was stated that this was still a significant material consideration (see paragraph 32 of the decision letter). There was no suggestion, it is to be noted, in the explanation given in the letter of 14 December 2012, that the reason for not conjoining was one of practicality, or inappropriateness, in the light of the previous Inspector's decisions which were matters raised by Goodman and Helioslough.

87. The representations in September 2012 had, further, been responded to by way of the Secretary of State's letter dated 12 October 2012 when he indicated why he remained of the view that the appeals should be conjoined.

88. The decision letter fails to explain what, if any, representations or further evidence received in response to his letter of 19 September 2012 informed his new conclusion nor any reasons as to why such material caused him to change his mind.

89. The decision not to conjoin the inquiries was, in the light of this, based either upon an irrational analysis or failed to take into account material considerations. It is not possible to understand how the Secretary of State rationally came to the conclusion that there was sufficient information to reach a decision when he had come to the decision prior to that point that the information was not sufficient so as to reach a more coherent and consistent decision. On the face of it, the decision was made irrationally or by failing to take into account material considerations – there was no evidence in the subsequent information which justified the change of mind and by reaching the decision it is clear that the Secretary of State failed to taken into account the continuing relevance of the competing merits of the proposals and his own view that the evidence before him was not appropriate to reach an appropriate view on the two schemes. The failure to give proper reasons has substantially prejudiced the Council since it is unable to scrutinise the decision so as to be clear that the decision was reached unlawfully.

90. The letter of the Secretary of State dated 20 December 2012 indicated that the Secretary of State was minded to grant permission. In that decision, the Secretary of State indicated that he was of the view (at paragraph 32) that: "*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".*

91. The Council has made it clear to the Secretary of State that it considers the contents of that letter to be flawed and that, should the Secretary of State continue with the reasoning contained in the letter in the event that he issues a final decision, the Council will challenge this decision under section 288 of the Town and Country Planning Act 1990. It has made it clear to the Secretary of State that the only reason a challenge is not now being made is because of the interim nature of this decision.

92. The reasoning of the Secretary of State in that letter, however, provides no indication as to why the decision not to conjoin the two inquiries was rationally reached. The Secretary of State has considered that the comparison between Colnbrook and Radlett is a significant material consideration. The Secretary of State has provided no explanation as to why the information given by the Inspector was sufficient in order for him to reach a coherent and consistent decision – all that is indicated is that the Inspector's analysis and "other evidence" led him to the decision which he reached on Colnbrook. In the circumstances, that does not provide any basis for clarifying the nature of his decision made 6 days earlier.

<u>The Responses to the Defendant's and the First Interested Party's letters replying to the letter before claim</u>

<u>The Defendant's Response to the Letter before Claim</u>

93. The Defendant's response raises the following matters:

a) The challenge is based on a misapprehension of the nature of the letters of 19 September and 12 October 2012 since they were expressing preliminary views and the Secretary of State was not bound to the views identified in those letters. The Secretary of State was entitled to reflect on the matter and consider the questions of re-opening and conjoining in their entirety.

b) For any decision to get off the ground it would be necessary to show that the decision that the Secretary of State was minded to grant the Radlett appeal was unlawful and the letter before claim disavows any challenge to that letter.

c) The letter before claim does not indicate why the lack of any proper and adequate comparative assessment of the relative merits of Colnbrook and Radlett renders the "minded to" letter unlawful, particularly given the policy protection Colnbrook enjoys as a result of the strategic gap designation.

94. As to the contention that the letters were expressing preliminary views, that is accepted. Such a contention, however, misses the point. The Council's case is that, in the light of the position being expressed by the Secretary of State and the reasons for that position, it was incumbent on the Secretary of State to give proper reasons for his ultimate, and contrary, decision on 14 December 2012. The reason that was given in the letter discloses the likelihood that the Secretary of State either failed to take into account material considerations or acted irrationally in reaching the conclusion which he did. It is to be noted that the Secretary of State, even following the letter before claim, provides no further evidence of what his reasons were at the time of making the decision on 14 December.

95. The Secretary of State ultimately seeks to argue that the challenge to the decision not to conjoin the inquiry cannot succeed in the absence of any challenge to the Secretary of State's letter of 20 December 2012 and it is suggested that no such challenge is being made under this claim. The Secretary of State is aware that, through its letter of 18 January 2013, the Council considers that a decision to grant permission would be unlawful if it is based on the reasons given in the 20 December 2012 letter and that the only reason a challenge is not yet made to that letter is because no permission has yet been granted and so a final decision has not yet been issued. If the Secretary of State is seeking to suggest that the Council needs, in order to make good its claim, to challenge the letter of 20 December, it should state so specifically; in those circumstances, the Council will also lodge a claim against the decision of 20 December.

96. The Council has set out the reasons why the second decision is in error in its letter dated 18 January 2013. In addition, the letter of 20 December is predicated on the lawfulness of the decision not to conjoin the two inquiries. Should the Secretary of State's decision not to conjoin the two inquiries be in error, the Secretary of State's approach of proceeding to a final decision on the Radlett appeal cannot, it is submitted, stand.

97. The position is, therefore, that to the extent that it is necessary to identify an error at this stage with the 20 December letter, such errors clearly exist.

<u>Helioslough's Reply to the Letter Before Claim</u>

98. In its response to the letter before claim Helioslough has suggested (as distinct from those matters raised by the Secretary of State):

a) That the Council's letter is misleading by omission since it has not indicated that the Secretary of State had concluded during the written representations stage that the information before him was sufficient to reach a decision (for example, by way of the Secretary of State's letter 1 February 2012).

b) That the Council did not, until the latter stages of the process, seek a conjoining of the inquiry until that stage.

c) There was no relevant power or duty to conjoin the inquiries.

d) It is wrong to suggest that the preliminary views of the Secretary of State in his letters dated 29 September 2012 and 12 October 2012 are binding on him; in fact, the Secretary of State approach in these letters was itself misconceived by being contrary to the statutory scheme and his previous actions. Once he was reminded of the basic

facts it was inevitable that he would realise it was not appropriate to take the step he had.

99. In relation to the first point, the Council's letter set out a summary of the grounds of challenge. It did not purport to amount to a full recounting of the facts. The Secretary of State had the relevant correspondence available to him when reaching his decision.

100. The Council did not seek a conjoining of the inquiries until such time as the matter was suggested by the Secretary of State. The Council considered the Secretary of State's reasoning and decided that it was appropriate and necessary to take that step in the circumstances. To suggest that the Council's approach was opportunistic fails to recognise that it was the Secretary of State who made the suggestion, the long period of the decision-making process and the clear changes of circumstance which had occurred. Indeed, had the Council asked to conjoin the inquiry at an earlier stage, the same allegation would have been made by Helioslough that the Council was acting opportunistically. The fact was that the Colnbrook appeal had reached a stage at which it was feasible, sensible and practical to conjoin the two inquiries and thus arrive at an appropriate conclusion on the relative merits of the two appeals. It was that which the Secretary of State thought, as at September and October 2012, was appropriate and the Council agreed.

101. As to the statutory power to have a conjoined inquiry, the power under rule 19 of the 2000 Rules is widely drafted and enables the holding of an inquiry, whether or not a statutory timetable has been set for the decision-making process.

102. As to the inevitability of the Secretary of State's realisation that the conjoining of the inquiries was inappropriate, the Secretary of State's position set out in the 12 October 2012 letter was a response given in spite of the various arguments set out by Helioslough as to why conjoining the inquiries was inappropriate. No significant new arguments were made by Helioslough thereafter. The Secretary of State was not dissuaded at that stage from his initial view by Helioslough's arguments; there was, therefore, no inevitability in the Secretary of State's ultimate conclusion. The contention rather misses the essence of the Council's complaint, namely, that having reached a position which set out, with specific reasons, why a particular course of action seemed preferable, there was an almost complete change of position without any explanation being given for rejecting the factors that had earlier led him to the position he had then reached.

Remedy

103. In light of the above, the Council seeks an order:

a) quashing the Secretary of State's decision of 14December 2012; and,

b) remitting the matter to the Secretary of State for a further decision as to whether the local inquiry into the Radlett appeal should be re-opened and conjoined with the forthcoming local inquiry into the Colnbrook appeal.

MATTHEW REED