

22 January 2009

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Our Ref: APP/Q4625/A/98/1013084
and APP/Q4625/A/06/1199380
Your Ref:

Ms Jill Davis BA, MRTPI
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Dear Sir and Madam,

**TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 APPEALS BY:**

A. SWAYFIELDS LTD – Land Adjacent to the M42 at Catherine de Barnes, Solihull. Application Ref: 97/1930

B. SHIRLEY ESTATES (DEVELOPMENT) LTD – Land at Box Tree Farm, Junction 4, M42 Motorway, B93 8NJ. Application Ref: 2001/1943

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector Mr M P Hill BSc, MSc, CEng, MICE, FGS (the first Inspector) who, between 30 November 1999 and 16 June 2000, assisted by Mr Colin Ball Dip Arch, Dip Arch Cons, RIBA, FRSA (Mr Ball), held an inquiry into an appeal against non-determination by Solihull Metropolitan Borough Council of the following application, made by Blue Boar Motorways Ltd and the Executors of Sir John Gooch (and subsequently, with their agreement, pursued by Swayfields Ltd) for outline planning permission for a comprehensive motorway service area, with all matters reserved for subsequent approval apart from means of access, on land adjacent to the M42 at Catherine de Barnes, Solihull, in accordance with application number 97/1930, dated 19 December 1997 (**Appeal A**).
2. **Appeal A** was recovered for determination by the then Secretary of State (Environment, Transport and the Regions) on 19 February 1999, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because the proposals would involve significant development in the Green Belt. A public inquiry into this and other appeals was held in 1999-2000. Following consideration of the first Inspector's report, the then Secretary of State indicated by letter dated 6 March 2001 that he was minded to accept the first

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Inspector's recommendation. For the reasons set out in his letter of 6 March 2001, the then Secretary of State indicated that he was minded to grant outline planning permission for an MSA at the Appeal A site, excluding the use of Walford Hall Farmhouse as a training centre, subject to:

- appropriate conditions;
 - the execution of a signed agreement under section 278 of the Highways Act 1980, between the appellant and the Highways Agency and the completion of any additional procedures required under the Highways Act 1980 necessary to enable the Highways Agency to reach a final decision on whether the auxiliary lanes should be constructed;
 - consideration of the views of the parties on the omission of the use of Walford Hall Farmhouse as a training centre from any planning permission granted in respect of Appeal Site A;
 - consideration of the views of English Heritage and of any further representations received in respect of the impact of the proposed MSA on the setting of the listed building; and
 - the entering into of a new Deed of Planning Obligation by Undertaking, which binds all the owners of the land and off-site land in respect of each obligation in the Deed.
3. A copy of the then Secretary of State's letter of 6 March 2001 is enclosed at Annex A to this letter and forms part of the decision in relation to Appeal A. The first Inspector's conclusions are not attached as these were enclosed with the letter of 6 March 2001, but a copy of them can be made available upon request to this office.
4. Following subsequent correspondence with English Heritage and other interested parties, the then Secretary of State (Office of the Deputy Prime Minister) decided by letter dated 6 September 2005 that, in the light of material changes in circumstances since the original public inquiry, a fair way of proceeding to a decision about Appeal A in order to serve the interests of natural justice would be to re-open the inquiry. In reaching her decision on Appeal A, the Secretary of State has given consideration to the report of the Inspector, Mr Michael Ellison MA (Oxon) (the Inspector), who, assisted by Mr Ball, held a re-opened public local inquiry between 12 February 2008 and 16 July 2008. The Secretary of State's letter of 6 September 2005 also listed the matters on which he particularly wished to be informed. These are set out at IR1.8 of the Inspector's report. This report also lists at IR1.9 the changes which have taken place in relation to a number of documents referred to in the statement of matters; and, at IR1.10, the Inspector notes that there have been other changes in policy guidance and the physical environment since the 1999/2000 inquiry. In his report, the Inspector has considered Appeal A against current relevant policies, documents and circumstances (IR1.13), and the Secretary of State has taken the same approach in reaching her decision.

5. The re-opened inquiry in 2008 also considered an appeal against the non-determination by Solihull Metropolitan Borough Council of an application made by Shirley Estates (Development) Ltd, for outline planning permission for a motorway service area, with all matters reserved for subsequent approval, on land at Box Tree Farm, Junction 4 of the M42, Solihull, B93 8NJ, in accordance with application number 2001/1943, dated 23 August 2001 (**Appeal B**). I am directed by the Secretary of State to say that consideration has also been given to the Inspector's report as it relates to Appeal B.
6. **Appeal B** was dated 12 June 2006. The Planning Inspectorate confirmed in its letter dated 14 July 2006 that discretion had been exercised on behalf of the Secretary of State under Article 23(2) of the Town and Country Planning (General Development Procedure) Order 1995 to extend the time limit for making the appeal. It was recovered for determination by the Secretary of State in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 on 11 February 2008, because the appeal could most efficiently and effectively be decided together with Appeal A, over which Inspectors had no jurisdiction.

Inspector's recommendations and summary of the decision

7. The Inspector recommended that both appeals be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendations. A copy of the Inspector's full report (IR) is enclosed for the main parties. Other interested parties, for whom only the Inspector's conclusions are enclosed, can obtain a copy of the full report on request. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

8. Since the 1999/2000 inquiry the Appeal A scheme has been amended as set out in IR1.11. Like the Inspector, the Secretary of State has considered Appeal A on the basis of the drawings identified by the Inspector at IR16.6, including the illustrative layout shown on drawing DH.301.A-5.F, and she agrees with him (IR16.7) that no prejudice has been caused to any party by this course of action. As set out in IR16.9, the appellant in Appeal B asked for the appeal to be considered on the basis of a revised illustrative layout. The Secretary of State agrees with the Inspector that no party would be prejudiced by taking the revision into account and, like him, she has therefore considered the appeal on the basis of the illustrative layout shown on plan 50292_MSA_001 Revision F.
9. In reaching this position the Secretary of State has taken into account the Environmental Statements which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the Regulations") and all the updated environmental information provided in respect of both appeals. For the reasons set out in paragraph 25 below, the Secretary of State is satisfied that the Environmental Statement in respect of Appeal A is adequate for the purpose of giving proper consideration to any likely environmental effect of the proposed development and complies with the Regulations. For the reasons set out in paragraph 50 below, she is content that

the Environmental Statement in respect of Appeal B is adequate for the purpose of giving proper consideration to any likely environmental effect of the proposed development and she is satisfied that it complies with the Regulations.

10. Having had regard to the procedural issues raised by Solihull Against Motorway Service Areas (SAMSAG) and the Inspector's explanation of how he handled these issues (IR16.10-16.14), the Secretary of State considers that the Inspector applied the Rules correctly and exercised his discretion with regard to SAMSAG's request to cross examine witnesses in a reasonable way, and there was no prejudice to its case. She also considers that the Inspector was correct in his ruling that SAMSAG's complaint about being excluded from the production of various key documents was without legal foundation, and that copies of these documents were available for inspection by SAMSAG and other interested parties.
11. An application for costs was made in writing by Solihull Metropolitan Borough Council against the Appeal B appellant. The Secretary of State's decision on that application is the subject of a separate letter.

Policy considerations

12. 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.
13. In this case, the development plan comprises the Regional Spatial Strategy for the West Midlands (RSS), published in June 2004 and amended in January 2008, and the Solihull Unitary Development Plan (UDP), adopted in February 2006. The Secretary of State considers that the development plan policies most relevant to the appeal are those identified in the documents listed by the Inspector at IR4.4.
14. Preferred options for the second phase of the revision of the RSS were submitted to the Secretary of State, following consultation, in January 2008. Like the Inspector (IR4.3), the Secretary of State has given this second phase of revision limited weight as it is still at an early stage.
15. Other material considerations which the Secretary of State has taken into account include the national policy guidance documents listed at IR4.5.
16. The Secretary of State has also taken into account the proposed changes to Planning Policy Statement 6, *Planning for Town Centres*, published for consultation in July 2008, but as that document is still in draft and may be subject to change, she affords it little weight.
17. In deciding Appeal A, the Secretary of State has had regard to the potential impacts on the Grade II* listed Walford Hall Farmhouse, with particular regard to the desirability of preserving that building or its setting, as required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main issues

18. The Secretary of State considers that the main issues in these appeals are as set out by the Inspector in: IR16.18 (both appeals); IR16.33 (Appeal A); and IR16.160 (Appeal B).

Need for an MSA

19. In his letter of 6 March 2001, the then Secretary of State accepted that there was a significant need for an additional MSA serving traffic travelling in both directions on the M42 between Junction 3A and Junction 6. Although the then Secretary of State's letter referred to Junction 6, it is clear from paragraph 19.1 of the Inspector's report of the first inquiry that the stretch of the M42 in question was the eastern stretch between the junctions with the M40 and the M6, namely Junctions 3A and 7. The Secretary of State notes that there has been no material change in the provision or availability of MSAs since this matter was considered in the 2001 interim decision letter (IR16.19). For the reasons given by the Inspector in IR16.20-16.27, she agrees with him that there remains a significant unmet need for one additional MSA serving traffic travelling in both directions on this stretch of the M42, and that this need is somewhat greater than that which existed in 2001 at the time the interim decision on Appeal A was issued (IR16.28).

Appeal A

Consistency with airports policies

20. For the reasons given by the Inspector at IR16.54-16.57, the Secretary of State agrees with him at IR16.58 that the development of an MSA on the appeal site would not conflict with national policies contained in the Air Transport White Paper; it would not prejudice RSS policy for Birmingham International Airport; and it would not prejudice safety surfaces and public safety zones.

Consistency with national policy for MSAs

21. A new policy statement on the provision, standards and signing of MSAs and roadside facilities was published on 2 April 2008 in DfT Circular 01/2008. This new policy does not directly apply to the appeal proposals, because the planning application to which the appeal relates was registered before 2 April 2008. However, like the Inspector, the Secretary of State is of the view that the new Circular is a material consideration because it indicates the direction of travel of the Government's MSA policy (IR16.59). She agrees with the Inspector at IR16.62 that it remains the position that the appeal development would be a 30 mile MSA which would also meet some of the infill site tests. She also agrees that the proposal would provide all the facilities required by Circular 01/2008; and that it would complete a network of 30 mile MSAs in this part of the motorway system. Like the Inspector at IR16.63, she concludes that the appeal is consistent with the policies in the MSA policy statement.

Consistency with PPS6

22. For the reasons set out by the Inspector in IR16.64-16.66, the Secretary of State agrees with him (IR16.67) that the proposed development would be consistent with paragraph 3.30 of PPS6.

Consistency with PPG15

23. Since the issue of the Secretary of State's interim decision, the proposal for the use of Walford Hall Farm as a training centre has been dropped. The present proposal is for the separate residential use of Walford Hall Farmhouse and its outbuildings (IR16.68). Listed building consent for works to the Farmhouse to make it habitable as a single dwelling was granted on 13 October 2006 and listed building consent for repair works to bring its outbuildings into a stable and weatherproof condition was granted on 11 April 2007 (IR1.9d).

24. The omission from the MSA scheme of the proposed use of the Farm as a training centre accords with the views expressed in the then Secretary of State's letter of 6 March 2001. For the reasons given at IR16.70-16.83, the Secretary of State agrees with the Inspector at IR16.84 that the proposed works to Walford Hall Farm would be a significant benefit of the proposed MSA and that, while there would be some harm to its wider setting, the revised proposals for the separate residential use of Walford Hall Farmhouse and its outbuildings, and the consequent improvement of its immediate setting, are fully consistent with advice in PPG15.

Adequacy of the Environmental Statement

25. The Environmental Statement submitted to the 1999-2000 inquiry was re-submitted to the re-opened 2008 inquiry, updated by further environmental information provided in June 2006 and September 2007. The totality of the environmental information covers the scheme illustrated in drawing DH.301.A-5.Revision F (IR16.89). Like the Inspector (IR16.96), the Secretary of State considers that the updated Environmental Statement is adequate for the purpose of giving proper consideration to the likely significant effects of the proposed development as shown on drawing DH.301.A-5.F and she further concludes that the environmental information complies with the Regulations.

26. A further revision to the illustrative layout was also prepared and circulated by the appellant in January 2008 – Revision G (IR16.90), and the Inspector notes that he has some concern that the environmental information does not cover the impact of the additional works shown on this drawing (IR16.96). However, as stated at paragraph 8 above, the Secretary of State has determined the appeal on the basis of drawing DH.301.A-5.F, and, in view of this, she has not taken a view on whether the environmental information covers the impact of additional works shown on drawing DH.301.A-5.Revision G.

Active traffic management scheme (ATM) and access to proposed MSA

27. The ATM on the M42 was first announced in July 2001 and was implemented in stages between early 2003 and September 2006 (IR16.97). In correspondence

subsequent to the start of the ATM's construction the Highways Agency confirmed that it had no objection in principle to auxiliary lanes on the M42, so long as they could be satisfactorily integrated with the operation of the ATM (IR16.98). The appellant submitted a number of potential schemes for access to the MSA to the Highways Agency, the last of these in December 2007 (IR16.99). As explained in paragraph 8 above, the Inspector has considered and the Secretary of State has determined the appeal on the basis of the December 2007 revision.

28. The December 2007 proposals would create a permanent fourth lane between J5 and J6 of the M42 by adjusting the existing lane widths, deleting the hard shoulder, and replacing it with a hard strip of at least 1m in width (IR16.100). For the reasons given at IR16.103-16.105 and IR16.108, the Secretary of State agrees with the Inspector (IR16.121) that the December 2007 proposals would require acceptance of an extended length of the M42 without an adequate hard shoulder; and it could lead to driver uncertainty because of the changes in operating regimes which would be involved along different stretches of the motorway. She has taken account of the Inspector's comments about the absence of a detailed signage strategy and the appellant's decision not to submit formal applications for the approval of the numerous and substantial Departures from standards which Appeal A would involve (IR16.110-16.119 and IR16.121).
29. Like the Inspector, the Secretary of State has had regard to the fact that the impact of the appellant's proposals would be to make the lane drop/lane gain arrangements at the south facing slips of J6 and the north facing slips of J5 permanent, but does not consider this to be a sufficient advantage to outweigh the significant highway and safety problems which remain associated with the proposals (IR16.122). Also, like the Inspector (IR16.124), the Secretary of State is very far from satisfied that the appellant's proposals represent a safe basis on which detailed planning for an MSA at Catherine de Barnes can proceed. Furthermore, she agrees with the Inspector that although it is possible that some of the issues could be addressed by a proper process of negotiation and discussion between the appellant and the Highways Agency, there is no certainty, or even a high degree of likelihood, of a satisfactory outcome (IR16.123).
30. For the reasons given by the Inspector at IR16.97-16.124, the Secretary of State agrees with him, at IR16.125, that the issues arising from the impact of the appeal development on the operation of the ATM represent a significant change in circumstances since the minded to grant letter of 6 March 2001 which is material to consideration of the appeal, and which militates strongly against approval. She also accepts the evidence of the Highways Agency that, if the proposals were approved on the basis of the information submitted, the ATM scheme could not continue to operate within the bounds of its established safety case (IR16.125). She agrees with the Inspector that, if the proposals were approved, the ATM scheme would have to be revised or even switched off, and that this would have clear implications for the free flow of traffic and congestion on the M42, and for achieving the economic goals set out in the RSS (IR16.125). Like the Inspector, she concludes that it would put at risk a scheme which has had a major positive impact and which represents a significant investment of public money (IR16.125).

Conditions

31. The Secretary of State has considered the proposed conditions and the Inspector's comments as set out at IR16.139 -16.147, as well as national policy as set out in Circular 11/95. Like the Inspector at IR16.142, she accepts the Highways Agency's evidence concerning the potential for traffic growth to generate a need for additional parking space at the appeal development. She has noted the illustrative drawing DH.301.A-5.G which shows how this might be achieved. However, as she has determined the appeal on the basis of drawing DH.301.A-5.F, she does not consider that Condition 21 (which assumes that parking provision could be developed beyond the provision shown in drawing F) should be included. She considers that the rest of the proposed conditions comply with the policy tests in the circular, but that they do not overcome her reasons for refusal.

Planning obligations

32. The Deed of Planning Obligation by Undertaking of 27 August 2004 referred to in the Secretary of State's statement of matters of 6 September 2005 has been replaced by a new obligation in the form of a Section 106 Agreement, dated 20 March 2008. The Secretary of State has considered the new Agreement in the light of the Inspector's comments at IR16.85-16.86 and national policy as set out in Circular 05/2005. She agrees with the Inspector that it meets the tests of the Circular (IR16.87).

33. A further planning obligation, a Unilateral Undertaking dated 3 June 2008, has been made in relation to this appeal. The Secretary of State has considered this Undertaking, together with the Inspector's comments at IR16.148-16.153 and national policy as set out in Circular 05/2005. The Undertaking makes provision for a contribution of £950,000 to finance additional Regional Control Centre resources. For the reasons given at IR16.151-16.153, the Secretary of State agrees with the Inspector at IR16.153 that this obligation is not fairly and reasonably related in scale and kind to the proposed development and that it is not reasonable in all other respects. Like the Inspector (IR16.154), she concludes that it does not meet the requirements of Circular 05/2005.

The relationship of the proposal to the development plan

34. The Secretary for State notes that neither the RSS nor the UDP offers specific support for an MSA in the area (IR16.37). However, for the reasons given at IR16.35, the Secretary of State agrees with the Inspector at IR16.49 that, overall, the RSS policies in the development plan relating to the improvement of facilities and safety on the road network support the provision of an MSA at the appeal site so long as safe arrangements can be made for the integration of the development with the operation of the motorway in the area. She further agrees with the Inspector at IR16.36 that the importance of maintaining the Active Traffic Management system (ATM) is also supported by the thrust of RSS policy, and that it is thus necessary to consider the impact which the appeal development might have on that system in considering whether the proposal for an MSA at the appeal site is in line with the development plan. As set out at paragraphs 28-30

above, she has concluded that the proposal is not consistent with the safe operation of the ATM. She therefore concludes that the proposal does not comply with RSS policies to improve facilities and safety on the road network.

35. For the reasons given at IR16.38-16.40, she also agrees with the Inspector at IR16.49 that the appeal development would be in conflict with UDP policies in relation to the protection of agricultural land, safeguarding the countryside and protecting countryside areas that retain a “dark sky”. The UDP policies in relation to the countryside have come into effect since the date of the interim decision letter.
36. In the light of her conclusions in paragraph 42 below, she concludes that the development is also contrary to development plan policies on the Green Belt.
37. For the reasons given by the Inspector at IR16.79, the Secretary of State considers that that the proposal would not be in overall conflict with development plan policies in relation to listed buildings.

Green Belt

38. The Inspector summarises the conclusions reached by the then Secretary of State in 2001 in relation to Green Belt considerations in respect of Appeal A at IR16.126-16.127. The Secretary of State agrees with the Inspector at IR16.132, for the reasons at IR16.126 and IR16.128-16.131, that the appeal development would still cause harm to the Green Belt through its inappropriateness, its impact on the openness of the Green Belt and its encroachment into the countryside, but that since 2001 the harm which the proposed development would cause has reduced in the respects identified by the appellant. As regards the additional negative issues which were identified at the inquiry, for the reasons given by the Inspector at IR16.132, she agrees with him that none of these matters affect the overall balance in connection with the appeal development.
39. In line with PPG2, the Secretary of State attaches substantial weight to the harm to the Green Belt through inappropriateness when considering any planning application or appeal concerning such development. The Secretary of State has also attached some weight to the other aspects of Green Belt harm which this development would cause. She has gone on to consider whether there are other material considerations which clearly outweigh the harm by virtue of inappropriateness and other harm and which would constitute very special circumstances sufficient to overcome the presumption against development in the Green Belt.

Green Belt Balancing Exercise

40. As indicated in paragraph 19 above, the Secretary of State agrees with the Inspector that there remains a significant unmet need for one additional MSA serving traffic travelling in both directions on this stretch of the M42, and that the need is somewhat greater than that which existed in 2001 when the interim decision in relation to Appeal A was issued. As explained at paragraph 34 above, she also agrees with him that the RSS provides support for the provision of an MSA to improve the facilities of the road network and to improve safety on

the network, but that any improvements must be subject to safe arrangements being made for the integration of an MSA with the operation of the motorway in the area (IR16.133).

41. The Secretary of State agrees with the Inspector at IR16.135 that substantial harm would arise from the appeal proposal in terms of its adverse consequences on the effective operation on the M42 and that this greatly reduces the weight that can be given to this potential benefit of the proposal compared to the position in 2001. She has also taken into account the slight reduction in some aspects of Green Belt harm which would arise with the current scheme in comparison with the proposal considered in 2001, and the improved treatment of Walford Hall Farmhouse.
42. Overall, the Secretary of State concludes that the benefits she has identified above are positive factors which weigh in favour of the proposal and she has considered whether or not, either individually or cumulatively, they amount to very special circumstances. However, like the Inspector (IR16.136), she has concluded that they are not sufficient to clearly outweigh the harm which the appeal development would cause to the Green Belt and other harm and that very special circumstances do not exist.

Overall Conclusions on Appeal A

43. The Secretary of State has given very careful consideration to all the issues raised by the appeal proposal. Although the proposal gains support from national policy on the provision of MSAs at 30 mile intervals, the need for an MSA on this part of the M42 (which is now somewhat greater than that which existed in 2001), and her conclusion about the proposed works to the listed building, the Secretary of State concludes that the appeal proposal is not in accordance with the development plan overall as it does not comply with RSS policies T1 and T12 and there is also conflict with UDP policies relating to the protection of agricultural land, the countryside and the Green Belt. She has also concluded that the proposal is inappropriate development in the Green Belt, which is harmful by definition, and that further harm would be caused to the Green Belt as a result of its impact on openness and its encroachment into the countryside.
44. For the reasons stated above, she considers the proposals before her are incompatible with the safe and efficient working of the ATM system, on which the effective operation of the M42, and the economic prosperity of the region, depend. The Secretary of State is not satisfied that the outcome of any further negotiations with the Highways Agency concerning safety issues would produce an outcome which would resolve what she considers to be a serious flaw in the proposal. She has taken into account the fact that this proposal would result in some reduction in the harm which would be caused to the Green Belt when compared to the scheme proposed in 2001, and that the revised proposals for Walford Hall Farmhouse also weigh in favour of the proposal. However, the Secretary of State concludes that the planning balance which weighed in favour of the appeal proposal at the time of the minded to allow decision in 2001 no longer exists for the reasons given above. Furthermore, she does not consider that very special circumstances to justify the proposed development in the Green Belt exist and she considers that planning permission should be refused.

Appeal B

Consistency with airports policies

45. The proposed MSA at Junction 4 (J4) would be located well away from Birmingham International Airport. The Secretary of State agrees with the Inspector at IR16.177 that the proposal would not affect the national policies set out in the Air Transport White Paper, the airports policies contained in the RSS, or the Birmingham International Airport Master Plan.

Consistency with national policy for MSAs

46. The Secretary of State agrees with the Inspector at IR16.179 that the J4 scheme would comply with the requirements of the 1998 MSA Policy Statement in terms of the spacing of MSAs. Like the Inspector, she considers that it is a 30 mile site which would also happen, in some respects, to provide an infill facility and it would also meet some of the infill tests contained in the Policy Statement.

47. Although DfT Circular 01/2008 does not directly apply to the consideration of this appeal, because the application was registered before 2 April 2008, the Secretary of State agrees with the Inspector, for the reason he gives, that there would be no difficulty in ensuring that the appeal proposal could provide all the facilities required by Circular 01/2008 (IR16.182).

48. For the reasons given by the Inspector at IR16.183, the Secretary of State agrees with him that, given her conclusions on Appeal A, the Government's new guidance which indicates a preference for on-line MSA sites does not present a barrier to consideration of Appeal B. She concludes, like the Inspector at IR16.184, that the appeal development would be consistent with the policies in the MSA Policy Statement.

Consistency with PPS6

49. The Secretary of State concurs with the Inspector at IR16.187, for the reasons given by him at IR16.185-16.186, that the proposed development would be consistent with paragraph 3.30 of PPS6.

Adequacy of the environmental statement

50. The Council drew attention at the Inquiry to the fact that, since the latest Environmental Statement was prepared, the proposed parking area has been extended and could be further extended (as shown on Plan NJA 5A Rev A) if planning permission were granted for the appeal development including a condition proposed by the Highways Agency (IR16.188 and proposed condition 22). Both extensions would reduce areas of landscape around the proposed parking area as envisaged at the time the Environmental Statement was prepared. The Secretary of State agrees with the Inspector that the amendments, even taken together, are small ones, with no obvious environmental consequences (IR16.189). She also agrees that the engineering works at Gate Lane would have no apparent impact on Monkspath Wood

(IR16.190) and that the omission of reference to English bluebells in the Gate Lane verge is not a substantial criticism of the environmental information presented to the inquiry (IR16.191). Like the Inspector at IR16.192, she concludes that the environmental information provided is adequate for the purpose of giving proper consideration to any likely environmental effect of the proposed development.

Impact on safety and the free flow of traffic

51. In 2001, the then Secretary of State dismissed an appeal relating to a previous application for an MSA at J4, agreeing in particular with two criticisms made on traffic grounds. It was concluded that the scheme then being promoted would not allow the gyratory system at J4 to operate without causing undue congestion; and that the proposed access layout to the MSA would be so complicated that it would lead to confusion for drivers who were unfamiliar with the area (IR16.194). The Secretary of State has taken account of the Inspector's comments (IR16.195-16.196) about those two issues in relation to the scheme currently before her, and the fact that the present scheme has sought to address those issues (IR16.197).

52. As regards the first of these, the Secretary of State is content that the form of assessment required by the highway authorities has been undertaken and that all the parameters required by the Council have been accommodated in the modelling (IR16.208). She notes that the results show that the junction arrangements could cope with the additional traffic generated by the MSA use, though queues would not always clear within one green phase, and intergreen times might have to be increased (IR16.208). For the reasons given by the Inspector in IR16.209, the Secretary of State agrees with him at IR16.210 and IR16.222 that additional MSA traffic on the gyratory system at J4 must of necessity add to the delay to that system and, whilst the indication is that it would not cause the gridlock feared in 2001, there is at least the possibility that such delay would reduce the attraction of the regional investment sites in the area of J4, to which importance is attached in the development plan in the interests of the regional economy. In view of this, the Secretary of State attaches substantial weight to the additional delay which this proposal would cause at J4 and the potential economic implications of such delays.

53. On the matter of complicated access arrangements, the Secretary of State has had regard to the proposed routes for traffic accessing and leaving the MSA, and the number of decision points which this would require for drivers wishing to continue northwards after a stop at the MSA (IR16.211). She has also taken account of the fact that the scheme would provide a benefit to the existing motorway system in that the southbound off slip diverge from the M42 to J4 would be improved to a two lane diverge. She agrees with the Inspector at IR16.212, for the reasons he gives, that this would produce a net benefit, in that it would address an existing potential problem.

54. The Council remains concerned about the impact of MSA traffic on the safety of J4. The Secretary of State has given careful consideration to those concerns, which are summarised by the Inspector at IR16.213 and IR16.215. For the reasons given by the Inspector at IR16.216, however, the Secretary of State

agrees with him at IR16.217 that the access arrangements now proposed for the MSA and the highway proposals associated with the development would not cause confusion for drivers sufficient to justify a refusal of planning permission. She also agrees with the Inspector at IR16.223, for the reasons he gives at IR16.218-16.221, that the other highway and traffic issues raised in connection with the appeal do not identify matters which should stand in the way of the approval of the appeal development.

Impacts on light and air pollution

55. The Secretary of State agrees with the Inspector's analysis and conclusion that the requirement for safe levels of lighting within the MSA together with attendant vehicle lights would extend the lit corridor of the M42 into open countryside for a significant distance; and that the night time tranquillity would be eroded and the urbanising influence of the M42 corridor would be extended (IR16.239).

56. She concludes in common with the Inspector at IR16.244, for the reasons in IR16.241-16.243, that there is no evidence to support the claim that the appeal development would cause unacceptable air pollution.

Impacts on noise, landscape and visual amenity

57. She also agrees with the Inspector (IR16.248), for the reasons given in IR16.245-16.247, that there is no evidence to support the claim that the appeal development would cause unacceptable additional noise pollution.

58. As regards impacts on landscape and visual amenity, the Secretary of State recognises, like the Inspector, the efforts the appellant has made to meet the criticisms of the previous scheme, but agrees with him that they have not fully addressed some of those criticisms and have, at the same time, run into new problems (IR16.253) which he identifies in IR16.254-16.258. For the reasons given at IR16.254-16.258, she agrees with the Inspector that the current proposal would still cause harm to the landscape of the surrounding area through the introduction of alien uses and alien land forms, and that the visual amenity for travellers through the area, on the M42 or otherwise, would be reduced by the appeal development (IR16.259).

Other matters

59. The Secretary of State agrees with the Inspector at IR16.261, for the reasons he gives in IR16.260, that the tree and hedgerow loss involved in the appeal development would represent an identifiable harm resulting from the proposal, but that that harm would not alone be so substantial as to justify the refusal of the appeal. As regards the impact on ecology, for the reasons given by the Inspector at IR16.262-16.265, she concurs with him that, subject to the imposition of the conditions offered, there is no issue on this matter which should stand in the way of approval of the appeal development (IR16.266).

Conditions

60. The Secretary of State has considered the proposed conditions and the Inspector's comments as set out at IR16.277-16.288, as well as national policy as set out in Circular 11/95. Like the Inspector at IR16.279, she accepts the Highways Agency's evidence concerning the potential for traffic growth to generate a need for additional parking space at the appeal development. She has noted the illustrative drawing Plan NJA 5 Revision A, which shows how this might be achieved. However, as she has determined the appeal on the basis of drawing 50592_MSA_001_Rev F, she does not consider that Condition 22 (which assumes that parking provision could be developed beyond the provision shown on drawing 50592_MSA_001_Rev F) should be included. She considers that the other proposed conditions comply with the policy tests in that circular, but that they do not overcome her reasons for refusal.

Obligation

61. The appellant submitted two Unilateral Undertakings during the inquiry, dated 27 March 2008 and 29 May 2008. The Secretary of State notes that the appellant wished to substitute the later Undertaking for the earlier one, but that it was pointed out to them that a Unilateral Undertaking cannot be revoked by a subsequent document in the way the appellant proposed. She also notes that the Council undertook, however, to rely only on the later of the two documents (IR16.289). The Secretary of State has considered the later planning obligation and national policy as set out in Circular 05/2005.

62. Amongst other things, the Undertaking dated 29 May 2008 commits the land owners not to start the development until they have applied to the Council for the stopping up of one footpath and have dedicated a replacement route and two new routes as public footpaths. Whilst she considers that other aspects of the Undertaking would deliver the intended benefits and meet the tests of national policy in Circular 05/2005, the Secretary of State is of the view that the provisions relating to the stopping up of footpath SL56 and its replacement would require further clarification to ensure that the necessary order is in place prior to commencement of development. However, in view of her overall conclusions on Appeal B, she did not consider it necessary to pursue this matter further.

The relationship of the proposal to the development plan

63. As noted at paragraph 39 above, neither the RSS nor the UDP offers specific support for an MSA in the area. However, the Secretary of State agrees with the Inspector at IR16.164 and IR16.173 that RSS policies to improve facilities and improve safety on the road network offer support for the provision of an MSA at the appeal site, so long as there would be no detriment to the operation of the ATM system and provided that it does not harm safety.

64. For the reasons given by the Inspector at IR16.165-16.167, she agrees with him at IR16.173 that the proposal conflicts with UDP policies to protect agricultural land and the countryside. For the reason given by the Inspector at IR 16.239, she also agrees with him (IR16.240) that the proposal would conflict with the UDP policy C9 for the protection of areas of dark sky.

65. In the light of her conclusions in paragraphs 71-72 below, she has concludes that the development is also contrary to development plan policies on the Green Belt.

Green Belt

66. In 2001 the Secretary of State concluded that the scheme then proposed at J4 would be inappropriate development, and would cause harm to the openness of the Green Belt and conflict with several of the purposes of including land in the Green Belt. The Secretary of State agrees with the Inspector (IR16.168) that the current appeal proposal would represent inappropriate development. She has also had regard to the fact that, although the actual hard area of the built development of the present proposal would be less than that envisaged in the previous scheme, the overall area of land involved would be increased (IR16.227). For the reasons given by the Inspector (IR16.228), she agrees that the appeal development or its access road would be visible from a number of points nearby. The Secretary of State also agrees with the Inspector, for the reasons he gives at IR16.229, that the development would represent a significant loss of openness as compared with the present undeveloped state of the site. She also agrees with him that, while the main areas of built development would be in a less prominent position as far as travellers on the M42 are concerned, the development would actually be taken further into the Green Belt and the impact on openness would be that much greater (IR16.229).

67. Like the Inspector (IR16.270), the Secretary of State considers that the proposal would contribute to urban sprawl by extending development into a predominantly rural area, appearing as a physical extension of the existing built up area, because the roads, lighting and signing of the MSA would effectively link the existing development in the area of J4 with the hard development of the MSA to the east. She further agrees that the appeal development would occupy a significant proportion of the narrow gap between Solihull and Dorridge, and give rise to a risk that it would be claimed that the gap which would remain would no longer serve a Green Belt purpose. Like the Inspector, she considers that it would increase the perception of coalescence between Solihull and Dorridge and that the more the gap is reduced, the more vulnerable it will become. The Secretary of State shares the Inspector's view that the appeal development would encroach on what is at the moment open countryside and that it would not retain or enhance an attractive landscape near to where people live, and it would take land out of agriculture (IR16.270).

68. For the reasons given by the Inspector at IR16.230-16.235 and IR16.237, the Secretary of State also agrees with him that the proposed development would be in conflict with three of the five purposes of including land in the Green Belt and with two of the six land use objectives for the Green Belt (IR16.238). She does not agree with the Inspector's reasoning at IR16.236 about a new route for footpath SL56, given that she is not satisfied that the application for a stopping up order provided for by the Unilateral Undertaking would necessarily secure such an order. However, she has taken account of the appellant's intention to provide a replacement footpath and, given that the fault in the Unilateral Undertaking may have been capable of remedy, she agrees with the Inspector that the appeal

development would not harm the Green Belt objective relating to access to the countryside (IR16.236).

69. In line with PPG2, the Secretary of State attaches substantial weight to the harm to the Green Belt through inappropriateness when considering any planning application or appeal concerning such development. The Secretary of State considers that the harm which the proposal would cause to openness (paragraph 66 above), and the harm it would cause to the purposes of the Green Belt (paragraph 67-8 above) are significant matters to which she attaches considerable weight. She has also attached a little weight to the harm the proposal would cause to the land use objectives of the Green Belt (paragraph 68 above). She has gone on to consider whether there are other material considerations which clearly outweigh the harm by virtue of inappropriateness and other harm and which would constitute very special circumstances sufficient to overcome the presumption against development in the Green Belt.

Green Belt Balancing Exercise

70. As indicated in paragraph 19 above, the Secretary of State agrees with the Inspector that there remains a significant unmet need for one additional MSA serving traffic travelling in both directions on this stretch of the M42, and that the need is somewhat greater than that which existed in 2001 when this matter was previously considered. She agrees with him, moreover, that the provision of an MSA would also improve facilities and safety on the strategic road network in line with RSS aims (IR16.267). The Secretary of State has also had regard to the fact that the appeal proposal would include an improvement to the southbound off-slip diverge from the M42 to J4, as discussed in paragraph 53 above.
71. The Secretary of State concludes that, in addition to the harm to the Green Belt described in paragraphs 66 - 69 above, the appeal proposal would cause other harm, including the creation of additional light pollution, harm to the landscape and visual amenity, and loss of trees and hedgerows (addressed in paragraphs 55, 58 and 59 above). As noted at paragraph 52 above, the Secretary of State has also concluded that it would add to delays at the J4 gyratory system, and she attaches substantial weight to those delays, and their potential economic implications.
72. Overall, the Secretary of State concludes that the benefits she has identified above are positive factors which weigh in favour of the appeal proposal and she has considered whether or not, either individually or cumulatively, they amount to very special circumstances. However, like the Inspector (IR16.274-16.275), she considers that they are not sufficient to clearly outweigh the harm which the appeal development would cause to the Green Belt and other harm and that very special circumstances do not exist.

Overall Conclusions on Appeal B

73. The Secretary of State has given very careful consideration to all the issues raised by the appeal proposal. She has concluded that the appeal would cause harm to the Green Belt by reason of inappropriateness; loss of openness; conflict with three of the purposes for including land in the Green Belt; and conflict with

two of the objectives for the use of land in the Green Belt. She has also identified conflicts with the development plan with regard to light pollution, the landscape, visual amenity and the delays to J4 and their implications. The Secretary of State recognises that there is a need for an MSA on this stretch of the M42, and that this need has increased over recent years. She also acknowledges that the scheme would bring about a benefit to the existing motorway system through changes to the southbound off slip diverge from the M42 to J4. However, overall the Secretary of State concludes that the benefits offered by the appeal proposal do not overcome the disbenefits and do not indicate that she should determine the appeal other than in accordance with the development plan. She has found that very special circumstances do not exist and she concludes that planning permission should be refused.

Formal Decision

74. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations.

75. She hereby dismisses the appeal and refuses planning permission for outline planning permission for a comprehensive motorway service area, with all matters reserved for subsequent approval apart from means of access, on land adjacent to the M42 at Catherine de Barnes, Solihull, in accordance with application number 97/1930, dated 19 December 1997 (**Appeal A**).

76. She hereby dismisses the appeal and refuses planning permission for outline planning permission for a motorway service area, with all matters reserved for subsequent approval, on land at Box Tree Farm, Junction 4 of the M42, Solihull, B93 8NJ, in accordance with application number 2001/1943, dated 23 August 2001 (**Appeal B**).

Right to challenge the decision

77. 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.

78. A copy of this letter has been sent to Solihull Borough Council and all parties who appeared at the inquiry.

Yours faithfully

Christine Symes

Authorised by Secretary of State to sign in that behalf