

**ROLFE JUDD**  
**/ PLANNING**

# **/ Churchfields Road**

**ENFORCEMENT APPEAL STATEMENT**

**8th April 2025**

# / Churchfields Road

London Electricity Board Depot Churchfields  
Road Beckenham

P08389  
8th April 2025

On behalf of Churchfield Road BR3 Limited

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# 01. INTRODUCTION

## 01.1 SUMMARY

**01.1.1** This Appeal Statement of Case supports a planning appeal submitted on behalf of Churchfield Road BR3 Limited ('The Appellant') against the serving of an Enforcement Notice [Document 8] ('the Enforcement Notice') by the London Borough of Bromley Council ('the Council') dated 12th March 2025 in respect of the development at London Electricity Board Depot Churchfields Road Beckenham ("the Appeal Site") as shown in [Document 9](the "**Appeal**").

**01.1.2** This Statement of Case has been prepared in accordance with Planning Inspectorate Procedural Guide Planning Appeals- England (September 2018).

**01.1.3** The Enforcement Notice was issued by the Council on 12th March 2025 outline that:

Without the required planning permission, the material change of use from Sui Generis formed of an electricity undertaker's depot to a dual use of Class B8 (to provide a scaffolding equipment storage/distribution yard) and Sui Generis retaining the existing electricity undertaker's depot, installation of two single storey cabins and CCTV/lighting.

**01.1.4** The Council identified the reason for pursuing enforcement action as part of the notice as:

The dual use of Class B8 (scaffolding equipment storage/distribution) and Sui Generis (electricity undertaker's depot) represents a significantly more intensive use of the site which has a detrimental impact on the general residential amenities of the area, resulting in additional noise and disturbance associated with the comings and goings to and from the site.

**01.1.5** In doing so the Council referred to policies 37 and 119 of the Bromley Local Plan and Policies D3 and D14 of the London Plan.

**01.1.6** This Statement of Case explains that the Appellant is appealing on grounds e), f) and g) pursuant to section 174(2) of the Town and Country Planning Act 1990 (as amended).

**01.1.7** The Appellant will provide evidence that demonstrates that:

- / Ground e) – By virtue of not being served on all parties with an interest in the land the Enforcement Notice does not meet the requirements of Section 172.
- / Ground (f) – “that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”.
- / Ground (g) – “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.

**01.1.8** This Appeal is inextricably linked to a separate appeal against the refusal to grant planning permission pursuant to an application submitted by the Appellant under reference 24/00815/FULL2 for development on the same site and amounting to the same works. The refused planning application which is the subject of that appeal was for the following:

*Full application for the temporary (5 years) change of use from SUI Generis formed of an electricity undertaker's depot to a dual use of Class B8 (to provide a scaffolding equipment storage/distribution yard) and SUI Generis retaining the existing electricity undertaker's depot. Installation of 2 no. single storey cabins and CCTV/lighting. Retrospective. AMENDED DESCRIPTION TO INCLUDE STRUCTURES AND ADDITIONAL INFORMATION RECEIVED 27/08/24*

**(THE "REFUSED APPLICATION")**

**01.1.9** The Refused Application was determined under delegated powers by the London Borough of Bromley on 17th October 2025. The Officers Delegated Report is enclosed in [Document 2]

**01.1.10** As part of the delegated decision, a loosely worded reason for refusal was provided by the Council. The decision notice [Document 3] was issued on 17th October 2024.

**01.1.11** In determining the planning application, the Council only identified 1 reason for refusal of planning permission:

- / *Reason 1 – The proposal as set out in the application and currently in operation represents a significantly more intensive use of the site which has a detrimental impact on the general residential amenities of the area, resulting in additional noise and disturbance associated with the comings and goings to and from the site, as well as the activities upon the site itself, and insufficient information has been provided to demonstrate that the impact of the use on the residential amenities of the area and with regards to highways safety could be successfully mitigated and controlled. The proposal is thereby contrary to Policies 32, 37 and 119 of the Bromley Local Plan and Policies D3 and D14 of the London Plan.*

**01.1.12** Both on the face of the decision notice of the Refused Application and the Enforcement Notice it is evident that the issues arising are in substance the same planning issues under consideration.

- 01.1.13** The Appellant requests that the Appeal be heard by way of an Inquiry. This is due to the technical complexity of the issues raised, which relate to transport and noise that are considered to require a detailed cross-examination of witnesses and evidence. This approach is especially important given the clear difference of opinion between the consultants on behalf of the Appellant and the LPA officer team, and the lack of common ground, notably on the topic of noise.
- 01.1.14** We believe that the need for the Inspector to sufficiently understand the technical evidence is alone sufficient reason to necessitate an Inquiry.
- 01.1.15** In any case, there has also been significant public interest in the linked planning application. This creates a realistic expectation that other parties may seek to gain Rule 6 status. An inquiry is also an appropriate means for these parties to be able to express their view.
- 01.1.16** The Appellant is precluded from appealing the Enforcement Notice on ground (a) given that it forms development for which permission was sought in the preceding two years. This is a recent change in the law, see s.174(2A) Town and Country Planning Act 1990, as substituted by s.118 of the Levelling-up and Regeneration Act 2023:

*"(2A) An appeal may not be brought on the ground specified in subsection (2)(a) if—*

*(a) the land to which the Enforcement Notice relates is in England, and*

*(b) the Enforcement Notice was issued at a time after the making of an application for planning permission that was related to the Enforcement Notice."*

and the Planning Inspectorate Procedural Guide: Enforcement Notice appeals – England (Updated 12 September 2024), at paragraph 4.2 which states that:

*"Where an Enforcement Notice is issued on or after 25 April 2024, no appeal under ground (a) may be made within two years of the date on which the related application ceased to be under consideration"*

- 01.1.17** If ground (a) was available to the Appellant it would have appealed on this ground on the same basis that it appeals the Refused Application, being that the application should have been granted permission.
- 01.1.18** Without prejudice to the above, the Appellant also appeals the Enforcement Notice on grounds (e), (f) and (g).
- 01.1.19** Where the appeals are joined, and where planning permission is granted under the Appeal against the Refused Application, the Enforcement Notice must fall.
- 01.1.20** Under ground e) we note that a leaseholder of the Appeal Site, London Power Networks Plc ("**LPN**") has suffered, or is likely to suffer, substantial prejudice as a result of not having been served with a copy of the Enforcement Notice which refers to its use of the Appeal Site. LPN have a leasehold interest over a significant



part of the Appeal Site – see document [10]. Its demised area includes an operational depot and works area, in addition to the existing substation.

**01.1.21** Ground (f) – “that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”.

**01.1.22** Ground (g) – “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.

## **01.2 SUPPORTING APPEAL DOCUMENTATION**

**01.2.1** This Statement of Case should be read in conjunction with the following additional documents, which accompany the Appeal:

ENCLOSURE	CONTENTS
1	Application Form
2	Delegated Officers Report
3	Decision Notice
4	Combined Record Set of the information submitted for the Appeal Scheme
5	Combined Record Set of the information submitted during determination of the Appeal Scheme
6	Watermans Noise Assessment
7	SLR Transport Rebuttal
8	Enforcement Notice 23/00705/OPDEV
9	Site Location Plan
10	Copy of Lease for the Appeal Site
11	Draft Statement of Common Ground
12	LB Bromley Highways Comments during determination
13	LB Bromley EHO Comments during determination

## **02. THE APPEAL SITE AND SURROUNDING CONTEXT**

### **02.1 THE APPEAL SITE - DESCRIPTION AND LOCATION**

- 02.1.1** The Appeal Site comprises a land situated in southeast London within the London Borough of Bromley.
- 02.1.2** The site is an existing brownfield land holding located adjacent to Churchfields Road Reuse and Recycling Centre (Beckenham) recycling site, Maberley Road Playing Field and Churchfields Recreational Ground in the London Borough of Bromley. The three uses described the site surround it on the northern, western and southern side with significant tree cover to all. The site is also bound by a railway line to the east.
- 02.1.3** Access to the site is shared with the Churchfields Road Reuse and Recycling Centre from Churchfields Road. Wider access to the site is via the A324 and Elmer's End Road both equal distances along Churchfields Road. The site also has good public transport accessibility with local train and bus routes.
- 02.1.4** For a detailed analysis of the existing site, the Planning History and surrounding context, please see the Planning Cover Letter for the Refused Application [Document 4]
- 02.1.5** The following images show the evolving condition of the Appeal Site since remediation works were undertaking in 2013.





Image 1 - Site Condition Pre-remediation, September 2013



Image 2 – Site Condition Post Remediation, October 2013



Image 3 - Ariel Image of the site dated, late 2021



Image 4 – Site Condition prior to Appeal works commencing, August 2022

## **02.2 PLANNING HISTORY AND LAWFUL USE**

- 02.2.1** In 1992 planning permission was granted under reference 92/00337/FUL for the change of use from electricity undertakers depot to electricity undertakers depot and vehicle service repair and MOT testing station (the "1992 Approval").
- 02.2.2** The permission required the cessation of the servicing, testing, repairing and storing of vehicles other than those owned by or belonging to London Electricity PLC on or before 1st May 1994, and that the night trunking operation involving the use of 2 x 30 tonnes maximum length drawbar units would only access the application site between 0730 and 1730.



- 02.2.3** This permission established a more intensive B2 industrial use on site. This B2 would be more intensive than perceived intensification of the site under B8 and was authorised to undertake noisy and polluting aspects beyond that of the relatively light scaffolding use. The Council has provided no clear rationale why the previous intensification of the site under B2 and the 1992 permission was acceptable and the use of the site, is not acceptable.
- 02.2.4** Under reference 13/01555/PLUD a certificate of lawfulness for proposed remediation of contaminated land and removal of waste and contaminated material was granted. The site location plan submitted with the application was consistent with that submitted with the use of the site.
- 02.2.5** We therefore consider that the 1992 Approval is the extant approval for the site and authorises the Sui Generis uses as a substation and associated electrical undertaker works. In the event the Appeal is dismissed this UKPN use will continue to operate under the 1992 planning permission Therefore the existing use of part of the Appeal Site by UKPN forms part of the baseline scenario to which the Enforcement Notice is considered against.
- 02.2.6** The is not allocated in the Local Plan and is therefore a non-designated industrial site in accordance Paragraph 6.4.1 of the London Plan (2021) definition below (with emphasis added):

"London depends on a wide range of industrial, logistics and related uses that **are essential to the functioning of its economy and for servicing the needs of its growing population**, as well as contributing towards employment opportunities for Londoners. This includes a diverse range of activities such as food and drink preparation, creative industry production and maker spaces, vehicle maintenance and repair, building trades, construction, waste management including recycling, transport functions, **utilities infrastructure**, emerging activities (such as data centres, renewable energy generation and clean technology) and an efficient storage and distribution system which can respond to business and consumer demands."

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## **03. THE CURRENT USE OF THE SITE**

### **03.1 DESCRIPTION OF EXISTING USE**

- 03.1.1** As set out above, the Enforcement Notice relates to a scheme refused by the Council under reference 23/00705/OPDEV [Document 8] and subject to the linked appeal. The description of development for the linked appeal scheme is as follows and is the agreed use of the Appeal Site between the Appellant and the LPA:

*Full application for the temporary (5 years) change of use from SUI Generis formed of an electricity undertaker's depot to a dual use of Class B8 (to provide a scaffolding equipment storage/distribution yard) and SUI Generis retaining the existing electricity undertaker's depot. Installation of 2 no. single storey cabins and CCTV/lighting. Retrospective. AMENDED DESCRIPTION TO INCLUDE STRUCTURES AND ADDITIONAL INFORMATION RECEIVED 27/08/24*

- 03.1.2** In summary, the Refused Scheme involves the change of use from electricity undertaker's depot and vehicle service repair and mot testing station to a dual use of Class B8 and SUI Generis in the form of the previous electricity undertaker's depot and vehicle service repair and mot testing station.
- 03.1.3** In practice, this would not change the electricity undertaker depot but replaced the vehicle repair garage (per the 1992 Permission) with a simple B8 use as a scaffold site.
- 03.1.4** The Appeal Scheme relates to a change of use to a scaffolding equipment storage yard. The wider site, alongside the continue Electricity Depot aspect is used solely for this purpose and is a use falling squarely within the definition of non-designated industrial site (Paragraph 6.4.1 of the London Plan (2021)) as well as falling withing B8 Use Classes.
- 03.1.5** The existing use maintains the existing site access and incorporates a new site cabin for office space associated with the use, as well as scaffolding racks. No additional vehicular or cycle parking is proposed, however, the hardstanding on the site for parking and access will be retained.
- 03.1.6** An Existing Site Plan [Document 14] showing the latest site layout is enclosed as part of the Appeal.



Image 5 – Masons Scaffolding current use of the Appeal Site



Image 6 – Masons Scaffolding current use of the Appeal Site



## 04. PRINCIPAL PLANNING POLICIES

### 04.1 INTRODUCTION

**04.1.1** We set out below the policy position with regards to the current use and Enforcement Notice issued by the Council.

**04.1.2** Paragraph 60 of the NPPF states that

*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.*

**04.1.3** Bromley Council does not publish a specific Enforcement Plan however does reference several aspects the enforcement team would seek to investigate on the Council website.

### 04.2 THE ENFORCEMENT NOTICE

**04.2.1** The Council reference the two following policy documents within the Enforcement Notice.

/ The London Plan (2021) (LP)

/ The Bromley Local Plan (2019) (BLP)

#### THE LONDON PLAN

**04.2.2** The London Plan is the statutory Spatial Development Strategy for Greater London prepared by the Mayor of London (“the Mayor”) in accordance with the Greater London Authority Act 1999 (as amended) (“the GLA Act”) and associated regulations.

**04.2.3** The policies and guidance within the London Plan (LP) is consistent with both national and local objectives in terms of the need to promote sustainable forms of development. The Enforcement Notice associated only refers to two policies in the reasons for action being undertaken: Policies D3 and D14 of the London Plan.

#### POLICY D3 OPTIMISING SITE CAPACITY THROUGH THE DESIGN-LED APPROACH

**04.2.4** Policy D3 sets out the London Plan Approach to ensuring that development and land is appropriate to the local requirements and area. The policy explicitly states that all development must make the best use of land by following a design-led approach that optimises the capacity of sites.

- 04.2.5** Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site.
- 04.2.6** While no specific aspects of the Policy are cited in the Enforcement Notice it is assumed that Part 9) is the most relevant which sites development must help prevent or mitigate the impacts of noise and poor air quality.
- 04.2.7** Paragraph 3.3.1 provides context to how Policy D3 should be implemented. Of note it states that for London to accommodate the growth identified in this Plan in an inclusive and responsible way every new development needs to make the most efficient use of land by optimising site capacity. This means ensuring the development's form is the most appropriate for the site and land uses meet identified needs.
- 04.2.8** Paragraph 3.3.9 also provides context on Part 9) of the policy stating that measures to design out exposure to poor air quality and noise from both external and internal sources should be integral to development proposals and be considered early in the design process.

#### POLICY D14 NOISE

- 04.2.9** Policy D14 sets out that the London Plan approach with regards to mitigating the impact of noise. The Policy explicitly sets out that in order to reduce, manage and mitigate noise to improve health and quality of life, residential and other non-aviation development proposals should manage noise citing the following key aspects relevant to the current use:
- / 1) avoiding significant adverse noise impacts on health and quality of life
  - / 2) reflecting the Agent of Change principle as set out in Policy D13 Agent of Change
  - / 3) mitigating and minimising the existing and potential adverse impacts of noise on, from, within, as a result of, or in the vicinity of new development without placing unreasonable restrictions on existing noise-generating uses
  - / 6) where it is not possible to achieve separation of noise-sensitive development and noise sources without undue impact on other sustainable development objectives, then any potential adverse effects should be controlled and mitigated through applying good acoustic design principles
- 04.2.10** Paragraph 3.14.1 of the supporting text sets out that managing noise includes improving and enhancing the acoustic environment and promoting appropriate soundscapes. This can mean allowing some places or certain times to become noisier within reason, whilst others become quieter. The supporting text goes further to state that the consideration of existing noise sensitivity within an area is important to minimise potential conflicts of uses or activities. The policy expressly identifies that boroughs, developers, businesses and other stakeholders should work collaboratively to identify the existing noise climate and other noise issues to ensure effective management and mitigation measures are achieved in new development proposals.

#### BROMLEY LOCAL PLAN 2019

- 04.2.11** The Bromley Local Plan (LLP) was adopted on January 2019. The Enforcement Notice cites Policies 37 and 119 of the Local Plan. These policies are summarised below for reference.

#### POLICY 37 GENERAL DESIGN OF DEVELOPMENT

- 04.2.12** No specifics are given with regards the Enforcement Notice however given the general nature of the policy it is assumed the concerns relate to Part E. Part E requires that all new development must respect the amenity of occupiers of neighbouring buildings and those of future occupants, providing healthy environments and ensuring they are not harmed by noise and disturbance.
- 04.2.13** Paragraph 5.07 sets out that the design of new development should safeguard public amenity and improve the quality of life in the borough with new development relating well to the character of its surroundings.

#### POLICY 119 NOISE POLLUTION

- 04.2.14** Policy 119 sets out that in order to minimise adverse impacts on noise sensitive receptors, proposed developments likely to generate noise and or vibration will require a full noise/ vibration assessment to identify issues and appropriate mitigation measures.
- 04.2.15** The supporting policy for the text sets out how the Council is sought to formulate its approach to noise as well as the detailed background information on how impact is assessed. Of note the paragraph states that the Industry guidance including guidance issued by the Institute of Acoustics in addition to British Standards such as BS8233:2014 and BS4142:2014 should be referred to when assessing impact.

## **05. GROUNDS OF APPEAL**

### **05.1 APPEAL UNDER GROUNDS**

**05.1.1** This Appeal is submitted under three grounds.

**05.1.2** Ground e) on that basis that the Enforcement Notice were not correctly served.

**05.1.3** Ground (f) – “that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”.

**05.1.4** Ground (g) – “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.

**05.1.5** The following sections out the Appellant’s detailed response on this matter.

### **05.2 GROUND E**

#### **STATUTORY REQUIREMENTS**

**05.2.1** s.174(2)(e) Town and Country Planning Act 1990 (TCPA 1990) allows a person having an interest in the land to which the Enforcement Notice relates (or such relevant occupier) may appeal that Enforcement Notice where copies of the Enforcement Notice were not served as required by section 172.

**05.2.2** s.172(2)(a) requires that a copy of the Enforcement Notice be served "on the owner and the occupier of the land to which it relates."

**05.2.3** The Enforcement Notice relates to the entirety of the Appeal Site. The freehold interest in the Appeal Site is held by the Appellant. A leasehold interest in the Appeal Site is held by Masons Scaffolding Ltd. A leasehold interest of part of the Appeal Site is also held by London Power Networks Plc (LPN).

**05.2.4** LPN's site is directly and explicitly referred to in the description of the Appeal Site and is shown on the accompanying plan.

**05.2.5** LPN's use of the Appeal Site is directly and specifically mentioned by the Council in paragraph 3 of the Enforcement Notice.

**05.2.6** It is clear therefore that LPN should have been served with a copy of the Enforcement Notice, pursuant to s.172(2) TCPA 1990.

#### **SERVICE IN FACT**

**05.2.7** The Council states, under the heading "Service of notice" in the Enforcement Notice, that notice has been served on:

- / 1. The Owner/Occupier (note, not 'Occupiers');
- / 2. The Directors of the Appellant at its 60 Cheapside address; and
- / 3. The Directors of the Appellant at its Weaver Walk address.

**05.2.8** We therefore understand that the Enforcement Notice was not served on LPN, as required by s.172(2) TCPA 1990.

### **PREJUDICE**

**05.2.9** s.176(5) TCPA 1990 allows an Inspector to disregard submissions in relation to ground (e) where neither the appellant, nor the person that was not served (here being LPN) has been substantially prejudiced by the failure to serve him.

**05.2.10** The Appellant is not aware of any service of the Enforcement Notice by the Council on LPN. This ground is brought in good faith.

**05.2.11** On the basis that the Enforcement Notice explicitly refers to LPN's land and that the alleged breach explicitly refers to the use carried on by LPN, LPN have been substantially prejudiced.

**05.2.12** The extent of that substantial prejudice will become clear as the Council's case is made in this appeal and the issues arising from the evidence put forward. In any case the substantial prejudice already caused means that:

- / LPN has not had the opportunity to appeal the Enforcement Notice before Enforcement Notice comes into effect;
- / unless LPN is permitted to be a Rule 6 party, it will not be allowed to be a main party to the appeal;
- / LPN has not been able to share resources with the Appellant (to the extent that their interests align) so further costs will be incurred should LPN now seek to be joined as a Rule 6 party; and
- / similarly, the costs incurred by the Appellant could have been shared with LPN, but for the Council's deficient service.

**05.2.13** Further significant prejudice may also arise as the Appeal progresses in relation to concessions or agreements which may be made by the Appellant in relation to restrictions on noise and/or access to the highway, which could significantly impact LPN's use of the Appeal Site.

## **05.3 GROUND F**

**05.3.1** As discussed above this Appeal is submitted under Ground f) which states that



*"That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".*

**05.3.2** Within the Enforcement Notice for the site the Council highlight that the following actions will be needed to remedy the breach:

- / "(a) Cease the use for the storage and distribution of scaffolding equipment at the Land as described in paragraph 3 above, and
- / (b) Remove from the Land the scaffolding storage and equipment, and
- / (c) Remove from the Land all resulting debris."

**05.3.3** Notwithstanding the Appellants position that the Refused Application should have been granted by the Council and should be granted by the Inspector pursuant to the linked appeal, this blanket remedy exceeds the steps required to remedy the harm they have identified as part of the Enforcement Notice. The LPA highlights the reason for the Enforcement Notice and therefore the justification for requiring the remedy as:

*The dual use of Class B8 (scaffolding equipment storage/distribution) and Sui Generis (electricity undertaker's depot) represents a significantly more intensive use of the site which has a detrimental impact on the general residential amenities of the area, resulting in additional noise and disturbance associated with the comings and goings to and from the site. The proposal is thereby contrary to Policies 37 and 119 of the Bromley Local Plan and Policies D3 and D14 of the London Plan.*

**05.3.4** The Council state the main impact of the Development is the "detrimental impact on the general residential amenities of the area, resulting in additional noise and disturbance". In order to assess the concern, the Appellant has commissioned a Noise Assessment undertaken by Watermans [Document 6] which assesses the current profile of the site.

**05.3.5** This report included a BS4142 assessment which has been undertaken of the operations set out in the Enforcement Notice. Full details of the methodology and summary of the Assessment can be found within the enclosed Waterman report however a brief summary is provided below

**05.3.6** The nearest sensitive receptors to the Site are houses on Clock House Road located east of the railway line and houses on Churchfields Road. At Clock House Road the dominant source is rail noise whereas at Churchfields Road the dominant source is road traffic noise together with noise from Churchfields Re-Use & Recycling facility. Noise from the Re-Use and Recycling facility which uses a JCB to move material and crush it down into skips was clearly discernible from Churchfield Road and the Appeal Site.

**05.3.7** The assessment covered the 4 operational periods with the following conclusions made:

- / Vehicle movements between 06:30-07:00 Monday to Friday (max of 3 vehicles in 15 minutes)
  - None to negligible impact.
- / Yard operations Monday to Friday 07:00-18:30 (includes max of 4 vehicle movements in 1-hour)
  - None to negligible at Churchfields Road and negligible to small impact at Clock House Road. This assumes localised screening provided around cut-saw bench.
- / Outside of operational hours time-sensitive works 22:00-05:00, (1 LGV/HGV movement in a 15-minute period, no yard operations).
  - Negligible impact at Clock House Road and negligible to small impact at Churchfields Road.
- / Weekend works loading LGVs/HGVs, Saturday 07:30-16:00 and Sunday 08:00-13:00 (Same hours as Re-Use & Recycling facility).
  - None during loading operations at the weekend.

**05.3.8** With regard to LAFMax levels during the night-time period, at the nearest receptor to the access road there is the potential for WHO criteria of 45dB LAFmax to be exceeded (+4dB) in a bedroom facing the road with an open window. This would only occur between 1 and 4 times and is comparable to that window's current exposure from HGVs moving along Churchfields Road during the night-time period. At Clock House Road this is not predicted to be exceeded.

**05.3.9** In conclusion, the BS4142 assessment shows that (taking account of the prevailing noise levels, predicted sources noise levels at receptor locations based on noise measurements of current operations on-site, with provision of localised screening around the cut-saw bench, which in any case is used infrequently) the B8 use does not adversely affect the existing residential amenity of the area.

**05.3.10** It is therefore the Appellant's case that the Refused Application accords with Policies 37 and 199 of the Bromley Local Plan and Policy D14 of the London Plan as it does not result in a detrimental impact on residents' amenity.

**05.3.11** Furthermore Paragraph 125 of the NPPF states that "*Planning ... decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land*".

**05.3.12** Planning policy is clear that applications should only be refused if any potential harms are considered to be "substantial", the Council has failed within the Enforcement Notice to identify where the site leads substantial acoustic harm.

**05.3.13** When considering the potential remedies associated with the scheme to address the suggested breach these must be cognisant of the impact of the scheme.

- 05.3.14** The Council suggest that the scheme represents a significantly more intensive use of the site which has a detrimental impact on the general residential amenities of the area, resulting in additional noise and disturbance associated with the comings and goings to and from the site.
- 05.3.15** The resulting suggestion is that the only possible remedy is to cease the use and clear the Appeal Site of any works associated with the use.
- 05.3.16** The enclosed Noise Assessment [Document 8] clearly demonstrates that there is no breach of Policies 37 and 119 of the Local Plan and D3 and D14 of the London Plan. Furthermore in line with Paragraph 125 of the NPPF the enclosed Noise Assessment demonstrates no significant harm, or even harm, from the use of the site.
- 05.3.17** The intermittent and short use of the buzz saw on site results in a negligible to small impact at Clock House Road which is mitigated through the acoustic enclosure recently installed on site.
- 05.3.18** It is therefore unreasonable and disproportionate to suggest the whole use should cease for this minor aspect which could be controlled by other means. Notably no acoustic impact is measured through the “general coming and goings” on site as suggested by the Enforcement Notice. The negligible to small impact of the scheme to Clock House Road can be addressed through a commitment to maintain the enclosure of buzz saw (as recommended by the Watermans Report).
- 05.3.19** Overall the Appellant considers that the suggested method by the LPA to ensure appropriate local amenity as disproportionate to the impact of the use and therefore not comply with ground F. Notwithstanding that with regards to Paragraph 125 of the NPPF, given the use does not lead to substantial harm, it should be seen as acceptable. In the interest of expediency we request the Enforcement Notice is amended to require the buzz saw curtain as recommended by the Watermans Report.
- 05.3.20** With regards to Transport, while the linked refusal appeal also notes highways impact as a reason for refusal the Enforcement Notice does not reference highways safety, nor does it refer to Policy 32 of the Bromley Local Plan, it is therefore assumed that no steps are required in relation to the Enforcement Notice on transport or highway matters.
- 05.3.21** We also note that the Enforcement Notice does not raise any issues with highway safety as suggested by the reason for refusal mentioned above for the linked Appeal Scheme. Nor does the Enforcement Notice mention Policy 32 ('Highway Safety') of the Bromley Local Plan.
- 05.3.22** We therefore fully expect the Council to agree with the Appellant that the linked Appeal Scheme did not raise matters of highway safety and can therefore agree that there are no transport or highway issues associated with the Appeal Site, nor is the use a breach of Policy 32 of the Local Plan.
- 05.3.23** However, in the event that the Council raise issues of highway safety in relation to this Appeal, we provide commentary below with regards to this topic.

- 05.3.24** As mentioned above the Council outline that the use of the Appeal Site must cease to reduce its potential impact on the surrounding area. For the linked Appeal Scheme the Council cited highway safety concerns in justifying their decision regarding the schemes unacceptable nature.
- 05.3.25** Paragraph 116 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios. This approach is reciprocated by Policy 32 of the Bromley Local Plan.
- 05.3.26** The Council's own highways officer agreed that there were no significant transport impacts arising from the linked Refused Application. The officer stating that "trip attracting potential of the proposed development is not significant and will therefore not lead to a severe impact on the adjacent transport network".
- 05.3.27** With regards to highway safety, we enclose with this Appeal a Road Safety Audit [Appended to Document 7] which analysis the site and concludes no potential issues with regards to the safety of the existing use and surrounding road network. It is therefore readily apparent that the use of the existing site would comply with Policy 32 of the Bromley Local Plan.
- 05.3.28** Given the scheme does not result in any significant harm to the highway network or a road safety issue it is therefore unreasonable to suggest the use must halt to remedy the impact of the scheme. Further, as discussed above, given that highway's safety is not mentioned in the Enforcement Notice it is considered that the LPA also agree with this position.
- 05.3.29** Overall, we consider that the remedies suggested by the LPA are disproportionate to the impact the of the use. Evidence clearly shows the negligible to minor noise impact is only driven by buzz saw use on site which, no only does not meet the tests of NPPF Paragraph 125, can also be adequately remedied through other means suggested in the accompanying Noise Statement.
- 05.3.30** In addition, the LPA have not raised any transport or highway concerns with the use on site. As such, notwithstanding our position in the linked Appeal Scheme that the scheme submitted for planning should be granted, its is the Appellants case that alternative remedies suggested in this statement can be implemented on site to solve the perceived impact on residential amenity suggested by the LPA.
- 05.3.31** We therefore request the Enforcement Notice for the Appeal is amended to only require the buzz saw curtain and acoustic mitigation as recommended by the Watermans Report.

## **05.4 GROUND G**

- 05.4.1** Appeal Ground G states that:

*Ground (g) – "that any period specified in the notice in accordance with section 173 falls short of what should reasonably be allowed".*

- 05.4.2** It is the Appellant's contention that the timeframe of 3 months provided by the Enforcement Notice to cease the use and clear the site is not realistic when considering the requirements of the existing business and work needed to clear the site, nor is it reasonable and reflective of the time need to relocate business and would result in it ceasing to trade and loss of jobs.
- 05.4.3** In summary to comply with the steps sought by the Council, the tenant would need to:
- / Commission Agents and find an alternative site with the relevant planning permission in an appropriate location.
  - / Enter into a lease agreement or purchase the site.
  - / Clear the new site of any current use and detritus and make ready.
  - / Dismantle and transfer the temporary scaffolding and site cabins from the Appeal Site.
  - / While retaining a minor presence on the Appeal Site for business continuity, transfer to the new site and set up.
  - / Advertise change to business address and updates to relevant statutory documentation.
  - / Transfer stock and other key business means to the new site.
  - / Finalise removals from the Appeal Site.
- 05.4.4** As an example the current tenant undertook a similar process when identifying the Appeal Site as their previous location was being redeveloped. This process took circa 18 months to complete which ensuring business continuity.
- 05.4.5** Mason Scaffolding have identified the Appeal Site due to its location in Bromley with easy access to key service roads into central London. This was after an extensive search of other suitable sites to meet their needs. It is unrealistic to suggest that an alternative site can be found quickly especially with a lack of suitable locations within the immediate area.
- 05.4.6** Given the likely challenges in finding a need site it is clearly unreasonable of the Council to suggest that the tenant can find an alternative site, enter into contract negotiations, complete due diligence, complete any tenancy agreement, prepare the new site and relocate from the Appeal site in 3 months.
- 05.4.7** Given this unrealistic nature of timeframe for the business to relocate it will ultimately lead to the Appeal Site having to close without a new location being found and a scaffolding company cannot operate without an alternative site. Given that this is the only site operated by the business in site it will result in the closure of the company. This in turn leads to:



- / The closure will result in the loss of 7 permanent yard staff, Lorry drivers, 8 full time management and 3 part time management on site staff alongside those based offsite including 45-60 scaffolders based around London (this number fluctuates but 45-60 are a minimum and maximum average), combined to a total of 76 jobs using average of 52 scaffolders. Many of which involve people employed from the London Borough of Bromley. This would be directly contrary to the aims of the Bromley Local Plan which seeks to deliver net additional jobs across the Borough.
- / Loss of the service the company provides being a leading scaffolder in London and impacting on the wider construction and development industry at a time when there is a central government push on development to accelerate economic growth.
- / This brownfield site being vacant and underutilised contrary to the aims of the NPPF, the London Plan and Bromley Local Plan.

**05.4.8** In summary, in accordance with the requirements of Ground G, it is clear that the timeframe sought by the Council is wholly unrealistic and does not reflect any suggestion of reasonableness when considering the relocation of the existing operation and all that entails.

## 06. CONCLUSION

- 06.1.1** The Appeal has been made under grounds e), f) and g) under paragraph 174 (2) of the Town and Country Planning Act 1990 (as amended).
- 06.1.2** This Statement of Case has been prepared in relation to the Enforcement Notice Served by the London Borough of Bromley with regards to the site at London Electricity Board Depot Churchfields Road Beckenham.
- 06.1.3** The Statement of Case outlines that under Ground for Appeal Part e) the Council has not met the requirements of regulation 172 by not serving the Enforcement Notice on LPN.
- 06.1.4** The scheme does not result in a material impact to amenity of the surrounding area and notwithstanding the Appellants contention that the Linked Appeal should be granted, through reasonable adjustments the Refused Application could easily overcome the reason for the notice outlined in the Enforcement Notice.
- 06.1.5** Therefore, Under Ground F without prejudice to the above, this appeal Statement demonstrates that the measure for remediation as set out in the Enforcement Notice is disproportionate.
- 06.1.6** Under Ground G it is readily apparent that the timeframe of three months is not sufficient to undertake the actions required while ensuring the existing tenant can continue to operate as a business in London and retain the associated jobs.
- 06.1.7** The Appellant respectfully requests that the inspector cojoins this appeal with the appeal against the Refused Application which deals with a refusal for planning permission sought for the development referred to in the Enforcement Notice. If the Refused Application was granted, the Council would not have issued the Enforcement Notice.
- 06.1.8** A Draft Statement of Common and Uncommon Ground is provided in [Document 11] which outlines those matters that Appellant is seeking to resolve with the Council prior to the Appeal. The Appellant will seek to meet with the Council to discuss and agree the items in the draft Statement of Common and Uncommon Ground ahead of the Appeal.
- 06.1.9** In conclusion, the Inspector is respectfully urged to allow this appeal against the Enforcement Notice under Grounds e), f) and g) in relation to the Appeal Site, which in the Appellant's view would provide significant benefits to the Borough in providing a temporary industrial use provide jobs for the Borough
- 06.1.10** Having regard to the forgoing and to the evidence and material accompanying this statement, we respectfully request that the Inspector considers each of the grounds raised and grants the appeal against the Enforcement Notice, and:
- 01.** where the Refused Application Appeal is allowed and planning permission is granted pursuant to section 79 of the 1990 Act, the Enforcement Notice is quashed pursuant to section 176 of the 1990 Act;

02. where the Refused Application Appeal is not allowed, but the Inspector in this Appeal finds that ground (e) is established, then the Enforcement Notice is quashed pursuant to section 176 of the 1990 Act;
03. where the Refused Application Appeal is not allowed and the Inspector in this Appeal finds that ground (e) is not established, but that ground (f) and/or (g) are established then the Enforcement Notice is varied in accordance with the terms set out in this Appeal at paras 5.3.31 and 5.4.8 as applicable pursuant to section 176 of the 1990 Act

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