

ROLFE JUDD
/ PLANNING

/ London Electricity Board Depot, BR3 4QY

Proof of Evidence

21st July 2025

/ London Electricity Board Depot, BR3 4QY

Proof of Evidence

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Associate Director - Rolfe Judd Planning

Appeal Refs: APP/G5180/C/25/3363900 and
APP/G5180/W/25/3365514

21st July 2025

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LINKED CORE DOCS (SEPARATE DOCUMENT)

REFERENCE	DOCUMENT	PREPARED BY
CD 9.02	Schedule of Responses to 3rd Party Representations	Tom Lawson
CD 9.03	Mason FORS Accreditation	Mason Scaffolding

APPENDICES

Appendix 1 – Mason Scaffolding Operational Plan

Appendix 2 – Mason Scaffolding Relocation Statement

01. PROFESSIONAL CAPACITY

01.1 INTRODUCTION

01.1.1 My name is Tom Lawson, and I am a Member of the Royal Town Planning Institute (RTPI) and an Associate Director of Rolfe Judd Planning Ltd, a town planning consultancy.

01.1.2 I qualified as a member of the RTPI in November 2024, having completed a Masters in Town and Country Planning at Manchester University between 2007 and 2011. I was employed at Lodge Park Ltd (housing developer) between 2011 and 2013 as a Technical Assistant.

01.1.3 I joined Rolfe Judd in 2014 and became an Associate Director of Rolfe Judd Planning in October 2022. I have specialised in town planning consultancy, advising clients on feasibility studies, the formulation of development projects, the submission and negotiation of planning applications and appeals as well as the submission of representations in respects of development plans. Whilst my experience has extended to work both throughout London and the Home Counties, the majority of my experience has been in London where I have advised on a number of major urban development and regeneration projects.

01.1.4 I have accumulated circa 13 years' experience of planning and development issues related to land use and development in central and greater London and the Home Counties.

01.2 INVOLVEMENT IN THE APPEAL SCHEME

01.2.1 Rolfe Judd Planning has acted as town planning consultants on behalf of Luke Osborne of Churchfield Road BR3 Ltd (the "Appellant") throughout the preparation, submission, and determination of the relevant planning application (reference 24/00815/FULL2) (the "Application"), enforcement proceedings and appeal. Rolfe Judd Planning was instructed in February 2022 and has been involved consistently since that date.

01.2.2 Since the appeal was submitted, the Appellant and the London Borough of Bromley (the "Council") have continued to discuss the proposal, and I have been party to those negotiations including on the Statement of Common Ground. I have visited the site ("London Electricity Board Depot, BR3 4QY") on a number of occasions, reviewed all the available correspondence and prepared and submitted the application in my role as the Agent. As a consequence, I consider myself well placed and qualified to provide evidence on behalf of the Appellant.

01.2.3 The evidence that I have prepared and provide in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of my professional institution, the Royal Town Planning Institute, and I confirm that the opinions expressed are my true and professional opinions.

02. SCOPE OF EVIDENCE

02.1 SCOPE OF PROOF

02.1.1 My evidence supports the appeals submitted on behalf of the Appellant against the enforcement notice issued (appeal reference: APP/G5180/C/25/3363900) ("Appeal A" / the "Enforcement Appeal") and the refusal by the Council of a planning application for the site known as London Electricity Board Depot, BR3 4QY as shown in [B20100 P05 – Existing Ground Floor Plan] (appeal reference: APP/G5180/W/25/3365514) ("Appeal B" / the "Refusal Appeal") (the "Appeals").

02.1.2 My evidence covers the following matters as far as they are relevant to the planning aspects of the Appeals:

/ Appeal B

- Main issue 1 - the development's effect on the living conditions of neighbouring occupiers
- Main issue 2 - the development's effect on highway safety
- Whether the proposed development would be consistent with the development plan
- The effect of other considerations on the overall planning balance

/ Appeal A

- Main issue 1 - whether the inspector needs to put the enforcement notice in order.
- Main issue 2 - whether London Power Networks plc has been substantially prejudiced.
- Main issue 3 - whether the steps required to be taken to remedy the breach of planning control are excessive.
- Main issue 4 - whether the 3-month compliance period specified falls short of what should reasonably be allowed.

/ Other matters

- Matters arising from third party representations.

02.1.3 Reference to evidence with a prefix CD is to Core Documents agreed with the Council and available at the Inquiry.

02.1.4 My evidence is provided in association with that of Mr James Bancroft of SLR and Ms Innes Urbanski of the Waterman Group. Mr Bancroft's evidence focusses principally on transport matters and Ms Urbanski will

provide evidence in regard to noise at operational stage. I rely on their evidence to provide the technical analysis and conclusions which inform the application of the relevant planning policies.

03. THE APPEALS

03.1 APPEAL B – REFUSAL

- 03.1.1** The Application refused by the Council and which is the subject of Appeal B was originally submitted for the following proposed development:

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. Retrospective.

- 03.1.2** During determination, the application was amended to reflect the addition of structures, CCTV and Lighting. The application was determined in accordance with this description.

"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"

- 03.1.3** The Council refused the Application on 17th October 2024 under delegated powers for the following reason:

"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."

03.2 APPEAL A - ENFORCEMENT

- 03.2.1** The Council began correspondence with regards to potential enforcement action in late December 2024 and issued a Planning Contravention notice on 17th Jan 2025. This was returned by me on 5th February 2025. The formal enforcement notice which is subject to this appeal was issued by the Local Planning Authority on 11th March 2025. The enforcement notice outlines the following alleged breach of planning control.

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.

- 03.2.2** Supporting the above the reason for issuing the enforcement notice is listed 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.

03.2.3 It will be noted that, in contrast to the decision notice on the refusal of planning permission, this reason did not cite any concerns relating to highway safety. At the date of receipt, it was assumed that this was deliberate and that, following receipt of further information from the appellant's highway consultants, the Council was no longer pursuing this element of the planning reason for refusal. However, para 1.7 of the Council's statement of case asserts that this was an oversight.

03.3 APPEAL SITE DESCRIPTION AND LOCATION

03.3.1 Please refer to section 1 of the Statement of Common Ground [CD7.01], for a detailed description of the Appeal Site and surrounding context.

03.3.2 The site has historically been in industrial use for a significant period. Historic mapping shows the use of the site as a power plant in the mid 1900's and has been in varying industrial uses since that date. Most recently it has been used by the London Electricity Board and continues function to date.

03.3.3 This historic use is acknowledged by all parties who agree that the site is termed as a non-designated industrial site in accordance with the London Plan Policy E4.

03.3.4 The Council note in paragraph 4.7 of the LPA SoC that "There is a significant amount of scaffolding equipment on the Council owned land adjacent to the south-western corner of the appeal site." This land was not part of the Application, nor the Enforcement Appeal, and is therefore wholly irrelevant to the Appeals. Notwithstanding this, the Appellant requested that the tenant remove their equipment from the land owned by the Council and that this has now been completed. This is ratified in the image below.



Image of LPA Owned Lane – 15th July 2025/

03.4 THE APPEAL SCHEME AND USE OF THE SITE

- 03.4.1** Please see the Statement of Common Ground [CD 7.01] for a description of the appeal scheme and the use of the site.
- 03.4.2** Further details of the day-to-day operations of the site, including the timing of specific activities and core hours, are set out in the Site Operations Statement prepared by the tenant, Mason Scaffolding, appended to this Proof [Appendix 1].
- 03.4.3** In paragraph 2.8 of their Statement of Case, the Council refer to a “heaped deposit.” For the avoidance of doubt, this “deposit” is not contaminated soil associated with the de-contamination of the site undertaken by the previous owners (REF 13/01555/PLUD) but sits alongside the boundary within a designated "quarantine area" which is used to store wooden boards that are no longer safe to be used. The designation of this space is a health and safety requirement due to potential hazards associated with using defective boards when

working on site and at heights. Both of these aspects were explained in detail to the Council during their site visit.

03.4.4 The Council within its statement of case (paragraph 4.5) identified a discrepancy with regards to the hours of operation for the site. This discrepancy stems from the terminology used to describe the site hours on the application forms. The hours are described in detail in the Site Operations Statement with additional commentary on what tasks are undertaken at specific times. For the avoidance of doubt the site operates as per the following standard working hours:

/ Vehicle Hours

- Monday – Friday - 630am-5pm
- Saturday – 7.00am–4pm
- Sunday – None

/ Office Hours

- Monday – Friday – 9am-5pm
- Saturday – None
- Sunday – None

/ Yard hours

- Monday – Friday - 8am-630pm – Loading, Unloading and general site operations.
- Saturday - 8am-5pm – Loading and Unloading Only
- Sunday – 8am-1pm – Loading and Unloading Only

03.4.5 The impacts of the scheme, as considered by the Acoustic Report and Transport Reports are assessed against the use of the site.

03.4.6 Paragraph 4.2 of the LPA Statement of Case comments on the temporary nature of the permission for which has been applied. While the Appellant has applied for temporary planning consent, all impacts have been assessed as if they are permanent to ensure no harm to the local area.

03.5 PLANNING HISTORY OF THE APPEAL SITE

03.5.1 Please see the Statement of Common Ground [CD 7.01] for details regarding the planning history of the Appeal Site.

03.5.2 Within Paragraph 3.2 of the LPA Statement of Case the Council suggests it is unclear to what extent the ancillary activities consented on a temporary basis for the associated with the site under Ref 92/00337/FUL was ever implemented. However, irrespective of whether or not that permission was ever implemented and whether it remains extant, it was granted by the Council and therefore deemed to be acceptable, notwithstanding the fact that vehicles accessing the site pursuant to that permission would need to use the access road which also serves the Refuse and Recycling Centre, were subject to no restriction regarding the directions from which they could access or egress the site, and were permitted to exit the site during the drop-off-and collection times for the nearby school..

03.5.3 Within the same paragraph the Council also suggest the previous consent had been deliberately constructed to control the intensity of the use of the site. While this is noted, it was based on the contents of the previous application as determined at that time and the current Appeal Scheme has instead been considered on own its merits.

03.6 STATEMENT OF COMMON GROUND AND MATTERS IN DISPUTE

03.6.1 The Appellant and the Council have agreed a Statement of Common Ground (the “SOCG”), which forms Core Document [7.01].

03.6.2 The matters that remain in dispute thus relate solely to the single RfR (as reflected in the reasons for serving the Enforcement Notice), the adequacy of the service of the Enforcement Notice and the adequacy of the time allowed for compliance.

04. PRINCIPAL PLANNING POLICIES

04.1 INTRODUCTION

04.1.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act (2004), planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The adopted development plan documents relevant to the Appeal are as follows:

/ The London Plan (2021)

/ The Bromley Local Plan (2019)

04.1.2 The SOCG sets out the policies that are agreed between the Council and the Appellant as being relevant to this Appeal. In this section I will make mention of policies identified in the reason for refusal as well as policies in the Development Plan which the Council do not cite as reasons for refusal, but which are nevertheless of relevant to the Appeal Scheme.

04.2 POLICY D3 OF THE LONDON PLAN

04.2.1 Policy D3 sets out the London Plan approach to ensure 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.

04.2.2 Policy D3 is clear that optimising site capacity means ensuring that development is of the most appropriate form and land use for the site.

04.2.3 While no specific aspects of the Policy are cited in the Delegated Report, the Council's Statement of Case asserts that Parts 4, 5 and 9 are relevant. These parts state that development must minimise negative impacts on the environment, public realm, and vulnerable road users; achieve safe, secure, and inclusive environments and help prevent or mitigate the impacts of noise and poor air quality.

04.2.4 It should be noted that no other parts of Policy D3 are referenced and therefore it is assumed the Council agrees that the development accords with the remaining parts of the Policy.

04.2.5 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.

04.2.6 Paragraph 3.3.9 also provides context on Part 9 of the policy stating that measures to design out exposure to poor noise from both external and internal sources should be integral to development proposals and be considered early in the design process.

04.3 POLICY D14 OF THE LONDON PLAN

04.3.1 Policy D14 sets out the London Plan approach 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 Appeal Scheme:

- / 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
- / 7) promoting new technologies and improved practices to reduce noise at source, and on the transmission path from source to receiver.

04.3.2 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.

04.4 POLICY E4 EMPLOYMENT OF THE LONDON PLAN

04.4.1 The site is not designated or allocated in either the London Plan or the Bromley Local Plan. However, it meets the definition of a non-designated industrial site in accordance Paragraph 6.4.1 of the London Plan (2021) 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 demand

- 04.4.2** Policy E4 of the London Plan seeks to promote and protect employment and industrial sites within London and confers specific protection on Non-Designated Industrial Sites such as the Appeal Site. Policy E4 explicitly states that the retention, enhancement, and provision of additional industrial capacity on Non-Designated Industrial Sites should be planned, monitored, and managed to help support London's overall demand.

04.5 POLICIES T2, T5 AND T6 OF THE LONDON PLAN

POLICY T2 HEALTHY STREETS

- 04.5.1** London Plan Policy T2 sets out the strategic objective of the Mayor of London to deliver patterns of land use that facilitate residents making shorter, regular trips by walking or cycling. The Policy states that Development proposals should:

- 01.** demonstrate how they will deliver improvements that support the ten Healthy Streets Indicators in line with Transport for London guidance.
- 02.** reduce the dominance of vehicles on London's streets whether stationary or moving.
- 03.** be permeable by foot and cycle and connect to local walking and cycling networks as well as public transport.

POLICY T5 CYCLING

- 04.5.2** London Plan Policy T5 encourages development proposals to help remove barriers to cycling and create a healthy environment in which people choose to cycle through supporting the delivery of a London-wide network of cycle routes and securing the provision of appropriate levels of cycle parking which should be fit for purpose, secure and well-located.

POLICY T6 CAR PARKING

- 04.5.3** London Plan Policy T6 states that car parking should be restricted in line with levels of existing and future public transport accessibility and connectivity. It goes on to say that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport, with developments elsewhere designed to provide the minimum necessary parking ('car-lite').

04.5.4 In regard to non-residential car parking standards, London Plan Policy T6.2 allows up to 1 space per 100 sq. m GIA in Inner London locations.

04.5.5 It will be noted that the Council does not cite any breach against Policies T2, T5 and T6 of the London Plan within either the reason for refusal for the site or the enforcement notice.

04.6 POLICY 32 OF THE BROMLEY LOCAL PLAN

04.6.1 Policy 32 Road Safety states that *“The Council will consider the potential impact of any development on road safety and will ensure that it is not significantly adversely affected.”*

04.6.2 Policy 32 notes that development should ensure it does not significantly or adversely affect Road Safety. The supporting text highlights that where a proposal may have a detrimental effect on the safety of all users, measures to remove that potential risk should be agreed with the Council.

04.6.3 The LPA did not originally cite Policy 32 as part of the Enforcement Notice issued for the site. However, this has now been amended with para 1.7 of the Council's statement of case asserting that this was an oversight.

04.7 POLICY 37 OF THE BROMLEY LOCAL PLAN

04.7.1 The reason for refusal refers to Policy 37 but does not identify the part with which conflict is alleged. The Council's Statement of Case indicates that Part E is considered to be relevant. That Part 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. It should be noted that no other parts of the Policy are referenced and therefore it is assumed the Council accepts that the development accords with the remaining parts of the Policy.

04.7.2 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.

04.8 POLICY 199 OF THE BROMLEY LOCAL PLAN

04.8.1 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.

04.8.2 The supporting text for the Policy sets out how the Council has 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 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.

04.9 MATERIAL CONSIDERATIONS

04.9.1 The following are material considerations in the determination of this case. Further documents are noted in the SOCG.

/ NPPF (Feb 2025)

- Paragraph 11 – Sustainable Development
- Paragraph 115 – Highway
- Paragraph 116 – Highway Harm
- Paragraph 125 – Brownfield
- Paragraph 187(e) – Noise
- Paragraph 198 – Noise

05. APPEAL B: THE REFUSAL

05.1.1 The Council has identified only one RfR of planning permission, to which I have already referred. Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("DMPO") states:

(1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters—

(b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision;"

05.1.2 Although (contrary to article 35 DMPO) the overall reason for refusal is generalised and vague, it clearly refers to only 3 Local Plan policies and 2 London Plan policies. Having regard to article 35, it follows that the Council is satisfied that all other policies of the London Plan and Bromley Local Plan are either satisfied or not relevant.

05.1.3 The Inspector in her Pre-Conference Notes for the Case Management Conference on 17th July 2025 [CD 5.05] set out the main issues for Appeal B, which are:

- / The development's effect on the living conditions of neighbouring occupiers, with regard to noise and disturbance associated with comings and goings to and from the site as well as on site activities; and
- / The development's effect on highway safety, and whether any highway safety harm can be satisfactorily mitigated and/or controlled.

05.1.4 Ms Urbanski in her evidence deals with issue one and Mr Bancroft in his evidence deals with issue two, however there are matters of planning policy of note in relation to both issues, particularly with regard to policies thirty-seven of the Bromley Local Plan and D3 of the London Plan. These are addressed in my evidence. In assessing these points, I will focus on the RfR specifically and highlight that the Appeal Scheme complies with other relevant London Plan and Bromley Local Plan policies as well as recent amendments to the NPPF and ministerial directions which place significant planning benefits on development on brownfield sites, notably for employment and economic development. This demonstrates a strong planning balance in favour of the Appeal Scheme.

05.2 MAIN ISSUE 1 - THE DEVELOPMENT'S EFFECT ON THE LIVING CONDITIONS OF NEIGHBOURING OCCUPIERS

- 05.2.1** Although the impact of noise on the amenity of existing residents is clearly a material consideration, it is important to recognise that neither Policy D14 of the London Plan nor Policy 119 of the Bromley Local Plan states that all adverse impacts are unacceptable and contrary to Policy. Rather, the Bromley Local Plan seeks to ensure “**minimise adverse** impacts on noise sensitive receptors,” while the London Plan states that development should “**avoid significant** adverse noise impacts on health and quality of life.” Both Plans indicate that the guidance issued by the Institute of Acoustics in addition to British Standards such as BS8233:2014 and BS4142:2014 is the most appropriate way to consider noise impacts.
- 05.2.2** As Ms Urbanski notes (see paragraph 2.15 of her evidence) this approach is also reflected in the Council's Noise Technical Guidance titled 'Planning requirements for noise', which states that “*Development will not be permitted where levels above the Significant Observed Adverse Effect Level (SOAEL) exist, and mitigation measures have not been proposed that will reduce impacts to as near to the Lowest Observed Effect Level (LOAEL) as is reasonably possible.*”
- 05.2.3** The approach set out in Policies D14 and 119 and Bromley's Noise Technical guidance is particularly important in London where there are competing pressures which it would be impossible to address if a policy of “no harm” were to be applied. This is particularly the case in relation to the function of non-designated industrial sites. Both Plans acknowledge that noise, such as that from industrial sites, can be heard and this in itself does not make the development unacceptable.
- 05.2.4** With regards to the design of the site and potential impact on the quality of the local area, Part 4 of Policy D3 of the London Plan sets out that development should minimise negative impacts on the environment, public realm, and vulnerable road users. Parts 5 and 9 seek to ensure the experience of space around new development is safe, secure, and inclusive and that developments achieve indoor and outdoor environments that are comfortable and inviting for people to use.
- 05.2.5** Part E of Policy 37 of the Bromley Local Plan outlines that development will be expected to 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.
- 05.2.6** In accordance with Part E of Policy 37 of the Local Plan and Parts 4, 5 and 9 of Policy D3 of the London Plan, consideration has been given to the design of the scheme the site layout preventing adverse noise impacts to neighbours through the location and distribution of the noisier uses on site.
- 05.2.7** The Appeal Scheme locates key aspects such as the pole cutting area and storage and loading areas for the scaffolding pallets in the centre and northern areas of the site adjacent to the Council Waste Depot and away from the nearest residential accommodation (across the railway). Furthermore, the pole cutting area is shielded with an acoustic curtain to further reduce the noise it creates.

- 05.2.8** The tenant on site has also sought to adopt good neighbourly working practices to ensure any potential noise disturbance is kept to a minimum and the site does not result in any adverse impacts on local residents. In understanding the tenant's operation, I have overseen the preparation of the Mason Scaffolding Method Statement Document (Appendix 01) to ensure that it covers all relevant matters including the typical operation of the Site and the working practices in place.
- 05.2.9** The outcome of the site layout and working practices result in a scheme which respects the amenity of neighbouring residents and stakeholders. As demonstrated by the evidence provided by Ms Urbanski and Mr Bancroft the site minimises any negative acoustic or transport impacts on the local environment and does not cause any road or wider safety concerns. It is therefore readily apparent that through the design and use of the site that the Appeal Scheme is compliant with Policy 37-part E of the Bromley Local Plan and Policy D3 parts 4, 5 and 9 of the London Plan.
- 05.2.10** A Planning Noise Assessment accompanies the Appeal [CD8.03] undertaken by a qualified acoustic expert. This report considered the potential impact of the use of the site with regards to the assessment criteria set out by the London Plan, Bromley Local Plan and Bromley Planning guidance.
- 05.2.11** The report also considered the potential impact from vehicles leaving the Appeal Scheme onto Churchfield Road (from the access road). On Churchfields Road itself, the increase in vehicle numbers associated with the Appeal Scheme and noise associated with them was found to be in accordance with the relevant standards and supported by:
- / The minimal change in vehicle numbers as summarised by Mr James Bancroft in his reports accompanying the Appeal Scheme [CD1.04, CD2.05, CD8.04] and his Proof of Evidence.
 - / The overall profile of the Churchfields Road which is trafficked by a number of larger vehicles accessing the immediate and wider area.
- 05.2.12** The report is also accompanied by a detailed Proof of Evidence by Ms Innes Urbanski of Watermans Group in relation to acoustic matters. The proof of evidence in paragraph 5.13 concludes that the scheme is not considered to cause unacceptable and unneighbourly noise and disturbance. Therefore, the scheme complies with the tests set out above in Policies D3 and D14 of the London Plan and 37 and 119 of the Bromley Local Plan.
- 05.2.13** With regards to the case of the Local Planning Authority officers raise a number of concerns regarding the noise impact of the scheme in their Statement of Case as summarised below:
- / Para 7.11 - This is a Site which gives rise to loud and unpredictable noises when metal hits metal and some level of disturbance is inevitable due to the nature of the use and the processes associated with manoeuvring the equipment around the site and on/off the lorries.
 - / Para 7.11 - Noise/disturbance that results from the hours of operation of use, including the early hours of the morning and weekends.

- / Para 7.13 - The Council does not accept that the assumed noise levels accurately predict the impact to surrounding residents.
- / Para 7.14 - It is the view of the Council that the BS4142:2014 methodology has not been properly considered, and when it is fully taken into account, its application casts doubt on the accuracy of the conclusion reached.

05.2.14 It should be noted that, at the time of writing, there is a marked lack of any detailed or empirical evidence to substantiate the above noise concerns outlined in the Council's Statement of Case. These comments are broad, ill-defined, and often based on complaints and assumptions with no detailed evidence to support the claims.

05.2.15 In particular, the Appellant has sought clarification of the "complaints" referred to in the Council's Statement of Case and has been advised that this is a reference to the objections received by the Council during consultation on the planning application. A brief perusal of those objections demonstrates the most of these are lacking in any kind of detail. This is particularly important in the context of a site which operates in very close proximity to two other uses (the UKPN site, and the Refuse and Recycling Centre), both of which can be noisy and involve the use of HGVs, in circumstances where it may not always be possible to be certain where a particular noise (such as a "loud bang") comes from. It is also important in order to be able to differentiate noise and disturbance which may have been associated with the initial setting up of the scaffold yard (for example, during the erection of the scaffold storage areas, which is a short-term impact which is no different to any construction site) from the way in which the site has operated thereafter. Finally, the lack of detail is important, because it affects the extent to which the Council has been able to give proper consideration to the extent to which would be possible for particular impacts to be addressed or mitigation, for example by restrictions on the hours of operation for certain activities.

05.2.16 In contrast the Noise Assessment submitted for the Appeal Scheme alongside Ms Urbanski's Proof of Evidence addresses the technical matters related to noise for the Appeal Scheme and has also sought to address the assertions in the LPA Statement of Case. Table 1.1 of Ms Urbanski's proof provide direct responses to the queries raised by the LPA with precise evidence led rebuttals. The proof assesses the impact of the Council's comments as part of the technical review of noise for the site.

05.2.17 On review of the outcome of this technical exercise undertaken by Ms Urbanski it is clear that the scheme does not cause any harm or impact to local sensitive receptors. The Council has provided no evidence to contradict the conclusions of her report.

05.2.18 Furthermore, and notwithstanding the assertion of compliance raised proceeding in this chapter, the Council at no stage within their Statement of Case or Delegated Officers report allege or demonstrate substantial harm associated with the Appeal Scheme as required by policy D14 and their technical guidance. It is therefore considered that the Council has failed to show how the scheme conflicts with Policy D14 and their own guidance.

05.2.19 The Council has also raised no specific comments with regards to Policies D3 of the London Plan or Policy 37 of the Local Plan. Overall, there is no specific evidence provided to show non-compliance with any noise related planning Policies within the Development Plan.

05.3 MAIN ISSUE 2 - THE DEVELOPMENT'S EFFECT ON HIGHWAY SAFETY

05.3.1 Policy 32 of the Bromley Local Plan outlines that the Council will consider the potential impact of any development on road safety and will ensure that it is not significantly adversely affected. Paragraph 4.0.18 of the supporting text highlights that where development may have a detrimental effect on the safety of all users, measures to remove that potential risk should be agreed with the Council.

05.3.2 The supporting text also goes further to state that where a proposal is situated in a location with an existing road safety problem, it would be expected to fund any necessary mitigation to resolve the difficulty **as far as possible** within the development and/or contributing to broader off-site solutions.

05.3.3 Included in the Appeal submission is a Road Safety Audit [CD8.04] prepared by Gateway-TSP with the Appeal which concludes no issues with regards to highway safety, this is further demonstrated through collision records on the local highway network. On this basis it is considered that the Appeal Scheme complies with Policy 32 of the Bromley Local Plan and does not contribute to any road safety concerns.

05.3.4 Notwithstanding this clear compliance and without prejudice against the Appeal Scheme the Appellant, as a good neighbour and in the interest of improving the area, is willing to engage with the LPA regarding potential improvements to the access road. While the reason for refusal given by the LPA and the comments by local residents are shown to be without evidence with regards to road safety the Appellant is willing to fund improvements with regards to pedestrian safety at the junction to allay the concerns, notably from residents.

05.3.5 The Appellant has entered into a Statement of Common Ground with the LPA with regards to this matter and agreed a planning condition which could be imposed which would address these issues. While, for the reasons set out by Mr Bancroft, the Appellant does not consider this is strictly necessary in order to make the development acceptable, Masons have confirmed that they would be able to operate with such restrictions in place, and the Appellant has no objection to them in principle.

05.3.6 Paragraph 7.22 of the Council's Statement of Case comments on access to the site via the access road, notably the tracking of vehicles and the turn required. These aspects are addressed through Mr Bancroft's evidence which concludes the manoeuvre is safe and acceptable, and therefore in accordance with Policy 32.

05.3.7 In this regard, it is significant that the Council has already granted permission for the use of the appeal site by UKPN. The use of the site by UKPN was considered acceptable at the time it was granted planning permission. This would have included the impact on the surrounding road network, size and scale of vehicles using the access road and relationship to immediate neighbours such as residential homes and the primary school.

- 05.3.8** Importantly, that permission is not subject to any conditions on either the number or size of vehicles, or their direction of travel. As paragraph 7.28 of the Council's Statement of Case ("LPA SoC") recognises - "the electricity undertaker's depot has a permission from 1992 (93/00337/FUL) which would facilitate a reasonable amount of relevant commercial vehicle access". In contrast, the Appellant is willing to accept a limit on the size of vehicles associated with the scaffolding yard to those which Mr Bancroft's evidence has demonstrated can make the turn, and to accept a restriction on vehicles entering the site from, or exiting it to, the west.
- 05.3.9** Queues experienced by the Churchfields Road Waste Site have also been an issue which will have impacted the UKPN site, and both uses have co-existed for a significant period of time. Furthermore, the queues from the waste site have not been subject to investigation or mitigation by the Council so similarly should be seen as acceptable.
- 05.3.10** Paragraph 7.28 of the Council's SoC asserts that the use of the UKPN site at the present moment is particularly intensive due to immediate works being undertaken locally and therefore it cannot be relied on as a true baseline for the site. I find this argument difficult to understand for a number of reasons. First, while it is true that variations in the level of movement to and from the UKPN site will affect the percentage by which the Appeal scheme would increase traffic on the access road, it is clear that the traffic levels from the existing situation can ebb and flow naturally between quiet and intensive periods. This is the natural existing condition of the site and has been surveyed at multiple occasions in order to obtain accurate data across a broader period of time.
- 05.3.11** Second, the current trip generation from the UKPN site is within approved permission for of the site: as noted above there are no planning conditions restricting this use or the size of vehicles involved.
- 05.3.12** Third, even if the access road is currently being used by both Masons and what Council regards as an unusually high number of HGV's accessing the UKPN site, Mr Bancroft's evidence demonstrates that this has not given rise to any adverse impact on highway safety or congestion. That combined number will only decrease if UKPN's movements drop off.
- 05.3.13** Finally, notwithstanding the comments about the intensity of the existing use the scheme only results in an additional twenty two-way HGV movements along the access road. As Mr Bancroft demonstrates, this is an extremely small proportion of movements on Churchfields Road and is minimal when compared to the capacity of the road.
- 05.3.14** Mr Bancroft also addresses this aspect in his Proof of Evidence in paragraphs 5.12 onwards.
- 05.3.15** Considering the existing use subject to this Appeal and in support of the scheme I note that the Council's own Highway Officer did not raise any concerns with regards to the proposal [CD3.01] from a highway perspective. This includes access arrangements, trip generation and swept paths. Furthermore, the issue of highway safety was never raised during the determination of the Appeal Application until it featured in the officer's report. Had it been raised earlier it could easily have been addressed through the commissioning of a Road Safety Audit, as has now been provided in the supporting documents submitted with the Appeal. It is difficult to understand how the Council managed to reach the conclusion that the scheme could not "evidence safe

use” given that, at no stage prior to the actual determination of the application did any planning or highway officer raised it as a concern.

- 05.3.16** The Council within paragraph 7.25 of their Statement of Case identify that there have been “observed instances of Mason Scaffolding vehicles bypassing queuing traffic by driving on the wrong side of the access road in order to reach the site.” While it is acknowledged that when the site initially opened this did occasionally occur it was quickly remedied by the operator who has set out a policy (with the Enclosed Method Statement) of how to safely manoeuvre on the access road. This ensures that no overtaking is undertaken until the vehicle is past the exit to the Churchfield Road Waste site. There is no evidence provided by the Council or any interested stakeholders to show that the issue prevails.
- 05.3.17** Mason Scaffolding are also FORS Silver Accredited [CD 9.03] and are regularly audited to ensure the management and transport processes are accurate and comply with the relevant legislation. Mason Scaffolding have put the necessary procedures in place to ensure vehicles only operate safely on the access road. This aspect is outlined in the Mason Scaffolding Method Statement enclosed with this proof (Appendix 1).
- 05.3.18** Overall, it is considered that through the evidence provided by Mr Bancroft and supported by the above as well as the Method Statement from Mason Scaffolding that the scheme complies with Policy 32 of the Bromley Local Plan.

05.4 WHETHER THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE DEVELOPMENT PLAN

- 05.4.1** It is my view, based on the evidence provided by Watermans and SLR, that the scheme complies with Policies 32, 37 and 119 of the Bromley Local Plan and Policies D3 and D14 of the London Plan. The SoCG also sets out Appeal Scheme accords with all other relevant policies which are not in despite between the Appellant and the Council.
- 05.4.2** With regard to Policies T2, T5 and T6 of the London Plan, the Council's Highway Officers have accepted that the level and type of vehicle movements would not exceed the central transport planning tests of the National Planning Policy, which informs and underpins the London Plan. The Policies were not referenced as part of the reason for refusal for the Appeal Scheme and form part of the common ground with the SOCG.
- 05.4.3** The Council assert in Paragraph 2.6 of their Statement of Case that trees have been removed from the site. It is not clear whether the suggestion is that this is associated with the Appeal Scheme however for the avoidance of doubt it is confirmed that – although clearance of shrubs has occurred as relevant and would be expected as part of the use of the site - no trees have been removed been as part of the Appeal Scheme and/or use of the site by Mason Scaffolding. In any case neither the Delegated Officers Report [CD3.03] nor the Council's Statement of Case suggests that the loss of trees gives rise to conflict with any policy of the development plan. The relevance of para 2.6 is therefore unclear.

05.4.4 As noted in Section 4.1 above, the RfR only relates to five policies, and hence any allegation of breach of the Development Plan is limited to these aspects in relation to noise impact and highways safety. On this basis the Council consider the Appeal Scheme complies with all other relevant policies: see above. Through his evidence presented Ms Urbanski will demonstrate that the scheme complies with Policies 37 and 119 of the Bromley Local Plan and D3 and D14 of the London Plan. Mr James Bancroft has demonstrated through his evidence that the scheme will not lead to any highway safety concerns.

05.4.5 As such it is evident that the Appeal scheme is consistent with the Development Plan.

05.4.6 Third Party representations have outlined a number of concerns related to breach of other London Plan and Bromley Local Plan policies. As set out in my response in Section 6 and my Statement of Case I consider the Appeal Scheme to be in accordance with all relevant policies in the London Plan and Bromley Local Plan. Additional detail is provided in section 6 of this proof.

05.5 THE EFFECT OF OTHER CONSIDERATIONS ON THE OVERALL PLANNING BALANCE

POLICY COMPLIANCE

05.5.1 Para 11 of the NPPF states that decisions should apply a presumption in favour of sustainable development. For decision-taking this means c) approving development proposals that accord with an up-to-date development plan without delay. I have undertaken an analysis of the scheme and in accordance with Paragraph 11 Part c) of the NPPF concluded that the scheme accords with the development plan and therefore should be approved.

05.5.2 Notwithstanding the Appellant's position that the scheme complies with all policies, even if conflict was found with the more stringent aspects of Policy 119 of the Bromley Local Plan; in so far as there is a difference in the wording of the two policies, the London Plan is the more recent and takes precedence, and that in those circumstances any conflict with Policy 119 is not enough, on its own, to mean that the application does not accord with the development plan as a whole.

05.5.3 Paragraphs 8.1 and 8.3 of the Council's Statement of Case asserts that only they have undertaken a correct assessment of planning balance as *"The Council on the other hand has carried out an assessment which draws reference to both harms and benefits, reaching a considered and balanced conclusion."*

05.5.4 This is a misconstruction of the Appellant's case as it is our position that we have reviewed the potential negatives and there is no policy conflict associated with the scheme and therefore it causes no harm when considered against the development plan.

05.5.5 The Council on the other hand have started from a view to refuse the scheme and has sought to find issues without evidencing them while failing to acknowledge any positives.

- 05.5.6** The Council contends the scheme, conflicts with both Policies 119 of the Bromley Local Plan and D14 of the London Plan. As stated in section 4.2 Policy D14 does not state that ‘any’ acoustic impacts would lead to development being unacceptable or noncompliance with Policy. Instead, the policy states that development should manage noise by avoiding “significant” adverse noise impacts.
- 05.5.7** The Council has not demonstrated significant adverse impacts associated with Appeal Scheme and therefore have failed to demonstrate that it does not accord with Policy D14 of the London Plan which weights in favour of granting planning consent.
- 05.5.8** Beyond its concerns about noise and disturbance and highway safety, the Council has not identified any other material considerations which would weigh against the scheme. In my view, all their “other material considerations” are strongly supportive. I have set out below considerations related to:

/ The NPPF

/ The use of planning conditions and planning obligations to mitigate any perceived harm.

THE NPPF

- 05.5.9** The RfR does not refer to the NPPF and fails to therefore address the benefits of the scheme with regards to the delivery of jobs and employments floorspace but also the tests associated with assessing harm, notably in relation to highway impacts.
- 05.5.10** Paragraph 8 of the NPPF states that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

a) an economic objective – to help build a strong, responsive, and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation, and improved productivity; and by identifying and coordinating the provision of infrastructure.

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and

c) an environmental objective – to protect and enhance our natural, built, and historic environment, including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

- 05.5.11** The Appeal Scheme delivers economic benefits, by delivering a service key to the construction sector as a whole and delivering new jobs. The Appeal Scheme delivers environmental objectives by making effective use of this underutilised brownfield land. The Appeal Scheme delivers indirect social benefits by providing a service which supports key development of new homes and infrastructure throughout London and direct benefits through the tidy and professional management of an industrial site.
- 05.5.12** Paragraph 85 states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses, and address the challenges of the future.
- 05.5.13** The Appeal Scheme supports the economy of the Borough and London as a whole. The Appeal Site is an underused non-designated industrial site in the Borough. By making effective use of the land, the Appeal Scheme supports the objectives of the Council in supporting economic growth in this area.
- 05.5.14** Paragraph 115 of the NPPF states in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:
- / a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.
 - / b) safe and suitable access to the site can be achieved for all users.
 - / c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and
 - / d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 05.5.15** Paragraph 116 identifies 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 would be severe.

- 05.5.16** As demonstrated within the supporting Transport Assessment [CD1.04, CD2.05, CD8.04] and Mr Bancroft's Proof of Evidence, which was accepted by the Council, there would be no severe harm to the highway network. It is therefore clear that the Appeal Scheme meets the tests set out within the NPPF.
- 05.5.17** Paragraph 124 states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously developed or 'brownfield' land.
- 05.5.18** The Appeal Scheme makes effective use of brownfield land. The environmental and transport effects of the increased use of the Appeal Site have been assessed by the Appellants technical team and considered to be acceptable. The scheme was considered to not have a significant effect on transport movement and had negligible effect on air quality and noise sensitive receptors.
- 05.5.19** 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".
- 05.5.20** Planning policy is clear that applications should only be refused if any potential harms are considered to be "substantial", here those matters appear to be noise and transport.
- 05.5.21** The Government's "Brownfield Passport: Making the Most of Urban Land" (updated 13 February 2025) summarises potential proposed options for a form of 'brownfield passport'. This 'passport' once introduced would specify that development should be regarded as acceptable for a brownfield site, and the default answer to suitable proposals should be a straightforward "yes."
- 05.5.22** While this is not adopted policy it reinforces a clear direction of travel to use brownfield sites, building on the NPPF (paragraph 147) which highlights the importance of a Brownfield first approach. The Appeal Site is brownfield land, and the Appeal Scheme will make effective use of this underutilised land, this weighs in favour of the scheme.
- 05.5.23** As discussed above it is my opinion that based on the information submitted alongside the Appeal Scheme that the development accords with all relevant planning policies. The NPPF and London Plan policies weigh in favour of the development notably with regards to the use of an underutilised brownfield site.
- 05.5.24** Notwithstanding our assertion that the scheme meets all relevant policies even if the Council was to show minor levels of acoustic harm as outlined by Policy 119 of the Local Plan, on balance I would therefore consider compliance with Policy D14, the NPPF and benefits associated with the scheme to outweigh any alleged harm and thus the scheme to comply with the Development Plan when read as a whole.

PLANNING CONDITIONS

- 05.5.25** The SOCG has an agreed set of Planning Conditions and draft Planning Obligations.

05.5.26 I note the following transport related condition which, while as demonstrated by the evidence provided by Mr Bancroft is not required, however in accordance with being a good neighbour we would not object as it further mitigates any perceived effects of the Appeal Scheme on Churchfield Road. These conditions are agreed as Common Ground and are considered to serve a planning purpose in accordance with regard the NPPG – Use of Conditions.

- / Compliance with Vehicle Management Plan [Document XXX] approved as part of the Appeal scheme unless otherwise agreed in writing with the Local Planning Authority, securing.
 - o A routing plan that would require all HGVs to access and egress the Appeal Site from Beckenham Road and Churchfields Road only, to ensure that vehicles do not pass the HGV entrance to the existing Council recycling centre or school.
 - o A restriction on the maximum size of HGV able to access the site to 12.84 metres (see Appendix D of [Document 7] for full detail); and
 - o A restriction on any HGVs movements to or from the Appeal Site between the hours of 15:15 and 15:45 on days on which the school is open to pupils, to avoid school pick up times.

06. APPEAL A: THE ENFORCEMENT NOTICE

06.1.1 In issuing the Enforcement Notice for the site the Council referred to policies 37 and 119 of the Bromley Local Plan and Policies D3 and D14 of the London Plan. The Council with their Statement of Case have also reintroduced non-compliance with Policy 32 of the Bromley Local plan stating it was an oversight it was previously omitted.

06.1.2 , Notwithstanding this oversight it follows that the Council must agree enforcement action is not warranted with regard to all other relevant policies in the London Plan 2021 and the adopted Bromley Local Plan 2021 as scheduled in the SOCG.

06.1.3 The Council highlight the following actions in order to comply with the Enforcement notice.

- / (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.

06.1.4 The Appeal on behalf of the Appellant was under grounds (e), (f) and (g) as summarised by the Enforcement Appeal Statement of Case [CD 8.02].

06.1.5 The Inspector in her Pre-Conference Notes for the Case Management Conference on 17th July 2025 [CD5.05] set out the main issues for Appeal B, which are:

- / Whether the inspector needs to put the enforcement notice in order.
- / Whether London Power Networks PLC has been substantially prejudiced by the failure to have been served with a copy of the enforcement notice.
- / Whether the steps required to be taken to remedy the breach of planning control are excessive, and whether the lesser steps suggested would remedy the breach or injury to amenity, as the case may be; and
- / Whether the 3-month compliance period specified falls short of what should reasonably be allowed.

06.2 MAIN ISSUE 1 - WHETHER THE INSPECTOR NEEDS TO PUT THE ENFORCEMENT NOTICE IN ORDER

06.2.1 For the reasons set out in sections 6.3 below, in accordance with the evidence provided it is considered that the enforcement notice should be amended pursuant to section 176 of the 1990 Act. Consideration is also given to whether London Power Networks Plc is also prejudiced by not forming part of the Appeal.

06.3 MAIN ISSUE 2 - WHETHER LONDON POWER NETWORKS PLC HAS BEEN SUBSTANTIALLY PREJUDICED.

06.3.1 All parties are agreed that the respective enforcement notice was not served on London Power Networks Plc (LPN) [SOCG Section 7]. Therefore, in accordance with the main issue the question is whether LPN were substantially prejudiced by this failure.

06.3.2 Here, as a preliminary point, I note that – although the Enforcement Notice includes LPN's land and explicitly refers to the use carried on by LPN – the Council accepts that LPN's own operations on the site are lawful. In my view, this brings into question one of the matters which, at the CMC, the Inspector specifically asked the parties to address, namely the proper planning unit.

06.3.3 In issuing the enforcement notice, the Council appears to have taken “the planning unit” to be the same as the red line on the application drawings for the application for planning permission. In my view, that is wrong. If one looks at the overall area covered by the enforcement notice, there are two clearly distinct parts – the LPN yard and the yard occupied by Masons. These are two separate businesses, with distinct uses. Their yards are separated by a security fence. Although there is a small part of the access road beyond the main gate which is shared, beyond that each yard has its own, secured entrance. This is not a situation where there is a mix of two different uses on the same site: there are two units of occupation which are physically and functionally separate. Applying the usual **Burdle** tests, it is my view that there are two distinct planning units. Critically, within the planning unit occupied by LPN, there has been no breach of planning control which would justify service of an Enforcement Notice.

06.3.4 As a consequence, the land which LPN occupy is now subject to an Enforcement Notice, even though the Council now accept that LPN is doing (and has done) nothing wrong. In my view, that is of itself prejudicial, not least because an Enforcement Notice sits on the planning register as a “black mark” against a property. In this regard, there is a key difference between the position of LPN and Masons, in as much as it the breach of planning control in relation to the scaffold yard is accepted.

06.3.5 Critically, because LPN has not been served:

- LPN has not had the opportunity to appeal the Enforcement Notice before the Enforcement Notice comes into effect, and as therefore been denied the opportunity to argue that its site should be excluded from the notice.
- LPN are not part of discussions where the Council has sought to introduce a planning condition (Section 5 of the Statement of Common Ground) which would remove the ability for HGV to access the UKPN site without prior approval of the LPA.
- LPN are not part of discussions during the inquiry to regarding HGV movements which may impact on the future use or changes to the whole of the Enforcement Notice site.

06.3.6 These points explain why in my view, the only way in which this prejudice can be remedied is either the quash the Enforcement Notice as a whole, or to remove the LPN yard from the Enforcement Notice.

06.4 MAIN ISSUE 3 - WHETHER THE STEPS REQUIRED TO BE TAKEN TO REMEDY THE BREACH OF PLANNING CONTROL ARE EXCESSIVE.

06.4.1 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."

06.4.2 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.

06.4.3 Ground (f) when considered in isolation from conjoined Appeal B is a key aspect and the Appellants Statement of Case with regards to the Enforcement Appeal [CD 8.02] considers the ground at length.

06.4.4 However now that it has been confirmed that Appeal A is conjoined with Appeal B it is considered that any discussions with regards to the nature of planning policy and the scheme with regards to the adopted development plans should be considered under the main issues associated with Appeal B.

06.4.5 Through my evidence above in relation to Appeal B I demonstrate that the Appeal Scheme complies with Policies 32, 37 and 119 of the Bromley Local Plan and Policies D3 and D14 of the London Plan and thus those comments should be read into this section to demonstrate that there is no breach of planning control to remedy.

06.5 MAIN ISSUE 4 - WHETHER THE 3 MONTH COMPLIANCE PERIOD SPECIFIED FALLS SHORT OF WHAT SHOULD REASONABLY BE ALLOWED.

06.5.1 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”.

06.5.2 It is my view that this is not a practical timeframe given the substantial steps required to undertake the actions identified by the LPA as being required to remedy the breach which amount to shutting down the site and business as well as removing all structures. The tenant would need to:

- / Commission Agents and either find an alternative site with the relevant planning permission in an appropriate location or find a site and obtain planning permission.
- / 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

06.5.3 The Council within their Statement of Case have highlighted that they would be willing to extend the time for compliance to 6 months and have indicated that this would be consistent with the Appellant's response to the Planning Contravention Notice.

06.5.4 As a preliminary point, I note that this is not actually what the PCN response says: as it makes clear, the period of 6 months is what is required in order to clear the site. The response does not accept that this would be sufficient time for Masons to find an alternative site to move to, and in my view, this is extremely unlikely. In my view, the six months suggested by the Council would barely be sufficient to identify an alternative site undertake due diligence.

06.5.5 In this regard, I refer to the statement by Mason Scaffolding which outlines the timeframes associated with renting the Churchfields Road Site. This is enclosed within Appendix 2 and demonstrates that a period of circa 15 months is a much more realistic estimate of the time which is likely to be required. would be required for the reaction.

06.5.6 If the enforcement notice is not quashed, and the time for compliance is not extended it will result in the near immediate closure of the site, the business, and redundancies.

- / The closure would 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.

06.5.7 In the circumstances, I consider the Notice should be amended to allow a period of 15 months.

07. RESPONSE TO THIRD PARTY REPRESENTATIONS

07.1 INTRODUCTION

07.1.1 I am aware that since the Appeal was submitted a number of representations have been received from local residents and local groups regarding the Appeal Scheme. Such representations reflect the comments received during the planning application.

07.1.2 The key themes of the representations made during the planning application and the Appeal Scheme are summarised below. Of the comments provided thirty-four appear to have been copied in an identical format. Other comments all follow similar themes with regards to the issues raised.

/ Highway

- Road safety impacts associated with the use of the site by Mason Scaffolding and number of HGVs.
- Traffic congestion caused by the additional vehicles from Mason Scaffolding and no commitment from the LPA that the booking system will remain. Concerns raised regarding accuracy of traffic data.
- Location adjacent to Primary School causes conflict from a and highway perspective.
- Active travel impacts have not been considered by the Appeal Scheme.

/ Noise

- Noise created by the site is unacceptable, incorrectly assessed and no mitigation proposed.
- Use of site is more intensive than the approved use and not does not adhere to the proposed hours of operation.
- Impact of noise on the adjacent Primary School.

/ Other

- Alternative locations for Mason Scaffolding have not been assessed or reviewed as part of the Appeal Scheme.

07.1.3 It is my view that the technical reports submitted with the planning application and subsequently forming part of the Appeal address these points in depth and displace the assertions. It is also my view that the resident comments have been founded on fears and concerns which do not arise, but which the Appellant has offered to agree to further conditions to assuage resident concerns as a matter of being a good neighbour.

07.1.4 To assist the Inspector, I have set out a more detailed summary of the comments and how the Appeal Scheme responds to these aspects in [TL01] of my Proof.

07.1.5 I would also bring to the Inspector's attention the analysis undertaken by planning officers in the Officers Report [CD 3.03] which concludes that the scheme is only in breach of five policies and gave regard to the substantial comments made on the Appeal Scheme at application stage.

07.2 RULE 6 PARTY

07.2.1 It is understood at this stage that no parties have applied to part of the inquiry under Rule 6.

08. SUMMARY

08.1 CONCLUSIONS AND PLANNING BALANCE OF APPEAL B

- 08.1.1** The Appeal Scheme is for the use of an underutilised non-designated industrial site adjacent to a Council Waste Site for a temporary period of 5 years as a scaffolding yard. The lawful use of the Appeal Site is industrial having been associated with the electrical substations on site and long-standing historic use by the London Electricity Board (now LPN) for over a hundred years.
- 08.1.2** The Appeal Scheme was developed to positively respond to Planning, Noise and Transport and feedback during determination but was subsequently refused by the London Borough of Bromley on 17th October 2024.
- 08.1.3** It is the Appellant's view that the Appeal Scheme complies with all relevant development plan policies and will deliver jobs for the immediate local and wider area. The Appeal Scheme also supports the wider construction sector within London providing a key use to active construction sites.
- 08.1.4** The Appeal Scheme accords with all sections of Policies 37 and 119 of the Bromley Local Plan and D3 and D14 of the London Plan.
- 08.1.5** The Evidence prepared by Ms Urbanski in particular addresses comments in regard to noise made by the Council during determination of the Appeal Scheme.
- 08.1.6** Furthermore, the scheme accords with Policy 32 of the Bromley Local Plan with the evidence from Mr Bancroft fully addressing the transport effects of the Appeal Scheme with regards to Road Safety.
- 08.1.7** The Appeal Site would be subject to a planning condition which have been agreed with the Council as set out in the SOCG. This condition will provide the Council additional layers of control with regards to the movements of vehicles on site.
- 08.1.8** The redevelopment of the Appeal Site will deliver a range of substantive benefits for the Borough. These include:
- / Making effective use of brownfield land to deliver jobs for the borough.
 - / The introduction of an enforceable management of the site and associated traffic movements through planning conditions and obligations.
 - / Wider benefits to the development and construction industry in Bromley, London, and the UK through the service the scaffolding yard provides.
- 08.1.9** I consider that third party evidence received during the appeal does not raise any new matters which were not fully addressed during the application process through technical evidence, the Council's own officers' assessment (as set out in the Officers Report) or the Officers Statement of Case.

08.1.10 Notwithstanding the above assertions that the scheme does not cause harm, I also consider that any harm the Council may seek to identify would be minor and would be outweighed by other Policies within the Development Plan and the benefits the Appeal Scheme will deliver as scheduled above. Having regard to Section 38(6) of the 2004 Act and to the evidence and material accompanying my Proof of Evidence, I would respectfully ask the Inspector to allow this appeal and grant planning permission.

08.2 CONCLUSIONS OF APPEAL A

08.2.1 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).

08.2.2 Having regard to the evidence and material accompanying this statement, it is my view that with regards to the Enforcement Notice issued by the LPA:

- / where the Refused Application Appeal is not allowed, ground (e) is established, and the Enforcement Notice is quashed pursuant to section 176 of the 1990 Act, or the Notice is amended to exclude the LPN land.
- / where the Refused Application Appeal is not allowed and the Inspector in this Appeal finds that ground (e) is not established, that ground (g) is established and the Enforcement Notice is varied in accordance with the terms set out in this Appeal at section 5.5 of this Proof as applicable pursuant to section 176 of the 1990 Act.

APPENDIX 1 – MASON SCAFFOLDING OPERATIONAL PLAN

APPENDIX 2 – MASON SCAFFOLDING RELOCATION STATEMENT

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