



PROOF OF EVIDENCE FOR LONDON BOROUGH OF BROMLEY

PROOF OF EVIDENCE OF KAREN DAYE

PINS References: APP/G5180/C/25/3363900 & APP/G5180/W/25/3365514

LBB References: 23/00705/OPDEV & 24/00815/FULL1

Appellant: Churchfields Road BR3 Ltd, Mr Luke Osborne

Address: Land at London Electricity Board Depot, Churchfields Road, Beckenham BR3 4QZ

Proposal: 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.

Date of Inquiry: 19-21, 27-28 August 2025

JULY 2025

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1.0 QUALIFICATIONS

- 1.1 My name is Karen Daye I am a Team Leader in the Planning Appeals section at the London Borough of Bromley.
- 1.2 I hold a Bachelor of Science degree in Urban and Environmental Studies and a Post Graduate Diploma in Town Planning. I have over 25 years experience working in the public sector across development management and planning appeals. I am a Chartered Member of the Royal Town Planning Institute.
- 1.3 I am familiar with the appeal site and its context having visited a number of times in preparation for this appeal. I had no involvement with the application until the appeals were lodged in April 2025.
- 1.4 The evidence which I have provided for this appeal is true and has been prepared in accordance with the guidance of the Royal Town Planning Institute. I confirm that the opinions expressed are my true and professional opinions.

2.0 THE APPEAL AND SCOPE OF EVIDENCE

- 2.1 My proof of evidence has been prepared on behalf of the London Borough of Bromley ("the Council") and relates to a s174 appeal (Appeal A) and s78 Appeal (Appeal B) submitted, in respect of retrospective 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, land at London Electricity Board Depot, Churchfields Road, Beckenham BR3 4QZ ("the appeal site") by Churchfields Road BR3 Ltd, Mr Luke Osborne ("the appellant").
- 2.2 Policies which the Council relies upon have been set out in the Council's Statement of Case (**CD12.01** - p11-16) which I do not intend to repeat below. This document will however draw upon policy throughout its extent as a context to my evidence.
- 2.3 The following sets out the scope of my evidence in relation to each of the appeals, although there will inevitably be some overlap.

APPEAL A

- 2.4 **APP/G5180/C/25/3363900 - against an Enforcement Notice (EN) alleging 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.**
- 2.5 My evidence relates to the following matters:
- Whether the Enforcement Notice (EN) needs to be amended / varied;
 - 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.

APPEAL B

- 2.6 **APP/G5180/W/25/3365514 - against the refusal to grant planning permission for the temporary (5 years) change of use for Sui Generis formed of an electricity undertaker's depot to a dual use of Class B8 and Sui Generis retaining the existing electricity undertaker's depot. Retrospective.**
- 2.7 My evidence relates to the RfR and aspects of those reasons confirmed in the Post Case Management Conference Note (**CD5.06**) as being amongst the main issues before the Inquiry. My evidence will cover:
- 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.
- 2.8 In relation to the above I will rely upon the assessments made by the Council's other witnesses and focus my evidence in applying my judgement as to the weight to be given to those considerations in the overall planning balance.
- 2.9 For the above reasons for both appeals my evidence should be read in conjunction with the Proofs of Evidence prepared by Nojan Rastani, Dani Fiumicelli and Jim Cowan.
- 2.10 My Proof of Evidence is structured as follows:
- **Section 2:** I set out the scope of my evidence.
 - **Section 3:** I set out the background, history and principle of development.
 - **Section 4:** I set out my evidence in relation to the impact of the appeal site on the residential amenity in terms of noise and disturbance associated with comings and goings to and from the site and activities upon the site itself.
 - **Section 5:** I set out my evidence in relation to the impact of the use on highway safety
 - **Section 6:** I consider the planning harm and benefits to be weighed in the planning balance.
 - **Section 7:** I set out my conclusions on the overall planning balance.
 - **Section 8:** I set out the Council's case in relation to Appeal A – the Enforcement Appeal.
 - **Section 9:** I set out a summary of my evidence.

3.0 PLANNING HISTORY AND PRINCIPLE OF B8 USE

Planning History / Principle

- 3.1 The historical use of the site (**CD3.03** - p11) as a Sui Generis statutory undertaker's depot is long established. It is not clear whether the vehicle service, repair and MOT testing station element of the consent which was linked to the use of the depot was ever implemented and, if it was it has not been in use for many years. The fundamental use of the site as an electricity undertaker's depot has continued in perpetuity since the 1992 consent through the presence of large substations on site which are live to this date and used for storage of equipment such as cabling associated with the depot. This use has never ceased, and it forms an important part of the electrical infrastructure for the area. On this basis, it is considered that this 1992 consent is the extant approval for the site.
- 3.2 In 2001 it appears that demolition work had taken place over much of the site, although some buildings were at the time still standing. Subsequent planning records indicate that the removal of rubble/detritus associated with the demolition of buildings on the site was undertaken over a long period of time, including as recently as 2013 when a lawful development certificate was granted for the "remediation of contaminated land and removal of waste and contaminated material." Until recently therefore, the use of the site has been a Sui Generis use with all activities on the site related to the statutory electricity provider's function.
- 3.3 There are four conditions attached to the 1992 permission (**CD12.06**) covering the appeal site sought to control the user, hours and operation of the use as follows:

01 *The servicing, testing, repairing and storing of vehicles on the application site other than those owned by or belonging to London Electricity Plc shall cease on or before 1 May 1994.*

Reason: *In order that the situation can be reconsidered in the light of the circumstances at the time in the interest of the amenities of the area.*

02 *The servicing, testing, repairing and storing of vehicles on the application site hereby permitted shall be carried out only by London Electricity Plc.*

Reason: *To enable the Council to reconsider the situation in the event of a change of user in the interest of the amenities of the area.*

03 *The use hereby permitted shall not operate before 07.30 hours or after 17.30 hours on any day.*

Reason: *In the interest of the amenities of the area.*

04 *The night trunking operation involving the use of 2 x 30 tonnes maximum length drawbar units will no longer collect or deliver to the application site outside the hours of opening as stipulated by condition 03 of the decision notice.*

Reason: *In the interest of the amenities of the area.*

3.4 It is important point for the Inspector to note that the consideration of residential amenity in the previous planning application was also important such that, for example, the car repair use was limited to a two year period.

3.5 These reasons remain relevant to the appeal case not least because the appeal proposal would introduce a dual use incorporating a significantly more intensive use of the site. The nature of the 'users' operations as a scaffolding yard and its impacts are significantly different and the Council's case is that they have a detrimental impact on the general residential amenities of the area.

3.6 The Council recognises the importance of non-designated employment sites and does not object to the principle of intensification of the site with an employment generating use. Indeed Policy 83 of the Bromley Local Plan (BLP) – 'Non-Designated Employment Land' (**CD6.15**) states:

"The Council will seek improvements to the quality and quantity of employment floorspace on sites containing existing industrial and related employment uses outside designated SILS and LSISs."

3.7 Importantly Policy 83 also states:

"Proposals for change of use or redevelopment of non-designated sites containing Class B uses for alternative employment generating uses will normally be allowed provided that the amenity of any nearby residential areas is not detrimentally affected." This approach aligns with the reason for refusal.

3.8 Part A of Policy E4 (**CD6.07**) of the London Plan (LP) - 'Land for Industry, Logistics and Services to Support London's Economic Function' states:

"A sufficient supply of land and premises in different parts of London to meet current and future demands for industrial and related functions should be provided and maintained, taking into account strategic and local employment land reviews, industrial land audits and the potential for intensification, co-location and substitution."

3.9 This includes making provision for the varied range of operational requirements across all 3 industrial land categories: Strategic Industrial Locations (SIL), Locally Significant Industrial Sites (LSIS) and Non-Designated Industrial Sites (NDIS), including:

1) light and general industry (Use Classes B1c and B2)

2) storage and logistics/distribution (Use Class B8) including 'last mile' distribution close to central London and the Northern Isle of Dogs, consolidation centres and collection points

3) secondary materials, waste management and aggregates

4) utilities infrastructure (such as energy and water)

5) land for sustainable transport functions including intermodal freight interchanges, rail and bus infrastructure

6) wholesale markets

7) emerging industrial-related sectors

8) flexible (B1c/B2/B8) hybrid space to accommodate services that support the wider London economy and population

9) low-cost industrial and related space for micro, small and medium-sized enterprises (see also Policy E2 Providing suitable business space)

10) research and development of industrial and related products or processes (falling within Use Class B1b).

3.10 Given the constraints of the site in relation to access, proximity to residential properties, Churchfield Primary school, the Reuse and Recycling Centre (RRC) and the operational nature and requirements of the scaffolding yard, it is considered that there are likely to be other industrial / employment uses as listed at Part A of Policy E4 above that would better suit the appeal site. For example, from the list above, 1) light industrial Class B1c uses and 9) low-cost industrial and related space for micro, small and medium-sized enterprises.

3.11 The strategic advice at Part A Policy E4 of the LP is considered to be in line with the BLP Policy 83. The supporting text at Part A Policy E4 (paragraph 6.1.22) (**CD6.15**) supports the view that Non-Designated Employment Land:

"...serves an important purpose in the Borough, accommodating small business units that often cannot for various reasons be located satisfactorily in an area designated for industrial/employment purposes. It is therefore important to retain a large range of accommodation for different business uses..."

3.12 This would not in my opinion rule out an alternative Class B8 use on the appeal site. The operational characteristics of the B8 use would need to take account of the nature of the surrounding area and potential impact on general residential amenities. This would need to be on a case by case basis having regard to the specific characteristics of the nature of the Class B8 use proposed.

3.13 Part A 4) of Policy E7 of the LP - 'Industrial Intensification, Co-location and Substitution' (**CD6.08**) states that development proposals should proactively encourage the intensification of business uses in Class B1c, B2 and B8, occupying all categories of industrial land including

through, a more efficient use of land, higher plot ratios having regard to operational yard space requirements. It is considered that this policy represents general strategic advice that should be read and considered in terms of the Development Plan as a whole, and all other material considerations.

- 3.14 Part C Policy E7 of the LP considers mixed use development proposals on Non-Designated Industrial Sites which co-locate industrial, storage and distribution floorspace with residential and / or 'other uses'. Mixed uses are supported only where:

1) there is no reasonable prospect of the site being used for the industrial and related purposes set out in Part A of Policy E4 Land for industry, logistics and services to support London's economic function; or

2) it has been allocated in an adopted Local Development Plan Document for residential or mixed-use development; or

3) industrial, storage or distribution floorspace is provided as part of mixed-use intensification.

- 3.15 It is my opinion that the Sui Generis electricity undertaker's depot does not fall into the category of 'other uses' that would result in a mix of uses on the appeal site as per criteria 3) above. The Sui Generis Use together with the Class B8 appeal proposal, which itself is more akin with an industrial use (in terms of the impacts of its operation), would not in my opinion represent a mixed use of the type Policy E7 Part C seeks to encourage, as set out at paragraph 6.7.1 (**CD6.08**).

"In collaboration with the Mayor, all boroughs are encouraged to explore the potential to intensify industrial activities on industrial land to deliver additional capacity and to consider whether some types of industrial activities (particularly light industrial) could be co-located or mixed with residential and other uses." (LP - para 6.7.1)

- 3.16 Notwithstanding the above, should the Inspector find favour with the position that the Sui Generis undertakers depot falls into the category of 'other uses' referred to in Policy E7 Part C confirming the appeal site comprises a mixed use. It is also important to consider that such co-location which Policy E7 Part C advocates should only be supported where it meets criteria set out in Part D (1-3) of Policy E7.

- 3.17 Part D 1) is particularly relevant, it states that processes in Parts B and C of Policy E7 must ensure that:

"1) the industrial and related activities on-site and in surrounding parts of the SIL, LSIS or Non-Designated Industrial Site are not compromised in terms of their continued efficient

function, access, service arrangements and days/hours of operation noting that many businesses have 7-day/24- hour access and operational requirements.”

- 3.18 In this case it is not the appellant that is responding to a pre-existing “noisy” neighbour but rather the appellant’s use itself that is causing the adverse effects. As such, mitigation responsibilities fall squarely on the appellant. It is clear that the operation of the scaffolding yard would need to be stringently curtailed by condition in a manner that would be highly likely to impact upon operational efficiency. This has become evident by representations from residents that indicate that the use operates outside the hours which permission has been applied for (See Appendix 1-2). Furthermore, the encroachment of the use onto Council land suggests the operation is too intensive a use of the appeal site. A request to access the site to fence off the Council’s land dated 17 June 2025 had not at the time of writing been responded to by the appellant. When in due course the Council fences off its land it will further intensify the use of the site on to a smaller parcel of land which may give rise to further intensification of the use.
- 3.19 In general terms the Council does not dispute that a sui generis use of the site could allow for an intensification of the site in certain circumstances, but this would depend on the nature of the use, the operator and operations. The conditions imposed upon the 1992 (**CD12.06**) permission collectively sought to carefully control the Sui Generis use and to avoid the intensification of the use of the site which may have arisen had the site been used for more general vehicle works and storage.
- 3.20 The operational requirements of the scaffolding yard use would in my opinion be better suited to being located in a SIL or LSIS where there would be less need for operationally restrictive conditions in an attempt to mitigate any harmful impacts to residential amenity. Since the use commenced on site the photographic evidence at appendices 1-3 of the Council’s Statement of Case (**CD12.02-12.04**) indicates a steady and continuous increase in its intensity. This is in terms of the amount of equipment and associated paraphernalia on site connected to its operation, which as stated above, has now expanded and encroached onto Council owned land. This view aligns with significant adjustment in the appellant’s appeal stage SLR Transport Statement trip generation data which previously significantly underestimated the number of vehicle movements the use would generate.
- 3.21 The delegated report (**CD3.03**) page 14 also picks up on this point and states:
- “The existing unfettered/unauthorised use of the site has generated considerable concern amongst local residents and evidence has been submitted that speaks to unsociable working practices on the site and associated disturbance to neighbouring residents, including working*

outside of the proposed hours of operation and also comings and goings during school pick up/drop off periods. There is considered to be a limit to the extent to which in view of the open nature of the site and the use (i.e. no acoustic mitigation associated with structures and enclosures that might lessen the impact) is capable of being adequately controlled through the use of planning conditions that would meet the tests required in the imposing of conditions on a grant of permission."

4.0 IMPACT ON RESIDENTIAL AMENITY: NOISE AND DISTURBANCE

- 4.1 There have been a lot of residential objections about this site, both at application and appeal stage. This is a retrospective application, and a number of the comments explain that they know of, from their own experience, the Appellant causing noise issues (as well as transport issues and other amenity issues);
- 4.2 The Council has had complaints to its officers, separate from the planning process, about noise, which have been disclosed to the Appellant. These are complaints effectively about noise nuisance. The Council does not rely on these in its case at this appeal. Almost all of them post-date the decision maker's decision in any event;
- 4.3 Where the Council has referenced noise "complaints" made by residents in its Statement of Case, we refer to comments made by residents during the planning application and appeal process, for example the following application stage resident's objection (full copy attached at Appendix 1) which stated:

"Loading and unloading of vehicles – a palletised system has been mentioned, further information needs to be provided with evidence of exactly how scaffold poles can be loaded/unloaded using a Forklift truck and at supporting evidence of this will decrease the noise as a comparison to loading/unloading by hand. What assurances are they providing to suggest that this is the only method of loading to be used? What noise will be generated by said FLT operating? I also have concerns that SLR stating that their client uses a palletised method is completely untrue, I can again support this by providing evidence of Masons scaffolding unloading lorries by hand and poles thrown to the floor creating additional noise issues, most notably for this the supporting evidence is from Masons scaffolding unloading 3 HGV's at 7:30pm last night and staff working through till 9:30pm last night."

- 4.4 It should be made clear that the case officer who dealt with the application has confirmed that they were unaware of any noise nuisance complaints when drafting the delegated report. The main reason for refusal as it pertains to noise was based upon a review of the application stage noise report by the Council's Environmental Health Officer (EHO) who raised concerns regarding the potential impact of the use and the high likelihood of noise complaints going forward. Those concerns aligned with objections to the application by residents which were

not adequately addressed by the appellant's acoustician within the application process when clarification was sought.

- 4.5 For the avoidance of doubt, had the application not attracted the hundreds of objections it did, the recommendation of the EHO would not have changed, the wording of the reason for refusal reflects this stance. Insufficient information was provided to demonstrate that the impact of the proposal in relation to noise and disturbance would not be intrusive or harmful to residential amenity. On the basis of the information provided at application stage there was significant concern in regard to potential noise impacts, these concerns have been substantiated by the conclusions of Mr Fiumicelli following interrogation of the Appellant's methodology which underestimates the noise impacts. The above is in line with Planning Practice Guidance for Noise (**CD14.03**) which states decision making needs to take account of the acoustic environment and in doing so consider:
- whether or not a significant adverse effect is occurring or likely to occur;
 - whether or not an adverse effect is occurring or likely to occur; and
 - whether or not a good standard of amenity can be achieved.
- 4.6 The EHO was also not satisfied that the handling of scaffolding could be reasonably controlled by condition to ensure the acceptability of the use, in these circumstances recommending refusal was considered appropriate.
- 4.7 The ground of refusal refers to the appeal proposal resulting in additional "noise and disturbance". The word "disturbance" in the decision notice is used in the context of a catch-all term that captures the negative impacts of noise and covers a range of negative impacts including disruption of rest and relaxation, negative impacts on sleep, speech interference, activity interference, annoyance, all of which relate to and have an impact upon quality of life.
- 4.8 The above aligns with Policy D14 (**CD6.06**) Part A which states:
- "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 by:*
- 1) avoiding significant adverse noise impacts on health and quality of life."*
- 4.9 Paragraph 13.4.1 refers to the management of noise and its importance in promoting "good health and quality of life within the wider context of achieving sustainable development."
- 4.10 The supporting text to Policy 119 (**CD6.16**) of the BLP at paragraph 7.0.41 also refers to the National Policy Statement for England (NPSE) which again sets out the broad approach to

effective management and reducing potential negative effects on people's health and wellbeing within the context of sustainable development.

- 4.11 BLP Policy 37 (**CD6.14**) 'Design of New Development' criteria (e) of states that the:

'design of new development' should respect the amenity of occupiers of neighbouring buildings, providing healthy environments and ensuring amenities are not harmed by noise and disturbance [my emphasis].

- 4.12 The NPPF paragraph 198 a) also requires planning decisions to "avoid noise from giving rise to a significant adverse impacts on health and quality of life" as a result of new development".

- 4.13 The assessment of the impact of noise by the Council has been led by and based upon an assessment of the appellant's technical acoustic report. The impact of unwanted sound is not only about a quantitative assessment but also has a qualitative aspect based on policy which also seeks to ensure the noise impact of a development does not have an adverse impact upon people's health and quality of life. This is a key aspect of sustainable development and is referred to in local, regional and national policy.

Comings and Goings

- 4.14 The site entrance / exit is via a Council owned access road which is well in excess of 100m long. It is not part of the public highway and extends from Churchfield Road terminating at the entrance to the appeal site. Whilst the closest properties to the actual appeal site are in Clock House Road, there are closer properties in Churchfield Road opposite the access road.

- 4.15 The impact of the appeal use in terms of comings and goings relates to the access / egress point at the junction with Churchfields Road and associated noise and disturbance from the Heavy Good Vehicles (HGV's).

- 4.16 Mr Fiumicelli Proof of Evidence at section 11 (**CD14.01**) deals with HGV pass-by levels on Churchfields Road. It is noted by Mr Fiumicelli that the appellant's assessment in this respect has in his opinion inaccurately used source data that is appropriate for a HGV at a constant cruising speed of 10mph. Mr Fiumicelli opinion is that the level should have been higher to take account of "accelerating from a stop to a higher speed, as it would when turning onto Churchfield Road from the site access road".

- 4.17 It is also noted by Mr Fiumicelli that the noise survey and traffic count (Table 1: Summary para 11.4) conducted by the appellant on 3 July 2025 "underestimated the noise from vehicles accessing and leaving the Masons site by up to around 16 decibels i.e. the measured levels are around three times as loud as they predicted".

- 4.18 The impact on general residential amenities of the area in terms of comings and goings across the Churchfield Road access can also be said to extend to parents and guardians

of those attending children attending Churchfield Primary School and Churchfield Recreation Ground particularly during drop off and pick up times. One (of a number) of appeal stage local representation put their concerns in very vivid terms referring to the impact of the appeal proposal on their well-being (Full letter at Appendix 1) as follows:

"I now feel genuinely anxious walking my kids past the site. The trucks Masons use are 18-26 tonne vehicles — heavy-duty kit clearly not meant for narrow residential streets. These lorries cross into the opposite side of the road just to enter or exit, right at a junction next to Churchfields Primary School and the park. It's intimidating and dangerous — not just inconvenient. These aren't theoretical risks. This is happening now, daily, in full view of residents, parents and children — and it's only by pure luck that no one's been seriously hurt... yet. Masons' suggestion of avoiding peak school drop-off with a 30-minute restriction is a joke. They don't stick to stated hours as it is, and no one can realistically enforce such a narrow window. Their entire pattern of operation is built around ignoring these sorts of conditions...and the ongoing erosion of the peaceful environment we live in. I urge all parties involved — including the legal representatives now overseeing this case — to take the lived experience of residents seriously. We are not making this up. We are dealing with the consequences every day. And it's not sustainable."

- 4.19 The above impacts are associated with highways safety matters which Mr Rastani considers in depth in his Proof of Evidence.
- 4.20 The appellant has stated that it is outside the scope of BS 4142 to assess noise from vehicles on roads. Whilst residents real world experience in this regard may not technically fall within the scope of BS 4142, it remains a material consideration in terms of impact on residential amenity /wellbeing particularly at noise sensitive times of the day.
- 4.21 I have had regard to the information contained within Mr Cowan's Proof of Evidence at section 8 and email thread at Appendix B (**CD16.01**). This gives important context to the current use of the access by Clancy vehicles operating from the electricity undertaker's depot. Mr Cowan's evidence gives a clear indication that the current use would not be an ongoing concern typical of the day to day operations of the use of the undertaker's depot.

On site activities - Operation of the scaffolding yard

- 4.22 The nearest residential dwellings to the scaffolding yard front onto Clock House Road and are sited on the opposite side of the railway line, the rear of the residential gardens are on average approx. 18m from the boundary with the scaffolding yard on its eastern side. The average length of the rear garden of properties on Clock House Road are approx. 17m which I do not consider to be extensive. There is limited screening to the edges of the site and concerns have been raised by Mr Fiumicelli and residents regarding the noise generated by the loading and

unloading of the scaffolding poles, wooden board and equipment from the lorries as well as sawing of poles and boards.

4.23 It falls then to be considered whether the unauthorised use results in appreciable noise impact to residents of Clock House Road over and above the authorised use of the site, the more distantly sited RRC and the railway line uses which may also be considered to be noise generating uses. The noise inducing activities on the part of the appeal site occupied by the electricity undertaker's depot have been limited to comings and goings which I consider have been set in context by Mr Cowan's evidence which sets out that the increase in vehicles accessing the site is in connection with a specific infrastructure projects with an end date. The hours of operation of the uses are not exactly aligned and it is also the case that the noise from the scaffolding yard is tonally distinctive.

4.24 I have considered Mr Fiumicelli's Proof of Evidence and had regard to his comments at paragraphs 6.11 and 6.13 with regard to the Appellant's view that the noise from the scaffolding yard would be less prevalent than the railway noise. It seems clear from Mr Fiumicelli's comments that the railway noise does not characterise the acoustic environment to the rear of Clock House Road for the following reason which he sets out in his evidence as follows:

"However, whilst train noise may make a substantial contribution to the LAeq,T noise levels and cause the LMax, T noise levels, it is not the most prevalent sound at the rear of the houses on Clockhouse Road as the trains were audible for no more than 45 seconds at the measurement location and in any one hour there is a considerable majority of the time when there are no trains audible in which noise from Masons can occur and have impacts,... Because for the substantial majority of any hour there is no train noise the acoustic conditions during the periods with no train noise characterises the typical sound environment at the rear of the houses on Clockhouse Road. Subjectively during the extended periods with no train noise, the location is a tranquil and relatively quiet example of a sub-urban predominantly residential area.

4.25 With regard to the nature of the noise at the appeal site scaffolding yard it is noted at section 13 of his Proof of Evidence that Mr Fiumicelli advises that the Appellant's own evidence indicates a significant adverse noise effect from pole cutting. This point is well summarised at page 14 of the Council's delegated report (**CD3.03** p14) which refers to the nature of the noise as follows:

"The nature of the equipment involved has significant potential to give rise to loud and unpredictable noises when metal hits metal and while the operatives may attempt as far as is possible to undertake their tasks quietly, some level of disturbance is almost inevitable due to the nature of the use and the processes associated with manoeuvring the equipment around the site and on/off the lorries. The intermittent nature of the noise/disturbance alongside the

hours of operation of the use (which include early hours of the morning, well before the waste/recycling centre opens as well as the hours of operation imposed on permission 92/00337/FUL (CD12.06) and working hours on weekends) is considered likely to give rise to an unacceptable impact on residential amenity. It is noted that residents have referred to the site already being used outside of the indicated hours of operation. It would be reasonable, if permission was forthcoming, to impose a condition relating to the hours of use, but it would require confidence that the condition would not only be complied with in the first instance, but that any potential breach would be readily identified and enforced against (i.e. would be enforceable)."

4.26 It is considered that the current operation associated with the scaffolding yard has intensified, focusing the activities associated with the scaffolding yard in a previously underutilised part of the appeal site. The general intensification of employment land on the site is not in and of itself unacceptable and is indeed encouraged in policy terms. The issue in this case relates to the specific characteristics of the nature of the subject scaffolding yard the intensity of which must be said to add to the harm caused.

4.27 Residents' objections have also referred to the use of the site beyond the proposed hours 0600-1600 Mon - Sat as stated in the application form at weekends. (See Appendix 1). The proposed starting time of the use is also well before that of the RRC and the electricity undertaker's depot. During a recent site visit on 9 June residents also referred to noise and disturbance from the yard having been used on Sundays.

4.28 The appellant at paragraph 06.3.14 of their Statement of Case sets out the conclusion in relation to noise as follows:

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

4.29 The Council does not agree, the Council's case is that there is a detrimental effect on amenity such that it has resulted in a large number of objections from residents at application and appeal stage.

4.30 The Council's conclusion with regards to on-site activities is based upon the evidence of Mr Fiumicelli at section 13 of his Proof that:

"13.1 The appellant's noise assessment understates the impact of operations at the Masons site both in terms of the intensity of the noise e.g. the noise levels are likely to be higher than the appellant's advisers have predicted and the background noise levels against which they are

evaluated are lower; and the spread of impact e.g. the WIE report does not consider impacts above ground level at first and second floor where reduced screening of the Masons yard to the rear of the properties on Clockhouse Road means higher noise levels than at ground level.

13.2 RBA have re-modelled the propagation of noise from the Masons site and found that the total discrepancy between the WIE and RBA noise predictions is up to around +5 dBA i.e. the RBA noise predictions are up to 5 dB higher than those presented by WIE. As a consequence, the adverse effects and significant adverse effects of the noise from the Masons site increase, with some noises WIE rate as NOEL crossing into the LOAEL category, and the magnitude of some sounds which are rated as SOAEL intensifying. This further demonstrates that noise from the Masons site is likely to be detrimental to residential amenity and that the adverse noise impacts of the use have not been adequately mitigated."

5.0 HIGHWAY SAFETY

- 5.1 Paragraph 115 states that applications for development should ensure that safe and suitable access to the site can be achieved by all users. Paragraph 116 of the NPPF states: "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety...."
- 5.2 Paragraph 117 a), c) and d) states within this context, applications for development should:
- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;*
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;*
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles.*
- 5.3 Policy 32 of the BLP concerns 'Road Safety' the Council will consider the potential impact of any development on road safety and will ensure that it is not significantly adversely affected. The supporting text at 4.0.18 states: Road safety considerations need to influence design of any development. 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. Where a proposal is situated in a location with an existing road safety problem, the applicant 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.

- 5.4 Mr Rastani identifies safety concerns in relation to the Churchfields Road junction access and along the access road itself.
- 5.5 In relation to the junction access Mr Rastani's (**CD15.01**) highway safety evidence includes those considerations set out at paragraph 6.8 of his Proof of Evidence which states:
- "The fundamental point is the access conditions are unsafe because of the width of access road, the type of HGV turning in and out and the tight turn required. This is particularly the case because the access road is also used by pedestrians crossing the footway and by vehicles seeking entry to the Recycling Centre. The residential parking further limits the turning in and out. The existing access is not designed to accommodate the size of vehicles operated by Masons Scaffolding whether 10- metre rigid or 16.5-metre articulated lorries. The width of the access and the tight junction radii prevent safe ingress or egress in a single movement. I include below a section of the swept path analysis showing these problem in action. There have been instances where lorries have overridden the kerb due to the limited road space, which makes it difficult to manoeuvre safely within the confines of the carriageway."*
- 5.6 Residents have expressed their concerns in terms of the impact of the proposal on children and other pedestrian users particularly during drop off and pick up periods. Mr Rastani has highlighted the fact that the Transport Statement fails to specifically address pedestrian safety especially given the proximity of the Churchfields Primary School.
- 5.7 New appeal stage information relating to recorded vehicle movements put them at 67 which significantly exceeds the original application stage estimate of 20 trips per day. Whilst there has been additional vehicular activity connected with the electricity undertakers depot use, the predominant vehicle type associated with use by Clancy has been noted by residents (See Appendix 2) as being the smaller LGV and not the HGV associated with scaffolding yard use. Mr Rastani deals with this issue at section 7 of his statement and states at paragraph 7.15 of his evidence (CD? NR -PoE) that it is *"reasonable to conclude that the majority of HGV traffic observed is attributable to Masons Scaffolding, given that other occupiers of the site predominantly operate LGV's"*.
- 5.8 In relation to the Road Safety Audit Mr Rastani has highlighted at paragraph 8.6 of his Proof of Evidence, the fact that it was conducted during a low-activity period in relation to school related pedestrian activity and vehicle activity associated with the scaffolding yard therefore failing to capture "real-world" risks. In addition, the appellant has relied upon outdated assumptions which he states:
- "...did not identify any safety concerns at the existing access point. However, the audit appears to rely exclusively on the Audit Brief dated 11 March 2025 and five years of Personal Injury Collision (PIC) data. This approach overlooks the significant changes in the type and size of vehicles now using the access point. Historical PIC data cannot reliably predict future risk where*

there has been a material change in site operations, such as the introduction of significantly larger HGVs associated with the scaffolding yard."

- 5.9 Mr Rastani's conclusion (**CD15.01**, para 8.8) is that the above *"significantly undermines the reliability of the RSA's conclusions regarding road safety at the Churchfields Road/Site Access Road junction"*.
- 5.10 In relation to safety along the access Mr Rastani raises concerns about vehicles bypassing the queuing traffic by travelling on the wrong side of the access road to reach the scaffolding yard. This also raise concerns about safety of pedestrians using the access. The appeal proposal results in a poor walking environment which compromises the safety of pedestrians using the footway. Mr Cowan's evidence (**CD16.01**, para 4.6) confirms there have been 2625 pedestrian appointments booked between February and July which is an average of 15 pedestrian visits to the RRC per day.
- 5.11 The poor / unsafe walking environment along the access road and at the junction with the access along Churchfield Road does not align with the 'Healthy Streets' approach advocated in Policy T2 CD of the LP. It is correct that the decision notice does not refer to this policy, however Policy T2 does provide 10 healthy street indicators which are based on "evidence of what is needed to create a healthy, inclusive environment in which people choose to walk, cycle and use public transport". Amongst the indicators that are considered relevant to this case are: streets where people feel relaxed, where people feel safe , streets that are not too noisy and streets that are easy to cross.

6.0 PLANNING BALANCE

- 6.1 In undertaking the balancing exercise, I have relied upon and summarised the evidence and conclusions of Daniele Fiumicelli, Nojan Rastani and Jim Cowan as to the assessment of various aspects of the appeal proposal. I have applied my judgement as to the weight to be afforded to the harm (or benefit) which they identify and weighed them in the overall planning balance. In terms of the relative weighting of these topic issues I have adopted the following scale:
- Substantial / Significant
 - Moderate
 - Limited
 - Neutral
- 6.2 The conflicts with the development plan policies (and the NPPF as a material consideration) are also part of the balancing exercise , with the weight accorded to this a matter of planning judgement.

- 6.3 Finally in considering the planning balance I will also engage with whether the impact of the appeal proposal could be successfully mitigated or controlled by the imposition of conditions.
- 6.4 The appellant considers the appeal site will deliver a substantive range of benefits, at paragraph 07.18 of their Statement of Case (**CD8.01**, p26) the following benefits are identified:
1. Making effective use of a brownfield site to deliver jobs for the borough
 2. Increase in industrial floorspace creating more jobs in the borough
 3. The introduction of an enforceable management of the site and associated traffic movements through planning conditions and obligations.
- 6.5 In respect of the above it is my opinion that points 1 and 2 are double counting, I consider the intensification of the Non-Designated Employment Land to be the effective use of land that will deliver jobs. With regard to 3, I do not in principle consider that weight should be afforded to mitigation measures necessary to remedy an identified harm, the basis for these measures is to allow the scheme to be considered acceptable and not to provide added benefit.

Planning Conditions / Mitigation

- 6.6 The use of planning conditions is essential to ensure development is appropriate and able to mitigate negative impacts. In the appeal case of particular importance would be conditions that could ensure specific long term compliance in respect of measures to mitigate noise and highways impacts resulting from the nature of the use and the intensification of the site
- 6.7 In line with the above paragraph 56 of the NPPF states:
- "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations..."*
- 6.8 The stated reason for refusal engages with the above, it is acknowledged that that the suggested conditions may in principle result in some limited mitigation of the existing proposal. As per paragraph 57 of the NPPF:

"Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

Conditions - The Tests

- 6.9
1. **Necessary:** Conditions should only be imposed where they are genuinely needed to make a development acceptable.
 2. **Relevant:** Conditions must be directly relevant to planning

3. **Relevant** to the development being permitted;

4. **Enforceability:** Conditions must be clear, unambiguous, and capable of being enforced.

5. **Precise:** Conditions should be specific and not overly broad or vague.

5. **Reasonable:** Conditions should be fair and proportionate to the development and its potential impacts

6.10 It is not considered that all of the suggested conditions meet all of the necessary tests. This will be explored in further detail at the roundtable discussion where consideration will be given to each of the suggested conditions by the Council's relevant witnesses. However, whilst it has been suggested by the appellant that the scheme is capable of delivering a package of mitigation measures, enforceability and clarity as to how conditions will be delivered is also important. For example, it is not clear at this stage how a condition to ensure pedestrian safety along the access road would be achieved. This may even need to be by way of planning obligation.

6.11 The operation of the scaffolding yard has already given rise to unsociable working practices which gives justification to reasonably question the likelihood of the appellant complying with conditions in the future. The appeal stage representations reaffirm representations made at application stage from residents around the operation of the scaffolding yard including operating outside of the proposed hours of operation. Based upon the above, it is not evident that such conditions would be readily enforceable and complied with in practice.

6.12 Furthermore Sunday working is referred to in the WIE report and expressly stated in para 1.7 of the introduction :

"The operational hours of the Class B8 usage is 06:30 – 18:30 Monday to Friday, but with no yard operations before 07:00 only vehicles leaving Site. Saturday and Sunday operational hours are the same as Churchfields Reuse & Recycling facility, 07:30-16:00 and 08:00-13:00, although it is understood that Saturday yard operations are infrequent, and Sundays are only required if a vehicle returns late on a Friday or a Saturday i.e. it will be loaded during Sunday hours (08:00-13:00) ready for departure Monday morning. Generally, no yard activities are undertaken other than loading at weekends."

6.13 To be clear the application form section 20 (**CD1.02**) states the proposed operating hours as Monday to Saturday 0600-1600. It is clear from the above that the use is required to operate on Sundays and out of stated hours for operational efficiency reasons. This casts further doubt on the ability of the Appellant to comply with conditions that would restrict its use during times of the day and days of the week which are operationally important.

- 6.14 The Council does have concerns about the ability of the conditions to mitigate the harms caused, for example at section 9 of Mr Rastani's evidence, he discusses the difficulties of imposing conditions to mitigate the harm at a junction that is not designed for HGV access. Another example is the practicality of a noise condition when the inherent nature of the appellant business is the need to load and unload scaffolding poles giving noise causing harm to residential amenity.

Temporary Permission

- 6.15 It is acknowledged that the appeal proposal seeks planning permission for a temporary period of five years. However, it is my opinion that such a duration represents a substantial and unjustified period of time during which the identified adverse effects particularly those relating to noise, disturbance, and impact on residential amenity would continue. The length of time proposed does not mitigate the harm, nor does it align with the policy intention underpinning the use of temporary permissions.
- 6.16 Planning Practice Guidance concerning the use of planning conditions (**CD13.05**) supports the use of temporary permissions in a limited set of planning circumstances, typically where:
- A trial run is needed to assess the effect of a development;
 - It is expected that planning circumstances will change in a defined way or time frame; or
 - The proposal represents a meanwhile use of land or buildings pending redevelopment.
- 6.17 In the case of the appeal proposal, there is no reasonable expectation of a change in circumstances that would justify a temporary permission. The use is not proposed, it is retrospective and ongoing. A temporary permission would therefore serve only to prolong harm that has already been identified as unacceptable, resulting in hundreds of objections / complaints from local residents. In my opinion there is limited prospect of enforceable conditions capable of providing a meaningful mitigation to residents. As such, a 'trial period' is not necessary to assess the development's effect on amenity but would essentially allow it to continue to the ongoing detriment of residential amenity.

Planning Benefits

- 6.18 It is agreed that the appeal proposal would result in some benefits in terms
1. Intensification of Non-designated Employment Land and;
 2. Economic benefits through job creation.

Intensification of Non-designated Employment Land

- 6.19 *Employment floorspace and Land Need Assessment* - Across national and regional policy there is support for retention, enhancement and intensification of all categories of employment /

industrial land, the Bromley Local Plan (2019) is no different in this respect. The proposal then in terms of the intensification of Non-Designated Employment is a benefit. I consider the weight to be attributed to this benefit is tempered by the information set out below.

6.20 The Council Local Plan Review Direction of Travel (Regulation 18) draft document (**CD13.04**) consultation evidence base was approved for consultation by the Council's Executive on 25 June 2025. This document included the preferred policy direction for employment and set out an overview of the approach the Council intends to take to address what it considers to be the key employment issues. The preferred policy direction is informed by Bromley Employment Land and Space Study (ELSS) (2024) (**CD13.03**). This document was not taken into account as a material consideration during the assessment of the application or the Council's Statement of Case, as it is a Local Plan evidence base document and its publication coincided with the consultation on the Regulation 18 Local Plan consultation which will be launched on the 25 July 2025.

6.21 The ELSS covers the period up to 2040 and provides an up-to-date assessment of future employment floorspace and land needed to accommodate economic growth in Bromley based on industry-accepted economic projections. The Bromley Local Plan Review (Regulation 18) document summarises the ELSS and at paragraph 5.6 states:

"The ELSS identifies a net floorspace requirement of approximately 33,000sqm to 63,000sqm of employment floorspace across the borough. Across Use Classes E (g) and B2, broken down as follows:

- *Approximately 23,000sqm to 37,000sqm of Use Class E(g)(i) and E(g)(ii) floorspace.*
- *Approximately 10,000sqm to 26,000sqm of Use Class B2 and E(g)(iii) floorspace.*
- *No net requirement for additional Use Class B8 floorspace.*" [author emphasis added]

6.22 In terms of the Council's preferred policy direction SILs and LSISs will continue to be the focus for new and intensified industrial floorspace to support increased economic growth in the borough. The ELSS recommends the designation of 8 new LSISs across the borough, most of which would fall within the Green Belt and as such it is intended that they will be considered as part of the Green Belt review.

6.23 Non-Designated Employment Land will also contribute to economic growth and employment floorspace and will continue to be protected. However, the Council will continue to focus floorspace in designated areas with possible scope to allow smaller scale employment proposal in non-designated areas.

- 6.24 Part C Policy E4 of the LP seeks the retention, enhancement and provision of additional industrial capacity across all industrial land categories. However, the fact that no net requirement for additional Class B8 floorspace has been identified in the ELSS together with the focus for intensification being on SILs and LSISs has informed my opinion that this benefit should be afforded **moderate** weight.

Economic Benefits

- 6.25 The application form states that that 7 FTE jobs have been created, the Planning Contravention Notice reply (25 Feb 2025) suggests that the appeal proposal would “facilitate circa 76 jobs”. Whilst I accept that figure as a general premise in terms of the use facilitating other scaffolders, the weight to be afforded to this benefit is in relation to the 7 FTE jobs on the actual appeal site. I attribute **limited weight** to the economic benefits arising from this modest number of jobs.

Planning Harm

Highway safety

- 6.26 Having had regard for Mr Rastani’s Proof of Evidence it remains the case that the appeal proposal presents serious highway safety concerns. The actual vehicle movements far exceed those initially estimated. The narrow, shared site access and its use by large HGVs using the Churchfield Road access poses heightened highway risks to children and other vulnerable pedestrians, especially during school drop-off and pick-up times particularly due to its proximity to Churchfields Primary School and Churchfields Recreational Ground. The applicant’s Transport Rebuttal does not assess the potential impacts of increased traffic in relation to pedestrians particularly school children. The Swept path analysis shows large vehicles cannot safely manoeuvre in a single movement, and traffic control measures are lacking. The Road Safety Audit is based on outdated assumptions around the type and size of vehicle and fails to reflect with a site visit conducted at a time that corresponds with typically low vehicle and pedestrian activity.
- 6.27 In the planning balance, I am to attribute planning benefits and planning harm. Taking Mr Rastani’s evidence in the round, I attribute the matters he has raised as being a planning harm. Specifically, there is a negative impact on residential amenity; there are clear highway safety issues, and the Appellant has not demonstrated these can be mitigated or controlled. Those matters are therefore considered a planning harm in line with our RfR.
- 6.28 Having regard to the above I agree with and adopt Mr Rastani’s evidence and conclusions that confirm that the appeal proposal represents significant highway and pedestrian safety risks in relation to the Churchfields Road junction access and along the access itself. I attribute **substantial weight** to the harm that he identifies.

Noise and disturbance from on-site activities - Operation of the scaffolding yard/ comings and Goings

- 6.29 Noise from operations on site including the loading and unloading and sawing of metal scaffolding poles and wooden boards and other related paraphernalia, is distinctive and unpredictable, and has been raised as a particular concern by Mr Fiumicelli in his Evidence and also by local residents.
- 6.30 Whilst it is acknowledged that some steps have been taken to reduce noise including use electric forklifts and a palletised system for moving equipment and the plastic curtain around the buzz saw station, given the nature of the processes involved means these measures have not alleviated the concerns with regards to noise. It seems to me that there are also elements of compliance that would be reliant upon individual behaviour for example by lorry drivers when entering or exiting the site or yard operatives loading and unloading vehicles. The mitigation of harm through condition would only be reasonable and effective if clear and enforceable mechanisms were in place to secure strict compliance. Without this, local residents could face further adverse effects upon amenity in relation to a use that has already proven to be operationally problematic in terms of general residential amenity and wellbeing.
- 6.31 The retrospective nature of the proposal has resulted in a high number of objections and gives a strong indication over a not insignificant period covering over 12 months of how the 'in practice' operation of the scaffolding yard impacts on the amenities of local residents. It is clear that there continues to be a significant impact on the well-being of many residents who have written in impassioned ways about the nature of this impact upon their well-being.
- 6.32 Mr Fiumicelli concludes that the Appellant's noise assessment understates the likely noise impacts arising from operations at the scaffolding yard. The assessment fails to adequately account for receptors located above ground level, particularly at first and second floor levels along Clock House Road, where reduced screening results in greater noise exposure than that predicted at ground level. Furthermore, Mr Fiumicelli identifies higher noise levels, especially during early morning periods, during pole-cutting operations and with regards to noise from vehicles accessing the site, concluding that both adverse and significant adverse noise effects would occur, this underestimation has implications for the overall planning balance.
- 6.33 Having regard to the above I have concluded that **substantial weight** should be attributed to the concerns which Mr Fiumicelli raises regarding the noise impact of the appeal proposal.

7.0 CONCLUSION ON THE PLANNING BALANCE

7.1 The proposal would, in line with paragraph 125d) of the NPPF, promote and support development of under-utilised land. However, the Council's objection is not in principle to the intensification of the use of the Non-Designated employment land but rather to the harmful impact upon residential amenity. There are no material considerations that outweigh the identified harm and associated development plan conflict. In this instance, the characteristics of the nature of the scaffolding yard are not compatible with its location and in this instance, the use would be better suited to a SIL or LSIS.

7.2 In carrying out the planning balance I have had regard to the individual harms and benefits arising through the appeal scheme. In assigning weight to the harms and benefits I have considered in the preceding sections key policy and contextual issues which have informed my judgement.

7.3 The factors that weigh in favour of the scheme and the benefits identified can be summarised as:

Planning Benefits

- Economic benefits in terms of 7 FTE jobs, low number attracts **limited weight**
- Intensification of Non-Designated employment Land attracts **moderate weight**

7.4 The factors that weigh against the scheme and harm identified can be summarised as:

Planning Harm

- the 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 I would give this harm **substantial weight**
- the effect on highway safety I would give this harm **substantial weight**

7.5 It is my judgement that notwithstanding the benefit outlined above which would accrue from the proposal, the adverse impacts of the use far outweigh the benefits when assessed against the Development Plan and policies of the Framework taken as a whole.

7.6 This proposal remains in conflict with local and regional planning policy in terms of introducing harm to residential amenity and highway safety which without enforceable mitigation would continue to impact detrimentally on the well-being of local residents. This includes not only those that live close to the site but also those who may live further afield but who visit Churchfields Primary School twice daily when dropping off and picking up children from this two form entry school which I understand has over 500 pupils.

7.7 This is not a hypothetical situation, in this case the identified adverse impacts arising from the proposal are known, evidenced, and have resulted in demonstrable and detrimental impacts upon the residential amenity and well-being of local residents. I remain of the opinion that even with the suggested conditions the harmful impact of the use could not be successfully mitigated or controlled. This is in part due to the unpredictable nature of the noise and disturbance which is reliant to a significant degree upon individual driver / operative behaviour. Also, the appellant has been aware of the application stage local objections for some time yet complaints about the operation of the scaffolding yard regarding for example hours of operation and timing of delivery have continued, proposed hours of operation do not align with what is happening in practice and this is a likely indication that the intensity and characteristics of the scaffolding yard as a business require operation in the manner that currently results in detrimental impact to residential amenity.

7.8 In light of the above the Inspector is respectfully requested to dismiss the s78 appeal.

8.0 APPEAL A

Ground (e) - The notice was not properly served on everyone with an interest in the land.

8.1 The Council are satisfied the Notice has been served correctly and effectively on the appellant (Churchfield Road BR3 Limited) and Masons Scaffolding Limited (handed in person to operation manager). The Council accepts it has not served on London Power Networks LPN, but denies any prejudice. Moreover, the Council does not take issue with the general activities being undertaken by LPN, who operate an electricity sub-station depot, and which is not the subject of the EN. The comments made previously about present traffic volume from the electricity undertaker's yard being likely to be temporary because of a current infrastructure project are repeated.

8.2 The Council would like to stress that The EN does not concern the activities of LPN, and it does not require PLN to take any action. We don't agree that there is any prejudice caused by the notice not having been served on LPN and therefore the notice has been served correctly on the relevant parties.

Ground (f) -The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections

8.3 The requirements of the Notice are to:

(a) Cease the use for the storage and distribution of scaffolding equipment at the Land

(b) Remove from the Land the scaffolding storage and equipment, and

(c) Remove from the Land all resulting debris.

8.4 The Council does not agree that the steps required by the EN are excessive to remedy injury to amenity for reasons set out in detail in response to Appeal B which are summarised as follows:

- i. noise from the development has negative impact upon residents amenity, and the appellant has not demonstrated that they can be sufficiently mitigated or conditioned
- ii. highways safety, there are highway safety concerns and the appellant has not demonstrated that they can be mitigated or conditioned
- iii. As mentioned above there are inherent problems with the workability of the conditions and the appellant complying with them.

8.5 The Council have suggested adding the following to the reasons for issuing the EN: ***"and unacceptable impact on highways safety that cannot be successfully mitigated or controlled."*** The Council recognises that the Appellant has not dealt with this in its SoC about Appeal A, but has made extensive representations about it in the SoC about Appeal B, including providing a Transport Rebuttal. The Council will say the Appellants are not prejudiced by the amendment in consequence, and that the issues are the same for the Inspector. The Council considers the proposed amendment to the EN to be wholly compatible with the requirements as set out within the EN for compliance.

Ground (g) -The time given to comply with the notice is too short.

8.6 As set out in Council's Statement of Case the Council has had regard to the information submitted with the appeal, and recognises that the Appellant could benefit from more time than was afforded and will not object to up to 6 months, which is in line with the appellants response to this question in the Planning Contravention Notice (PCN) response in February 2025 (CD- awaiting redaction).

8.7 The Inspector is respectfully requested to uphold the Enforcement Notice and dismiss the appeal.

9.0 PROOF SUMMARY

- 9.1 The Council does not object to the principle of the appeal proposal which is supported in policy terms at national, regional and local level. The key issue in this case is that the particular characteristics of the nature of the scaffolding yard result in a significantly more intensive use of the site that has a detrimental impact on the general residential amenities of the area and highway safety.
- 9.2 The basis for the Council's objections rests on well-founded and technical concerns, informed by a detailed review of the appellant's submissions on highways and noise matters. The evidence presented by Mr Rastani and Mr Fiumicelli supports the Council's position, substantiating the nature and extent of harm caused by the scaffolding yard use. This technical evidence is consistent with the clearly expressed and widespread concerns of local residents, who speak to the lived experience of significant and ongoing impacts on their residential amenity and well-being.
- 9.3 With regard to mitigation and the proposed planning conditions, there remains substantial uncertainty about their practicality and enforceability. Evidence provided to the inquiry by residents indicates that the use of the site has occurred outside the operational hours stated in the appellant's own application. Given the scale and consistency of such reports and the volume of objections that the appellant could have and should have responded to it reasonable to deduce that in particular the hours of operation including Sundays is driven by operational necessity rather than anomaly. Furthermore, key aspects of the appellant's noise and highway mitigation rely on the conduct of individual drivers and operatives, introducing a level of variability and risk that cannot be reliably controlled through planning conditions.
- 9.4 In the overall planning balance, while it is acknowledged that the scheme offers some benefits, including the intensification of non-designated industrial land and the creation of seven full-time equivalent construction industry jobs, are modest in scale. These benefits are significantly outweighed by the ongoing harm to the amenity of neighbouring residents, particularly in terms of noise, disturbance, and highway safety. Simply put, this is not the right location for the scaffolding yard use and accordingly, the appeal should be dismissed.