APPEALS BY CHURCHFIELDS ROAD BR3 LIMITED

LONDON ELECTICITY BOARD DEPOT, CHURCHFIELDS ROAD, BECKENHAM

REFERENCES APP/G5180/C/3363900 AND

APP/G5180/W/25/3365514

OPENING STATEMENT FOR THE APPELLANT

INTRODUCTION

1. This is an Inquiry into two appeals by Churchfields Road BR3 Limited ("the Appellant") against:

    a. An Enforcement Notice ("EN") issued by the London Borough of Bromley on 11 March 2025, alleging the material change of use of the appeal site to a dual use of Class B8 storage/distribution and a *sui generis* use as an electricity undertaker's depot ("Appeal A");

    b. The refusal, by a decision notice dated 17 October 2024 issued under delegated powers, of permission for the use of the appeal site, for a temporary period of 5 years, for the same dual use ("Appeal B").

2. This opening statement summarises the case which will be advanced by the Appellant. Although the appeal against the refusal of permission has been labelled "Appeal B", it effectively fulfils the same role as an appeal under s.174(2)(a). If it succeeds, the remaining issues under Appeal A will be largely academic. We therefore start with Appeal B.

APPEAL B

Preliminary Observations

3. Although only one reason was given for the refusal of planning permission, that reason can be broken down into the two main issues set out in the Inspector's Pre-CMC Note[1], namely:

    a. The effect on the living conditions of neighbouring residents, with regard to noise and disturbance associated with both activities on the site and comings and goings to and from it;

    b. The effect on highway safety, and whether that harm can be satisfactorily mitigated and/or controlled.

4. We address these matters below, but before turning to them, it is important to place them in context, both as a matter of wider policy, and as a matter of fact. In particular:

    a. As a matter of policy:

        i. It is common ground that the appeal site is a "non-designated industrial site" for the purposes of Policies E4 and E7 of the London Plan, and Policy 83 of the Local Plan;[2]

        ii. In recognition of the importance of and need for industrial land in London, that suite of policies not only seeks to protect non-designated industrial sites: it positively encourages the intensification of their use;

        iii. These points are particularly relevant in the present case, where it is clear from the aerial photographs that, prior to its acquisition by the Appellant, a significant part of the Appeal Site was not being used by

[1] CD5.05
[2] CD7.01 para 1.6

by the electricity undertaker[3] at all. On behalf of the Council, Ms Daye recognises that there is scope for intensification, and that this would be a benefit.[4]

b. As a matter of fact:

i. The appeal site benefits from a planning permission, issued in 1992, for its use by LPN as an electricity undertaker's depot, and for the servicing, testing, repairing and storing of vehicles by LPN. Although that permission has conditions limiting the hours of operation to 0730 to 1730,[5] there are no restrictions on the number or size of vehicles which may access the site between those hours. Surveys carried out on behalf of the Appellant show that LPN generates an average of 109 vehicle movements per day, of which 43 are HGVs.[6] The Council takes no issue with these movements.

ii. The appeal site is adjacent to, and shares use of the access road with, the Reuse and Recycling Centre ("RRC") operated by Veolia on behalf of the Council. The RRC generates over 700 vehicle movements per day on the shared access road (essentially by members of the public seeking to access the site). In addition, HGVs access the RRC via a separate entrance, which is located between the access road and the primary school. Again, the Council takes no issue with any of these movements.

iii. The Inspector will be able to see and assess for herself the nature of operations at the RRC: it is evident that it is not a quiet neighbour, even though it is far closer to the residential properties on Churchfields

[3] Originally London Electricity plc, but since variously referred to as London Electricity Board (LEB), London Power Networks (LPN) or United Kingdom Power Networks ("UKPN") (which owns and operates LPN). For ease of reference, the Appellant refers to the current occupier as LPN.
[4] CD13.1 paras 3.19-20 and 6.19
[5] Actual surveys indicate that operations at the LPN depot are in fact taking place as early as 0630-0700: CD11.1 Tables 5.3 and 5.4
[6] CD11.1 Tables 5.3 and 5.4

Road than the appeal site. The Council clearly considers the impacts associated with this to be acceptable.

iv. The site is separated from the rear gardens of the properties on Clockhouse Road by the railway line into Charing Cross, which operates a passenger service between 0525 and 0040 (with 6 train movements on weekdays between 0600 and 0700, and 8 trains an hour thereafter until 1900) as well as freight services at night. As Mr Fiumicelli's evidence demonstrates[7], it is those movements (which last from between 25 to 45 seconds each) which cause the L_{Amax} noise levels at Clockhouse Road.

Noise and Disturbance

5. The broad policy framework for this issue is found in Policies D13[8] and D14[9] of the London Plan, Policy 119 of the Local Plan[10] and para 198 of the NPPF. Further detail is found in the Noise Policy Statement for England[11], the Council's Noise Technical Guidance[12], the PPG[13] and BS4142.[14] Collectively, these documents indicate that:

    a. Although adverse noise impacts are always relevant, it is only at the point where they are likely to have "significant" adverse effects on health and quality of life that refusal of permission is justified.[15] At levels below that, the appropriate planning response is to mitigate and minimise the adverse effects as much as possible[16];

[7] CD14, paras 6.2, 6.11
[8] CD6.5
[9] CD6.6
[10] CD6.16
[11] CD10.5
[12] CD10.7
[13] CD10.6
[14] CD10.8
[15] NPPF para 198, Policy D14, NPSE para 2.23, PPG table
[16] Policy D13 parts C and E, Policy 119, NPSE para 2.24, PPG table

b. Noise impact levels are generally divided into "No Observed Effect Level" (or "NOEL"); "Lowest Observed Adverse Effect Level" (or LOAEL") and "Significant Observed Adverse Effect Level" (or "SOAEL").

c. The NPPF and London Plan references to "significant" adverse effects correlate with what acousticians refer to as the SOAEL.

d. BS4142 is the relevant guidance for assessing the noise levels generated from within an industrial site;

e. The starting point for deciding whether the SOAEL has been reached is whether the "rating level" (as defined in BS4142) exceeds the background sound levels (L_{A90}) by around 10dB. Below this, a level difference of around +5dB is equivalent to LOAEL;[17]

f. The final evaluation of whether a particular impact is LOAEL or SOAEL requires consideration not only of the difference between the rating and background levels, but also of the context. Here, factors such as the prevailing noise levels without Masons, the level of noise emissions from Masons at sensitive receptor locations and the time of day when and frequency with which Masons operations occur are highly relevant to the question whether the new noise is likely to cause a material change in behaviour or attitude. Consideration of context is an integral part of the BS4142assessment.

6. For the reasons which Ms Urbanski will explain, it is the Appellant's case that the noise impacts of the Appeal Scheme are all within the territory of NOEL or LOAEL, and that appropriate steps have been taken to mitigate and minimise those impacts.

7. In unpacking that, it is helpful to start by identifying what is, and what is not in dispute. In essence, it appears that the Council's complaints focus primarily on:

[17] BS4142 section 11, p. 15

a. The operation of pole-cutting, which Mr Fiumicelli considers takes the impact of normal yard operations over SOAEL at Clockhouse Road (without context)[18] and places it towards the upper end of the range between LOAEL and SOAEL (without context) at Churchfields Road;[19]

b. The impact on residential properties on Churchfields Road of HGVs exiting the site in the early morning.

8. We draw attention to the narrow ambit of these complaints, in as much as Mr Fiumicelli concludes that:[20]

a. the impacts of the Appeal Scheme on Saturdays and Sunday are either at NOEL or ≤SOAEL;

b. Out of Hours Operations ("OOH" – which are essentially limited to a pre-loaded lorry leaving the site between 1830 and 0630) are at ≤LOAEL to SOAEL;

c. the impact of movements within the site between 0630 and 0700 on weekdays do not exceed LOAEL at Clockhouse Road, and are between NOEL and LOAEL at Churchfields Road;

d. during operational hours, yard operations without pole cutting are in the NOEL to LOAEL range at Churchfields Road, and in the LOAEL to SOAEL range (a rating level difference of +7dB) at Clockhouse Road.

9. Against that backdrop, as Ms Urbanski will explain:

a. Pole-cutting is an operation which is normally carried out in batches, once a week if necessary, but in some weeks not at all.[21] Contrary to Mr Fiumicelli's evidence, third-octave measurements demonstrate that it does not justify the

[18] CD14.1 Table 9
[19] CD14.1 Table 10
[20] See CD14.1 Tables 9 and 10
[21] CD9.02 p.2, CD10.1 para 4.14

3dB penalty he has applied for tonality; his evidence that the noise curtain which has been installed is "acoustically transparent" is contradicted by the measurements which WIE have taken on site (which clearly show a 10dB reduction[22]); and his assessment of the impact on Churchfields Road (without context) takes no account of the mitigation provided by the boundary wall to the RRC site. If proper corrections are applied, even yard operations with pole-cutting operations do not reach the threshold of LOAEL at Churchfields Road. At Clockhouse Road, when account is taken of context, the impact is ≤LOAEL. Moreover, if a better acoustic screen was required, that is a matter which could be addressed by condition.

b. It is not entirely clear whether Mr Fiumicelli is concerned about the impact of operations without pole-cutting on the properties in Clockhouse Road, but if he is, the figure of a +7dB level difference over background in the rear gardens overestimates the impact (without context) because (i) his lower background noise will only be correct at ground floor level (ii), his addition of 1dB for barrier reflection is not justified. Even if that were not the case, a +7dB difference between rating level and background is insufficient to take the impact into SOAEL, especially when context is taken into account. Consideration of context is conspicuously absent from Mr Fiumicelli's analysis.

c. With regard to the noise from HGV's exiting the access road onto Churchfields Road, BS4142 is explicitly intended for use in relation to noises generated from within an industrial site, and is not an appropriate methodology for assessing the noise generated by HGVs turning onto Churchfields Road. If it were to be used, it would require a significant correction for "on time" to reflect the fact that BS4142 relies on 15 minute assessment periods, and that (pre 7am) only 3 HGVs will leave within a 15 minute period, and will therefore only be present for a minute or so. More important is the fact that the 1-minute measurements taken on Churchfields Road demonstrate that the L_{AFmax} whenever a Mason's HGV is exiting the site

[22] CD10.1 paras 4.10 – 4.11

is no different to the L_{AFmax} at any other time between 0630 and 0645. In essence, there is a steady stream of traffic on Churchfields Road (including HGVs leaving the RRC) which is as loud or even louder.

10. In the circumstances, none of the activities associated with the Appeal Scheme gives rise to a significant adverse effect. To the extent that there are any adverse effects, the layout and operation of the site (including the use of electric forklift trucks and stillages for loading, and the provision of an acoustic screen for pole-cutting) has (as required by policy) been organised in such a way as to minimise and mitigate those impacts as much as possible. The application therefore satisfies the relevant development plan policies on noise.

Highway Safety

11. It is a matter of record[23] that, when this application was first made, Mr Rastani raised no objection to it, but instead concluded that:

    a. "there are no design defects contributing to an unsafe environment for road users";

    b. "the trip attracting potential of the proposed development is not significant and will therefore not lead to a severe impact on the adjacent transport network";

    and

    c. that any concerns about the interaction between HGVs accessing the appeal site and the peak drop-off and pick-up times for the nearby school could be addressed by a condition restricting vehicular movements at those times.

12. Significantly, Mr Rastani's position did not change even after he had read and considered local resident's objections to the application, as lodged during the consultation period. It is therefore a matter of some surprise that Mr Rastani presents

[23] CD3.1

evidence to this Inquiry which directly contradicts his previous professional view. In particular, he contends that the appeal scheme is unacceptable because:

a. HGVs need to cross over the centre line in order to turn from Churchfields Rd into the access;

b. There is no stop line at the junction between the access road and Churchfields Road, and sight lines are inadequate;

c. The interaction between HGV's turning into the access road and pedestrians (especially children walking to school) is an "accident waiting to happen";

d. Queuing on the access road associated with the RRC causes HGVs to overtake, giving rise to conflicts with vehicles and pedestrians accessing the RRC;

e. Traffic associated with the Appeal Scheme will worsen congestion on Churchfields Road.

13. Mr Rastani seeks to explain this *volte face* on the basis that he has since become aware of new information which has caused him to change his mind. In the Appellant's view, that is patent nonsense, but that is a matter we will explore with him in cross-examination. More importantly, as Mr Bancroft will demonstrate, his concerns are without foundation. In particular:

a. There is nothing inherently unsafe about HGVs needing to cross the centre line in order to be able to make the turn into or out of Churchfields Road. This is a movement which is expressly endorsed by the Manual for Streets.[24] It is preferable to the widening of radii (which is the solution the Council has adopted at the HGV entrance to the RRC)[25]. It is the kind of movement seen all over cities such as London, whose streets were laid out before HGVs even

[24] CD11.13 para 9.4.11
[25] CD11.13 Figure 6.3 and para 6.3.12

existed. It is a movement which has been carried out in this location for years by LPN vehicles accessing their depot without any problem.

b. Even without the Appeal Scheme, the existing access accommodates over 800 movements a day, associated with LPN and the RRC.[26] If the absence of a stop line and/or visibility splays was unsafe, that would be an existing rather than a new problem. However, as Mr Bancroft demonstrates,[27] the visibility splay is more than adequate, and - as the Council owns the access road - the absence of a stop line is a matter within its own control. In fact, the absence of any recorded accidents at this location suggests it is not a problem at all.

c. The interaction between pedestrians and HGVs already happens, both on the access road (where the peak time for LPN's HGVs coincides with the school pick-up) and at the HGV entrance to the RRC. Despite over 30 years of operations at the LPN site, there is no record of this having caused a problem. Video footage submitted by local residents overwhelmingly shows Mason's vehicles executing this turn during school drop-off and pick up in a manner which is supervised by a banksman and is perfectly safe. The requirement to have a banksman on hand during peak times could be secured by condition, and would be a benefit over the existing conditions which cover the use of the access road by LPN and the RRC. But if that is not considered sufficient, the Appellant is willing to submit to a condition which precludes Mason's vehicles accessing the site during the main school peak.

d. While it is accepted that, in the early days of operation, there were incidents of Masons HGVs bypassing queues waiting to enter into the RRC, Masons drivers have since been instructed not to undertake this manoeuvre until they have passed the exit from the RRC, thus avoiding any possible conflict with exiting vehicles. There is ample width along the access road for a car, and HGV and a pedestrian, and there is good visibility which will ensure there is no risk to pedestrian safety.

[26] CD11.1 Tables 5.1, 5.2, 5.3 and 5.4
[27] CD11.3 Drawing AT-D03

e. Movements associated with Masons vehicles would only add 2% to the average daily flows on Churchfields Road.[28] It is absurd to suggest that such a small increase could give rise to a "severe" impact. Mr Rastani suggests that the impact would be worse if the Council decides to abandon the booking system for the RRC, but as it is clear that – in the absence of a booking system – traffic queuing to get into the RRC was causing queues on Churchfields Road even before Masons started operating, it is difficult to understand why the Council would scrap the booking scheme, or how (if it did) it would then be in a position to complain that Masons were the cause of the problem. In any event, as Mr Bancroft explains, the addition of Mason's vehicles makes no material different to flows and travel times on Churchfields Road, whether or not the booking system is in place.

14. In short, there is no good explanation for Mr Rastani's change of position. In fact, the evidence (including the independent Stage 1 Safety Audit[29] and Highway Risk Assessment[30] by Gateway RSE) supports his original conclusions that the access is safe, there will be no severe impact on congestion, and any concerns which may exist in relation to the Appeal Scheme can be addressed by a condition requiring submission and approval of a Vehicle Management Scheme.

APPEAL B

15. Appeal B has been lodged on 3 grounds:

a. Ground (e): failure to serve the EN on an occupier of the land to which the notice relates;

b. Ground (f): that the steps required by the EN exceed what is reasonably necessary to remedy any injury to amenity which has ben caused by the breach;

[28] CD11.1 para 5.14
[29] CD11.6
[30] CD11.14

c. Ground (g): that the period for compliance with the EN falls short of what should reasonably be allowed.

Ground (e)

16. Under s. 172(2)(a), copies of an enforcement notice must be served on the owner and occupier of the land to which it relates. In contrast to section 172(2)(b) - which requires service on "any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected") sub-section (2)(a) does not allow an LPA to dispense with service on an occupier on the grounds that the LPA does not believe that occupier is materially affected. However, under s.176(5), the Secretary of State may disregard a failure to serve an EN correctly if neither the appellant nor the person who was not served has been substantially prejudiced by that failure.

17. In the present case, despite the fact that the Appellant's response to the Planning Contravention Notice issued by the Council on 17 January 2025[31] specifically identified both Mason Scaffolding and LPN as occupiers of the land it is common ground that the EN was served only on the Appellant and Masons, but not on LPN.

18. In its Statement of Case, the Council has sought to defend this on the basis that it "does not take issue with the general activities being undertaken by [LPN] who operate an electricity sub-station … which is not the subject of the EN". However, for the reasons we have outlined, that is not a permissible reason for failing to serve the EN on all occupiers. As a matter of law, therefore, the EN was not correctly served. The fundamental questions, therefore, are whether LPN has been substantially prejudiced by the failure, and if so, what should be done to remedy that.

[31] CD4.01

19. For reasons which will be explained by Mr Lawson, the Appellant contends that LPN has been prejudiced. In particular:

    a. In its response to questions asked by the Inspector[32] the Council has recognised that the LPN depot is both physically and functionally separate from the Masons yard and that, applying the ***Burdle*** tests, it is therefore "likely to be considered" a separate planning unit. It also accepts that, within that planning unit, there has been no breach of planning control. It follows that the land which LPN occupies has been the subject of enforcement action for no good reason. Of itself, that is prejudicial, especially in circumstances where the EN sits on the register as a "black mark" against LPN's land.

    b. In its response to Appeal B (which might just as easily have been a ground (a) appeal, by either the Appellant or LPN), the Council is arguing that if – contrary to its primary case that permission should be refused – the appeal is allowed, and permission should be subject to conditions which would not only restrict the future operation of the scaffold yard, but would also bite on LPN. As these conditions would be more stringent than those under which LPN currently operates, this would clearly be prejudicial to LPN.[33]

    c. Because it has not been served, LPN has been deprived of the ability to lodge its own appeal, or to join with the Appellant at this Inquiry. It has been deprived of the opportunity to argue that its depot should be excluded from the EN. It has not been invited to take part in the discussion of conditions which would materially affect its operations.

20. In the Appellant's submission, there are only two possible solutions to the problem of non-service: either the EN is quashed in its entirety, or it is amended to remove the LPN depot.

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[32] CD5.08

[33] In the coming week, and in the run-up to the session on conditions, we would invite the Council to think carefully about its position in this regard. It is patently inconsistent to contend that UKPN has not been prejudiced while at the same time seeking to impose conditions which would cut back what is authorised by the 1992 permission under which UKPN currently operates.

Ground (f)

21. Ground (f) appeals may be brought either on the basis that the steps required by an EN exceed what is necessary to remedy the breach of planning control, or that they exceed what is necessary to remedy any injury to amenity which has been caused. The wording links back to s.173(4), which specifies the purposes for which the steps required by an enforcement notice may be identified.

22. In the present case, the EN is somewhat opaque as to the reasons for the particular steps it has identified, but the central reason provided in Section 4 is the alleged "detrimental impact on the amenities of the area, resulting in additional noise and disturbance", which clearly falls within s.173(4)(b), and the second limb of s.174(2)(e).

23. However, without prejudice to its argument that these are matters which could be advanced under ground (f), this ground was pleaded at a time when it was not known whether the two appeals would be heard together, and the arguments set out in the Notice of Appeal[34] as to why the steps required exceed what is necessary to remedy any injury to amenity are in essence the same as those advanced under Appeal B. At this stage of the Inquiry, it is difficult to envisage a situation in which, if those arguments do not succeed under Appeal B, they might have any greater traction under ground (f). Consequently, while this ground is formally retained, it does not add anything to Appeal B.

Ground (g)

24. As currently drafted, the EN requires compliance within 3 months from the date on which the notice takes effect. The Council now accepts that this is too short, and suggests that it should be extended to 6 months.

25. While grateful for this, the Appellant contends that it still does not go far enough. In particular, while 6 months might be sufficient for Masons to wind down its existing operations and clear the site, it is nowhere near enough for them to find, acquire, fit

[34] CD5.02

out and transfer operations to suitable alternative premises. A period of only 6 months would therefore require Masons to cease trading.

26. In the Appellant's submission, that is unreasonable, especially in circumstances where:

    a. The scaffolding service which Masons provide is vital to the construction industry in London;

    b. Masons employ between 85 and 95 people,[35] who would be out of a job;

27. Having regard to Masons' previous experience of relocation[36] and reasonable allowances for (a) finding a site and conducting due diligence in relation to it (b) acquisition (c) the possible need to obtain planning permission (d) site preparation and (e) the transfer of business operations, a period of 15 months should be allowed.

CONCLUSIONS

28. In summary, the Appellant's primary case is that neither of the Council's objections to the grant of planning permission is justified. The principle of the intensification of the use of the site for industrial purposes is strongly supported by the development plan; the Appeal Scheme complies with the more detailed development plan policies on noise and highway safety and is therefore in accordance with the development plan as a whole; and there are no other material considerations which would warrant refusal. As such, Appeal B should be allowed, and planning permission should be granted.

29. If that argument is accepted, Appeal A will become academic. However, if it is not, service of the EN was defective and the prejudice to LPN can only be corrected by quashing the EN or amending it so as to exclude their land. If it is not quashed, the time for compliance should be extended to 15 months so as to ensure that a significant

[35] See CD9.02 p.2
[36] CD9.03

local employer which provides a important service to London's construction industry is not needlessly forced into closure.

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19 August 2025

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