Re: London Electricity Board Depot, Churchfields Road, Beckenham, BR3 4QZ

PINS Reference: APP/G5180/W/25/3365514

LPA Reference: C/24/00815/FULL2

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

CLOSING FOR THE LOCAL PLANNING AUTHORITY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. This inquiry has been about the harms caused by the Appellant’s operations to local residents. Over 500 objections[[1]](#footnote-1) have been made. It is clear the operations are causing a negative, sustained, and detrimental impact to local amenity. The Council’s case is that this is unacceptable in planning terms, and that the harms are ultimately not capable of sufficient mitigation by way of condition. The Inspector is invited to dismiss both appeals, and to uphold the refusal of retrospective permission and the Enforcement Notice.

**Amenity**

1. Residents set out objections at application stage, between May and September 2024. Three examples were provided in Opening and are not repeated here, but the Inspector is invited to review them. Three further examples include:

*“My son attends Churchfields school and I object to this proposal as this will increase traffic to unsafe numbers - the road is also too small for large vehicles who cannot turn into the site typically in one go and take several attempts - I have witnessed this myself and it is unsafe with hundreds of small children accessing this area twice a day.”[[2]](#footnote-2)*

*“As the Headteacher of the adjoining Primary School which caters for around 500 children, including a provision for 20 children with severe and complex SEND needs, I object strongly to this proposal… The use for scaffolding lorries has already impacted the health and safety of our pupils - one example being a large lorry, unable to turn, mounting the whole pavement outside the school at pick up time.”[[3]](#footnote-3)*

“*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 is 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]](#footnote-4)*

1. Further comments were provided to PINS during the appeal consultation window of 23 May 2025 and 23 June 2025. Four examples were provided with the Council’s written Opening and are not repeated here, but the Inspector is invited to review them. Other examples include:

*“As I lived nearby, I can confirm that between July 2010 and January 2022, the Electricity Depot plot in question… was vacant and not used. In the 12 years I probably saw one National Grid van going in and out… We have been hearing Masons trucks leaving early in the morning before 7am, earlier than the Recycling centre traffic, after 9pm, and in the weekends… I have witnessed near misses… we cannot go on like this and wait until a child is hit by a truck”[[5]](#footnote-5)*

*“The road to access the scaffolding site does not have suitable access for large vehicles, there is no wide angle for large lorries to turn in safely. I have witnessed scaffolding lorries clipping the kerb, whilst walking my young children to school. This poses a danger to school children and other children visiting the playground next to the proposed scaffolding site.”[[6]](#footnote-6)*

*“As a local resident, I am deeply concerned about the negative effects the current use is having on the neighbourhood… The use of the site for scaffolding storage and distribution… has introduced significant noise and disruption. Heavy goods vehicles loading and unloading activities, and early/late operating hours, all contribute towards a persistent decline in residential amenity”[[7]](#footnote-7)*

*“The conduct of the applicant by beginning the development without permission shows disregard… and calls into question whether the applicant can be trusted to abide by any proposed mitigation measures. The applicant is currently operating seven days a week, despite in their application stating they do not operate at weekends. The HGV vehicles have been seen regularly arriving at the site as late as 7 pm during the week and at 4 pm on Sundays.”[[8]](#footnote-8)*

*“having such large vehicles next to a children’s playground is a recipe for disaster. This is a residential area and not an industrial estate, as such an alternate site should be found for this kind of business.”[[9]](#footnote-9)*

*“The yard’s metal-on-metal impact noise and diesel engine noises are loud and can be heard from the school and the street no credible mitigation has been offered”[[10]](#footnote-10)*

*“The proximity to Churchfields Primary and the park, both very busy with children means there is an accident just waiting to happen if they continue operating there. As a parent and local resident, it’s extremely worrying”[[11]](#footnote-11)*

*“I write as a local resident to formally object to the appeal… against the enforcement notice… No lesser steps can meaningfully mitigate the disruption, noise, and safety concerns associated with such operations in this location. The only reasonable course is the complete cessation of the unauthorised use. Conditions or partial measures would merely delay the inevitable harm and fail to adequately protect the local community.”[[12]](#footnote-12)*

*“this scaffolding company could not be less fitting occupant of the site in question. From my observations they seem to have a flagrant disregard for their surroundings and neighbours. They drive on the wrong side of the road, above the speed level, outside of the agreed hours and, most critically, they put the lives of residence, park goers, recycling centre users, the elderly, adults, children and pets at risk. I think they should find a more appropriate site not in the middle of a residential area”[[13]](#footnote-13)*

*“I am one of many residents directly affected by Masons, but due to my location directly opposite the site, the impact on myself and my neighbours is even more severe than most… Masons’ original transport statement suggested a maximum of 20 two-way trips per day. The reality is wildly inaccurate. As one clear example, on Monday 11th November, numerous trucks were recorded returning to the site, showing the actual trip numbers far exceed their claims. And this isn’t occasional – it’s daily. The operating hours are completely inappropriate for a residential area. Trucks routinely leave before 7am and return as late as 9.45pm, often rumbling through the road with engines revving and metal clanking. The noise has repeatedly woken both of my young children... It’s a daily intrusion on our lives… I feel genuinely anxious walking my kids past the site. The trucks Masons use are 18-26 tonne vehicles – heavy-duty kid clearly not meant for narrow residential streets… It’s intimidating and dangerous – not just inconvenient. 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… I regularly… hear forklifts operating at all hours, weekdays and weekends. These neighbours are enduring the constant noise… from industrial activity on their doorstep”[[14]](#footnote-14)*

*“The staff treat the driveway like a racetrack overtaking people queuing to enter the recycling centre”[[15]](#footnote-15)*

*“My house is a corner property… a couple of minutes walk from the depot, and for the last six months or so we’ve been woken early by the noise of Masons lorries driving along Churchfields Road, starting from about 5.30am. Now that it’s the heat of summer and we’d like to have the windows open, it’s even worse”[[16]](#footnote-16)*

1. The written representations clearly set out the lived experience of the harms identified in the technical evidence at the inquiry. The Inspector has video and photographic footage showing interactions between children and HGVs, as well as a video of resident Karis Grae talking to camera, which was provided before the Inquiry. It is obvious that the residents catalogued and provided this information because they want the Inspector to be aware of how harmful, inappropriate, and indeed dangerous they see the Appellant’s operations as being to their quality of life.
2. Further evidence was given to the Inquiry by residents on day 1. The Inspector will have her own note. A few points to highlight. Ms Lesley Ubee read in the statement of an elderly lady on Clockhouse Road, who lived opposite the site and could not attend herself because she was recovering from an operation: “*I have been living Clockhouse road over 58 years, there has never been industrial use on the site… There is constant noise, banging and clanging of metal pipes, which I imagine are being thrown about… This goes on and on. It should not be allowed, it is destroying the peace in my garden*”. Mr Roi Perez said: “*It is a frightening experience for many reasons. I have witnessed Masons vans overtaking school children and cars by going on the kerb.”* Councillor Jeremy Adams recalled being in the queue of cars for the RRC the Friday before the Inquiry began and “*at 4.10, a Masons vehicle came down the outside the full length of the road*”. Commenting on comments residents had made to himself, Councillor Adams said: “*This is not a case where people objecting because don’t like idea of something. This is about lived experience. Many are genuinely mystified that a business of this type, could be sandwiched between a primary school and a playground”.* Commenting on the evidence, Councillor Adams further said, “*This case is not about maths, it is about real world risks today, and in the future*…” Mike Frewer said, of the overtaking on the access road: “*When they see there is a queue, they just overtake. Miracle no one had serious accident there. They don’t hang about, they think “we’re a bit late, got to get home for tea”… They bomb down the road”*. Adam Reuvany explained he lived directly opposite the site, and has his own operator’s licence for LGVs and HGVs in his business. He explained that *“Clancy use smaller vans, 3.5 tonnes in gross weight, LGVs*”, compared to the HGVs used by Masons. He said: “*The so-called mitigation is a banksman. That does nothing to stop conflict. It is a fig leaf to cover fact access is fundamentally unsafe*”. Sally White, the school’s deputy head teacher, explained the school has around 490 children. Children are collected between 3-6pm, and that (underlining added) “there is “*considerable pedestrian traffic throughout this time 38 weeks of the year*”. The school hosts a breakfast club 7.30am-9am each day, and explained that the school was trying to increase the enrichment clubs offered before and after school, so the numbers of children pedestrians on the roads at those wider times “*will only increase*”. She referred to “*a number of near misses*” between children and HGVs, and as safeguarding lead for the school, was very concerned, and invited the Inspector to dismiss the appeal on safety grounds.
3. The Reason for Refusal does put detrimental impacts to residential amenity front and centre. It is correctly said to be foundational to this case. The Council have put considerable resource into this appeal because it recognises the impact and harm the use of this site has had and is having on residents.
4. How should the Inspector deal with amenity as a planning consideration? It is correct that policy 37 of the Bromley Local Plan does say that “*all development proposals*” should “*respect the amenity of occupiers of neighbouring buildings*”. The Inspector can therefore directly find conflict with this Local Plan policy. Ms Daye also explained that residential amenity is a material planning consideration. Section 38(6) PCPA 2004 provides that determinations must be made in accordance with the development plan unless material considerations indicate otherwise. Therefore, the Inspector can clearly also find residential amenity to be a material consideration that would allow refusal of permission, even if the Inspector found there to be no development plan conflict. The Appellant’s suggestion that there is not in fact any technical problem and therefore that there is no overall conflict with the development plan is strongly opposed by the Council in any event, as is discussed below.
5. Importantly, however, the consideration is for the development plan taken as a whole. As was noted in the Inquiry[[17]](#footnote-17), and as is well known, policies can and do point in different directions. Some policies may weigh in favour, others against. The NPPF at paragraph [8] includes 3 overarching objectives, the second of which is the social. Inherent to the social objective is well being. Implicit to the social objective is amenity. Paragraph [135] of the NPPF explains that planning decisions should ensure that developments “*create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users*”. Clearly, on the residents’ evidence alone, the activities of Masons are in direct conflict with para [135] and [8].
6. The Appellant’s view of residential amenity was given by their three witnesses. Ms Urbanski was asked in cross examination if, with regard to the residents concerns, she agreed they were experiencing detrimental impacts to their amenity. Ms Urbanski responded: “*I cannot agree because it is unsupported*”. Mr Bancroft was asked in cross examination if he agreed that the residents were experiencing detrimental impacts to their amenity, and he did agree, but added, “*that’s their perspective*”. Mr Lawson view of residential amenity was that *“the resident comments have been founded on fears and concerns which do not arise”[[18]](#footnote-18)*, a view he confirmed in cross examination that was, in his words, “*based on the technical evidence*”.
7. Mr Bancroft’s admission was at least reflective of the reality. It is hard to explain why the Appellant has overall sought to deny the impacts to residential amenity, when the residents concerns, amply justified by the Council’s technical evidence, have been so clear. There is something of the dogmatic one-sided approach in Mr Lawson’s evidence that, far from recognising those impacts, he instead sought to portray the Appellant as seeking “*to adopt good neighbourly working practices[[19]](#footnote-19)*” and being “*a good neighbour*[[20]](#footnote-20)”. Those are in direct contrast to the views of the residents, notably Ms Karis Grae who said there had been no engagement at all. More particularly, the statements are not correct. Mr Lawson conceded in cross examination that they had in fact done no residential consulting at all. And when asked by Mr Brown about what the Appellant had done to try to minimise its impact, one of the points Mr Lawson mentioned was “*yard activities during specified hours*”. When asked about this in cross examination his evidence was to point to Masons’ Operational Statement[[21]](#footnote-21), which lists working hours, not only in excess of what had been applied for (up to 6.30pm in the evenings), but introducing Sunday workings as well. For Mr Lawson to have pointed to this document as an example of how the Appellant has sought to lessen their impact on local residents, when it in fact is an example of a worsening of that impact and a disregard for residents considerations, is reflective of the Appellant’s entire approach.
8. That approach crystalises in the Appellant’s suggestions about how the Inspector is to consider residential amenity in policy terms. Mr Lawson described residential amenity as “*a series of technical topics to be assessed at their own level of technical detail*”[[22]](#footnote-22).Mr Lawson’s view was that because residential amenity has been included in the formulation of the specific policies for noise and highways, therefore the Inspector should take no further account of it. It is worth noting that no proposition, whether case law or previous inquiry decision, has been put forward by the Appellant in support of that view. It was a position similarly expressed by Mr Bancroft in cross examination, that his case was that when the numbers and models are run, on their evidence, there is no problem to consider. But such an approach ignores the lived experience of residents, their perceptions of impact, and their concerns about well-being and safety. The Council’s case is that the residents’ concerns cannot be ignored, that they are foundational to this appeal, and that impacts to residential amenity are a material consideration for the Inspector.

**Noise**

1. The Council’s case is that the noise from the Appellant’s operations is at the technical level of adverse effects (from yard operations), significant adverse effects (pole cutting), significant adverse effects (HGV noise on Churchfields Road), and overall, that the noise has a detrimental impact to amenity across all types of noise emitted from the site. The Council’s case is also that the Appellant has provided insufficient information to demonstrate this could be successfully mitigated and controlled.

(a) Noise Policy

1. The policy framework is set out primarily in the Noise Planning Statement for England (“NPSE”), the NPPF, and the Planning Practice Guidance (Noise). The NPSE explains that the Government’s noise policy of promoting good health and a good quality of life through the effective management of noise within the context of policy on sustainable development is supported by three aims:
   1. avoid significant adverse impacts on health and quality of life;
   2. mitigate and minimise adverse impacts on health and quality of life; and
   3. Where possible, contribute to the improvements of health and quality of life.
2. The NPSE provides guidance on “significance adverse effects” and “adverse effects” in its Explanatory Note, by using the concepts of No Observed Adverse Effect Level (“NOEL”), Lowest Observed Adverse Effect Level (“LOAEL”), and Significant Observed Adverse Effect Level (“SOAEL”). The Noise PPG provides a table[[23]](#footnote-23) setting out how these categories may be given meaning, based on their effects for an average person. Mr Fiumicelli agreed with Mr Brown that none of the policy documents tell us what “significant” means, and importantly, agreed with Mr Brown’s next question, that “significant is put in terms of adverse impacts to health and quality of life”.
3. The key paragraphs of the NPPF are 187, 198, and 200. Paragraph 187 in particular explains that planning decisions should prevent new development from contributing to unacceptable levels of noise pollution. Mr Fiumicelli explained that none of those NPPF paragraphs say that noise must reach a certain level before it is unacceptable in planning terms, and he also explained that there is still “harm” from noise at a LOAEL level, and that even if the Inspector finds that there is noise less than the level of SOAEL overall, that does not mean the Inspector must grant permission. Put another way, noise impacts below SOAEL can still amount to a valid reason for refusal when weighed in the planning balance.
4. As for Local Plan policy, the London Plan policies D13 and D14 provide that new noise generating development should put in place measures to mitigate and manage any noise impacts for neighbouring residents, and that significant adverse noise impacts on health and quality of life should be avoided. The Council’s Local Plan provides at policy 119 (“Noise Pollution”)[[24]](#footnote-24) that proposed developments likely to generate noise will require a full noise assessment to identify issues and appropriate mitigation measures, and that “*where there is a risk of cumulative impact on background level over time or where an area is already subject to an unsatisfactory noise environment, applicants will be required to ensure that the absolute measured or predicted level of any new noise source is 10dB below the existing typical background LA90 noise level when measured at any sensitive receptor.”*
5. The Council’s Noise Technical Guidance includes a requirement that “*a noise generating development should include an assessment to demonstrate how it prevents or minimises to an acceptable level all adverse noise impacts*”[[25]](#footnote-25). Mr Fiumicelli was clear that any level of noise harm can be contrary to Policy 119, and he was not challenged on this point in cross examination.
6. Mr Brown cross examined Mr Fiumicelli by asking: “If there is a residual adverse effect, if you have mitigated and managed as much as you can, policy will still be complied with?”, to which Mr Fiumicelli said yes. In re-examination however, Mr Fiumicelli confirmed that if all possible acoustic mitigation had been complied with, that did not mean that the Inspector was to grant permission no matter what the residual adverse effect. Clearly, the level of harm and the residual impact on residents after mitigation is central.

(b) Background noise levels

1. Mr Fiumicelli carried out a baseline noise survey from a property at the rear of Clockhouse Road, directly opposite the site, between 02-08 July 2025. The key point for the Inspector here is that the Appellant’s assumption of background noise has blurred LA90 with LAEQ, and so has resulted in a higher background noise level than is prevailing. The background noise level is of course key, because the noise of the Appellant’s operations above that level give rise to the relevant LOAEL and SOAEL classifications.
2. Mr Fiumicelli explained that the relevant[[26]](#footnote-26) methodology was noise standard BS 4142. Mr Fiumicelli explained that the correct way of assessing background noise was to use the LA90 method, as prescribed by BS4142[[27]](#footnote-27). Ms Urbanski agreed that was so. However, Ms Urbanski in her Rebuttal proof at Table 4 on page 15 stated: “*The predicted absolute noise level is 10dB below the prevailing ambient noise level of 53dB LAeq*”. This is the wrong measurement. It is a blurring of two separate concepts.
3. The properties on Clockhouse Road are separated from the site by a train line. Mr Fiumicelli set out the volume of train traffic on that railway line in his proof at Table 6[[28]](#footnote-28). In cross examination, Ms Urbanski agreed that that volume of train traffic was accurate. Ms Urbanski agreed that the section of Mr Fiumicelli’s Table 6, “Minutes in an hour without train sound”, was correct, meaning that for at least 90% of the time, that location does not have any train sound. Ms Urbanski agreed with Mr Fiumicelli who said (para 6.11 of his proof) that the “considerable majority of the time when no trains”. Ms Urbanski further agreed that the LAeq measurement is measuring 4 minutes of train noise spread over an hour. It does not therefore characterise the prevailing background conditions, because it gives too much weight to train noise, and is not the LA90 level, which is the noise which is not exceeded for 90% of the time.
4. Ms Urbanski continually used the averaging noise metric LAeq to move away from the impacts of peaks of noise from heavy goods vehicle movements measured using the LAmax noise metric. In relation to the impact on Churchfields Road, this particularly relates to increase in HGV’s at the junction and on the road. WEI referred to an external LAeq of 60dB equivalent to 45dB internally via an open window to state that the noise climate is already an issue and the additional 3 Mason’s vehicles in any 15 minute period between 06.30 hours and 07.00 hours would be of no further consequence as sleep disturbance will already take place. The impact of an LAeq and LAmax differ: the former evaluates the effects on sleep over the whole night period including the majority of the time in this case when there are no heavy vehicle movements; whereas the latter evaluates the likelihood of adverse effects on sleep of each heavy vehicle movement when they occur towards the end of the night between 0630 and 0700 hrs.
5. Mr Fiumicelli recognised the presence of that train noise in the locality, but confirmed this does not characterise the acoustic climate of the area because it is short term, intermittent, and there are large gaps between trains when there is no noise[[29]](#footnote-29).
6. On Mr Fiumicelli’s own analysis, the Appellant’s LA90 measurements for background noise were greater than his own, of up to 4dB difference[[30]](#footnote-30). It is submitted that Mr Fiumicelli’s analysis is to be preferred, and that his background sound levels more appropriately characterise the prevailing conditions.
7. It was clear throughout the Appellant’s evidence that Ms Urbanski considers that the area is inherently noisy, so a SOAEL is in fact a LOAEL. This argument cannot stand. Ms Urbanski agreed in cross examination that it could not be her case that just because there already existed some noise, it did not matter what further noise was made by the Appellant.

(c) The Appellant’s model

1. The headline point for the Inspector is that the Appellant’s noise model underestimated the levels of noise coming from the site, by a level which makes a material difference.
2. Mr Fiumicelli explained that the output of a noise model can vary considerably in favour of one side or the other depending on choices made about inputs to the calculation.[[31]](#footnote-31) When asked in cross examination if it was important to get the inputs correct so that the model was more precise, Ms Urbanski gave the eye-brow raising reply that she “*wouldn’t say precise, just different*”. It is hard to understand what Ms Urbanski meant by this answer. The purpose of modelling noise should clearly be to get results on which viable conclusions about the level and impact of that noise can be based. It is not enough to shrug and say some results are different to others. It is not clear whether Ms Urbanski meant that precision doesn’t effectively matter, but it is clear that when her work was subject to Mr Fiumicelli’s analysis, it proved to be imprecise in a number of ways.
3. Ground absorption was set by Ms Urbanski at 0.5%, that is, the ground was given a 50% absorbative capacity. Mr Fiumicelli explained that, given the nature of the site being concrete and tarmac, it is “*hard acoustically reflective ground*”[[32]](#footnote-32). He suggested that it should have 0% absorbative capacity, because it was 100% acoustically reflective. Mr Fiumicelli’s analysis was that this correction adds around 2 dB to the predicted noise levels at Clockhouse Road, than afforded by the Appellant’s model. Ms Urbanski explained she had no objection to this[[33]](#footnote-33), and agreed that this afforded the 2dB increase.
4. Acoustic (barrier) reflection was not accounted for by Ms Urbanski. Mr Fiumicelli explained[[34]](#footnote-34) that the reflective barriers of the RRC (effectively the walls of the RRC) would increase noise transfer from the site to properties on Clock House Road, and that this would add a further 1dB increase to the sound experienced by residents on Clock House Road. Ms Urbanski in her Rebuttal “*disagree[d]*”[[35]](#footnote-35) with this assignment, because the Appellant’s pole racking system was in between Clock House Road and the RRC. But in her evidence in chief, when asked about it by Mr Brown, she in fact said “*I am fine running with it*”. Accordingly, a further 1dB of sound is to be added to the sound levels experienced by residents at Clock House Road from that which was initially afforded by the Appellant.
5. Heavy vehicle departures were explained to be 3 departures per 15 minute period in the initial Acoustic report of March 2025[[36]](#footnote-36) (i.e., 12 per hour, and not 9). The model used by the Appellant had in fact used 9 per hour. Mr Fiumicelli said this meant an underestimation of 1dB in predicted heavy vehicle noise. Ms Urbanski in her Rebuttal[[37]](#footnote-37) said “*This is an accepted error within the noise model*”, and accepted that this would give rise to a further 1dB in sound.
6. The operational times modelled by the Appellant were set at 30 minutes per hour, that is, in every hour, Ms Urbanski was modelling only 30 minutes of operational noise and then averaging this down over an hour. But the operational times provided by the Appellant were initially set to be 30-45 minutes for every hour. By measuring 30 minutes instead of 45, Mr Fiumicelli considered that it gave rise to an underestimation of noise by a further 1dB.
7. There is an obvious question about why these inputs were not accurate the first time around. This goes directly to the reasonableness of the Council’s reason for refusal, and is sufficient and clear evidence to demonstrate that the Appellant had not provided sufficient information on which the Council could be satisfied about the Appellant’s case on noise.
8. The question over precision further developed in the noise grids. The Appellant’s March 2025 Report provided[[38]](#footnote-38) 5 pages of noise grids, which are a helpful visual impression of how far noise extends from its source, and at what level of severity. The problem is these are inaccurate. The Appellant did not model for noise penetrating above ground floor. One example of this feature being noticeable is the graphic[[39]](#footnote-39) showing daytime operations including pole cutting. The noise penetration stops quite neatly on the edge of the railway line embankment which reduces the further propagation at ground level. There is no noise penetration at all to Clock House Road. That is evidently wrong just on the comments voiced by residents. But as Mr Fiumicelli explained[[40]](#footnote-40), the lack of account for the first and second floor underestimated the noise by 3dB than if they had been considered, as the railway embankment provides less screening of noise from Masons yard at these heights compared to ground level. Mr Fiumicelli provided[[41]](#footnote-41) noise grids which should show the accurate position, and these show a much greater penetration of noise at a first floor and mansard roof level of the properties on Clock House Road than was afforded by the Appellant’s model.
9. It is notable that the way in which Ms Urbanski gave evidence on this point was also circular. Initially Ms Urbanski said that the noise grids only relied on ground floor noise, before trying to change her mind to say that in fact they did not do so. Ms Urbanski stated that the Buildings Evaluation Criteria was not affected by grid size and pointed to an assessment that was relied upon. When asked in cross examination where that assessment was, Ms Urbanski then responded to say she had not said it was relied upon. The Inspector may recall this part of the questioning when Mr Cruickshank said to the witness, “you literally just did” in terms of Ms Urbanski’s reliance upon it. Whichever way, it is clear that the Appellant’s presentation of technical evidence on this issue is far from satisfactory.
10. The final issue on precision was the size of the noise grids themselves. Mr Fiumicelli explained that the more precise grids to be used, which more accurately gained the measurements, were a 5x5m grid, but the Appellant had used a 10x10m grid, leaving the Appellant’s analysis that degree less precise than he would have liked.

(d) Tonality and context

1. Tonality is a further key concept that was discussed in the noise evidence. Some sounds are tonal, meaning they attract penalties under BS4142, because of the way in which they are heard. The example of fingernails on a chalkboard was agreed to be a sound that might not be very loud, but one that was inherently tonal and attracted a penalty. Ms Urbanski did not attribute any penalty for tonality from the sound of pole cutting from the site, stating: “I do not consider it to be tonal” [[42]](#footnote-42). Mr Fiumicelli did. He attributed a +2dB penalty, which he explained was a “cautious underestimate”[[43]](#footnote-43), when the band range for the addition of the penalty extended to +6dB. That is, Mr Fiumicelli could have applied a greater tonal penalty than just 2dB.
2. Ms Urbanski relied on the “1/3 octave method” to justify the fact that under that method, no penalty should be applied[[44]](#footnote-44). Mr Fiumicelli listed two reference documents which explained that the 1/3rd octave approach can underestimate tones in sound, the Environment Agency’s Method Implementation Document for the Standard[[45]](#footnote-45), and the Association of Noise Consultant’s Technical Note for BS 4142[[46]](#footnote-46). Ms Urbanski said she in cross examination that she was aware this was said by one of those two documents, and that she had not read the other document. Ms Urbanski then attempted to dismiss the Environment Agency’s document as the Masons site is not regulated by the Agency. But the points made by the Agency about the inaccuracy of the “1/3 octave method” are technical criticisms of the approach which are relevant whatever the regulatory regime is in place.
3. At a technical level, Ms Urbanski agreed that real-life noises with tonal components can have many spectral peaks across a range of frequencies, resulting in an elevation of several third octave bands, and not just a single third octave band in isolation. Ms Urbanski agreed that that is one reason why one single third octave band in isolation is inadequate for assessment. Ms Urbanski also agreed with a second technical reason why the 1/3 octave method was problematic, that tones with frequencies near the boundary between two third octave bands will raise the level of both third octave bands, meaning some audible pure tones are undetectable, because neither frequency band is sufficiently prominent.
4. Ms Urbanski was then taken to Figure 4-2 of her proof[[47]](#footnote-47) in cross examination, a bar chart showing 1/3 octave noise measurements during pole cutting. A little more than half way along, reading it left to right, blue and white shaded bars (given the tag, “Pole Cutting Rail Boundary Location 1”) stick out from the rest of the bars. When asked whether these indicated tonality, Ms Urbanski agreed it did.
5. It is unclear why Ms Urbanski then remained of the view that there was no tonality correction to be applied. That position is all the more puzzling given that the Clement Acoustic report which was used by the Appellant at application stage, agreed the sound was tonal and applied a correction penalty[[48]](#footnote-48). Ms Urbanski sought to explain the position by stating during her evidence in chief that the propagation pathway of the sound might be tonal at source, but not at a receptor. But as Ms Urbanski then conceded during cross examination, the propagation pathway of a sound can also have the opposite effect, and turn a noise at source which is not tonal, into a noise which is tonal at receptor. Ms Urbanski also said during her evidence in chief, “*I was thinking it is more impulsive than it is tonal*”, and concluded on the discussion with “*it might just be impulsive*”. There are two points to highlight. First, as Ms Urbanski later conceded in cross examination, penalty ratings are not exclusive. A penalty can be attributed for impulsivity as well as tonality. But secondly, the statement that “it might just be impulsive” is not one of very strong conviction, and the point to highlight for the Inspector is that, in the round, Ms Urbanski is wrong not to attribute a penalty for tones.
6. To briefly mention context, Ms Urbanski criticised Mr Fiumicelli for not taking account of context, but this was consistently denied by Mr Fiumicelli. It is evident from Mr Fiumicelli’s analysis[[49]](#footnote-49) of the noise climate of the area that he did take account of context. Paragraph 6.11 is specifically discussing the noise climate, and demonstrates that whilst the train noise is a component, it is not prevalent. It is more likely, given the discussion about train noise and LAeq above, that Ms Urbanski took account of the wrong context herself, by making train noise more prevalent than it otherwise is, and failing to appropriately contextualise the noise source itself and its character (because of tonality).

(e) The Noise: yard operations; pole cutting; HGV movements

(i) Yard operations

1. For the headline point in this section, it is helpful to start with Mr Fiumicelli’s conclusion that the Appellant’s categorisation of noise level cannot be supported, and on his evaluation, they “increase” and in some cases, intensify within the SOAEL category[[50]](#footnote-50). For the three categories of noise in question (1) the yard operations giving rise to noise including pole on pole clanking; (2) the pole cutting, and (3) HGV movements, the first gives off noise which is detrimental to residential amenity, the second is agreed to be at a level of SOAEL, and the third is at a level of SOAEL for residents on Churchfields Road.
2. Mr Fiumicelli said that when he attended Clockhouse Road for the purposes of his baseline survey, he heard the sound of metal on metal clangs which was noise coming from the scaffolding yard. He said in his oral evidence that he was certain of this, and that was based on his long experience of visiting “hundreds” of industrial sites with scaffolding poles. He formed the conclusion that this noise was detrimental to residential amenity[[51]](#footnote-51).
3. Ms Urbanski sought to counter this by suggesting that Mr Fiumicelli had in fact heard the noise of the JCB digger scraping in buckets on the RRC[[52]](#footnote-52). That this explanation was advanced by Ms Urbanski is again hard to understand. It is unclear whether this was provided by Ms Urbanski because the noise grids were obviously wrong, showing the noise from the site neatly stopping at the train tracks and therefore on her technical evidence no meaningful noise at Clock House Road at all. That is, whether the explanation was advanced to try to sure up the position that Clock House Road was not experiencing any noise at all. But it is clear that the inference of such a position is consistent with a denial that there is any metal pole clanking noise from the site. Mr Fiumicelli was sensibly not cross examined on the point by Mr Brown, and so given it is unchallenged evidence, the Inspector is invited to accept his conclusions that that was what he heard and that it was, in his view, exactly the sort of metal on metal clanking that residents have complained about which is detrimental to amenity.

(ii) Pole Cutting

1. The level of noise from pole cutting is at the level of SOAEL. The exactness of the level measured by the Appellant is not clear. The Appellant’s March 2025 Report[[53]](#footnote-53) provided a figure of 97dB. The figure provided by Ms Urbanski in her proof[[54]](#footnote-54) gave a range of 101-106dB. Further comments about this are made in the mitigation section below. It is important to note, however, that the distance from the pole cutter at which the measurements were taken is different i.e. 3.7 m in the March 2025 report and 3 m in Ms Urbanski’s proof. This is equivalent to a difference in sound level of around 1 dB and is not sufficient to account for the 4 to 9 dB variation between the measurements. There is substantial uncertainty regarding what are the typical and maximum source noise levels for pole cutting and therefore any analysis of the impacts of this noise.
2. The previous comments about the tonality of this sound are clearly relevant to the determination of the noise level. Mr Fiumicelli’s conclusion is that with pole cutting, the Appellant’s assessment is below SOAEL, but the impact is above SOAEL[[55]](#footnote-55). Mr Fiumicelli was not challenged on this conclusion in cross examination.

(iii) HGV movements

1. The Appellant calculated the noise of HGV vehicles leaving the site on Churchfields Road. The issue is the level of noise to nearby residents. In the Appellant’s March 2025 Report[[56]](#footnote-56), the calculation was 64dB at LAFmax level at approximately 15m from the access road. The Appellant provided the results of a survey to Mr Fiumicelli[[57]](#footnote-57) where the range of LAFmax was 80-86 dB. Mr Fiumicelli took the minimum difference (of 16 dB) and concluded that the Appellant had therefore underestimated the noise impacts attributable to Masons’ heavy vehicle movements on Churchfields Road by 16dB, based on their own data.
2. Ms Urbanski in her evidence in chief explained the reason for this discrepancy to be because only HGVs within the bounds of the site were considered. That is a puzzling explanation. If the objective was to measure the impact of the Appellant’s HGVs on nearby residents, it is clearly inadequate to measure that impact solely from within the bounds of the site. As Ms Urbanski agreed in cross examination, the noisiest place for LAFmax would be when HGVs were leaving the junction of the access road, having pulled onto Churchfields Road, and were accelerating away. Ms Urbanski agreed that maximum noise was not therefore what had been measured. Clearly, the Appellant’s evidence on this point is unsustainable.
3. The significance of getting it wrong is because of the relative significance of the impact of the noise on residents’ sleep. Mr Fiumicelli explained that 80dB and over is a recognised threshold for conscious awakening, “likely to cause significant adverse effects on sleep”[[58]](#footnote-58). Ms Urbanski however, in cross examination, said that the significant threshold was that it should not exceed 60dB. This admission in oral evidence means that the discussion about the underestimation of the measurement of 64dB because it was within the bounds of the site becomes somewhat academic: even from that incorrect distance, on the Appellant’s own case, the significant threshold is exceeded.
4. Ms Urbanski sought to justify the position by saying the neighbourhood was already noisy because of HGVs from the RRC and local buses. Earlier in cross-examination, Ms Urbanski had however agreed that it could not be the Appellant’s case that just because the neighbourhood was already noisy, it did not matter what noise the Appellant made. Ms Urbanski was asked in cross examination if she agreed that the regularity of loud vehicle noise events intensifies with Masons HGVS and that leads to a greater probability that people will be woken up compared to without Masons HGVs, and Ms Urbanski’s response was “no”. The denial of any level of additionality of Mason’s HGVs to residential amenity at Churchfields Road is unrealistic, and clearly unsustainable. Indeed, it is a position contrary to that adopted by Mr Lawson, who said in his cross examination: “*I agree that the addition of Masons scaffolding should be considered against the existing baseline*”.
5. The evidence shows HGVs leaving the site are making noise at a significant adverse effect on nearby residents.

(f) Mitigation

1. The pole curtain was discussed. Mr Fiumicelli’s evidence on this point was that the plastic strips were “effectively acoustically transparent”. Ms Urbanski relied upon Figure 4-1 of her Proof[[59]](#footnote-59) to show there was a 10 decibel noise reduction afforded by the curtain, in that the noise measurement taken inside the curtain (coloured red) was higher than the noise measurement taken outside the curtain (coloured green). But as Ms Urbanski agreed during cross examination, up to 6dB of the difference is attributable to moving from a reverberant to a non-reverberant space (i.e., going from the inside to the outside). Other factors also inputted on the difference, that it was not the same event (done at different times on the clock at Figure 4-1), so the level of pressure applied and level of speed would vary, the location of the measurement because the direction of noise emitted would not radiate equally in each direction. Ms Urbanski agreed in cross examination that all of that served to realistically reduce the 10dB reduction she had suggested. Mr Fiumicelli also gave evidence that the supposed technical data sheet[[60]](#footnote-60) submitted by Ms Urbanski to support the claimed noise reduction from the plastic strips was inadequate, flawed and could not be relied upon. Ms Urbanski agreed with those criticisms in cross examination.[[61]](#footnote-61) Mr Fiumicelli’s evidence was that overall, at least 9 decibels of the alleged 10 decibels of the noise reduction by the “Acoustic Curtain” could be due to the variation in source levels as described above. Given Ms Urbanski’s concessions on the point during cross examination, it appears that the pole curtain is indeed effectively acoustically transparent.
2. For mitigation for noise from yard activities, Ms Urbanski agreed in cross examination that there was a limited amount that could be done to prevent the noise of metal poles clanking together. While Ms Urbanski had relied on extended hours of operation, beyond those sought in the Application Form, for loading and unloading only, when cross examined about what loading and unloading exactly meant from a noise perspective, it was clear that it would entail such continued noise. Ms Urbanski positively said that “it will give rise to” noise, when, for example, poles are unloaded from vehicles. When asked “*you can’t condition that can you*?”, in cross examination, Ms Urbanski’s response was “*not unless you fully enclose it*”. This admission that to effectively condition noise from yard operations would require a housed structure for the whole site clearly supports the Council’s case that it is not capable of mitigation.
3. For noise coming from HGV vehicle movements, Ms Urbanski said in cross examination that “*you don’t need any mitigation. The only mitigation you can do is not allow vehicles to leave*”. This is a surprising answer for two reasons. First, the denial that any mitigation is required is a denial of the evidence which shows a significant adverse impact on residents, and supports entirely the Council’s reason for refusal in respect of demonstrating feasible mitigation and control. Second, the acknowledgement that the only mitigation would be to stop vehicles leaving supports the Council’s wider case, that this industrial development is fundamentally not suitable for a residential area.

(g) Overall conclusions on noise

1. Mr Brown for the Appellant put to Mr Fiumicelli the “so what” question, asking that just because there are some numbers which should more properly reflect an increase in dB rating, why should that matter. It does matter, for several reasons. It matters because the Appellant’s case has been to deny there is noise which is detrimental to residential amenity[[62]](#footnote-62), and the Council profoundly disagrees with this conclusion. It matters because, when assessed at a technical level, the Appellant’s noise ratings increase and intensify, and move upwards within the LOAEL and SOAEL categories. It matters because the Appellant’s characterisation of NOAEL and LOAEL is proven to be demonstrably wrong. It matters because the casual way the Appellant underestimates the noise impact across its evidence is reflective of a disregard for the impact on local residents. It matters because the Council have had to incur time and expense unravelling the Appellant’s model, and demonstrating its lack of accuracy to the Inspector. The answer to the “so what” question is, it matters very much.
2. The tenure of Ms Urbanski’s evidence was to be almost dismissive of impulsive noise generated by vehicles at the site or the pole cutting and clanking issues as non-measurable effects. In planning terms, however, these are considered to be intrusive, jarring and detrimental to the peaceful enjoyment of residents, whether in their bedrooms or their gardens.
3. The Council invites the Inspector to prefer the evidence of Mr Fiumicelli to that of Ms Urbanski, and to find that the noise given off by the Appellant’s operations at the site is detrimental to residential amenity, that that noise has not been demonstrated to be capable of mitigation, and that the Council’s reason for refusal regarding noise is sustained and justified.

**Highways Safety**

1. The Council’s case is that the operations of the Site have a detrimental impact on residential amenity from a highway safety perspective, and that the Appellant has not demonstrated that the detrimental impact can be successfully mitigated and controlled.

(a) Policy background

1. The NPPF at para [116] explains that “*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety*”. As Mr Rastani pointed out in his evidence in chief, and he was not cross examined on the point, there is no definition of “*unacceptable*” anywhere, that is left to the Inspector’s judgment.
2. The NPPF also makes clear at paragraph [115] that “*it should be ensured that:… (b) safe and suitable access to the site can be achieved for all users*”.
3. Policy 32 of the Local Plan on Highway Safety states: “*The Council will consider the potential impact of any development on road safety and will ensure that it is not significantly adversely affected.”* Mr Rastani pointed out that there is no threshold of road safety impact that is required for a development to be contrary to policy 32, some degree of harm would do.

(b) Amenity

1. Mr Bancroft agreed that the numerous comments from residents showed that the Appellant’s HGVs are having a detrimental impact on residential amenity. He agreed that parents were worried about their children in the presence of HGVs, and he agreed that users of the RRC were worried about being overtaken. He agreed that the character of his case was that, despite all of this, the technical evidence showed there to be no problem.

(c) Safety issues at the junction

1. The setting of the access road cannot be separated from the primary school next door. HGVs and children are mixing, and Mr Bancroft agreed that there is a safety issue when HGVs and children mix on the roads. Mr Bancroft agreed that children are more likely to run out into the road and are less road safe aware. Mr Rastani had put forward statistics, which Mr Bancroft said in cross examination were a “matter of record”, that HGVs are disproportionately involved in accidents involving fatalities and serious injuries. When asked in cross examination, Mr Bancroft agreed that no condition could remove the risk of HGV and child conflict, because it would be unreasonable to impose conditions for a sufficiently wide period that children would not be present. It is clear that there will always be a risk of HGV and child conflict at this site, because of the existence of the adjacent primary school, the fact that children may be arriving or leaving throughout the school day, and because the before-school and after-school provisions offered by the primary school which deputy head teacher said were expanding. That expansion of the offering widens the hours in which there are likely to be children on the roads going to and from the school. Given Mr Bancroft’s acceptance that there is an obvious safety question when HGVs and children mix on the roads, there remains a central issue about this junction not being safe.
2. The crossing of the kerb is a particular safety issue. Mr Bancroft agreed that kerbs serve to separate pedestrians from vehicles, and are there as a form of safety separator. He agreed that where there were pedestrians, there would be a highway safety issue if the kerb was overridden. Mr Bancroft’s evidence was that there was no evidence of kerbs being overridden by the Appellant’s HGVs. When it was pointed out to him that he had in fact relied in his proof of evidence[[63]](#footnote-63) on such a photo, he tried to qualify this by saying what his denial of that fact needed to be read in the context of damage to the kerbs. That “*volte face*” hardly seems plausible. It is worth repeating the objection from the headteacher at the application stage: “*I object strongly to this proposal… The use for scaffolding lorries has already impacted the health and safety of our pupils - one example being a large lorry, unable to turn, mounting the whole pavement outside the school at pick up time”.* It is also worth repeating the objection set out in the Council’s written opening: “*I have had the misfortune of waiting to cross the access road to the tip whilst a fully loaded scaffolding lorry has tried to turn into the access road (which required multiple attempts) and I had to move backwards (and my children backwards) as the lorry mounted the inside kerb”*.Another example is the appeal stage objection*[[64]](#footnote-64)*: “*I have witnessed scaffolding lorries clipping the kerb, whilst walking my young children to school.”* Clearly, there is evidence of HGVs clipping the kerbs while children are on the roads, and as Mr Bancroft identified, that is a safety issue.
3. The nature of the junction was itself discussed. Mr Bancroft acknowledged the parked cars on the far side of the road from the access road entrance narrow the ability for a HGV to turn in, but denied that the nature of the junction was fundamentally unsuitable for HGVs, stating it was perfectly acceptable. The tightness of the turn is clear from the swept path analysis drawings, which show the limited space that is available. Mr Bancroft agreed the junction was not designed for HGV vehicle use, but said that while it was not designed to accommodate them, it did accommodate them. But his evidence on that point was not convincing. Mr Bancroft maintained that it was “possible” for an HGV to turn in in one go. He did not put it any higher than “possible”, and repeated the word “possible” several times.
4. Clearly, if it is only “possible” (and that on the Appellant’s own case), there are going to be times when the turn is not effected in one go. Mr Bancroft agreed that if an HGV could not do the turn in one go, and had to reverse, then that would give rise to a safety issue. He said he was himself unaware of any HGVs undertaking that manouvre, and denied that Mr Rastani’s photograph[[65]](#footnote-65) showed such a manouvre. He was cross examined about this, and the comment from a resident set out in the Council’s Opening Statement was put to him. This comment was: *“I have witnessed Masons scaffolding HGVs attempting to enter the site this way during school drop off in November 2023 and having to go back and forth several times. This created a very dangerous situation for a mother and a child who were trying to cross the road behind the truck... I witnessed other instances where Masons vehicles were unable to enter in one go. The entrance is not suitable for commercial vehicles”*. Mr Bancroft’s response was that he was unaware about it. This type of denial of what is being complained about unfortunately runs through the Appellant’s evidence.
5. There is another issue about the inherent safety of the junction. Mr Rastani’s evidence was that lines of sight along Churchfields Road, and along the access road when a vehicle was on it, were acceptable. But the view of the access road on approach were limited. Mr Bancroft agreed that the visibility of what was happening along the access road was limited for vehicles that were approaching it along Churchfields Road. As explained in evidence by Jim Cowan, the swept path analyses show the Appellants turning in on the wrong side of the access road, potentially increasing the risk of collision for vehicles emerging from the access road onto Churchfields Road. The limited line of sight for HGVs approaching the junction, and about to undertake that manoeuvre, accentuates the safety concern expressed by Mr Cowan.
6. Mr Bancroft relied heavily on the Manual for Streets to demonstrate that there was nothing inherently unsafe about vehicles having to drive on the other side of the road when emerging from a junction. Importantly, he tried to suggest the word “occasionally” in Manual for Streets meant “periodic”, that is, it was acceptable as a routine manoeuvre so long as it wasn’t being done all the time. With respect, such an interpretation cannot reasonably stand. The obvious meaning of “occasionally” is not that everytime a vehicle needs to turn from a junction it is forced to turn drive on the other side of the road (which is not an “occasional” occurrence, but a routine occurrence), but that such a manouvre happens once in a while at an otherwise safe junction. This goes to the points repeatedly made about the fundamental unsitability of this junction for the type of traffic used by the Appellant. Mr Bancroft was cross examined about whether he had missed the first part of that policy, that *“In many cases it will be better to have slightly greater carriageway widths at the junction”*, and his answer to that was not clear.

(d) Safety issues on the access road

1. It is fundamentally “unacceptable” (in the sense of NPPF para 116) to have a situation where the Appellant’s vehicles are overtaking queuing cars for the RRC by driving on the wrong side of the road. Mr Rastani’s view was that that manoeuvre is unsafe, in breach of the obvious rules of the Highway Code, and positively dangerous. Mr Bancroft said it was not dangerous in cross examination, because HGVs will proceed “*with their flashing hazard lights on*” down the other side of the road and with caution. This was a surprising announcement, which Mr Bancroft agreed was not within any of the written statements or other evidence before the inquiry. It is worth highlighting that point. Nowhere in the February 2024 letter, the August 2024 Statement, the April 2025 Rebuttal, Mr Bancroft’s Proof of July 2025, or his further Rebuttal of August 2025, was this point made by the Appellant. No residents have said they have seen HGVs overtaking on the access road with hazard lights on, and the photographic evidence does not support that contention. Indeed, the residents’ experience is one of HGVs careering along the wrong side of the road at frightening speed. Mike Frewer, who lives on Churchfields Road just across from the access road, told the Inquiry on day 1: “*When they see there is a queue, they just overtake. Miracle no one had serious accident there.*

***They don’t hang about****, they think “we’re a bit late, got to get home for tea”.* ***They bomb down the road****. It has got to stop*”. This comment was submitted at the appeal stage *“The staff treat the driveway like a racetrack overtaking people queuing to enter the recycling centre”[[66]](#footnote-66).* There is a further comment from a resident that the Council included within its Opening Statement worth noting: “*I was queuing for the tip last week and in the space of 15 minutes, 7 vehicles of various sizes, crossed to the wrong side, overtook my car and the queue!”*, with the resident going on to say that overall “*This is NOT acceptable or safe and very dangerous”.*

1. In any event, whether or not the flashing hazard lights are on while the overtaking is done, it is submitted that Mr Bancroft cannot be right that this is an acceptable and safe thing to do. Mr Bancroft tried to say that the specific part of the Highway Code referenced by Mr Rastani didn’t in fact apply, but that is, with respect, technical point scoring that overlooks the fundamental point in issue. As explained by Jim Cowan, drivers queuing may open their car doors, decide to queue jump and walk their rubbish in, or children may be on the road collecting a football kicked over the fence from the park. As Mr Cowan said, one cannot account for human behaviour. There is clearly a risk of an HGV colliding with another car or indeed with a person outside of a car by pursuing that manoeuvre.
2. The safety consequences become particularly evident for cars exiting the bays of the RRC, and rejoining the access road. As Mr Bancroft conceded, that exit junction is a blind junction. Cars have no line of sight left or right to check what is on the access road. While the exit is a marked by a Stop sign, and there is an expectation that cars would stop, look, check, and only proceed if the road was clear in both directions, the reality is that there is a risk that drivers will not look properly to their left, on the assumption that they will not expect a large HGV to be driving on the wrong side of the road towards them. It is indeed an appropriate point at which to use the phrase “accident waiting to happen”.
3. The photographic and video evidence shows one example of what the Council characterise as a near miss incident here. This is where Mr Rastani and Mr Cowan both reference a video showing an HGV overtaking the queue by driving on the wrong side of the road, and just after it passes the exit to the RRC, a black car pulls out of that exit.
4. There was discussion at the inquiry about this overtaking manoeuvre and the direction that had been direction to them to stop. In Mr Lawson’s evidence[[67]](#footnote-67), he stated that “i*t is acknowledged that when the site initially opened this did occasionally occur it was quickly remedied by the operator*” . That suggestion is simply not sustainable, given the continued comments about this issue in both the appeal stage representations and from residents at the start of the inquiry, particularly Councillor Jeremy Adams who said this had happened to him on Friday 15 August 2025.
5. The Council maintain the behaviour of Mason’s HGVs on the access road is dangerous. Mr Bancroft seemed to dismiss that the residents perceived the HGVs driving on the wrong side of the road as being dangerous, because that was only their perception, and in his expert opinion, it was not. But that overlooks that fact, as put to him in cross examination, that the criminal offence of dangerous driving is one of perception, of driving far below the standard of what an ordinary driver would perceive to be safe. It clearly matters that residents and Mr Rastani consider the movements of HGV vehicles overtaking the queuing cars to be dangerous.

(e) Historical collision data, and use of the access road

1. Part of the Appellant’s case, so far as it is understood, is that the absence of historical collision data on the access road is supportive that there is no safety issue here[[68]](#footnote-68). When it was put to Mr Bancroft in cross examination that it was not reasonable to rely on historical data when HGV use was a relatively recent intensification, his response was first to say he was not in fact relying on it after all, before then saying he was (“if we were expecting historic accidents, they would have happened by now”). Whichever way the Inspector interprets that evidence, it has not been denied by the Appellant at any stage that the intensification of HGV use is recent. As Mr Cowan said in his evidence, no HGVs used the access road until the Appellant started its operations.
2. Clancy’s vehicles are also presently using the access road. While resident observations have noted that Clancy vehicles predominantly use vans as opposed to HGVs, Mr Cowan’s evidence[[69]](#footnote-69) was that the use of the access road by Clancy will reduce significantly after the current regional infrastructure upgrade project. Mr Cowan concluded[[70]](#footnote-70) on this point that “*at that point thereafter,* *HGVs from the appeal site will account for 100% of HGV activity within the approach road*”. It is not understood that this point was denied by the Appellant in their cross examination of Mr Cowan, and accordingly, the Inspector is invited to accept that fact.

(f) Road Safety Audit

1. Mr Rastani observed[[71]](#footnote-71) that the Appellant’s Road Safety Audit was carried out at a time corresponding with “*with the lowest levels of Masons vehicle activity and minimal school-related pedestrian traffic*”, being done between 10.45 and 11.30am. Mr Bancroft agreed that this was done at the quietest time of the day. When asked in cross examination if there was an obligation that a road safety audit be carried out to reflect the prevailing traffic conditions of concern, Mr Bancroft said no. He said there is no requirement in the guidance of what time an assessment is to be taken. That may be so, but the underlying fact does, as Mr Rastani suggests, undermine the reliability of the Road Safety Audit. The Road Safety Audit Rebuttal[[72]](#footnote-72) provided by the Appellant does not rely on any re-visit to the site during the maximum pedestrian-HGV activity, it simply states it has watched the videos provided by the residents, and is of the view there is no concern.

(g) Healthy Streets Assessment

1. Mr Bancroft had carried out a Healthy Streets Assessment, and relied on it in his Rebuttal. Mr Rastani submitted to the inquiry a document[[73]](#footnote-73) expressing his view was that it did not properly reflect the fact that residents did not feel safe. This was a point also voiced by Emily Kingston, a resident who gave evidence at the Opening of the inquiry, who emphasised its relevant question of whether “People Feel Safe”. Ms Kingston said to the Inquiry: “*The answer to that question for local residents since Masons Scaffolding have started operating, is very much no*”.

(h) Mr Rastani’s change in opinion

1. Mr Rastani was much criticised by the Appellant for changing his opinion between application stage and on appeal. Mr Rastani’s evidence on this point was that he changed his opinion because there was no mention of HGVs in the Appellant’s initial submission documents, the February and August letters, and because it was not clear that HGVs were involved, and that total vehicle movements focused on a total of 7 staff and 20 vehicles. Mr Bancroft agreed in cross examination that there was no mention of HGVs in the February and August letters, and that it was left to presumption. He then agreed that it was not clear that there were references to HGVs in those documents. Given the admission that the documents were unclear, Mr Rastani can hardly be criticised for changing his view when the position was finally set out in the April 2025 Rebuttal explains that there are 20 daily HGV movements and 67 vehicle movements in total. As Mr Rastani said in his evidence, the final number is over 3 times that which had been initially presented.
2. Accordingly, the Inspector can be satisfied that the basis for which Mr Rastani changed his opinion was a reasonable one.

(i) Mitigation

1. The Appellant put forward a Delivery and Service Plan with three proposals, (i) a routing plan; (ii) a restriction on maximum HGV size; and (iii) a restriction on hours. Mr Rastani’s evidence[[74]](#footnote-74) was that this would not overcome the safety issues at the junction and on the access road. Mr Bancroft relied on banksman in his evidence as a method to reduce the harm at the junction. When asked what a banksman would do, Mr Bancroft said it would stop traffic. Mr Cowan explained his concern that a banksman was not entitled to stop vehicles in the road. Taken as a whole, therefore, the Council’s case is that the Appellant has not demonstrated that the detrimental impact can be successfully mitigated and controlled.
2. Ms Daye in her evidence[[75]](#footnote-75) also expressed the point “*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 is a reasonable point to take, given that it was accepted by Mr Bancroft that to remove the risk of HGV child conflict, a condition would be too wide to be reasonable. Indeed, Mr Brown in the Conditions Roundtable expressed that a particular condition would be unfair on the Appellant.

(j) Conclusion on highways safety

1. There are demonstrated safety concerns associated with this junction and the access road. The Council’s case is that these are unacceptable in planning terms. The Appellant’s offers to mitigate and control do not bring the harms down to an acceptable level. The Inspector is invited to find that the Council’s case on highway safety is sustained and justified.

**Planning balance**

1. Ms Daye gave evidence to say that she attributed weight to the positive benefits associated with the Appeal proposal, and attributed weight to the harms identified with the Appeal proposal. Ms Daye’s opinion[[76]](#footnote-76) was that the harms far outweighed the benefits when assessed against the Development Plan and the policies of the framework as a whole. The Inspector is invited to adopt Ms Daye’s conclusions. While Mr Lawson’s evidence generally has been discussed above, one further point to add is that he was cross examined on the shifting baseline of numbers of staff, and hours of operation that are evident from the application stage documents[[77]](#footnote-77), and the documents now relied upon at the Inquiry[[78]](#footnote-78). He agreed on the importance of providing accurate information, because it mattered in respect of impacts and the planning balance. The shifting baseline point, therefore, does support Ms Daye’s concern about this issue.

**Enforcement Appeal**

1. Further to the Enforcement Roundtable at the Inquiry, the Council are in agreement with the Inspector’s corrections to the Notice. The Inspector has seen the Council’s written submissions about the grounds. The Council agree Ground (e) is no longer in issue given the accepted redrawing of the site at the Enforcement Roundtable. Ground (f) has been dealt with in the above written submissions. For Ground (g), the Council agrees more time can be afforded than was within the Notice.

**Conclusion**

1. The Inspector is invited to dismiss both appeals.

Peter Cruickshank

6 Pump Court

28 August 2025

1. 417 at application stage, and 91 at appeal stage. [↑](#footnote-ref-1)
2. Printed and attached to this Closing Statement [↑](#footnote-ref-2)
3. Printed and attached to this Closing Statement [↑](#footnote-ref-3)
4. Printed and attached to this Closing Statement [↑](#footnote-ref-4)
5. 3P- Caselton O - 1172535 - INTERESTED PARTY.pdf [↑](#footnote-ref-5)
6. 3P- Doyle N - 1172230 - INTERESTED PARTY\_(ATTACHMENT) - Gmail - Comments for Planning Application 24\_00815\_FULL2.pdf [↑](#footnote-ref-6)
7. 3P- Holmes M - 1164538 - INTERESTED PARTY.pdf [↑](#footnote-ref-7)
8. 3P- Patel U - 1173005 - INTERESTED PARTY.pdf [↑](#footnote-ref-8)
9. 3P- Robson-Greenaway S - 1172380 - INTERESTED PARTY.pdf [↑](#footnote-ref-9)
10. 3P- sutcliffe j - 1172509 - INTERESTED PARTY.pdf [↑](#footnote-ref-10)
11. 3P- Wood V - 1172386 - INTERESTED PARTY.pdf [↑](#footnote-ref-11)
12. 3P1- Cowling J - 1164605 - INTERESTED PARTY.pdf [↑](#footnote-ref-12)
13. 3P1- Cox-Neale K - 1173313 - INTERESTED PARTY.pdf [↑](#footnote-ref-13)
14. 3P1- Reuvany A - 1173016 - INTERESTED PARTY.pdf [↑](#footnote-ref-14)
15. 3P1- Richings S - 1165292 - INTERESTED PARTY.pdf [↑](#footnote-ref-15)
16. 3P1- Talmage J - 1172415 - INTERESTED PARTY.pdf [↑](#footnote-ref-16)
17. Mr Lawson’s evidence, in examination in chief and in cross examination [↑](#footnote-ref-17)
18. Proof of Evidence para 7.1.3 [↑](#footnote-ref-18)
19. Proof of Evidence, 5.28 [↑](#footnote-ref-19)
20. Proof of Evidence 5.3.4 [↑](#footnote-ref-20)
21. CD9.2 [↑](#footnote-ref-21)
22. In cross examination [↑](#footnote-ref-22)
23. CD14.03 [↑](#footnote-ref-23)
24. CD6.19 [↑](#footnote-ref-24)
25. CD10.7, page 8 [↑](#footnote-ref-25)
26. CD10.08 - “*BS 4142:2014+A1:2029 Methods for rating and assessing industrial and commercial sound”*, see also the Statement of Common Ground on Noise (CD7.04) that BS4142 is an appropriate standard. [↑](#footnote-ref-26)
27. Within BS4142 at CD10.08, Section 3 (“Terms and Definitions”), subsection 3.4 is titled: “background sound level, LA90”. [↑](#footnote-ref-27)
28. CD14.01 page 15, where Mr Fiumicelli also references the relevant Southeastern Rail timetable. [↑](#footnote-ref-28)
29. CD14.01, page 16, para 6.14. [↑](#footnote-ref-29)
30. CD14.01, discussion on page 17. [↑](#footnote-ref-30)
31. CD14.01, para 8.1. [↑](#footnote-ref-31)
32. CD14.01, page 23, para 8.13.1 [↑](#footnote-ref-32)
33. CD10.11, para 2.35 [↑](#footnote-ref-33)
34. CD14.01, page 23, para 8.13.2 [↑](#footnote-ref-34)
35. CD10.11, para 2.37 [↑](#footnote-ref-35)
36. CD8.3, para 5.7 [↑](#footnote-ref-36)
37. CD10.11, para 2.39 [↑](#footnote-ref-37)
38. CD8.3, pages 16-20 [↑](#footnote-ref-38)
39. CD8.3, page 17, Figure 6.3 [↑](#footnote-ref-39)
40. CD14.01, page 24, para 9.2 [↑](#footnote-ref-40)
41. In particular page 26, Figures 3-6, CD10.01 [↑](#footnote-ref-41)
42. CD10.11, para 2.49. [↑](#footnote-ref-42)
43. CD14.01 para 10.12, page 30 [↑](#footnote-ref-43)
44. CD10.11, para 2.49 [↑](#footnote-ref-44)
45. Cd14.06 [↑](#footnote-ref-45)
46. CD14.07 [↑](#footnote-ref-46)
47. CD10.01, page 15 [↑](#footnote-ref-47)
48. CD1.05, para 6.3, “*A +3dB penalty for tonal noise emissions has been included*”. [↑](#footnote-ref-48)
49. CD14.01, section 6 [↑](#footnote-ref-49)
50. CD14.01, para 13.2 [↑](#footnote-ref-50)
51. CD14.01: para 13.6, para 6.2. [↑](#footnote-ref-51)
52. CD10.11, paragraph 2.17 onwards. [↑](#footnote-ref-52)
53. CD8.3 [↑](#footnote-ref-53)
54. CD10.11, Figure 4.1, page 14 [↑](#footnote-ref-54)
55. CD14.01, para 13.3 [↑](#footnote-ref-55)
56. CD8.3 Paragraph 6.25 [↑](#footnote-ref-56)
57. Detailed at section 11.3 of his proof, page 31, CD14.01 [↑](#footnote-ref-57)
58. CD14.01, para 11.5, page 31. [↑](#footnote-ref-58)
59. CD10.01 [↑](#footnote-ref-59)
60. Appendix C, CD10.14 [↑](#footnote-ref-60)
61. CD10.14 [↑](#footnote-ref-61)
62. CD10.01, Ms Urbanski proof of evidence, paragraph 1.1 Introduction [↑](#footnote-ref-62)
63. CD11.01, page 30, section 6.10 [↑](#footnote-ref-63)
64. 3P- Doyle N - 1172230 - INTERESTED PARTY\_(ATTACHMENT) - Gmail - Comments for Planning Application 24\_00815\_FULL2.pdf [↑](#footnote-ref-64)
65. CD15.01, page 18 [↑](#footnote-ref-65)
66. 3P1- Richings S - 1165292 - INTERESTED PARTY.pdf [↑](#footnote-ref-66)
67. CD9.1, Proof of Evidence, page 20, para 05.3.16 [↑](#footnote-ref-67)
68. For example, Mr Bancroft’s proof, CD11.01, page 29 and para 6.7. [↑](#footnote-ref-68)
69. CD16.01, section 8 “Clancy Vehicle Movements”, and email attachments. [↑](#footnote-ref-69)
70. CD16.01, para 8.8 [↑](#footnote-ref-70)
71. CD15.01, para 8.7 [↑](#footnote-ref-71)
72. CD11.13 [↑](#footnote-ref-72)
73. ID7 [↑](#footnote-ref-73)
74. CD15.01, page 28 [↑](#footnote-ref-74)
75. CD13.01, para 3.18 [↑](#footnote-ref-75)
76. CD13.01, para 7.5 [↑](#footnote-ref-76)
77. For example, the Application Form CD1.02 [↑](#footnote-ref-77)
78. The Masons Operational Statement, CD9.2 [↑](#footnote-ref-78)