

**APPEALS BY CHURCHFIELDS ROAD BR3 LIMITED**  
**LONDON ELECTRICITY BOARD DEPOT, CHURCHFIELDS ROAD,**  
**BECKENHAM**

**REFERENCES APP/G5180/C/3363900 AND**  
**APP/G5180/W/25/3365514**

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**CLOSING SUBMISSIONS FOR THE APPELLANT**

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**INTRODUCTION/STRUCTURE**

1. It is standard practice at planning inquiries that the evidence and argument should focus on the areas of dispute between the parties. The reasons for that – in particular the need to make best use of Inquiry time – are entirely understandable. In closing, however, it is necessary to stand back from the analysis of what is in dispute, and to view that disagreement in context.
2. In particular, it is widely understood that, when section 38(6) requires applications to be determined “in accordance with the development plan”, the question whether something accords with the development plan has to be answered by reference to the development plan as a whole, and not by asking whether it satisfies each and every policy. It is a question which cannot be answered by focusing only on the policies which are said to be breached.
3. Accordingly, these closing submissions for the Appellant begin with the wider development plan context. They then address four aspects of the way in which the Council has put its case, before turning to the specific reasons for refusal under Appeal B, and the remaining issues under Appeal A.

## THE DEVELOPMENT PLAN CONTEXT

4. As we observed in opening:

- a. It is common ground<sup>1</sup> that the Appeal Site is a “non-designated industrial site” for the purposes of Policies E4<sup>2</sup> and E7<sup>3</sup> of the London Plan, and Policy 83<sup>4</sup> of the Local Plan.
- b. 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<sup>5</sup>: it positively encourages the intensification of their use.<sup>6</sup>

5. In addition:

- a. London Plan Policy GG2<sup>7</sup> stresses the importance of “making the best use of land” and requires those involved in planning (inter alia) to “enable the development of brownfield land” and to “pro-actively explore the potential to intensify the use of land”.
  - b. London Plan Policy D3 (“Optimising site capacity”) requires development to “make the best use of land” by following an approach that “optimises the capacity of sites”. While “optimising” is not the same as “maximising”, Policy D3 provides explicit support for higher density development and “incremental densification” which will make the most efficient use of land.
6. These policies are directly relevant to the Appeal Site which (as can be seen from the aerial photographs dating back to 2003<sup>8</sup>) is a brownfield site which has been significantly underused for more than 20 years. There is, therefore, a strong policy imperative to make better use of it, and to ensure that its intensified use is industrial.

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<sup>1</sup> CD7.01 para 1.6

<sup>2</sup> CD6.07

<sup>3</sup> CD6.08

<sup>4</sup> CD6.15

<sup>5</sup> See Policy 83, para 3 (CD6.15); Policy E4.D (CD6.07); Policy E7.C (CD6.08)

<sup>6</sup> Policy E4.D (CD6.07); Policy ED7.A (CD6.08), Policy 83 first para(CD6.15)

<sup>7</sup> CD6.01

<sup>8</sup> CD12.3

7. In the circumstances, it is unsurprising that Ms Daye not only recognises that there can be no objection to the principle of intensification of the site with an employment generating use,<sup>9</sup> but accepts that this is a positive benefit.<sup>10</sup>
8. That conclusion is important, in the light of the complaints made in the reason for refusal that the Appeal Scheme “represents a significantly more intensive use of the site” which has resulted in additional noise and disturbance “associated with the comings and goings to and from the site”. Making a more intensive use of the site is fully supported by policy, and it is difficult to see how this could be achieved without an increase in the “comings and goings” associated with that use. Moreover, in terms where policy requires the retention of the Appeal Site for an industrial use which does not pose problems for the future operation of the RRC,<sup>11</sup> those “comings and goings” will necessarily be of the kind associated with such a use.

#### FOUR OBSERVATIONS ON THE COUNCIL’S CASE, AS IT HAS BEEN PRESENTED

9. First, Ms Daye argues that there are other industrial uses which she considers would be more suitable ways of intensifying the use of the site. In particular, she refers to light industrial (former Class B1(c)) uses and “low cost industrial and related space for micro, small and medium-sized enterprises”.<sup>12</sup> Conversely, she also suggests that there are other locations (such as a SIL or LSIS) which would be better suited to a scaffold yard.<sup>13</sup>
10. The short answer to both these points is that, as Ms Daye accepts,<sup>14</sup> applying the well-known *Mt Cook* principles<sup>15</sup>, if the proposed use of the site is acceptable in planning terms, neither the fact that the Council might prefer to see some other use on the Appeal Site nor the possibility that there might be a more suitable site for Masons is

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<sup>9</sup> CD13.01 para 3.6

<sup>10</sup> CD13.01 para 6.19

<sup>11</sup> The RRC is a Safeguarded Waste Site in the Bromley Local Plan. Any proposal for development adjoining it would need to respect the “Agent of Change” principle in Policies D13 and D14 of the London Plan (CD6.05, 6.06)

<sup>12</sup> CD13.01 para 3.10

<sup>13</sup> CD13.01

<sup>14</sup> Daye x-exam

<sup>15</sup> *R (o.a.o. Mt Cook Land Ltd) v. Westminster City Council* [2003] EWCA Civ 1346

relevant. Moreover, in considering them, we draw your attention to what the Council is itself doing on the adjoining site. On any analysis, the RRC is not a B1(c) use, or remotely like any of the uses Ms Daye suggests would be better suited to the surrounding area. It is difficult to see why similar uses should not be acceptable on the Appeal Site.

11. Second, throughout his presentation of the Council's case, Mr Cruickshank has made repeated reference to local resident's "lived experience" and to their perceptions and fears. At times, it has been difficult to avoid the impression that the entirety of the Council's case now depends on the argument that residents amenity is affected simply because they perceive this is the case, irrespective of whether that perception is objectively justified.
12. It is no part of these submissions to suggest that the views and evidence of local residents are irrelevant, but it is important to understand where and how that evidence fits within the planning framework. Whether or not we like it, we live on a crowded island where space is at a premium, and the only way in which the planning system can accommodate society's competing needs is to recognise the need for compromise. Those pressures are even more pronounced in London, and are at the heart of the London Plan focus on making more efficient use of land.<sup>16</sup> It is the role of planning policy to tell us how and where those compromises need to be struck. People may disagree with what policy tells us, and that disagreement may be rooted in a genuine disagreement with the way the balance is struck, or a perception of harm or even fear of the consequences, but the planning system needs to hold the ring between those disagreements, perceptions and fears, and the wider needs of society. Hence, in this case:
  - a. Both national and development plan policies on noise draw a clear distinction between "significant adverse noise impacts on health and quality of life"<sup>17</sup> which is to be avoided, and lesser adverse impacts which are to be minimised

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<sup>16</sup> See generally para 1.2.1 of the London Plan (CD6.01) and (with particular regard to industrial land) paras 6.1.21-6.1.23 of the Local Plan (CD6.15)

<sup>17</sup> See NPPF para 198; Policy D14.A(1) (CD6.06); NPSE para 2.23 (CD10.05);

and mitigated, as far as possible.<sup>18</sup> They also recognise the importance of potentially noisy and nuisance-generating uses in the London economy and the need to protect places where such uses can operate.<sup>19</sup> It is therefore noteworthy that it is common ground<sup>20</sup> that the NPPF and development plan policy references to “significant adverse noise impacts” correspond with what the NPSE<sup>21</sup> refers to as SOAEL; and that in assessing this we should<sup>22</sup> have regard to the methodology in BS4142,<sup>23</sup> which tells us that SOAEL is reached at “around a +10dB or more” difference between background noise levels and the noise which the development is predicted to make. Below these levels, if – despite having mitigated and minimised the impact as far as possible – there is a residual adverse effect, policy tells us this is acceptable, notwithstanding the fact that local residents will still perceive the difference, may be aggrieved by it, and may feel that the +10dB threshold is too high.

- b. In the context of the Council’s highway objection, we have all experienced the frustration of sitting in traffic queues, and can understand local residents’ objections to anything which threatens to make current congestion on their doorstep worse. However, para 116 of the NPPF tells us that it is only at the point when the impacts are “severe” that the planning response should be to refuse permission. Local residents may disagree, but those views carry little weight when it comes to decision-making. Similar principles apply to the perception of a risk to highway safety.

13. In the circumstances, while the first-hand evidence of local residents concerning specific events may be relevant to the question whether the noise impacts of the appeal scheme reach the level of SOAEL, or whether the HGV movements are unsafe or congestion is severe, their perception of the answer to those questions is not a substitute for objective analysis.

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<sup>18</sup> See NPPF para 198; Policy D13.C and E (CD6.05); Policy D14.A(3) (CD6.06); Policy 119 first para (CD6.15); NPSE para 2.24 (CD10.05)

<sup>19</sup> Policy D13.B (CD6.05)

<sup>20</sup> DF x-exam

<sup>21</sup> CD10.05 para 2.19-2.23

<sup>22</sup> See Local Plan para 7.0.47 (CD6.16); Bromley Noise Technical Guidance p. 12 (CD10.07)

<sup>23</sup> CD10.08 Section 11

14. Third, in the context of the Council's case on highway safety, both Mr Rastani and Mr Cowan have placed considerable emphasis on the risks associated with the possibility that other drivers, not connected with the Appeal Scheme, might behave in a manner which is unsafe and contrary to the Highway Code. We return to this in our response to the highways objection, but pause at this stage to say this not a tenable basis for making planning decisions.
15. Fourth, the Council has placed significant reliance on its argument the harms which they allege cannot be addressed by condition, because Masons' own conduct demonstrates that the conditions which we have proposed are unworkable and/or that Masons cannot be relied upon to adhere to them. As to this, we make the following comments:
- a. It is fundamentally unfair to say that Masons has had no regard to local concerns in the way it operates. Its decision, for example, to post a banksman at the junction with Churchfields Road at peak school pick up time is a clear indication that has taken local residents' views on board.
  - b. Beyond this, however, Masons operations are not currently governed or controlled by any conditions, there are no clear rules to which they should be working, and there is considerable disagreement as to whether particular rules are necessary, or (if they are necessary) exactly what they should stipulate. In the circumstances, it is unsurprising that Masons operations have gone beyond some of the conditions now being proposed. It does not follow from this that, if conditions were imposed, Masons would not be able to work within them.
  - c. It is a well-established principle of planning that permission should not be refused if the reason for that refusal could be addressed by condition. In the present case, we suggest that all of the Council's concerns can be addressed in this way; that the conditions we propose are not unusual; and that they are all enforceable. That being so, this Inquiry should proceed on the basis that the Council will take enforcement action if necessary.

- d. As Mr Lawson has explained,<sup>24</sup> the conditions we propose have been arrived at following discussions with Masons. If (as the Council argues) there is any tension between those conditions and Masons' optimal business model, the risks which flow from that are risks which rest with Masons/the Appellant. That is not a reason for refusing to impose the condition, still less a reason for refusal.

## **APPEAL B**

16. As we noted in opening, the Council's single reason for refusal breaks down into the two broad issues set out in the Inspector's Pre-CMC Note<sup>25</sup>, 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.

## **Noise**

17. We have already touched on the policy framework for consideration of this issue. In simple terms, the key point is that both national and development plan policy distinguish between "significant adverse impacts on health and the quality of life", which are to be avoided, and impacts which fall below this level, which should be mitigated and reduced to a minimum. For these purposes, "Significant adverse impacts" equate to SOAEL, which BS4142 tells us is reached when the difference between background noise and predicted (or measured) noise levels (adjusted for acoustic character) is "around +10dB", depending on context. Differences of around +5dB equate to LOAEL, i.e. the lowest observed adverse effect. By definition,

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<sup>24</sup> TL in chief, and TL x-exam

<sup>25</sup> CD5.05

anything which is below LOAEL is not observable and therefore cannot be materially harmful.

18. Against that backdrop, we start by emphasising the narrow ambit of the Council's objection. Although Mr Fiumicelli makes various criticisms of the WIE Report, the results of which are set out in his Tables 9 and 10,<sup>26</sup> in x-exam he accepted that the only two respects in which he identified "significant adverse impacts" were:

- a. As a result of yard operations with pole cutting, as experienced in the rear gardens of residents on Clock House Road;
- b. As a result of the noise from HGVs exiting the access road onto Churchfields Road between 0630 and 0700.

19. As regards the other impacts shown on Tables 9 and 10, Mr Fiumicelli accepts that:

- a. There is no issue at either Churchfields Road or Clock House Road associated with operations during the weekend.
- b. At Churchfields Road, there is no issue with yard operations (with or without pole cutting) between 0700 and 1830. In this regard, Mr Fiumicelli accepted that it was reasonable to replace the background sound levels which he had used for Churchfields Road with the measurements taken by WIE and that if this was done, the level difference reduced by +5dB. This would take it down to NOEL without pole cutting and to  $\leq$ LOAEL with pole cutting. Having stood on Churchfields Road for some time and experienced the general noise environment there (in particular, passing traffic and noise from the RRC) the Inspector will understand the reasons behind this.
- c. Aside from the noise of HGVs as they pass the properties on Churchfields Road, there is no issue at either Churchfields Road or Clockhouse Road with operations on site between 0630 and 0700.

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<sup>26</sup> CD14.01 pp 28-29



- d. The impact of Out of Hours Movements on residents at Clock House Road was  $\leq$ LOAEL.
  - e. Only at Clock House Road was the impact of yard operations without pole cutting between LOAEL and SOAEL, but even here it was below the level of “significant harm”. That conclusion is obviously right, given Mr Fiumicelli’s conclusion that the level difference in this regard is +7dB: 7dB is nearer to +5dB (LOAEL) than it is to +10dB (SOAEL); and Mr Fiumicelli recognises that, whereas the +2dB difference between +5dB and +7dB would not be noticeable, a +3dB increase (e.g. from +7dB to +10dB) would be. Consequently, +7dB is either “around LOAEL” or somewhere between LOAEL and SOAEL, but cannot possibly be regarded as “around SOAEL”.
20. If these points are fed into the policy framework, it is apparent that the Council’s noise complaint boils down to three short points:
- a. Whether the Appellant has sought to minimise and mitigate the impact of yard operations without pole cutting on residents at Clock House Road;
  - b. The impact of pole cutting on residents at Clock House Road
  - c. The impact of HGV movements between 0630 and 0700 on residents at Churchfields Road.

*Yard operations without pole cutting: Clock House Road*

21. Even if the RBA figures in Mr Fiumicelli’s Table 9 are correct, it follows from the above (and Mr Fiumicelli accepts) that yard operations without pole cutting are not in the territory of “significant adverse impacts” which need to be avoided, but are at a level where policy tells us they should be minimised and mitigated as far as possible. Critically, this includes the Council’s concerns about the clanking of metal poles because (as Mr Fiumicelli acknowledged)<sup>27</sup> the BS4142 methodology includes within

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<sup>27</sup> Fiumicelli x-exam

in it the corrections for the impulsive and intermittent nature of this element of yard operations.

22. In the Appellant's submission, the Appeal Scheme satisfies the requirement to minimise and mitigate impacts as far as possible. As Ms Urbanski and Mr Lawson have explained, the Masons yard has been deliberately laid out so that the main areas of activity – i.e. loading and unloading – are located within the centre and northern part of the site, as far away from Clock House Road as possible, with quieter operations such as the offices located near the boundary, and storage areas in places where they can operate as a partial barrier to noise escaping. Noise within the site has been reduced by the use of electric forklift trucks, which do not have reversing beepers, and the palletised system under which poles are loaded and unloaded on stillages wherever possible. Hours of operation have been chosen to overlap or coincide with the operation of the RRC.
23. Significantly, aside from suggesting that it should not operate at all, the Council has not suggested that there is anything more which Masons could do to reduce the residual impact. Consequently, as regards yard operations without pole cutting, London Plan Policies D13C, E and D14A(3), Local Plan Policy 119 and para 198 or the NPPF are all satisfied.
24. Critically, this conclusion follows even if Mr Fiumicelli's Table 9 figures and overall classification are correct. In the circumstances, it is not strictly necessary to address the disagreements between him and Ms Urbanski in this regard. However, similar issues arise in relation to yard operations with pole-cutting and so, for completeness, however, we note that:
- a. A key contributing factor to the level differences on which Mr Fiumicelli relies is his use of a background sound level (based on measurements taken in a rear garden at Clock House Road) which is 3dB lower than the figure used by WIE. While Ms Urbanski accepts the use of this lower figure in relation to the ground floor at Clock House Road, she does not consider it is representative of background noise at first or second floor, which do not benefit from the attenuation provided by the railway embankment and garden

fence. In this regard, she notes that Mr Fiumicelli has himself relied on the fact that the railway embankment will not attenuate sound from Masons yard above ground floor, and considers a difference of +3dB is appropriate.<sup>28</sup> Since, as Ms Urbanski points out, the rear gardens of properties on Clock House Road are screened from activity on Clock House Road by the dwellings themselves, the majority of the background noise in those gardens will be attributable to the RRC, the school, the playground and movements on Churchfields Road, and should therefore be subject to a similar adjustment;

- b. Mr Fiumicelli has increased predicted sound levels by an additional +1dB for reasons which relate either to barrier correction or the modelling of operational times. While, as Ms Urbanski indicates, a difference of  $\pm 1$ dB is not significant, she disagrees with both these corrections, on the bases that:
  - i. The RRC wall at the eastern boundary of the site is shielded from operations within the yard by the scaffold storage area, which will disperse sound both as it moves towards the wall and as it returns from it. The allowance for reflectivity is therefore not justified.
  - ii. Mr Fiumicelli's correction for operational times would effectively assume that all activities undertaken on the site were undertaken at the same time, all of the time, which is simply not realistic.
- c. If points (a) and (b) above are added together, the result would be a reduction in level difference (at first floor and above) of 4dB, which would place the impact at  $\leq$ LOAEL.
- d. In any event, as Mr Fiumicelli acknowledged, his classification of the impact as shown on his Table 9 is based simply on the level difference, and makes no allowance for context. Although Mr Fiumicelli says he has taken context into account, there is nowhere else in his proof where that analysis can be seen (at least, not in those terms, or in a manner which relates it to the rows and columns on Table 9). This omission is telling, given the clear statements in

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<sup>28</sup> See CD14.1 paras 8.5, 9.2 and 9.3

BS4142<sup>29</sup> that a conclusion on the classification of impacts depends on both the mathematical level difference and context, and that it is “essential to place the sound in context”. As Ms Urbanski says, context is an integral part of a BS4142 assessment.

- e. For the reasons given by Ms Urbanski<sup>30</sup>, if context is applied, the impact is  $\leq$ LOAEL.
- f. Mr Fiumicelli disagrees with Ms Urbanski’s reference to ambient noise levels as part of the context, because he considers it is affected by train noise which he describes as short term and intermittent, and does not regard as part of the acoustic climate.<sup>31</sup> However:
  - i. Train noise may not be present all the time, but there are up to 8 trains an hour, the noise from which is discernible for between 25 and 45 seconds (amounting to between 5 and 11.25% of the time<sup>32</sup>) and trains are responsible for the  $L_{Amax}$  at properties in Clock House Road.<sup>33</sup> It is unrealistic to say that they are not part of the context;
  - ii. In any event, Ms Urbanski’s conclusions on context do not rest on ambient noise alone: she has also had regard to absolute noise levels which, as she points out, remain low (and well below the WHO guideline level of  $\leq 50-55$ dB  $L_{Aeq,T}$  for rear gardens<sup>34</sup>) even with Masons in operation. Having regard to the WHO guidelines, Masons operations would not even give rise to “moderate annoyance”. Mr Fiumicelli makes no reference to this, even though BS4142 specifically identifies absolute noise as a factor which is relevant to context.

25. In the circumstances, both the RBA level difference and classification in Mr Fiumicelli’s Table 9 overstate that actual impact of yard operations. However, for the

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<sup>29</sup> See CD10.8 section 11

<sup>30</sup> Urbanski Rebuttal (CD10.11) Table 3

<sup>31</sup> CD14.01 para 6.13

<sup>32</sup> CD14.01 Table 6

<sup>33</sup> CD14.01 para 6.11

<sup>34</sup> CD10.4 Table 1, CD10.11 Table 4

reasons set out in paragraphs 21-23 above, the Appellant's case does not depend on this: even if Mr Fiumiceli's figures are correct, yard operations are at worst in the territory where what is required is minimisation and reduction. These additional points simply provide further comfort to the conclusion that yard operations without pole cutting are not a reason for refusal.

*Yard operations with pole-cutting: Clock House Road*

26. As noted above, even with pole-cutting Mr Fiumicelli accepts that yard operations are not a cause for concern at Churchfields Road. The issue here is limited to the impact on Clock House Road.
27. Here, as Mr Fiumicelli's Table 9 shows, the mathematical difference between him and Ms Urbanski is +6dB.<sup>35</sup> As to this, we begin with the points already made at paragraphs 24(a)-(c) above. For the reasons given there, we submit that Mr Fiumicelli's level difference is already 4dB too high, at least above ground level.
28. The reason for the remaining 2dB difference relates to whether or not there should be penalty or correction for tonality. This is a question which BS4142 suggests can be answered by employing a subjective method, an objective method, or what is called "the reference method". Mr Fiumicelli has done the first of these, Ms Urbanski the second. Neither has used the "reference method".
29. In so far as it is necessary to reach a decision on this (see submissions below), Ms Urbanski's evidence on this point should be preferred:
  - a. Although BS4142 recognises the subjective method as an appropriate way of assessing tonality, in this case Mr Fiumicelli has never actually heard pole-cutting as it takes place on site. His assessment is based on experience of metal cutting elsewhere, but we have no way of knowing what equipment was involved, what type of metal was being cut, or what the surroundings were like. In contrast, the Inspector has experienced this on site.

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<sup>35</sup> i.e. IU's level difference of +9dB as compared with DF's +15dB

- b. In contrast, and as Ms Urbanski explains, applying the methodology set out in Annex C of BS4142, the one-third octave measurements clearly demonstrate that there is no tonal element to the pole-cutting.
  - c. Mr Fiumicelli makes no criticism of Ms Urbanski's application of the Annex C methodology. Rather, he contends that the objective method is unreliable, and quotes various publications to that effect. However:
    - i. Notwithstanding those criticisms, the objective method remains part of BS4142, and is still a recognised means of assessing tonality;
    - ii. Ms Urbanski has considered the circumstances in which critics have suggested that the objective method may not be reliable, and concluded that those do not apply in this case.
30. In the circumstances – and to the extent that it is necessary in order to reach a conclusion on the impact of pole cutting - the Appellant submits that a further 2dB should be removed from Mr Fiumicelli's +15db level difference. However, even if that is done, we are still at Ms Urbanski's figure of +9, which she recognises is "around +10dB", and that at ground floor level the level difference will be +12dB, both of which are within the territory of SOAEL (without context).<sup>36</sup>
31. In the Appellant's submission, there are two reasons why this should not be a cause for concern.
32. The first is context. We have already made our submissions on this issue generally, but there is a further factor which is relevant to pole-cutting, namely that it is an activity which happens infrequently – sometimes for up to an hour a week, sometimes not at all – and that when it is happening, it is a series of short sounds lasting c.5 seconds each, separated by the time it takes for the pole-cutter to move the cut pole and bring in a new one. For all of the rest of the week, the impact of yard operations

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<sup>36</sup> It is for this reason that the mathematical differences between Ms Urbanski and Mr Fiumicelli may not be especially important.

will be as assessed under the “without pole-cutting” scenario, which Mr Fiumicelli agrees does not give rise to “significant harm”.

33. This is important, given the indication in the Noise Exposure Hierarchy Table in the PPG<sup>37</sup> that one of the features which distinguishes LOAEL from SOAEL is whether the noise is likely to lead to “small changes in behaviour or attitude” such as “having to close windows for some of the time” (LOAEL), or whether it would cause a “material change in behaviour, attitude or other physiological response” such as “having to keep windows closed most of time” (SOAEL). Given the very limited period of time for which pole-cutting takes place, it is obvious that it falls in the category of LOAEL, rather than SOAEL.
34. The second reason why pole-cutting should not be a concern is because neither Mr Fiumicelli’s nor Ms Urbanski’s level differences make any allowance for mitigation. In this regard, the Inspector will have seen that Masons have already taken steps to mitigate the impact of pole cutting through the installation of the acoustic curtain. Although Mr Fiumicelli is critical of this (describing it as “acoustically transparent”), as Ms Urbanski explains, curtains of this sort are frequently used in industrial workplaces, and the measurements taken by WIE on site indicate that it attenuates the noise by around 10dB. At this level, the noise impact of pole-cutting is no louder than ordinary yard operations.
35. In any event, even if the Inspector concludes that the curtain is inadequate, both Mr Fiumicelli and Ms Urbanski agree that it would be possible to come up with a better solution. Consequently, if this was a concern, it could be addressed by condition. We have suggested three possible ways in which pole-cutting could be controlled by condition. Mr Fiumicelli’s concern that the mitigation might itself amount to “development”, for which planning permission is needed, is addressed by the third possibility, which would prohibit any pole-cutting on the site unless and until suitable mitigation has been put in place.
36. This would mean that the Appellant takes the risk that, if planning permission was needed but was not forthcoming, Masons would not be able to cut poles. However,t

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<sup>37</sup> CD10.6

in circumstances where the site is not visually sensitive, if the wider principle of a scaffold yard is accepted it is difficult to see why permission should not be granted for an enclosed structure in the vicinity of the existing pole cutting area. Certainly, this would not fall foul of the PPG's guidance<sup>38</sup> on the imposition of conditions where there is "no prospect at all" of the condition being satisfied. In any event, that is a risk which the Appellant (and Masons) are willing to take, in which case this is a complete answer to Mr Fiumicelli's concerns about pole-cutting. With mitigation in place, the impact would be no different to that of normal yard operations.

*The Impact of HGV Movements Between 0630 and 0700 on Residents on Churchfields Road*

37. It is common ground that a proportion of Masons' HGVs will leave the site between 0630 and 0700 in the morning. The Council argues that Ms Urbanski has underestimated the impact of this on residents on Churchfields Road by up to 16dB.

38. In responding, we begin with the observations that:

- a. The 16dB figure comes from a comparison between the figure set out in the original WIE Report (64dB, which was based on the impact of vehicles on the access road, some 15m from the properties concerned) and the more recent measurements taken by Ms Urbanski directly outside these properties. Mr Fiumicelli's criticism is therefore an "apples and pears" comparison. As Ms Urbanski pointed out,<sup>39</sup> it was obvious that the noise level would change as the HGV moved out onto Churchfields Road.
- b. The more recent measurements quoted in Mr Fiumicelli's evidence<sup>40</sup> were the  $L_{Amax}$  recorded on Churchfields Road within each 15 minute window. Mr Fiumicelli has assumed that these were all Masons' HGVs, but Ms Urbanski's evidence<sup>41</sup> shows that this is not the case.

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<sup>38</sup> Para reference ID: 21a-009-20140306

<sup>39</sup> IU x-exam

<sup>40</sup> CD14 para 11.3

<sup>41</sup> CD10.11, Table 2 on p. 7



- c. In any event, even at 64dB the noise was sufficient to exceed WHO guidelines for sleep disturbance. Ms Urbanski's point was never that Masons HGVs were not loud, but that their impact had to be assessed in the context of other traffic on Churchfields Road at that time of day. In that regard, table 3 of Ms Urbanski's Rebuttal<sup>42</sup> demonstrates that Masons vehicles are no louder (and, indeed, are often quieter) than other vehicles (including buses) which are on Churchfields Road at the same time of day.
- d. In particular, the Council itself is already placing HGVs on Churchfields Road at the almost exactly the same time of day: as Mr Cowan has indicated, a number of RCVs leave the RRC before 0700 each day. The Council has undertaken no assessment of the noise impact of those movements, or expressed any concern about them.
- e. The normal tool for assessing changes in road traffic noise is the DMRB LA111 Noise and Vibration, using the calculation methodology of the Calculation of Road Traffic Noise,<sup>43</sup> under which even as much as a 25% increase in traffic volumes would only increase noise levels by 1dB, which would be barely perceptible. At around 2.1% of traffic flows on Churchfields Road, the addition of Masons vehicles is well below the level where it could be considered significant.

39. Mr Fiumicelli's response to this is that, even if there are other loud vehicles on the road at the time, the addition of Masons vehicles is likely to increase the risk of sleep disturbance. However, this overlooks the frequency with which other loud vehicles are already passing. WHO Guidelines<sup>44</sup> indicate that ten to fifteen noisy events during an eight-hour night time is enough to cause sleep disturbance. It is therefore noteworthy that - as Ms Urbanski's survey demonstrates - between 0630 and 0645 there is scarcely a minute that goes by without at least one, if not two vehicles passing the properties on Churchfields Road and generating noise at levels which exceed the WHO Guidelines. In other words, existing traffic on Churchfields Road in the 15 minute window from 0630 to 0645 is already at or over the WHO recommendation

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<sup>42</sup> CD11.11

<sup>43</sup> See IU Rebuttal CD11.11 para 2.28

<sup>44</sup> See guidelines at CD11.04

for an entire nighttime. On the basis that the period 0645 to 0700 is unlikely to be any less busy, there will be more than twice the WHO night-time recommendation in a single half hour. That picture would not change, even if, as Mr Cowan suggests might happen, RCV's stop exiting the RRC before 0700. Consequently, anyone who is likely to be disturbed will already be sleeping with their windows closed, and the extent to which Masons vehicles are likely to increase the chances of them being disturbed is minimal.

#### *Summary on Noise*

40. For all of the above reasons, the Inspector is invited to conclude that there would be no unacceptable noise impacts on residential amenity which cannot be addressed by condition.

#### **Highway Safety**

41. It is a matter of record that, when the application was first referred to him, Mr Rastani raised no objection to it, but instead concluded that “there are no design defects contributing to an unsafe environment for road users”; that “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 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. Significantly, as he confirmed in cross-examination, this remained his view even after the case officer raised with him the concerns of local residents, and he had been down to see the site for himself.

42. Despite this, his proof of evidence to this Inquiry raises five concerns relating to:

- a. HGVs needing to cross over the centre line in order to turn from Churchfields Road into the access road;

- b. The absence of a stop line at the junction between the access road and Churchfields Road, and the adequacy of sight lines;
- c. The interaction between HGV's turning into the access road and pedestrians (especially children walking to school);
- d. Queuing on the access road associated with the RRC causes HGVs to overtake, which he suggests gives rise to conflicts with vehicles and pedestrians accessing the RRC;
- e. The impact of traffic associated with the Appeal Scheme on congestion.

43. Mr Rastani seeks to explain his change of position on these issues on the basis that he has since received information which has caused him to change his mind. In the Appellant's submission, that explanation lacks any credibility:

- a. The need for HGVs to cross over the centre line in order to enter the access road was readily apparent from the swept path drawings which accompanied the Transport Statement. Mr Rastani does not regard the swept path drawings which accompany Mr Bancroft's evidence (which show more precisely the type of vehicles used by Masons) show anything materially different.
- b. The absence of a stop line and the adequacy of the visibility splays at the junction between the access road and Churchfields Road are features which should have been readily apparent both from Mr Rastani's initial appraisal of the site via Google Street View<sup>45</sup> and his own site visit.
- c. He was clearly always aware of the fact that the site was adjacent to a school, and that vehicles accessing the site would need to cut across the flow of parents and children during school drop-off and pick up was also plainly obvious, because he suggested a condition to deal with this issue.

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<sup>45</sup> Rastani x-exam

44. Mr Rastani’s answer to this is that, although he was unaware of these things when he wrote his consultation response, he was not originally concerned by them, because he believed the number of vehicle movements associated with the Appeal Scheme would be lower than the 67 movements shown in the Transport Rebuttal<sup>46</sup> which accompanied the Appellant’s Notice of Appeal. He contrasts this with the information set out in the Transport Statement<sup>47</sup> and suggests that the surveyed trips demonstrate more than a tripling in the number of movements. Once again, this argument does not hold water:

- a. The argument that there has been more than a tripling in the number of vehicles is premised on the argument that the Transport Statement referred to a total of 20 movements per day. However, as Mr Rastani recognised, the Transport Statement clearly showed 9 staff members driving to work each morning and leaving each evening (i.e. 18 movements), in addition to 20 operational movements, which were explicitly stated to depart in the morning and return in the evening. Leaving aside the fact that the “tidal flow” of the latter figure was the opposite of that associated with staff, the figure was described as a “maximum worst case number of daily operational vehicle movements” in circumstances where each operational vehicle “typically works on one job per day”. It was therefore as plain as pikestaff that the 20 movements which Mr Rastani now claims represented total vehicular movements were only operational movements, and did not include staff arriving and departing.
- b. In addition to the Transport Statement, Mr Rastani also had the August 2024 Transport Response,<sup>48</sup> which clearly showed a total of 30 movements in just two hours.
- c. Although it is still correct that the Transport Rebuttal showed an increase in total vehicle movements <sup>49</sup>, it also clearly demonstrated that the number of

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<sup>46</sup>CD8.04, Table 4.1

<sup>47</sup> CD1.04

<sup>48</sup> CD2.05

<sup>49</sup> from 38 per day as predicted in the Transport Statement (18 staff and 20 operational) to the 67 shown in the Transport Rebuttal

HGV movements remained at 20 per day<sup>50</sup>, and that the additional movements were all cars. As Mr Rastani is not concerned about cars<sup>51</sup>, and as the Transport Rebuttal showed that the the number of movements recorded in the peak hours was in fact less than had been predicted in Transport Response submitted in August 2024<sup>52</sup> the overall increase could not possibly explain Mr Rastani's change of position.

- d. Mr Rastani's explanation is thus reduced to his claim that, although the 20 operational movements referred to in the Transport Statement were obviously not the total number of movements, he nevertheless did not appreciate that these would all be HGVs. In circumstances where the Transport Statement made it clear that these were the operational vehicles which would be transporting the scaffolding to and from the site, and where it included details of the swept path movements of a 10m rigid "scaffold truck", that explanation is extraordinary. If nothing else, it begs the question why – if Mr Rastani was not certain what an operational vehicle was – he did not ask the question.

45. In the circumstances, there is simply no good or convincing reason for Mr Rastani's *volte face*. It is therefore not surprising that none of the arguments he now presents to the Inquiry stands up to scrutiny. We take them in turn.

*The need for HGVs to cross the centre line in order to enter/exit the access road*

46. It is common ground that, in order to enter or exit the access road, Masons HGVs will need to cross the centre line on both Churchfields Road and the access road. In the Appellant's submission, there is no basis for Mr Rastani's conclusion that this gives rise to an adverse impact on highway safety:

- a. This is the kind of movement seen all over cities such as London, whose streets were laid out before HGVs even existed. Masons' HGVs will almost certainly have to carry out similar manoeuvres at numerous junctions on their way into and out of London each day.

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<sup>50</sup> CD8.04 para 4.12

<sup>51</sup> NR, x-exam

<sup>52</sup> CD2.05 Table 1

- b. Crossing the centre line in this particular location is not unusual, and is the even case for many vehicles which are proceeding straight ahead, and need to align themselves with the single lane “throttle” between the entrance to the school and the HGV entrance to the RRC. This is something the Inspector will have been able to see for herself on the site visit.
- c. It is also a movement which has been carried out in this location for years by LPN vehicles accessing their depot. Similarly, although the Council argues that the wider radii at the entrance to the RRC site remove the need for Veolia’s HGVs to cross centre line, the evidence produced by local residents<sup>53</sup> and Mr Bancroft<sup>54</sup> clearly demonstrates that they do cross it (and the Inspector will have witnessed this for herself). In neither location has this caused any problem.
- d. The swept path drawings clearly demonstrate that this is a corner which Masons vehicles can negotiate in a single movement. The video clips submitted by local residents overwhelmingly show Masons HGVs turning into the access road without difficulty. The Inspector’s site visit will have confirmed this.
- e. It is a movement and a junction layout which is specifically endorsed by the Manual for Streets (“MfS”), para 9.4.11 of which indicates that accepting that larger vehicles occasionally cross into the opposing lane may be preferable to having “generous corner radii”, because (as paras 6.3.12-6.3.13 note) widening the radii means that the pedestrian desire line is deflected, vehicles are encouraged to turn faster, and pedestrians do not have to look further behind to check for turning vehicles. Consequently, if pedestrian safety is the primary concern, the MfS clearly indicates that this is preferable to the use of wider radii, as the Council has done at the HGV entrance to the RRC.

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<sup>53</sup> See ID4.

<sup>54</sup> CD11.11 photo at p. 3

- f. In both his written<sup>55</sup> and oral evidence, Mr Rastani suggests that the guidance in the MfS is not appropriate in this case, but his reasoning on this point is simply wrong:
- i. First, he contends that the Manual for Streets is written primarily for use in residential areas, and is therefore not applicable to the access road, which serves an industrial site. This argument is frankly bizarre, given Mr Cruickshank's statement (in the second sentence of his opening) that "the site is in a residential area of Bromley"<sup>56</sup> and Ms Daye's response (in answer to the very first question put to her in chief) that it was "very important" to recognise that the area was "predominantly residential". The access road itself may serve industrial premises, but when considering the most appropriate junction layout, the character of the area is precisely what MfS is written to address.
  - ii. Second, Mr Rastani contends that para 9.4.11 of the MfS does not apply because it is limited to cases where larger vehicles "occasionally" cross into the opposing lane, whereas Masons' vehicles "routinely"<sup>57</sup> do so. This makes little sense. If a large vehicle cannot negotiate a junction with a smaller radius without crossing over into the opposing lane, that particular vehicle will always need to do this. Mr Rastani therefore quite rightly accepts that the question whether this is "occasional" cannot be answered by reference to that particular vehicle or group of vehicles.<sup>58</sup> It is a question which can only be answered by looking at those movements as a proportion of the number of total vehicles making the turn. In this case, Masons' HGVs make up 20 of 800 or more vehicles using the access road. In the Appellant's submission, 1 in 40 is infrequent enough to be described as "occasional".

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<sup>55</sup> CD15 para 6.13

<sup>56</sup> ID2 para 1

<sup>57</sup> CD15 para 6.13

<sup>58</sup> Rastani x-exam

- g. Mr Cruickshank's attempt, in x-exam of Mr Bancroft, to add to Mr Rastani's reasons for rejecting MfS the point that para 9.4.11 refers to having slightly wider carriageway width instead of tight radii was similarly misconceived. Para 9.4.11 expressly describes greater carriageway widths as a possible alternative to accepting that larger vehicles will need to cross into the opposing lane, without indicating any preference for this. At the Appeal Site, the option of having greater carriageway widths is clearly not available. In those circumstances, MfS not only indicates that having larger vehicles crossing into the opposing lane is acceptable, but that it is positively preferable to wider radii.

47. In summary, the history of movements at this junction, the present day experience of Masons HGV negotiating the corner and the MfS all support the conclusion that there is nothing inherently unsafe about this situation.

*The absence of a controlled junction at the intersection between the access road and Churchfields Road, and the adequacy of visibility at that point*

48. Mr Rastani's suggestion that the absence of a stop-line and/or problems with visibility render the junction between the access road and Churchfields Road unsafe is difficult to comprehend in circumstances where that is an existing layout and where - even without the Appeal Scheme - the junction already accommodates somewhere between around 740 and 870 movements a day.<sup>59</sup> If the absence of a stop line and/or visibility splays was unsafe, one would expect that to be reflected in the accident data, but it is not.

49. In any event, the point is thoroughly bad:

- a. As the Council owns the access road, the absence of a stop line is a matter within its own control: if this is a problem, Mr Cowan could solve it tomorrow

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<sup>59</sup> The figure of 740 is taken from Mr Cowan's estimate of 630 vehicles accessing the RRC (CD16.1 para 4.5) together with the SLR survey of 109 vehicles accessing the LPN site (CD11.1 Table 5.3). The figure of 870 is taken from the total of the 762 average daily trips to the RRC surveyed by SLR in November 2024, and the 109 daily trips to the LPN site (CD11.1, Tables 5.1, 5.2, 5.3 and 5.4).



by sending someone out with a pot of paint, in exactly the same way as was done at the exit from the RRC onto the access road.

- b. As far as visibility is concerned, Mr Rastani accepts<sup>60</sup> that there is an adequate visibility splay at the junction (see also Mr Bancroft's evidence in this regard<sup>61</sup>).
- c. If congestion on Churchfields Road is blocking views along that road, this is less likely to affect a HGV driver (who will be able to see over the line of traffic), but the fact that there is congestion will mean there is no need to see much further than the vehicle which is already moving slowly across the junction.
- d. Mr Rastani's suggestion that a car on Churchfields Road might not be able to see pedestrians on the pavement who were shielded from view by an HGV which was also on Churchfields Road makes similarly little sense: either those pedestrians would cross the access road ahead of the HGV (in which case, they would cease to be at risk from the car behind) or they would come into view as the HGV began to make the turn. Unless the car was also turning into the access road, it would not come into conflict with the pedestrians, and if it was turning, it is inconceivable that it could get to the corner without being in full sight of them.

50. In the Appellant's submission, this is a make-weight argument which is entirely without merit.

*The interaction between HGVs entering the access road and pedestrians on Churchfields Road, especially during school pick-up*

51. In circumstances where most of the Masons vehicles have left well before the morning drop-off, this is only an issue in the afternoons, when they return to the yard. However (and without in any sense belittling the natural concern of parents for the

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<sup>60</sup> Rastani x-exam

<sup>61</sup> CD11.3 Drawing AT-D03

safety of their children) even then there is no objective reason to conclude that this is unsafe:

- a. 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 (which, as the MfS makes clear, has been designed to prioritise the movement of HGVs over pedestrians, rather than the other way around). Despite over 30 years of operations at the LPN site, there is no record of this ever having caused a problem.
- b. The Inspector has herself been on Churchfields Road for a lengthy part of what would ordinarily be the school pick-up period, and noted the very significant amount of time in which there are no Masons HGVs arriving. On any given day, the vast majority of children returning home or going to the park will be unaffected by Masons.
- c. When Masons vehicles do arrive, the video footage submitted by local residents overwhelmingly shows them executing this the during school pick-up without incident, whether or not they are supervised by a banksman.
- d. While Mr Bancroft did not consider a banksman was strictly necessary, he recognised that it would be sensible. In x-exam, Mr Rastani accepted that, if a banksman was present, this movement was safe. The requirement to have a banksman on hand during peak times is a matter which can be secured by condition,<sup>62</sup> and would be a benefit over the existing situation in which this is also school pick-up is the peak time for movements not and out of the LPN site.
- e. With a banksman present, there would be no need for a condition restricting the hours at which vehicles could return to the Masons yard. However, if there were any residual concerns about the adequacy of a banksman, the Appellant would be willing to accept a condition which precludes Mason's

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<sup>62</sup> Masons vehicles are all tracked (see CD9.2) so the banksman could either be sent out "on demand", whenever it was known that a vehicle was returning, or the condition could require one to be present at the junction continuously for a prescribed period.

vehicles accessing the site in the period 3.00 to 3.45, i.e. 15 minutes before the first school children come out, and 20 minutes after the end of the normal school day for other forms. The Council's webcam covering the access road to the RRC means that there is no reason why this condition could not be enforced. While the times suggested would not cover later departures by children taking part in after school activities or after school club, Masons vehicles clearly need to be able to return to the yard at some point in the day, and this is a reasonable balance which focuses on the period in which interaction between schoolchildren and returning vehicles is most likely. In that regard, it is no different to the "lollipop lady" who is there to assist children cross Churchfields Road for an hour after school.

52. In summary, to the extent that there is any concern about the safety of pedestrians during the school pick-up period, it can be addressed by condition. It is not a reason for refusal.

*The interaction between HGVs and other traffic (pedestrian and vehicular) on the access road*

53. The Council's principal concern here relates to the fact that Masons HGVs have been observed overtaking bypassing queues waiting to enter into the RRC by driving on the "wrong side of the road". Mr Rastani and Mr Cowan contend that this gives rise to an unacceptable risk to highway safety.

54. In response, we note as follows:

- a. The movement is one which the Inspector has seen performed, on more than one occasion on the site visit, by Clancy vehicles. It is apparent that it is a frequent occurrence, yet there is no record of any accident occurring as a result.
- b. The only accident which has occurred on the access road to date has been caused by a driver leaving the RRC who failed to look right and collided with an LPN vehicle which had right of way. That has nothing to do with vehicles

overtaking the queue, and the RRC has since taken steps to avoid a repeat by painting a stop line at the exit, and putting up signs telling drivers to look to the right. Although Mr Cowan expresses concern that any increase in the use of the Appeal Site will increase the chances of a similar accident in future, that risk does not depend on whether the additional vehicle is n HGV. It is therefore impossible to reconcile with the Council's acceptance that there is a policy imperative to intensify the use of the Appeal Site.

- c. Contrary to Mr Rastani's suggestion, there is nothing in the Highway Code which prohibits the overtaking manoeuvre. All the Highway Code says is that vehicles should not overtake unless it is safe to do so. In this case, there is nothing unsafe about overtaking: the access road is straight, and drivers (whether of Masons HGVs or Clancy vehicles) have perfect visibility to see whether there is anything coming the other way before commencing the manoeuvre.
- d. Mr Rastani's fear that this might lead to conflict with drivers seeking to exit the RRC ignores the fact that there is a stop line at the exit. Contrary to Mr Cruickshank's insistence that this is a "blind junction" Mr Cowan confirms that the stopline has been positioned at a point where there is visibility (indeed, there would have been little point in providing a stopline if it did not).
- e. Mr Rastani's suggestion that drivers might not look left before turning out asks the Inspector to proceed on the basis that she should assume that visitors to the RRC will drive in a manner which is unsafe and contrary to the Highway Code. Aside from the fact that this cannot be an appropriate basis for decision-making, it ignores Mr Bancroft's point<sup>63</sup> that it would mean drivers were not looking in the direction in which they were travelling, which is inherently unlikely.
- f. In any event, if and so far as this is a problem, it could be addressed by a Vehicle Management Plan under which drivers were instructed not to overtake until they had passed the exit. Although (based on his own experience) Cllr

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<sup>63</sup> JB x-exam

Adams suggests that there is no guarantee that drivers would obey such an instruction, repeated breaches would be caught on the Council's webcam and could be enforced against.

- g. Neither Mr Rastani nor Mr Cowan has suggested there is any possibility of conflict further down the access road, where vehicles are waiting to turn into the RRC. The reasons for that are obvious, given the presence of RRC staff at the entrance who signal vehicles across and direct them to a space within the RRC, as and when one becomes available.

55. As far as the interaction with pedestrians is concerned, although it is unlikely that this would happen there is ample width on the access road for two HGVs to pass and still leave room for a pedestrian. Drivers and pedestrians would both have good visibility of one another. There is therefore no reason to be concerned about the safety of pedestrians, but if there were, that could be addressed by requiring either a properly kerbed pavement, or even a railing to separate pedestrians from vehicular traffic.

### *Congestion*

56. Despite the fact that it is raised in both the Council's Statement of Case<sup>64</sup> and his proof of evidence<sup>65</sup>, in x-exam Mr Rastani accepted that the impact of the appeal scheme on congestion is not a reason for refusal, and that this would remain the case even if the Council decided to dispense with the booking system for the RRC. That concession was obviously correct, given Mr Bancroft's evidence that Mason's vehicles represent only 2% of traffic on Churchfields Road. This could not possibly reach the level of a "severe" impact of the kind which para 116 of the NPPF requires before refusal would be justified.

### *Fear and Perception*

57. For the foregoing reasons, the Appellant submits that there is no objective basis for the Council's concerns about highway safety. This leaves only the question of local

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<sup>64</sup> CD12.01 para 7.6, first bullet

<sup>65</sup> CD15, paras 6.20-6.23

resident's fears and perceptions. In part, we have addressed this in our opening comments about the policy framework. However, the question "how should the planning system respond to the perception of risk in highway safety terms" is addressed by TfL in "Healthy Streets".

58. We point out that this is a document which was first mentioned by Mr Rastani,<sup>66</sup> who suggested that the appeal scheme gave rise to conflict with the criteria in Healthy Streets relating to vulnerable road users. However, Mr Rastani did not himself carry out an assessment under that guidance. Mr Bancroft has now done that, and the outcome<sup>67</sup> is that the Appeal Scheme makes no difference. Mr Rastani's inability to understand how this can be the case, when Masons will be introducing additional traffic, is answered by the simple point that the TfL methodology recognises the need for more than just marginal changes in HGV numbers before there is any discernible impact. In simple terms, the additional traffic generated by Masons does not cross the threshold which would be needed to change the score.

59. In x-exam, Mr Rastani made it clear that he had no criticism of Mr Bancroft's application of the TfL methodology: his complaint was with the methodology itself. However, he cannot have his cake and eat it too: either Healthy Streets is relevant, or it is not, but Mr Rastani cannot cherry pick the bits of the advice which he likes and divorce himself from TfL's methodology for assessing those matters. The Appellant's case does not turn on Mr Bancroft's Healthy Streets assessment, but – if and so far as the guidance is relevant in shedding light on the weight to be attached to the more subjective, amenity-based impacts of the Appeal Scheme - it supports the conclusion that there is no justified reason for refusal.

#### *Miscellaneous Highways Issues*

60. The submissions above address the main areas of concern identified by Mr Rastani. However, the Council pursues a number of subsidiary points. It is difficult to see that these add anything to the points discussed above, but for completeness we deal with them here.

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<sup>66</sup> CD15 para 3.12

<sup>67</sup> CD11.15

### The Temporary Nature of Clancy's Operations from the LPN depot

61. As part of the Appellant's appeal documentation, and in response to the complain that the "additional comings and goings" associated with Masons were unsafe, the Transport Rebuttal<sup>68</sup> provided details of surveys showing the use of the access road by LPN, and noted that the Appeal Scheme generated both less traffic, and fewer HGV movements than the LPN site.
62. In response, Mr Rastani<sup>69</sup> and Mr Cowan<sup>70</sup> have both argued that this is only because the LPN site is currently being used by Clancy's, whose contract for cabling project works is about to end. Mr Cowan contends that, when this happens, Masons will be responsible for 100% of the HGV traffic on the access road. What neither of them explains is how this undermines the point being made in the Transport Rebuttal. In particular:
- a. It is clear that use of the LPN site has ebbed and flowed over the years. Although the Clancy project may be about to end, there is nothing to say that another, similar project may not come along, in which case there is no restriction on the type, size or number of vehicles which can use the LPN depot, nor is there anything to require them to avoid the school pick-up or drop-off periods.
  - b. It overlooks the fundamental point that the Transport Rebuttal demonstrates that the access road is currently accommodating both Masons lorries and the vehicles using the LPN site, without any recorded problem. If, as Mr Cowan suggests, LPN's use of its depot does dwindle to almost nothing, it is self-evident that the proportion of traffic on the access road which is attributable to Masons will increase, but absolute numbers will not. If the access road has operated perfectly satisfactorily with both Clancy and Masons using it, there is no reason to believe this will change if the overall number of vehicles goes down.

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<sup>68</sup> CD8.04 Table 4.3 and paras 4.10-13

<sup>69</sup> CD15 paras 7.14-15

<sup>70</sup> CD16 para 8.8

- c. In this regard, it is also difficult to understand how Mr Cowan's evidence that use of the LPN site will dwindle to nothing sits alongside Mr Cruickshank's point (with which we agree) that it is necessary to consider the cumulative impact of LPN's existing use, and the additional movements generated by Masons.
- d. In any event, where does this argument go? Even if Masons were responsible for 100% of traffic on the access road, how or why would that make matters unsafe? The short answer is that it would not.

#### The Booking System for the RRC

63. Mr Cowan<sup>71</sup> refers to the fact that, although (following the temporary closure of its other RRC at Waldo Road) the Council has introduced a booking system at Churchfields Road, which has reduced problems associated with traffic waiting to get into that site queueing back onto Churchfields Road, there is no certainty that this will remain once Waldo Road reopens.
64. There are various problems with this argument. The first and most obvious is that the problem of queuing back onto Churchfields Road was one which predated the start of operations by Masons, and was therefore patently not caused by their additional vehicles. That being so, if the Council is genuinely concerned about traffic queuing back onto Churchfields Road, it is difficult to see why (having introduced the booking system specifically to prevent this happening) it would now abandon it. Certainly, if it did that, it would not lie in the Council's mouth to complain about Masons vehicles adding to congestion which was already being caused by the operation of the RRC.
65. The second is that Mr Bancroft's assessment of the impact of the Appeal Scheme is not dependent on the existence of the booking system: it has been carried out on the basis of pre-booking system flows on Churchfields Road and the access.

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<sup>71</sup> CD16 para 9.1



66. The third is that Mr Rastani accepts that congestion is not a reason for refusal, irrespective of whether the booking system is in place.

67. In short, this is a point that goes nowhere.

#### The Road Safety Audit (“RSA”)

68. The RSA was produced as part of the Appellant’s appeal documentation because (having never previously raised the point) the Delegated Officer’s Report<sup>72</sup> had commented that “it would be reasonable to request a safety audit” and that “it has been recommended that a road safety audit be undertaken”, before suggesting that “insufficient information has been provided to demonstrate that the use of the site would be acceptable in terms of road safety impact”. Quite how or why the case officer thought it was reasonable to criticise the Appellant for failing to produce something that had never been requested remains a mystery, but the RSA was appended to the Notice of Appeal to plug that gap.

69. Mr Rastani is critical of the RSA for various reasons<sup>73</sup>, to which Gateway have provided a full and comprehensive response,<sup>74</sup> the key points of which are summarised in Mr Bancroft’s Rebuttal.<sup>75</sup> In particular:

- a. It is common ground that there is no policy requirement for a RSA in this case. It is a little odd to criticise the Appellant for something that is not even necessary.
- b. Although Mr Rastani is critical of the fact that the RSA is only a Stage 1 audit, this is the most appropriate stage in cases where no physical changes to the road layout are proposed. Stage 2 takes place on detailed design and Stages 3 and 4 are post construction. In the present case, there is no design to assess at Stage 2, and nothing to construct.

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<sup>72</sup> CD3.3 p8

<sup>73</sup> CD15 Section 8

<sup>74</sup> CD11.13

<sup>75</sup> CD11.11 Section 3

- c. It is unreasonable to criticise the use of CrashMap, or to imply that damage-only collisions are routinely relied upon to determine whether a given road environment is safe. This was not the approach taken by Mr Rastani in his initial review of the Transport Statement, and there is no support for it in the PPG.<sup>76</sup>
- d. The junction radii are appropriate in policy terms, particularly in the context of the MfS;
- e. Mr Rastani's suggestion that congestion is linked to road safety issues is incorrect, given that congestion often creates a safer environment by slowing vehicles.
- f. The video evidence provided by local residents demonstrates that all road user interactions take place safely, and thus supports the findings of the RSA;
- g. Mr Rastani's complaint that the RSA was carried out at a time which was not the peak school hour is surprising, given that Mr Rastani's own site visit was carried out at a similar time. It asks the Inspector to conclude that a qualified and experienced consultancy which was aware of the presence of the school was unable to imagine what the situation would be like during the school pick-up period. That is highly unlikely. In this regard, RSA's position is no different to that of the Inspector, who has only seen the site out of term time, but is still perfectly capable of appreciating what is in issue.
- h. In any event, in the light of Mr Rastani's criticisms, Mr Bancroft has commissioned Gateway to carry out a Risk Assessment, which comes to much the same conclusions.

70. The Appellant's case on highway safety, as presented to this Inquiry, is not dependent on the RSA or the Risk Assessment: its primary evidence is that presented by Mr Bancroft. Nonetheless, it is relevant that the RSA was prepared by independent

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<sup>76</sup> The relevant passages from which are quoted by JB in his rebuttal CD11.11 para 2.16-17

consultants with considerable experience in these matters, and fully supports Mr Bancroft's conclusions on each of the safety issues raised by Mr Rastani.

### *Conclusions on Highway Safety*

71. At the end of the day, we are talking about an additional 10 HGV going into the appeal site, and 10 leaving, each day. As Mr Bancroft observed,<sup>77</sup> "it's a very low number". Mr Rastani was entirely right in his original conclusion that it gives rise to no unacceptable impact on highway safety.

### **Conclusions on Appeal B**

72. For all the above reasons, the Appellant submits that:

- a. The Appeal Scheme does not cause significant adverse noise impacts which need to be avoided;
- b. To the extent that the Appeal Scheme causes adverse noise impacts which are below the threshold of "significant", it has sought to minimise and mitigate these. If further mitigation is required (for example, in relation to pole-cutting) this can be secured by condition;
- c. The Appeal Scheme does not have an adverse effect on highway safety, nor will it come anywhere near the level of causing "severe" congestion;
- d. In the circumstances, there is no material conflict with any of the development plan policies dealing with noise or highway safety;
- e. All the other relevant development plan policies are entirely supportive of the intensification of industrial uses on this brownfield site;
- f. The Appeal Scheme therefore accords with the development plan as a whole;

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<sup>77</sup> JB x-exam

- g. There are no material considerations which would justify a determination which is other than in accordance with the development plan;
- h. Appeal B should therefore be allowed, and planning permission granted.

## **APPEAL A**

73. If Appeal B is allowed, Appeal A will become largely academic. Moreover, following the roundtable session, there is substantially greater agreement on how the remaining issues under Appeal A should be addressed. In particular:

- a. It is now common ground that the EN should be amended to exclude the LPN depot, with consequential changes to the description of the breach.
- b. If that is done, this would address the prejudice caused by the Council's failure to serve the EN on LPN.
- c. In the Appellant's submission, this means the ground (e) appeal should succeed, to the extent outlined in (a) above;
- d. Although the ground (f) appeal is not withdrawn, the Appellant accepts that it adds nothing to Appeal B.

74. In the circumstances, the only substantive issue which is still in dispute is the ground (g) appeal. Here, as we observed in opening, the Council now accepts that the three months allowed in the EN is too short, and suggests that it should be extended to 6 months. While grateful for this, the Appellant submits 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 out and transfer operations to suitable alternative premises. A period of only 6 months would therefore require Masons to cease trading.

75. 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,<sup>78</sup> who would be out of a job;

76. Having regard to Masons' previous experience of relocation<sup>79</sup> 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

77. In summary, the Appellant's primary case is and remains 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.

78. If that argument is not accepted, 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 local employer which provides an important service to

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<sup>78</sup> See CD9.02 p.2

<sup>79</sup> CD9.03

London's construction industry is not needlessly forced into closure.

**PAUL BROWN K.C.**

**28 August 2025**

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