

**FERME PARK DEPOT
CRANFORD WAY INDUSTRIAL ESTATE HORNSEY N8 9DG.**

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT.

Introduction.

1. This application is for an employment use on an estate which has specifically been identified as appropriate for industry within the adopted and emerging development plan.
2. The noise and dust concerns about the proposed plant are illusory when the actual evidence is explored. On no sensible construction of any of the relevant standards does the proposal give rise to demonstrable harm.
3. The traffic generation characteristics of the proposal are entirely consistent with the use of the site as an industrial estate. In terms of harm to the amenity of residents, the additional numbers of vehicles generated does not come close to generating material harm, indeed the level of generation which can be controlled by condition falls below the levels at which even its materiality as a legitimate consideration is in doubt having regard to the existing patterns of traffic flow.
4. The proposition that if this consent is granted, there will be an exodus of employers from the industrial estate does not bear rational scrutiny. It is a bad point which appears to derive more from misconception and self interest than from any logical consideration of the impacts of the proposal.
5. The public objection to this proposal has been very significant. Surprisingly significant given the nature of the evidence which was before the local planning authority.

6. I have in 20 years at the Planning Bar not experienced such a level of objection to a proposal which was accepted by the local planning authority to be consistent in principle with the land use allocation for the site in the Development Plan.
7. Neither have I experienced such a degree of passionate and honestly held opinion which has been based on a misinterpretation and/or misrepresentation of the evidence.
8. I have no hesitation in saying that whatever the result of this appeal on its merits, the amenity of many of those that spoke passionately at the inquiry will be touched far more by the campaign against the proposal than ever it could be by any impact of the proposal.
9. The genuine distress evinced at the inquiry by objectors who live many hundreds of metres away from the proposal and could not conceivably be materially affected by the batching plant did no credit to the exaggerated nature of much of the objection to the proposal.
10. Parliament has put an appeal system in place precisely to deal with circumstances such as this. The appeal falls to be determined on the evidence and its merits.
11. I shall therefore in this closing concentrate on these matters. I do not propose to spend much time on issues which have exercised many members of the public in a major and understandable way but which have absolutely no foundation in fact. But it is correct that I set out for the record at least that:
 - a. The proposal is not for a cement producing factory, or any other type of factory.
 - b. The appellant has not identified a dust dispersion area within which harmful and carcinogenic dust clouds will range. Neither has any other expert witness who has examined the proposal.

- c. The appellant has never identified the fact that the application promotes an operation running at 50% and will seek to increase the capacity to 100% in due course. The operation will and can be carefully controlled by condition.
 - d. The application site does not as a matter of fact impinge on any nature conservation designation.
12. I said in opening that the case could, consistent with other decisions in relation to similar operations, be reduced to two broad propositions. I shall now return to those propositions in closing.

Proposition One.

The proposal to create a rail served concrete batching plant in this part of London is in principle, entirely in accord with all levels of policy advice.

Introduction.

13. This proposition does not appear to be in serious dispute. Certainly on behalf of the local planning authority, Mr Gurtler was able to accept that each and every limb of policy support for a proposal of this nature set out by Mr was applicable and weighted in favour of the grant of consent in the absence of demonstrable land use planning harms.
14. In these circumstances, I can limit myself in closing to a brief rehearsal of the key policy issues. The weight of support which derives from these policies should not however be underplayed.
15. Their place in the decision making process is a profound one. This is because a proposal which is capable of being so sustainable and consistent with policy should only be set aside if the scheme's advantages are clearly outweighed by the alleged impacts of the proposal.

Compliance with Policies on movement of material by rail.

Facts.

16. In a case which has spent significant time on the alleged harmful impacts of lorry movements as a general proposition, it is as well to remember that the overall effect of this proposal will be to **reduce** very significantly the overall number of lorry movements associated with development both within the local highway framework and generally.
17. London is to grow significantly over the next 10 years. Haringey is to play its significant part in such growth. Both the draft sub-regional framework and the emerging local plan identify very significant areas of the borough within which housing and employment development will play their part in making London an exemplary sustainable, growing world city.
[See Woolner in chief and extracts from the London Plan Woolner 21]
18. There is at present no concrete batching facility in the borough. Neither is the provision of facilities surrounding the borough extensive. As a general proposition, where concrete is needed within the borough it is required to be brought in from outwith the borough by lorry.
[See Woolner appendices for plan showing existing absence of provision]
19. Although the borough boundaries are neither significant land-use planning barriers nor necessary definers of a market by themselves, there is a clear and incontrovertible case to be made that the proposal in placing a facility of the type proposed where presently there is none will significantly reduce the need to haul and by road in the area and generally.
20. Yet further those sites which do presently serve the borough are predominantly road based both in terms of aggregate and cement deliveries.

21. The proposal allows for all deliveries to the plant to be made by rail. In terms of aggregate deliveries, this can be affected immediately. In terms of cement deliveries, the location is best placed to allow for the acceptance of deliveries by rail when such deliveries become a realistic option.

22. It is impossible at an inquiry of this nature to seek accurately to quantify numerically the benefits associated with this sustainable use of rail transport. Suffice it to say that many thousands of lorry movements will be saved as a result of the proposal. Other lorry movements will be significantly reduced in distance.

23. Despite some unsubstantiated assertions to the contrary, **not one** alternative site upon which this based provision might be made to serve the locality was identified by the local planning authority or by any objector. Certainly there is no scope for another site so well served by rail to meet the need.

[Gurtlers assertion in proof that there were other sites was not maintained in XX he
accepted he had identified none.]

24. Thus, there is a clear need for a facility of the type identified. Its provision by itself will save thousands of lorry movements and hundreds of thousands of lorry miles.

National Policy.

25. The proposal is on all fours with relevant and up-to date national advice in this regard. Mr Woolner sets out the clear nature of this advice in his proof. I needn't repeat it all here. Highlights include:

- a. Para 45 of PPG 13 which advises that land use planning can help to promote sustainable development including where feasible, the movement of freight by rail.
 - b. Statement to Parliament by Secretary of State for Transport July 2005 which confirms that “Our clear policy aim is to see goods being moved in a sustainable way.. We believe rail therefore has a crucial role to play in goods transport.. and we wish to see freight travelling by rail instead of road wherever this makes more sense.
 - c. MPG 6 Para 93, which provides that “the effect of the heavy goods vehicles used to move aggregates is often a major concern to the local community. Where possible, consideration should be given to the movement of material by rail as this can offer environmental advantages.
26. The position of these national policy imperatives in favour of rail in the planning balance was specifically addressed by the Minister, who reminded planning decision makers that although it was not appropriate for the Government to promote individual schemes, **“the Government does want due account to be taken of our policy goals for the sustainable movement of goods.”**

The London Plan

27. This position is reflected in the London Plan, the strategic limb of the development plan for the purposes of s 54A and s 38 of the relevant Acts.
28. Again the policies relevant are set out in Mr Woolner's evidence and were not the subject of serious challenge as to their applicability.
29. The main policies relevant are:
- a. Policy 3C.24 seeks to ensure that “suitable sites and facilities are made available to enable the transfer of freight to rail and water through the protection of existing sites and the provision of new sites.”

- b. Para 3.215 reminds us that the Plan seeks to foster a progressive shift of freight from road to more sustainable modes such as rail and water where this is economic and practicable.
- c. Policy 4A.5 specifically relates to the movement of aggregates and provides that UDP policies should “protect existing railhead capacity to handle and process aggregates and minimise the movement of aggregates by road. “ Of course since these policies were drafted the London Plan has itself become part of the development plan, the aims and objectives of these policies are now directly applicable to the circumstances of the case.
- d. The reasoning behind the policy is explained in 4.11-13. It is of particular relevance to the circumstances of this case. It explains that London needs a reliable supply of materials to support high levels of building and transport construction. “The principle of this plan is to support the Government’s Mineral Planning Guidance and the objective of achieving an essential level of supply in the most sustainable fashion. Aggregates are bulky materials and policy should maximize their use and re-use and minimise their movement, especially by road.”

30. The proposal is self evidently in accord with this element of policy.

Local Development Plan policy.

- 31. As one would expect the adopted UDP contains a policy which seeks to protect and encourage new employment uses. EMP 1. As to the locations within which such employment uses are to be sustainably encouraged, the Plan identifies Defined Employment Areas.
- 32. The vast majority of the application site lies within such an area. In such areas priority is given to the sustaining and encouragement of inter alia General Industrial Uses. (EMP 1.3) But this employment area is special in

that uniquely in the borough, it presents an opportunity for an aggregate based industry to be rail fed.

33. The proposal entirely accords therefore with the site specific allocation.
34. The review UDP takes the allocation a little further. The largest part of the site is again identified as a Defined Employment Area, but this time, following advice in the London Plan and an employment land survey, the DEAs are split into 4 types, Strategic Employment Locations, Industrial Locations, Employment Locations and Regeneration Areas. The nature of the consideration which went into identifying which category a site was placed in can be garnered from the careful note prepared for an elected member in the circumstances of this case.
35. The application site is identified as an **Industrial** Location- areas which “are well established industrial areas” where the aim is that the areas “be retained solely for uses that fall within the B1(b) or (c) B2 or B8 use classes.” The plan explains that such areas have been set aside specifically to create a degree of certainty regarding the planning status of a site.
36. This allocation is therefore unambiguous.
37. The proposal is in principle consistent with this allocation.
38. Further, applying the advice in PPS 12 the industrial allocation is to be given very significant weight. The Plan has reached a very advanced stage and there is no duly made objection to the allocation. Neither are there plans to publish proposed modifications to the allocation. In such circumstances the allocation is as a matter of law and policy all but complete. The fact that this application gave rise to a non-duly made objection where previously there had been none by any party at all is not a material consideration of any weight.

39. Against this background, it is pertinent to note that case on behalf of the local planning authority presented to the inquiry by Mr Gurtler proceeded on the misguided basis that the type of use proposed was **in principle inappropriate and unacceptable on this estate**.

[See for example 4.12 Proof]

40. This was not a simple slip or overstatement. It is a proposition and a wholly incorrect proposition that runs through the entire case presented by the authority. It was not sought to be corrected in chief and underlies many of the judgments about the specific acceptability of the development or parts of it.
41. It is significantly more than mere overstatement. It is a fundamental misidentification of the basic policy position.
42. If one starts from the proposition that as a matter of principle a use is inappropriate to a location as a matter of policy, then that obviously colours the way in which all other matters are dealt with in one's analysis. This was the case with Mr Gurtler's analysis which is not to be preferred.

Conclusion.

43. The proposal is entirely in tune with each level of policy provision. It will bring significant sustainability and employment benefits and is supported in principle by the development plan both at London wide and local level.
44. In such circumstances it should only be refused if there is clear evidence that granting consent would result in significant harm to interests of acknowledged importance which outweigh the clear sustainability benefits of the proposal. It is to those issues that I now turn.

Proposition 2

There is no evidence that granting consent would result in significant harm to interests of acknowledged importance which outweigh the benefits of the proposal.

Introduction.

45. In this closing I shall deal with the issues of noise, air quality and dust, impact of the proposal on employment perceptions and traffic.

Noise

46. The issue to be determined in relation to noise is whether there is evidence to establish that the proposal will generate levels of noise which are significantly harmful to interests of acknowledged importance.

47. Two potential areas of concern have been identified. The impact of noise on

- a. Residential amenity of houses in the vicinity of the plant.
- b. Residential amenity of houses and businesses affected by increased traffic movements.

48. I shall deal with each area in turn.

Residential Amenity and plant and other noise.

Introduction

49. Two issues arise under this heading also. First the issue of the noise emitted from the operation of the main batching and loading process. Second, the issue of the noise from the discharge and delivery of aggregates.

Aggregates unloading.

50. On the second issue I can be extremely brief. Although the issue of the noise from the aggregate discharge and delivery mechanisms has never been identified as a relevant or material potential source of annoyance or disturbance by any EHO or noise consultant employed by the it was indicated to be as a potential noise source for the first time in evidence in chief by Mr Fuimicelli on behalf of the council.
51. The identification of this matter as an issue did not last long however. Mr Sharps produced a note which was agreed to by Mr Fuimicelli which establishes that there is no conceivable issue over the noise generated from the aggregate delivery process. The agreed note establishes that the bottom discharge facility would be some 300m from Chattel Court and some 180m from Wightman Road.

[See Agreed Note Doug Sharps Appx J]

52. At these distances, and excluding any screening or attenuation effects, the sound levels at the most relevant premises are agreed to be 31dB and 36dB respectively. These levels are extremely low in absolute terms and fall significantly below even the noise levels associated with the other activity on the site. (see below).
53. At these levels, no relevant standard is breached, no harm can be identified at any relevant receptor. There should be no reason for refusal.
54. The issue relating to the noise from the plant is a little more complex. I now deal with that issue.

Noise from Batching

55. There is a methodological debate between the main parties as to the relevance and applicability of BS 4142 to the proposals. But I needn't spend a disproportionate part of the closing on this debate because, **the**

local planning authority's own evidence, (as corrected for errors) establishes that even applying BS 4142 on its face, results at worst in a position where the noise generated from the proposal is “of marginal significance”.

56. Thus Mr Fuimicelli's original written and considered BS 4142 analysis sought to identify a position where the difference between background and specific rating level was “around 10db” for 5 trucks an hour. (a level which is the equivalent of constant delivery-see Table 6 p35 proof).

57. However, Mr Fuimicelli in executing this BS 4142 assessment had made a computational error. A computational error which is now accepted. That error is now agreed to reduce all relevant figures by 6.5dB.

[See revised and agreed Table 6]

58. The effect of that is to significantly reduce the potential BS 4142 impact identified and relied upon by Mr F. The effect of the accepted correction is set out in the revised Table 6 and shows that the difference between background and rating levels are at most of marginal significance.

59. Let us be clear about this document and its status. It is the formal and correct reworking of the authority's BS 4142 analysis. It is that which was, with error the backbone of the authority's case.

60. This agreed conclusion that the proposal even applying BS 4142 would be of marginal significance has to be weighed against the following factors.

a. The fact that it is accepted that in absolute terms, the impact of the proposals upon any dwelling is well within the guidelines on absolute noise levels. Even at the closest receptor, the noise of the plant element of the proposal would be significantly below the level set by BS 8233.(see Sharps in chief and proof and below)

b. The fact that the site is already significantly affected by train and train noise. (500 trains a day both day and night- see Tiana Harper)

- c. The substantial sustainability benefits which flow from the proposal (see above)
61. I suggested in opening, perhaps a little mischievously, that the realisation of this mathematical error would in all likelihood lead to a series of reformulations and recalculations.
62. I am sorry to say that this suggestion proved prophetic with both Mr Fuimicelli and latterly Mr Maurici seeking to escape the consequences of Mr Fuimicelli's flawed analysis.
63. The suggestions began with wholly inappropriate suggested corrections for façade effects and continued with extreme and grotesque redrafting/reinterpretation of the guidance in BS 4142, to make the figures work for the Council's case.
64. None of these late alterations to the method of calculation are even foreshadowed as appropriate in the written proof or in any other statement by the authority. Neither were they adopted as appropriate by the author of the report to Committee. They are exigencies which the council have been driven to as a result of the state of their own evidence.
65. They should be given little weight. More specifically,
- i. The façade effect issue was adopted by Mr Fuimicelli as the saviour for his arithmetic error. It was suggested that 3db ought to be added to the specific noise level as a result of the façade effect. But as he fairly admitted in XX (on reflection) this doesn't assist him. If this was to be appropriate in methodological terms, one would also have to add 3 dB to the background levels, ensuring that the difference between rating and background noise was unaltered- in this case at an agreed level of marginal significance.
 - ii. The attempt by Mr Maurici to remedy this clear concession should be treated with caution [See xx note Fuimicelli J]

1. It was Mr Maurici's own invention, he made clear it had not even been derived from Mr Fuimicelli- the witness. Mr Fuimicelli did not give evidence on this basis and could not therefore be cross examined on the contents of the note. His evidence on behalf of the authority is now clear and inconsistent with a refusal on BS 4142. (see above and amended Table 6)
2. Mr M assessment relies in the first instance upon back calculating from daily HGV movements of 76 and 106 movements: scenarios which can and will be restricted by the imposition of an appropriate condition.(see below) Even then however the BS 4142 analysis gives a reading of only 6.3 dB, still only of marginal significance and entirely consistent with Mr F revised Table 6) (see Fuimicelli (sic) Appx J for details.)
3. Finally, Mr M is driven to break out of the four corners of BS 4142 in order to achieve a result which is helpful to the council. Thus, sole concentration on any unrepresentative hour and/or adopting 5 minute reference times are grotesque rewritings of the BS. They result in the circumstances of the case in wholly meaningless outcomes. The conclusions of BS 43142 have all been drafted on the basis of the proper application of the Standard. To alter the parameters and yet maintain the ultimate tests of appropriateness is incorrect in principle. This approach is particularly ironic in this case since the reason for refusal relating to noise was specifically drafted upon the basis that the appellant had failed properly to apply BS 4142,

66. Further and in any event, there are dangers in relying solely on BS4142 analyses in the absence of any consideration of the absolute noise levels which are experienced by those receptors who are concerned.

67. In this case, the nearest receptors will at all material times experience noise levels well, well within the absolute standards set for absence of disturbance in the BS 8332 and the World Health Organisation noise standards. This is important but seems to be ignored by the local planning authority.
68. Every single relevant absolute standard is met by a margin. Thus is an agreed position between the parties and should be given very significant weight.

Noise from Drum washing activities.

69. This matter was raised with Mr Casey following the site visit. The issue is whether drum washing activities on the site at the end of the working day are likely to give rise to complaints by reason of noise in the absence of an acoustic wall.
70. No issue in relation to this matter has been raised by the local planning authority. The matter was not canvassed at all in terms with either noise witness.
71. But Mr Fuimicelli was quite clear in relation to this type of noise when asked by the inspector at the end of his evidence. Because the activity takes place during the day, at the end of the afternoon ordinarily, there is requirement in BS4142 or elsewhere to measure single noise events over very short time. All the relevant standards reserve this type of measurement to the nighttime when the issue is not one of general daytime annoyance but one of sleep disturbance.
72. Thus, the activity falls to be considered by a reference time of 1 hr at a typical period of operation. When consideration of the washing out process is undertaken by reference to this time reference a time penalty has to be added to ensure that the source noise level is properly equalised over the

measurement period. This is explained best in Mr Fuimicelli's text at 4.17 and Table 3. When a correction is applied to deal with this issue and to reflect the fact that the operation takes about 1 minute, the appropriate reference time correction would be in the order of -18 dB.

[simple logarithmic regression of Fuimicelli Table 3]

73. This would by itself be sufficient to bring the rating level well below the area where its impact would be of marginal significance, even in the absence of an acoustic barrier and even assuming the same level of engine noise.
74. But of course, the noise source would be different too. Although the drum would be spinning at the same speed as when mixing, the loading on the engine associated with a drum part full of water is wholly different from that when it is full of aggregate cement and water.
75. Both these factors explain why Mr Fuimicelli has never raised the issue as a daytime source of potential nuisance or complaint. There is no reason for refusal here.

Noise from vehicles in Cranford Way and on the highway.

76. The standard advice on the impact of the effect of increased vehicular traffic upon noise and disturbance is contained in PPG 24.
77. It is to the effect that ordinarily the human ear will not appreciate changes in noise levels of 3dB or less. Further, in order for changes in levels of traffic to register as appreciable, there is ordinarily required to be a doubling of the traffic levels. Levels of increase beneath these are not likely to be perceptible much less harmful.
78. There are no sensible reasons for setting aside these well understood and well applied principles.

79. Applying these principles to the circumstance of this case, the levels of traffic generation do not come close to giving rise to a concern in terms of noise for those who live on highways adjacent to the site. Indeed the figures indicate that the levels of traffic which could be controlled by condition would not even sensibly reach the threshold of materiality. (see below for further details.)

Dust Emissions and track-out.

Introduction

80. The issue of concern about dust falls into two categories.
81. First, there is the issue of dust emissions from the plant. This matter is undoubtedly the most controversial and contentious of the concerns raised by third parties. It is not a concern that is shared by the Council or its independent consultants who undertook a peer group critique of the appellants work.
82. Second, there is the issue of vehicle track-out. This is a concern that is raised by the authority at the appeal but not one that was supported by their independent consultants, who considered the process as a whole **including** the potential for track out.
83. This issue has become extremely emotive, largely because of the dissemination of the proposition that the proposal will bring with it a 200m radius dust dispersion “cloud” and because of the assertions, wholly misplaced on behalf of Green N8 that the process is akin to cement manufacture.
84. This is a misunderstanding of the position by those objecting to the proposal. The fact that the consideration of dust dispersion was **scoped** by

reference to a 200 m radius is a completely different matter from there being an acceptance that dust will be dispersed over this area as a result of the proposal. It will not.

85. Further, the process uses cement. It does not make it. In its powdered state, there are no health impacts associated with cement at the types of concentrations being considered in this case.

[See Bardon Note and HSE standards]

The evidence.

86. The proposal involves state of the art processing equipment. It has now been considered by a series of inspectors who have expressed themselves as more than content with its dust handling characteristics.

[See Battersea 1 and 2 and Tolworth Gurtler 8 and 9]

87. There is no reason to depart from these conclusions in the circumstances of the present case.

88. But the protection goes further than reliance upon the state of the art machinery. In addition the process as a whole is the subject of LAAPC.

[Grant Appendix 2 and 3]

89. The process is one which is characterised by the relevant process notes as one which with appropriate mitigation has a low risk of dust pollution.

[Appx 2]

90. Further the authorisation process will ensure that the process is required to use best available techniques and is the subject of appropriate mitigation. Yet further, the process will be the subject of periodic review and review in any event if there is a justified complaint.

91. In addition to this layer of statutory protection, there is a dust management scheme which provides a level of mitigation above and beyond that which would be required as a result of statute and the authorisation process.
[See s 106]
92. Thus, for example, even though there is no evidence that the dry batching part of the process will give rise to unacceptable levels of dust generation, the dry batching process will only be used when absolutely necessary as a result of necessary.
93. The management scheme of course goes into greater detail than this. It is commended to the Inspector in full.
94. Notwithstanding these matters and because of the levels of concern that were being indicated by third parties in this case, the local planning authority instructed expert consultants to review the appellants own air quality assessment.
95. Their assessment was full and thorough and not uncritical one. Its conclusions are unambiguous. The proposal will have a negligible impact in terms of air quality.
96. There is no sustainable reason for refusal based upon dust emissions from the plant.

Track-out.

97. The issue of track out really comes nowhere close to constituting a valid reason for refusal when the evidence as a whole is considered.
98. The following matters are relevant:
- a. The state of the art processing equipment.
 - b. The requirements of the relevant process note.
 - c. The requirements of the dust management scheme
 - d. The distance between the operational part of the plant and the site boundary
 - e. The history of London Concrete's operation elsewhere.
99. I shall deal with each of these issues in turn.
100. The processing equipment is specifically designed to discharge cleanly and accurately into the delivery trucks. The potential for accidental discharge at the point of delivery is therefore minimised.
101. This is reinforced by the requirements of the process note: requirements which will be imposed upon any authorisation. Thus at section 6 of the guidance note details of how track out is dealt with are clearly set out.

[Grant Appendix 3]

102. The distance between the delivery point of the process and the site entrance is significant. The distance between the delivery point and the main highway is even further. (see Grant in Chief). Any fugitive material which has not been dealt with by the above measures is wholly unlikely to be a land-use planning demonstrable harm following this layer upon layer of protection.
103. The dust management scheme takes this further. There are copious requirements to sweep, clean and wash down any relevant surfaces or

vehicles. The requirement also goes as far as to require the sweeping of the site AND the industrial estate road, though as noted in Mr Grant's evidence, this requirement is almost certainly otiose and strictly unnecessary as a result of the matters mentioned above.

[See s 106]

104. Finally, the documented and verifiable evidence in relation to London Concrete's activities elsewhere establishes that there is no demonstrable harm identified. Thus:
 - a. No nuisance, enforcement or breach of condition notices have ever been served in relation to these issues
 - b. No requirement for a wheel wash was imposed or required even where conditions were at their worse.
105. As another inspectors have indicated, it would be unfair and inappropriate to tar London Concrete with the same brush as other older and less controlled operators.
106. Even if, contrary to all of these assertions, a rare track-out from the site is missed, a wholly unlikely proposition in the light of the evidence, such an occurrence, particularly bearing in mind the industrial allocation of the site and the distance to the public highway cannot come close to representing a sustainable reason for refusal.

Impact on Employment.

Introduction

107. The case advanced on behalf of the authority in relation to this issue is entirely lacking in weight. It is to the effect that, even if wholly unsupported by the evidence, the mere **perception** that the concrete

batching plant will result in employees on the industrial site losing their jobs.

108. Such a proposition does not stand any rational scrutiny. Most importantly, it was not a proposition that even Mr Gurtler felt able to adopt on his clients behalf. In answer to a direct question from the inspector on the issue, Mr Gurtler conceded that perceptions which were not based on demonstrable harm were to be given little weight. The issue for Mr Gurtler was and for the decision-maker is whether there is harm.
109. This must be correct. Even if, as a matter of law, the potential for a mere perception to be a material consideration exists, the issue is one of weight. And, unless there are very compelling reasons, mere unsubstantiated perceptions should surely be given little weight. Otherwise, the mere voicing of unsustained perceptions would be sufficient to defeat any application which otherwise causes harm.
110. Further, in the circumstances of the case, such unfounded opposition would result in a de facto rezoning of the site by the existing occupiers.
111. In any event, the evidence in the case does not support even the flawed proposition advanced by the appellants. It is to that evidence that I now turn.

Evidence that Businesses have relocated from the site.

112. A major B8 delivery operator, has vacated the site. That vacation had nothing at all to do with the application before the inquiry.
113. BMC, at least in part, have vacated the site at the entrance to the industrial estate. This has had nothing to do with the application before the inquiry.
114. Indeed there have been no departures from the site as a result of the proposal before the inquiry.

Evidence that Businesses have not relocated to the site.

115. It is said by Mr Gurtler, who is not an employment land specialist, that vacancies at these premises have pertained as a result of the existence of the application for planning permission for the concrete batching plant.
116. The rather tortuous case advanced by Mr Maurici to this effect was that although the site is one of the better than average industrial sites, it had remained vacant for more than an average period and that therefore the application must have had an effect. He also relied on the position of the reversionary freeholder, who has no knowledge or interest in the letting of the premises.(see 1st evening session.)
117. The best and most compelling evidence in relation to this issue is as follows:
- a. BMC has been sold following an extremely competitive marketing exercise. It has been sold to a B class developer which proposes to develop the site for small business units. This, in the face of the inquiry and with the huge publicity surrounding the application and appeal, establishes a clear confidence in the site and an absence of concern about the application.
- [Mr Stephenson in chief]
- b. Unit 11, one of the TNT units, the nearest to the application site has again been let, notwithstanding the application and the appeal and all of the (mis)information about in the public domain. Unit 10 was under offer when the inquiry closed. There is no reason to suppose that by now that deal has not been complete. The freeholder's agent was of course entirely unaware of the existence of these deals. As a long lease reversioner, there would of course no reason for him to be aware of this interest.
 - c. Both Units 10 and 11 have also been the subject of significant renovation indicating security and confidence in the future of the site, notwithstanding the existence of the planning application.

- d. At the same time the rental values on the site have increased from between 25%-50%, further indicating significant levels of confidence in the site.
118. With the greatest of respect to the forensic ingenuity of Mr Maurici, this evidence is a clear and complete answer to the points raised under this heading. There is no evidence that this proposal has resulted in continuing vacancies at the industrial estate.

Existing Occupiers would leave as a result of the proposals.

119. The vast majority of occupiers of the estate express no view at all about the impact of the proposal. Those that do, have on at least one occasioned been actively canvassed by Mr Gurtler on behalf of the authority.
120. What they say is instructive. With the exception of Trade Winds, the vast majority of occupiers are clear, their consideration of the issue will depend not on perception but on the actual impact of dust and noise and traffic movements that will arise. **If** these are deemed to be unacceptable, they will **consider** their position.

[Gurtler appendix 10]

121. It follows that if their concerns are unfounded as a matter of fact, little weight can be given to the potential consequences of them leaving. If the harms will not eventuate, even on their own case, they will not leave.
122. In any event if any of the occupiers were (for misguided reasons) to leave, the above evidence establishes that the estate remains a vibrant and upwardly mobile estate. (see above). There is no evidence to suggest that any such units would not be reoccupied at higher rents.

123. As to Trade Winds, care is needed. The company is still seeking to negotiate its rent review. On this basis:
- a. It is hardly surprising that they have been unable to dispose of their lease
 - b. It is hardly surprising that they are complaining about the conditions within the estate: that would assist in their rent review negotiations.
[See Stephenson in chief and details of lease in draft pars Appendix 3]
124. Little weight should be afforded to their contentions. Contentions which they chose not to speak to at the inquiry and which therefore could not be the subject of proper testing.
125. There is no reason for refusal disclosed by these matters.

Transport Impacts.

Introduction.

126. The nature of construction requires the “just in time” delivery of concrete when it is needed at the sites that are presently the subject of development. The use of concrete in the modern world is unavoidable. In the most sustainable of scenarios, it is impossible to ensure that, save in exceptional circumstances, the final delivery of concrete is delivered in anything other than concrete mixer trucks.
127. Even a completely rail served facility will therefore be required to generate traffic movements. There is no other way of achieving delivery given the nature of the construction industry.
128. Much of the inquiry was taken up with an assessment of how many vehicles per day would be generated by the proposal. Would this be a London Favourable circumstances type of site or a 5 trips a lorry site?. This is a shame because the number of vehicles generated by the proposal

is one of the parameters which can be most easily and properly controlled by condition.

129. That has been accepted in terms by this local authority from the outset. It has also been accepted by other inspectors considering applications of this nature.
130. Many of the worst case positions adopted by the local planning authority and third parties based on unrestricted free for all delivery conditions are thus strictly irrelevant to the issues to be determined.
131. Sensible conditions to control vehicular use of the plant have now been proffered and are commended to the inquiry.
132. This closing will proceed on the basis that the conditions controlling lorry movements can and will be controlled as necessary, consistent with circular advice.
133. The issues when thus considered reduce to three.
 - a. The appropriateness of the vehicles using the roads identified in policy terms.
 - b. The evidence of harm to any interests of acknowledged importance occasioned by such use.
 - c. The highway safety of the use of these roads by mixer trucks.

Use of the Haringey Roads in Policy Terms.

134. Haringey is a typical metropolitan North London Borough. It is in its entirety densely developed with Victorian and Edwardian buildings and houses. The transport network reflects this history. This is not a borough which in any part is characterised by wide purpose built transport routes for transhipment.

135. Neither is it a borough which has the luxury of being able strictly to separate its necessary employment offer and its transportation consequences from the routes along which people shop and live. That is a fact of London life, particularly in this part of the capital.
136. But that does not mean that employment generation and the traffic generation which goes with it are inappropriate to the borough. The UDP and the emerging UDP reflect this fact and seek to direct traffic to the network in a way which is most sustainable. The policy documents seek to achieve this by way of a road hierarchy.
137. This hierarchy reflects strategic advice in the London Plan whose underlying aims and objectives are to maximise sustainable transport use in the capital.
138. When the adopted and proposed hierarchy are examined, it is plain that those routes which will be used by the delivery vehicles are entirely consistent with their function either as Strategic Routes or London Distributor Roads.

[Woolner Appx 19]

139. If this proximity is to be sustainably provided for by way of a concrete batching plant, these are the roads which are required and identified to be used for the purpose.
140. The proposal and its vehicle generating characteristics are in accord with the road hierarchy applicable to the case.

Impact of the traffic generated on interests of acknowledged importance.

141. The impact of the traffic generated has to be viewed in context.

142. First, as seen above the proposal will generate traffic onto roads specifically designated to serve at least London-wide distribution functions.
143. Second, the absolute numbers of vehicles generated onto the network is in terms of the existing flows tiny. Using the appropriate figures, the impact on traffic flows always falls below 1% of existing flows.
144. The test for determining whether an increase in traffic flows is even material, much less harmful is contained in the well known “Guidelines for the Environmental Assessment of Road Traffic”.

[Bellamy Appendix 13]

145. If it is to be relied upon, it should be used accurately and correctly.
146. It provides that one should only begin to need to consider impact on:
- “Highway links where traffic flows will increase by more than 30% (or the number of HGVs will increase by more than 30%)” (Rule 1)**
- “any other specifically sensitive areas where TRAFFIC FLOWS have increased by 10% or more. (Rule 2)**
147. On any sensible view of the evidence Rule 1 is not engaged by the traffic associated by the proposal. It does not suggest that there is a material increase in movements which even needs consideration.
148. The rationale for Rule 2 is set out at 3.16 of the document which explains that changes in traffic of less than 10% should be assumed to create no discernable environmental impact. Such would be lost within the general day-to-day variation experienced by the community.

149. In the present case, the local planning authority, without the benefit of any expert highway evidence, sought wholly inappropriately to argue that the rules should be read to suggest that the threshold of materiality arises wherever **HGV numbers (as opposed to total traffic)** increased by more than 10% at specifically sensitive locations. This is a fundamental misunderstanding of the rules as they are written and meant to be understood. Nothing in the document suggests this interpretation is appropriate. I have no hesitation in asserting that if this interpretation is adopted by the decision-maker, there will be a fundamental error of law.
150. The truth of the position is that with the conditions relating to generation in place, the impact of the proposal on traffic flows will at each relevant link fall well below 1%age point. Thus, and even if the area is thought to be specifically sensitive, (which Mr Bellamy disputes) the increase in overall comes nowhere close to meeting the threshold for consideration when judged against the flows already on the link.
151. Further, the impact of the proposal on the composition of traffic using the roads would similarly be unnoticeable. The proportion of HGV as a percentage of the overall flows on the relevant most effected roads hardly alters at all. Even on Green N8's analysis (10th March Table A1 Church Road, the proportion of HGVs increases less than ½ %age point from 3.5% to c 4%).
152. It is to be remembered that the traffic levels which would be generated fall well below those previously generated by the site in any event when TNT were in occupation.
153. The exercise of assuming higher generation figures overall is a strange one in the context of the conditions being proposed and in any event does not assist the Local Planning Authority .

154. Using the 7 trips or 10 trips a day per vehicle appears completely to ignore the ability to and reality of a condition controlling the generation from the site. It is a meaningless exercise in the circumstances of the present case where the operator is prepared to accept conditions that such flows cannot occur and the authority is proposing to enforce them.
155. But even then, (and even assuming the Green N8 calculations and further assumptions to be correct)-(which they are not see GB note issued in the adjournment) one is still left with the maximum increase in overall traffic of 1.25% on Church Lane (the highest percentage link all others are even lower) and a tiny impact on the overall HGV component of traffic.

[See letter 10th November Table A the HGV component is at present 3.5 % it will rise to 4%]

156. This will when considered against the overall level of traffic passing through these links be imperceptible in terms of material harm applying the guidance in the most relevant policy document..
157. The further guidance on the actual symptoms of increases in traffic contained in the guidance is also instructive in the light of the many objections to the proposal which were generated by the proposal.
158. The environmental impacts of traffic are identified as being noise, severance, pedestrian delay and intimidation. (para 3.17) .
159. As to noise people cannot perceive a change in noise nuisance for changes in noise levels of less than 3dB: such a change requires a doubling or halving **in the level of traffic**. Here the level of traffic alters by less than 1%.
160. As to the other symptoms, they are more sensitive to traffic flow changes and the DoT has indicated that 30%, 60% and 90% changes in traffic levels should be considered as “slight” “moderate” and substantial”.

Increases of less than 1% and alterations in the composition of traffic of less than 1/2 % HGVs would hardly figure as relevant in these circumstances.

Highway Safety.

161. The roads in the vicinity of the appeal site likely to be used by the vehicles generated by the trips are, as indicated above all identified as appropriate at least to accommodate London Distribution needs. Further, there is no accident record associated with their use as such. All of the relevant roads already have a very significant HGV component upon them.
162. There is no evidence that these roads suffer from a significant or any accident record which is inconsistent with this function or use. In other words there is no evidence at all to suggest that this area is particularly sensitive to a tiny increase in the overall level of HGV on the network.
163. Further, the vehicles used by London Concrete all exceed by a considerable margin the safety and other requirements of the Construction and Use regulation for such vehicles to be used on the public highway in England and Wales.
164. Parliament has authorised their use on all roads subject to road traffic orders in identified and appropriate circumstances.
165. Concrete and other aggregate delivery vehicles will use the streets of Haringey whether or not this consent is granted. If it is not granted there will be significantly higher levels of HGV movements through the Victorian and Edwardian Streets of North London. There is nothing specifically sensitive in Highway safety terms about the streets of this

location adjacent to an industrial estate which means that these overall benefits ought to be turned away.

166. Listening to the lady who had lost her daughter in a bicycle accident was heart rending. One wonders how people who have experienced such terrible loss are able ever to recover. We are all sorry for her loss.
167. But, she was not advocating the banning of mixer trucks from our roads, she was working to make them safer and more sustainable, recognising their importance to the economy as a whole. The promotion of this scheme is consistent with that underlying aim. It seeks to reduce the need for HGV trips, to reduce the distance travelled by each delivery vehicle all on a rail fed industrial site in an urban area whose junctions can easily cope with the additional traffic generated and which has no specific accident record of sensitivity.
168. In these circumstances it is not surprising that the local authority was unable to identify a highway expert who was prepared to support a reason for refusal on these grounds.
169. There is no rational highway safety reason for refusal.

Overall Conclusion.

170. This consent should be granted. It is consistent with the development plan at all levels. There is no sustainable harm which can be established when the evidence is properly examined. It is a shame that the proposal has been so misunderstood and misrepresented.

**RUSSELL HARRIS QC
LANDMARK CHAMBERS
MARCH 2006.**