

Development Control Committee - 25 February 2019

Application Number:	CM/19/17
Title:	The importation, storage and onward distribution of rail borne aggregates together with the erection and use of a concrete batching plant and associated infrastructure
Site Location:	Thorney Mill Rail Siding, Thorney Mill Road, Iver
Applicant:	Breedon Southern Ltd
Author:	Head of Planning & Environment
Contact Officer:	Gemma Crossley dcplanning@buckscc.gov.uk
Contact Number:	01296 382092
Electoral divisions affected:	Iver
Local Members:	Luisa Sullivan

Summary Recommendation(s):

The Development Control Committee is invited to APPROVE application CM/19/17 for the proposed importation, storage and onward distribution of rail borne aggregates together with the erection and use of a concrete batching plant and associated infrastructure at Thorney Mill Rail Sidings subject to conditions, to be determined by the Head of Planning and Environment, including those set out in Appendix B and subject first to completion of a Planning Obligation, with details, alterations, additions and deletions, to be determined by the Head of Planning and Environment, to secure the following:

- I. Routing agreement to avoid Iver High Street and minimise traffic through the Sutton Lane/A4 London Road Junction and M4 Junction 5 where possible.
- II. All HGV's within the applicants own fleet that travel to and from the site shall be in full compliance with the Euro VI Standards and the applicant shall use best endeavours to encourage contracted HGV's to travel to and from the site in full compliance with the Euro VI Standards.
- III. A financial contribution of £39,841.50 to Slough Borough Council's Low Emission Strategy, in particular to fund a Clean Air Zone (CAZ) feasibility study and



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implementation plan for Brands Hill AQMA.

- IV. A financial contribution of £39,841.50 to South Bucks District Council towards the implementation of a Clean Air Zone for the Iver AQMA.
- V. A financial contribution of £115,700 towards Highways Improvements at the Sutton Lane / A4 London Road Junction.

Appendices: Appendix A: Site Plans

Appendix B: Recommended Conditions

Appendix C: Previous Committee Report dated 23rd July 2018 and Minutes of the Meeting

Appendix D: Plan to show Slough Borough Council's AQMAs and Iver AQMA

Appendix E: Network Rail letters dated 22nd April 2016 and 27th November 2018

Appendix F: Slough Borough Council correspondence including Bevan Brittan letters dated 20th July and 12th September 2018

INTRODUCTION

1. This report provides an update to application CM/19/17, for the proposed importation, storage and onward distribution of rail borne aggregates together with the erection and use of a concrete batching plant and associated infrastructure at Thorney Mill Rail Sidings, Thorney Mill lane, Iver. Members may recall the application, submitted by PDE Consulting Ltd on behalf of Breedon Southern Ltd, was presented to the Development Control Committee Meeting on 23rd July 2018. The application was recommended for approval, as set out within the Officer's Report (see Appendix C) and following Public Speaking and Member debate, Members voted to approve the application subject to conditions and a legal agreement to include the following:
 - I. Routing agreement to avoid Iver High Street and minimise traffic through the Sutton Lane/A4 London Road Junction and M4 Junction 5 where possible.
 - II. All HGVs within the applicant's own fleet that travel to and from the site shall be in full compliance with the Euro VI Standards and the applicant shall encourage contracted HGVs to travel to and from the site in full compliance with the Euro VI Standards.
 - III. A financial contribution to Slough Borough Council's Low Emission Strategy, in particular to fund a Clean Air Zone (CAZ) feasibility study and implementation plan for Brands Hill.
 - IV. A financial contribution towards Highways Improvements at the Sutton Lane / A4 London Road Junction.
 - V. A Road condition survey of Thorney Mill Road to be carried out by the applicant prior to the commencement of the development; and thereafter for the applicant to undertake regular surveys of Thorney Mill Road; and in the event that any survey identifies that damage has occurred to Thorney Mill Road as a result of HGV movements to and from the development, to remunerate the Council for the costs of repair (added by Members).

2. The minutes of the Committee Meeting on 23rd July 2018 is provided at Appendix C for information.
3. As the application is located within the Green Belt and deemed contrary to Green Belt policy as set out within the Development Plan, the application was sent to the Secretary of State (SoS) for Housing, Communities and Local Government in accordance with the provision of the Town and Country Planning (Consultation) (England) Direction 2009. The SoS determined not to call the application in for his own consideration and resolved that the Local Authority (Buckinghamshire County Council) should determine the application themselves. As there have been no further changes to the application in this regard, it is not considered necessary to forward the application to the SoS for further consideration.

CLARIFICATION

4. The following issues were addressed within the Committee Report dated 23rd July 2018, however, they are reiterated here for clarification.

Permitted Development Rights

5. The application site benefits from Permitted Development (PD) Rights under the Town and Country Planning General Permitted Development (England) Order 2015, Schedule 2, Part 8, Class A. The PD Rights enable “Development by railway undertakers on their operational land, required in connection with the movement of traffic by rail.” The PD Rights are unlimited in terms of HGV movements, hours of operations and throughput.
6. A Certificate of Proposed Lawful Use or Development (CPLUD) (ref: 10/00739/CM) issued on 25th May 2010 (“the CPLUD”), clarifies that “*the importation of and deposit of material (including inert waste material) required in connection with the movement of traffic by rail*” constitutes permitted development under Schedule 2, Part 17 Class A of the Town and Country Planning (General Permitted Development) Order 1995. The PD Rights exist even without the CPLUD.
7. The site is operational land and the landowner, Network Rail, is a railway undertaker. Therefore, they are entitled, under the PD Regulations, to use the site for the purposes of the movements of traffic by rail.
8. Network Rail, the landowner, has made it clear that if this application is not successful, that they intend to re-market the site. Network Rail has indicated in their letters dated 22nd April 2016 and 27th November 2018 (see Appendix E) that there is increased interest in this site by rail operators and therefore there is a realistic possibility that the PD Rights will be implemented. Therefore, the PD Rights are a legitimate fall-back and a material consideration in this application.
9. The erection and use of a concrete batching plant does not benefit from PD Rights or the CPLUD and therefore this requires planning permission.
10. It is acknowledged that the applicant, Breedon Southern Ltd, is not a railway undertaker. However the PD Rights remain a material consideration as to how the site is likely to be used if this application is rejected and the site is brought back into use by a Railway Undertaker.
11. The PD Rights afforded to Network Rail as a railway undertaker is considered to provide a ‘fall-back’ position in planning terms. Officers recommend that reasonable weight is attached to the presence of the PD Rights as a fall-back.

Inappropriate Development in the Green Belt

12. As set out within the previous Committee Report (paragraphs 132-141), the site is located within the Green Belt and as such must be considered against Green Belt policy, including the National Planning Policy Framework (NPPF).
13. The use of the site for the importation and storage of aggregates, as well as the construction of storage bays, is considered to be not inappropriate development in the Green Belt, as the site is previously developed land and these aspects would have no greater impact on the openness of the Green Belt (this is the test as set out in paragraph 145 of the 2018 NPPF (paragraph 89 of the 2012 NPPF)).
14. The concrete batching plant and two-storey site office, however, are considered to have a greater impact upon the openness of the Green Belt than the existing development and as such are considered inappropriate. Therefore, the whole development is considered to be inappropriate development in the Green Belt and as such, in accordance with paragraph 143 of the NPPF, should not be approved except in very special circumstances. Very special circumstances do apply in this case (see paragraph 139 of the previous Committee Report), which outweigh any harm to the Green Belt by way of inappropriateness.

Demonstration of need

15. The applicant sets out within the planning application that there is a recognised need for the development, which is enshrined in policy and to meet the forecasted growth in the region over the coming years.
16. In policy terms, the Buckinghamshire Minerals and Waste Local Plan (MWLP) encourages the fullest use of rail for the transport of bulk materials (Policy 7) and along with Policy CS7 of the MWCS sets out that the Council will safeguard the existing rail aggregates depot site at Thorney Mill, Iver. Policy CS22 c) requires that applicants minimise the distance that materials are transported by road by transporting materials in more sustainable ways. Sustainable transport and the safeguarding of existing rail infrastructure is also supported through emerging policy (in the emerging Buckinghamshire Minerals and Waste Local Plan) and within the 2018 NPPF.
17. Based on the proposed population growth within Buckinghamshire and particularly within South Bucks and surrounding areas and the permitted, proposed and planned development that will be required to support that growth, there is and will continue to be a need for aggregates and aggregate products such as concrete, to supply the construction industry.
18. A rail depot, such as that proposed, will provide the infrastructure to transport the necessary construction materials to the area, whilst reducing the number and therefore impact of HGVs on the highways network. The co-location of a concrete batching plant at this site further reduces HGVs on the network and reduces environmental and amenity impacts by concentrating similar development in one location. If the concrete batching plant is not located at this site, the aggregates would need to be transported to another site to produce concrete. This plant effectively replaces that which recently closed at All Souls Farm Quarry, George Green.

Slough Borough Council's Air Quality Management Areas (AQMAs)

19. Slough BC has 4 designated AQMAs, two of which are relevant to this application (see Appendix D):
- AQMA 1, which includes part of the M4 motorway corridor either side of Junction 5 with the A4 London Road.
 - AQMA 2, which lies adjacent to AQMA 1 and covers part of the A4 London Road at Brands Hill.

MATERIAL CHANGES

20. Since the application was presented to Committee on 23rd July 2018, there have been a number of material changes that must be considered prior to determination of the application. Hence the application has been brought back to Committee for Members to consider these changes.
21. The material changes are as follows:
- A. Iver Air Quality Management Area (AQMA) - declared by South Bucks District Council (SBDC) on 1st August 2018, which includes the site, Thorney Mill Road, Richings Way and North Park.
 - B. Damage Cost Calculation – Slough Borough Council have critiqued and questioned the inputs and assumptions used.
 - C. Inspector Decision on Appeal reference APP/P0430/W/17/3189493 at Link Park Heathrow, Thorney Mill Road, Iver, which is located to the east of the application site.
22. A number of other relevant issues and updates are also provided.
23. For details of the site description, location, context, development proposal, consultee response and representation, as well as relevant policy, please see the 23rd July 2018 Officer's Report to Committee at Appendix C.

A. Iver Air Quality Management Area (AQMA)

24. On the 1st August 2018, SBDC designated an area as shown marked in blue on the plan in Appendix D as South Bucks District Council Air Quality Management Area No 2. It incorporates the administrative boundary of Iver Parish Council, the application site, Thorney Mill Road, Richings Way and North Park, along which the route that the HGVs associated with this application will travel.
25. As such, it is necessary to consider the application in terms of any potential impacts upon this newly designated AQMA.
26. The Environmental Health Officer (EHO) at SBDC was consulted on the original application (see comments at paragraph 44 of the Officer's Report to Committee dated 23rd July 2018) and in light of the newly designated AQMA, they were re-consulted. Their comments are as follows:

“On the 1st August 2018 an AQMA was declared and its boundary follows that of Iver Parish. We are in the progress of developing an Air Quality Action Plan but as you can imagine as the area was declared at the beginning of August the plan is in its infancy.”

The main source of Nitrogen Dioxide is road traffic, and it is evident from the Iver Traffic and Transport Study that the concentrations of Nitrogen Dioxide are exceeding in certain areas due to the high volume of HGV traffic. This study outlines the key issues in Iver and lists possible mitigation measures. Even though the production of the action plan is only beginning there is a political drive to introduce a Clean air Zone in the Ivers and plans are already in place to assess its efficacy on reducing the cumulative impact of HGVs on the AQMA.

Although the site currently has planning permission for aggregate type industry its currently closed and therefore is not a HGV generating site. The aggregate depot at Thorney Mill Road [will] increase the number of HGVs in the area and will in turn increase Nitrogen Dioxide concentration in the area. Therefore South Bucks Council would like to request a contribution by s106 funding to reduce the impact of additional NO₂ concentrations on the Ivers. I understand that a damage costs calculation has been made to assess the impact of the development. South Bucks supports this method of assessment for developments of this nature.”

27. The applicant updated their Air Quality Assessment in October 2018 to take account of the Iver AQMA. The assessment concludes that the proposed development would have negligible effects in terms of NO₂, PM₁₀ and dust.
28. Paragraph 170 of the 2018 NPPF states that planning decisions “*should contribute to and enhance the natural and local environment by...e) preventing new and existing development from contributing to...unacceptable levels of...air...pollution. Development should, wherever possible, help to improve local environmental conditions such as air ...quality...*”
29. Paragraph 181 states that “*Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.*”
30. Despite the negligible impact, consideration must be given to the NPPF and the adoption of an AQMA, which is declared in an area where the National Air Quality Objectives are not likely to be achieved. As such, it is necessary to mitigate further harmful effects. Therefore, it is considered appropriate to seek a contribution towards the implementation of a Clean Air Zone, in order to reduce the impact of additional Nitrogen Dioxide (NO₂) concentrations in the Ivers, the main source of which is road traffic.
31. The applicant states that the air quality contribution calculated is based upon the HGVs associated with the development and cannot be requested twice. However, the proposed route that HGV’s would take from the site to the motorway network would result in them passing through the SBDC Iver AQMA, as well as Slough Borough Council’s AQMAs 1 & 2 (Brands Hill and the M4 Motorway Junction 5).
32. Legal Advice has been sought on whether contributions can be requested for both AQMAs and the following Case Law was cited as evidence that it can be. In Gladman Developments Limited v Secretary of State for Communities and Local Government,

Swale Borough Council v Campaign to Protect Rural England (Kent Branch) [2017] EWHC 2768 (Admin), the development impacted on two AQMAs and separate payments were made for each AQMA to mitigate pollutant concentrations in these areas resulting from the development.

33. As the original cost calculation was carried out prior to the designation of the Iver AQMA, it could only have related to the SBC AQMAs and therefore a further contribution would be needed to mitigate the impact on the Iver AQMA.
34. The Gladman case and the NPPG indicate that where the proposed development will contribute to an increase in the air quality threshold in an AQMA, that is a material consideration. Planning permission could be refused if the impact cannot be mitigated.
35. The Air Quality Assessment submitted by the Applicant concludes that the air quality impacts as a result of Nitrogen Dioxide (NO₂) and Particulate Matter (PM₁₀) would be negligible. This assessment is based upon the total number of proposed HGV movements, which as set out within the previous report (dated 23rd July 2018), is not the case in reality due to the CPLUD and Permitted Development Rights allowing for an unlimited number of movements. The Air Quality assessment is based on a worst-case scenario and still the conclusion is that any impact would be negligible.
36. The proposed routing of HGVs associated with this development (Thorney Mill Road, Richings Way, North Park, Sutton Lane and London Road), would take all movements west into Slough and through the Brands Hill AQMA. Under the Permitted Development Rights, although movements would be unlimited in number, they would also be unlimited in routing and therefore they could also travel north via Thorney Lane and Iver High Street. The use of Iver High Street is considered by Iver Parish Council and the Highways Authority as less favourable. Therefore, this development would seek to prevent HGVs travelling via Iver High Street and instead all movements would be directed west along Richings Way. This requirement to route movements away from Iver village results in a potential increase of HGVs through SBCs AQMAs 1&2 and as the pollutant levels have already exceeded EU recommended limits, it is considered that measures to reduce such levels wherever possible should be implemented.
37. As set out above, paragraph 181 of the NPPF requires that planning decisions sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking account of AQMAs and Clean Air Zones. The NPPF goes on to say that opportunities to improve air quality or mitigate impacts should be identified.
38. Policy 18: Sustainable Transport of the Emerging Minerals and Waste Local Plan (EMWLP) sets out that proposals for minerals and waste development will require a Transport Assessment or Statement, which should address emission control and reduction measures to be implemented.
39. As such, it is considered appropriate to request suitable mitigation for the SBC and Iver AQMAs.
40. It is proposed that the financial contribution required to mitigate air quality impacts will be used to implement a Clean Air Zone in each of the AQMAs.

B. Damage Cost Calculation

41. The Air Quality Damage Costs associated with the development have been recalculated following queries raised by Slough Borough Council (SBC) (further details are provided below).
42. SBC queried three main points with regard to the Damage Costs, namely:
 - use of the 'transport average' damage costs provided by the IGCB (DEFRA). This is the lowest priced category for transport and isn't appropriate for schemes that will service developments within the M25. The 'outer London' category should be used
 - 2015 damage cost prices haven't been uplifted to 2018, 2019, 2020, 2021 and 2022
 - a fixed emission rate has been used for all years 2018 to 2022. Emission rates for NOx and PM should have been calculated for each of the specified years.
43. Officers have sought independent advice from the Local Air Quality Management (LAQM) helpdesk, which is operated by Bureau Veritas on behalf of Defra and the Devolved Administrations.
44. The LAQM helpdesk advice is as follows:

"The definition of outer London roads for the EFT is derived from the London Atmospheric Emissions Inventory (LAEI), and this relates to which roads are included within this database. I have overlaid the outer London boundary (black line), with roads included within the LAEI (red lines) with a rough site area (grey blob) and you can see that it is right on the boundary!"

I have taken the approach that the road in question where the additional traffic will be travelling along (Thorney Mill Road) is included within the LAEI so would be classed as 'outer London', therefore I would follow the basis of the Slough Council calculations to calculate a final total in terms of using an outer London definition to derive the emissions from the EFT in tonnes/annum and the annual emissions damage costs based upon the central damage cost values.

Within Sloughs methodology the relevant 5 years for the assessment should be 2019-2023 as per the WYG calculations to derive the final total, as the increase in HGVs would not have increased within 2018."

45. Following this advice, the applicant has recalculated the Damage Cost Calculation using the Outer London category, the 2% uplift per year and calculating the emission rate per year and the final cost has been calculated as £39,841.50.
46. As the figure for the Damage Cost Calculation is still being debated, Officers suggest that Members delegate the Head of Planning and Environment to establish the appropriate figure following discussion between relevant parties.

C. Link Park Appeal Decision

47. A Section 73 planning application (reference CM/16/17) was submitted to BCC to increase the hours of operation at Heathrow Link Park, Thorney Mill Road, which lies immediately adjacent to the eastern boundary of the application site. An Appeal for non-determination was made to the Secretary of State (Appeal reference APP/P0430/W/17/3189493). In respect to this appeal, the Planning Inspector raised

concern over lack of information on noise impacts of HGVs travelling to and from the site out of normal hours. He stated:

“...it appears to me that the noise and disturbance impact would be likely to arise from the number and frequency of traffic movements, including the effect this would be likely to have on residential properties in the vicinity of the intended route to the main road system where the HGV movements would be dispersed. Further, the extended operating hours, particularly in the morning, should be regarded as quiet times where disturbance would be seen as unsociable.”

“...I am not satisfied that it has been demonstrated that the increase in operating times indicated in the proposed variation to condition No. 6 would not result in a scale of HGV movements to and from the site that would give rise to unacceptable levels of noise and disturbance at sensitive times to residents of properties near the intended lorry route.”

48. It is proposed that the operation of the concrete batching plant and ancillary facilities, including ingress and egress of HGVs, would be undertaken during the hours of 07:00 to 23:00, Monday to Friday and between 07:00 to 16:00 on Saturdays. A Noise Assessment was provided with the application, which made an assessment of the possible effects of noise on the nearby residents from the application site itself, however the potential noise impact of additional HGVs on the proposed local road network was not assessed.
49. The application and appeal sites' proposed hours for HGV movements differ, as shown below.

Days	Application CM/19/17	Link Park Appeal	
		Existing	Proposed
Monday – Friday	07:00 – 23:00	06:00 – 18:00	05:00 – 22:00
Saturday	07:00 – 16:00	07:00 – 14:00	05:00 – 15:00
Sunday	No operations	07:00 – 14:00	05:00 – 15:00

50. As a result of the Link Park Appeal Decision, BCC requested further information from the applicant with respect to the impacts associated with HGVs travelling to and from the site outside of 'normal operating hours'.
51. As such, the applicant produced a Technical Note dated 14th November 2018, which made a further Noise Assessment, taking account of the potential increase in road traffic noise levels due to the proposed HGV movements on Thorney Mill Road and Richings Way for the period Monday to Friday 18:00 to 23:00 hours. This approach was agreed by Steve Braund, Senior Specialist EHO at SBDC.
52. Taking account of the proposed 82 HGV movements per day associated with the development (assuming no fall-back position and therefore a worst case), gives an “average hourly development traffic flow” of 6 HGV movements per hour. Between the hours of 18:00 and 23:00, an average of 6 HGV movements per hour, gives an increase in calculated noise levels of between 0.2 and 0.8dB $L_{Aeq, 1 \text{ hour}}$ per hour on Thorney Mill Road and Richings Way. Despite a drop in calculated noise levels over the period 18:00 to 23:00 of circa 5dB on Thorney Mill Road and 4dB on Richings Way (around 1dB per hour), the expected increase of less than 1dB as a result of the development, would not be expected to be perceptible at the nearest receptors.

53. The assessment has been reviewed by the EHO, who provided the following response:
- “I have reviewed the Technical Note provide by WBM dated 14 November 2018 and can confirm that I am satisfied with the assumptions methodology and conclusion.”
54. The Noise Assessment provided demonstrates that the proposed HGV movements would not result in a perceptible increase to noise levels experienced along Thorney Mill Road and Richings Way, during the evening period from 18:00 to 23:00. Further, the Permitted Development Rights enable unlimited HGV traffic to access and egress the site, without restrictions on the hours of operation. As such, it is not considered that the proposed development would result in any perceptible increase to noise levels experienced by receptors along Thorney Mill Road and Richings Way. Therefore, this is considered to comply with the NPPF requirement to:
- “ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:*
- a) *Mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life,”*
55. The British Standard (BS) 4142:2014 "*Methods for rating and assessing industrial and commercial sound*" describes methods for assessing the likely effects of sound on premises used for residential purposes. It includes the assessment of sound from industrial and manufacturing processes, M&E plant and equipment, loading and unloading of goods and materials, and mobile plant/vehicles on the site. It can be used to assess sound from proposed, new, modified or additional industrial/commercial sources, at existing or new premises used for residential purposes. The BS specifies daytime as being 0700-2300 and night-time as 2300-0700. The BS states that if the rating level is +5dB above the background sound level, it is likely to indicate an adverse impact and if the difference is +10dB or more, it is likely to indicate a significant adverse impact, depending on the context.
56. Policy 28 of the Buckinghamshire County Council Minerals and Waste Local Plan (MWLP) 2006 states "*the County Council will protect the amenity of all those who may be affected by mineral and waste development proposals and will not grant planning permission for proposals which are likely to generate significant adverse levels of disturbance, both near the site an on routes to and from it, from noise...*"
57. Draft Policy 17: Managing Impacts on Amenity and Natural Resources, of the emerging Minerals and Waste Local Plan (EMWLP) requires that "*all proposals for minerals and waste development must demonstrate that the proposed development is environmentally feasible, secures a good standard of amenity and would not give rise to unacceptable adverse impacts on the following...noise*".
58. In line with the BS, Policy 28 and emerging Policy 17, it is considered that the HGV movements associated with the proposed development are unlikely to result in an adverse impact to the amenity of receptors on Thorney Mill Road and Richings Park in terms of noise, specifically between the hours of 1800 and 2300. Therefore, it is not considered that there is a justifiable reason to refuse planning permission in terms of noise.

FURTHER UPDATES

Slough Borough Council objection

59. Since 23rd July 2018 Committee Meeting, Slough Borough Council have provided two letters via their legal representatives, Bevan Brittan LLP, reiterating their objections to the application and an email dated 19th October 2018 from their Planning Area Team Leader (see Appendix F). The Officers believe that the points raised have been fully and satisfactorily addressed, however some points have been clarified within this report.
60. The key points raised in Slough BC's email of 19th October 2018 are as follows:
- Weight attached to the CPLUD
 - Calculation of Air Quality Mitigation

Weight attached to the CPLUD

61. Slough Borough Council (SBC) have provided further comments since the application was taken to Committee in July 2018. Their main contention is *“the CPLUD is not a CLEUD and simply restates the fact that railway undertakers benefit from permitted development rights for specified development. The applicant is not a railway undertaker, the land is not therefore operational land and the development proposed is not that permitted under permitted development rights. Therefore the applicant is in no way able to benefit from the lawful use described in the Certificate.”*
62. The Planning Practice Guidance (PPG) states that a CLEUD confirms “an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under [section 191 of the Town and Country Planning Act 1990](#)”, whilst a CPLUD confirms “a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under [section 192 of the Town and Country Planning Act 1990](#)”.
63. In this case, the CPLUD (reference 10/00739/CM, dated 2nd August 2010), sets out that *“the importation and deposit of material (including inert waste material) required in connection with the movement of traffic by rail would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990”*.
64. The reason attached to the CPLUD was that the use constitutes development under Schedule 2, Part 17, Class A of the Town and Country Planning (General Permitted Development) Order 1995. Part 17 covers “*Development by Statutory Undertakers*” and Class A: Railway or light railway undertakings, reads as follows:
- “A. Permitted Development
Development by railway undertakers on their operational land, required in connection with the movement of traffic by rail.”*
65. This has since been replaced by the Town and Country Planning (General Permitted Development) Order 2015, Part 8: Transport related development, Class A, which is essentially the same.
66. In this case, the site is owned by Network Rail, who is a Railway Undertaker. The applicant, Breedon Southern Ltd, is not a Railway Undertaker.

67. SBC are correct that the CPLUD confirms the Permitted Development Rights that exist, however, even without the CPLUD, the site would benefit from Permitted Development Rights. Permitted Development Rights themselves can provide a legitimate fall-back (see *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314).
68. By virtue of s263(1) of the Town and Country Planning Act 1990, “operational land” means:
“in relation to statutory undertakers—
(a) land which is used for the purpose of carrying on their undertaking; and
(b) land in which an interest is held for that purpose.
(2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.”
69. The site is operational land, as it is owned by Network Rail and would be used to carry out their undertaking in terms of moving freight by rail. The storage of the material transported by rail is required in order to facilitate the transit of that load.
70. The concrete batching plant proposed as part of the development does not fall within the PD Rights or the CPLUD. As the applicant is not a Railway Undertaker, they do not benefit from the PD Rights and therefore it has been necessary for them to submit this application. However, in considering this application the PD Rights available to the landowner, Network Rail, is a material consideration.
71. SBC claim the following:

*“A fall-back position only exists where there is a ‘realistic prospect’ of the permitted development right being exercised. In this case the railway undertaker has ceased its use and vacated the site. There is no ‘realistic prospect’ of that user returning to the site and it has been marketed commercially. In that open market the site was more attractive to a user that was not a railway operator. Neither the applicant nor the determining authority has interrogated any evidence provided by the applicant to demonstrate that there is a ‘realistic prospect’ of a different user who is a railway operator outbidding the current prospective (non-railway undertaker) such that it can be demonstrated that there is a realistic prospect of a railway undertaker resuming operations and it being able to be properly claimed that there is a fall-back position. It is established planning caselaw stemming from **R v SSE, Ex Parte Ahern (London) Ltd** [1998] Env. LR. 189 and reinforced recently in the Court of Appeal in **Mansell v Tonbridge & Malling BC** [2017] EWCA Civ. 1314 that “For a fall-back suggestion to be relevant there must be a finding of an actually intended use as opposed to a mere legal or theoretical entitlement.”*
72. SBC states *“If the prospect of a railway undertaker resuming a railway undertaking on the land is less than realistic then it will be ‘Wednesbury unreasonable’ for a determining authority to attach any weight to that prospect and any decision to do would be vulnerable to challenge.”*
73. The site is owned by Network Rail and is operational land. Officers accept that Network Rail have not used the site in recent years to the extent of the proposed development or as intended under the CPLUD. However, this does not affect the fact that there are Permitted Development Rights and a realistic prospect of the site being brought back into use in the future, as evidenced by Network Rail’s marketing of the site and intention to re-market if this application is unsuccessful (see letter dated 27th November 2018 at Appendix E). Network Rail state:

“Our Freight Surveyor has confirmed that if the above application is refused NR will re-market the site given the time that has passed since NR agreed to lease the site to Breedon Southern Ltd (previously known as Hope Construction Materials), and the strengthening of the market since this was last carried out. This time NR would request bids specifically for uses which could be carried out under NR’s permitted development rights afforded to railway undertakers listed in Part 8, Class A, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.”

74. They go on to say that:

“Current urgent demand is significantly inflated by the need to deliver HS2, and every FOC and contractor involved in or bidding for work from that has a requirement for rail served sites, in addition to the “usual” level of need. Known current inquiries include, Freightliner, GBRf, DBC, Hanson, Cemex, Al, Lynch, Walsh, FCC and FM Conway and, if marketed now, we would expect very strong bids from all of the above.”

75. We believe the statements provided by Network Rail, the site owner and a Railway Undertaker, are sufficient to demonstrate that there is a realistic prospect of the fall-back development being implemented.

76. The Permitted Development Rights remain a legitimate fall-back. The likelihood of its implementation is a matter for the Council. Based on the letters provided by Network Rail it is believed, on a balance of probability, that there is a real likelihood of the fall-back being implemented. Network Rail has made clear their intention to re-market the site, should this application be refused, considering the interest already expressed in this site by rail freight operators such as Freightliner, GBRf and DBC, among others. It is therefore considered that there is a realistic prospect that the fall-back position would be implemented.

77. SBC has also expressed concerns regarding the assessment of HGV movements associated with the proposed development. They claim HGV movements have been discounted from 82 down to 28 as a result of the perceived likelihood of the fall-back position. They have equated the percentage of this reduction in HGV movements to the weight the Council has attached to the -fall-back.

78. This is incorrect. The 28 HGV movements is calculated to be the additional movements associated with the development from the concrete batching plant, which does not fall within the Permitted Development Rights. This has been used as the number of movements above the fall-back and therefore used to calculate the degree of impact associated with the proposed development, particularly in terms of air quality. The figure does not provide a percentage prospect of the railway undertaking use being resumed.

79. The fact is the site benefits from Permitted Development Rights, whether or not, the CPLUD exists. The CPLUD confirms the Permitted Development Rights that exist under GPDO for a railway undertaker to import material by rail and store it on site, to then be removed by road. The courts have confirmed that such permitted development rights provide a legitimate fall-back position in planning terms.

80. As set out within the previous Report to Committee and above, the CPLUD and the Permitted Development Rights are a material consideration and have rightly been considered by the Officer in the determination of this application. The weight to be afforded to the fall-back is a matter for the decision maker. It is the Officer’s view that the fall-back position, on a balance of probability, has a greater than theoretical prospect of being implemented and that should it be implemented it could operate at the same level of intensity as the proposed development or more, and that such unregulated use would be more detrimental to the surrounding area and the community.

81. If Members do not share the Officer's view that there is a realistic prospect that the fall-back position could be implemented, then they would need to consider the proposed development as generating additional highways and air quality impacts. Members should then consider if these impacts are significant and if they can be addressed by suitable conditions. If they cannot be adequately mitigated, the application should be refused on these grounds.

Calculation of Air Quality Mitigation

82. SBC have also commented on the calculation used for the air quality mitigation. The calculation was undertaken by the applicant following agreement on the methodology at a meeting between both SBC and the applicant. There is no standard guidance on calculating air quality mitigation, however the methodology used is that recommended by Defra in their Local Air Quality Management Policy Guidance (PG16) dated April 2016.

83. Set out in the table below are the comments from Slough Borough Council followed by the response provided by the Applicant.

Slough Borough Council comment

"Without prejudice to the case put forward above on the weight attached to the CPLUD, there are serious concerns about the mitigation calculation methodology adopted by the applicant and accepted by the Council.

Looking solely at the impact from 28 lorries a day rather than the 82 that would be considered if no weight was attached to the CPLUD we have a number of concerns. These could have been addressed earlier but In terms of the process, Bucks CC did not disclose the damage cost calculations for the scheme until Friday 20th July with the application going to committee on Monday 23rd July. This information should have been disclosed earlier and SBC comments considered.

In terms of the calculations carried out by the scheme consultants, the main point is that that there are significant errors in the way that the damage cost calculation has been carried out. It would appear that there has been a deliberate attempt to use erroneous data and manipulate the calculation to achieve a favourable outcome for the applicant.

These errors include:

- use of the 'transport average' damage costs provided by the IGCB (DEFRA). This is the lowest priced category for transport and isn't appropriate for schemes that will service developments within the M25. The 'outer London' category should be used

[.... The industry category is the lowest priced damage cost - transport costs are much higher, particularly with proximity to London]"

Applicant Response

The IGCB guidance does not specify definite areas for using one cost or another and the selection of the cost is down to professional judgement to pick an appropriate value. In this instance, it is useful to have a range of results calculated to give an idea of the different potential costs against each item. However, it is no more correct to say that this area outside of London should be considered against the London guidance as it is to say that the Industrial cost for this industrial development should not be used. The transport average used in the latest is considered representative of all the surrounding area.

Slough Borough Council Comment
- 2015 damage cost prices haven't been uplifted to 2018, 2019, 2020, 2021 and 2022
Applicant Response
Table 6 in the previous comments document which was attached to your e-mail, shows the uplift in cost between these years in NOx and PM10 in the previous note.
Slough Borough Council Comment
- a fixed emission rate has been used for all years 2018 to 2022. Emission rates for NOx and PM should have been calculated for each of the specified years
Applicant Response
This is accepted, however this would result in a lower overall cost as emissions improve in future years.
Slough Borough Council Comment
We have re-calculated the damage costs, following HMRC guidance and make the damage costs for 28 vehicles as £63,782 (and not £21,336 as stated). Using the same emission rates as the scheme consultant the damage costs come to £69,355 . In the committee report, the damage costs are lowered again to £19,193.30
Should the 82 vehicles per day be considered, the damage costs would be in the region of £190,000
Applicant Response
It is unclear how the £190,000 sum has been reached as this is not shown in Slough's calculations. However, it has been accepted that the proposed development will only result in an additional 28 vehicles over and above the existing use and therefore, [£63,782]this is the only number that should be considered within these calculations.
Slough Borough Council Comments
Please see the calculations attached. I have also attached the applicants calculations for convenience. An additional issue to consider is that the contribution from the scheme is to be paid in instalments over 3 years. This will not allow SBC to put mitigation in place from the outset and would be unacceptable."
Applicant Response
It is unclear where the '3 years' split has come from, most guidance recommends 5 years, hence the calculation being undertaken over 5 years. As discussed in the previous response, there is no reason to accept that the London cost is any more correct than the transport average costs.

84. The SBDC EHO agrees with SBC that the applicant has used some of the wrong inputs, however it appears that the main difference in the outcome is due to the number of movements used. The applicant has used 28 HGV movements as representative of the

concrete plant movements and the increase in movements above the fall-back position. SBC have used 82 HGV movements as the total proposed for the development.

85. To clarify, it is the Officer's view that there is a realistic prospect of the fall-back being implemented and therefore we consider it unreasonable to take account of the entire 82 movements proposed.
86. However, following SBCs comments regarding the inputs used in the Damage Cost Calculation, Officers have sought independent advice from the LAQM Helpdesk, which is run on behalf of Defra. The advice provided confirms SBCs view that the Outer London category should have been used and as such, the applicant has re-calculated the Damage Costs, as set out above.

Buckinghamshire Country Council Local Plan progress

87. The County Council has progressed the preparation of the Emerging Minerals and Waste Local Plan (EMWLP). The Examination in Public hearing sessions were held in September 2018, following which the County Council have produced a Schedule of Proposed Main Modifications to the Local Plan, dated December 2018, which have recently been consulted upon (10th December to 4th February 2019).
88. The following proposed modification should be taken into account in the determination of this application:

Proposed Modification MM25: Paragraph 7.24 (addition of underlined text)

“Proposals for minerals and waste development must demonstrate that transport movements associated with the proposed minerals and waste development would not result in unacceptable adverse impacts on the community and the environment within areas that would be reasonably expected to be affected by the proposed development, including along transport routes. Of particular note, Burnham Beeches SAC is located within the south of the county, with the A355 running in a north-south direction to the east. In order to avoid having a significant effect on the interest features of the SAC, transport movements associated with minerals and waste development should avoid using this route. In parts of the county there are a number of employment areas, identified in Table 9 as areas of focus for waste management facilities that generate HGV movements particularly affecting particular transport hotspots. Any proposals that come forward, may be asked to specifically consider the likely HGV movements that would be generated. As part of the required Transport Assessment/Transport Plan applicants should seek to demonstrate how they can reduce HGV movements compared to the current/previous use on the site.”

89. The reason for this modification is “To carry forward into the MWLP aspirations contained within the 2012 Minerals and Waste Core Strategy about locations in Iver parish but to also extend this to other locations that may have similar issues.”
90. The applicant maintains the view that the proposed development would result in a reduction in and control over the number of HGV movements associated with the site and development when compared to the fall-back position available via the CPLUD and Permitted Development Rights.
91. This view is shared by the Highways Authority and the Planning Case Officer. This is considered to provide betterment in planning terms.

National Planning Policy Framework (NPPF) 2018

92. An updated NPPF was published in July 2018.

93. Paragraph 102 of the revised NPPF states “Transport issues should be considered from the earliest stages of plan-making and development proposals, so that...b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised...d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects , and for net environmental gains;”

94. Paragraph 109 states:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

95. Paragraphs 133 to 147 of the 2018 NPPF set the Government’s policy with regard to the Green Belt. This has not significantly changed since the 2012 version and there are no changes relevant to the consideration of this application.

96. Paragraph 180 states:

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”

97. Paragraph 181 states:

“Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.”

Road Condition Report

98. At the Committee Meeting on 23rd July 2018, Members requested that a Road Condition Survey be included within the proposed Legal Agreement, requiring the Applicant to undertake a survey of the condition of the local highway to the application site prior to the commencement of development and again at a prior agreed time, in order to compare the condition of the road surface and assess if there has been greater than expected damage. If this damage is assessed as being as a result of the proposed development, then the Applicant would be required to cover the cost of any necessary repairs.
99. It should be noted that this was requested by Members having discussed the use of Thorney Mill Road and has not been requested by BCC as the Highways Authority.
100. The Highways Authority comment as follows:
“The 12 hour traffic count on Thorney Mill Road is approx. 5488 vehicles using this stretch of highway so it would be difficult to attribute the deterioration of the highway to the HGVs associated with the concrete batching plant.”
101. Members should consider if they wish to retain this requirement without the support of the Highways Authority.

Further Representations Received

102. One further representation has been received raising objection to the application, by a resident who objected previously. The objection raised relates to the Noise Assessment submitted following the Link Park Appeal Decision, which assesses the noise impact of HGVs on Thorney Mill Road and Richings Way between 6pm and 11pm. The objector states that there will be a serious effect on the quality of life of residents on Thorney Mill Road, stating that HGV levels have increased since the application was submitted and that extra traffic will have a further detrimental effect in terms of noise, air pollution and vibration. They consider the application should be refused, but if approved, they consider the hours should be limited to ‘social hours’.
103. As Members are aware the Permitted Development Rights enable the use of the site with no limit on the hours of operation. This application would restrict the concrete plant and HGV movements to 7am to 11pm Monday to Friday and 7am to 4pm on Saturdays. The assessments submitted with the application conclude that there would be no significant impact to the amenities of local residents and this is supported by the responses received from Statutory Consultees, such as the EHO. Therefore, it would be considered unreasonable to restrict hours of operation further.

CONCLUSION

104. The conclusions and recommendation as set out in the Officer's report to Committee dated 23rd July 2018 has not changed as a result of the material changes addressed above.
105. Application CM/19/17 seeks planning permission for importation, storage and onward distribution of rail borne aggregates together with the erection and use of a concrete batching plant and associated infrastructure at Thorney Mill Rail Sidings. The site has an existing permitted use for the importation and deposit of material (including inert waste material) required in connection with the movement of traffic by rail and is safeguarded within the Minerals and Waste Core Strategy as a rail aggregate depot.
106. The application is supported by a number of environmental assessments, which conclude that the development would not result in significant adverse impacts to the environment or amenities of the local area.
107. It is considered that the development complies with the Development Plan as a whole and therefore, in accordance with the NPPF, which supports sustainable development, it is considered that application CM/19/17 for the importation, storage and onward distribution of rail borne aggregates together with the erection and use of a concrete batching plant and associated infrastructure at Thorney Mill Rail Sidings, should be APPROVED, subject to conditions, to be determined by the Head of Planning and Environment, including those set out in Appendix B and subject first to completion of a Planning Obligation, with details, alterations, additions and deletions, to be determined by the Head of Planning and Environment, to secure the following:
- I. Routing agreement to avoid Iver High Street and minimise traffic through the Sutton Lane/A4 London Road Junction and M4 Junction 5 where possible.
 - II. All HGV's within the applicants own fleet that travel to and from the site shall be in full compliance with the Euro VI Standards and the applicant shall use best endeavours to encourage contracted HGV's to travel to and from the site in full compliance with the Euro VI Standards.
 - III. A financial contribution of £39,841.50 to Slough Borough Council's Low Emission Strategy, in particular to fund a Clean Air Zone (CAZ) feasibility study and implementation plan for Brands Hill AQMA.
 - IV. A financial contribution of £39,841.50 to South Bucks District Council towards the implementation of a Clean Air Zone for the Iver AQMA.
 - V. A financial contribution of £115,700 towards Highways Improvements at the Sutton Lane / A4 London Road Junction.

BACKGROUND PAPERS

Application CM/19/17

Officer's Report to Committee dated 23rd July 2018

Consultee responses and representations received between June and November 2017

Emerging Buckinghamshire Minerals and Waste Local Plan, Proposed Modifications, December 2018

National Planning Policy Framework (NPPF), July 2018

National Planning Practice Guidance (NPPG)

Correspondence from Slough Borough Council dated 20th July 2018, 12th September 2018 and 19th October 2018

Letters from Network Rail dated 22nd April 2016 and 27th November 2018