IN THE MATTER OF ARLINGTON WORKS

Appeal PINs reference: APP/L5810/W/20/3249153

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

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1. Ms. Roads and her family have always held the view that Arlington Works is a space for small businesses to incubate and grow. That has always been part of the history of the site. This Appeal Scheme represents an evolution, rather than a revolution of that thinking. It responds to local business need and simultaneously secures its use for creative industries into the next century.

2. Securing the provision of such new industrial floorspace, within the Buildings of Townscape Merit (BTMs), however, requires significant investment – this comes in the form of a residential component on-site. In the Appeal Scheme, that residential component also generates a significant amount of affordable housing. That is more than the Borough typically receives on such sites, and, moreover, is set against the context of national prevailing need, historic under-delivery and statistics as stark as 4,442 households who are currently on the Richmond Housing Access Queue.[1]

3. Not only does the scheme offer those significant benefits, but it commits to the refurbishment of the historic assets of the site: bringing back to life buildings of local significance and safeguarding them for future generations. It also provides for considerable environmental enhancement through significant remediation works to remove contamination from the site.

[1] Paul Bradbury, Council's Housing Witness. Proof of Evidence, Table 1 – Richmond Housing Access Queue.

Waste Site

The plan-led approach

4. The approach to be taken to waste planning was considered at length with Mr Potter and Mr Mehegan. Mr Reed QC put to Mr Potter (and was contained in his opening submissions[2]), that the **only** means by which the aims of the London Plan would be achieved through the waste designation of the site would be through the plan-making process. That analysis is not supported in the text of the Publication Version of the London Plan ("**PVLP**").

5. Policy SI9[3] states only that the waste **designation** had to be through the plan-**led** process and that sites could not be released on an *ad hoc* basis. Mr Reed QC took that to mean that this prohibits sites being released on a planning application basis. That, however, as explained by Mr Mehegan cannot be a correct interpretation, or application of policy SI9 of the London Plan. It would run contrary to the way in which the planning system works in England.

6. As a matter of interpretation, deference to the plan-led process means deferring to the relevant waste plan: in this case, the West London Waste Plan ("**WLWP**"). Indeed, during the course of questioning, Mr Mehegan referred to the WLWP as the most relevant plan for the purposes of waste management. That is not surprising, nor is it novel. In fact, it is the expected, and correct, approach, as the WLWP provides the planning framework for the management of all waste produced in the six Boroughs over the period to 2031. This is to help meet the aim of net self-sufficiency by 2031.[4]

7. Contrary to the assertion of Mr Potter (in questioning from Mr Reed QC), the plan-**led** process does not forbid release of waste sites from safeguarding. The plan-led process envisages - indeed, it expressly provides for - situations such as this: where sites are to be released.[5] Safeguarding of sites is to be permitted where "*compensatory and equal*

[2] See paragraph 7 of Mr Reed QC's opening submissions.
[3] Publication Version of the London Plan ("PVLP").
[4] Paragraph 1.3.7 of the West London Waste Plan. The compensatory provision was agreed to be 13,404 tonnes of hazardous waste capacity. Similarly, it was agreed that the area is smaller than the outlined in the WLWP: instead it is only the area which could lawfully operate under the Certificate of Lawfulness and therefore relates only to the 0.08ha.
[5] See policy WLWP2.

provision of capacity for waste, in scale and in quality", is made elsewhere within the West London Boroughs.[6] The assertion of Mr Potter is that the release of sites is premised only on the basis of the plan-**making** process.[7] That is based on a misreading, a misinterpretation, or a misunderstanding of the relevant policy matrix.

8. The release of waste sites is also envisaged in the Local Plan.[8] Policy LP 24, which considers the protection of waste sites, defers to the WLWP on issues of waste. It also states that the existing waste management sites appended to the plan are "*identified as a snapshot in time. The list can be revised*."[9] The transience of those sites in the plan-led process were raised directly in the context of the redundant waste use at the Arlington Works Site.[10]

9. Pursuing that line of questioning, Mr Reed QC, then raised the issue of tension with the WLWP and the PVLP. There is no tension between them. The WLWP requires that the plan-led approach be followed – that is the reason that we defer to it. Release of a safeguarded site through WLWP2 **would** be genuinely plan-led, and therefore consistent with the PVLP. It is therefore submitted that here is no arguable tension, let alone conflict between the PVLP and the WLWP on that basis.

10. Until Mr Potter's Evidence-in-Chief, the Council had also considered that the site could have the benefit of planning consent for non-waste uses, provided that it is compensated for. At all times in the process, the Council encouraged the Appellant to find compensatory provision within the WLWP, or within the Greater London area.[11] To change tact during the course of the inquiry, alighting on the argument that, now, planning applications for non-waste uses are not acceptable runs contrary to the WLWP, the FALP, the Local Plan and is a misinterpretation of the PVLP. There is, no arguable conflict with Policy SI9 of the PVLP.

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[6] WLWP2 of the West London Waste Plan.
[7] See the language of opening of Mr Reed QC's opening submissions, paragraph 8.
[8] which defers to the WLWP.
[9] A new paragraph was added after 6.5.6 in the LBRuT Local Plan (CDB1), page 77.
[10] Indigo (now WSP) made representations to the Local Plan explaining that, as it then operated Arlington Works did not serve "the overall waste function of the six boroughs in the WLWP. 93% of the oil that is recycled on site comes from outside of the plan area. There would be no measurable loss in service/capacity for waste oil recycling if Arlington Works is no longer identified in both emerging Policy LP24 or Policy WLPWP 2."

[11] See, for example the email chains of 7.03.18, 13.04.2018, 18.04.2018. These were submitted with the evidence of Mr Matthew Mehegan [Tue 19/01/2021 17:40]. (CDJ 8, CDJ 9, CDJ 10)

Type of waste to be provided in compensation

11. Paragraph 4.5.1 of the WLWP states that the policy directs that existing hazardous waste sites should be safeguarded unless compensatory provision is made elsewhere. Crucially, the plan envisages the retention of flexibility and, to avoid "stifling innovation", the "*Plan does not dictate which type of waste management technology could be developed in which location*".[12]

12. In the cross-examination of Mr Mehegan, Mr Reed QC, sought to undermine this approach by requiring that the provision was "oil for oil". This was not an approach which was supported by the Appellant. Instead, Mr Mehegan stated that the language of the policy required instead that "type" was a reference to the level on the waste hierarchy (see Figure 1-3 of the WLWP). Furthermore, that analysis was not raised in Mr Potter's Proof of Evidence, nor is it an approach that the Council had taken until that point. References to hazardous waste being the required compensatory provision are littered throughout Mr Potter's proof of evidence - see paragraphs, 18, 46 and 59 as an example of this.

13. The "type" being a reference to the waste hierarchy is also an approach which is consistent with the thrust of the WLWP and the specific language of WLWP2. Nowhere is the analysis of "oil for oil" supported. The safeguarding of the particular type of waste sites is not dictated in the plan: that is left to the market and need for the particular waste processing facility available.[13] For that reason, the plan does not stipulate what type of waste management should be undertaken at each respective site.

14. Moreover, the requirement now to provide compensatory capacity of a sub-class within hazardous waste is yet more surprising when it runs directly contrary to the position which was taken by the Council in earlier correspondence – a point on which the Appellant sought direct clarification on several separate occasions during paid for pre-application discussions with the Council. Precisely what was required by way of compensation was stipulated as being "hazardous." Notably, as referred to in evidence by Mr Mehegan, the following exchanges are of note:

[12] Paragraph 5.1.3 of the West London Waste Plan.
[13] In cross-examination, Mr Reed QC sought to establish this by relying on the site activity in Appendix 2 of the WLWP. That does not safeguard a site in a particular use. It merely explains the "Existing Waste Sites in West London" and refers to the activity on the site. It does not prescribe the use of the site. This was corrected through Mr Newberry QC's re-examination of Mr Mehegan.

a. In email correspondence from Ms. Wendy Wong Chang (Principal Planning Officer) to Ms. Jessica Carmichael of WSP Indigo[15] which referred to paragraph London Plan Policy 5.19 that "*development proposals that would result in the loss of existing sites for the treatment and / or disposal of hazardous waste should not be permitted unless compensatory hazardous waste site provision has been secured in accordance with Policy 5.17H*".

b. The Appellant, seeking to make doubly sure that they had interpreted the policy correctly, emailed Ms. Wendy Wong Chang. The reply was sent to Jessica Carmichael, where that position was further strengthened. [16] The officer stated that:"*[w]e have already confirmed that the London Plan, policy 5.19, 12,000 tonnes of another hazardous waste stream, is fine*".

15. To seek to move away from that approach is wrong. This is particularly inappropriate when the Appellant directly sought clarification from the Council on that point and relied upon that advice.[17] To seek to change tact now (after a period of some two years) demonstrates that the approach of the Council is not only wrong as matter of policy interpretation, but their entire shift is entirely unacceptable. This is extremely unreasonable on the part of the Council.

The area in which compensatory provision is to be sought

16. The shift in the Council's position is even more remarkable when the Appellant actively engaged with the Council on the issue of the geography in which the compensatory provision was to be sought. First, it was clarified that it should be within the West London Waste Plan area, but that there was a possibility of providing the compensatory capacity within the greater London area, approaching the geography question on a sequential basis.

17. In email correspondence from Ross Harvey to Jessica Carmichael,[18] it was stated that "*the Council has already confirmed agreement to this approach at the pre-app meeting. The*

[15] See email dated 13.04.18 which was tendered in evidence with the evidence of Mr Mehegan in email sent to the Planning Inspectorate dated [Tue 19/01/2021 17:40]
[16] See email dated 18.04.2018 which further follows up on the evidence above [Tue 19/01/2021 17:40]
[17] See the correspondence with the waste providers, for example, Quattro who were mentioned during the inquiry and with whom the Waste consultant is in negotiations.
[18]which is now WSP, the lead consultants on the scheme. See email dated 7.03.2018. This was tendered in evidence prior to the session of Mr Mehegan in email sent to the planning inspectorate dated [Tue 19/01/2021 17:40]

West London Waste Plan area has to be reviewed as a priority. If the capacity cannot be accommodated within the WLWP area then you may consider the wider London generally. The Council will be reluctant to accept an alternative location outside of London at this stage. (...)"

18. Moreover, the sequential approach would be supported by the PVLP. The net self-sufficiency of hazardous waste was an issue which was laboured by Mr Potter in his Evidence-in-Chief and was a point which underpinned his submission 'Impact of Loss of Appeal site capacity on achievement of net self-sufficiency for management of waste received'.[19] The overarching aim of the policy of contributing to "net self-sufficiency" would allow for compensatory provision to be provided within the greater London area. Again, the sequential approach would be in accordance with what the policy, in broad terms is seeking to achieve.[20]

19. More importantly, to not allow for a sequential approach to be adopted, would mean that the approach taken now, would be inconsistent with the pre-application advice provided by the Council. Again, this precise issue was raised, explored, and clarified.[21] The Appellant relied upon this approach, and explored other options within the greater London area.[22] Again, if they are now seeking to deviate from that approach, then that approach is, again, totally unreasonable.

The waste hierarchy

At 1.3.4, the WLWP provides for the management of waste according to the waste hierarchy. As explained by Mr Mehegan in evidence, the process of waste processing to be undertaken was in the category of "other recovery" in the hierarchy and was not recycled considerably lower than the re-use (or preparation for re-use) of the waste as was explained by Mr Potter.

[19] submitted 18/01/2021 12:32.
[20] This is the aim of the net self-sufficiency within London.
[21] This was part of the evidence which was tendered in evidence prior to the session of Mr Mehegan in email sent to the planning inspectorate dated - Tue 19/01/2021 17:40.
[22] See for example, Mr Mehegan's options which were put forward to the inquiry including indications that discussions were ongoing with ARO in Greenwich, and, as Mr Mehegan referred to in evidence that there were ongoing discussions with Powerday which were described as being "immediately adjacent" to the border of the WLWP area.

20. At paragraph 2.4 of his proof, Mr Potter refers to the fact that "*the current consented use relates to a specialist facility dealing with hazardous waste*" and throughout his written evidence the focus was placed on ensuring that there was a throughput to manage the same capacity of waste. As Mr Mehegan explained, this was also the understanding on which discussions with the local planning authority proceeded.

21. At paragraph 2.4 of his rebuttal proof (CDI 22), Mr Potter refers to the fact that "*the current consented use relates to a specialist facility dealing with hazardous waste*" and throughout his written evidence the focus was placed on ensuring that the throughput to manage the same capacity of waste. As Mr Mehegan explained, this was also the understanding on which discussions with the local planning authority proceeded.

22. In his Evidence in Chief, Mr Potter explained he understood the facility on the appeal site to treat waste to the extent that it ceased to be waste – that it became product. He went on to coin the phrase Quality Protocol. Introducing the concept that waste was being treated to the standard of the Quality Protocol. This would position the process at high level in the waste hierarchy. However, Mr Potter is wrong, product is not made here. The facility took waste in, processed it (including by gravity and by heat) and dispatched it still as waste. This places the activity on the "other recovery" rung of the waste hierarchy

The unexploited hazardous waste capacity

23. Mr Mehegan provided the inquiry with an analysis of the unexploited hazardous waste capacity within the WLWP area, and with a provider who was "*immediately adjacent to the border*".[24] Mr Mehegan also explored how the available capacity was available within the WLWP area[25] and was still negotiating with relevant providers. It was clear from Mr Mehegan's evidence that the provision of compensatory provision for waste was a moving feast and that Mr Mehegan was of the view that it was "very likely" that compensatory provision within the WLWP could be found within a three year period, if permission was to be granted.

[24] This relates to the Powerday site which lies within the OPDC, but not in the boroughs of Brent and Ealing. It lies immediately adjacent to the border in Hammersmith.
[25] this was set out in the Excel spreadsheet produced for the inquiry at [Mon 18/01/2021 19:53]

24. To the extent that the Council claims now that the Appellant was not prejudiced either is wholly unsustainable. Based on the communications above, the Appellant preferred to look for oily waste compensation, however it also proceeded its search for compensation on the basis that hazardous waste (generally) and, potentially outside the WLWP area, would be acceptable.

Condition

25. During the inquiry, a suggested condition was put forward by the Appellant to allow for the compensatory waste provision to be provided in any event, prior to the commencement of development. This would make the scheme policy compliant within the requirements of the WLWP as it is designed to ensure that the compensatory provision is delivered, prior to the construction being commenced.

26. Where the scheme would otherwise be an unacceptable development it could be made acceptable through the use of the conditions. In accordance with paragraph 55 of the NPPF2019, planning conditions should meet the relevant tests. These are clearly met. It is submitted that in all respects a pre-commencement condition would be acceptable, and there would be a clear justification for the same for the reasons set out.[26]

Employment and industrial land

"No net loss" of industrial land

27. The site is a non-designated industrial site. The site is not classified as strategically important industrial land (SIL), nor is the site classified as a locally significant industrial site (LSIS). As indicated by the Secretary of State, the "no net loss" of industrial floorspace for designated industrial land (relevant to SIL/LSIS) was removed in the most recent iteration of the London Plan.[27]

28. It is accepted that the removal of "no net loss" does not strictly apply to the Appeal site. However, it is relevant. It is relevant, **first**, because, as explained by Mr Villars, the requirement to protect even the most strategically important or locally significant industrial land has been removed from the London Plan. Mr Villars stated that the clear driver underpinning this approach was to remove the significant hurdle to freeing up industrial

[26] It is submitted that this would be a Grampian-style condition given that it would involve third parties.
[27] Formerly at Part C of Policy E4 of the ITPLP (2019)

and employment land because there are other development priorities. This is to allow for the release of SIL/LSIS sites to allow for the transfer of some employment land to other uses. This is wholly unsurprising, given the dire need for housing in London.[28] This is also a direction of travel which is encapsulated in the main industrial policy of the PVLP, Policy E7.

29. **Second**, even if those sites which are most strategically significant are released from the "no net loss" requirement, then it begs the question why, as a matter of principle, the Council should afford a less significant industrial site, an even higher level of protection. That runs contrary to the London Plan objectives and the principle of the hierarchy of designation. Moreover, the policy implications of that approach are to safeguard sites which could be used to deliver other policy priorities, as well as intensified industrial use.

The policy context

30. Mr Ground QC and Mr Reed QC alighted on the analysis of LP42 of the Local Plan. Mr Villars gave evidence that there had been no marketing of the site. The policy requirements set out that the loss of industrial land would only be permitted where robust and compelling evidence is provided which clearly demonstrates that "*there is no longer demand for an industrial based use in this location at the site and that there is not likely to be in the foreseeable future"*.[29] In evidence, Mr Villars explained that there was no loss of an industrial site. In fact, the development would safeguard the use of the site for industrial use.

31. Several rationales were given for this analysis. First, that the floorspace would not be lost. The contextual factors of the site are important here. The waste use of the site has ceased and, as Mr Weeks stated, the shed buildings had come to "*the end of their natural life*". The BTMs require significant works in order to make the space usable, let alone marketable.

[28] See 1.4.3 of the Publication Version London Plan (2020)
[29] Policy LP 42A(1).

32. Second, the agreed position on the relevance of the floorspace was that the existing GEA industrial floorspace was 1010sqm; and the proposed GEA is approximately 714 sqm. The more relevant figure, in Mr Villars' evidence, particularly in terms of employment density was the net internal area of the existing site which is currently 849sqm, and which, as a result of the Appeal scheme would be reduced to approximately 512.5sqm.

33. In addition, and of relevance, as Mr Villars stated, the majority of the BTMs, are currently in a Class E use. He also stated that the B2 and B8 uses can change to B1 offices without consent. The detailed uses of the site were set out in Mr Villars' schedule of uses.[31] This schedule has not been disputed by the Council. Contrary to the submissions of the Council, the reality, therefore, is that the industrial use of the site is not protected in any event. They can, now, be used for any use within Class E which would include a range of non-industrial uses including uses as disparate as for retail, a gym, office or a creche.

34. Despite the protestations of the Council, and as was evident from Mr Villars' evidence, the Council cannot exercise control of Class E uses on site in the manner suggested by Ms. Dyson[32] or Mr Davidson. The industrial safeguarding of the BTMs therefore mischaracterises their protected industrial use.

35. Furthermore, the uses which are currently B2 and B8, could, through the exercise of permitted development rights move to a Class B1 use tomorrow. Mr Villars confirmed that there was at the very least a possibility through Class O[34] that the B2 and B8 units could be used as B1 office uses. Lindblom LJ in the Court of Appeal stated that the basic principle is that for a prospect to be a "real prospect", it does not have to be probable or likely; a possibility will suffice (per. *R (Mansell) v Tonbridge & Malling Borough Council* [2017] EWCA Civ 1314).

36. For completeness, Mr Batchelor's assertion that the move to a residential use on the site through a "daisy chain" of PD rights was completely unsubstantiated. This was an error. This was confirmed by Mr Villars in evidence particularly given the commitment of the Appellant to deliver space for creative industries, SMEs, etc, through the limitation of the

[31] Philip Villars, Proof of Evidence, Appendix D.
[32] Fiona Dyson, Proof of Evidence, paragraph 9.3
[34] Town and Country Planning (General Permitted Development) Order 2015.

use to E(g) with the relevant condition. Accordingly, the material relevance of the fallback position is that the vast majority of the site is not safeguarded or protected for industrial use in any event.

37. To demonstrate the commitment of the Appellant to the retention and provision of the industrial use of the site, a condition was offered to restrict its use to Class E(g) and to deliver it prior to first occupation of the residential part of the scheme. Accordingly, the Appellant agrees to restrict the use of the site be safeguarded: this is an important, relevant and very material consideration. From the evidence of Mr Villars and Mr Howe, preserving the longevity of the site is of importance to the Appellant and her family, having supported SME businesses on the site over many years.

38. On this basis, the Appellant's submissions are therefore defensible on two bases: **first**, that in material terms, the safeguarded industrial use of the site is not as great as the Council suggests. Given the great number of units which are now within Class E (and which have therefore lost the control of the Council), and given the possibility of using the remainder for B1 office uses, then the scheme does not result in a reduction of industrial floorspace. On that basis alone, Mr Villars' analysis that there was no need to market the site is sound.

39. **Second**, Mr Villars stated that the ideal and intended use of the site was for SME maker-spaces, creative industries or studio spaces, an analysis which was supported by Mr Weeks, the commercial agent from the local area. The employment density matrix[35] sets out the comparable density (in sqm) on the loss of industrial floorspace. Mr Villars stated that this space would be ideal for the "mixed B Class" or small business workspace.[36] Such spaces (in employment density terms) do have a range of predicted densities, however, it was envisaged that this would be for between 20 and 50 employees, even at the very lowest and this would be more than exists.

40. As stated by Mr Villars and from the guidance from the Homes and Communities Agency, this types of space, "*frequently come forward in locations with an industrial heritage*".[37] This was also consistent with the yardstick used by Mr Weeks who, from experience,

[35] Employment Density Matrix Page 29.
[36] as above.
[37] see the definition at paragraph 3.82 on page 24.

though not from a planning perspective, also gave a similar view (that the site would be in the order of 50 employees). On that basis too, the scheme would not result in the loss of an employment or industrial use of the site.

41. Mr Villars explained that the site would be fully compliant with the Publication Version of the London Plan Policy E7.[38] In broad terms, Mr Villars was of the view that the scheme would deliver an enhanced and more intensive provision of workspace within Class E(g). Demonstrating its commitment to the industrial aspects of the scheme, the Appellant further undertook, through a condition, to complete, and have ready for occupation, the 610sqm of commercial space before first occupation of the residential use.

42. Furthermore, in questioning, Mr Villars further explained that the definition of "equivalent" within the language of policy E2, was qualified by type, by use and by size. Mr Villars said that in his view, the scheme was certainly equivalent. It was at least equivalent in use, and the considerable qualitative upgrade of the space meant that there would be a more intensive, productive use of the site. Against the "fall-back" it would be a significant improvement not just "equivalent".

43. Putting the Council's case at its highest that there would be "some" loss of industrial floorspace (though that is disputed), it falls woefully short of the "complete loss" mooted by the Council in Reason for Refusal 2. In any event, the scheme does not conflict with policy LP42 and is fully compliant with new London Plan policy E7.

44. It was clear from the evidence of Mr Davidson's that the Council's approach was to slavishly follow the local plan policy without any regard for the fallback position or the emerging policy landscape.

The demand and need for the Appeal Scheme

45. In evidence, Mr Weeks also discussed the marketability of these types of proposed spaces.[39] Mr Weeks explained that the these were spaces which were sought after in this part of the borough: of great commercial interest, particularly in light of the Covid-19 pandemic and

[38] It is helpful to use his note entitled "Arlington Industrial Land Policy – London Plan" of 15 January 2021, "Provision of Class E(g) Space" where Mr Villars provides a "walk through" of the various limbs of the policy and how it complies with each individual element of the scheme.
[39] see the Featherstone Leigh Marketing Report, prepared by Featherstone Leigh Commercial (CDF27).

there is a need for flexibility in SME/creative spaces which need to be adaptable to increasingly diverse and changing working patterns.[40]

46. In broad terms, Mr Villars was of the view that this was an appropriate, sustainable industrial use in this predominantly residential area. This is particularly the case when compared with the heavy B2 industrial and hazardous waste use of some of the site, which, by its definition is inappropriate in a residential area. Of note, were the comments of Mr Hines, representing 600 residents, who in opening submissions stated that he did not wish to see the oil refinery use of the site return, largely owing to the amenity issues arising from the use of the site for that purpose. Residents were "pleased" that it had gone.

47. In summary, in real terms there is no arguable loss of industrial land – in fact, the Appeal scheme will maintain an extensive industrial presence. This is secured at the site through the condition. Without the Appeal scheme, no control of the industrial use at the site can be exercised. On that basis, the fallback situation is a very real and possible. Moreover, the scheme is fully compliant with Policy E7. The scheme is compliant with emerging London Plan policy and which, if adopted before the decision is taken, would conflict with LP42. On that basis alone, Policy E7 is, at the minimum a material consideration of full weight, and, if adopted, the touchstone against which this appeal should be determined.

Housing need

48. Notwithstanding the five year housing land supply conclusion reached, there is an undeniable need for new homes in LBRuT, a point accepted by the Council. The identified housing targets in the adopted London Plan, the Publication version of the London Plan, and the LBRuT Local Plan all acknowledge that they fail to meet the identified OAN housing need of the areas the plans cover.

49. In LBRuT the current housing target of 315 and the emerging housing target of 411 dpa are woefully short of the need identified by the 2016 SHMA of 1,047 dpa. The result of this is damaging to the community LBRuT is to serve, making housing simply inaccessible and

[40] Employment Density Guide (3rd Edition) (Homes and Communities Agency, 2015)

unaffordable: using the median affordability ratio (which compares house prices against workplace earnings), LBRuT is the sixth least affordable authority area in the country.

50. On the Council's own case, Richmond has the highest house prices in Outer London, and, despite households, having the second highest average earnings in Greater London, affordability is a key issue affecting residents (see evidence of Mr. Bradbury, the Council's Development Project Officer[41]). Mr Bradbury then goes on to say that there is a "*significant need for family sized rented homes of the size to be provided in the proposed scheme*". Insofar as that translates into statistics, on Mr Wood's evidence, there has been a consistent inability to provide for the identified affordable housing needs in the borough. Between 2014 and 2020, just 312 affordable homes were delivered amounting to just 5% of the identified need during this period. This is an abominable record.

51. On the issue of the 5YHLS, against the Publication of the new London Plan housing target of 411 dpa, the Appellant maintains that the Council cannot demonstrate a 5YHLS. The Appellant demonstrates that the Council's stated supply of deliverable housing is overstated, including sites without the evidence required to be considered "deliverable" by virtue of the NPPF definition, reducing the identified supply from 2,217 or 1,817 dwellings.

52. The Council has also failed to appropriately address the backlog of unmet housing need against the new target from the first year of the plan period. The 79 home shortfall against the target in the 2019/20 period, must be met in the subsequent plan period. Given the drastic housing situation in LBRuT, this shortfall must be addressed as early as possible, accordingly, it is submitted that it is only right to apply the "Sedgefield" Method and attribute this shortfall in the next five years (rather than spreading it across the 10 year plan period). If the "Sedgefield" Method is appropriately applied, then the Council cannot demonstrate a five year housing land supply even if it is accepted that all of its identified supply of 2,217 homes are suitably deliverable.

53. Correctly applying the "Sedgefield" approach and discounting sites which do not meet the definition of being deliverable, means that, against the new London Plan policy target, the

[41] Paul Bradbury Proof of Evidence, paragraph 3.1

council is only able to demonstrate a 4.1 years supply. In those circumstances, the Inspector should apply the "tilted balance."

Design

54. The issues of design of the scheme were considered by Mr Sellars and Mr Howe, the scheme architect. The focus of the Council's reason for refusal relates to: (i) the layout, height, scale and massing; (ii) the townscape, screetscape and visual dominance; and (iii) the impact on the BTMs.

55. The consideration of the design of the scheme was set against the backdrop of an appeal site which was acknowledged to be "*unsightly*",[42] where the existing arrangement was in "*an advanced stage of dereliction…with the stable buildings in a poor state of repair*".[43] Mr Weeks gave the view that the metal shed units were one of the worst he had the pleasure of seeing during his 30 years in business.

Layout, height, scale and massing

56. First, the complaint on layout, scale and massing is completely ill-founded. During his evidence, Mr Sellars focused throughout his evidence on 2/3 storey buildings on the approach to the Appeal site,[44] he failed to mention that, on the other side of the same roads (closer to the appeal site) there are five storey buildings (as were explored with Mr Howe). Ms Dyson even commented in paragraph 146 of the Report to Committee that "*it would be inappropriate to ignore the contribution that these buildings make to the character of the wider area".*

57. In cross-examination, Mr Sellars stated that the "*proposals cannot be described as being substantially taller than the surroundings or cause a significant change to the skyline.*" This is wholly unsurprising, given that the true context of the approach to the site is mixed. Not only does the East Twickenham Village Planning Guidance SPD confirm that the site is not visible from the context due to the four storey Twickenham Studios Sound Centre buildings and other adjacent residential buildings, including Kelvin Court and Howmick Court that surround the site (other than the railway). Importantly, its inclusion as part of a

[42] Chris Howe, PoE, CDI17 paragraph 5.18.
[43] Chris Howe, PoE, CDI17 paragraph 5.18.
[44] see Mr Sellars' Powerpoint presentation which omitted several important buildings in the approach to the Appeal Site.

four storey context is in keeping, indeed, it is entirely consistent with the immediate surrounds.

58. During cross-examination, Mr Sellars agreed that the scheme was compliant with all the material aspects of design standards – in particular, he took no issues on the unit sizes, on the accessibility of the site, or on the density of the development. These were all features which are relevant to layout, and "crampedness" and, yet, were standards with which the Council took no issue. As was evident from Mr Howe's evidence, the proposed buildings are appropriately separated and spaced from their neighbours to avoid overlooking and privacy issues. They are also arranged within landscaped areas, providing an enhancement to the existing site devoid of planting or ecology and the proposal does not affect the amenities of any adjacent property or their occupants.

59. Mr Newberry QC unpacked with Mr Sellars and Mr Howe the rationale for the purported "*severe horizontal emphasis of the eastern elevation*".[45] This was a surprising view to take, largely given the verticality of the series of rectangular blocks on the front elevation, the recesses for the doorways and the balconies which were also acknowledged by the Council.[46] The subjectivity of horizonal-emphasis criticism was indicated in the evidence of Mr Howe who said that the glass atriums now favoured by the Council (to break up the horizontality) were not favoured by the previous case officer. That "horizontality" was, as indicated by Mr Howe, a highly subjective feature, which does not engage policy and which, on that basis should be disregarded.

Impact on the BTMs

60. Mr Sellars levelled a criticism of the impact of the Appeal Scheme on the mews buildings. That was not, however a view which withstood scrutiny. First, the mews buildings, by their very nature and purpose are designed to be tucked away, towards the rear of the site as former stable blocks (designed not to be seen). Similarly, there was no simple or defined pathway to them either.[47] They are not civil buildings in a public realm setting, they are utilitarian and inward-facing.

[45] This was contained in RfR4.
[46] Paragraphs 147-148 and 15 of the Officer's Report (Statement of Case, paragraphs 14.13-14 and 14.16).
[47] Chris Howe (CDI17) PoE, 6.15.14

61. Of material relevance, is the fact that, without having a statutory listing, and being outside a conservation area, there is no protection which can be afforded to the BTMs. As Mr Howe stated, the residential buildings have been sensitively designed to step down to the BTMs. The Appellant has, however, committed to comprehensive and sensitive restoration of the buildings bringing them back to be a feature of public interest.[48] The appeal scheme proposals would rejuvenate the BTMs – and at no small cost – in the order of just short of £1 million. As was stated by Mr Villars this is a considerable planning benefit of the scheme which should be afforded substantial weight, meeting the policy of both preserving and enhancing.

Rule 6 Parties.

62. First, the inquiry heard from Mr Hines, Chairman of the Twickenham Park Residents' Association and representative of the Barons' Association. Despite purporting to have support of local residents in his objection to the scheme, during cross-examination, Mr Hines conceded only that he had engaged in a brief conversation with Mr Vohra of the studios. During that conversation (July 2020), Mr Vohra, had convinced Mr Hines, (without any evidential basis) that the construction works on site would be so noisy as to cause the studios to become "uneconomic".

63. It is submitted that this analysis is unsound. First, it is set against the heavy industrial use of the site (for oil refining), and for several B2 uses, including a blacksmith and car body repair shop close to the boundary with the studios. Mr Villers referred to a litany of complaints received from residents and the studios regarding activities at the site over time. There were also complaints which had been received by Environmental Health and which were submitted to the inquiry.

64. Moreover, until that point, Mr Hines admitted in cross-examination that he had blindly followed the assertions of Mr Sunny Vohra of the Studios. This was without having seen any acoustic analysis of the potential impacts of the Appeal scheme, or economic analysis to assert that the scheme would lead to the studios becoming "uneconomic".

[48] It was evident from Mr Howe's evidence that they are currently prohibited from public access as the site is currently gated and are therefore not for public enjoyment.

65. Much of the Twickenham Studios' evidence was given by Mr Sunny Vohra. In his position as a senior official within the Studios, Mr Vohra gave evidence of his view of the potential impacts on the Studios. Again, the substance of his complaints were not supported by any noise evidence. A letter from the studio's noise consultant was only provided at the end of the first week.

66. Mr Ground QC, during the evidence of Mr Batchelor, asked whether the construction impacts of the development had been considered. To the extent that any noise evidence was submitted by the studios, these were submitted late.[49] Those impacts had been considered extensively by Aulos in their Acoustic Report which formed part of the suite of application documents.[50] The Council also did not take issues with any potential construction noise on the site. In their detailed analysis of the appeal scheme, the site was deemed to not cause any potential environmental effects associated with the required demolition and construction of the works which have been adequately identified and assessed, with proper proposals for their mitigation by condition clearly defined.

67. In the Committee Report, the Officer was satisfied that any potential impacts of the noise development could be managed by a Construction Method Statement and Monitoring regime.

68. The Studios' argument is that failure to grant permission of the site will result in the scheme being brought forward for development by the Studios themselves. Such development would likely cause still further noise than residential and light industrial development of the site. While in cross examination, Mr Batchelor gave evidence of the proposed use of the Studios' site (and how noise mitigation would be handled), he failed to address the pre-application proposals which included the Appeal Site. As noted by Mr Villars, the Council in its pre-application correspondence had included the Appeal site.[51]The Council did not accept the overdevelopment illustrated for the Arlington site. The second pre-application scheme did not include the Arlington site, we assume for this reason.

[49] This was after the evidence had been given by Mr Vohra and Mr Batchelor.
[50] CDF28 Noise and Vibration Assessment, prepared by Aulos Acoustic.
[51] page 19 and 20 of Appendix 2, Mark Batchelor PoE.

69. In addition, Mr Batchelor disclosed that the Studios want to purchase the site. The Inspector is not entitled to place any weight on that as a material consideration in these proceedings anyway. The Inspector should also not place any weight on the pre-application schemes submitted by the Studios, not least because these were not accepted by the Council.

Planning merits

The approach

70. It was clear from the evidence of Ms. Dyson that the approach of the Council is to treat the Appeal as destined to fail if any one of the Reasons for Refusal were to succeed. She states, at 17.8, that "*[W]hether the reasons are looked at cumulatively or individually, the scheme fails to comply with strategic or local policies*." That approach is entirely contrary to the principle of having a development plan and assessing schemes against the plan as a whole.

71. It is trite that, in planning law terms, the development plan will have policies that pull in different directions. If Ms. Dyson's approach is to be adopted, then only if **all** policies are met would the Appeal scheme succeed. That cannot be correct. A similarly surprising position was adopted by Mr Batchelor who was of the view that non-compliance with LP42 would, in itself mean that the appeal was bound to fail. That is a draconian approach which fails to assess the merits of the scheme in the round.

72. Mr Villars, by contrast, assesses the scheme against the development plan, taken as a whole. The scheme does comply with important policies of material relevance. These include compliance with WLWP2 and LP24; Design and Character (LP1&LP4) and affordable housing (LP36 & LP34) and mix of uses (LP1&LP35). In addition, the scheme is policy compliant with the relevant highways policy (LP45), children's play space (LP31), and CO2 emissions (LP20&22).

Planning balance

73. For the reasons set out here, the Appellant contends that the scheme is compliant with LP42: there is no loss of industrial space, particularly when regard is had to the fallback position. However, to even contend that that policy alone should bring down a whole

scheme is entirely unreasonable. There are a multitude of other policies set out above against which the scheme should be assessed, against which the scheme clearly and squarely delivers.

74. Even if there is a degree of tension with a policy in the plan, the scheme has a multitude of benefits which should be given significant weight in the planning balance. This includes:
    a. the development comprising the use of previously developed, brownfield land including the re-use and enhancement of heritage assets;
    b. the efficient use of land, making better use of an under-utilised site to deliver more employment than existing uses;
    c. the provision of housing, including affordable housing;
    d. development in a sustainable location;
    e. provision of high quality design, enhancing the setting of the BTMs and conservation area;
    f. provision of mixed use development providing both B (E(g)) class and C3 class uses;
    g. removal of uses which harm the amenity of neighbouring uses, including hazardous waste.

75. As Mr Villars stated in evidence the scheme "works hard" to safeguard industrial land and delivers on a multitude of development imperatives. It should be allowed to ensure that the scheme is able to protect sustainable industrial space within the borough which will otherwise not be secured as well as to ensure that there the site will continue to deliver employment, housing and heritage benefits for many years to come.

Clive Newberry QC

No.5 Barristers' Chambers

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