IN THE MATTER OF ARLINGTON WORKS

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

REPONSE TO COSTS APPLICATION FROM THE LPA

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1. The Appellant defends the claim for both full and partial costs in the strongest possible terms. The Appeal enjoys a wholly reasonable prospect of success. The Appellant's appeal was by no means unreasonable within the meaning of the PPG.

2. The Appellant's submissions are set out with the benefit of the important context that the Inspector, in his pre-inquiry CMC note, encouraged the parties to engage pro-actively in negotiation, narrow the issues and find common ground. This was to help save time at the inquiry. That is exactly the approach which has been taken in these proceedings, and on several of the key issues now the subject of this application.

3. Moreover, as the inquiry note states that the Inspector "could not foresee an application for costs" as being forthcoming and that is having considered the policy framework and the initial Statement of Case. On that basis alone the costs application from the Council is entirely without merit.

Waste

4. On the issue of the loss of a waste site, the Appellant's case was not at all premised on an unreasonable interpretation of the provisions of the waste policy within either the FALP, the PVLP or the WLWP. The Council's suggestion that the interpretation of the waste policy was incorrect is wholly misconceived.

5. Strictly, as a matter of policy interpretation, the Appellant has clearly demonstrated that it has not misunderstood the terms of the policy. The Appellant admits that it has not yet demonstrated the compensatory provision it is in place – however, through the

suggested condition that it, of course, the Appellant would be required to do so prior to development commencing on the site. That is entirely consistent with the language of the policy.

6. Second, it is the Council who have changed their interpretation of the policy, and at the very last minute, notably, as late as during the course of the inquiry. The fact that the Council, now, are seeking costs against the Appellant is rather incredulous. So unreasonable has the Council's case on this matter been, that this would, in itself amount to behaviour deemed to be wholly unreasonable.

7. The reason it is unreasonable is set out in full in the Appellant's closing submissions. The Appellant asks the Inspector to have regard for those full submissions in considering this application but, for the purposes of brevity, the essential point is that **firstly**, the interpretation of the PVLP does not mean that waste sites can only be released on an plan-**making** basis. A correct reading of the policy is that is has to be on a plan-**led** basis. That means deference to the relevant waste plan, in this case the West London Waste Plan ("**WLWP**").

8. Indeed, the Appellant has abided by the relevant waste plan policy. It understands it and has every intention to find compensatory provision prior to the development being commenced. That is why it put forward a condition to that effect. A costs application from the Council on this point is therefore baseless.

9. **Second**, contrary to Mr. Reed QC's suggestion, the plan does not prescribe the actual type of processing facility which is to occur on the site. That is, in itself, a misreading of the relevant policy document. Of note, is the relevant passage in the WLWP which reads as follows that, the "*Plan does not dictate which type of waste management technology could be developed in which location*"[1]. The WLWP states that all waste management sites have been assessed as broadly suitable for the development of additional waste management capacity that would count towards meeting the London Plan apportionment.[2] It is therefore within the proper reading and interpretation of the

[1] Paragraph 5.1.3 of the West London Waste Plan.
[2] Paragraph 5.1.3 of the West London Waste Plan.

policy that this meant, as was stated by Mr. Mehegan in evidence, that the "type" was a reference to the level on the waste hierarchy.[3]

10. Moreover, however, the Council's position on this matter is perverse. The reason that the Appellant rebuts the costs application in the strongest manner is because it took a diligent approach by contacting the Council and seeking clarity on these points as far back as 2018. The Council are therefore entirely wrong to suggest at paragraph 4 that the Appellant "did nothing". In fact, it did everything it could. Precisely what was required by way of compensation was clarified with the Council as being "*hazardous*",[4] and that while provision within the WLWP would be preferred, a sequential approach (including providing within the Greater London Area) could be adopted.[5]

11. The Appellant has neither misinterpreted, nor misapplied the relevant policies. The Council's behaviour has in itself been entirely unreasonable on this issue and on that basis alone, the Costs application should fail.

Industrial Land

12. Similarly, as was evidenced on the issues on industrial land; the position is not clear cut either. There is a clearly arguable basis that there is no conflict with LP42 and that the requirement for marketing does not apply in the instant case: the Appellant had every intention from the onset – and has made every effort to - secure the long-term viability of an industrial use on site. As set out in the evidence of Mr. Villars, and again, as referred to extensively in the closing submissions, despite the policy designation, this is not a site where the Council is able to exercise development control and ensure that the site is kept in an industrial use.

13. The reality is that much of the site is already in a Class E use (and it is possible for it to be used flexibly for that purpose). It is possible that PD rights can be exercised for use of the site as a B1 office use. Accordingly, the slavish application of policy in the manner suggested by both the Council and the Studios is not well-founded. Contrary to

[3] see Figure 1-3 of the West London Waste Plan.
[4] see email of Wendy Wong Chan in email correspondence with the Appellant on 13 April 2018.
[5] see email correspondence with Ross Harvey and Jessica Carmichael where it was stated that the WLWP had to be reviewed as a priority but that, if the capacity could not be met within the WLWP area then "you may consider the wider London area generally".

the position as set out by the Council at paragraph [6] of the Costs Application, no market evidence is required in order to show that the fallback position can be relied upon.

14. The "fallback position" is, however not relied upon as the totality of the Appellant's case on industrial land. The Appellant's case was that the it was based on the fact that the Appellant is providing industrial floorspace and would therefore not need to market the site in order to show that there was no demand for the same. For the reasons set out in Mr. Villars' evidence, the Appellant is passionate about preserving the industrial use of the site which has grown up over many years. This has provided a home for many local SMEs and now requires a new lease of life and significant investment.

15. The Council's view that this would amount in a "complete loss of an industrial site" is entirely wrong. It is wrong on a plain reading of the reason for refusal - in no way would this amount to a "complete loss" of an industrial site; the Appellant has committed to that use by putting forward a condition safeguarding that use.

16. Similarly, the Appellant is of the view that the industrial use, will, in-fact be strengthened and intensified. That is reasonable based on the current essentially redundant uses, with many of the areas of the site based on the poor, almost uninhabitable industrial accommodation. The Appellant is of the view that this enjoys a very real prospect of success and is certainly more than merely arguable.

17. Contrary to paragraph [7] of the Council's Costs Application, the reliance on E7 was also entirely reasonable. It represents the very latest thinking on industrial land policy, is due to be imminently adopted (likely to directly affect this Appeal decision). It is entitled to be given full weight in the planning balance if the PVLP is **not** adopted prior to a decision being taken. If the PVLP **is** adopted prior to the decision being taken, then, given the conflict with Policy LP42 on the issue of site marketing, is very likely to take precedence over LP42 in any event (owing to s.38(5) Planning and Compulsory Purchase Act 2004).

18. Finally, it is clear from the provision of new and refurbished space, the nature of the condition on E(g) accommodation and the commitment to bringing forward industrial space ahead of residential means that the scheme is policy compliant.

19. For the reasons set out above, the Claimant's case on the basis of industrial land policy is more than merely arguable and enjoys very real prospects of success.

Other Issues raised

20. Other matters raised by the Council include the 5YHLS. There is not, as the Council purports to admit, a clear position on 5YHLS. This was an issue which was raised by the Appellant in the Statement of Case (as early as March 2020) and given that the Council, even on their own case were only marginally able to demonstrate a 5YHLS (having turned their mind to the proving the same) of 5.1 years based on the outstanding deliverability of the sites in question, then the matter is clearly finely balanced.

21. Moreover, on the Appellant's analysis, the Council only meets that requirement where it applies the "Liverpool" approach. If the Inspector concludes that the "Sedgefield" approach is more acceptable (which, the Appellant submits, he should, given the historic under delivery in the Borough), then 5YHLS cannot be demonstrated at all.

22. In addition, this is set against the context of a more general housing need crisis in the borough, and severe issues with affordable housing in Richmond. This was even admitted by the Council's Housing officer, Mr. Paul Bradbury in his Proof of Evidence. On this basis, it was not an unreasonable stance to take at all. In fact, the Appellant is still of the view that even if the tilted balance does not apply, then these are factors which should be afforded substantial weight in the planning balance. For these reasons, paragraph 8 of the Council's claim for costs is entirely baseless.

23. In the spirit of active engagement and in accordance with the Inspector's instructions, the matters in dispute between the parties were narrowed. On the issue of traffic and highways, the Appellants were content with the layout of the site: the Appellant's moved their position in order to accommodate the Council's preference and sought agreement which was clearly in the interests of saving inquiry time.

24. Similarly, the issue of Affordable Housing provision was also narrowed. The obligations were produced subject to ongoing negotiation with the Council (specifically, Mr Paul Bradbury) because the Appellant wanted to close the gap with

the Council on precisely the type of housing that was required in the Borough. This was again, to prioritise unmet need, maximizing the value that the affordable housing provision could offer.

25. Furthermore, the Appellant's "without grant" offer of 8 intermediate units has not changed (which was the offer before the committee). It is only with the benefit of potential grant funding that a different offer is now on the table. It was Mr Grimshaw (the Appellant's viability consultant) who was advised by the housing officer not to approach Registered Providers until the viability document was agreed. This was not agreed until after committee. For these reasons, the contentions relating to Affordable Housing are also wholly without merit.

Conclusion

26. For the reasons set out above, the Council's claim is spurious and does not have any reasonable basis. The Appellant has proactively engaged with the Council throughout and considerably reduced the matters in issue between the parties. Of the matters that remained, the Appellant's position was entirely defensible and for those reasons alone, the Costs Application should fail.

Clive Newberry QC

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