IN THE MATTER OF ARLINGTON WORKS

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

REPONSE TO COSTS APPLICATION FROM TWICKENHAM STUDIOS

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1. The Appellant defends the claim for costs from the Twickenham Studios ("the Studios") 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 pre-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, including the issue of industrial land. On that basis alone the costs application from the Twickenham Studios should be considered to be entirely without merit.

Industrial land policy

3. The submissions relating to industrial land relied upon in the closing submissions are adopted but not repeated here.

4. **First**, on the topic of industrial land, the issues were not clear cut. There is a clearly arguable basis that there is no conflict with LP42 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.

5. 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) and 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. The "fallback position" is, however not relied upon as the totality of the Appellant's case on industrial land.

6. **Second**, the Appellant's case was that the it was based on the fact that industrial floorspace is provided in considerable quantities – this is not a loss of an industrial site. For the reasons set out in the 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. On this basis, the Appellant has even sought to safeguard that use by putting forward a condition protecting that use and by committing to bringing it forward in advance of residential occupation.

7. 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.

8. **Third**, the Appellant's reliance on Policy E7 of the PVLP 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).

9. **Fourth**, 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. However, even if the Appellant is found to be wrong on this analysis having regard to (i) the fallback position; and (ii) policy E7, then that does logically lead to the conclusion set out by Mr. Batchelor in his planning evidence. Non-compliance with policy LP42 does not mean that the Appeal would be bound to fail which is the approach taken by him.

10. The scheme is compliant with the development plan when taken as a whole. Putting the Studios' case at its highest, non-compliance with a policy does not mean non-compliance with the plan. Development plans often have policies which pull in different directions. This scheme delivers on a range of other policy priorities for the Council. In addition, as indicated extensively there are several very important and material considerations not least the commitment to provide high-quality, flexible industrial floorspace, and affordable housing, outweigh any harm in the planning balance.

11. **Finally**, and in light of these submissions, to award costs, the Inspector must be satisfied that the Appellant has been unreasonable. For the reasons set out above and in the closing submissions, the Appellant has been far from unreasonable, the Appeal does enjoy a realistic prospect of success and, on that basis the Claim for costs should be dismissed.

Clive Newberry QC

No.5 Barristers' Chambers

29 January 2021