Arlington Works

CLOSING SUBMISSIONS FOR TWICKENHAM STUDIOS

1 INTRODUCTION

1.1 Twickenham Studios [TS] is one of the most important production and post-production facilities operating in the UK. TS have made many world class films which have won Oscars and Baftas. Some of the most celebrated and talented directors, actors and post-production and sound professionals use the studios. It is no surprise that TS is designated as locally important industrial land in the recently adopted Richmond Local Plan. The serious adverse effect this application would have on TS is contrary to policy and in any event an important material consideration pointing to a refusal.

1.2 The application land is heavily protected by planning policy in the Richmond Local Plan. The developers need to show that there is no longer demand for an industrial based use in this location under Policy LP42. They simply cannot come close to that because there is a very real demand not least from the TS who have made an offer for the land of more than its value in its current use and quality. The result is a failure to comply with the industrial policy in the Local Plan.

2 CONTRARY TO NATIONAL, LOCAL PLAN AND LONDON PLAN INDUSTRIAL POLICY.

NATIONAL POLICY

2.1 Nationally the NPPF sets out that decisions should help create the conditions in which businesses can invest expand and adapt. Significant weight should be placed on the need to support economic growth and productivity taking into account local business needs. The approach taken should allow each area to build on its strengths.[1] The importance of the creative industries is recognised in the NPPF. Decisions should address the locational requirements of different sectors including the creative industries. [§82] This requirement of national policy is clearly breached as MB said in his examination in chief and he was not challenged on this. The loss of 40% of the floorspace on an NIA and 2/3rds of the site in an area with a great need for industrial and the second lowest vacancy rate in London is clearly contrary to this policy. The application does not support economic growth and productivity and take account local business needs. It jeopardises growth by losing 2/3rds of the site to residential and puts at risk a valued local business TS.

[1] Paragraph 80NPPF

LOCAL PLAN POLICY LP42

Full Weight to LP42 tested at LP examination.

2.2 Quite clearly one of the reasons why LP42 deserves full weight is that it has been through all the processes of the local plan and was fully endorsed by the local plan Inspector. The Inspector's report notes that "there has been substantial losses of both office and industrial space over recent years."[2] This is reiterated at paragraph 99 which endorses the conclusions of the evidence base. The Inspector said that "the Borough has experienced losses of industrial land of a higher rate than anticipated and retains a positive demand for industrial space into the future."

2.3 The Inspector expressly endorsed Policy LP42 and the presumption against the loss of industrial land in al parts of the borough. The Inspector said:

> *Policy LP42 carries a presumption against the loss of industrial land in all parts of the borough.* ***With regard to the available evidence, this is justified.***[3]

2.4 The Inspector expressly thought about the period of marketing and concluded that it was justified. He said

> *101 The two year marketing period is lengthy but not unreasonable in the context of a borough with high levels of occupancy and a minimal stock of land.*

LP 42 should be given Full weight consistent with London Plan and Government Policy

2.5 Mr Batchelor's evidence was always that LP40-42 carry full weight and are in conformity with the London Plan and emerging London Plan. He said that at paragraph 3.32 and said that

> *Accordingly they carry full weight.*

[2] Paragraph 94 App 5 Batchelor
[3] My emphasis §100 app 5 MB

2.6 Mr Villars accepted that LP42 was consistent with the FALP and the PLP. He said it should be given full weight.[4]

2.7 The planning witnesses were of course correct to say that LP42 was consistent with Government Policy. Paragraph 80 of the Framework provides that

> *80 Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.*

2.8 Richmond's approach is entirely consistent with Government guidance. It could not create the conditions where businesses can invest expand and adapt if there is not the land for industrial uses in Richmond or if that is further reduced. If significant weight is to be given to economic growth then land must be available for industrial uses.

LP42 PURPOSE IS AVOID ANY LOSS OF INDUSTRIAL LAND

2.9 The purpose of the policy is to avoid any loss of industrial land.[5] That is the only logical interpretation of the policy. That is what is meant when the policy says in the first paragraph that "the borough has a very limited supply of industrial floorspace and demand for this is high. Therefore the council **will protect.. the existing** stock". It is what is meant when the heading then says "**Retention of industrial floorpace**" in bold and then most obviously says:

> *"There is a presumption against loss of industrial land in all parts of the borough"*

[4] See cross examination PV by MR
[5] Eventually conceded by PV

Loss of Industrial space.

2.10 MB went through each of the steps of the policy logically in his examination in chief. The first step [as Mr Davidson called it] is to ask whether there is a "loss of industrial space" One then has to apply the test in A1 if there is loss of industrial space. There obviously is.

2.11 There is loss of floorspace on any measure. The best is NIA as MB said because that is what the user actually benefits from. Here there is a loss of 40%. The precise figures on FD's helpful table is that it goes from

- Existing 849sqm NIA to
- Proposed approx. 512.5sqm NIA[6]

2.12 There is a loss of 383.5sq m of completely industrial uses within the meaning of 10.3.1 of the local plan in the sheds as was set out by MB and conceded by PV. That is together with the ancillary uses around those sheds shown in the photos.[7] All of that would be lost to industrial. There would clearly be a loss of industrial space. That is being demolished and replaced with residential.

2.13 In fact looking at the whole site in terms of the ground floor it is currently all in industrial use within the meaning of the Local Plan at 10.3.1 as was accepted by PV[8] and set out by Mr Davidson and Mr Batchelor. In fact approximately 2/3rds of the site will be lost to industrial looking at the proposed ground floor plan[9] as MB said in his examination in chief and was not challenged on.

i) There is obviously a loss of industrial space as there is a reduction of NIA of 40%

[6] This is 40% reduction
[7] See Weeks page 7 and paragraph 5.42 proof of MB
[8] See cross examination of MR.
[9] Now 10(c)

ii) Looked at in another way there is a loss of 383.5 sq m of the sheds which are all in industrial use and only a gain of at most 38sqm times two for the small extension to the BTM.

iii) In addition to that there is a loss of space such that 2/3rds of the site is lost to industrial purposes. This included the loss of the industrial ancillary space for car parking and outdoor storage etc and in addition the ancillary car parking of the studios which is in the red line.

2.14 PV's efforts to say otherwise unfortunately for him are completely untenable on the plain words and purpose of the policy. The fact that they are refurbishing the BTM buildings is something that can of course be done in any event as MB said. There was no viability exercise done to say that this could not be achieved absent this appeal. In fact it has been continuously let in its existing condition. It would be bizarre if it could not be made to pay to do a scheme to improve the buildings economically. Mr Weeks said the refurbished scheme would drive the rents up from £6.30 to £25 per square foot.[10] The rent could accordingly be over quadrupled. In fact Mr Weeks said that "the rent levels or capital values just about warrant the expenditure[11]". The appellant cannot point to the cost of refurbishment[12] and say it could not happen without doing a proper viability exercise. Their case is that it is viable in any event that is why they did not do it[13]. The other point that PV made was to speculate as to the level of employment in the revised scheme. In reality this could all occur in any event even if correct. Office on their case has a higher rental value of £25 per square foot than B2 B1c which has £10-12 per square foot[14]. The appellant has reserved the right in the section

[10] CD F 27 at page 3
[11] Page 3 CDF27
[12] In any event it is wholly unclear which of the costs are refurbishment and which new build 4.7 of CD F23 refers to the Mews officers C5 to C7 which are not identified
[13] See F27 page 3
[14] Page 3 of CD F27

106 to use the BTM buildings for any use in E(g)[15] If Mr Weeks is correct on values there will not be any industrial in the BTM but instead office. This is consistent with the office use that the viability described.[16] This can hardly be seen to be a big advantage for an industrial site that all industrial within the meaning of the local plan 10.3.1 will be lost. The numbers of employees are purely speculative and not properly justified by the appellant. On 28 January 2021 PV said there was a range it could be.

2.15 In any event there is clearly "a loss of industrial space" as there is a net loss of employment floorspace and a loss of 2/3rds of the site to residential. The refurbishment of the BTM buildings cannot possible mean there is not a net loss of industrial space. In fact if the appellant follows their own advice on rent and their own construction estimates all the BTMs will be lost to industrial and used for office. The reality is that PV was factually wrong at 3.11 of his proof and based it on an untenable reading of what loss of industrial space means.

Cannot show no longer demand for industrial so Fails LP42A1

2.16 Since there is clearly a loss of industrial space this is only permitted where the appellant satisfies the test in A1 and shows that there is "no longer demand for industrial based use in this location and there is not likely to be in the foreseeable future." They cannot show there is no longer demand for industrial based use because there clearly is. They did not try because they knew that there was. That was the bizarre evidence of PV.

2.17 In fact Mr Weeks quite plainly accepted that there was demand in this area for industrial. He said this in his proof at paragraph 23 and confirmed it in cross examination form the Council and TS.

[15] See 3.1 (d) on page 5
[16] See page 11 and page 7 of Stace commentary at the end. They describe what is built as office

2.18 The evidence of Mr Batchelor was that the renting records at appendix D of Mr Villars confirms that there is a healthy demand for industrial use. Even though the appellant has in the words of Mr Weeks had "years of neglect[17]" of the buildings the demand is so strong that there has hardly been any vacancy.

2.19 PV accepted that there had not been any marketing of the site. Mr Weeks also said that he had not been instructed to market the site for industrial use.[18] PV said that of course they had not done any marketing because their case was that there was demand for industrial. He thus accepted there was a flagrant disregard for the policy in A1. He knew perfectly well that there was enormous demand for industrial now and in the future and that he would not do marketing because it would only prove what he knew that there was enormous demand. The fact that there is an enormous demand for the industrial land means it should not be lost under the policy. It cannot justify losing 2/3rd of it to other uses when there is demand for the industrial land.

The offer from TS is clear evidence of demand for industrial

2.20 In fact, the offer of £1.5m which is more than the value of the land in its current use and quality from TS who would use it for B1C shows there is about as strong a demand for an industrial based use as it is possible to evidence. The idea that this offer in some way is irrelevant when marketing is required is bizarre. Evidence of marketing is compulsory but evidence of an offer for the very use that is sought to be predicted in the appellant's world is irrelevant. That is not right. The offer is highly relevant and highly pertinent because it shows that there about as real a demand as it is possible to evidence for the actual use that is sought to be protected.

[17] Page 3 of cd F27
[18] See cross examination from MR and RG

2.21 It is quite clear that the Studios is a B1c use which is now E g (iii). This was set out by MB and he was not challenged and accepted in cross examination by PV. The Use Classes Order 1987 SI 1987/764 has been amended by the 2020/757 Regulations but retains the definition of industrial process.

> *"industrial process" means* ***a process for or incidental to*** *any of the following purposes:—*
> *(a)* ***the making of any article*** *or part of any article (including a ship or vessel, or* ***a film****, video or* ***sound recording***[19]*);*

2.22 What occurs at TS is a process for or incidental to making of films or sound recordings so it is an industrial process and now within class E (g) (iii).

2.23 The offer that was made was originally made in 2016 as is clear from appendix 3 of MB.[20] SV explained that he had made an offer of £1m and let it be known that he would go higher following an earlier valuation. He explained that at this time he was happy to discuss outright purchase, rental or even making Dawn Roads a partner in the Studios. In fact, he saw his local MP, VC who wrote a letter to DR and said that SV was "open to discussion on price and availability"[21]. He recommended that DR "seek jointly a new valuation from a respected surveyor who could identify a range of plausible figures which you can negotiate from." In fact, DR has not done that but completely ignored the offer.

2.24 The offer was repeated in 2020 on 14 October 2020 from Piers Read the managing partner of TS.[22] It was for £1.5m and it was pointed out that this considerably exceeds the market value of the property in its current use and current quality and was supported by a valuation. The invitation at the end was made for the appellant to come back if she did not consider that the figure is exceeded. That offer has been completely

[19] My emphasis
[20] See email of 16 July 2020
[21] See app 5 of MB rebuttal
[22] See appendix 3 of MB

ignored by the appellant and by Mr Villars. Mr Villars was sent this in advance of the exchange of evidence but has never taken any instructions on it.[23]

2.25 That offer indeed does exceed the market value of the property in its current use and current quality. The marketing that must be done is explained in appendix 5 of the Local Plan and on price it says that it has to be marketed at:

> *A price that genuinely reflects the market value of the property at its current use and current quality*[24]

2.26 The valuation of LSH values the existing use value of the appeal site at £1.4m. This is set out at page 25 of appendix 4 of MB. The appellant did not seek to dispute that value in any way, and it was accepted by PV in cross examination. In fact, their own work for the AH put forward an existing use value of the property at £1,385,182[25] which was agreed with the Council. It is difficult for the appellant to begin to say that they do not believe this figure when it is what they and the council rely on for their affordable housing modelling. In any event it is consistent with the valuation done for TS which they do not dispute. Thus, the offer exceeds the price that the appellant would have to show that they marketed it unsuccessfully at. It is highly material and shows there is a very active demand for industrial based use at the appeal site now and in the future.

2.27 There can be no question that this offer is a serious offer by a party that can afford it and would go through with the purchase and use for E.g. (iii). The evidence of MB, SV and Jeremy Rainbird was not disputed in this regard.

Breach of A1

2.28 The result of the fact that:

[23] Accepted by PV in Cross examination on TS issue by RG
[24] See page 201 §18.0.4 fifth bullet
[25] See page 276 of PV appendix F

i) There is a loss of industrial space

ii) There is a demand for industrial based use now and in the future

Is that there is a breach of LP42A1 with the result that there is a breach of the policy and the loss of 2/3rds of the site should not be permitted. This was the evidence of MB. The appellant effectively falls at this first hurdle erected by the policy.

Breach of A2

2.29 Even if the appellant had not irrevocably fallen at the first hurdle of the policy, they would fail A2 for very similar reasons. They have not done a marketing exercise that shows that the sequentially favourable use is not possible. The sequentially more favourable approach is

a Redevelopment for office or alternative employment uses.

2.30 The appellant has not done any marketing for that. They have not done any viability exercise for that. In fact, we know that TS want to use it for industrial which is on any view an employment use so it is impossible to think an alternative employment use would not be snapped up.

2.31 Thus, even if the appellant had not have failed under A1 they would have failed under A2.

2.32 The development is entirely contrary to LP42

THERE IS NO REAL PROSPECT OF NON-INDUSTRIAL FALLBACK OF SHEDS.

2.33 The change to Class E does not undermine this clear protection in this case for the reasons that MB explained at his section 4 and in examination in chief.

2.34 PV was clear that he was not relying on any fallback to go to residential in the BTM.

2.35 In fact, the industrial uses that are lost are in the sheds and surrounding land. The only point on an alleged fallback use that PV took was that one of the sheds may go to a non-industrial class E use. This suggestion did not even pass the preliminary "real prospect test" to mean that it could be considered as a fallback.

2.36 The law on fallback uses has been set out by Lindblom LJ ***in R(Mansell) v Tonbridge & Malling*** [2019] PTSR 1452

> *27 The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three thingscan be said about it:*
> *1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.*
>
> *(2) The relevant law as to a "real prospect" of a fallback development being implemented was applied by this court in the Samuel Smith Old Brewery case: see, in particular, paras 17–30 of Sullivan LJ's judgment, with which Sir Anthony Clarke MR and and Toulson LJ agreed; and the judgment of Supperstone J in Kverndal v Hounslow London Borough Council [2016] PTSR 330, paras 17 and 42–53. As Sullivan LJ said in the Samuel Smith Old Brewery case [2009] JPL 1326, in this context a "real" prospect is the antithesis of one that is "merely theoretical": para 20. 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": para 21. Previous decisions at first instance, including Ex p PF Ahern (London) Ltd [1998] Env LR 189 and Brentwood Borough Council v Secretary of State for the Environment (1996) 72 P & CR 61 must be read with care in the light of that statement of the law and bearing in mind, as Sullivan LJ emphasised, "'fallback' cases tend to be very fact-specific": para 21. The role of planning judgment is vital. And, at [2009] JPL 1326, para 22:*
>
> > *"[it] is important … not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge's response to the facts of the case before the court."*

2.37 Thus, for a fallback to be a material consideration it needs to be one that is a real prospect as opposed to one that is merely theoretical. However even if it were a material consideration the weight that a decision maker would want to give to it would depend on a number of factors but one of

them would be the likelihood of it coming about. Hence at paragraph 34 Lindblom LJ praised the officer for doing an analysis of the likelihood of it coming about and said that was a matter of planning judgment for the committee.

> *34 The officer did not simply consider the fallback in a general way, without regard to the facts. He considered it in specific terms, gauging the likelihood of its being brought about if the council were to reject the present proposal. In the end, of course, these were matters of fact and planning judgment for the committee.*

2.38 Here there is clearly no real prospect of any of these sheds going to non-industrial Class E use. This was the judgment of MB which was not challenged.

2.39 This was also the evidence of Mr Weeks. He said that the sheds were no longer fit for purpose and had come to the end of their useful life. [see paragraph 12 and 17 of his proof and cross examination by Council] He accepted in answer to me that there is no real prospect of them being used for another purpose without improvement. There are no pd rights to do such improvement. Thus, the evidence of the appellant's witness that had experience of letting industrial buildings and the market was that there was no real prospect of a change of use of these sheds to be used for non-industrial. That stands to reason because if they are not fit for their existing purpose, they can hardly be fit for a more demanding purpose that they were not even designed for.

2.40 The evidence of PV on this topic was incredible. He accepted that the sheds are long past being fit for their industrial purpose as Mr Weeks had said at paragraph 17. He accepted that there are no PD rights for any operational development. However he said that he did think there was a possibility of one of the sheds being changed to a shop. He accepted that there was not a single shop in Richmond that looked remotely like one of these sheds. He could not point to any shop in a shed in an industrial estate with no frontage. He said that it would be the first time this had

been done. This evidence contrary to the market evidence from the appellant from Mr Weeks was contrary to common sense. It is not remotely a real prospect that someone would turn one of these sheds into a shop in Richmond. The site is entirely uninviting for retail, away from any high street with no footfall and beside industrial uses. It is a bizarre suggestion and one that does not pass the test of a "real prospect" even to be a material consideration. Even if it did it would be so unlikely as not to attract any real weight.

2.41 There are, in reality, very unlikely to be any daisy chain of changes of use of these industrial sheds to take it away from an industrial use within 10.3.1 of the local plan. Thus, there is clear breach of a policy which has gone through all the processes of the Local Plan and been endorsed by the Local Plan Inspector and can be given full weight. This is sufficient as will be set out below to mean that the Local Plan as a whole is breached because the industrial policy must take priority over residential because it sets out a sequence. It would otherwise be entirely ineffective at preventing the loss of industrial land.

CONTRARY TO PLP INDUSTRIAL POLICY

2.42 The Publication London Plan policy does not support this scheme. In fact a mixed use on non-designated industrial sites is only supported under E7 where there is a mixed use intensification in line with E2. MB explained that E7 C (1) could not be satisfied and E7 C(2) was not satisfied. PV did not try to argue the reverse[26]. E7 D(3) makes it plain that the intensification needs to be of the industrial storage and distribution uses. E2 is clear that there needs to be "an equivalent amount of B Use Class business space is re-provided". MB explained that there could not possibly be an intensification of the industrial in this case.

i) There is a reduction of floorspace on NIA basis of 40%

[26] See cross examination of PV by Council and TS

ii) About 2/3rds of the industrial space is lost.

iii) The amount of B Use Class business space in policy E2 is quite clearly reduced.

2.43 That construction and application of the policies is correct. MB explained that the first paragraph in E2 was satisfied because there clearly was a shortage of lower cost workspace in Richmond bearing in mind the first sentences of LP42, the conclusions of the local plan inspector and the figures in the Costar reports which show vacancy in Richmond is about 1/6th of the London average.[27] PV did not dispute that the first paragraph of E2C was engaged.[28] His only point was that there was an equivalent amount of B Use Class space despite the 40% reduction in floorspace and despite the loss of 2/3rds of the site. This argument is untenable. It is relevant to note that he did not even engage with the PLP policy E7 in his proof at all and then when he did his construction that there could be an intensification of the industrial use when there was a massive reduction was not consistent with the words of the policies. The only other point that he took on the PLP was that it did not require marketing. That turned out not to correct because the PLP did expressly say a marketing exercise is necessary to show vacancy and marketing at 6.7.5 neither of which had been complied with.

2.44 It is also worthy of note that under E4 in a paragraph inserted to deal with the Secretary of State's recent objection the mayor has inserted a paragraph that deals with when boroughs are encouraged to assess the release of industrial land. They are only invited to assess the release of industrial land when vacancy rates are above the London average at paragraph 6.4.8. MB put in the Costar reports that showed that London has an average vacancy rate of 3.5% but in Richmond it is only 0.6%.

[27] See MB supplementary appendix 1
[28] See cross examination by MR

Thus it is about 1/6th of the London average. So Richmond is not under the PLP asked even to assess the release of industrial land. Against this measure they are advised to retain their very limited and heavily in demand supply. There can be no expectation under E4 that there would be any release in Richmond of its valuable industrial land.

2.45 Thus there is clearly a breach of National, Local Plan and Publication London Plan industrial policy. The judgment of Mr Batchelor is that this means it is contrary to the plan read as a whole.

3 SERIOUS ADVERSE EFFECT ON TS

IMPORTANCE OF CREATIVE INDUSTRIES

3.1 The Publication London Plan recognises that London has "unique strengths in specialist fields" including creative industries. The "wealth this generates is essential to keeping the whole country functioning". [29] The creative industries contributed £42billion GVA in London in 2015 and that figure is growing and likely to be more important as time goes on. It is over 11% of London's total GVA.[30] The London Plan Policy supports the continued growth and evolution of the creative industries. [HC5]

3.2 In fact, the "creative industries" are described in the PLP as one of London's "unique strengths".[31] Those specialist fields are in the words of the P London Plan:

> *"Essential to keeping the whole country functioning"*[32]

[29] 1.5
[30] 7.5.3 Publication London Plan
[31] §1.5.1
[32] ibid

TWICKENHAM STUDIOS KEY CONTRIBUTION TO THE UK FILM INDUSTRY

3.3 The PBA evidence base document for the Local Plan which the Local Plan Inspector endorsed[33] said that

> *"Twickenham Studios continues to provide a key contribution to the UK Film industry form its long-established base in St Margaret's."*[34]

3.4 Mr Rainbird has multiple studio interests through TCDICo and its subsidiary company TSS.[35] However, even with all of those interests he describes TS as "the jewel in our crown"[36].

3.5 The reason for this came out in the passionate evidence of SV the Chairman of Twickenham Studios and the man who Vince Cable accurately said saved it from extinction and is responsible for one of Twickenham's success stories. [37]

3.6 The list of films made at TS include many multi award winning, world class films. At least 4 or 5 of the Classics were world class multi award winning. Gandhi and Zulu won best picture. Similarly, many recent films have won numerous awards. Bohemian Rhapsody won Baftas and Oscars. Others have been nominated for example The Martian and War Horse. Last Full Measure is in the awards for this year. Similarly, some excellent TV productions are made at the TS. McMafia and Belgravia are some of the most significant productions made for UK TV. The list of directors who have worked at TS is a roll call of world class directors who are household names.[38] Sir Ridley Scott, Sir Kenneth Branagh and the late Sir Richard Attenborough who had an office at TS are very much

[33] Para 99 of appendix 5
[34] Page 16 of CD E 33 at paragraph 16
[35] See his written statement paragraph 1.1 and 1.2
[36] Paragraph 1.3
[37] See email of 16 February 2019 at app 5 MB rebuttal
[38] 1.15 of SV

A list directors who have repeatedly worked at TS underscoring its significance.

3.7 Similarly, with the actors who have performed at TS they are absolutely at the top of the world in their field as SV explained. The household names of John Cleese, Sir Kenneth Branagh, Hugh Grant, Meryl Streep. Tom Cruise who was there recently with Top Gun, Pierce Brosnan, Eddie Redmayne, Brad Pitt, Daniel Radcliffe etc are names that speak for themselves. SV added that Sir Anthony Hopkins should also be on that list. TS is a special place that people want to use for big budget films with top world class actors and actresses. But it also caters to the small independent productions.

3.8 The producers, post-production supervisors, and sound professionals, working at TS are equally world class as SV explained albeit not so famous. All the sound professional he listed have won major awards such as Oscars or Baftas. Tim Cavagin and Paul Massey have both won Oscars and Baftas for Bohemian Rhapsody. And nominated for many other awards.

3.9 James Mather is an important figure in the world of film and makes big budget Hollywood films. In his first paragraph SV explained that just 5 of those films would have had sales between $2-3 billion dollars. He thus has the ability to bring the biggest budget films in the world to the UK and to Twickenham with all that contributes to the UK's economy. His view is that

> *Twickenham Studios is quite simply one of the most important production and post-production facilities operating in the UK, with undoubtedly the best mixing studios in the country.*[39]

[39] See app 2 of SV

3.10 SV explained that it was a widely held view that TS is one of the most important production and post-production facilities in the UK and that the mixing studios was the best.

3.11 Similarly, Oliver Tarney who was the sound editor on 1917 which was nominated for best picture at the Oscars last year which is the blue-ribbon film award in the world. He similarly rates TS as "somewhere I always look to first, because of the high quality of the facilities coupled with the fantastic attitude and creative talent of the staff".[40] The kind of films that he is bringing to the UK include Top Gun, Mission Impossible and 1917. These are big budget films that massively benefit the UK as SV explained.

3.12 Miranda Jones who worked on Bohemian Rhapsody for example and the nominated Baby Driver, also takes the view that TS has the best sound mixing theatre in the UK.

3.13 Mr Vohra has unprecedented knowledge of the requirements of TS which he "saved from extinction[41]" and invested £9m in and turned it into what the foremost experts in the film industry describe as one of the most important production and post-production facilities operating in the UK[42]. He said that in terms of size and quality the sound theatres were the best in Europe.

3.14 These sound studios are one of the beacons of the film industry acting as a magnet drawing in high value films to London. It is critical that these are protected for the UK's, London's, and Richmond's economy.

3.15 It is no surprise the Richmond Local Plan following the evidence-based document from PBA setting out TS makes a key contribution to the UK

[40] See App 2 SV
[41] Words of Vince Cable former cabinet minister
[42] Appendix 2 letters

Film industry protects TS as Locally Important Industrial Land. Paragraph 10.3.6 of the Local Plan says

> *"The locally important industrial land ….listed below are of particular importance for …locally important creative industries"*

3.16 In fact, TS is the only locally important protected site in Richmond for the creative industries demonstrating it is the most significant site for this key industry in Richmond. None of this section was disputed by the appellant but that reinforces the importance of TS to Richmond, London, and the UK.

4 APPLICATION PUTS TS ENTIRE BUSINESS AT RISK

4.1 The evidence of SV was absolutely clear that the construction of this scheme would "put the entire business at risk".[43] This is even if a condition is imposed that would mean that the construction is controlled so that it would be quiet. The reason that he said that was that once the industry sees cranes at the back of the site immediately behind the sound centre and for a project that he said would last 2.5-3 years word will get around and people will not take the risk of doing the post-production sound at TS.

4.2 Mr Vohra was the only witness that really understood how Hollywood Studios make decisions about where to do their post-production work. He has spent the last 9 years turning round TS and attracting some of the most prestigious films and post-production work there. He understandably has an intuitive grasp of what would happen with a construction project. He explained that the post-production sound work happens at the very end of the production of a film. That of course means that hundreds of millions of pounds of value can very nearly be realised in the film and so any delay at that stage would be critical. Films by the

[43] See 1.23 and 1.32 of his proof.

time of the post-production work are often on a very tight time scale where they need to hit cinema and award ceremony deadlines with massive consequences if they fail. It is no surprise as he said that they would be risk averse to doing the post-production sound at a place which may delay the film. The simple position as he explained is that they will not tolerate risk and they will simply go to other studios. Twickenham studios will lose revenue from the sound centre for the construction period. SV said in his experience construction projects always take longer than planned and he would think it would take three years to build this scheme. In any event even if it was only two years he would expect to lose 2 years' worth of revenue while construction was going on and it would take him two years to win back the business. So that there would be a loss of revenue at the sound centre for four years which would put the entire business at risk.

4.3 The studios have been entirely consistent with their case on this aspect. It is worthy of note that Roger Sewell the FD of TS speaking for TS at the committee hearing made precisely the same point. He said:

> *"Any intrusion or effect on our sound would in fact cease that section of our business you might say but why don't you work round it for a few days, but I have to say the productions at that stage in their production cycle have very stringent timing issues about getting the production out, any delay would mean that they wouldn't come to us for that work"*[44]

4.4 Against this clear and reliable constant evidence from those with expert knowledge of the industry the appellant did not dispute this at all. They have had since the committee decision to dispute this if they had any answer and they do not.

4.5 In fact, this case is further supported of course by the letters from those sound experts that use the sound centre. Tim Cavagin who won a Bafta and an Oscar for Bohemian Rhapsody said the following.

> *It has been brought to my attention that there are major building projects being proposed at Arlington works, adjacent to Twickenham studios.*

[44] See 4.25 of PV

> *A pneumatic drill operates at a mean level of 117DB. That would resonate through every wall in the complex.*
> *The loudest parts in most movie are generally lower than 100DB. So even over the loudest parts there would be a resonance that would be heard. …*
>
> *If these works are now to go ahead there would not be one client prepared to accept this and so the business would suffer massively, with the loss of jobs and possibly the company.*
>
> *I cannot stress the sound pollution strongly enough imagine trying to hear a pin drop in a crowded room . That is the level of detail we are talking as to what is required.*
>
> *I believe turnover would hit near zero . There are competitors.*
>
> *I for one (and I speak for many have heard of this) worry for the studios survival*

4.6 This is literally one of the greatest movie sound experts in the world speaking and his fear for the survival of the studios is entirely consistent with the evidence of Sunny Vohra. They know what is needed in a sound studio and what the market will and will not tolerate. Mr Villars has absolutely no knowledge of this whatsoever.

4.7 The evidence from Craig Irving the Interim Sound Dept manager is in entirely consistent form. He said in his email of 21 January 2021 the following.

> *A long-term construction project near the sound centre would be a disaster for our business. ….*
>
> *Furthermore, our industry is dominated by a handful of discerning and demanding clients and film studios who will not tolerate an imperfect listening environment and will simply take their work elsewhere*

4.8 The residential is to be built literally adjacent to the sound centre as is shown by his evidence and plan. The construction time period is at least 2 years[45]. In fact the viability consultants have agreed that the total development period is 31 months with pre construction and construction

[45] See page 276 PV appendices

being 24 months together. That is if there are not delays which SV said always happened.

4.9 Mr Vohra has suffered noise closures when the appellant took out the oil recycling equipment which meant that work in the sound centre had to stop and Stage 1 and Theatre 3 were adversely affected. This is supported by contemporaneous emails and was not disputed. PV accepted that his client was trying to limit noise on this occasion as the emails show. It can be no surprise that some of the best sound theatres in the UK should need to be free from outside noise and vibration to be able to function with perfectionist talent making world class films.

4.10 This construction would be a major interruption to revenue which would put the entire business at risk as Mr Vohra, Mr Tim Cavagin, Mr Craig Irving and Mr Jeremy Rainbird all set out. This is consistent with what the FD, Mr Roger Sewell said to the committee.

4.11 It is of course a feature of this scheme that it is a large residential development on a small site immediately beside the studios. In fact, oddly CN tried to attack what TS was proposing to put on the Arlington Works site as overdevelopment in the event they bought it. The pre-app scheme for that[46] had 1100 sq m of floorspace. The appellant could not see the irony of their position when they are proposing 610sqm of industrial and 1686sqm of residential.[47] They are proposing over double as much as they said was overdevelopment right beside the sound centre. If TS had control of Arlington Works site, they could of course control when the works were so as to fit in with the schedules in their sound centre. They could also design the proposals for that part of the site to be very quick to build as they have for the works that they have applied for planning permission for on their site.[48]

[46] See page 19 App 1 of MB
[47] See Ground Floor Plan Rev C
[48] See App 1 and the answers of MB in examination in chief.

SOUND CONDITION NOT COMPLETE MITIGATION.

4.12 It is quite clear in national policy that it is for the agent of change to make sure they are providing suitable mitigation to make sure that existing businesses will not be impacted. The NPPF at paragraph 182 provides

> *"Existing business and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established."*
>
> *.. The applicant (or agent of change) should be required to provided suitable mitigation*

4.13 Here in fact the applicant or agent of change did nothing to ensure that suitable mitigation was in place to deal with the special requirements of the Studios. Their noise report CDF28 does not contain one word about the mitigation for construction noise for one of the UKs most important sound studios beside.

4.14 They clearly knew that there was an ongoing serious concern from TS based on adverse effect from construction on the sound theatres particularly made at the planning committee because PV set that out in his proof at 4.25. It cannot be explained by the fact that they were not admitted in 2018 to the Studios. SV explained the difficulty of even getting access to the sound studios for himself. In any event that was a year before the determination of the application. No step has been taken since then to get information from the studios. No information was set out in the statement of case. No request was ever made to MB for any information. Nothing was said at the CMC that further information was required. In any event as the Noise Consultants (NC) first and second note explained mitigation could be proposed without access. [49]

4.15 Faced with the appellant having done nothing and putting forward a condition that offered no specific protection to TS sensitive to its special

[49] See page 2 of 21 January 2021 letter from NC

use the appellant has tried to suggest better conditions. However even the suite of conditions that NC now propose would not offer anything like perfect protection. On page 5 of the 21 January 2021 letter he says that:

> *However because of the broad brush nature of these values they may still not provide adequate protection for this unique land use* [50]

4.16 Sir You now have two sets of conditions to choose from.

i) The set of conditions which have been agreed by NC and the senior environmental health officer representing Richmond which are set out as refined in the letter of NC of 27th of January 2021. These essentially follow the model set out in HS2 for construction noise impacts specifically for "sound recording & broadcast studios". They follow the Thames Tideway approach for ground borne impact. These offer a preferable level of protection for the studios and have been justified by Will Martin from NC in his letters of the 21st of January and 27th of January .

ii) Alternatively, you have the conditions which have been suggested by Mr Tomalin. Mr Martin has tried to tighten them up to offer some level of protection for the studios and you have his email of 28th of January. It must be remembered that the approach of Mr Tomalin is one that specifically does not try to avoid disturbance from construction. In fact in his letter of the 26th of January Mr Tomalin says the following:

> *"It must be stated that no noise sensitive premises has the ability or right to avoid all disturbance from construction there is a presumption that some impact is inevitable if desirable and permitted development is to continue at a specific site or in the wider community"*

[50] See page 5 of 21 January NC letter

4.17 So the Mr Tomalin approach to conditions is one that allows for disturbance to the studios. The Mr Martin approach gives the level of protection recording studios was suggested in general as a starting position at HS2 and Thames Tideway and so is specifically justified for this use.

4.18 In any event any condition imposed would not in the real world of the studios mean that time critical films would continue to choose TS sound theatres. The perception of the open market would simply mean that they would not come to Twickenham sadly. This critical high value global business would go elsewhere in the world as all the experts in the film industry said.

4.19 There would also be a loss of parking used by the studio both on the main site where 14 spaces are used by TS and on the access drive where 7 spaces are used. The loss of 21 spaces would clearly be a disadvantage to TS even if 5 spaces could be put on the access drive in place of the current 7 resulting in a loss of 16 spaces for TS. Clearly when renting the space to high value global productions it is critical to have close by parking for those with heavy equipment and tight deadlines. It would hamper the studios in obtaining this global business if they could not offer the parking spaces required by productions. Mr Vohra with his unrivalled experience of TS gave evidence that for much of the week, in normal non-pandemic times, the car park is full. The fact is that losing 16 spaces would impede the studios in attracting productions to Twickenham.

4.20 The overall position is that the evidence entirely supports Mr Vohra who concluded that this development would cause:

> *"a major interruption to revenue which will put the entire business at risk"*[51]

[51] See §1.32 of his proof

4.21 Not only that it would prevent for all time the logical intensification of this important film studio by putting housing on the only site where they can expand. This is clearly a massive lost opportunity for our country, London and Richmond. This would stop the potential economic advantage in a sector that is critical to London's and the UK economy by permanently preventing this expansion which would comply with policy and for which there has been positive pre-app responses. The adverse effect on the TS and the lost opportunity are clearly material considerations that point very strongly against granting permission.

CONTRARY TO NATIONAL LOCAL PLAN AND PLP POLICY

4.22 The evidence of Mark Bachelor was absolutely clear that the adverse effect on TS was contrary to all levels of policy.

i) It was contrary to national policy. [NPPF 80,82]

ii) It was contrary to local plan policy LP 42B (c)

iii) It was contrary to London plan policy HC5.[52]

National policy

4.23 Mark Batchelor's evidence was clear that on the basis of SV's evidence that the business would be put at risk and that this development would fail to comply with paragraph 80 of the NPPF. This development puts the only designated locally important industrial land for creative industries in Richmond at risk. It stands to reason that it fails to create the conditions in which businesses can invest, expand and adapt. It fails to take into account local business needs and it fails to allow Richmond to build on this strength of this important studios. Mr Bachelor is right that it would breach paragraph 80 and the government say that significant weight should be given to that. This is especially so bearing

[52] See examination in chief of MB of TS

in mind that planning decisions should make provision for the creative industries as is set out at paragraph 82.

PLP

4.24 MB set out why it was evident that the development breached HC5.

4.25 The London Plan seeks to support the continued growth and evolution of the creative industries at HC5.

> *A The continued growth and evolution of london's diverse cultural facilities and creative industries is supported development plans and development proposals should:*
> *1) Protect existing cultural venues facilities and uses*

4.26 It is self-evident that if SV's evidence is right, which it is, that this policy is breached as Mark Batchelor said. PV also accepted in cross examination that it was breached based on SV's evidence.

Local Plan

4.27 Based on the powerful evidence of SV that the entire business would be put at risk TS Policy LP42B (c) of the Local Plan is also breached as MB said. This provides that

> *c Proposals for non-industrial uses will be resisted where the introduction of such uses would impact unacceptably on industrial activities [which may include waste sites]*

4.28 This is clearly breached by a development on this site which would jeopardise and put at serious risk the Locally Important TS.

4.29 There is also a breach of Policy LP40 (4) which provides that

> *4 The inclusion of residential use within mixed use schemes will not be appropriate where it would adversely impact on the continued operation of other established employment uses within that site or on neighbouring sites*

4.30 MB set out that this scheme would breach this policy.

4.31 PV accepted that there would be a breach of this policy if, which it is the evidence of SV was correct.

4.32 Thus the impact that this development would have on TS is contrary to

i) National

ii) PLP and

iii) Local plan policy.

4.33 It is a further reason why it should not be permitted.

5 OVERALL BALANCE.

5.1 The evidence of MB was clear that this development would conflict with Policy LP42 and the development plan read as a whole. His evidence at 6.5 should be interpreted to be about this particular case as it need not apply to all cases.[53]

5.2 The reality is that Policy LP42 must on the facts of this case mean that industrial is favoured over residential. The words of the policy when properly interpreted mean that you cannot lose industrial unless:

i) there is no longer demand for it and then only

ii) if redevelopment for office or alternative employment uses is not possible.

5.3 It is only then that the policy allows a mixed use scheme. Industrial takes precedence under this sequential approach to say otherwise is to usurp the Local Plan which made choices based on evidence and scrutiny. Industrial must dominate over the housing policies such as LP36 because

[53] See re examination 28/1/21

otherwise all industrial land would be able to be lost if a developer could provide as much affordable as they could on industrial land even if less than 50%.

5.4 MB was correct to give full weight to LP 42 and give preference to this in deciding that the specific policy that dealt with this specific land use took priority.

5.5 It was accepted as a matter of principle and law that a breach of one policy could by itself amount to a breach of the plan read as a whole by PV. He was right to concede because that is what Lindblom LJ set out at paragraph 42 of ***Corbett v Cornwall*** [2020] EWCA 508.

5.6 It is clearly better to keep this land in industrial than allow residential. The need for industrial in Richmond is extreme. It is the 31 out of 35 boroughs in terms of supply. [54] It has the second lowest vacancy rate of any Borough being only 0.6% which is the same as Hammersmith and Fulham.[55] The local plan Inspector endorsed the priority given to industrial in LP 42. [app 5 at 94-101]

5.7 This development even with grant will only provide 40% affordable housing which is lower than the plan expectation on any release of industrial which should be a minimum of 50% in policy LP36. So that shows it is a bad site to release. This is especially so when without any public money this site can be used 100% for the preferred industrial use

[54] App 1 of MB supplementary at page 21
[55] Ibid page 23

and by the most important creative business in Richmond acknowledged as such in LP42.

5.8 Even if the PLP is adopted the evidence of MB is that it would be in breach of the PLP read as a whole because of the conflict with E7C which on the facts of this case is the dominant policy.

5.9 Thus whether the PLP is adopted prior to the decision or not the development is in breach of the development plan read as a whole. The evidence of PV was non-existent on this question in his proof and only came about because the Inspector had to ask him. The reality is that his answer was based on his misreading of LP42 and E7. He did not have any basis for saying that there was another policy that pulled in a different direction if LP42 and E7 was breached. Residential policies do not outweigh a plan that has sought industrial to be protected in preference to residential.

5.10 Richmond's Local Plan wants to resist loss of industrial floorspace and resist non-industrial uses where it would impact unacceptably on industrial activities LP42. This residential site would cause a major interruption of revenue which would clearly fail policy LP42. It would also conflict with LP 40 because of this serious risk to TS. It would conflict with HC5. So there is further conflict with the Development plan in the policies that protection important industrial land and the creative industries which will help drive us out of recession if allowed to.

5.11 The overall decision should be taken in accordance with section 38(6) Planning and Compulsory Purchase Act 2004. The conflict with the plan industrial policies and policies that protect creative and important industrial uses should be given great weight for the reasons that MB said.

5.12 It would be very odd if material considerations gave a different conclusion to up to date policies in the development plan. Of course it

does not in this case. The breach of paragraphs 80 and 82 in respect of this employment land should be given significant weight. This must be so bearing in mind the extreme need and demand of industrial land in Richmond and the shortage of supply. The conflict with the plan must be given great weight. In addition, many of the alleged benefits such as it being a sustainable and brownfield site make it just as good for industrial and employment as the less preferred residential. The affordable housing offer is less than the policy expectation in LP36 for industrial and with a grant. The balance is decisively in favour or refusal as MB said at 5.22-5.33.

5.13 For these reasons TS respectfully ask you to refuse permission for this scheme which breaches the development plan and where the overall balance is decisively in favour of refusal.

. **Richard Ground QC**

29 January 2021

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