



Appeal Decision

Inquiry held on 19-22, and 25-29 January 2021

Site visits made on 12 January 2021 and 2 February 2021

by Peter Rose BA MRTPI DMS MCMl

an Inspector appointed by the Secretary of State

Decision date: 19 April 2021

Appeal Ref: APP/L5810/W/20/3249153

23-27 Arlington Works, Arlington Road, Twickenham TW1 2BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Sharpe Refinery Service Ltd against the decision of the Council of the London Borough of Richmond upon Thames.
 - The application Ref: 18/2714/FUL, dated 10 August 2018, was refused by notice dated 19 September 2019.
 - The development proposed is **described as** 'redevelopment of the site to provide 610sqm of commercial space (B Class) within existing Buildings of Townscape Merit plus a new build unit, 24 residential units (5 x 1 bedroom, 12 x 2 bedroom and 7 x 3 bedroom) and associated car parking and landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary matters

Site address

2. A clearer description of the address, not as stated on the application form or reflected in the banner above, is agreed by the main parties to be Arlington Works, 23-27 Arlington Road, Twickenham TW1 2BB.

Description of development

3. The application form refers to Use Class B and the application was publicised on those terms. The proposal was subsequently amended more specifically to Class B1. The application was determined on that basis and the appeal was publicised to that effect. In September 2020, changes were made to the Use Classes Order such that B1 would be superseded by new sub-Class E(g).
4. The proposal includes two new build units (not one) and a small extension to the Buildings of Townscape Merit.

Plans

5. Amended drawing CA3743 SK006 (Rev D) was submitted prior to the Inquiry and accepted as part of the appeal. The agreed schedule of recommended conditions also includes minor updates in the form of drawings 4786 3 10 C, 4786 3 15 B, and 4786 3 25 B.

Planning obligations

6. The appeal is supported by an agreement made between the appellant and local planning authority pursuant to section 106 of the Act dated 17 February 2021 (the section 106 agreement).

London Plan

7. The **Mayor of London's Publication London Plan**, December 2020¹ (the PVLP) was considered in detail at the Inquiry. The PVLP was subsequently published on 2 March 2021 and became operative as part of the development plan on that date.
8. **Reference is made in the Council's decision** and elsewhere to policies set out in the previous version of the London Plan, The Further Alterations to the London Plan, March 2015 (the FALP).² Those references have now been superseded by the PVLP and the parties have identified the new relevant provisions in evidence.

Rule 6 interests

9. The Inquiry was addressed by two Rule 6 parties: Twickenham Studios; and by a joint representation on behalf of Twickenham Park Residents Association and The Barons Residents Association (**the residents' associations**).
10. I consider the appeal on the above terms.

Main issues

11. The main issues are:

- possible implications for a designated waste site;
- possible implications for industrial and employment land policy;
- whether or not the scheme would provide an appropriate mix of uses;
- the effect of the development upon the character and appearance of the appeal site and the surrounding area, and including any implications for the significance of non-designated heritage assets, and;
- possible implications for the continuing operation of Twickenham Studios.

Reasons

The site

12. Arlington Works comprises an irregularly shaped backland site of some 0.3 hectares located in a predominantly residential area. The site is served by a relatively long and narrow internal access from Arlington Road. The access is enclosed to the north by Howmic Court, a post-war housing development, and by Twickenham Studios (TS) to the south.

¹ The London Plan, Publication London Plan, December 2020 The Spatial Development Strategy for Greater London
² As included in the **Mayor's** published compendium The London Plan The Spatial Development Strategy for London Consolidated with Alterations since 2011 March 2016

13. The site abuts a railway line to the west where it comprises a cleared area previously associated with the treatment of waste oil. The waste use ceased in 2018 and occupied some 0.08 hectares. Adjacent to the eastern boundary are post-war single-storey corrugated metal structures (the sheds) in a poor state of repair but still occupied by commercial tenants.
14. A pair of facing late-Victorian terraced buildings originally separated by cobbled surfacing and designed as stables or similar occupy the southern part of the site and are designated as Buildings of Townscape Merit (BTMs). Various other facilities lie further beyond the BTMs to the south, including a telecoms enclosure and a toilet block.
15. The metal sheds comprise 8 units and the BTMs 24, and have been identified to be in various Class B1/B2/B8 use. The Council confirmed that no planning permissions apply to the units, and that the waste use operated with the benefit of a Certificate of Lawful Existing Use or Development (CLEUD) dating from August 1994.³ The Certificate includes no limitations beyond 'use for the refining of waste oil (other than petroleum or petroleum products)(to include the use of fuel storage tanks **in this connection**)'.
16. Much of the site is open hardstanding and comprises access, parking and other incidental areas. Some parking space is also provided for TS.

Possible implications for a designated waste site

The development plan

17. Policy WLWP 2 of the West London Waste Plan Adopted July 2015 (the Waste Plan) seeks to safeguard and protect existing and allocated waste sites. Existing waste management sites are defined as those sites managing waste which are lawfully permitted to do so as set out in Appendix 2. Appendix 2 refers to Sharpes Recycle Oil Ltd and identifies Arlington Oil Reclamation Facility, Twickenham as an 'oil reclamation facility'.
18. The policy requires land accommodating existing waste management uses in West London to be protected for continued use for waste management. To ensure no loss in existing capacity, re-development of any existing waste management sites must ensure that the quantity of waste to be managed is equal to or greater than the quantity of waste which the site is currently permitted to manage, or that the management of the waste is being moved up the waste hierarchy.
19. Development for non-waste uses will only be considered on land in existing waste management use if compensatory and equal provision of capacity for waste, in scale and quality, is made elsewhere within the West London Boroughs.
20. Policy LP 24 of the London Borough of Richmond upon Thames Local Plan as adopted by the Council 3 July 2018 (the Local Plan) states that proposals affecting existing waste management sites will be assessed against the policies of the Waste Plan.
21. Policy SI 8 of the PVLPA sets out the need for **London's waste** capacity to be managed sustainably, and includes three particular provisions. Firstly, it seeks

³ Ref: 94/2139/S191

for **the equivalent of 100 per cent of London's waste** to be managed within London and for such net self-sufficiency to be achieved by 2026. Secondly, in conjunction with Policy SI 9, it seeks to safeguard existing waste management sites. Thirdly, it seeks to optimise the waste management capacity of existing sites.

22. Policy SI 9 similarly requires existing waste sites to be safeguarded and retained in waste management use. It requires that waste plans should be adopted before considering the loss of waste sites. The proposed loss of an existing waste site will only be supported where appropriate compensatory capacity is made within London that must be at or above the same level of the waste hierarchy and at least meet, and should exceed, the maximum achievable throughput of the site proposed to be lost.
23. Further, Policy SI 9 requires proposals that would result in the loss of existing sites for the treatment and/or disposal of hazardous waste not to be permitted unless compensatory hazardous waste site provision has been secured in accordance with this policy.
24. The PVLP further explains how any proposed release of current waste sites should be part of a plan-led process, rather than done on an ad-hoc basis. Waste sites should only be released to other land uses where waste processing capacity is re-provided elsewhere within London.

The need for compensation

25. The Waste Plan makes clear that safeguarded sites are an essential resource to the West London area, and **the 'continued identification' of the** appeal site as safeguarded in the context of Policy WLWP 2 was expressly endorsed as recently as 2018 by the Local Plan Inspector as **'sound' policy**.⁴
26. The lawful use of the appeal site is for refining waste oil. The extent of re-provision to be compensated is defined by the development plan with reference to the PVLP calculation methodology (the maximum throughput over the last 5 years in the first instance), and the corresponding throughput is agreed between the parties to be 13,404 tonnes per annum. This methodology drawing upon existing capacity is also consistent with the broad approach of the Waste Plan.

Compensation - type and location

27. It is clear that, as part of pre-application discussions, the local planning authority advised that compensation could relate to a wider definition of hazardous waste ('another waste stream'). Further, Council officers indicated locations could be considered within 'the wider London generally' (sic) but that 'the West London Waste Plan area has to be reviewed as a priority'.⁵
28. The view offered by officers and upon which the appellant has subsequently acted was informal, and without prejudice to subsequent formal decisions by the authority. That earlier position was not maintained by the Council as part of **the authority's case to the Inquiry**. I find the application of policies reflected in that earlier advice not to be appropriate to the particular circumstances of this

⁴ Paragraph 85, CDE11 'Report on the Examination of the Richmond upon Thames Local Plan' dated 26 April 2018

⁵ See email dated 7 March 2018

case and instead concur with the more formal assessment of the Council as subsequently submitted in evidence.

29. In particular, the straightforward reading of Policy WLWP 2 is a requirement for **'compensatory and equal provision of capacity for waste, in scale and quality** (to be) made elsewhere within the West London Boroughs'. The Waste Plan expressly identifies the **appellant's operation** as an oil reclamation facility. Logically, if compensation does not involve a similar facility with necessary capacity, it is difficult to appreciate how the purposes of the policies would be anything other than compromised. The expectation must therefore relate to the actual type of processing undertaken on the site and as recognised by the development plan rather than to hazardous waste treatment more generally.
30. The appellant draws attention to paragraph 5.1.3 of the Waste Plan as not seeking to specify the type of waste management technology in any site. That reference must also be read in context. That particular context is not about safeguarding capacity of existing sites but instead relates to possibilities for future redevelopment to provide waste management at a number of specified sites and which do not include the appeal site.
31. Notwithstanding disagreement as to where the operation may lie within the Waste Plan waste hierarchy, Policy WLWP 2 is clear that compensation needs to relate to the nature of the existing operation unless the management of the waste is being moved up the waste hierarchy, and there is no specific or otherwise detailed proposal to that effect.

Other sites and available capacity

32. The appellant has made initial approaches to a number of hazardous waste operators with a view to seeking informal expressions of interest towards providing compensatory facilities for that which would be displaced.
33. None of the responses confirm the availability of a currently available compensatory facility offering the necessary combination of credentials. In summary, none are confirmed as offering an oil reclamation facility with the same type of process as the appeal site and with the available capacity and located either within the Waste Plan area or as offering the necessary combination of features more widely within Greater London.
34. The application is not accompanied by any such specific compensatory proposal and I have little clear evidence to confirm such provision could be imminent or likely. Even if the required compensatory provisions were to be accepted as applying more generally to hazardous waste, no specific proposal is part of the appeal scheme. In the terms of Policy WLWP 2 and of Policy SI 9, compensatory waste provision has not been secured.
35. I also place little weight on the discontinued status of the waste operation. The development plan seeks to protect safeguarded sites whether or not they are in active use. If this were not the case, mere closure could be used to facilitate redevelopment and so undermine the safeguarding regime required of the development plan. There is no indication of how or where the previous capacity of the facility is now accommodated and there is no evidence to conclude that the loss has been other than detrimental to net self-sufficiency.

Viability

36. The safeguarding policies are not conditional upon viability but, in any case, very little evidence has been submitted to that effect. Rather, the evidence is of a site operating prior to closure at its peak 5-year production, and there has been no clear demonstration to the contrary.

Possible condition

37. During the Inquiry, the appellant suggested a condition to the effect that no development should take place until a suitable scheme of compensatory hazardous waste provision, of up to 13,500 tonnes, has been agreed with the Council. Such provision should be made within the Waste Plan area. If such capacity cannot be met within the Waste Plan area, the condition would then allow the shortfall to be made up within the neighbouring area or wider Greater London area.
38. The suggested terms would provide for hazardous waste generally to satisfy the compensatory provisions and not be specific to oil waste as required. **Further, provision of 'up to' 13,500 tonnes could be anything less than the defined capacity and would conflict with the terms of Policy SI 9 in that regard.**
39. The Planning Practice Guidance makes clear that conditions relating to land not within the control of the applicant should not be imposed if there are no prospects at all of the action in question being performed within the time-limit required by the permission. The evidence presented to the Inquiry does not satisfy me of any reasonable prospect of an appropriate replacement policy-compliant facility for refining waste oil being in place prior to the 3-year expiry of a permission. **Mere 'agreement' of a scheme by the Council is also not the same as a scheme being implemented and available to compensate within a specific timescale compliant with commencement of the development.**
40. The Framework also requires conditions that are required to be discharged before development commences to be avoided unless there is a clear justification. Given the shortcomings of the condition and its remaining conflict with the development plan, I find no reasonable basis to justify.

Summary of conclusions

41. The development plan requires protection of the site as part of a consistent west London and broader London-wide strategic approach to the realisation of self-sufficiency in waste management by 2026. **Notwithstanding Policy SI 9's** expectation that any release of waste sites should be plan-led rather than ad-hoc, the proposal in any case runs contrary to the **plan's** expected retention of the site for such purposes and would mean permanent loss of a significant **contribution to London's net self-sufficiency** in oil waste management.
42. I therefore find the proposed development would be significantly harmful to **London's strategic approach** to the management of waste. Accordingly, the scheme would be in conflict with Policy WLWP 2 of the Waste Plan, with Policy LP 24 of the Local Plan, and with Policies SI 8 and SI 9 of the PVLP. These policies, in turn, are consistent with the National Planning Policy Framework (the Framework) which defines its environmental objective to include making effective use of land and minimising waste and pollution.

Possible implications for industrial and employment land policy

The development plan

43. Policy LP 42 of the Local Plan recognises that the Borough has a very limited supply of industrial floorspace and how demand for this type of land is high. It therefore seeks to protect, and where possible enhance, the existing stock of industrial premises to meet local needs.
44. The policy was informed by the Richmond Employment Sites and Premises Study 2016 Update which demonstrated there was a significant gap between the demand for industrial premises and available supply. This situation persists and recent evidence shows a London vacancy rate of 3.5% compared to **Richmond's** rate of 0.6%. This evidence ranks the Borough second lowest in London for vacancy and suggests **the Borough's supply has actually contracted** over the past 10 years, as demolition has outpaced construction.
45. Policy LP 42 sets out a presumption against loss of industrial land in all parts of the Borough. Loss of industrial space (outside of the Locally Important Industrial Land and Business Parks) will 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 a particular location and that there is not likely to be in the foreseeable future. Significantly, this must include evidence of completion of a full and proper marketing exercise over a minimum period of two continuous years in accordance with the approach and details set out in its accompanying Appendix 5.
46. If marketing fails to identify appropriate future industrial use, the policy then triggers a sequential approach to possible redevelopment or change of use. Firstly, it requires consideration of redevelopment for office or alternative employment uses, and only then for mixed use including other employment generating or community uses, and residential purposes. The terms of Policy LP 42, including the duration of the required marketing period, were expressly supported by the Local Plan Inspector.⁶
47. Policy LP 40 also seeks to retain land in employment use for business, industrial or storage purposes. In exceptional circumstances, mixed use development proposals which come forward for specific employment sites should retain, and where possible enhance, the level of existing employment floorspace. It advises 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.
48. Policy E2 of the PVLDP similarly requires, amongst other things, for development proposals that involve the loss of existing B Use Class business space in areas where there is a shortage of lower-cost space or workspace of particular types, uses or sizes as identified in a local Development Plan Document, to demonstrate that there is no reasonable prospect of the site being used for business purposes, or ensure that an equivalent amount of B Use Class business space is re-provided in the proposal.
49. Policy E4 seeks to ensure retention and enhancement of Non-Designated Industrial Sites. Any release of industrial land in order to manage issues of long-term vacancy and to achieve wider planning objectives should be

⁶ See paragraphs 100 and 101, CDE11

facilitated through the processes of industrial intensification, co-location and substitution set out in Policy E7. Under Policy E4 Boroughs are only encouraged to assess the release of industrial land when vacancy rates are above the London average and there is no evidence such circumstances apply in this case.

50. Policy E7 encourages mixed-use or residential development proposals on Non-Designated Industrial Sites only in specified circumstances. These include where there is no reasonable prospect of the site being used for industrial and related purposes, or where the site has been allocated for residential or mixed-use development, or where industrial, storage or distribution floorspace is provided as part of mixed-use intensification.
51. **Evidence to demonstrate 'no reasonable prospect' of Non-Designated Industrial Sites** being used for industrial and related purposes is similarly specified to include details of vacancy and marketing for at least 12 months, or greater if required by a local Development Plan Document.

The proposal

52. Agreed figures submitted to the Inquiry identify an existing net internal area of some 849 square metres of commercial floorspace reducing to some 512 square metres. The scheme would therefore involve a loss of some 337 square metres, a reduction of just under 40% within the general meaning of paragraph 10.3.1 of the Local Plan. This reflects loss of the sheds but does not include the surrounding open areas of ancillary use, or the waste use. In broader terms, the proposed layout suggests that, excluding areas of shared access, well over half of the site would be lost for industrial-related use and would instead be residential. Even allowing for a possible existing B1(a) element of anything up to 119 square metres, significant loss would still be incurred.
53. The BTMs would be refurbished and there would be a slight gain of some 76 square metres for the small extension. The refurbished industrial units would be intended for small and medium-sized enterprises (SMEs), including creative industries or studio spaces consistent with the local market, and reflecting a growing need for adaptable space responding to increasingly diverse and changing working patterns.
54. Notwithstanding the quantitative loss of industrial space, the appellant suggests the definition of 'equivalent' **within the language of** Policy E2 is to be **qualified by type, by use and by size. In the appellant's view the scheme** can be seen to be at least equivalent, particularly as the considerable qualitative upgrade of the space would for a more intensive, productive use of the site.
55. The scheme is promoted as providing an improved and sustainable industrial use appropriate to this predominantly residential area.

The possible implications of fallback

56. The appellant further maintains that **the Council's concern to protect industrial** space is undermined by the prospect of existing industrial uses now falling within new Use Class E and subsequently changing to a non-industrial Class E activity. This could enable introduction of a variety of other activities now accommodated within Class E, such as retail, recreation, medical, nursery or creche uses, and without any prior recourse to the authority.

57. The **appellant's** commercial evidence was that the sheds were no longer fit-for-purpose, and had come to the end of their useful life. It was maintained that there is no real prospect of the units being used for another purpose without physical improvement, but there are no Permitted Development rights to allow such works. If the premises are not fit for their existing purpose, it must also be highly questionable whether they can be readily attractive for other alternative and more discerning activities and likely to be requiring more bespoke standards of accommodation.
58. I have little evidence to suggest that a shed or similar in a state of disrepair on a backland site with no street frontage or other physical customer exposure and set within a row of industrial buildings of similar run-down character might somehow aspire to the role of a shop or some other public-facing use within Class E. The appellant was unable to identify any comparable development in Richmond or elsewhere and I have little market evidence to that effect. To then speculate that the proposal might somehow be regarded as involving no loss of industrial space due to the possibility of such widespread unregulated changes is not credible and is without reasonable foundation.
59. Whilst I acknowledge a theoretical basis to the **appellant's** fallback scenario, I find little reason to substantiate its practical reality as a possibility relative to the particulars of this case. I am therefore unconvinced there is a real prospect⁷ of appreciable loss of existing industrial space occurring, and I afford this submission little weight.⁸

Possible conditions

60. The appellant suggests two particular conditions. The first would be to the effect that the use approved should only be for activities which fall within Use Class E(g). The second, and related condition, would be to the effect that the Class E(g) use approved should be available in its entirety prior to the first occupation of any residential element of the approved development.
61. Whilst these conditions would ensure the commercial accommodation would be available and remain consistent with industrial activity, they do not overcome the principal harm arising from the loss of industrial floorspace and associated areas. The second condition would ensure a degree of compliance with Part D to PVLP Policy E7 in terms of relative programming but both conditions would only serve to regulate availability of an otherwise reduced quantity of industrial space.

Summary of conclusions

62. The scheme would involve a significant loss of industrial floorspace and land and for which the development plan and accompanying evidence indicate a real and up-to-date need. The development plan sets out a presumption against the loss of industrial land and space and the proposal would conflict.

⁷ 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 (as per R (Mansell) v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314)

⁸ Post-Inquiry, the proposed Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 makes further provision for change of use from the new Class E to residential use, but this would be subject to control through separate accompanying restrictions

63. Further, in considering possibilities for such losses, the scheme fails to accord with the sequential approach of Policy LP 42, and the appellant confirmed there was a very high demand for commercial use in this area.
64. The sequential structure of Policy LP 42 is also of particular significance in underlining that industrial policy assumes precedence over residential use. This is because of their relative order within the sequence. Unless the earlier steps of the policy can be satisfactorily discharged, residential use does not come into consideration. This industrial presumption is reinforced by Policy LP 40.
65. Whilst the site has not been marketed, an offer has been made by TS to acquire for industrial use as an extension to its existing premises and consistent with the terms of the **Local Plan's** Appendix 5. That offer, and TS' serious and continuing interest, further demonstrate the need to retain industrial use of the site and the continuing relevance of Policy LP 42 and related policies.
66. The appellant argues there is not a breach of the policy because there is no loss and, if there had been marketing, it would have shown that there was in fact demand for industrial use. I find the first assessment to be factually incorrect, and the second argument merely serves to support the underlying need to resist loss of industrial space.
67. I do not accept that the proposal amounts to intensification as identified under the terms of Part C of Policy E7 in relation to mixed-use development on Non-Designated Industrial Sites. Part A indicates that intensification has a particular meaning and this is not defined to include the loss of industrial floorspace. Part C 3) also cross-references to Part C of Policy E2. In this regard, the proposal fails to demonstrate the site has no reasonable prospect of being used for business purposes and there is no equivalent amount of B use class business space being re-provided appropriate in terms of type, use and size.
68. I am also unpersuaded by any suggestion of an intensification of employment density. Whilst the appellant suggested there could be an increase in employment numbers on the site from 17 to 50, it was acknowledged this figure did not reflect proposed employment B1(b) and (c) type uses, and for which the same government matrix⁹ indicates much lower densities than B1(a) office uses. If a density of 47 square metres (corresponding to B1(b) and (c) uses) were applied, only some 11 employees would be accommodated, less than the existing position, and still exclusive of the waste use. Densities for small business workspace could be as low as 60 square metres. In any case, little convincing evidence of probable densities was before the Inquiry.
69. No viability exercise was presented to demonstrate that refurbishment of the BTMs could not be achieved independently of the appeal scheme and, indeed, the evidence is that, generally, the buildings have been continuously let in their existing condition and remain so.
70. Reference has been made to decisions by the authority in relation to other industrial sites. From the details provided, it is clear that the particular overall circumstances of each of those other cases are materially different and I find the specific merits of the appeal scheme remain as described.

⁹ Page 29, Homes and Communities Agency Employment Density Guide November 2015 - CDH16

71. I find general consistency between Policy LP 42 and PVLP Policy E2 insofar as the former provides the local management approach for the strategy outlined in the latter, and broad consistency between Policies E2, E4 and E7 and Policies LP 40 and LP 42.
72. I therefore conclude that the proposed development would be contrary to Policies LP 40 and LP 42 of the Local Plan and to Policies E2, E4 and E7 of the PVLP. These policies are consistent with the Framework which, amongst other things, seeks to help build a strong, responsive and competitive economy by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity.

Mix of uses

73. The Council has concerns regarding the operational relationship between the residential and commercial elements of the scheme.
74. Previous objections regarding accommodation of pedestrian and cycle movement have now been resolved, but the Council retains concerns regarding the respective locations of the commercial and residential units. In particular, both are to be served by the same vehicular access and vehicles attending the commercial elements would need to pass beyond the dwellings.
75. The commercial units would be limited to uses within Use Class E(g). I would not expect the scale or nature of such movements to be excessive or disruptive given the number and size of units. Besides, the likelihood is of various forms of home deliveries generating not dissimilar vehicle activity in connection with the dwellings themselves over and above **residents'** own movements.
76. I therefore find there would be no harm in relation to the operational implications arising from the mix of uses. Accordingly, there would be no conflict with Local Plan Policies LP 1 or LP 35 which seek, amongst other things, to ensure development respects the suitability and compatibility of uses, taking account of any potential adverse impacts of the co-location of uses.

Character and appearance

77. Framework policy requires development to be sympathetic to local character and history. A similar principle is reflected in the National Design Guide. It emphasises how well-designed places should be integrated into their surroundings, should be influenced by and influence their context positively, and be responsive to local heritage.
78. Externally, the site has little exposure to the existing public street-scene but still forms part of an established residential area. The East Twickenham Village Planning Guidance Supplementary Planning Document June 2016 describes how the east side of Arlington Road is made up of semi-detached houses of regular design with front garden areas. Whilst referring to blocks of flats on the west side, it also reflects how the area contains wide pavements with tree-lined streets and a suggestion they were originally laid out with grass verges.
79. Internally, the existing character of the appeal site is shaped by a combination of features. These include its sense of backland enclosure, the sheds, the BTMs, and a general unbuilt form within its central area affording various views through the site.

80. The opportunity to replace the relatively ramshackle yet prominent sheds would be a positive feature of the scheme in townscape terms.
81. Whilst relatively utilitarian in form and inward-facing, and in a state of some disrepair, the BTMs still make a positive contribution to the quality of townscape consistent with **the terms of the Council's Buildings of Townscape Merit Supplementary Planning Document Adopted May 2015**. Their significance is as a distinctive and cohesive group of Victorian stable/mews buildings generally retaining their original architectural interest and integrity. As ancillary buildings, their original design and position may well have sought to marginalise their presence within the site. Nevertheless, the open central area means they remain visible across much of the site as characteristically defining and established features and this enhances their setting and significance.
82. The Council has raised no in-principle concerns regarding the proposed density of development. The Framework advises that planning policies and decisions should support development that makes efficient use of land and, whilst not substantiated, the appellant indicated at the Inquiry a general need for housing development to cross-subsidise the proposed commercial accommodation.
83. I acknowledge the need to make optimum use of the available land, and the **appellant's efforts to produce a quality bespoke design**, but find the scale of residential development to be overwhelming relative to both the distinctiveness of the BTMs and the wider site character. The proposed scale and position of the main 3/4-storey building and the smaller adjacent block would serve to relatively annex and conceal the BTMs. Their significance and setting would be neither respected nor developed as positive and distinctive features of the site.
84. Further, whilst there would be some garden space to the two residential blocks and areas of planting elsewhere, provision of soft landscaping throughout the scheme would be generally limited. Although Arlington Road does contain blocks of flats, these are set within more generous landscaped settings, and face towards traditional houses designed with front gardens. The scheme would thereby also fail to reflect the wider and more spacious character of Arlington Road.
85. I disagree with the proposition that the proposal largely has to establish its own place with its own identity. That is to deny the importance of context. The consequence is a scheme which, by virtue of the scale of built form and its relationship to the BTMs, would be a cramped over-development of the site not reflective of its distinctive character and harmful to the settings of the non-designated heritage assets. An apparent quest to maximise site capacity has prevailed over an approach more appropriately informed by local context.
86. Notwithstanding the backland character of the site, Local Plan Policy LP 39 still requires development to reflect the character of the surrounding area. Similarly, the **Council's Design Quality Supplementary Planning Document Adopted February 2006** states that design which fails to take the opportunity to improve the character and quality of an area should not be accepted. An appropriate design solution does not require the BTMs to be all pervading and nor be elevated to a status beyond their significance, but it does require their form and setting to be more respected and acknowledged as distinctive and referential features. The appeal scheme is markedly lacking in that regard.

87. I therefore conclude the proposed development would be harmful to the character and appearance of the appeal site and the surrounding area, and would undermine the significance of the BTMs. Accordingly, there would be conflict with Local Plan Policies LP 1, LP 4 and LP 39, and with PVLP Policies D3 and D4. These seek, amongst other things, to ensure that the high quality character and heritage of the Borough will be maintained and enhanced where opportunities arise and that backland development should reflect the character of the surrounding area. They aim to ensure that development should be the most appropriate form for the site, that high quality design and placemaking are delivered, and that the significance, character and setting of non-designated heritage assets are preserved, and where possible enhanced.

88. I find these policies to be consistent with the Framework. This also seeks to ensure that development should establish or maintain a strong sense of place, and emphasises how heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.

Possible implications of the development for the continuing operation of Twickenham Studios

89. TS raises three particular matters: support for the development plan in relation to industrial policy; implications of noise and disturbance; and loss of parking.

The development plan

90. The development plan recognises the importance of creative industries, and of TS itself.

91. PVLP Policy HC5 sets out the support expected to be offered to **London's culture** and creative industries and this includes the need to protect existing cultural venues, facilities and uses where appropriate. It also underlines the significance of the sector to London and the wider economy. The PVLP describes creative industries **as one of London's unique strengths**.

92. At Borough level, the Local Plan identifies TS as Locally Important Industrial Land and as of particular importance for locally creative industries.

93. Similar support is drawn from the Framework which explains how planning policies and decisions should recognise and address the specific locational requirements of different sectors, and this includes creative industries.

94. The Inquiry heard how TS has developed an award-winning, worldwide reputation as one of the most important production and post-production film facilities in the UK. It was told how TS is now looking to expand its operation and how the appeal site represents the **Studios' only opportunity to** do so at its existing premises.

95. I have found in relation to the second main issue that the appropriate use of the appeal site, at least in the first instance by virtue of the sequential test and other associated policies, is for industrial purposes and waste management. Aside from the safeguarded waste use, the industrial presumption could include, together with all other policy-compliant possibilities, opportunities for TS to pursue expansion. Even in the absence of any other marketing as expected by the development plan prior to consideration of non-industrial use, the very real and already expressed interest of TS in seeking to acquire and

develop the site to date demonstrates the validity of the **plan's expectation** to retain the land for industrial purposes.

96. The proper application of development plan policies includes an opportunity for possible TS expansion onto the site of Arlington Works unless and until such time as the sequential steps are discharged or such other alternative industrial development materialises. Should that industrial ambition of the development plan be abandoned prematurely and without justification, an important potential opportunity would also be lost for Richmond, for London, and for the national film industry.
97. The local significance of TS is also underlined **by the residents' associations, describing it as a 'respected local employer' and** as reflecting on the local area as a **'huge commercial success globally'**.¹⁰

Implications of noise and disturbance

98. The evidence demonstrates the acute sensitivities of the TS premises to noise and other disturbance. Theatres 1, 2, 3 and 4 and the picture post department are all directly adjacent to Arlington Works. TS advised the Inquiry how any external noise and vibration would make mixing impossible. The Inquiry also heard how the industry is dominated by discerning and demanding clients who will not tolerate the commercial risks of an imperfect listening environment and will instead simply take their work elsewhere. It heard concerns of how, at best, production at TS could be seriously interrupted by building works for several years, but how, at worst, the entire business might be at risk.
99. In its Committee report, the Council's **Environmental Health service raises** no specific concerns towards TS and indicates, generally, that any potential impacts of noise and disturbance could be managed through a construction method statement. I disagree, and find the particular sound sensitivities of TS mean there could be a very serious specific impact upon the Studios and one which would require a more direct and focussed response.
100. Dialogue between noise experts representing TS and the appellant throughout the Inquiry highlighted possibilities for technical mitigation in the form of planning conditions. I consider that a very robust and bespoke regime could be devised making reasonable provision for noise and other construction impacts. **TS' preference would be** to follow a similar model to that applied to the High Speed 2 and Thames Tideway projects for construction noise impacts specific to sound recording and broadcast studios and which I consider, in principle, to be appropriate. Significant progress was made by the parties in that direction, although agreement around finer details of key aspects, including noise limits and monitoring, were outstanding.
101. Whilst such restrictions may not afford TS the perfect working environment it seeks, the model approach appears reasonable and justified and has been found to be appropriate in other similar noise-sensitive circumstances elsewhere. Such conditions may also help TS to address its perceptive concerns for future trade arising from the mere presence of a building site adjacent to a recording studio. This could include possibilities for informed client communication explaining the restrictions to be in place. In any event, the same challenges of managing client perceptions would no doubt arise in some

¹⁰ Letter from The Barons Residents' Association dated 2 June 2020 and email from Twickenham Park Residents' Association dated 5 July 2020, and Mr Hines in evidence

form should TS ever develop the site itself. There are also no existing planning restrictions upon any noise currently generated within the appeal site.

102. Local Plan Policy LP 10 requires development not lead to detrimental effects on the amenity of existing occupiers of surrounding land, and for mitigation measures to be considered. Policy D13 of the PVLP requires that nuisance-generating development proposed close to noise-sensitive uses should put in place measures to mitigate and manage any noise impacts for neighbouring businesses. The Framework also makes clear that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. I am satisfied such mitigation could be achieved by way of planning conditions as described.

Loss of parking

103. The proposal would incur some loss of parking currently available to TS. This would involve loss of 14 spaces within the main area of the appeal site. A further 7 spaces are used on the internal access drive where 5 may still be available.

104. I appreciate that parking may be important to high value global film productions working to tight deadlines. It was maintained that loss of 16 **spaces would impede TS'** operation and this could have implications for its ability to attract productions to Twickenham if the required facilities are not available. TS gave evidence that for much of the week, in non-pandemic times, these parking spaces would be full.

105. I accept that the reduced parking would be inconvenient but exactly how disruptive is unclear. I am not satisfied from the evidence before me that the loss would necessarily be critical to the **Studios' continuing** viability or operation, and all other possible options to manage the loss would need to be fully explored and discounted before reaching such a conclusion. Parking space within the appeal site is also not land within the ownership and ultimate control of TS, and I note that no objections are raised by the authority in relation to any possible issues of displacement parking or other highways consequences for the surrounding area.

Summary of conclusions

106. The site should remain available for industrial use in accordance with the development plan policies in my assessment of the second main issue, and that definition would allow for any ambitions of TS as well as other qualifying industrial activities. The appeal scheme conflicts with that policy expectation and, in turn, with the expected support arising from PVLP Policy HC5.

107. If development of the site is to proceed independently of TS, the implications of the works for its highly noise sensitive operations must be adequately mitigated. I am satisfied that, in principle, suitably robust conditions could be attached to a planning permission to reasonably mitigate the noise and associated implications of the works and so accord with Local Plan Policy LP 10 and with PVLP Policy D13.

108. Thirdly, whilst the loss of parking would be inconvenient to TS, from the limited evidence available, I am unconvinced of the impact this would have upon operation of the Studios. I find no significant conflict with the

development plan in this specific regard, and this includes PVLP Policy T6 which, amongst other things, seeks to generally restrict availability of parking in line with levels of public transport accessibility and connectivity, and Local Plan Policy LP 45 which similarly seeks to minimise car parking.

Other matters

Section 106 agreement

109. The agreement sets out various matters, including obligations in response to **the Council's** other previous concerns which the authority no longer maintains. These related to possible implications for Co2 emissions, provision for on-site **children's play space**, and to whether or not the proposal would make adequate provision for affordable housing.
110. The agreement makes provision for Co2 emissions and play space to the satisfaction of Local Plan Policies LP 20, LP 22 and LP 31. Policy LP 20 and LP 22 seek to promote climate change adaptation. Policy LP 31 seeks to ensure adequate child play facilities in new development. The agreement also makes provision for affordable housing as expected by Local Plan Policy LP 36 and by PVLP Policy H4 and which I deal with further under possible benefits below.
111. The Council has confirmed that amended drawing CA3743 SK006 (Rev D), allied to commitments set out in the section 106 agreement, now address the **authority's previous concerns regarding the need for adequate off-street** parking, and including any associated implications arising for the free and safe movement of vehicles, pedestrians and other road users in the vicinity.
112. **I note the previous representations on behalf of the residents' associations** regarding pressures on existing parking. No further representations were made by the associations at the Inquiry in this regard and no objections were raised in relation to the revised drawings or to the terms of the section 106 agreement.
113. I am satisfied the scheme would make adequate provision for off-street parking to serve the development, and there would be no harmful implications arising for the free and safe movement of vehicles, pedestrians and other road users in the vicinity. Accordingly, there would be no conflict with Local Plan Policy LP 45.
114. The parties confirmed at the Inquiry they were satisfied with the form and content of the agreement as a deed. I find the undertaking to be compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and to be generally fit-for-purpose. Accordingly, I take into account the commitments and accompanying terms as considerations of my decision.

Housing land supply

115. Whilst the scheme would contribute to the supply of new housing in accordance with Local Plan Policy LP 34 and PVLP Policy H1, it is agreed between the parties that the Borough has been able to demonstrate a 5-year housing land supply (5YHLS) relative to the requirements of the FALP as applicable at the time of the Inquiry. **The Council's** estimate was a supply of 6.7 years, **the appellant's** 5 years.

116. **The Borough's housing target established in the FALP** was for an additional average annual provision of 315 units between 2015 and 2025. This requirement was exceeded in the 2019/20 financial year, and the Council remains on course to meet that strategic requirement by 2025.
117. Relative to the PVLP, the Council maintains a supply of 5.14 years, but the appellant suggests this to be 4.1 years. **The appellant's** lower figure appears to reflect a number of issues, including its application of the government's proposed local housing need '**cities and urban centres uplift**' of 35%.¹¹
118. I regard inclusion of the uplift to be premature. Firstly, the Planning Practice Guidance advises that a 35% uplift is to be applied to the entire London Plan area. It makes clear that responsibility for the overall distribution of housing need in London lies with the Mayor as opposed to individual boroughs so there is no policy assumption that this level of need will necessarily be met within each authority.¹² Secondly, the government has stated the local housing need uplift will only be applicable once the next London Plan is being developed.¹³ Thirdly, and in any case, there is a general transition period for decision-making for relevant authorities. The Guidance explains how transitional arrangements apply for six months from its publication date and during which the uplift would not apply.¹⁴
119. I also do not accept that the 5YHLS calculation should reflect an alleged shortfall which arises from applying the PVLP housing requirement to the period 1 April 2019 to 31 March 2020. This pre-dates the PVLP and, besides, for that period the relevant target was that contained within the FALP and the Council has confirmed there was no shortfall in its delivery.
120. I have little basis to doubt the appropriateness of longer term methodology. The PVLP advises the increase in housing delivery required may be achieved gradually and how Boroughs are encouraged to set out a realistic and, where appropriate, stepped housing delivery target over a ten-year period.
121. From the detailed evidence, I have no reason to conclude that **Richmond's** anticipated delivery is generally over-optimistic or otherwise incautious.
122. The appellant also makes various references to details of housing need and standard methodology, but this is a situation where the housing requirement is set out in an adopted plan which is not more than 5 years old.¹⁵
123. The **Borough's** 2018 Housing Delivery Test measurement was 141% and no action was required. The corresponding 2019 measurement was 121% and similarly required no action. The 2020 measurement recently published in **January 2021 shows Richmond's measurement to be 112% and with a continuing consequence of no action.**
124. In summary, the evidence is of a Borough which has been able to demonstrate a 5YHLS to date. **The Council's** current details appear robust and realistic and, notwithstanding the transitional circumstances currently applicable to London, I have little clear or reasonable basis to conclude that

¹¹ As announced on 16 December 2020 and which will apply across the London Plan area

¹² Planning Practice Guidance paragraph 034 Reference ID: 2a-034-20201216

¹³ '**Consultation** Outcome Government Response to the Local Housing Need Proposals' in 'Changes to the Current Planning System' updated 16 December 2020

¹⁴ Planning Practice Guidance paragraph 037 Reference ID: 2a-037-20201216

¹⁵ Framework paragraph 73 refers

Richmond is no longer able to demonstrate a 5YHLS for the purposes of this appeal.

Overall assessment

i) The development plan as a whole

125. I consider the policies which are most important are those referred to and variously applied in my assessment of the main issues and other considerations. Other policies identified by the parties, whilst relevant to differing degrees, are of less significance to the key aspects and merits of the scheme, are broadly neutral in their application, and therefore do not carry the same importance as those identified.
126. I regard the overall basket of most important policies identified to be generally up-to-date and the submitted details of this scheme give rise to no material conflicts between policies as they relate to the specifics of the proposal.
127. I have found conflict and harm in connection with Waste Plan Policy WLWP 2, with Local Plan Policies 1, 4, 24, 39, 40 and 42, and with PVLP Policies D3, D4, E2, E4, E7, HC5, SI 8 and SI 9.
128. Set within the wider basket, the lack of compliance identified is such that the appeal proposal cannot be regarded, read sensibly and in the round, to accord with the development plan as a whole. The scheme would involve fundamental conflict with the development plan on a range of important, site-specific matters and I find this collective discord warrants considerable weight.

ii) Other considerations in favour of the scheme

129. The scheme would make a significant contribution of both market and affordable housing. It would support the **government's objective of significantly boosting the supply of homes** and thereby help to meet local housing needs.
130. The Borough has particular needs for affordable housing. Between 2014 and 2020, only 312 affordable homes were delivered in Richmond amounting to just 5% of the need based upon a net annual requirement of 964 units. The scheme includes provision of eight intermediate housing units in the event of a **'without grant' tenure mix or eight affordable rent housing units and two intermediate housing units pursuant to a 'with grant' tenure mix.**
131. The site enjoys very good public transport connections and is well placed to support, and to be served by, a range of local services and other facilities, **including the nearby St Margaret's local centre.**
132. The site is brownfield land. The Framework is supportive of the use of **'suitable' brownfield** land.
133. There would be economic benefits arising from the proposed SME units. The more general economic benefits of development would also include investment in construction and related employment for its duration, and an increase in subsequent local household expenditure and demand for services from new residents.
134. The proposal includes a commitment to net biodiversity gain consistent with the Framework, and details would be addressed by a planning condition.

135. Representations of local residents show support for improvements in local living conditions arising from cessation of any disruptive industrial use.¹⁶ The appeal site lies within a residential area and neither the waste use nor the various other industrial activities are regulated by the detailed terms of either a planning permission or by any restrictions within the CLEUD. A fresh planning permission could address that absence.
136. I can sympathise with **residents'** preference for non-industrial use, but that matter would have been a consideration for the authority and examining Inspector in preparing the Local Plan and in formulating the subsequent presumption in favour of industrial use. Further, the Inquiry heard not just about the shortage of industrial sites in the Borough, but also of an historic pattern of long-established industrial sites operating in close proximity to residential use.
137. In sum, I afford the collective benefits of the development significant weight.

iii) Final planning balance

138. Relevant development plan policies apply and the policies which are most important for determining the application are not out-of-date within the terms of Footnote 7 of the Framework or otherwise. The tilted balance of paragraph 11 d) of the Framework is therefore not engaged, and the application remains to be determined in accordance with the statutory duty under section 38(6).¹⁷
139. Section 38(6) requires this appeal to be determined in accordance with the development plan, unless material considerations indicate otherwise. The scheme does not accord with the development plan as a whole, and I find the considerable weight of the conflicts and harms arising in those regards not to be out-balanced by the far lesser but still significant weight of other material considerations. Accordingly, I find that planning permission should be refused.

Conclusion

140. For the reasons given above, I conclude that the appeal should be dismissed.

Peter Rose

INSPECTOR

¹⁶ See, for example, Mr Buckley's letter of 11 January 2021, and Mr Hines' observations to the Inquiry regarding circumstances following the removal of the waste tanks

¹⁷ Planning and Compulsory Purchase Act 2004

APPEARANCES

For the local planning authority:

Matthew Reed of Queen's Counsel, instructed by George Chesman of South London Legal Partnership

He called:

Alan Potter - Partner, BPP Consulting LLP

Scott Davidson - Chartered Town Planner, RBRUT

Barry Sellers - Principal Planner (Urban Design and Conservation), RBRUT

Fiona Dyson - Senior Planning Officer, RBRUT

Contributions were also made to round-table discussions by:

Joanne Capper - Principal Planner Policy, RBRUT

Paul Bradbury - Development Project Officer (affordable housing), RBRUT

Will Marshall - Principal Transport Planner, RBRUT

George Chesman - South London Legal Partnership

For the appellant:

Clive Newberry of Queen's Counsel, instructed by Philip Villars of WSP

He called:

Matthew Mehegan - Technical Director, Waterman Infrastructure and Environment Ltd

Andrew Weeks - Head of Department, Featherstone Leigh Commercial

Chris Howe - Director, Brookes Architects Limited

Philip Villars - Head of Planning Consultancy and Environmental Assessment and Management, WSP

Contributions were also made to round-table discussions by¹⁸:

Mark Turner - Associate, Caneparo Associates

Michael Wood - Associate Director, WSP

¹⁸ Written contributions were also received from James Tomalin, Managing Director, Aulos Acoustics

For Twickenham Studios:

Richard Ground of Queen's Counsel, instructed by Mark Batchelor of Boyer

He called:

Sunny Vohra - Chairman, Twickenham Studios

Mark Batchelor - Director, Boyer

Contributions were also made to round-table discussions by Will Martin - Associate Director, Noise Consultants Ltd

On behalf of Twickenham Park Residents Association and
The Barons Residents Association:

Mr Colin Hines, Chair of Twickenham Park Residents Association and local resident

INQUIRY DOCUMENTS

The following documents were submitted and accepted during the Inquiry:

On behalf of the local planning authority:

Opening statement by Matthew Reed QC

Application publicity details (addresses notified)

Local Plan Authority Monitoring Report - Housing - 2019/20
dated 16 November 2020

Complaints note (Environmental Health extracts)

Plan of large footprint buildings

PowerPoint presentation accompanying Mr Sellers' **evidence**-in-chief

BPP Consulting for Richmond Council, Quattro Offer Letter Comments
dated 20 January 2021

BPP Consulting for Richmond Council, Comments of Alternative Capacity
Assessment Method dated 22 January 2021

Extracts from 2018 Policies Map

Updated CIL Compliance Statement attaching to email dated
27 January 2021

Applications for costs

Closing submissions by Matthew Reed QC

On behalf of the appellant:

Opening submissions by Clive Newberry QC

Letters from Brent Oil dated 12 January 2021, Slicker Recycling dated
13 January 2021, and Quattro dated 18 January 2021

Enquiry template for approaches to alternative waste providers attaching to
Dawn **Roads' email of 10 January 2021**

Briefing note - Unexploited Waste Capacity (Matthew Mehegan) dated
18 January 2021

Correspondence relating to draft industrial conditions attaching to
Philip **Villars' email of 19 January 2021**, and including note '**Arlington
Industrial Land Policy - London Plan' of 18 January 2021**

Email from Ross Harvey of RBRUT dated 7 March 2018

Emails from Wendy Wong Chang of RBRUT dated 13 and 18 April 2018

Land Registry details

Plan of Zone S, St Margaret's South CPZ

Summary note of affordable housing offer attaching to email dated
27 January 2021

Suggested waste condition dated 25 January 2021

Rebuttals to applications for costs

Closing submissions by Clive Newberry QC

Jointly on behalf of the local planning authority and appellant:

Amended draft list of suggested conditions, and accompanying drawings 4786 3 10 C, 4786 3 15 B, and 4786 3 25 B

Updated floorspace comparison attaching to email of 21 January 2021

Draft planning obligation (on-going copies)

London Plan Policies - Conversation Table

Mix of Uses Statement of Disagreement attaching to email of 25 January 2021

Updated Housing Statement of Agreement, including corrected page 8 attaching to email dated 27 January 2021

On behalf of Twickenham Studios:

Opening submissions by Richard Ground QC

PowerPoint presentation accompanying Sunny Vohra's evidence-in-chief

Email from Tim Cavagin dated 21 January 2021

Email from Craig Irving dated 21 January 2021

Email from Jeremy Rainbird dated 25 January 2021

Court of Appeal judgement, R (Mansell) v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

Application for costs

Closing submissions by Richard Ground QC

Jointly on behalf of the appellant and Twickenham Studios:

On-going correspondence between James Tomalin of Aulos Acoustics and Will Martin of Noise Consultants Ltd regarding possible noise conditions

The following documents were agreed by the parties to be submitted and accepted after the close of the Inquiry:

Final list of suggested conditions received by email dated 1 February 2021

Amended list of policies most important (updated extract to Statement of Common Ground) dated 2 February 2021

Completed section 106 agreement dated 17 February 2021



Costs Decision

Inquiry held on 19-22, and 25-29 January 2021

Site visits made on 12 January 2021 and 2 February 2021

by Peter Rose BA MRTPI DMS MCMl

an Inspector appointed by the Secretary of State

Decision date: 19 April 2021

Costs application in relation to Appeal Ref: APP/L5810/W/20/3249153
Arlington Works, 23-27 Arlington Road, Twickenham, TW1 2BB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Twickenham Studios for a full award of costs against Sharpe Refinery Service Ltd.
 - The Inquiry was in connection with an appeal against the refusal of planning permission **for a scheme described as** 'redevelopment of the site to provide 610sqm of commercial space (B Class) within existing Buildings of Townscape Merit plus a new build unit, 24 residential units (5 x 1 bedroom, 12 x 2 bedroom and 7 x 3 bedroom) and associated car parking and landscaping'.
-

Decision

1. The application for a full awards of costs is refused.

The submissions for Twickenham Studios

2. **The appellant's evidence on industrial policy was** unsatisfactory and had no reasonable prospect of success. The appellant failed to have any evidence of marketing or that there is no longer a demand for industrial use, and accepted there was a market. The appellant failed to take account of clearly material matters such as an offer from Twickenham Studios who want to use the land for industrial purposes. The other material considerations the appellant advanced in the context of this case were clearly inadequate to enjoy any reasonable prospect of the appeal succeeding.
3. Accordingly, the appeal should not have been brought as it had no reasonable prospect of success¹ and a costs award should be made in favour of Twickenham Studios which was required to be represented in order to protect its position.

The response by Sharpe Refinery Service Ltd

4. The appellant maintains the proposal is policy compliant and would strengthen and intensify industrial use of the site. This would be reinforced by its proposed planning conditions.

¹ As per Planning Practice Guidance paragraph 053 Reference ID: 16-053-20140306

Reasons

5. I have **found the scheme falls significantly short of the development plan's** expectations in relation to industrial use.
6. Whilst highly relevant and very important to this case, industrial policies still only form part of the overall development plan context. They also remain to be weighed as part of overall planning balances relative to other material considerations, including **the appellant's** perceived benefits of the proposal.
7. Although **I find the appellant's application of policies to be flawed, I can** appreciate why it chose to consider this was not a case where it necessarily had no reasonable prospect of succeeding. The proposal is clearly not in accordance with the development plan, but other material considerations have been advanced in favour of the scheme and with supporting evidence.² In particular, the appellant has been driven by other perceived attributes of the development and the weight they should attract, including retention of some employment, improved commercial accommodation, housing benefits, a bespoke design and environmental improvement for the local area.
8. In that context, and notwithstanding the clear conflict with the development plan as a whole and the harm arising, **I do not find, on balance, the appellant's** actions to have been unreasonable. Ultimately, decisions may be taken that depart from an up-to-date development plan, but only if material considerations in a particular case indicate the plan should not be followed.³

Conclusion

9. I therefore find that unreasonable behaviour on the part of the appellant resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has not been demonstrated. Accordingly, I conclude that an award of costs is not justified in this instance and the application is refused.

Peter Rose

INSPECTOR

² See also Guidance paragraph 053 Reference ID: 16-053-20140306

³ Framework paragraph 12



Costs Decisions

Inquiry held on 19-22, and 25-29 January 2021

Site visits made on 12 January 2021 and 2 February 2021

by Peter Rose BA MRTPI DMS MCMl

an Inspector appointed by the Secretary of State

Decision date: 19 April 2021

Costs applications in relation to Appeal Ref: APP/L5810/W/20/3249153
Arlington Works, 23-27 Arlington Road, Twickenham, TW1 2BB

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by the Council of the London Borough of Richmond upon Thames for a full award of costs and, alternatively, for a partial award, against Sharpe Refinery Service Ltd.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for **a scheme described as** 'redevelopment of the site to provide 610sqm of commercial space (B Class) within existing Buildings of Townscape Merit plus a new build unit, 24 residential units (5 x 1 bedroom, 12 x 2 bedroom and 7 x 3 bedroom) and associated car parking and landscaping'.
-

Decisions

1. The applications for full and partial awards of costs are refused.

The submissions for the Council

2. The appellant was unable to meet the compensatory provisions of Policy WLWP 2. The argument to avoid conflict with Policy LP 42 rested entirely on the contention that it was possible to move from existing uses to other activities in Class E. The appellant relied on a mis-reading of Policy E7 by which industrial land use could be intensified despite a substantial reduction in the industrial land in question. The appeal was therefore unreasonable, there was no real prospect of success and should not have been made.¹
3. Alternatively, a partial award is sought in respect of costs incurred in dealing with affordable housing and highways issues. Had the section 106 offer towards affordable housing been made at an earlier stage, the Council would not have needed to prepare a proof of evidence on this issue. Similarly, had the relevant information associated with the revised layout plan and related matters been made available earlier, the Council would not have been required to prepare highways evidence.

The response by Sharpe Refinery Service Ltd

4. It is not accepted that compensation should only be confined to oil waste or to sites within the Waste Plan area. The appellant took a diligent approach by contacting the Council and seeking clarity on these points as far back as 2018

¹ As per Planning Practice Guidance paragraph 053 Reference ID: 16-053-20140306

and acted in accordance with the authority's **own advice**. The appellant maintains the proposal to be policy compliant and would strengthen and intensify industrial use of the site. This would be reinforced by its proposed planning conditions.

5. **In the spirit of active engagement and in accordance with the Inspector's** instructions, the matters in dispute regarding affordable housing and highways implications were all narrowed in discussions prior to the Inquiry.

Reasons

Application for a full award

6. I have found the **scheme falls significantly short of the development plan's** expectations in relation to both waste site designation and industrial use. Whilst the appellant has pursued an application of compensatory waste policy with which I disagree, the approach taken did reflect previous informal advice from Council officers as expressly sought by the appellant.²
7. Further, waste and industrial policies, whilst highly relevant and very important to this case, still only form part of the wider development plan context. They also remain to be weighed as part of overall planning balances relative to other material considerations, including **the appellant's** perceived benefits of the proposal.
8. Although **I find the appellant's application of policies to be flawed**, I can appreciate why it chose to consider this was not a case where it necessarily had no reasonable prospect of succeeding. The proposal is clearly not in accordance with the development plan, but other material considerations have been advanced in favour of the scheme and with supporting evidence.³ In particular, the appellant has been driven by other perceived attributes of the development and the weight they should attract, including retention of some employment, improved commercial accommodation, housing benefits, a bespoke design, and environmental improvement for the local area.
9. In that context, and notwithstanding the clear conflict with the development plan as a whole and the harm arising, I do not find, on balance, **the appellant's** actions to have been unreasonable. Ultimately, decisions may be taken that depart from an up-to-date development plan, but only if material considerations in a particular case indicate the plan should not be followed.⁴

Application for partial awards

10. The Planning Practice Guidance **and the Inspectorate's Procedural Guide**⁵ make clear that an appellant should provide full disclosure of the details of their case and the arguments being put forward at the time they make their appeal.
11. Despite raising the need for affordable housing information at the Case Management Conference, required details were not received by the authority until the Inquiry approached. A similar timescale applies to relevant information associated with the revised layout plan and related highways

² That informal advice was not subsequently endorsed at the Inquiry by the Council

³ See also Guidance paragraph 053 Reference ID: 16-053-20140306

⁴ Framework paragraph 12

⁵ See **Annex J of the Inspectorate's Procedural Guide Planning Appeals** - England March 2021, paras J.2.2 and J.2.3, and also Guidance paragraph 052 Reference ID: 16-052-20140306

matters. Had those been made available at the time the appeal was made, I agree the Council would not have been required to prepare unnecessary evidence.

12. Even so, I regard the emerging details as a positive and genuine attempt by the appellant to address and resolve the **Council's objections rather than** as part of its case to confront and rebut **the authority's** stated opposition to the scheme through new information. The Procedural Guide also only refers to indications of on-going discussions or of anticipated discussions to resolve areas of dispute to be included **as part of the appellant's full statement of case**. Whilst details were progressed relatively late in proceedings, I find the **appellant's actions** well-intended and, on balance, not unreasonable.

Conclusion

13. I therefore find that unreasonable behaviour on the part of the appellant resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has not been demonstrated. Accordingly, I conclude that awards of costs are not justified in this instance and the applications are refused.

Peter Rose
INSPECTOR