

NOOKS and CORNERS

IT IS sad to report that the case for judicial review over Elmbridge council's decision to give planning permission for a big hotel and commercial development by the Thames opposite Hampton Court Palace – a scheme opposed by Historic Royal Palaces and, initially, English Heritage – has been unsuccessful (*Eyes passim ad nauseam*).

The case – that the scale of the project was neither desirable nor necessary – was brought by architect Keith Garner, at considerable personal risk, supported by the Hampton Court Rescue Campaign. But Mr Justice Ouseley rejected his arguments on both heritage and flooding grounds.

During the case, however, interesting light was shed on what had transpired between the borough council and the developers.

With large planning applications like this, the developer usually submits a “development appraisal” explaining the finances of the plan and the expected profit. Such documents are normally assessed by an independent expert. But here the appraisal was submitted to Elmbridge by the co-developer, Gladedale Special Projects Ltd, and the borough’s head of town planning, Martin Parker, decided not to have it independently assessed. Elmbridge also declined to share the information in the appraisal on the grounds that it was “commercially confidential”, even though it had surely been crucial in persuading the council to approve the application. Mr Garner’s legal team was only allowed to see it shortly before the judicial review after it was released following a freedom of information request.

The appraisal was accompanied by a supporting letter from a property consultant acting for the Royal Star & Garter Home, which subsequently withdrew from the project (*Eye* 1231). This letter – which, unlike the appraisal, was shown to councillors and the planning committee – successfully argued that, because of the unusual costs involved, eg the underground car park (in an area liable to flood), the potential profitability of “the proposed scheme is not able to support any more affordable housing than has been offered”; that is, 11 percent rather than the 40 percent normally required by the council.

It now emerges that although the 2008 planning application was submitted by both Gladedale and Network Rail as joint developers (and they both opposed Mr Garner in court), the hitherto confidential development appraisal was submitted by Gladedale as sole developer and the figures included a cost of £4.5m for purchasing part of the site from Network Rail (Gladedale already owns the Jolly Boatman part of the site, next to the river). As Mr Garner puts it: “The development partners have bought the site off themselves.”

The total estimated profit from the whole development is some £10m. With the excess profit of



the £4.5m from the co-developer, Network Rail stands to make some £6m or £7m out of the scheme while Gladedale will make £3.3m. In other words, the development will be much more profitable than it was argued it would be to justify the reduction in the amount of affordable housing – and much more profitable than it need be to secure the public benefits

specified in the development brief for the site issued in 1999.

The restoration of William Tite’s handsome neo-Tudor station building and other improvements could in fact be achieved by building on only half the site – and the Jolly Boatman part of the site by the

Thames and Hampton Court Bridge (designed by Lutyens) could be kept free of development.

Notwithstanding Mr Justice Ouseley’s conclusions, the question now arises: would Elmbridge councillors have approved the application had they been allowed to see these figures and had the benefit of an independent assessment of the development appraisal? If the development goes ahead, the first thing the thousands of tourists who arrive by train to visit England’s most beautiful and historically significant royal palace will see is the back of a mediocre Neo-Georgian hotel by Quinlan ‘n’ Francis Terry. As John Barnes, director of conservation and learning at Historic Royal Palaces, has said of the development: “We believe its size, scale and density, if implemented, will have a detrimental and irreversible effect on the historic setting of Hampton Court Palace.”

Keith Garner and his lawyers are now appealing. He already consoles himself with two things. Firstly, that the departure of Star & Garter Homes makes it difficult for Gladedale and Network Rail to proceed unless they can find another residential care home provider willing to occupy this unsuitable site. Secondly, that the ruling in the appeal court hearing last year granting him a protective cost order incorporates the Aarhus Convention into English law and means that others bringing environmental legal cases will not be saddled with, or deterred by, prohibitive costs.

In his judgment Mr Justice Ouseley opined: “It would beggar belief... for the council, dealing with a site so close to the Palace and Bridge, not to have had special regard to their setting.” Yet in a radio interview after that judgment, Cllr John O’Reilly (Con), leader of Elmbridge council, said he thought the development scheme was: “Just about OK.”

That is simply not good enough for a site so close to what historian David Starkey has described as “one of the three most important palace complexes to have survived in Europe. It is surrounded by a unique and magical landscape”. To reiterate his opinion: “Anything that gratuitously damages it isn’t a national scandal but an international scandal.”

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