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Sent: 14 April 2021 14:13
To: 'Jennifer Margetts' <JMargetts@elmbridge.gov.uk>
Cc: Conservation, The Gardens Trust <conservation@thegardenstrust.org>; Consult, The Gardens Trust <consult@thegardenstrust.org>
Subject: Ref : Legal Opinion on the 1913 Act re Application No : 2018/3810

Dear Ms Margetts,

I believe that Elmbridge will be commencing the public consultation for the above application today or tomorrow and will be sending letters to all neighbours, those who have commented on the application and consultees. In Dr Rutherford's HIA which The Gardens Trust recently submitted to Elmbridge as part of its objection to this application, a document is referred to which has only just become available : the Legal Opinion on the 1913 Act which stipulates the 50' maximum height of buildings on SW Railway land. The legal opinion, which I am attaching, considers that the 1913 Act is valid and so IS a material consideration that Elmbridge must consider. I would be really grateful if you could please upload it to the web site as part of the GT's objection as a Statutory Consultee and also forward it to the Applicants and Historic England as supplementary to the HIA. We would also be grateful if you could post evidence on the Officer Correspondence section of your web site that this has been done.

I am also attaching a 2nd copy of the HIA for your convenience.

Thank you.

Best wishes,

Margie Hoffnung

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HAMPTON COURT STATION, EAST MOLESEY DEVELOPMENT PROPOSALS

(CURRENT APPLICATION 2018/3810)

HISTORIC ENVIRONMENT IMPACT ASSESSMENT INCLUDING HAMPTON COURT PALACE AND ITS SETTING



Hampton Court Privy Garden with rendering of the proposed buildings to indicate height and scale.
Source: Montagu Evans/ Miller Hare TVIA View 5; block visualization by Piotr Hennig to indicate height and scale.

Dr Sarah Rutherford
Historic Environment Consultant

Dip. Hort. (Kew), M.A., PhD.

23 March 2021

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1 EXECUTIVE SUMMARY

This Historic Impact Assessment of proposals in Application 2018/3810 concludes the following (see also Section 7):

1.1 CUMULATIVE MAGNITUDE OF EFFECTS ON COMBINED HERITAGE ASSETS

1. The assessment in Section 6 identifies a large cumulative magnitude of harmful effect on the setting of 22 identified heritage assets (some of these including groups of assets), including the River Thames, many being of the highest significance.¹ Together these comprise a large proportion of the environs of the development, both in the immediate vicinity and further distant, and cumulatively amounts to a **large harmful impact**.
2. The cumulative magnitude of effect on the 12 heritage assets of the **highest significance**, affecting an extensive area north of, and including, the River Thames, forming a key part of Hampton Court Palace and its grounds, is generally defined as Large. This cumulatively amounts to a **large harmful impact**.
3. The cumulative magnitude of effect on the setting of the 10 heritage assets of **lesser significance**, i.e. those west of the Palace and south of the river, varies between mostly Large (those south of the river, nearest to the development) with fewer at Medium (north of the river).²
4. The buildings will be 3-4ft taller than the 50ft limit imposed by the 1913 SWR Act. This, magnified by the scale of the buildings, contributes to the **large harmful impact** on the setting of the Palace and its grounds.
5. This cumulatively amounts to a **large harmful impact**.

1.2 SPECIFIC HARM

The harm is a result of the position, height and bulk of the proposed building resulting in the following specific effects on the setting of the historic assets:

1. Overtopping and visible through the existing trees (which themselves are not a long term screen) from various key viewpoints in Hampton Court Palace and grounds, and the River Thames.
2. The scale and height competing with that of the Palace and introducing an alien form in close proximity.
3. Major damage to the setting of other nationally designated structures, significant areas of three Conservation Areas, and locally listed structures, introducing an alien form in close proximity.
4. Greatly increased light emission in a dark zone as seen from heritage assets on the north side of the River Thames, the river itself and parts of the Conservation Area south of the river, including Cigarette Island Park.
5. The level of harms are similarly high for most heritage assets, both those which are close to the development site, which are generally of lower significance, and those which are further away, which are of the highest significance and sustain a higher level of damage to the setting with less intrusion.

1.3 LEVEL OF HARM

Based on relevant published guidance and site-specific assessment, the large and harmful impact cumulatively on so many affected heritage assets assessed equates to **substantial harm** to the setting of these heritage assets.

This is principally owing to the height and scale of the buildings proposed as well as the materials. This applies most importantly and damagingly to the setting of the most significant heritage assets, relating to Hampton Court Palace.

1.4 OVERALL IMPACT ON HISTORIC ASSETS

The development will be transformative, with a group of three buildings damaging the setting of a large and varied group of designated heritage assets including highly significant ones, particularly the ensemble of Hampton Court, the architectural centrepiece, and its landscape frame, and intruding rudely into the Arcadian Thames landscape.

1.5 CONCLUSION

The development is unacceptably damaging to the setting of these heritage assets.

¹ Of those heritage assets assessed, the Magnitude of Impact is Large on 16 of them, Medium on 5 of them and Small on 1.

² The numbers of assets in each significance category are: A – 12; B – 3; C – 6; D – 1.

2 INTRODUCTION

“It should be the aim of each of us to leave our chosen corner not more vulgar but lovelier and more dignified after we have gone.” Dame Sylvia Crowe

2.1 PURPOSE

This Historic Impact Assessment (HIA) has been prepared specifically to address the effects of the proposal for development of the environs of Hampton Court Station on numerous designated heritage assets in the nearby historic environment.³ It is based on GLA guidance, which itself responds to UNESCO Guidelines.⁴ The area affected is shown in Figure 1 together with the historic assets addressed. Key views are shown in Figure 2. Visualisations of the effects are shown in Figures 3-23. The footprint is shown in Figure 24.

This analysis identifies the significances of heritage assets which will be most greatly affected by the proposal, and the magnitude and type of impact which the proposal will have upon these assets. In order to obtain a rigorous assessment of the effects of the proposal, definitions and scales of assessment have been set out below.

The impact on the River Thames and Hampton Court Bridge is amplified in two documents by K Liddell for the Hampton Court Rescue Campaign:

‘Objection Response on 2018/3810 Hampton Court Station and Jolly Boatman Site Redevelopment Urban Design and Heritage Issues’, 2019; and ‘Objection to Traffic Signals on Hampton Court Bridge’ report, February 2021.

2.2 PROFESSIONAL ENDORSEMENTS

The Statutory Consultee for Registered Parks and Gardens, **The Gardens Trust** (formerly the Garden History Society), having submitted letters of objection in February 2019 and February 2021, has reviewed this document and endorses the methodology and relevant conclusions.

The document has been scrutinized by a number of well-respected historic environment professionals who have lodged objections to the application. They have endorsed the findings of this assessment that the proposals are unacceptably damaging. They include:

- **Professor Neil Jackson** RIBA, FSA, Professor Emeritus, Liverpool School of Architecture, President of the Society of Architectural Historians of Great Britain.
- **Karen Liddell** BA (Hons), MRTPI (rtd), IHBC (rtd).
- **Chris Sumner** Dip. Arch., AA Grad. Dipl. Cons (Gardens) former Historic Buildings Inspector and Historic Landscapes Adviser, English Heritage. See Appendix 5 for Endorsement of Conclusions of this report.
- **Paul Velluet** RIBA, IHBC, conservation consultant, Regional Architect and Assistant Regional Director for English Heritage London Region 1991-2004.
- **Jack Warshaw** B.Arch, DipTP, AADipCons, RIBA (SCA), MRTPI, IHBC, RPUDG, principal architect Conservation Architecture and Planning.

³ Elmbridge Council 2018/3810 received on 201/12/2018 and currently undetermined.

⁴ GLA London World Heritage Sites Guidance on Settings Supplementary Planning Guidance, Appendices 2-4, Assessment of Significance, Scale of Change & Impact Issued March 2012.

3 THE NEED FOR AN OBJECTIVE AND RIGOROUS HIA

3.1 THE APPLICATION DOCUMENTATION

No adequate, rigorous HIA has been submitted with the applicant's proposals covering the full effect on the relevant heritage assets which sets out a clearly stated methodology. Section 6 'Predicted Impact: Heritage' in the applicant's Environmental Statement⁵ goes some way towards the role of HIA.

It is flawed in the following respects:

1. It is opaque in its reasoning to support the conclusions drawn in table 6.1.
2. It is incomplete, omitting various relevant heritage assets.
2. The methodology for the 'qualitative assessment' is not explained and so its accuracy cannot be tested.
3. Assessment criteria are absent and so its accuracy cannot be tested.
4. The conclusions, set out in the relevant section Indirect Effects, paras 6.37-6.78 (transcribed in Section 6 and reproduced in Appendix 1), are greatly understated, the reason for which is unclear given the absence of methodology and assessment criteria.

Thus it is inadequate to demonstrate the levels of harmful impact on the surrounding heritage assets.

Visualisations provided by the applicant provided block views in some cases, which indicated a high level of visual impact. These did not include the wider and more historically significant setting, particularly many key heritage assets north of the Thames, for which only wire frame visualisations were supplied. To gain a better understanding of the visual effects some of the most sensitive views have been emphasised, based on the wire frame views supplied by the applicant (see Appendix 2). These more realistic visualisations starkly indicate that significantly greater effects will occur, all of a highly damaging nature. In addition no analysis of the night-time effect was provided but will clearly cause further damage.

Review of the applicant's submitted information and assessment, together with visualisations including those in Appendix 2, strongly signalled that a more rigorous assessment of the impacts was required to understand the full level of harm that would be sustained in the historic environment. This has been the prompt for this HIA as the justification for a concentrated setting assessment using a more professional methodology.

3.2 METHODOLOGY FOR THIS HIA

This HIA provides a detailed assessment via a rigorous methodology for key heritage assets, based on accepted GLA guidance. While the GLA methodology is aimed particularly at the setting of sites of World Heritage Site significance, it is equally relevant and applicable to the whole historic environment. It is also relevant in this case because it is credibly suggested, in particular by the GLA as current policy, that the Arcadian Thames of which this area forms a key element (on both sides of the Thames), is of World Heritage Site quality; the GLA document sets out the aim to achieve this status.⁶

The GLA guidance amplifies and refines established methodologies such as the UNESCO World Heritage Operational Guidelines and the Highways Agency 'Assessing the Effect of Road Schemes on Historic Landscape Character' (2007). The broader guidance in the Historic England Setting Guidance document (2017) is embedded in the GLA methodology and referred to where relevant below.

⁵ Montagu Evans, 'Environmental Statement Volume 3: Heritage, Townscape and Visual Impact Assessment', December 2018.

⁶ See All London Green Grid SPG Chapter 5 and Area Framework 9 Arcadian Thames for GGA9 in which it is a stated aim to work towards achieving World Heritage Status for the Arcadian Thames. Relevant references outside the GLA boundary include to Cigarette Island & Albany Reach (9.1.7) & Molesey Riverside (9.1.6).

3.3 AUTHOR AND ACKNOWLEDGEMENTS

Sarah Rutherford, Dip. Hort. (Kew), M.A., Ph.D., is an historic environment consultant. She worked for English Heritage 1996-2003, initially as Historic Parks and Gardens Inspector and then as Head of the *Register of Parks and Gardens of special historic interest in England*. Her MA in landscape conservation from York University is supplemented by a Ph.D. based on pioneering research into the landscapes of Victorian and Edwardian lunatic asylums. As a consultant since 2003 Sarah has prepared conservation plans, statements of significance and other appraisals for a wide range of historic landscapes and buildings including Stowe, Buckinghamshire. She is the author of books on the historic environment including on Humphry Repton and Capability Brown.

The following people have kindly offered advice and information during the preparation of this document: Karen Liddell, BA (Hons), MRTPI (rtd), IHBC (rtd); Paul Velluet RIBA, IHBC; Piotr Hennig.

4 DEFINITION OF SETTING

Setting contributes to the value of an historic asset's significance as well as physical presence and is defined in the NPPF as 'The surroundings in which a heritage asset is experienced.' The setting of numerous historic assets is at the heart of assessing the impact of the proposed development and so an understanding of setting is crucial for this HIA.

The following definitions and guidance are reproduced from the Historic England Guidance Note: 'The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning Note 3' (Second Edition, December 2017, Part 1, Page 3). These are used as the basis for defining setting in this assessment.

PPG: What is the setting of a heritage asset and how can it be taken into account?⁷

The setting of a heritage asset is defined in the [Glossary of the National Planning Policy Framework](#).

All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not. The setting of a heritage asset and the asset's curtilage may not have the same extent.

The extent and importance of setting is often expressed by reference to the visual relationship between the asset and the proposed development and associated visual/physical considerations. Although views of or from an asset will play an important part in the assessment of impacts on setting, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust, smell and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting. The contribution may vary over time.

When assessing any application which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation.

⁷ MHCLG, Planning Practice Guidance Historic Environment, Paragraph: 013 Reference ID: 18a-013-20190723 Revision date: 23 07 2019 See <https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment>

5 THE FORM OF THE IMPACT ASSESSMENT TABLE (SECTION 6)

The assessment table in Section 6 addresses scales of significance, level of change and magnitude of impact which are based on those set out in GLA guidance, which itself draws on UNESCO Guidelines.⁸

5.1 COLUMN 1: SIGNIFICANT HERITAGE ASSETS AND DESIGNATIONS

This covers key significant heritage assets affected which are subject to local or national designations and were identified from the author's site survey, combined with an understanding of the historic character and significances of the area. It includes some assets not included in the Montagu Evans HTVIA and does not include some assets which were inaccessible during the current pandemic restrictions. The heritage assets identified are both north and south of the river, the most important being Hampton Court Palace and the most highly affected elements, and also include the Thames itself.

A location map of the features addressed is given in Figure 1.

5.2 COLUMN 2: SIGNIFICANCE OF HERITAGE ASSETS

Levels of heritage interest with selected criteria as applicable to this case, based on Appendix 2 of the GLA Guidance and relating to Historic England Setting guidance Part 2, **Step 2 'Assess the degree to which these settings and views make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated'**.

The basis for the assigned historic significance is local and national designations.

A Very High: International: WHS, Grade I Registered Parks & Gardens, Grade I Listed structures.

B High: National. Including nationally designated structures (II*) & historic landscape (Registered II* & II); Scheduled Monuments; conservation areas containing very important buildings and spaces; undesignated structures of clear national importance; nationally designated areas or activities associated with globally important intangible cultural heritage activities. Associations with particular innovations, technical or scientific developments or movements of national significance.

C Medium: Regional to Local (Greater London and South East; Borough, Elmbridge, Richmond Upon Thames). Designated structures (Listed Grade II); undesignated historic landscapes that justify special historic landscape designation; Conservation Areas.

D Low: Local (Borough, Elmbridge, Richmond Upon Thames). Historic (unlisted) buildings of modest quality in their fabric or historical associations. e.g. locally listed historic asset.

E Negligible: no historic interest.

5.3 COLUMN 3: SCALE OF CHANGE

The criteria are based on Appendix 3 of the GLA Guidance and address the Historic England Setting guidance Part 2, Step 3: 'Assess the effects of the proposed development, whether beneficial or harmful, on the significance or on the ability to appreciate it.'

Major change: Comprehensive changes to the setting. Extreme visual effects; gross change of noise or change to sound quality; fundamental changes to design, use or access; resulting in total change to historic landscape character unit and loss of OUV. Major changes that affect the intangible cultural heritage activities or associations or visual links and cultural appreciation.

⁸ GLA London World Heritage Sites Guidance on Settings Supplementary Planning Guidance, Appendices 2-4, Assessment of Significance, Scale of Change & Impact Issued March 2012.

Moderate change: Changes to setting, such that it is significantly changed; noticeable differences in noise or sound quality; considerable changes to use or access; resulting in moderate changes to historic landscape character. Considerable changes that affect the intangible cultural heritage or associations or visual links and cultural appreciation.

Minor change: Change to setting such that it is noticeably changed; limited changes to noise levels or sound quality; resulting in limited change to historic landscape character. Changes that affect the intangible cultural heritage activities or associations or visual links and cultural appreciations.

Negligible change: Very minor changes to key historic setting heritage assets; virtually unchanged visual effects; very slight changes in noise levels or sound quality; resulting in a very small change to historic character. Very minor changes to area that affect the intangible cultural heritage activities or associations or visual links and cultural appreciation.

No perceptible change: continuation of current conditions; changes which do not affect condition, appearance and perception of heritage assets, resulting in a negligible change in our ability to understand and appreciate the resource and its historical context and setting;

5.4 COLUMN 4: MAGNITUDE OF IMPACT

This assesses the positive and harmful impacts taking into account the extent and type of impact as related to the significance of the heritage assets affected. It defines the Proportionate Approach to Assessing the Magnitude of Impacts in Appendix 4 of the GLA Guidance set out in the matrix below.

For the purpose of this assessment the magnitudes are defined as follows:

Neutral: Little or no perceptible change in condition or setting of designated landscapes and setting of designated structures.

Small: Minor change which creates dis-benefits to the historic fabric of a locally listed or Grade II registered park, Conservation Area or in the condition and setting of Grade II or locally listed structures; but also provide benefits.

Medium: Moderate change which results in the major alteration or loss of elements of a locally listed or Grade II registered park, or to key elements of its setting, Conservation Area, or in the condition and setting of I/II* listed structures.

Minor change which results in damage to elements of a WHS, Grade I & II* registered park, or to key elements of its setting.

Large/ Very Large: Moderate to major change which results in major alteration or the loss of significant fabric.

Moderate to major change which damages the setting of a WHS, registered park, Conservation Area or I/II* listed structures considerably or greatly, or an element of cumulative changes within the setting which together constitutes major change.

LONDON WORLD HERITAGE SITES - GUIDANCE ON SETTINGS SPG					
PROPORTIONATE APPROACH TO ASSESSING THE MAGNITUDE OF IMPACTS					
Value of Heritage Asset	Scale of Change				
	NO CHANGE	NEGLECTIBLE CHANGE	MINOR CHANGE	MODERATE CHANGE	MAJOR CHANGE
VERY HIGH (OUV of World Heritage Sites)	Neutral	Small	Medium/ Large	Large/Very Large	Very Large
HIGH	Neutral	Small	Medium/ Small	Medium/ Large	Large/Very Large
MEDIUM	Neutral	Neutral/ Small	Small	Medium	Medium/ Large
LOW	Neutral	Neutral/ Small	Neutral/ Small	Small	Medium/ Small
NEGLECTIBLE	Neutral	Neutral	Neutral/ Small	Neutral/ Small	Small

Adapted from ICOMOS, Guidance on Heritage Impact Assessment for Cultural World Heritage Properties (Draft May 2010)

Proportionate Approach to Assessing the Magnitude of Impacts (Appendix 4 of GLA WHS Setting Guidance).

5.5 COLUMN 5: COMMENTARY ON SIGNIFICANCE, EFFECT AND LEVEL OF IMPACT

This commentary includes further information on significance, effect of the proposals, and assessment of acceptability.

5.6 COLUMN 6: MONTAGU EVANS HTVIA EFFECTS IDENTIFIED

The final column sets out, for comparison with columns 3 & 4, the level of effects on the heritage assets covered in this assessment as identified in the applicant's HTVIA, Section 6 set out in Table 6.1 (reproduced in Appendix 1 below), including the HTVIA Receptor ID. Also noted are assessments of Magnitude (comparable with scale of change in column 3) & Effect (comparable with column 4.)⁹ Not all the significant assets identified in this HIA were covered in the TVIA.

⁹ Montagu Evans, Environmental Statement Vol. 3: Heritage, Townscape & Visual Impact Assessment, Table 6.1 (Dec. 2019).

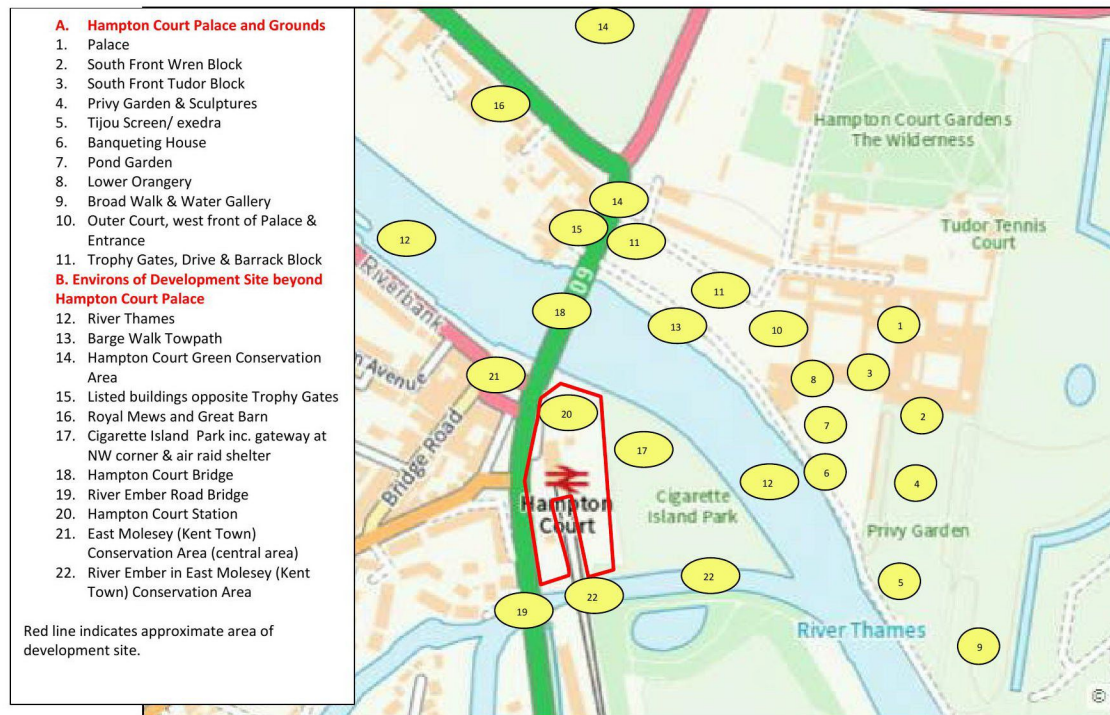


Figure 1 Key Heritage Assets Map.

Map base available under the Open Database License © OpenStreetMap contributors <https://www.openstreetmap.org/copyright>

6 IMPACT ASSESSMENT

This is based on definitions and criteria set out in Sections 4-5 above. A demonstration of key aspects of the impact is given in the visualisations in Appendix 2 and the layout of the proposed scheme is in Appendix 3. A location map of the features addressed is given in Figure 1 and key views affected from heritage assets in Figure 2.

A comparison of the accuracy of methodologies in this HIA and the Montagu Evans TVIA is given at the end of this section.

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
A. Hampton Court Palace & garden/ park (heritage assets in GI RPG, Scheduled Monument & CA)	A	Moderate	Large	See Figures 3-12, for selected key views from the Palace and grounds. Additional views of the Palace roofscape in association with the station building are obtained from Creek Road and Hampton Court Way (Figures 17, 20, 23).	Conservation Area B (Hampton Court Park) & 95 (RPG). Magnitude: Negligible/ Low; Likely Effect: Long Term Negligible/ Minor Beneficial
1. The whole group of palace buildings	A	Moderate	Large	A Tudor and Williamite tour de force of international significance. Views to and from the Palace will be greatly damaged, including those experienced in a dynamic and panoramic human manner not through a camera fixed lens which minimizes these effects. The 150m long Cigarette Island Park new building frontage facing the Palace inappropriately competes with the south front of the Palace in scale. Height is a major factor. At over 50' high the new buildings facing the Palace across Cigarette Island will compete with the highest and most important elements of the Palace, including facing the Wren block (60' high), and the roofscape of the Great Hall, the ridge line of which is 92' high. ¹¹ The importance of the setting of the palace was recognized as long ago as 1913 by Parliament in the South Western Railway Act (clause 49) in which 50ft was set as the maximum acceptable height for structures on railway land within half a mile of the Palace. Discussion of this Act, the greater height of the development and resultant damage is given in Appendix 7. The park trees do not offer an acceptably dense or permanent screen in these reciprocal views and in any case the historic character of the	10. Magnitude Low Likely Effect: Long Term Minor/Moderate Beneficial

¹⁰ Montagu Evans, Environmental Statement Vol. 3: Heritage, Townscape & Visual Impact Assessment, Table 6.1 (Dec. 2019).

¹¹ Noted by Ernest Law in his seminal *History of Hampton Court Palace in Tudor Times* (1885), p.165: 'in height from the ground to the topmost part of the gable-end it stands 92 feet'.

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
				environs as an integral part of the setting (as recorded by e.g. Thornhill in 1731) will be destroyed. The greatly increased night-time light levels from the buildings will be intrusive. See Figures 3-12, views from the Palace and landscape most greatly affected.	
2. South Front Wren Block (I)	A	Moderate	Large	The upper floors of the late C17 range including at 1st floor level the integral enfilade of royal state rooms and progression through them have oblique views west over the gardens and River Thames towards the station at present partially screened by the trees of Cigarette Island. The new buildings will seriously disrupt the view.	Part of 10 (Palace). Not identified individually. Magnitude Low Likely Effect: Long Term Minor/Moderate Beneficial
3. South Front Tudor Block (I)	A	Moderate	Large	The upper floors of the C16 range are closer to the station than the Wren block and also have oblique views west over the Pond Gardens towards the station at present partially screened by the trees of Cigarette Island. The new buildings will disrupt the view.	Part of 10 (Palace). Not identified individually. Magnitude Low Likely Effect: Long Term Minor/Moderate Beneficial
4. Privy Garden (I) & Sculptures (II)	B	Moderate	Large	The east end of the late C17 Privy Garden and associated sculptures enjoy glimpsed views west towards the station at present partially screened by the trees of Cigarette Island. The new buildings, including the 150m long Cigarette Island Park frontage, will disrupt the view. See Figures 10 & 11.	3. 27. 28. 64 Magnitude Negligible Likely Effect: Negligible
5. Tijou Screen and exedra at riverside (I)	A	Moderate	Large	Riverside viewpoint of the highest significance to the garden design, late C17 origin, framing 180 degree rural panoramic and dynamic views including west towards station at present partially screened by the trees of Cigarette Island Park. The new buildings, including the 150m long Cigarette Island frontage, will disrupt the view including at night when the greatly increased light levels will be intrusive. See Figures 10 & 11.	Part of 95 (RPG). Not identified individually. Magnitude Negligible Likely Effect: Negligible/Neutral
6. Banqueting House (I)	A	Moderate	Large	Riverside viewpoint of the highest significance to the garden, c.1700, Wren/Talman, design framing River Thames views from the windows of the main floor including west towards station. Preceded by Tudor banqueting house & water gate overlooking the river. At present partially screened by the trees of Cigarette Island. The new building, including the 150m long Cigarette Island frontage will disrupt the view including at	13. Magnitude Negligible/Low Likely Effect: Negligible/Neutral

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
				night when the greatly increased light levels will be intrusive. See Figures 5 & 6.	
7. Pond Gardens (with II structure)	A	Moderate	Medium	C16 origin, remodelled late C17 & early C20, of the highest significance to the garden design. Unclear if the buildings will be seen but if so will intrude on the skyline.	42. Magnitude Nil/Negligible Likely Effect: Negligible
8. Lower Orangery (I)	A	Moderate	Medium/Large	c.1700, Wren. Unclear if the buildings will be seen but if so will intrude on the skyline.	Part of 10 (Palace). Not identified individually. Magnitude Low Likely Effect:
9. South end of Broad Walk and Water Gallery (II)	A	Moderate	Large	Riverside viewpoint of the highest significance to the garden design, late C17 origin; the east end of the Broad Walk faces west directly towards the station; the Water Gallery frames 180 degree panoramic views including west towards station at present partially screened by the trees of Cigarette Island. The new buildings, particularly the 150m long Cigarette Island Park frontage, will disrupt the view including at night when the greatly increased light levels will be intrusive. This will be similar to Figures 10 & 11.	Part of 95 (RPG). Not identified individually. Magnitude Negligible/Low Likely Effect: Negligible/Neutral
10. Outer Court/west front of Palace & entrance (I)	A	Moderate	Large	The main land entrance to the early C16 Palace, scene of royal arrivals including Catherine of Braganza arriving for her marriage in 1662. Designed views south directly across the Thames to the far bank including station at present somewhat screened by the trees of Cigarette Island. The new buildings will disrupt the view including at night when the greatly increased light levels will be intrusive. See Figures 8 & 9.	32 & part of 95 (RPG) not identified individually. Magnitude Negligible (32) & Negligible/Low (95 RPG) Likely Effect: Negligible/Neutral

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
11. Trophy Gates (I) Drive to Outer Court & Main Entrance inc. the Barrack/Stable Block (I)	A	Moderate	Large	The main gateway (1701) and formal approach to the Tudor Palace, scene of royal arrivals including Catherine of Braganza arriving for her marriage in 1662. Designed dynamic and panoramic views directly across the Thames to the far bank including station and development. The new buildings will greatly disrupt the important view south, framed by the Lutyens River Thames bridge, towards the smaller scale station building and the buildings of East Molesey, all of which are subservient in scale to the Palace. At night the greatly increased light levels will be intrusive. See Figure 12 for effect from drive.	5. & part of 95 (RPG) not identified individually. Magnitude Negligible Likely Effect: Negligible/Neutral
B. Environs of the Development Site Beyond Palace					
12. River Thames (Thames Landscape Strategy/ Arcadian landscape; CAs: East Molesey (Kent Town) & Hampton Court Green.	A	Moderate	Large	A key feature and dynamic viewpoint for the Palace and grounds; an ancient and prestigious route. Potential for WHS status as spine and focus of Arcadian Thames (see GLA and TLS documents). Views from the river are some of the most important of the Grade I registered and listed Palace & Gardens and of Grade II Lutyens bridge. The buildings will be highly visible in this backdrop both in the daytime and at night with greatly increased light levels, also in the celebrated approach from upstream (west), recorded in so many historic views, causing great harm to the setting of the important buildings and structures and landscape. The proposed riverside open space does not relate to the river frontage or the landing stage, part of the listed bridge. See Figures 3-12, 15. Impact on river is amplified in K Liddell for Hampton Court Rescue Campaign, 'Objection to Traffic Signals on Hampton Court Bridge' report, February 2021.	Not identified. Magnitude No assessment of impact. Likely Effect: Not assessed.
13. Barge Walk Towpath (part of Hampton Court Scheduled Monument)	B	Moderate	Large	A key feature and dynamic viewpoint for the 2 estates; an ancient and prestigious route. Views from the river are some of the most important of Grade I registered and listed Palace & Gardens. The buildings will appear in this backdrop, causing harm to the significance of both building and landscape including at night when the greatly increased light levels will be intrusive. See Figures 3-7.	Not identified. Magnitude No assessment of impact on Scheduled Monument.

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
					Likely Effect: Not assessed.
14. Hampton Court Green (CA) south end inc. phone box (II)	C	Moderate	Medium	The final and immediate approach to the most important entrance to internationally significant Hampton Court both from the Lutyens Bridges/river crossings to the south and the north from Bushy Park. The new buildings will greatly disrupt the important view in the route south from the elevated open green 400m north of the station, framed by the Palace Trophy Gates and row of listed buildings opposite (see 15 below), towards Lutyens' Thames bridge, towards the station building and East Molesey. This is marked in Figure 2 below. At night the increased light levels will be intrusive.	D, 69 Magnitude Negligible/Low Likely Effect: Negligible/ Low-Neutral
15. Hampton Court Green: row of Grade II Listed buildings opposite Trophy Gates: The Mitre, 1 & 2 Palace Gate	C	Moderate	Medium	Part of the setting of the final and immediate approach to the most important entrance to internationally significant Hampton Court both from the Lutyens Bridges/river crossings to the south and the north from Bushy Park. The new buildings will disrupt the southerly setting, framed by the Lutyens river bridge, of the station building and of East Molesey. At night the increased light levels will be intrusive.	D, 22, 23 Magnitude Negligible/Low Likely Effect: Negligible/ Low-Neutral
16. Royal Mews & Great Barn, Hampton Court Green CA; Grade I Listed building	A	Negligible	Small	Former Royal Mews and Great Barn. Royal Mews 1537 for Henry VIII; stabling installed C19; converted to 12 flats. Great Barn dated and inscribed 'Elizabeth Regina 1570'. Early C19 installation of stabling with new entrances. Slight changes to setting with this development. Low visibility, only affects rear on river-side, not main frontage to/ approach from, Hampton Court Green.	D, 9 Magnitude Negligible Likely Effect: Nil/ Negligible
17. Cigarette Island Park (CA) including: Lutyens gateway	C	Major	Large	Until 1930s agricultural character within the extensive rural scene opposite the Palace and gardens (e.g. 1731 Thornhill view), for nearly a century framing views to the station building as the backdrop. In the 1930s, laid out as a public park to preserve the view from the Palace and provide a promenade for viewing the Palace and a riverside resort.	Not identified. Magnitude No assessment of impact.

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
with obelisks and WWII air raid shelter				<p>It is of sufficient heritage quality to merit inclusion on the Elmbridge Local List. A request has been made to Elmbridge to include it as part of the determination of this application.¹² This request is supported by the Statement of Significance for Cigarette Island Park by Dr Sarah Rutherford in Appendix 6.</p> <p>The new buildings will immediately dominate the park and overshadow a large proportion in winter.¹³ The temporary car park will damage a considerable stretch of the west side and destroy the WWII air raid shelter (see below). The chestnut trees are only a partial screen for the new buildings in views from the palace. They are reaching the end of their lives and subject to disease. The screening of the proposals by the existing vegetation by day or night cannot be used as a reliable permanent/ long term mitigation; a new planted screen cannot be considered an appropriate mitigation. The station should be a feature among the trees seen from the Palace e.g. see Figures 3-12. With the park are several important features:</p> <p>The 1932-33 park gateway is part of Lutyens' Thames bridge construction (see Appendix 6, Section 13.5). Important element by a pre-eminent designer of the remodelling of the area around the station with his River Thames bridge. Important part of the Conservation Area. It terminates the bridge ensemble in similar style, with a fine brick and Portland stone gateway and stately obelisks, linked to the bridge via a brick retaining wall with stone coping which supports the approach drive to the park. The gateway is of the same origin, designer and quality as the bridge, and if not already part of the listed structure is of sufficient quality to merit separate listing at Grade II.</p> <p>A WWII public air raid shelter in the NW corner survives adjacent to the west boundary, the structure below an earth mound.¹⁴ As yet it is an undesignated heritage asset but a request for Local Listing is in progress. This largely unrecognized structure will be</p>	Likely Effect: Not assessed.

¹² This request to Elmbridge made on 12 March 2021 is prompted both by the current application (2018/3810), and by recently published guidance from Historic England namely, that 'Non-designated heritage assets may also be identified by the local planning authority during the decision-making process on planning applications, as evidence emerges....'. (*Historic England Advice Note (Second edition) – Local Heritage Listing: Identifying and Conserving Local Heritage 2021*, Para 27).

¹³ GIA, Daylight and Sunlight Overshadowing Assessment Hampton Court Station, 29 August 2018.

¹⁴ Pers. comm. Ian Gayton, Elmbridge Council, 08 December 2020.

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
				destroyed in the laying out of an access road and car parking spaces as part of a temporary station car park during construction works.	
18. Hampton Court Bridge (II & CA)	B	Moderate	Large	<p>Lutyens, 1930-33. Pre-eminent designer, inspired by the Wren phase of the Palace. The climax of the 1930s remodelling of the station environs.¹⁵ Carefully considered relationship to heritage assets of the highest order e.g. Palace, informed design approach. The careful placing of the bridge within the oeuvre of Lutyens- especially his other bridges- it is the largest or one of the largest. A late work by Lutyens, within his move to neo-Classicism towards the end of his life. In design terms is an absolutely appropriate response to its context.</p> <p>Landscape qualities of the design are notable. The very generous dimensions of the bridge deck are designed for landscape effect for both the users of the bridge and those in its setting alongside the interplay between the strong horizontals of the structure and the decorative, almost playful delicacy of the designed lighting. Lamp standards make references to the Tjhou gates and railings of Hampton Court imitating their decorative language. These intangible and intellectual associations are part of the positive contribution made by the setting to both the palace and the bridge. The above analysis strongly suggests that the present List grading does not reflect its quality and it is worthy of II*. Impact on bridge is amplified in K Liddell for Hampton Court Rescue Campaign, 'Objection to Traffic Signals on Hampton Court Bridge' report, Feb. 2021.</p> <p>The new buildings will greatly disrupt the idyllic dynamic and panoramic views eastwards of the Palace, river, Cigarette Island Park and south-east to the station building both by day and at night. See Figures 3-7, 12, 15.</p> <p>The 150m long park frontage will entirely dominate the park character and its key features, giving it an inappropriate urban character.</p>	<p>20.</p> <p>Magnitude Medium</p> <p>Likely Effect: Long Term Moderate Beneficial</p>

¹⁵ See footage of it in the context of the river and Palace and Cigarette Island at its opening in 1933: <https://www.britishpathe.com/video/the-prince-of-wales-5>

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
19. River Ember Bridge (II & CA)	C	Major	Large	Lutyens, 1933. Important element by a pre-eminent designer of the remodelling of the area around the station with his River Thames bridge. Important part of the Conservation Area. This bridge is of a design and materials that have a close relationship to the principal bridge; currently both can be seen in the same vista from the south. This will be lost with the interruption from the overbearing solidness of the buildings. See Figures 18, 19, 22.	68. Magnitude Low Likely Effect: Long Term Minor Beneficial
20. Hampton Court Station (CA & Elmbridge Local List) including former coal office (now Hampton Court Motors office)	C	Major	Large	1849, Jacobean style, Sir William Tite, survives largely complete, minor reversible alterations; high group value with the palace. ¹⁶ The historicist style and positioning carefully designed to evoke a distant lodge at an entrance to the palace grounds. One of the earliest 'sightseeing' station buildings designed for tourism for a particular feature, i.e. to the Palace. In 1851 it carried most of the 350,000 visitors, and the 370,000 in 1862 and of the annual numbers in the 200,000s in the 1880s and 1890s (Guide book, 1898). It is a focal building with important associated views as identified in the adopted 'East Molesey (Kent Town) Conservation Area Character Appraisal' (2012), shown on the Townscape Analysis Map (p.62). The major change is the backdrop of bulky new buildings rising more than one storey above it in close proximity and projecting to the north by 7-10m and the loss of key views between the station and the Palace. The buildings will engulf the station building destroying its intended open setting. Hampton Court Motors building is a single-storey late C19 detached brick railway building south of the station; decorative features include prominent chimneys. Believed to originate as the coal office, it survives intact and contributes considerably to the station environs and scene along Hampton Court Way. It forms part of the Locally Listed	71. Magnitude High Likely Effect: Long Term Minor/Moderate Beneficial

¹⁶ English Heritage Report on Hampton Court Station, 2003, Conclusion p. 4: 'It is also an early example of a "sightseeing" station, initially built for the sole purpose of improving visitor access to the royal palace. While it has suffered from neglect in recent years, it is a grand and substantial building, the design of which clearly seems to have been influenced by its close proximity to the palace. In comparison to other LSWR and Tite listed railway buildings (Barnes and Kew Bridge Stations) near London, Hampton Court Station is of equal quality, and it may be argued that it is of higher architectural and historical interest.' Given this evaluation a decision by Historic England in 2019 not to list it seems perverse, noting that its lack of architectural interest outweighs the acknowledged historical interest and group value (ignoring the criteria that a building can be listed for historic interest with no architectural interest). All the architectural alterations are reversible.

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
				station building curtilage and setting. It should be included individually in the Local List. This will be demolished. See Figure 3-23 for current views of the station and former coal office, and setting, and visualisations of the effect of the new building. Figure 24 shows the footprint of the development which will engulf the station.	
21. Conservation Area, East Molesey (Kent Town) east section including the station and Cigarette Island Park (CA)	C	Major	Large	The relatively small-scale and attractive grouping of town/village buildings west of Hampton Court Way and the former river crossing will be dwarfed by the development. It will be highly visible in views downstream alongside the river, in the celebrated approach from upstream (west), recorded in so many historic views, alongside the Lutyens' bridge. The most important views and structures are identified in the adopted 'East Molesey (Kent Town) Conservation Area Character Appraisal' (2012), and shown on the Townscape Analysis Map (p.62). Hampton Court Parade, west of Hampton Court Way, is not part of the CA, and should be included in it, being carefully detailed in 'Wrenaissance' style, clearly responding to the Wren ranges of the Palace and intervisible with the Palace over the station platforms and in close proximity with its buildings, and Lutyens' bridges (Figures 18, 19, 21, 22). The development will dominate in some cases and obscure in others important recognised views set out in the CA Management Plan and Character Appraisal. The view along Creek Road currently contains a skyline of tree canopies with glimpses of the Palace roofscape, both by day and by night. All views of the Palace from the west and south of the site will be lost completely. See Figures 3-23 for current key views of the CA, its relationship with the Palace and visualisations of the effect of the building on various historic assets within it Figure 24 shows the footprint of the development which will engulf the immediate environs of the station in the CA.	CA E Magnitude Medium Likely Effect: Long Term Moderate Beneficial
22. River Ember East Molesey (Kent Town) CA	D	Major	Medium	The stretch south of the station and forming the south bank of Cigarette Island Park. In the 1930s rerouted and amalgamated with the River Mole, with creation of Hampton Court Way and building of Lutyens' two bridges. The new buildings will dominate it and views of the Tjouw Screen.	Not identified. Magnitude No assessment of impact. Likely Effect: Not

1. Significant Heritage Assets	2. Significance of Heritage Asset	3. Scale of change	4. Magnitude of impact, i.e. damage	5. Commentary NB the station is used as the reference point for the proposed development.	6. Applicant's HTVIA Receptor Number, Magnitude & Effect Assessments ¹⁰
				The bank woody vegetation is only an ephemeral, self-sown and seasonal screen for the new buildings in views from the river. The screening of the proposals by the existing vegetation is minor; a new planted screen is inappropriate mitigation.	assessed.

COMPARISON WITH EFFECTS IDENTIFIED IN THIS HIA AND IN MONTAGU EVANS HTVIA

Comparison of the magnitudes of impact identified above, using the GLA methodology (Column 4), with the heritage assets for the same items in the Montagu Evans HTVIA¹⁷ (in Column 6 above and Appendix 1 below) shows great variance of results. Analysis of this variance reveals that the HTVIA methodology, which is not fully articulated in the TVIA document, produces flawed results. Not only does the HTVIA omit assessment of key features, most importantly the River Thames, and also Cigarette Island Park. Most importantly, it minimises the magnitude of impact on the historic environment to a degree which is clearly wrong.

¹⁷ Montagu Evans, Environmental Statement Vol. 3: Heritage, Townscape & Visual Impact Assessment, Table 6.1 (Dec. 2019).

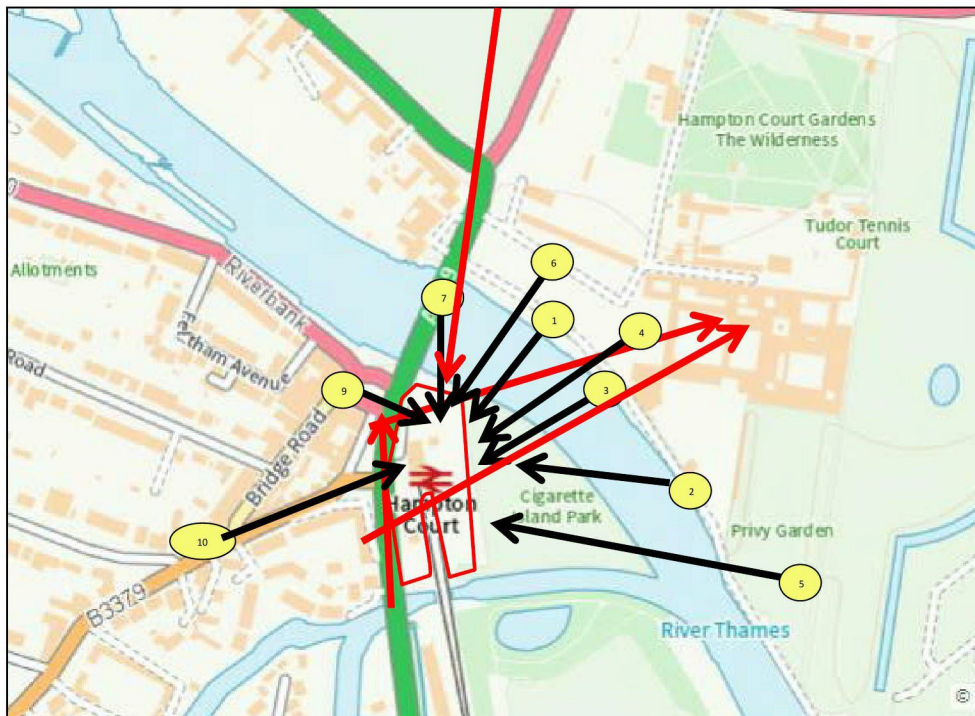


Figure 2 Map of viewpoints and view numbers from Montagu Evans/ Miller Hare TVIA in black (November 2018). These also relate to views and visualisations in Appendix 2. Additional viewpoints from Hampton Court Way and Green in red. Development site approximately outlined in red. Map base available under the Open Database License © OpenStreetMap contributors <https://www.openstreetmap.org/copyright>

7 CONCLUSIONS

7.1 CUMULATIVE MAGNITUDE OF EFFECTS ON COMBINED HERITAGE ASSETS

1. The assessment in Section 6 identifies a large cumulative magnitude of harmful effect on the setting of 22 identified heritage assets (some of these including groups of assets), including the River Thames, many being of the highest significance.¹⁸ Together these comprise a large proportion of the environs of the development, both in the immediate vicinity and further distant, and cumulatively amounts to a **large harmful impact**.
2. The cumulative magnitude of effect on the 12 heritage assets of the **highest significance**, affecting an extensive area north of, and including, the river, forming a key part of Hampton Court Palace and its grounds, is generally defined as Large. This cumulatively amounts to a **large harmful impact**.
3. The cumulative magnitude of effect on the setting of the 10 heritage assets of **lesser significance**, i.e. those west of the Palace and south of the river, varies between mostly Large (south of the river, nearest to the development) with fewer at Medium (north of the river).¹⁹
4. The proposed buildings are taller than the 50 ft limit imposed on Network Rail land by the 1913 SWR Act. This, magnified by the scale of the buildings, contributes to the **large harmful impact** on the setting of the Palace and its grounds.
5. This cumulatively amounts to a **large harmful impact**.

7.2 SPECIFIC HARM

The harm is a result of the position, height and bulk of the proposed buildings, together with the materials, resulting in the following specific effects on the setting of the historic assets:

1. Overtopping and visible through the existing trees (which themselves are not a long term screen) from various key viewpoints in Hampton Court Palace and grounds and the River Thames.
2. The scale and height competing with that of the Palace and introducing an alien form in close proximity.
3. Major damage to the setting of other nationally designated structures, significant areas of three Conservation Areas, and locally listed structures introducing an alien form in close proximity.
4. Greatly increased light emission in a dark zone as seen from heritage assets on the north side of the Thames and parts of the Conservation Areas south of the river, particularly Cigarette Island Park.
5. The level of harms are similarly high for most of the heritage assets assessed. This includes both those which are close to the development site, which are generally of lower heritage significance, and those which are further away, which are of the highest significance and sustain a higher level of damage to the setting from less intrusion (see Para. 193 NPPF, in Appendix 4 below).

7.3 LEVEL OF HARM

MHCLG Planning Practice Guidance, 2019, offers the following guidance on assessing the threshold for 'substantial harm' as identified in the NPPF Paras 193-95 (reproduced in Appendix 4 below).

'Whether a proposal causes substantial harm is a judgment, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. ... It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed.... even minor works have the

¹⁸ Of those heritage assets assessed, the Magnitude of Impact is Large on 16 of them, Medium on 5 of them and Small on 1.

¹⁹ The numbers of assets in each significance category are: A – 12; B – 3; C – 6; D – 1.

potential to cause substantial harm, depending on the nature of their impact on the asset and its setting.²⁰

Using this general guidance and the specific assessment in this case it is clear that the large and harmful impact cumulatively on so many heritage assets identified in Section 6 above equates to **substantial harm** to the setting of these heritage assets, principally owing to the height (well over the 50 feet, 15m, maximum stipulated in the 1913 South Western Railway Act) and scale of major elements of the proposal (see discussion of the Act and identification of actual proposed building heights of 53-54 ft in Appendix 7). This applies most importantly and damagingly to the setting of the most significant heritage assets which relate to Hampton Court Palace.

The Barnwell Manor decision, Northamptonshire (in relation to effects on the setting of Tudor Lyveden New Bield), confirmed that the circumstances for substantial harm are broader than the earlier Bedford setting case suggests, and that impact includes experiential aspects of the historic environment.²¹

Notwithstanding the professional judgment above identifying ‘substantial harm’, ‘less than substantial harm’ does not signify a less than substantial issue. Such harm still attracts great weight in the planning balance, requires clear and convincing justification, outweighs (some) public benefits, often resulting in a refusal. This has been demonstrated in case law, such as the Secretary of State’s refusal of permission for the Chiswick Curve (2019).

7.4 OVERALL IMPACT ON HISTORIC ASSETS

The proposed development will be transformative, with a group of three buildings damaging the setting of a large and varied group of designated heritage assets including highly significant ones, particularly the ensemble of Hampton Court, the architectural centrepiece, and its landscape frame, and intruding rudely into the Arcadian Thames landscape.

7.5 CONCLUSION

The development is unacceptably damaging to the setting of these numerous heritage assets which vary in significance from international to local levels.

²⁰ MHCLG, Planning Practice Guidance Historic Environment, Para. 18 ‘How can the possibility of harm to a heritage asset be assessed?’ Reference ID: 18a-018-20190723 Revision date: 23 07 2019 <https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment>

²¹ Court of Appeal decision regarding Barnwell Manor Wind Energy Ltd v East Northamptonshire DC ([2014] EWCA Civ 137) on 18 February 2014. The Bedford case regarded substantial harm as ‘an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced’. East of Cardington Airship Sheds, Shortstown. Bedford Borough Council. Application no.: 11/02686/EIA. Decision date: 27 January 2014. The guidance in the PPG now suggests otherwise in relation to impact on heritage assets, making it clear that a proposal in the setting of a heritage asset may cause substantial harm to the significance of the asset, but as case law Bedford remains as do other cases.

8 APPENDIX 1 TVIA ANALYSIS OF EFFECTS SUBMITTED BY APPLICANT

The following is reproduced from Montagu Evans, Environmental Statement Vol. 3: Heritage, Townscape & Visual Impact Assessment, Table 6.1 (Dec. 2019).

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Table 6.1 Heritage Register Effects

DIRECT EFFECTS								
Map Ref	Name	Heritage Value	Susceptibility	Sensitivity	Magnitude (Construction)	Likely Effect (Construction)	Magnitude (Operational)	Likely Effect (Operational)
E	East Molesley – Kent Town	Medium	Medium	Moderate	Medium	Short Term Minor Adverse	Medium	Long Term Moderate Beneficial
71	Hampton Court Station	Low	Low	Low/Moderate	High	Short Term Minor Adverse	Low	Long Term Minor Beneficial
INDIRECT EFFECTS								
Map Ref	Name	Heritage Value	Susceptibility	Sensitivity	Magnitude	Likely Effect (Construction)		Likely Effect (Operational)
Conservation Areas								
8	Hampton Court Park	Medium	High	High	Negligible/Low	Negligible	Negligible/Low	Long Term Negligible/Minor Beneficial
10	Hampton Court Green	Medium	Medium	Moderate	Negligible/Low	Negligible	Negligible/Low	Negligible
Listed Buildings								
2	Hampton Court Tilt Yard Tower	High	High	High	Nil – Negligible	Negligible	Nil – Negligible	Negligible/Neutral
3	Listed Structure within Privy Garden	High	High	High	Negligible	Negligible	Negligible	Negligible
5	Brick Gates	High	Medium	Moderate/High	Negligible	Negligible	Negligible	Negligible/Neutral
8	Barracks	High	High	High	Negligible – Low	Negligible	Negligible – Low	Long Term Negligible/Minor Beneficial
9	Royal Mills and Great Barn	High	Medium	Moderate/High	Negligible	Negligible	Negligible	Nil/Negligible
10	Hampton Court Palace	Exceptional	High	High	Low	Negligible	Low	Long Term Minor/Moderate Beneficial
13	Bandstand/House	High	High	High	Negligible	Short Term Minor Adverse	Negligible – Low	Negligible/Neutral
17	The Old Court House	High	Medium	Moderate/High	Negligible	Negligible	Negligible	Nil/Negligible
20	Hampton Court Bridge	Medium	Medium	Moderate	Medium	Short Term Minor Adverse	Medium	Long Term Moderate Beneficial
22	Mole Hotel	Medium	Medium	Moderate	Negligible	Negligible	Negligible	Negligible/Neutral
29	Palace Gate	Medium	Medium	Moderate	Negligible	Negligible	Negligible	Negligible/Neutral
27	Listed Structure within Privy Garden	Medium	High	Moderate/High	Negligible	Negligible	Negligible	Negligible
28	Listed Structure within Privy Garden	Medium	High	Moderate/High	Negligible	Negligible	Negligible	Negligible
32	Palace Gate House	Medium	Medium	Moderate	Negligible	Negligible	Negligible	Negligible/Neutral

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PREDICTED IMPACT: HERITAGE

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39	Kingfisher Court	Medium	Medium	Low/Moderate	Nil – Negligible	Negligible	Nil – Negligible	Negligible
41	Sulphur Pool and Associated Pump House at Kingfisher Court and Fountain at Kingfisher Court	Medium	Medium	Low/Moderate	Nil – Negligible	Negligible	Nil – Negligible	Negligible
42	Pond Together with Retaining Walls of Enclosing Sunbath Garden and Part of Surrounding Former Terrace at Kingfisher Court	Medium	Medium	Low/Moderate	Nil – Negligible	Negligible	Nil – Negligible	Negligible
50	Palace Gate	Medium	Medium	Moderate	Negligible	Negligible	Negligible	Negligible/Neutral
55	Paradise Cottage, King's Store Cottage and Attached Garage Between King's Store Cottage and Old Court House	Medium	Medium	Moderate	Negligible	Negligible	Negligible	Negligible
56	Old Office House	Medium	Medium	Moderate	Negligible	Negligible	Negligible	Negligible
64	Listed Structure within Privy Garden	Medium	High	Moderate/High	Negligible	Negligible	Negligible	Negligible
68	Bridge over the River Embur	Medium	Low	Low/Moderate	Low	Short Term Minor Adverse	Low	Long Term Minor Beneficial
69	Ka Theatre House at Hampton Court Theatre Gates	Medium	Medium	Low/Moderate	Negligible	Negligible	Negligible	Negligible
Locally Listed Buildings								
71	Hampton Court Station	Low	Low	Low/Moderate	High	Minor Adverse	High	Long Term Moderate Beneficial
72	S-7 Creek Road	Low	Low	Low/Moderate	Negligible-Medium	Negligible	Negligible-Medium	Long Term Negligible/Minor Beneficial
73	Albion Public House, 31-34 Bridge Road	Low	Medium	Low/Moderate	Negligible-Medium	Negligible	Negligible-Medium	Long Term Negligible/Minor Beneficial
74	The Old Mill, Queen's Reach	Low	Medium	Low/Moderate	Negligible-Medium	Negligible	Negligible-Medium	Long Term Negligible/Minor Beneficial
75	The Linns, 5 Palace Road	Low	Medium	Low/Moderate	Negligible-Medium	Negligible	Negligible-Medium	Long Term Negligible/Minor Beneficial
76	70 The Post Office and 72 Bridge House Bridge Road	Low	Medium	Low/Moderate	Negligible-Medium	Negligible	Negligible-Medium	Long Term Negligible/Minor Beneficial
Registered Park and Garden								
95	Hampton Court	Exceptional	High	High	Negligible	Negligible	Negligible	Negligible/Neutral

9 APPENDIX 2 VISUALISATIONS OF PROPOSALS FROM KEY VIEWPOINTS

The visualisations utilise the applicant's TVIA images. Wire lines where shown have emphasis in black.²²

The visualisations are supplemented with renderings of the buildings by Piotr Hennig based on the applicant's submitted plans to superimpose the proposed elevations.

9.1 VIEWPOINTS FROM NORTH OF THE THAMES



Figure 3 Proposed view from Scheduled Barge Walk below the main approach to the Palace over Cigarette Island, with Lutyens' Grade II Listed bridge, attached landing stage and park gateway and, beyond, East Molesey buildings. Montagu Evans/ Miller Hare TVIA View 1.



Figure 4 Similar proposed view from Scheduled Barge Walk with park horse chestnut trees omitted. The trees are dying and form only a short term and summer screen.

Source: Montagu Evans/ Miller Hare TVIA View 1, Piotr Hennig.

²² Montagu Evans, Environmental Statement Vol. 3: Heritage, Townscape & Visual Impact Assessment (Dec. 2019).



Figure 5 View from the Scheduled Barge Walk near the Grade I Listed Banqueting House, with Lutyens' Thames bridge. Wire line emphasized in black. Source: Montagu Evans / Miller Hare TVIA View 2. NB Horse chestnut trees currently in the park are dying and are a short term summer screen.



Figure 6 Similar proposed view from Scheduled Barge Walk near the Grade I Listed Banqueting House with rendering of the buildings which have a 150m long frontage to Cigarette Island Park, of similar length to the south front of the Palace. Horse chestnut trees in the park are dying and are a short term summer screen. Source: Montagu Evans / Miller Hare TVIA View 2, block visualization by Piotr Hennig to indicate height and scale.



Figure 7 View from the Scheduled Barge Walk over Cigarette Island, with Lutyens' Grade II Listed bridge and attached landing stage and park gateway. Wire line emphasized in black (above) with block visualization of the 150m long Cigarette Island frontage (below).
Montagu Evans / Miller Hare TVIA View 3, block visualization by Piotr Hennig to indicate height and scale.

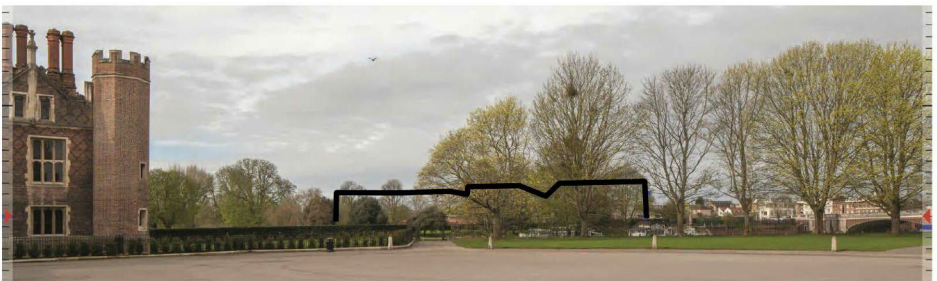


Figure 8 Proposed view from Palace Forecourt.
Wire line emphasized in black. Montagu Evans/ Miller Hare TVIA View 4.



Figure 9 Similar proposed view from Palace Forecourt with rendering of the buildings and enlargement.
Source: Montagu Evans/ Miller Hare TVIA View 4, Piotr Hennig block visualization by Piotr Hennig to indicate height and scale.

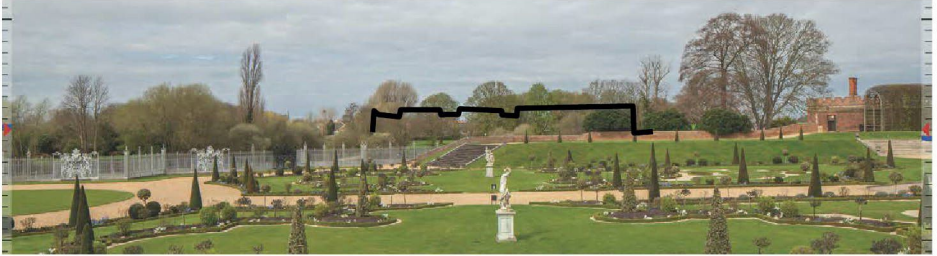


Figure 10 View from the Privy Garden, sculptures and Tjhou Screens over Cigarette Island.
Wire line emphasized in black. Montagu Evans/ Miller Hare TVIA View 5.



Figure 11 Similar view from the Privy Garden with rendering of the buildings and enlargement.
Source: Montagu Evans/ Miller Hare TVIA View 5; block visualization of the 150m long frontage to Cigarette Island Park by Piotr Hennig to indicate height and scale.



Figure 12 Proposed view from main drive in front of Barrack Block towards the station above landing stage and park entrance attached to Lutyens' Grade II Listed Thames Bridge to right; wire line emphasized in black.
Montagu Evans / Miller Hare TVIA View 6.

9.2 VIEWPOINTS FROM THE THAMES AND EAST MOLESEY



Figure 13 Current view from Cigarette Island Park towards Hampton Court station and Hampton Court Parade. Although just outside the Conservation Area Hampton Court Parade is in a considered 'Wrenaissance' style sensitive to the setting of the Palace buildings and Lutyens' bridges and with a well-considered use of high quality materials. The red brick is recessive in views from the direction of the Palace unlike the proposed buff colour of the proposed buildings with glass panels, and rigidly geometric forms (Figure 14). See also Figure 21. Source: Piotr Hennig.



Figure 14 Proposed view from Cigarette Island Park towards Hampton Court station and Hampton Court Parade. Block visualization of the 150m long frontage to the park to indicate height and scale. Source: Piotr Hennig.



Figure 15 View from Lutyens' Grade II Listed Thames Bridge towards the attached landing stage, and park gateway, and locally listed station, before and after the development. Montagu Evans / Miller Hare TVIA View 7.



Figure 16 View from East Molesey CA east towards the station, before and after the development. Montagu Evans / Miller Hare TVIA View 9.



Figure 17 View along Creek Road from Bridge Road, before and after development.
Montagu Evans / Miller Hare TVIA View 10.



Figure 18 Current view of the station and Hampton Court Way from Lutyens' Ember Bridge, north towards his Thames Bridge; Hampton Court Parade to the left overlooking the Palace.



Figure 19 Proposed view of the station and Hampton Court Way from Lutyens' Ember Bridge, north towards his Thames Bridge, after development. Montagu Evans, TVIA unnumbered image.



Figure 20 View across Hampton Court Way over station platforms to Hampton Court Palace Great Hall and other Tudor buildings and enlargement of Palace building. The main station structures and small station building (Hampton Court Motors) echo the architectural style and are subservient in scale. Hampton Court Parade behind the viewpoint (see below) although just outside the Conservation Area is in a 'Wrenaissance' style deliberately responding to the setting of the Palace buildings. This view will be lost if the development is built.



Figure 21 Hampton Court Parade west of Hampton Court Way opposite station platforms and intervisible with Hampton Court Palace Great Hall and other Tudor buildings. Although just outside the Conservation Area it is in a considered 'Wrenaissance' style sensitive to the setting of the Palace buildings and Lutyens' bridges and with a well-considered use of high quality materials. The red brick is recessive in views from the direction of the Palace unlike the proposed buff colour of the proposed buildings.



Figure 22 Proposed view of the station and Hampton Court Way towards the Ember Bridge, from the direction of Lutyens' Thames Bridge.

Montagu Evans, Environmental Statement Vol. 3: Heritage, Townscape & Visual Impact Assessment (Dec. 2019).



Figure 23 The Tudor Palace Great Hall seen from Hampton Court Way, past the station.

The west gable of the Great Hall is flanked by Tudor chimneys. These trees are in decline and the one partly obscuring the Great Hall should not be replaced. This view will be greatly diminished if the development is built causing harm to the station building and severing of visual connection with the Palace.

10 APPENDIX 3 PLAN OF SCHEME & VISUALISATIONS



Figure 24 Landscape Master Plan, layout of scheme.

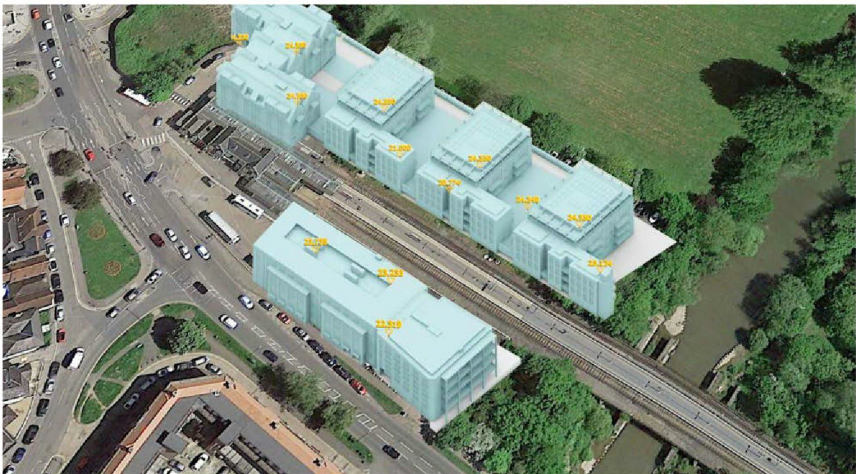


Figure 25 Axonometric View of scheme (GIA Drawing no. 8, 06.09.18) with aerial view of surroundings added (Piotr Hennig).

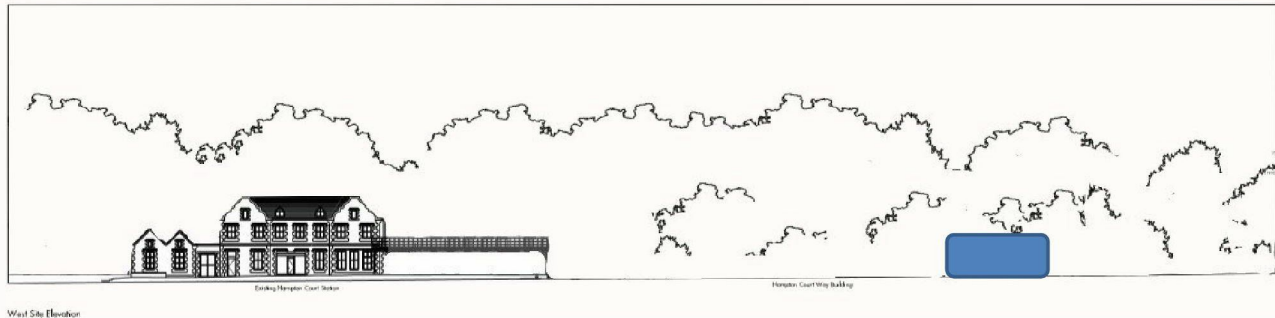


Figure 26 Hampton Court Station and Surroundings, west elevation against Cigarette Island Park, 2018.

This does not include the Hampton Court Motors former railway building which stands detached to the right of the platform canopy and forms part of the ensemble, approximately outlined in blue.



Figure 27 Hampton Court Station and Surroundings, west elevation against Cigarette Island Park, proposed.

11 APPENDIX 4 NATIONAL PLANNING POLICY FRAMEWORK (NPPF) & HERITAGE ASSETS

The following extract in the 2018 revision of the NPPF sets out the Government's planning policies for England and how these should be applied to the assessment of change to heritage assets.

They are of particular relevance in this case (highlighting added):

Para. 193. When considering the impact of a proposed development on the significance of a designated heritage asset, **great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).** This is **irrespective** of whether any potential **harm amounts to substantial harm, total loss or less than substantial harm to its significance.**

Para. 194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

- a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;
- b) assets of the highest significance, notably Scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be **wholly exceptional.**

Para. 195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a) the nature of the heritage asset prevents all reasonable uses of the site; and
- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and
- d) the harm or loss is outweighed by the benefit of bringing the site back into use.

12 APPENDIX 5 ENDORSEMENT OF CONCLUSIONS, CHRIS SUMNER

The following is from Chris Sumner, a highly respected former Historic Buildings Inspector and Historic Landscapes Adviser at English Heritage (now Historic England) who dealt with this case professionally for a prolonged period. It sums up the effects of the proposals and sets out his support for the conclusions of this report:

'Thank you for seeking my views on this very clear and thorough report on the Hampton Court Station redevelopment proposals. As you are aware, the site is one that I have known for many years. I first got to know it well when I worked for English Heritage in the 1990s, when I was an historic buildings inspector and historic gardens adviser in the London Region and when I served on (and at one time chaired) the officers steering group of the Thames Landscape Strategy.

'Prior to 1986 I worked for the Historic Buildings Division of the former Greater London Council. I trained as an architect and have a diploma in the conservation of historic landscapes, and since retiring from English Heritage was for a while chairman of the London Historic Parks & Gardens Trust (now London Gardens Trust), which is affiliated to the Gardens Trust which is the statutory consultee on planning developments affecting all registered historic designed landscapes. I have recently finished writing and editing with others a scholarly book on the eighteenth-century gardens of 'Twickenhamshire', the boundaries of which include Hampton Court.

'Hampton Court and its surroundings are of international significance historically and aesthetically, a fact that should not need restating. However, the development brief issued by Elmbridge Borough Council in 1999, despite strong opposition at the time from English Heritage, Historic Royal Palaces and others, adopted a very blinkered approach to the historic environment across the river (and thus in a different county and planning authority's area), and encouraged a scale of development for the station and former Jolly Boatman site that is quite simply incompatible with the need to respect and protect the setting of and views to and from the palace and its grounds. In the two decades plus since then, a number of schemes have been advanced, some of more architectural merit in themselves than others, but they have all been much too big for the location and would if built have caused unacceptable damage to the setting and context of the registered historic assets.

'Your report adopts a sound methodology based on GLA guidance for assessing proposals at World Heritage Sites and in sensitive historic environments such as this, and it is clear from your assessment that the scheme currently under consideration would cause immense and wholly unjustifiable and unacceptable harm to the area and indicates an inappropriate scale and density of development. You rightly draw attention to the matter of the trees; a decent scheme would not rely on the screening abilities of trees to make it palatable, and it is clear that the existing tree cover is at best sparse in places even in summer, and likely to get worse with the foreseeable loss of the horse chestnuts through bleeding canker exacerbated by leaf miner moth.

'I confirm that I endorse your methodology and your conclusions.

'Chris Sumner Dip. Arch., AA Grad. Dipl. Cons (Gardens)'

13 APPENDIX 6 CULTURAL SIGNIFICANCE OF CIGARETTE ISLAND PARK, EAST MOLESEY

13.1 INTRODUCTION

13.1.1 Purpose and Scope

The numerous aspects of the cultural significance of Cigarette Island Park, owned by Elmbridge Council, have not been fully identified to date. This report sets out these significances to support a request to Elmbridge Council to add the park to the Local List of historic assets.

As part of this the gateway at the park entrance has been appraised to highlight its specific architectural significance since, although it is attached to Hampton Court Bridge and thus part of that Listed ensemble along with the landing stage structures between, neither is mentioned in the description on the NHLE, but the gateway should be recognized for its contribution both as an architectural structure and for its contribution to the design of the Park.

Figures 28-32 below show the layout of the park, key historic views and the wider setting, and selected historical images.

13.1.2 Key Sources

The following documents provide historic images and maps.

Colvin & Moggridge, 'Historic Landscape Assessment ... Hampton Court Station/Jolly Boatman Site' (report for HRP, 2005).

Kim Wilkie Environmental Design, *Thames Landscape Strategy: Hampton Court Reach* (1994).

Longstaffe-Gowan, T., 'Molesey Meadow (Cigarette Island), Draft Landscape Proposal' (report for HRP, July 2015).

Liddell, K., 'Pictorial History of Cigarette Island Park' (report, 2021).

Thames Landscape Strategy, *Thames Landscape Strategy: Hampton Court Reach* (revision, 2012)

<http://thames-landscape-strategy.org.uk/who-we-are/vision/the-review-of-the-thames-landscape-strategy/>²³

Waterman Infrastructure and Environment, 'The Former Jolly Boatman and Hampton Court Station Archaeological Desk-Based Assessment' (report July 2018), submitted to Elmbridge Council with Application 2018/3810.

<http://edocs.elmbridge.gov.uk/IAM/IAMCache/3255798/3255798.pdf>

The author has visited the park many times and discussed its use and history with local residents, historians and officers of Elmbridge Council including Ian Gayton, Parks Manager.

13.1.3 Author

Sarah Rutherford, Dip. Hort. (Kew), M.A., Ph.D., is an historic environment consultant. She worked for English Heritage 1996-2003, initially as Historic Parks and Gardens Inspector and then as Head of the Register of Parks and Gardens of special historic interest in England. Her MA in landscape conservation from York University is supplemented by a Ph.D. based on pioneering research into the landscapes of Victorian and Edwardian lunatic asylums. As a consultant since 2003 Sarah has prepared conservation plans and other appraisals for a wide range of historic landscapes and buildings including Stowe, Buckinghamshire. She is the author of books on aspects of the historic environment including on Humphry Repton and Capability Brown.

The document has been scrutinized by respected historic environment professionals with knowledge of the Park who have endorsed the findings of this assessment in Section 6, Conclusions. They include:

²³ Elmbridge Council is a partner in the Thames Landscape Strategy.

- **Karen Liddell** BA (Hons), MRTPI (rtd), IHBC (rtd).
- **Chris Sumner** Dip. Arch., AA Grad. Dipl. Cons (Gardens) former Historic Buildings Inspector and Landscape Architect, English Heritage.
- **Paul Velluet** RIBA, IHBC, conservation consultant, Regional Architect and Assistant Regional Director for English Heritage London Region 1991-2004.

13.2 SETTING THE SCENE

Rowland Baker recalled the splendid views enjoyed by this public park:

From Cigarette Island one gets what is probably the finest view of that 'Structure of majestic frame, which from the neighbouring Hampton takes its name'. See from this viewpoint the two distinctive styles of the palace Wolsey's rich dark red brick, with its 'turrets and towers', and Wren's brighter red massive square block — are, as William Morris aptly put it, 'so blended together by the bright sun and beautiful surroundings, including the bright blue river which it looked down upon, that the beautiful building had a strange charm about it'.
(Thameside Molesey 1989)

The park visitors' romantic views of the Palace were a by-product of the original purpose of the park: to preserve the view in the opposite direction, from the Palace, of the rural scene, originally composed of osier meadows as shown by artists including Thornhill (c.1730) and Spyers (1770s). Morris's quote from *News From Nowhere* in 1890 captures the idyllic qualities that he so valued.

This was inevitably to change with the mid-C19 arrival of the railway bringing visitors, most obviously marked by Hampton Court station, the associated development of suburbia, and the reconfiguring of the rivers and highways with the fourth bridge (one of two here by Lutyens) in the 1930s. Even so changes to the island were carefully managed with the public acquisition of the open space for public use and the establishment of the 1938 covenant protecting the Palace views in this use.

13.3 HISTORIC CHARACTER

Cigarette Island Park is a 1930s public park and promenade designed as the backdrop to one of the most important royal palaces in order to perpetuate its view of designed green space beyond the River Thames. The main feature is the public promenade serving both local residents, and large numbers of visitors from Britain and worldwide travelling by rail or river, offering spectacular views of the majestic Palace and grounds over the Thames as both their first and last experiences of the Palace (see Figure 29, Features & Views map; 1940s aerial views Figures 30-32).

Lutyens' fine, low formal gateway (c.1933) frames the entrance to the park promenade in his typical spare neo-classical manner, using red brick walls and piers, with Portland stone dressings; it is given vertical emphasis by tall, slender framing obelisks on the piers and is an extension of the adjacent Thames bridge. The retaining wall for the park approach drive above the landing stage links the gateway to the bridge. They were all designed as part of the upgrading of the area relating to the creation of Hampton Court Way. Figure 32 indicates how it originally looked in its setting and integral relationship with the landing stage and bridge beyond.

Within the park the north-facing promenade walk is set in a simple landscape of informal lawns overlooking the Rivers Embur and Thames on two of the three sides. The park bank leading down to the Thames was created when the bank was cut back by the Thames Conservancy as part of the 1930s park design. It was intended as a resort lawn from which to view the Palace and river and is backed by rows of specimen chestnut trees intended to screen the former railway sidings (now the station car park). Hampton Court Station building forms a quasi-principal building, dominant in the approach to the entrance off Hampton Court Way and as a prominent backdrop to views within the

park together with the parade of shops along Hampton Court Way which echo the Wren style of the Palace.

Those crucial panoramic views from the Palace of green space are preserved without encroachment of suburban development. Conversely, the day-trippers' panoramic prospect of the Palace survives in part, but has not been lost to irreversible development. In many places it has been reduced to glimpses above overgrown river banks, rather than the intended uninterrupted panorama along the whole bank, and longer views are framed by trees. This however, is entirely reversible. While the condition of the park has been neglected in recent decades, and its original design as part of the whole Hampton Court resort for visitors, principally day trippers from London, is largely forgotten, the essential fabric, character and significance survives as set out below.

13.4 LOCAL CONTRIBUTION AS AN HISTORIC ASSET

Local significance is high for the following reasons:

1. As an ornamental designed landscape for local residents, it is an Inter-War public park strongly connected to the locality of East Molesey for nearly a century which survives intact.
2. As an open space, formerly an island of osier beds and meadow enclosed by three rivers, it has formed the key green backdrop for views from the great royal palace of Hampton Court since its C16 origins, particularly from the main drive from the Trophy Gates, and in views from the Banqueting House and Privy Garden.²⁴
3. The collection of mature specimen trees forms a key element of the structure of the design which contributes to the local scene both from Hampton Court Palace, Hampton Court Station, the Ember and Thames bridges and their respective rivers.
4. It is one of a group of public parks with strong connections with the residents of Elmbridge, including Hurst Meadows and Hurst Park to the west, and Albany Reach on the riverside east of the River Ember.
5. It makes a substantial contribution to the East Molesey (Kent Town) Conservation Area as a key open space and historic urban park serving this settlement.
6. It forms the park backdrop for a group of important communications structures in East Molesey: Sir William Tite's 1840s Hampton Court Station (Locally Listed), and Sir Edwin Lutyens' contemporary Ember and Hampton Court Bridges (listed Grade II) and the landing stages attached to Hampton Court Bridge.
7. It makes a strong contribution to the Thames riverscape as an essential element of the open space along the reach downstream of Hampton Court Bridge, including Ditton Fields beyond the Ember and Hampton Court Park and gardens opposite. This is part of the essential setting of Hampton Court Bridge, the Barge Walk and the Palace and its grounds.

ASPECTS OF CULTURAL SIGNIFICANCE

See Figure 29 for a map of the features referred to below.

13.5 ARCHITECTURE

1. Principal Built Feature: this is the 1932-33 park gateway at the north-west corner which is of national significance as an integral part of the Lutyens/ Robinson Hampton Court Bridge ensemble.²⁵

²⁴ See views of the site by Thornhill, 1730 and 1731, Spyers, c.1770s, etc, which formed part of 'those meads forever crowned with flowers' mentioned by Pope in his poem the *Rape of the Lock*, 'Where Thames with pride surveys his rising towers' (1712).

²⁵ The programme for the opening of the bridge on 3rd July, 1933, states that 'At the request of the Minister of Transport', Sir Edwin Lutyens, K.C.I.E., R.A. was called in to 'collaborate' with the County Engineer of Surrey (W.P. Robinson, M.Inst.C.E.) in preparing the design of the architectural features of the bridge. Lutyens' close involvement with the detailed design of the external features is readily apparent. The programme also noted that 'In designing the bridge [Robinson] made provision for a public landing-stage for river traffic on the Surrey shore in order to meet the convenience of persons using river craft who may desire to embark or disembark at this point'. The photograph of the newly completed bridge looking upstream from the Surrey bank shows the landing-stage still under construction. The detailed design of the 'gateway', the landing-stage and the retaining-wall clearly suggest the involvement of Lutyens. Pers. comm. P. Velluet, 08 March 2021.

The bridge is of sufficient quality to merit upgrading to Grade II* as a complex structure of considerably greater heritage merit than the associated Ember Bridge which is listed Grade II.²⁶

As an integral part of the bridge ensemble the gateway shares in the listed status of the bridge and reference to it should be added to the listing description, together with the linking landing stage and retaining structures. Were it a detached structure it should be listed separately at Grade II both for its own heritage merit and for group value with the bridge and associated structures.²⁷

2. The Form of the Gateway: Lutyens' fine low gateway is attached to the bridge via the east end of the landing stage retaining wall supporting the drive to the park. It forms the structural focus of the park design, with red brick piers and walls, and Portland stone dressings and bollards. Lutyens' stone obelisk finials confer height and dignity to the entrance.²⁸ The gateway is of considerable historic significance for the typical quality of design and materials that he used which establishes it at the main entrance to the park, although the gates have gone. It echoes the stylistic handling of his contemporary Queen Anne-style lodges and stone pylons at the entrance to Thames-side historic Runnymede (1930-32).
3. Group Value with Other Structures: Beyond the gateway the structure of Lutyens' Hampton Court Bridge and the adjoining landing stage retaining wall which supports the drive to the park gateway, are integral to the park as they lead to and embrace the gateway. The approach to the park entrance enjoys borrowed views of Tite's Jacobethan station building ensemble, which is of sufficient quality to merit listing at Grade II, acting as a quasi-principal building.²⁹

13.6 AESTHETIC SIGNIFICANCE OF THE PARK FABRIC AND DESIGN

As a designed landscape the significance is local to regional, and derives from the following aspects:

1. Completeness: The five acre site at its most fully developed by 1935 is complete.
2. Purpose: The purpose as a park is rare, and possibly unique: to protect the setting of a great royal palace. The land was bought by a government body, the Office of Works (OW), in 1933 to preserve it as the setting of the Palace, specifically to preserve the river frontage backdrop in views from the Palace. The OW handed it to the local authority stipulating that it must be laid out as a public park with a riverside walk.³⁰ The intention was to remove the riverside tree belt and rural aspect to create a more formal character as a foil for the park entrance by Lutyens.
3. Design: The deceptively simple but effective layout by an unknown designer, probably the District Surveyor, had a dual purpose. Most obviously it is typical of local public parks of this scale. However, the design has wider significance beyond the locality as a resort for a much greater audience in the many visitors to Hampton Court Palace arriving via the railway station and landing stage. For visitors it offered an

²⁶ It is comparable in heritage merit with Twickenham Bridge, built at the same time and opened on the same day by the Prince of Wales in 1933, which is Listed Grade II* and is less complex in its structure than Hampton Court Bridge.

²⁷ The bridge includes four embankment retaining walls, two landing stages and the park gateway with obelisks, all attached and thus part of the listing. They are not curtilage structures as they are attached and part of the original construction before 1948. This structure does not have a curtilage.

²⁸ Lutyens' design for the 'Entrance to Crown Lands' including the landing stage retaining wall supporting the drive to the park, park gateway and obelisks as executed, survives with the suite of design drawings for the rest of the bridge. TNA 19/837 August 7th 1932. The area of Crown land to which it gave access, 'Cigarette Island' east of the railway land, is noted as a 'public park'.

Reproduced in Colvin & Moggridge 2005, Fig. 6 and referred to in para 2.4.5. Pp. 12-18 set out the history and TNA documents.

²⁹ The station building was assessed by English Heritage (research Paper B/020/2003) as a 'grand and substantial building' of sufficient quality to list at Grade II, concluding that it is of equal quality to comparable listed station buildings including Barnes and Kew Bridge, and arguably of higher architectural and historical interest.

³⁰ A 1938 covenant between HM Works & Public Buildings and UDC of Esher established that the Council will "layout and plant a riverside walk" and maintain the land as an open space subject to restrictions including "for use by the public for games and recreation", not to erect buildings or stalls, nor allow the landing of boats, maintain "the river banks in good condition", and any other request "relative to the protection or maintenance of the amenities" of the Palace.

introductory (or final) view of one of the greatest royal visitor attractions of the C19 and C20, and a place of public resort during their visit.³¹

4. **Riverside Character:** The elevated ground enjoys views over the two rivers of differing characters, the Thames and Ember, and waterside access via the sloping banks (this somewhat obscured at present by vegetation). The enclosure of such a large proportion of a park by waterways in this manner is rare. Both river banks were originally a resort for picnics and river access. Historic images show they were very popular but this ceased in the later C20 (possibly with regrading). Both river banks were realigned before the park was laid out, with the Ember greatly altered to straighten it when the Mole was routed into it.
5. **Landscape Features:** The key landscape feature, the 250m-long riverside promenade, which survives well, gives the park its greatest significance. It facilitates splendid panoramic views of the most important grouping of the Palace and associated structures and gardens across the Thames. The east tip of the park at the confluence of the two rivers, armoured to resist erosion, offers climactic panoramic views of Hampton Court Park, the Tijou Screen and Privy Garden and a sweep of the two rivers.
6. **Riverside Banks:** seen from beyond the park, the park riverside banks (realigned c.1930-32) frame views along the rivers towards the Palace from the two Lutyens road bridges and from the Ember railway bridge and adjacent platforms. The open grassy character of both banks allowing riverside access and recreation seen in aerial photos of the 1930s-50s has been obscured by unmanaged vegetation but could be cleared to reinstate or evoke the intended character.³²
7. **Management:** The management is typical of this type of park although some decline in the management of the river banks has occurred, losing the intended open nature.
8. **Planting:** mature specimen trees set in an informal lawn were planted for their ornamental contribution in a particular pattern. The most important are the two lines of horse chestnuts behind the promenade, an ornamental species typical of this period. Specimens are subject to disease and partly obscure the important views between the Palace and station building.
9. The historic fabric and management survive largely intact and constitute the physical significance of the site.

13.7 SETTING

See Figures 28 and 31 for illustrations of the immediate and wider landscape setting.

1. **Immediate setting:** The varied adjacent surrounds add considerable interest to the design, with architectural interest from Tite's adjacent station and Lutyens' two bridges, contrasting with the two rivers which contribute greatly to the historic character.
2. **Wider Landscape Setting:** in the wider setting the relationship with Hampton Court Palace is of the highest significance as the park design is predicated on these views. The informally managed setting of the Albany Reach greenspace east of the River Ember contrasts with the station, townscape and royal palace characters. Figure 28 shows a sketch of the park in its wider setting and Figure 31 an historic aerial photograph of this.
3. **The Hampton Court Resort:** Cigarette Island Park enhanced the resort character established since the mid-C19 and developed for visitors to the Palace, spurred on by the coming of the railway. The station is an early sight-seeing station built for the sole purpose of improving visitor access to the royal palace and is of national significance in this respect. This function as a visitor facility links the park closely to the station, hosteleries such as the Mitre, landing stages, boat hire on Barge Walk, etc.

³¹ Early aerial views show the recently laid out park: <https://www.britainfromabove.org.uk/en/image/EPW060552> (1939); <https://www.britainfromabove.org.uk/en/image/EAW002300> (1946); <https://www.britainfromabove.org.uk/en/image/EAW023679> (1949) <https://www.britainfromabove.org.uk/en/image/EAW014184> (1948)

³² Plan and sections for the new channel for the River Ember designed by Surrey County Council and dated 1930 are reproduced in Colvin & Moggridge 2005, Fig. 5.

13.8 HISTORICAL CONTEXT

1. Protection of a view: The initial purpose of the park was part of the movement to protect the 'Finest Prospects', i.e. important historic views, in perpetuity.³³ This was expressed in various official ways including by Parliament in the 1902 Act to preserve the famed view from Richmond Terrace and in the 1913 South Western Railway Act in which the height of building on railway land in the setting of royal palaces and parks was restricted to 50ft; more recently the view from King Henry VIII's Mound in Richmond Park to St Paul's Cathedral was protected in planning policy. The acquisition of land such as Cigarette Island was part of this movement to preserve views such as the first major Lake District acquisition, Brandlehow Park, opened in 1902. To protect the view from Richmond Hill before legislation was enacted, Marble Hill was purchased for public use in 1901 with subscriptions from local councils and private donors and handed to London County Council for its preservation.
2. A public promenade: The park continues the tradition established in the C17 of ornamental public walks designed to take advantage of admired prospects. Most notable in the area is the seminal Richmond Terrace, c.1700 (Registered Grade II*), an elevated 220m long walk overlooking another artistically important reach of the Thames including several aristocratic estates. It was highly influential and much painted and written about.³⁴ Such walks often served visitors as part of a wider resort character as is the case here and for Richmond Terrace.

13.9 ARCHAEOLOGY

1. In 2018 the Surrey Historic Environment Record recorded no sites or finds within the park.³⁵ Even so the park has at least one archaeological site and potential for further evidence.
2. The main identified feature is a World War II public air raid shelter buried near the north-west corner of the park. It shows as a grassy low mound; the entrance has been blocked.³⁶
3. Potential exists for evidence of former cultivation as meadow and osiers and associated features and structures. This is low potential as the ground was significantly made up in the 1930s when the river banks were straightened and widened.
4. Potential exists for evidence of occupation from prehistoric times onwards, particularly relating to the island origins and riverside position and given the type of finds recorded alongside the banks of the Thames and other rivers in the vicinity from many periods.³⁷
5. Potential exists for other unrecorded archaeological remains, given the recent finding of sediments of geo-archaeological and possible palaeo-environmental value.³⁸

13.10 COMMUNAL SIGNIFICANCE AND ASSOCIATIONS

1. The park is of local significance for the association with local residents for whom it has been a public park for nearly a century, including Molesey carnival in the 1940s-50s.
2. The park is of national significance for the association with the many visitors to Hampton Court since the 1930s, arriving by train and river, for whom the promenade was designed as an introduction to the stately

³³ This phrase was used by Lord Chesterfield's description in his new Gallery at Blackheath, completed in 1750, with him boasting that it gave him 'three different, and the finest, prospects in the world'.

³⁴ Other riverside public walks include the New Walk promenade by the Ouse in York (1730s); Avenham Walk, Preston (1680s), and the Walks, Kings Lynn (early C18-early C20). All these are on the national Register of Parks and Gardens.

³⁵ Waterman Infrastructure and Environment, July 2018.

³⁶ Pers. comm. Ian Gayton, Elmbridge Council, 08 December 2020.

³⁷ E.g. prehistoric dug-out canoe found in the Thames about 100 yards below the former Mole confluence in 1877, around the site of the Jolly Boatman. It was evidently washed down from the delta ground at the point of the confluence. Many flint and stone axes have been found at this point. SHHER_259; NGR 515400 168400.

³⁸ Waterman Infrastructure and Environment, July 2018, report.

royal ensemble. It is part of the C19 and C20 nationally significant resort facilities serving Palace visitors.

13.11 CONCLUSIONS

The analysis above leads to the following conclusions:

1. The park has high cultural significance resulting collectively from a number of respects.
2. The park is of high local significance as an historic public open space.
3. The architectural value of the gateway is high as it forms part of the Hampton Court Bridge architectural ensemble with design input by Sir Edwin Lutyens.
4. The known archaeology and potential for evidence are medium to low, i.e. of local to regional significance.
5. The layout and character of the park, although simple, are of medium to high significance for the dual purpose in protecting a seminal cultural view and providing a spectacular viewpoint in the form of a public promenade as part of the ensemble of resort facilities for Palace visitors from all over Britain and worldwide.
6. As part of the wider Hampton Court resort straddling both sides of the Thames, the park is of medium to high historical significance: for the historical cultural and communal context and geographical setting including the station, Palace and grounds, hostelryes, landing stages, River Thames, etc.
7. **The park should be added to the Elmbridge Local List.**
8. **The park gateway should be explicitly described in the NHLE Listing of Hampton Court Bridge as it shares in the listed status, along with the landing stage, retaining wall and steps linking it to the bridge..**

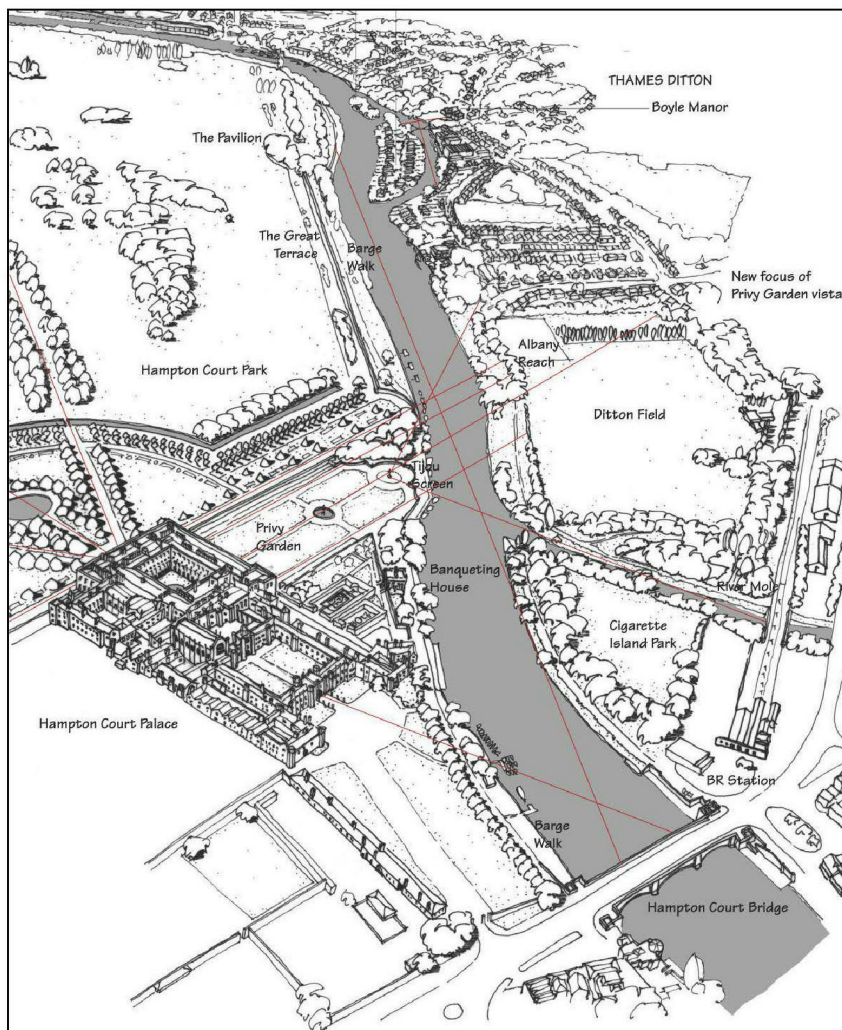


Figure 28 Birds Eye Sketch of the Hampton Court Reach of the Thames with Cigarette Island Park. This demonstrates the relationship of Cigarette Island Park to the palace and palace grounds, to Ditton Field, to the River Ember, and to the River Thames and to Hampton Court Bridge.
 Thames Landscape Strategy, *Thames Landscape Strategy: Hampton Court Reach* (revision, 2012).

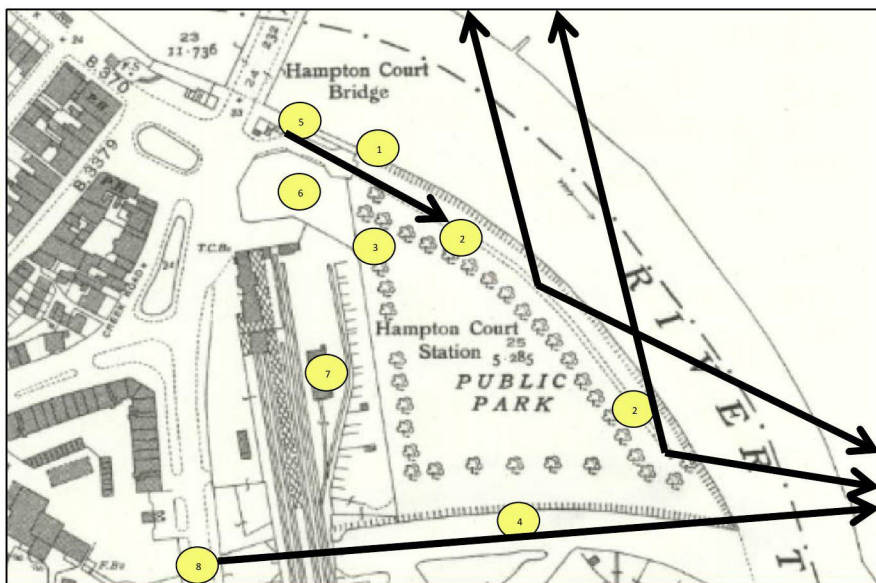


Figure 29 Features & Views Map of Cigarette Island Park shortly after completion (OS 25" scale, 1937 revision). Key views relating to the park include panoramic views of Hampton Court Palace from the Promenade (2), from Lutyens' Ember bridge (8), and into the park through his gateway (1) from the south end of Hampton Court Bridge and top of the landing stage steps (5).

Features

1. Gateway	2. Promenade
3. Air Raid Shelter	4. River Ember
5. Landing Stage, Steps and Retaining Wall linked to bridge	6. Jolly Boatman site
7. Former Coal Yard, now Station Car Park	8. River Ember Road Bridge



Figure 30 1946 Aerial Photograph of Cigarette Island Park (Britain from Above).



Figure 31 1946 Aerial Photograph of Cigarette Island Park in the wider context (Britain from Above).



Figure 32 1946 Aerial Photograph of the gateway to Cigarette Island Park, and the attached landing stage as part of Hampton Court Bridge (Britain from Above).

14 APPENDIX 7 BUILDING HEIGHT LIMIT IN THE 1913 SOUTH WESTERN RAILWAY ACT: ASSESSMENT OF HEIGHT OF PROPOSAL

14.1 THE RELEVANCE OF THE 1913 SOUTH WESTERN RAILWAY ACT

The 1913 South West Railway Act is relevant as it seeks to avoid significant damage to the character of the setting of Hampton Court Palace, specifically in relation to building on the environs of Hampton Court Station owned by Network Rail.³⁹ Even over a century ago the character of the setting of this royal palace was of enough concern to warrant legislation by Parliament controlling and protecting it from harmful change. The Act stipulates that the height of buildings on ground belonging to the South West Railway (since vested in the successor body, Network Rail) within half a mile of Hampton Court Palace or any royal park, shall not exceed 50ft (15.24m). This followed the precedent of pioneering legislation elsewhere on the Thames protecting other similar Arcadian scenes.⁴⁰ Counsel's opinion confirms that this stipulation in the 1913 Act remains a material consideration.⁴¹

14.2 MEASUREMENT OF BUILDING HEIGHT STIPULATED IN THE ACT

As the Act is silent on the detail of measuring the height of buildings, a definition in current relevant usage is adopted for this assessment of the development as set out in the *Town and Country Planning (General Permitted Development) (England) Order (2015) (GPDO)* as follows:

(2) Unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.

Similarly MHCLG technical guidance: *Permitted development rights for householders*, September 2019 advises:

"Height" - references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. (Note, ground level is the surface of the ground immediately adjacent to the building in question, and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.)

The definition of the 50ft building height limit in the Act can therefore reasonably be taken as the ground level of the land in current use for railway purposes. Thus the 50ft limit should respond to changes in the various ground heights

³⁹ [3 & 4 Geo. 5], *South Western Railway Act, 1913*, ch. lxxxviii Section 49.

⁴⁰ The view from Richmond Hill was protected in [2 Edw. 7], *Richmond, Petersham, and Ham Open Spaces Act, 1902* ch. ccliii.

⁴¹ Andrew Parkinson, Landmark Chambers, Opinion In the Matter of Hampton Court Station and the South Western Railway Act 1913, 22 March 2021.

across the site. Currently the highest point of the site is immediately around the station building to the north and west, along with the platforms raised above ground level to the east and south to allow access from trains to the station building (9.100m). Steps down from the platform lead to the car park c.3ft (0.900m) below that level.

14.3 METHOD OF EVALUATING THE BUILDING HEIGHT FROM CURRENT GROUND LEVEL

14.3.1 The Applicant's Incorrect Methodology

The applicant acknowledges the relevance of the 1913 Act and claims that it is complied with. For example, the Design and Access Statement (DAS) para 4.8 suggests that the entire height is at or under 50ft measured at the entrance to the station. This ground is the highest point of the site. The applicant has chosen this 9.1m AOD height as the datum for these buildings as it is on the most elevated ground of the site, which is itself on made-up ground.

The height measurement method employed by the applicant is misleading and wrongly suggests that none of the buildings will be over 50ft high measured from current adjacent ground level. In reality the blocks covering the majority of the site will be more than 50ft above current ground level. The height of each building measured by the applicant is not taken from the present ground level which slopes down from the station building to the car park. The majority of the site - is about 3-4ft (0.900-1.200m) lower than this level. Thus in the car park the building height above ground level is 53-54ft (16.5m).

14.3.2 The Correct Methodology

For the purpose of this HIA an accurate method has been applied based on the GPDO (2015). Measurements are taken from those in the applicants' documents and related to the current ground level AOD. Further confirmation of height taken on site by the author indicated that while platform datum is 9.100m AOD (from application documents) ground level adjacent to this at the bottom of the steps to the east car park is 0.900m lower, i.e. 8.200m AOD.

The ground level of 9.100m AOD at the north entrance to Hampton Court Station referenced as a base line at section 4.8 of the Design and Access Statement (DAS) is made-up ground and is not true ground level. This applies also to the station platforms which are at the same height AOD and approx. 0.900m above the level of the adjacent car park to the east. The true baseline is the current ground level of the car parks on each side of the tracks, which is therefore approximately 0.900m lower than platform level and level with surrounding land.

In any case the ground level of 9.100m AOD at the north entrance to Hampton Court Station is the highest point of the site. It is not the respective ground level measurement for each of the buildings which comprise the proposed development as described in the DAS and elsewhere in the application documents. In these documents it is emphasized that the development consists of a number of separate buildings: the riverside building, the three villas and the hotel and so the GPDO clearly indicates that ground level must relate to each building.

For the purpose of showing the true heights of the development above current ground level, the height of each of these buildings has been calculated individually. For each building the building height AOD has been read from application drawing 'Elevations – Key Dimensions, No 451_01_07_011 Rev P1 11' and the corresponding ground level subtracted from this (the measurement is taken from the topographical survey on p.31 of the Flood Risk Assessment in ES Appendix 11.1). The results are as follows.

14.4 HEIGHTS OF BUILDINGS IN THE CURRENT APPLICATION

This table sets out the heights of the individual buildings in the development.

Individual building in question	Height of building in metres AOD on Drawing 451-01-07-011 (H)	Existing height, metres AOD as shown on topographical survey: p.31 of Flood Risk Assessment, ES Appendix 11.1 (Ex)	Height of proposed building in metres (H minus Ex)	Height of building in question converted into feet
Riverside building: NE corner closest to Hampton Court Palace	24.340	8.100	16.240	53.28
Villa 1	24.340	8.100	16.240	53.28
Villa 2	24.340	7.900	16.440	53.94
Villa 3	24.340	7.700	16.640	54.59
Hampton Court Way building: NW corner	23.735	8.410	15.325	50.28
Hampton Court Way building: SW corner	23.735	8.900	14.835	48.67

14.5 CONCLUSION

1. **The applicant's methodology in measuring the heights of the five buildings from current ground level is wrong and misleading.**

GPDO (2015) states that each building in question should be compared with the nearest adjacent existing levels. Measuring the height from the single highest point on the site is not acceptable.

2. When the five buildings are assessed accurately using the GPDO (2015) guidance based on adjacent ground level, **four buildings are clearly above the 50ft height limit. Three of these buildings reach 53-54 ft high. This contravenes the height stipulation of the 1913 Act.**
3. The 53-54 ft high elevations of the 150m long east facade face and dominate not only Cigarette Island Park, but beyond this highly important historic features of Hampton Court Palace including the Privy Garden, Banqueting House, Tijou Screen and Wren south façade.
4. **The apparent height of the 150m long east facade will be increased, to over 56 ft**, when seen from elevated parts of the Palace and Cigarette Island Park adjacent, due to the excavation for the sunk access road below the buildings next to the park and facing the Palace.

IN THE MATTER OF THE HAMPTON COURT STATION SITE AND THE SOUTH
WESTERN RAILWAY ACT 1913

OPINION

Introduction

1. I am instructed on behalf of Mr. Keith Garner in relation to the determination of planning application (ref: 2018/3810) for the re-development of the Hampton Court Station site, opposite Hampton Court Palace (“the Site”). The local planning authority is Elmbridge Borough Council (“the Council”).
2. I am asked to advise as to whether the South Western Railway Act 1913 (“SWRA”) is a material consideration for the purposes of the Application. The issue arises because section 49 of the SWRA prohibits the development of any buildings of greater than 15.2m (50 ft) within a half mile radius of Hampton Court Palace unless the consent of the Commissioners of Works has first been obtained. I understand that the proposed development would breach that height restriction by several ft, although I understand that the developers dispute that.
3. If I conclude that the SWRA is a material consideration for the purposes of the Application, I am also asked to give my opinion as to the weight that the Council should give to a breach of the restrictions set out in the SWRA.
4. Finally, I am also asked to advise whether, and to what extent, it is appropriate for the Council to take into account in its determination of the Application a prior application (ref: 2008/1600) for the development of the same site (the “2008 Permission”).
5. In summary, I conclude as follows:
 - (1) I am firmly of the opinion that the SWRA, and the 50ft height limitation imposed within it, are material considerations. This is so notwithstanding the fact that it is derived from an Act of Parliament, rather than a statement of planning policy. Indeed, the Council

has previously recognised this in the Hampton Court Station and Jolly Boatman Sites Development Brief (November 1999) (“the 1999 Development Brief”) and the Officer’s Report for the 2008 Permission.

- (2) I have seen the Council’s explanation as to why it considers that the SWRA is not a material consideration. I have considered the Council’s reliance on the decision in Berkswell; however, I consider that reliance to be misplaced. Nothing in Berkswell suggests that the statutory purpose behind a relevant Act of Parliament cannot be taken into account as a material consideration.
- (3) In light of the findings of the Heritage Impact Assessment (“HIA”) prepared by Dr. Sarah Rutherford, the Council is required by law to give great weight to the heritage harm caused by the development.
- (4) As the 2008 Permission is not viable, there is no real prospect of it being developed. As such, the Application must be assessed on its merits, without comparison with that permitted in the 2008 Permission.

Background

6. The factual background can be stated briefly:

- (1) Section 49 of the SWRA prohibits the erection of buildings over 50 feet in height within half a mile of Hampton Court Palace on lands owned by “*the Company*”, unless the consent of the Commissioners of Works has first been obtained: section 49(1)(a).
- (2) The functions of the Commissioners of Works are now vested in the Secretary of State for Digital, Culture, Media and Sport (“SOSDCMS”), through the following route: the functions of the Commissioners of Works were transferred to the Minister of Works by section 1 of the Minister of Works Act 1942 (c.23) (repealed), and S.I. 1945/991. The Minister of Works was renamed the Minister of Public Building and Works by S.I. 1962/1549. The functions of the Minister of Public Building and Works were transferred to the Secretary of State for the Environment by virtue of S.I. 1970/1681, and then to the Secretary of State for National Heritage by article 7 of S.I. 1992/1311. The Secretary of State for National Heritage was renamed the Secretary of State for

Culture, Media and Sport by S.I. 1997/1744. The functions of the Secretary of State for Culture, Media and Sport were transferred to the Secretary of State for Culture, Olympics, Media and Sport by article 4 of S.I. 2010/1551, then to the Secretary of State for Culture, Media and Sport by article 3 of S.I. 2012/2590, and then to the Secretary of State for Digital, Culture, Media and Sport by article 4 of S.I. 2017/979.

- (3) I have reviewed the “Contract for the provision of services in respect of the care, conservation and presentation to the public of the Historic Royal Palaces” between (1) the Secretary of State for Culture, Media and Sport (2) Historic Royal Palaces and (3) Historic Royal Palaces Enterprises Limited dated 1st April 1998. Nothing in that contract delegates the consent required under section 49 of the SWRA to Historic Royal Palaces. I am not aware of any other agreement or legislation that would delegate this power. Therefore, consent under this section must be sought from SOSDCMS.
- (4) In addition, under the SWRA, no buildings erected within half a mile of Hampton Court Palace on lands owned by “*the Company*”, regardless of their height, shall be used for any manufacture or works which in the opinion of the Commissioners of Works “*shall be or be likely to become noisy or offensive or otherwise prejudicial to the amenities of the royal palace park or garden*”: section 49(3).
- (5) The purpose of section 49 is therefore clear. It is (as stated in the title) “*for the protection of Windsor Castle &c*”, the latter being a reference to Hampton Court Palace.
- (6) At the date of enactment, “*the Company*” was the London and South Western Railway Company (“L&SWRC”). It is now Network Rail Infrastructure Limited (“NR”), a successor company to the L&SWRC. The SWRA also binds future owners of the land in question: section 49(5).
- (7) It does not appear to be in dispute that all or the vast majority of the proposed development is on land that, in 1913, was owned by the Company and which is therefore subject to the Act. Indeed, I understand that the remains of the station’s Victorian-era turntable were found under the Jolly Boatman site.

(8) I note that some elevations on plans submitted as part of the Application, including elevations facing Hampton Court Palace, are intended to be over 50 feet in height when measured from the original ground level. The consent of the SOSDCMS has neither been sought nor obtained.

(9) I understand that the Council's position is that the provisions of the SWRA are immaterial. This is summarised in an email to residents in March 2019 as follows:

The rights enshrined by the Act of 1913 are not protected by the planning system and are not material considerations. The courts have limited the scope of material considerations where private interests are concerned or where other statutory codes are engaged. To take one example, in R v Solihull BC ex parte Berkswell Parish Council (1999) 77 P&CR 312, a decision to grant planning permission for development that involved the removal of lengths of hedgerow was challenged on the ground that the hedgerows affected were subject to the Berkswell Enclosure Act 1802, and that the planning authority had failed to have proper regard to this fact. The court was clear that this could not be a material planning consideration. Whether the 1802 Act created public or private rights, and questions as to the legal status of the hedgerows generally, were not relevant for the purposes of the planning merits: nor did any planning permission override any protections the 1802 Act might create.

(10) I have also had sight of an e-mail dated 19 March 2019 from Alan Harrison, Head of Legal Services at the Council, to Jennifer Margetts, a Team Leader in the Planning Services division of the Council, to much the same effect.

Legal Framework

7. Under section 70(2) of the Town and Country Planning Act 1990 ("the 1990 Act"), the Council is obliged to "*have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations*" in determining the application.
8. Whether or not a particular consideration is legally material is a matter for the court: Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 W.L.R. 759 per Lord Keith at p.764.
9. Where a decision-maker erroneously disregards a consideration as a non-material planning consideration, the decision is liable to be quashed: see R. (on the application of Holder) v Gedling BC [2014] J.P.L. 1087.

10. In this respect, the Supreme Court considered the meaning of “*material considerations*” in R. (Wright) v Resilient Energy Severndale Ltd [2019] 1 W.L.R. 6562. The following principles emerge:

(1) “*Material*” in s.70(2) of the 1990 Act, and also in s.38(6) of the Planning and Compulsory Purchase Act 2004 means material to the development which is proposed.

(2) To be material, the considerations must (a) serve a planning purpose and (b) fairly and reasonably relate to the development permitted: see Newbury District Council v Secretary of State for the Environment [1981] A.C. 578, 599H.

(3) A planning purpose is one which relates to the character of the use of land: see East Barnet Urban DC v British Transport Commission [1962] 2 Q.B. 484, 491.

11. It is, however, a matter for the decision maker to decide what weight should be accorded to a material consideration. The Courts will not intervene unless the weight attached to a particular material consideration can be said to be irrational: Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 W.L.R. 759.

12. There is no principle of law that means that the existence of difficulties in implementing a planning permission, even if apparently insuperable, must necessarily lead to refusal of planning permission for a desirable development. As it was put in British Railways Board v Secretary of State for the Environment [1994] J.P.L. 32, per Lord Keith of Kinkel:

A would-be developer may be faced with difficulties of many different kinds, in the way of site assembly or securing the discharge of restrictive covenants. If he considers that it is in his interests to secure planning permission notwithstanding the existence of such difficulties, it is not for the planning authority to refuse it simply on their view of how serious the difficulties are.

Analysis

Is the SWRA a material consideration?

13. The starting point is that there can be no doubt that the impact of the development on Hampton Court Palace is a material consideration in the determination of the development. That is so regardless of the SWRA.
14. In addition, I consider that it is material that Parliament considered that development of more than 50 ft high within half a mile of Hampton Court Palace was particularly sensitive. I say particularly sensitive, rather than unacceptable, because the SWRA does not impose an outright prohibition on development of this height. Rather, the consent of the Commissioner for Works is required once this threshold is exceeded.
15. The sensitivity above this height is a material consideration, notwithstanding the fact that it is derived from an Act of Parliament rather than a statement of planning policy. That is because it is well established that even restrictions contained in private law documents (such as restrictive covenants entered into under deed) may be material in circumstances where one of the contracting parties is a public body.
16. For example, in Stimpson v First Secretary of State [2003] EWHC 1591 (Admin), the following was held at paras. 17-18 – with emphasis added:

Here there is a section 52 agreement entered into in 1990. In that agreement the Council, as local planning authority, agreed with the landowner and the prospective developer that the appeal site should not be developed residentially but should be reserved for community uses. I can see no reason why that exercise of the Council's powers as local planning authority should be any less capable of being a material consideration than, for example, an agreed development brief between the local planning authority and an intending developer. Unlike the Secretary of State in the British Railways Board case, the Inspector in the present case did not rely upon the difficulty of implementing a residential planning permission for so long as the section 52 agreement remained in force. There is no reference to any such difficulty in the decision letter. He gave weight to the section 52 agreement because it was an agreement reached between the local planning authority, the owner of the land, and a prospective developer as to what would be the appropriate use for this site. Whether a local planning authority's agreement as to the future appropriate use of a site is contained in a deed under section 52 or a non-legally binding document, such as a development brief, it is still capable of being a material planning consideration. If it is such a consideration, then it is for the Inspector to decide whether, in the circumstances of the particular case, he should give it much, some, or little weight.

17. I can see no reason why a similar approach should not be taken to the SWRA, in that it demonstrates what Parliament considered to be an appropriate use for the site. In this

respect, it must be recalled that in 1913 what has become the modern Town and Country planning system was in its infancy. The Housing, Town Planning etc Act 1909 gave local authorities the power to create development schemes, but this was discretionary. There was no equivalent of modern day national planning policy statements. As such, if the Government wanted to impose restrictions on development, this could only be carried out through an Act of Parliament.

18. In this respect, the Restriction on Ribbon Development Act 1935 is an example of an Act of Parliament achieving through legislation what would today be achieved through national planning policy. The Richmond, Petersham and Ham Open Space Act 1902, which sought to protect (and indeed has succeeded in protecting) the view from Richmond Hill in perpetuity, is another example. The restriction in section 49 of the SWRA should be seen in this context.
19. Therefore, the 50 ft height threshold is important and material, even though it is contained in an Act of Parliament. The Council's reliance on R. v Solihull BC Ex p. Berkswell Parish Council (1999) 77 P. & C.R. 312 is misplaced. That authority establishes that the Council is not under an obligation to refuse to grant planning permission until consent has been granted by the SOSDCMS.
20. However, nothing in Berkswell suggests that the statutory purpose behind a relevant Act of Parliament cannot be taken into account as a material consideration. Indeed, I note that in Berkswell the challenge was only unsuccessful because the Council had taken into account the age and ecological interest of the hedgerows protected by the Berkswell Enclosure Act 1801. Therefore, the purpose behind the restrictions in the statute had been taken into account as a material consideration.
21. Applied here, there is nothing in Berkswell to suggest that the Council cannot take into account as a material consideration the fact that Parliament considered that development of more than 50 ft high within half a mile of Hampton Court Palace was particularly sensitive.
22. Indeed, the Council has historically recognised that the SWRA is a material consideration. For example, the 1999 Development Brief for the site states as follows (at paragraph 6.3):

The South Western Railway Act of 1913 prohibits the development of any buildings of greater than 15.2m (50 ft) within a one and a half mile radius of Hampton Court Palace. However, whilst this may control development to an extent it is the Council's view that no building anywhere on the site should exceed three storeys plus a pitched roof, which is likely to be substantially less than the 50 ft. limit. This is to ensure that development does not dominate the existing station building, is below the tree canopy of the park and masses appropriately with the East Molesey Conservation Area buildings.

23. Similarly, the Officer's Report for the 2008 Application states as follows:

The South Western Railway Act of 1913 prohibits the development of any buildings taller than 15.2m within a one and a half mile radius of Hampton Court Palace. But the Brief is more restrictive, recommending that no building anywhere on the site should exceed three storeys plus a pitched roof, in order to ensure that the development:

- *Does not dominate the existing station building*
- *Is below the tree canopy of the park, and*
- *Masses appropriately with the East Molesey Conservation Area buildings.*

24. The fact that both the 1999 Development Brief and the Officer's Report for the 2008 Application references the 50 ft threshold makes clear that the Council considered it to be material. It has provided no reason for its change in stance, bar the erroneous legal advice referred to above.

Weight to be attached to the SWRA

25. It is ultimately for the Council to decide how much weight to give to the fact that the development is above the 50ft threshold (see Tesco).

26. I have reviewed Dr. Rutherford's HIA. This concludes that the level of harm from the proposed development causes "substantial harm". Much of this harm derives from the height of the proposed development. The scheme is significantly more harmful than that approved in the 2008 Permission, which was below 50 ft in height. This conclusion is pertinent notwithstanding my thoughts below on the relevance of the 2008 Permission.

27. In light of the findings of the HIA, the Council ought to give considerable importance and weight to the heritage harm caused by the development arising from its height above 50ft: see paragraph 193 of the National Planning Policy Framework ("NPPF"). This is required as a matter of law as a result of the statutory duty in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which has the effect that where harm is

caused to the significance of a listed building, considerable importance and weight must be given to that harm: see Bamwell Manor Wind Energy v East Northamptonshire District Council [2014] EWCA Civ 137 at para. 29. In addition, in light of the finding of substantial harm, the tests in paragraph 195 of the NPPF ought to be applied.

Relevance of the 2008 Permission

28. Finally, I am asked to consider the relevance of the 2008 Permission.

29. In R v Secretary of State for the Environment ex parte Ahern [1998] Env LR 189 the Court explained how a fall-back use should be identified and assessed. It held that the decision maker must consider: (1) whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use; (2) whether there is a real prospect of such a use occurring (see Mansell v Tonbridge & Malling BC [2017] EWCA Civ 1314 at [27] for an explanation of what is meant by a “real prospect”); and (3) if the answer to the second question is “yes”, a comparison must be made between the proposed development and the fall-back use.

30. I have seen correspondence from Network Rail dated 3rd October 2016 which makes clear that this development did not proceed *“because of the economic conditions at the time and because the cost of the access arrangement made it unviable”*. Similarly, an application by Network Rail Infrastructure Limited to dispose of land in accordance with the Land Disposal Condition of its network licence, dated 18th November 2016 states that the 2008 Permission *“did not proceed because it was not financially viable at the time”*.

31. I am not aware of any information that suggests that the 2008 Permission has become financially viable in the intervening years. On the contrary, the available information suggests that the 2008 Permission remains financially unviable.

32. As the 2008 Permission is not viable, there is no real prospect of it being developed. As such, the Application must be assessed on its merits, without comparison with that permitted in the 2008 Permission. Nevertheless, the 1999 Development Brief remains a material consideration as it has not been withdrawn.

Conclusion

33. My conclusions are set out above at paragraph 5, which are as follows:

- (1) I am firmly of the opinion that the SWRA, and the 50ft height limitation imposed within it, are material considerations. This is so notwithstanding the fact that it is derived from an Act of Parliament rather than a statement of planning policy. Indeed, the Council has previously recognised this in the 1999 Development Brief and the Officer's Report for the 2008 Permission.
- (2) I have seen the Council's explanation as to why it considers that the SWRA is not a material consideration. I have considered the Council's reliance on the decision in Berkswell; however, I consider that reliance to be misplaced. Nothing in Berkswell suggests that the statutory purpose behind a relevant Act of Parliament cannot be taken into account as a material consideration.
- (3) In light of the findings of the Heritage Impact Assessment ("HIA") prepared by Dr Sarah Rutherford, the Council ought to give great weight to the heritage harm caused by the development.
- (4) As the 2008 Permission is not viable, there is no real prospect of it being developed. As such, the Application must be assessed on its merits, without comparison with that permitted in the 2008 Permission.

ANDREW PARKINSON

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15th February 2021