



**Elmbridge**  
Borough Council

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**STATEMENT OF CASE OF THE LOCAL PLANNING AUTHORITY**

APPEAL BY: Alexpo Ltd and Network Rail Infrastructure Ltd

SITE: Jolly Boatman and Hampton Court Station Redevelopment Area Hampton  
Court Way East Molesey Surrey KT8 9AE

LPA reference: 2018/3810 and 2018/3803

PINS reference: APP/K3605/W/22/3291461

March 2022

## **CONTENTS**

<b>1.0: Introduction .....</b>	<b>3</b>
<b>2.0 Site and Surrounds .....</b>	<b>3</b>
<b>3.0: Development Proposals .....</b>	<b>3</b>
<b>4.0: Development Plan &amp; Other Principle Material Considerations .....</b>	<b>4</b>
<b>5.0: Overview of the Council’s Case on Appels A and B .....</b>	<b>5</b>
<b>6.0: The Council’s Case in relation to Appeals A .....</b>	<b>6</b>
<b>Reason for refusal 1: Design and Townscape .....</b>	<b>6</b>
<b>Reason for refusal 2: The Hertiage Harm .....</b>	<b>7</b>
<b>Reason for refusal 4 and 4: Affordable Housing     and Highways Improvements and Alterations .....</b>	<b>10</b>
<b>7.0: The Council’s Case in relation to Appeal B .....</b>	<b>11</b>
<b>8.0: Witnesses .....</b>	<b>11</b>
<b>9.0: Conclusion .....</b>	<b>11</b>
<b>10.0: Other Matters.....</b>	<b>12</b>
<b>11.0: Documents to be referred to in evidence.....</b>	<b>12</b>

**Appendix 1: 2018/3810 Committee report, Committee results, Decision Notice  
and Committee minutes**

**Appendix 2: 2018/3803 Officer report and Decision Notice**

**Appendix 3: Hertiage Assessment**

**Appendix 4: Annual Monitoring Report 2021-22**

## **1.0 INTRODUCTION**

- 1.1 An appeal has been submitted by Alexpo Ltd and Network Rail Infrastructure Ltd (the Appellant) against the decision of Elmbridge Borough Council (the Council) to refuse planning permission for two applications.
- 1.2 Appeal A relates to application 2018/3810 on the land at the Jolly Boatman and Hampton Court Station redevelopment area.
- 1.3 Officers reported the application to the meeting of the Planning Committee held on 13<sup>th</sup> July 2021 with a recommendation that planning permission should be refused. However, after reviewing the application and attending a site visit, Members of the Planning Committee resolved to refuse permission. The decision notice was issued on 19<sup>th</sup> July 2021. A copy of the Decision notice, Committee report, updates and results from the meeting are attached in Appendix 1
- 1.4 Appeal B relates to application 2018/3803 on the land adjoining the above development site and incorporates a strip of land in Cigarette Island Park. The site location for the application was Jolly Boatman And Hampton Court Station Redevelopment Area Hampton Court Way East Molesey Surrey KT8 9AE. This application was refused planning permission on 12 January 2022 by Officers under delegated powers following consultation with the local ward members. A copy of the Decision notice and Officer report are attached in Appendix 2.

## **2.0 SITE AND SURROUNDS**

- 2.1 A description of the appeal sites and its surroundings has been agreed with the appellant at Section 2 of the Statement of Common Ground.
- 2.2 A commentary of the planning history relating to the site can be found in Section 2 of the Statement of Common Ground in relation to Appeal A. With regards to Appeal B there is no relevant planning history other than application 2018/3810 which is subject to Appeal A. A more detailed commentary of the history of the site in relation to Appeal A is provided in Section 5 of Committee report in Appendix 1.
- 2.3 The planning constraints relevant to the site are listed in Section 2 of the Committee report in Appendix 1 and apply to both sites.

## **3.0 DEVELOPMENT PROPOSALS**

- 3.1 Appeal A related to the proposal for a comprehensive redevelopment of the whole site including the former Jolly Boatman site, railway station (including the station building, car park, tracks, platform and land on the Hampton Court frontage), highway and the parcel of undeveloped overgrown land to the south-west of the station. The proposed development would provide 97 residential units with approximately 9,646 sqm (GIA) of open market

housing and 1270 sqm of affordable housing. The proposed development also includes 3,171 sqm of C1 floor space to provide an 84 bedroom hotel, 435 sqm of A1 retail space and 268 sqm of A2/A3 café/restaurant. Proposed works also include access, station interchange, car parking, servicing, new public realm, landscaping and other associated works following demolition of some existing buildings and structures on site including Hampton Court Motors.

3.2 The proposal comprises 3 distinct elements which will be referred to throughout the appeal documents. These are the Riverside Building, the Villas and the Hampton Court Way Building. The development also includes a two-storey underground car park, public realm space and private amenity space for the proposed residential units.

3.3 Appeal B relates to the proposal for temporary permission for car parking on the western part of Cigarette Island to enable continuous car parking for station users during the construction period, if planning permission is granted in relation to Appeal A. The proposal would provide temporary car parking for 110 spaces, for a period not exceeding 2 years from the date of first use, and subsequent reinstatement. The Appellants detailed in their planning statement for the application that the proposal would reduce the timeframe and minimise disruption during the construction period by some 14 months.

3.4 The description of the proposed development in relation to both Appeal A and B has been agreed in Section 2 of the Statement of Common ground.

#### **4.0 DEVELOPMENT PLAN & OTHER PRINCIPAL MATERIAL CONSIDERATIONS**

4.1 The Local Planning Authority has statutory duties relating to the determination of the application which are set out in the following legislation:

- Section 70 of The Town and Country Planning Act 1990
- Section 38(6) of The Planning and Compulsory Purchase Act 2004
- Sections 16, 66(1) and 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Equality Act 2010

4.2 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, this appeal falls to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the Core Strategy 2011 and the Development Management Plan 2015. The relevant development plan policies for consideration of the proposal will be agreed in the Statement of Common Ground.

4.3 In addition, the Design and Character Supplementary Planning Document 2012, the Developer Contributions Supplementary Planning Document 2020, Parking Supplementary Planning Document 2020 and the Flood Risk Supplementary Planning Document 2016 are material considerations.

Together with the Thames Landscape Strategy, Landscape Character Reach 02 Hampton Court, East Molesey Kent Town Conservation Area Appraisal and Management Proposals 2012, the Hampton Court Station and Jolly Boatman Sites Development Brief and London Borough of Richmond-upon-Thames' Unitary Development Plan.

## **5.0 OVERVIEW OF THE COUNCIL'S CASE ON APPEALS A & B**

- 5.1 In relation to Appeal A, the Committee members resolved to refuse planning permission at the Council's Planning Committee virtual meeting on 13<sup>th</sup> July 2021 and the decision was issued on the 19<sup>th</sup> July 2021 for the reasons set out in the Decision notice in Appendix 1. These relate to harm to the character of the area and the openness of the riverside and the adjacent green space, harm to heritage assets and the lack of a legal agreement in relation to affordable housing and highway improvements and alterations.
- 5.2 The Council accepts that the third and fourth reasons for refusal relate to matters which could be resolved by way of a suitably-worded legal agreement.
- 5.3 The Council will show that, as a consequence of the conflicts of the development plan outlined in reasons 1 and 2, the scheme will conflict with the development plan taken as a whole.
- 5.4 Notwithstanding that the Council cannot show a five-year supply of housing land as assessed against the standard methodology, the public benefits of the scheme do not outweigh the identified heritage harm. As such, it is considered that the tilted balance under paragraph 11(d)(ii) NPPF does not fall to be applied because there is a "clear reason" for refusal. There being no other material considerations which would justify granting permission otherwise than in accordance with the development plan, planning permission should be withheld.
- 5.5 In relation to Appeal B application 2018/3810 was refused planning permission on 12 January 2022 by Officers under delegated powers following consultation with the local ward members for the reason detailed in the Decision noticed in Appendix 2. The reasons for refusal relate to the loss of public open space and the harm to Heritage assets not being outweighed by public benefit.
- 5.6 The Council will show that as a consequence of the conflicts of the development plan outlined in reasons 1 and 2, the scheme will conflict with the development plan taken as a whole. In the absence of the permission for application 2018/3810, there are no material considerations justifying granting permission.
- 5.7 The Council will therefore invite the Inspector to withhold permission for both appeals.

## **6.0 THE COUNCIL'S CASE IN RELATION TO APPEAL A**

### **Reason for Refusal 1: Design and Townscape**

- 6.1 In relation to reason for refusal 1 The Council will demonstrate that the development would cause harm to the character and appearance of the area, contrary to policies DM2, DM12, DM13 of the Development Management Plan 2015 and policies CS7, CS12 and CS17 of the Core Strategy 2011 and the Design and Character Supplementary Planning Document 2012 and the National Planning Policy Framework.
- 6.2 An assessment of the design considerations in relation to this proposal are set out in Section 11.9 of the Committee report in Appendix 1. A consideration of the impact of the proposed development on the wider Townscape is set out in section 11.10 of the Committee report.
- 6.3 The Council will demonstrate that, as set out in 11.9.8 of the committee report, the proposal would cause harm to the character of the area by way of its height and massing.
- 6.4 As set out in the Townscape Analysis, the Council will demonstrate that the Riverside building would create an imposing and prominent feature on the waterfront which is considered to have an adverse impact on the openness of the river's setting and the character of the area. Furthermore, the height and mass of this building would not relate to the massing of the train station building and would appear dominant and overbearing on the existing structures. It will be demonstrated that the proposal is contrary to policies DM2, DM12 and DM13 of the Development Management Plan and CS7 and CS12, CS17 of the Core Strategy.
- 6.5 The Villas would result in a dominant and imposing development which would form a hard edge against the existing green space of the park. In combination with the Riverside building discussed above, the proposed Villas would cause harm to the character of the area contrary policies DM2, DM12 and DM13 of the Development Management Plan and CS7 and CS12, CS17 of the Core Strategy.
- 6.6 The proposed Hampton Court Way building would be located hard up against the pavement edge and the Council will demonstrate that the sheer massing of the development and its unrelenting position against the pavement, would be uncharacteristic of this view and would be visually detrimental to the character of the area. The proposed building by reason of its height, design and proximity to the highway would cause harm to the character of area contrary to policies DM2, DM12 and DM13 of the Development Management Plan and CS7 and CS17 of the Core Strategy.
- 6.7 As stated in Para 11.9.9. of the Committee Report, the Council will demonstrate that the quality of the architectural design and materials does

not overcome the concerns raised about the bulk and massing of the proposed buildings.

6.8 As set out in section 11.29.2 of the attached committee report, the Council will demonstrate the development would have a harmful impact on all but one (Viewpoint 8) of the identified views. This impact would be worse in views where the development would be seen against the existing townscape. In wider views, the proposed scale, massing and design would appear discordant with the existing and established townscape character.

6.9 The design evidence will demonstrate that the harm identified to the townscape results in the proposal being contrary to DM2, DM12 and DM13 of the Development Management Plan and CS7 and CS17 of the Core Strategy and significant weight if given to this harm in the planning balance.

6.10 The evidence will include an appraisal of the proposals against the relevant parts of the National Design Guide and Development Plan Documents.

### **Reason for refusal 2: The Heritage Harm**

6.11 The Heritage Assessment for this proposal is set out in Appendix 3. There is also the analysis set out section 11.10 on page 97 onwards of the committee report. The Council's evidence will address those heritage assets it is considered will be affected by the proposed development as set out in the Heritage Assessment and tabulated below:

<b>Designated heritage assets</b>	<b>List Number(s)</b>	<b>Grade / Asset Type</b>
Hampton Court Palace (1)	1193127; 1002009; 1000108	Grade I Listed, Scheduled Monument; Registered Park and Garden
Privy Garden, heritage assets within included as a group assessment, comprising: (2) <ul style="list-style-type: none"> <li>• Privy Garden (Screens by Tijou)</li> <li>• Privy Garden (1700s, ten lead vases)</li> <li>• Privy Garden (Sundial)</li> <li>• Privy Garden (1869, statue of a man)</li> <li>• Privy Garden (1869, statue of a woman)</li> </ul>	1065441; 1065450; 1065446; 1193330; 1065447; 1357716; 1065448; 1065449	Grade I and Grade II listed

<ul style="list-style-type: none"> <li>• Privy Garden (1600s+, Medici Venus, Bronze Statue)</li> <li>• Privy Garden (1600s+, Bronze statue of female)</li> <li>• Privy Garden (1700s, statue)</li> </ul>		
<p>Sunk Garden, heritage assets within included as a group assessment, comprising: (3)</p> <ul style="list-style-type: none"> <li>• Sunk Garden (1909 lead putti statues)</li> <li>• Sunk Garden (Undated statue of Venus)</li> </ul>	1357715; 1065443	Grade II listed
Banqueting House (4)	1357714	Grade I listed
Lower Orangery (5)	1193195	Grade I listed
Trophy Gates (6)	1065444	Grade I listed
Barracks (7)	1080810	Grade I listed
East Molesey (Kent Town) Conservation Area (8)	--	Conservation Area
Hampton Court Green Conservation Area (9)	--	Conservation Area
<p>Listed buildings opposite Trophy Gates, included as a group assessment, comprising: (10)</p> <ul style="list-style-type: none"> <li>• The Green</li> <li>• Palace Gate</li> <li>• Paper House</li> <li>• Old Court House</li> <li>• Palace Gate</li> <li>• Old Office House</li> <li>• Faraday House and Cardinal House</li> <li>• Mitre Hotel</li> <li>• Court Cottage</li> <li>• Faraday Cottage, King's Store Cottage and Garage</li> </ul>	1080795; 1065362; 1286380; 1080796; 1080796; 1240005; 1254109; 1080798; 1065361; 1080797; 1080797; 1254108; 1080794	Grade II and Grade II* listed
Royal Mews and Great Barn (11)	1192945	Grade I listed



Hampton Court Bridge (12)	1358100	Grade II listed
Bridge over the River Ember (13)	1377454	Grade II listed
Hampton Court Station (14)	--	Locally listed
Cigarette Island (15)	--	Locally listed (nominated)

6.12 The Council will provide expert evidence to demonstrate that the proposed development will cause less than substantial harm to the significance of the identified heritage assets as detailed in the attached Heritage Assessment in Appendix 3.

6.13 This assessment will be reached by applying the guidance within the Historic England guidance, principally *Historic England Good Practice Advice in Planning 3: The Setting of Heritage Assets* and *Historic England Good Practice Advice in Planning 2: Managing Significance in Decision-Taking*. Further to this, the Thames Landscape Strategy and Planning Practice Guidance will also be presented as the basis for analysis. The Council will explain the nature of weighted harm, and the importance of exactly ascertaining the extent and nature of such harm as part of the balanced planning judgment required in heritage cases and involving very highly graded assets such as the Palace.

6.14 The Council will demonstrate that the development will have an adverse impact upon the significance of the Palace and the heritage assets included within (outlined above) contrary to policies DM2, DM12 and DM13 of the Development Management Plan and policies CS7, CS12 and CS17 of the Core Strategy. If necessary, the Council will refer to *Catesby Estates Ltd v Steer* [2018] EWCA Civ 1697 as to the correct approach to identifying the setting of heritage assets.

6.15 The Council will also show that the development would cause harm to the significance of the other heritage assets detailed in the table above and set out in the Heritage Assessment in Appendix 3.

6.16 In summary, the Council will show that the proposed development lies within the setting of a number of heritage assets, some of which are of the utmost importance and are internationally significant. By virtue of its prominence, scale, massing and urbanising effect, the development would reduce the ability to appreciate and understand the significance of these heritage assets, causing less than substantial harm. If necessary, the Council will refer to *Barnwell Manor Wind Energy Ltd v SSCLG* [2014] EWCA Civ 137 as to the correct approach the statutory duties at s.66 and 72 Planning (Listed Buildings and Conservation Areas) Act 1990.

6.17 The Council does not accept that the new public realm would amount to a heritage benefit. It is therefore academic in this case whether that claimed heritage benefit is weighed against the harm as a “public benefit” or in a

preliminary heritage balance (as contended for by the Appellant). If necessary, the Council will refer to *City & Bramshill Ltd v SSCLG* [2021] EWCA Civ 320 as to the correct approach to accounting for heritage harm.

6.18 The Council acknowledge that there are public benefits of the scheme as a whole, however will show they do not outweigh the heritage harm.

6.19 The Council accepts a planning permission on the site (2008/1600) is extant, however the Council does not accept that scheme amounts to a fallback permission, to which any weight can be attached in this determination of this appeal. There has been no progress implementing the scheme since a token commencement was made to preserve the permission eight years ago. The Appellant has submitted no evidence to demonstrate that there is anything more than a theoretical entitlement. In his regard, if it proves necessary, the Council will refer to *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314.

6.20 The Council is presently unable to demonstrate a five-year housing land supply against the standard method. The latest Monitoring Report 2020/2021 (Appendix 4) confirms that the Council's Housing Land Supply is now at 4.88 years. The Council will demonstrate that the weight to attach to this shortfall is reduced in light of: (a) its limited nature, (b) the inherent constraints meeting the standard method in Elmbridge due to the Green Belt, (c) the steps being made to make-up the shortfall through the preparation of a new Local Plan. In supporting that position the Council will refer to *Hunston Properties Ltd v SSCLG* [2013] EWCA Civ 1610, *Suffolk Coastal DC v SSCLG* [2016] EWCA Civ 168, *Hallam Land Management Ltd v SSCLG* [2018] EWCA Civ 1808.

6.21 Accordingly, the development conflicts with policy DM12 of the Development Management Plan and policies CS7 and CS17 of the Core Strategy and the NPPF.

6.22 Moreover, the development would fail to preserve the historic and architectural interest of the affected listed buildings, nor would it preserve the character and appearance of the relevant conservation areas, contrary to ss.66(1) and 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990.

### **Reason for Refusal 3 and 4: Affordable Housing and Highways Improvements and Alterations**

6.23 The third and fourth reasons for refusal relate to the lack of a S106 agreement to secure the provision of affordable housing (with Early and Late Review Mechanisms) and the highway alterations and improvements required to make the development acceptable in these regards.

6.24 The Council will work with the Appellant to produce the full and final S106 agreement before the inquiry. In the event that the agreement is not

reached, the Council reserves its right to rely on additional evidence in order to fully substantiate these reasons for refusal.

## **7.0 THE COUNCILS CASE IN RELATION TO APPEAL B**

7.1 The two reasons for refusal for this application are both based on the refusal of planning permission for 2018/3810 resulting in a lack of public benefit to outweigh the identified harm to the heritage assets and loss of public open space. The Council's case is set out in paragraphs 35 to 61 of the Officer Report for application 2018/3810 in Appendix 2. The Council agree that in the event Appeal A is allowed, the public benefit of the reduced construction period and public disruption would outweigh the harm occasioned by Appeal B.

7.2 This would be subject to the conditions which will be set out in the Statement of Common ground that ensure protection of environmental and heritage assets during the temporary period of development as well as restoration of the land following removal.

## **8.0 WITNESSES**

8.1 The Council intends to call the following witnesses:

<b>Specialism</b>	<b>Witness</b>
Town Planning	Jennifer Margetts, North Area Team Leader, Planning and Environmental Health, Elmbridge Borough Council
Heritage and Townscape Assessment	Jason Clemons, Head of Heritage and Townscape, Savills

## **9.0 CONCLUSION**

9.1 The Council will show that the impacts on the character and appearance of the area and heritage assets arising from Appeals A gives rise to a conflict with the development plan as a whole.

9.2 The Council accepts paragraph 11(d) NPPF falls to be applied due to the housing land supply position against the standard method.

9.3 The Council will show the public benefits do not outweigh the harm to the heritage assets.

9.4 There is therefore a "clear reason" to refuse Appeal A and, therefore, the tilted balance at paragraph 11(d)(ii) NPPF does not fall to be applied.

9.5 Accordingly, because the scheme conflicts with the development plan and there are no material considerations which would justify granting permission

otherwise than in accordance with the plan (including the application of paragraph 11(d) NPPF), planning permission should be withheld.

9.6 If Appeal A is refused, there would be no material considerations to justify granting Appeal B in conflict with the development plan arising from its townscape and heritage impacts.

9.7 The Council will accordingly invite the inspector to dismiss both appeals.

## **10.0 OTHER MATTERS**

10.1 In accordance with guidance from the Planning Inspectorate and without prejudice to the Council's case, a list of recommended conditions to be applied in the event that the Inspector is minded to allow the appeal and will be provided in the Statement of Common/Uncommon Ground. These would be required, together with a legal agreement to secure the contributions outlined at section 8 above.

## **11.0 DOCUMENTS TO BE REFERRED TO IN EVIDENCE**

11.1 The Council will refer in its evidence to the documents identified in the statement above and other relevant documents including:

- Letters of representation
- Previous decision notices and officer reports
- The National Planning Policy Framework
- The Development Plan Documents and Supplementary Planning Documents as details in the Committee reports in Appendix 1 and 2
- Heritage Assessment in Appendix 3
- The Planning Brief 1999
- East Molesey Kent Town Conservation Area Appraisal and Management Proposals 2012
- The Thames Landscape Strategy and the Landscape Character Reach 02 Hampton Court
- London Borough of Richmond-upon-Thames' Unitary Development Plan
- Historic England Guidance, principally Historic England Good Practice Advice in Planning 3: The Setting of Heritage Assets and Historic England Good Practice Advice in Planning 2: Managing Significance in Decision-Taking
- Relevant statutory list entries
- All documents which formed part of or accompanied the application
- Any other relevant appeal decisions or legal cases

11.2 The Council reserves the right to refer to additional documents in response to the Appellant's case as developed in proofs of evidence.