Adam Watts

From: Jennifer Margetts
Sent: 21 March 2019 08:37
To: Planning Idox
Cc: Adam Watts
Subject: FW: Hampton Court Station Development
Attachments: Hampton Court Station 1920.jpg

Letter of representation for 2018/3810

From: Steve Nicho[redacted]
Sent: 19 March 2019 08:36
To: Jennifer Margetts <[redacted]
Cc: Karen Liddell <k[redacted] Kim Tagliarini <[redacted]>; Ray Lee [redacted] 'Ray Townsend' [redacted]
Subject: Hampton Court Station Development

Ms Margetts

I refer to your recent meeting with Karen Liddell on 14 March 2019 and the presentation that she made on behalf of the Hampton Court Rescue Campaign.

Karen and I have been in correspondence recently concerning the proposed redevelopment of Hampton Court Station and the site of the Jolly Boatman pub. She and I share much the same views of this proposed development, and although I haven't seen her presentation I expect that I would agree with most if not all of the content.

However, my discussions with Karen and other members of the Hampton Court Rescue Campaign have focussed on the legal issues thrown up by the proposed development. I am a practising solicitor and a partner at Trowers & Hamlins LLP – a firm with which you may be familiar given its profile in the public sector, although I am acting in a personal capacity in this matter and my firm is not (yet) formally instructed – and based on my legal background and experience I have been providing legal assistance to Karen and her colleagues.

It is in that capacity that I would like to raise two issues with you.

Potential Breach of the South Western Railway Act 1913

I am aware that you have been provided with information from a variety of sources concerning section 49 of the South Western Railway Act 1913, and I trust you will be familiar with this legislation. The position, in summary, is as follows:

1. The Act prohibits the erection of buildings over 50 feet in height within half a mile of Hampton Court Palace on lands owned by "the Company".

2. The Company was then the London and South Western Railway Company, and is now Network Rail Infrastructure Limited, a successor company to the L&SWRC. The Act also binds future owners of the land in question.

3. The topography of the area has changed significantly since 1913. At the time that this legislation came into force, Hampton Court Station was considerably larger than it is now, with 10 tracks, a turntable and outbuildings covering a much larger site. I attach a photo that shows clearly the extent of Hampton Court Station in 1920 (and I believe it had not changed materially between 1913 and 1920); it is clear 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.

4. The intention of Parliament in including section 49 within the Act is clear from the section itself. The purpose of section 49 is stated to be "*for the protection of Windsor Castle &c.*", the "*&c.*" quite clearly being a reference to Hampton Court Palace. Equally, section 49(3) makes it clear that the concern of Parliament was to avoid the construction of buildings that would be "*noisy or offensive or otherwise prejudicial to the amenities*" of the royal parks.

5. The only circumstances in which the restrictions of the act can be avoided is by obtaining the permission of the Commissioners. To the best of my knowledge the applicants have neither sought nor obtained the consent of the Commissioners' current successor department to this development.

6. There is no dispute from the applicant that the buildings forming the proposed development are intended to be over 50 feet in height, and that therefore the development contravenes the Act.

The final point here is, clearly, particularly significant. Historic Royal Palaces observed in its letter of 8 February 2019 that the development contravened the Act. In their reply of 1 March 2019, JLL, for the applicants, acknowledged the Act and that it was in force, and tacitly admitted that the proposed development would breach the Act.

However, there seems to be an assumption, or a belief, within the Council and elsewhere that the Act is somehow irrelevant to this planning application or that its relevance is somehow limited or diminished in some way. In my opinion that must be wrong:

1. The Act is a formal act of Parliament and was granted royal assent. It is still in force, and its fully binding nature has not been diminished by the passage of time.

2. It was very clearly the will of the 1913 Parliament that no buildings over 50 feet in height should be constructed in the proximity of Hampton Court Palace; and the will of Parliament (as set out in acts of Parliament) is absolutely sovereign. The Council has no authority to ignore, avoid, overrule or subvert the sovereignty of Parliament.

3. If – as Is the case here – the Council is aware that any proposed development contravenes an act of Parliament and is therefore illegal, the Council is obliged and required to refuse to grant planning permission for that development. To proceed otherwise would quite clearly result in a subversion of Parliamentary sovereignty and thus any decision to that effect would be *ultra vires* and illegal.

Put simply, the Act overrides the Council's delegated authority in this matter. The Council simply has no discretion as to whether or not to grant permission in these circumstances; it is bound by the Act to refuse it.

Identity of the Applicants

I believe you are also already aware that one of the two applicants is identified, apparently incorrectly, as "*Alexpo Limited*".

I say that this identification is incorrect because the only company in the UK with the name of Alexpo Limited is a company owned by one of the members of the Hampton Court Rescue Campaign. At the time that the planning application was lodged, there was no company in the UK by the name of Alexpo Limited.

In addition to this I have conducted searches of the local equivalents of the Companies House databases of a number of other relatively local jurisdictions, such as the Isle of Man, Jersey, Guernsey, Ireland and others at which a company by the name of Alexpo Limited might be registered. I have not been able to locate any such company.

I have, however, been able to locate a company by the name of "*Alexpo (IOM) Limited*" registered in the Isle of Man. I do not know whether this company is or is not related to the applicants, but objectively it seems likely that this company is in fact the applicant. Presumably the applicant has been incorporated in the Isle of Man in order to avoid paying any corporation tax.

In this context I am aware of the decision in *R (On the application of Park Pharmacy Trust) v Plymouth City Council and Emeris Coolart Ltd (Interested Party)* [2008] EWHC 445, which concluded that an error in the name of the applicant was not itself sufficient grounds for the granting of permission to be quashed in a judicial review, because the name of the applicant was irrelevant and no-one had been prejudiced by the use of an incorrect name.

However, in this case it seems reasonable to assume that Alexpo (IOM) Limited has incorrectly identified itself on its application to disguise the fact that it is located outside of the jurisdiction, and that as a result its profits from the redevelopment will not be subject to corporation tax in the UK. Equally, it seems reasonable to assume that this was done in order to avoid additional criticism from the public about the use of what is essentially a tax avoidance scheme.

I do not know whether either the Council or Network Rail were aware of this approach, but it seems likely that both the Council and Network Rail, both public bodies, would have also faced criticism for being seen to facilitate and co-operate in a tax avoidance scheme.

In those circumstances, and in the context of an application that was always likely to attract a high level of public comment and opinion, I do not think it is possible to conclude that the name of the applicant was or is irrelevant, or that no-one has been prejudiced by the use of the incorrect name. On the contrary, I take the view that those commenting on the application were and remain entitled to know that the applicant is a company located outside of the jurisdiction and that it will not pay any tax in the UK (or at all) on its profits. In these circumstances I believe that the decision in *R v Plymouth City Council* does not apply and that the Council cannot legitimately grant planning permission due to this issue.

Next Steps

I believe that, in order to satisfy itself that it has the requisite authority to award planning permission in this case, the Council must obtain the opinion of Leading Counsel in relation to these two issues. Accordingly I would like to request that the Council obtain the same.

I would of course be very happy to meet with the Council's solicitors, if so requested, to provide such assistance as I am able to provide in instructing Leading Counsel on these matters or to discuss them generally. Equally I would of course be happy to meet with Leading Counsel to discuss his or her opinion on these issues.

I am grateful for your consideration of this matter and look forward to hearing from you in due course.

Kind regards

Steve Nichol

d
m
e [redacted]