



Fazima Osborn  
Deputy Director, Heritage, and Cultural Analysis  
Arts, Heritage, and Tourism  
100 Parliament Street  
London SW1A 2BQ

Date: 11 March 2023

DCMS Ref: TO2023/02758/NB

Dear Ms Osborn,

**Application for consent under S.49 of the South Western Railway Act 1913  
Network Rail Infrastructure Ltd and Alexpo (IOM) Ltd  
Planning Permission ref: APP/K3605/W/22/3291461 (Elmbridge BC ref: 2018/3810)**

Network Rail Infrastructure Ltd and Alexpo (IOM) Ltd, as joint applicants, write further to my letter to you and your response dated 9 March 2023 (reference TO2023/02758/NB).

Network Rail had previously sought consent from the Commissioner for Works required under Section 49 of the South Western Railway Act 1913, following the grant of detailed planning permission by the Secretary of State for a residential led mixed use scheme (ref: APP/K3605/W/22/3291461), on land around Hampton Court Station.

You made no decision on the basis that the request was not explicit in stating that consent was required.

We are therefore writing now to explicitly seek consent, for the reason that parts of the permitted scheme, when completed, would exceed 50ft in height when measured from the current ground level across parts of the site, above which we are required to seek your consent under the terms of the 1913 Act. Since part of what is a composite scheme would rise more than 50ft above current ground level, we take the view that the entire scheme (which is an indivisible whole) requires your consent.

The background to the 1913 Act, details of the permitted development and the conclusions reached on the acceptability of the proposal, are set out below.

**Background to the 1913 Act**

As I set out in our original letter, when new railway lines to Windsor and Hampton were being brought forward under the South Western Railway Act 1913, it was at a time that pre-dated the controls provided by the Town and Country Planning Act. S.49 of the 1913 Act made provision for a degree of future control on the buildings that would be developed on the land being acquired for the railway. The 1913 Act states that buildings should not exceed 50 feet in height (where they would be within 1.5 miles of Windsor Castle or 0.5 miles of Hampton Court Palace), unless the consent of the Commissioners of Works is first obtained. S.49 then goes on to state that such buildings then need to be erected in accordance with the elevations submitted to the Commissioners and approved by them or by a referee. The approval of external appearance (the elevations) and the triggering height of 50ft were plainly both related to ensuring a degree of control over the height and appearance of certain buildings insofar as they might have been perceived from, or in association with, the royal premises.

**The Permitted Development**

The proposal is for demolition and redevelopment to provide 97 homes, a hotel (84 beds) and retail units for uses within Use Class E, together with access, station interchange, car parking, servicing, new public realm, landscaping and other associated works at the former Jolly Boatman site and land adjoining Hampton Court Station, Hampton Court Way, East Molesey, KT8 9AE.

The Secretary of State has granted detailed planning permission (ref: APP/K3605/W/22/3291461).

**The acceptability of the proposal has already been determined**

As set out above, it is clear that the intent behind S.49 of the 1913 Act was to protect the amenity and setting of Hampton Court Palace (and Windsor Castle, albeit this is not relevant here).

The redevelopment proposals present no amenity issues. They do not overshadow the Palace or have any effect on its daylight or sunlight. Nor will the proposals give rise to soot, noise or otherwise adversely affect its amenity.

The height, mass and appearance of the proposal and their effect on the setting of Hampton Court Palace (including in views of and with the Palace and its grounds) are issues that have undergone extensive and intensive scrutiny during the consideration of the application and the subsequent appeal, within the framework that is now provided by the Town & Country Planning system. The effect on the setting of the Palace was the principal matter which the Secretary of State considered in his recent positive determination of the planning appeal.

The detailed points made by the Local Planning Authority, statutory consultees, heritage bodies, Historic Royal Palaces and others have been thoroughly considered by the Secretary of State in reaching his decision dated 8 July 2022, a further copy of which I attach. Despite the objections by Historic Royal Palaces and others, he concluded that *"there would be no harm to the settings of Hampton Court Palace, Hampton Court RPG, the Trophy Gates, Barracks, Banqueting House or Lower Orangery or to any of the individually listed structures within the gardens"*(paragraph 61 of the decision letter. My emphasis).

The Secretary of State goes on to conclude that the settings of the listed buildings would be preserved.

There was an attempt to challenge the grant of planning permission through a judicial review, but this challenge was rejected by the High Court.

In conclusion, we are asking for your consent. We acknowledge that this is a determination under S.49 of the 1913 Act, as opposed to the 1990 Town & County Planning Act and 2004 Planning & Compulsory Purchase Act. However, full consideration has been given to all the representations made by local interest groups, statutory authorities and consultees, including Historic Royal Palaces within the modern-day statutory planning framework, resulting in the grant of planning consent by the Secretary of State. With the evidence on all relevant aspects of the matter having been carefully weighed up, there is no proper basis (nor indeed would it be rational) for DCMS to reach a different decision, merely because the same objectors continue to oppose the proposal on grounds that have been duly considered and rejected.

We ask that DCMS now gives its consent promptly.

Yours sincerely,

