

Appellant's Statement of Case

In respect of Planning Applications:

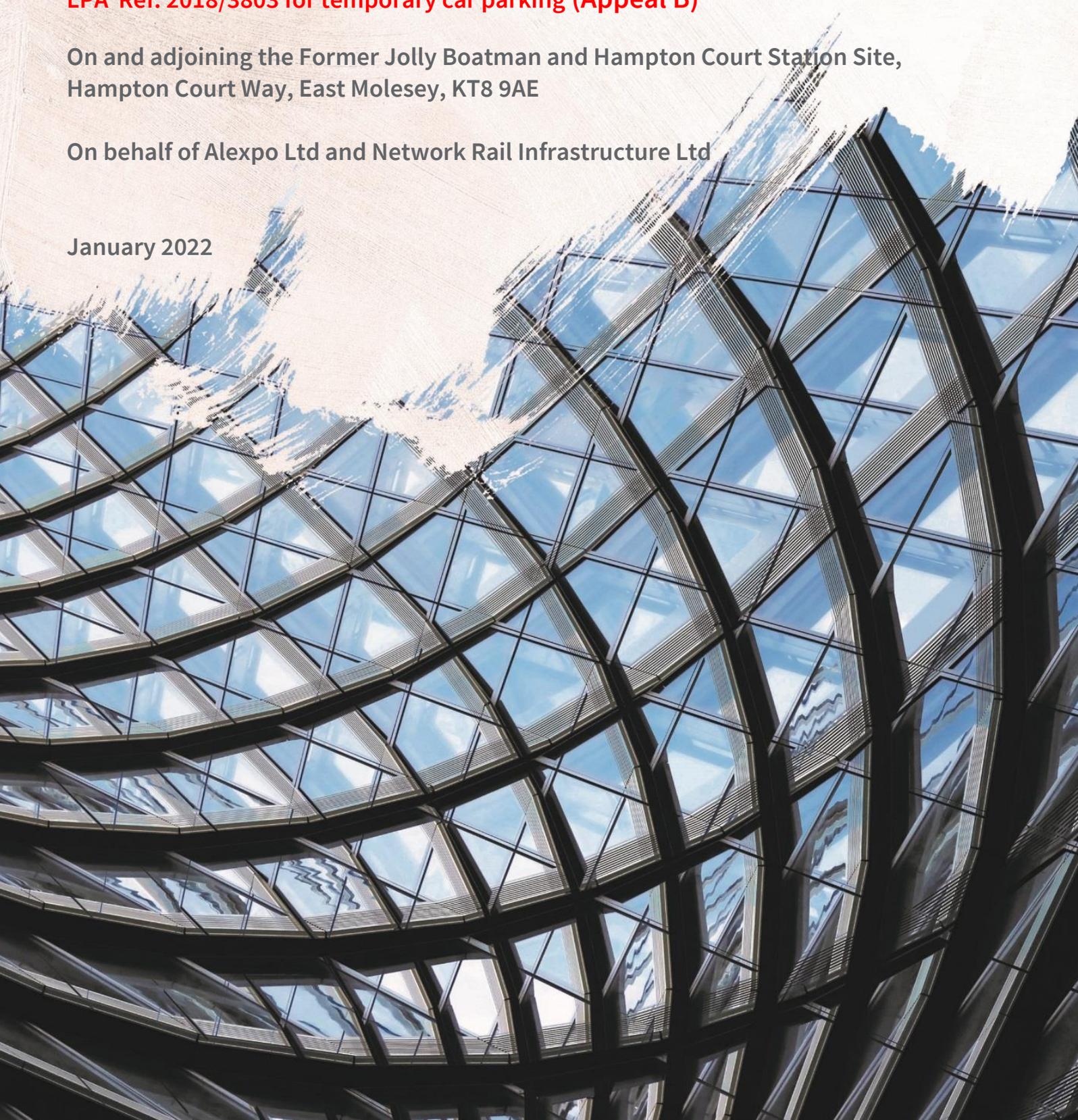
LPA Ref: 2018/3810 for comprehensive redevelopment (Appeal A); and

LPA Ref: 2018/3803 for temporary car parking (Appeal B)

On and adjoining the Former Jolly Boatman and Hampton Court Station Site,
Hampton Court Way, East Molesey, KT8 9AE

On behalf of Alexpo Ltd and Network Rail Infrastructure Ltd

January 2022



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Section 1: Introduction

1.1 JLL is instructed by Alexpo Ltd and Network Rail infrastructure Ltd to lodge two appeals in respect of directly related applications.

1.2 Appeal A is on land comprising the former Jolly Boatman and Hampton Court Station site off Hampton Court Way, in East Molesey KT8 9AE. The appeal is against the refusal of Elmbridge Borough Council on 19 July 2021 to grant permission for:

“Demolition and redevelopment to provide 97 homes, a hotel (84 beds) and retail units for uses within Use Classes A1, A2 and/or A3, together with access, station interchange, car parking, servicing, new public realm, landscaping and other associated work” LPA Ref: 2018/3810.

1.3 Permission was refused on four grounds. Appeal A is the ‘main’ proposal and if permitted, its implementation would be facilitated by Appeal B, but not dependent upon it.

1.4 Appeal B is directly related, adjoins the above site and encompasses a strip of Cigarette Island, to enable temporary car parking spaces to be provided for the station during construction of the above proposal. This temporary proposal was refused by Elmbridge Borough Council on 12 January 2022 on two related grounds. The description of development applied for is:

“Temporary car parking and associated works for Hampton Court Station to provide 110 spaces, for a period not exceeding two years from the date of first use, and subsequent reinstatement” LPA Ref: 2018/3803.

Scope of Statement of Case

1.5 This Statement of Case is submitted in accordance with the requirements and follows the guidance on the form that Statements of Case should take, published by the Planning Inspectorate on 19 August 2019.

1.6 The guidance states that where an inquiry is requested, the *“statement of case needs to set out your case, identifying the main issues and the evidence to be called. This will allow us to make an informed decision on the appeal procedure and will ensure that all other parties (including interested people) are fully aware of the nature of your case and the issues raised right from the start. The Planning Inspectorate will make the final decision on procedure based on the evidence provided at this stage. A statement of case is not expected to exceed 3000 words. Detailed submissions will be for the proofs of evidence in due course.”*

1.7 The guidance goes on to state *“Your statement of case **must:***

- *address each of the reasons for refusal set out on the local planning authority’s decision notice (where a decision has been made) focussing on areas of differences. Where the appeal is against non-determination, it must address the areas that you consider most likely to comprise the local planning authority’s objections to the development proposed;*

- *respond to comments in relation to other matters raised by interested parties at application stage but which were not, or are unlikely to be, a reason for refusal;*
- *include the relevant facts and planning/legal arguments likely to be relied upon. Where case law is cited, it should include the full legal citation;*
- *focus on areas of difference;*
- *be submitted as text with relevant imagery only;*
- *include the documents to which you intend to refer or rely;*
- *set out a summary of your overall conclusions.*

Your statement of case must also provide details of the likely topics that you consider need to be covered, together with your view on how the evidence can most effectively be tested in relation to each individual topic area”.

1.8 To satisfy this guidance, this Statement is structured as follows:

- Section 2 provides the background to the applications.
- Section 3 provides details of the determination of the applications.
- Section 4 identifies the key matters to be considered, giving particular consideration to the reasons for refusal.
- Section 5 refers to other matters raised by interested parties.
- Section 6 covers the inquiry procedures and other related matters.
- Section 7 provides the required summary of the Appellant's conclusions.

Section 2: Background

- 2.1 For each of the appeals, the sites and their context will be described and the relevant planning history will be set out. This background information is not disputed between the Council and the Appellant and is therefore common to the two principal parties. In respect of the planning history, particular reference will be made to permission 2008/1600 on the Appeal A site, which has been commenced and is therefore extant.
- 2.2 Following the acquisition of the former Jolly Boatman site and prior to the submission of any application, the Appellant carried out unusually extensive consultation with interest groups, statutory bodies, the public and others. Key objectives were identified and the scheme designed in response.
- 2.3 As part of this early engagement, a series of formal pre-application meetings were held with Elmbridge Borough Council, so that the main redevelopment which is now the subject of Appeal A, was only submitted when it was in the form that was supported by the Planning and Design/Conservation Officers. This will be set out.
- 2.4 The original idea for the temporary car park, which is now the subject of Appeal B, originated from the main local interest group, as a way of delivering the completed redevelopment of the former Jolly Boatman and Network Rail site in a shorter timeframe and to minimise disruption during the construction period. The idea was then tested with both the public and Officers, with both giving it strong support. This will also be set out.

Section 3: The Determination of the Applications

- 3.1 Consultation continued post submission, with minor amendments made to both applications and additional information provided.
- 3.2 Post submission the principal area that remained unresolved for the main redevelopment proposal (Appeal A), was in respect of flood related matters, with the Environmental Agency requiring both new assessments when up to date data became available and further modelling to be undertaken to a finer level of detail than its own models provided. This eventually enabled the Environment Agency to conclude that it has no objection to the proposal.
- 3.3 Concerns that the height, bulk, massing and design of the submitted proposal would be out of keeping with and harmful to the character of the area, and cause harm to heritage assets, were first raised in May 2021, nearly two and a half years after the application was submitted (and even longer since the support expressed during the pre-application process). This followed the Council's replacement Conservation Officer undertaking a fresh assessment of the proposals. This assessment was only made available to the Applicant after the Planning Committee.
- 3.4 The application was considered by the Elmbridge Planning Committee on 19 July 2021, where the intended Planning Officer recommendation changed from granting permission subject to planning conditions and the S106, to one of refusal. The application was duly refused by members on four grounds, which are set out in full in the Decision Notice and which form the basis of the key matters discussed in the following section of this Statement for Appeal A.
- 3.5 The temporary application for car parking spaces to serve the station during the construction period had not been determined when the Notification of Intention to Appeal was sent to the Planning Inspectorate and to the Council. Therefore the intention had been to appeal on grounds of non-determination. However, following receipt of the Notification, the Council refused permission on 12 January 2022 under delegated authority. There are two grounds of refusal, which are set out in full in the Decision Notice. Both are because the temporary loss of the public open space and the perceived harm to the heritage assets, were not considered to be outweighed by public benefit, in the absence of permission for the main scheme ref: 2018/3810 (now Appeal A). Before and after submission of the application, right through to determination, Officers have not raised substantive concerns if it came forward with Appeal A and they have recognised the benefits that this temporary car parking could bring.
- 3.6 It is agreed by both the main parties that there is only a need for the temporary spaces if planning permission is granted for the main redevelopment in Appeal A.

Section 4: Key Matters

4.1 Although the Council has refused planning permission for the redevelopment proposals in Appeal A, there are substantive areas of agreement between the main parties. These are listed within the draft Statement of Common Ground being submitted with the appeal. These will be discussed and progressed with Officers to see whether the points can be expanded. Currently it draws almost entirely from the Officer's Report to the Committee. To avoid repetition the full list is not repeated here, but for the main redevelopment, key areas of agreement include:

- The principle of redeveloping the site for the uses proposed.
- The need to make efficient use of the site, as underutilised land in a sustainable location within the settlement area.
- The proposal would help meet identified housing need, with a mix of unit sizes that is acceptable.
- The level of affordable housing being offered.
- The proposal being an improvement over the extant permission.
- The density, layout, public realm and relationship to neighbouring elements, being acceptable.
- The materials and detailed design, as well as the proposed landscaping.
- All transport and parking related matters.
- The highway works that form part of the proposal will enhance safety for pedestrians and cyclists, improve facilities for buses and improve traffic flow through the new junctions, reducing vehicle delay.
- The design and size of the proposed car parking is acceptable.
- All environmental, ecological and flood considerations.
- The range of economic and other benefits offered by the proposal.
- The South Western Railway Act 1913 does not prevent the determination of the current proposal or dictate its outcome.
- There is not a five-year housing land supply within the Borough (standing at 3.96 years at the time of the Committee).

4.2 For the temporary car parking proposal, key areas of agreement include:

- There is only a need for the temporary car parking spaces for the station if planning permission is granted for the main redevelopment in 2018/3810 (Appeal A). If Appeal A is dismissed, so should Appeal B.
- If planning permission is granted for the main redevelopment in 2018/3810 (Appeal A), then the benefits of the temporary car parking spaces for the station (of relieving car parking pressure elsewhere and avoiding the need for the main redevelopment in Appeal A to be phased, with a reduced construction period and its associated disruption), would outweigh the harms, and Appeal B should be allowed.
- The proposal would not harm the setting of the surrounding listed buildings, including Hampton Court Bridge, Hampton Court Palace, the Gardens and the locally listed station.
- The 'limited' level of harm to the Conservation Area being suggested by the Council is temporary in nature and once removed, and the land reinstated, then the harm will also be removed.

- There are no transport, flood risk, arboricultural or ecological objections to the proposal, subject to appropriate conditions.

4.3 These and the other areas of the agreement will be highlighted in the proofs of evidence in further detail, but in line with the Planning Inspectorate guidance, the remainder of this section focuses on the areas of difference between the two main parties for Appeal A. These are set out in the four reasons for refusal.

APPEAL A: THE FIRST AND SECOND REASONS FOR REFUSAL

Reason 1: Design and Townscape Context

4.4 In relation to Reason for Refusal 1 the Appellant will provide expert evidence to demonstrate that the Proposed Development causes no harm to the character or appearance of the area, or the way it functions.

4.5 The evidence will go further and explain that the proposals comprise an enhancement.

4.6 This will be demonstrated through an urban design analysis which will include a character based assessment, building on the analysis in the submitted ES chapter. The Appellant will explain why the Appeal site comprises part of a strip of land which has been created between the railway and road network. The construction of the bridge and the new road, the A309/Hampton Court Way, reinforced that separation of the site from any wider suburban character area.

4.7 This finer grain analysis will be considered with reference to the Borough's character-wide analysis, and its treatment of this site. As part of this analysis, the Appellant will refer to a recent Appeal decision on a site to the south (Units 1&2 Hampton Court Trading Estate, Summer Road, Thames Ditton KT7 0RG: APP/K3605/W/20/3257401). The Appellant accepts that planning decisions are fact dependent, but will submit this decision is material because it treats the interaction of the character SPD with the particular circumstances of a site. Other pertinent Appeal decisions, for example affecting highly graded assets, will be adduced on the basis they demonstrate what the Appellant considers is the correct approach to assessment.

4.8 Notwithstanding that analysis, and with regard to the characteristics of the design and its quality, the Appellant's evidence will demonstrate that the visual and townscape effects of the proposal are acceptable.

4.9 The high standard of design achieved will be said to comprise an enhancement too to designated assets which are directly or indirectly impacted by the proposals.

4.10 The evolution of the scheme over a number of years will be described as part of this analysis, along with the treatment of those proposals by officers, statutory and other consultees.

- 4.11 The design evidence proceeds on the basis that a townscape or urban enhancement, including through good quality design, is on the facts of this case both a freestanding planning benefit and one of potentially great weight, as per NPPF 134 parts a) and b).
- 4.12 The Appellant will argue that because the proposals meet the terms of that policy, full weight may be given to the high quality of the design.
- 4.13 The evidence will include an appraisal of the proposals against relevant parts of the National Design Guide with which the Appellant considers the proposals fully accord. All relevant local design and context policies, those cited in the RfR, will also be applied to this analysis.
- 4.14 Evidence and submissions will treat as appropriate case law and appeal decisions on the interpretation and application of design considerations.
- 4.15 The evidence will be presented with reference drawing on documents submitted as part of the planning application, and which may be supplemented by further information presented in evidence.

Reason 2: Historic Environment

- 4.16 The Appellant's evidence will address those assets which the authority allege are harmed by the proposed development:

Grade I Listed Buildings

- Hampton Court Palace (Scheduled Monument, Grade I)
- Hampton Court Palace Barracks (Grade I)
- Banqueting House, Hampton Court (Grade I)

Grade II Listed Buildings

- Hampton Court Bridge (Grade II)
- Ember Bridge (Grade II)

Registered Park and Garden

- Hampton Court Park and Garden (Grade I)

Conservation Areas

- East Molesey Conservation Area
- Hampton Court Park Conservation Area
- Hampton Court Green Conservation Area

Non-Designated Heritage Assets

- Hampton Court Station (Locally Listed)

4.17 The Appellant's outline case is set out below.

Approach to Assessment

4.18 The Appellant will adopt the following approach to assessment, which the Appellant believes can be agreed by the parties and avoids any need to cite the relevant case law. The Appellant will take that body of law as read. The Development Plan policies relating to heritage will form a second basis for analysis.

- The significance of any designated heritage asset affected by a proposal should be identified and assessed (NPPF paragraph 194). Heritage interest – or significance – may be archaeological, architectural, artistic or historic (Glossary to the NPPF). The setting of a heritage asset may contribute to that significance or an appreciation thereof. Hence a change to setting can harm significance;
- The impact of the proposed development on the significance of the identified asset is then to be considered;
- If the proposed development is held to cause harm to the significance of a designated heritage asset, such harm should be categorised as either less than substantial or substantial (NPPF paragraphs 202 and 201 respectively), and within each category the extent of harm should be clearly articulated (Planning Practice Guidance or 'PPG' paragraph 18). The nature and extent of harm is important to ascertain because that analysis informs the balancing out of any harm under the terms of paragraph 202. Underpinning this approach is the principle of proportionality. Whilst any harm to a designated asset is 'weighted harm', it is important for the decision maker to assess the extent, nature or degree of harm in order to undertake a balancing exercise;
- In either case, if a proposal would result in harm to the significance of a designated heritage asset, great weight should be given to the asset's conservation (NPPF paragraph 199), meaning the avoidance of harm and the delivery of enhancement where appropriate. Notwithstanding the 'great weight' provision, it would be unreasonable for an impact that is minor in nature or limited to lead to a refusal of permission. What matters, then, is the nature and extent of any harmful impact. Benefits to heritage assets likewise attract great weight in the planning balance;
- Any harm to the significance of a designated heritage asset should require 'clear and convincing justification', as per NPPF paragraph 200. A clear and convincing justification does not create a freestanding test requiring the demonstration of less damaging alternatives. To the extent that there is a test it is to be found in NPPF paragraphs 201 (in the case of substantial harm) and 202 (in the case of less than substantial harm); and

- In either case, and particularly looking at less than substantial harm, the clear and convincing justification the Framework requires is thus made out through no more than the countervailing public benefits delivered by a proposal. Public benefits can include heritage benefits, and can also include benefits to the way an area appears or functions or land use planning benefits.
- 4.19 The Appellant will present evidence to demonstrate that the appeal proposals will not result in any adverse impact to the ability to appreciate the significance of the main assets at issue.
- 4.20 The Appellant notes that the council has identified less than substantial harm to arise in respect of all designated heritage assets named in the Reason for Refusal.
- 4.21 Other parties in their consultation responses have alleged substantial harm to arise. Without prejudice to its evidence described below, the Appellant's evidence will explain what it understands such a level of harm to entail, and through the SoCG seek to reach a settled view on approach with the Council and others if possible.
- 4.22 The heritage evidence will be presented according to best practice, drawing on Historic England guidance for significance and setting (Historic England's Good Practice Advice Notes 2 and 3: Managing Significance in Decision-Taking, and The Setting of Heritage Assets), and the Thames Landscape Strategy. Guidance in the Planning Practice Guidance will also be presented as the basis for analysis.
- 4.23 In dealing with the allegation of substantial or a high level of less than substantial harm, the Appellant will also make reference to Secretary of State decisions which treat this topic. Relevant case law will be acknowledged either directly in the proofs or through submissions, and the Appellant will seek to agree a bundle of relevant authorities with the LPA and others in due course and where possible.
- 4.24 Thus, and for example, the Appellant 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. Likewise the Appellant will explain its understanding that the requirement for harm to have a clear and convincing justification, see Framework 200, does not create a freestanding test. This evidence will be without prejudice to the Appellant's evidence and its findings on harm which disagree with those of other parties, including the LPA.
- 4.25 The Appellant will likewise seek to agree a summary history and Statement of Significance for each of the assets under consideration, drawing on submitted information (since no criticism has been made of the baseline analysis).
- 4.26 The parties will necessarily provide different setting and impact assessments, which will be matters of evidence.

Hampton Court Palace

- 4.27 Whilst the baseline of information is accepted to be sufficient, the Appellant will present information on the historical evolution of the setting of Hampton Court Palace, and its changing interaction with surrounding land.
- 4.28 In so doing the Appellant will rely on a range of published documents and documentation submitted with the planning application, and which information the Appellant hopes can be agreed as relevant and accurate.
- 4.29 The Appellant will present expert evidence on the historic environment that is consistent with the findings of the Environmental Statement ('ES') (the methodology of which Elmbridge has agreed is suitable and to which no party has objected). That Environmental Statement included a Built Heritage Impact Assessment (part of the Built Heritage, Townscape and Visual Impact Assessment 'BHTVIA'), which found no adverse impact on the palace, the ability to appreciate the significance of the palace or any part of it (including separately designated heritage assets).
- 4.30 The Appellant's evidence will consider (with reference to Historic England's Good Practice Advice Note 3: The Setting of Heritage Assets) whether visibility from any part of the Privy Garden has the potential to cause harm by means of distraction through visual character. The Appellant will frame its evidence with reference to the position taken by Historic England, which identifies a degree of less than substantial harm (not sufficient to generate an objection) as a consequence of potential visibility.
- 4.31 The Appellant will consider the nature and extent of any harm on that basis.
- 4.32 Notwithstanding that position, the Appellant will explain that the benefits to the ability to appreciate the Palace from the design of the proposals, specifically from the creation of new public realm, would outweigh any less than substantial harm, which is the level suggested by Historic England. This will be on alternative bases, as outlined by the Court of Appeal in *Bramshill* [*Bramshill v SSHCLG* [2021] EWCA Civ 320], which the Appellant considers is a useful judgment drawing together the findings of earlier judgments, including in the Court of Appeal, on this point.
- 4.33 The Appellant acknowledges that between this Statement of Case and the preparation and delivery of evidence along with submissions, that there may be other judgments which clarify or supersede the accepted authorities as they stand at the time of writing. The Appellant will seek to agree any ones of particular relevance to the facts of this case through its SoCG with the Council.
- 4.34 The Appellant will also consider whether, on the alternative position - that visibility does not equate to harm - any of the physical characteristics of the proposal would undermine an appreciation of the significance of the palace or its registered park and gardens.

- 4.35 On either basis, the Appellant will again follow Historic England's position and identify significant improvement to the setting of the palace and the approach experience as a consequence of the appeal proposal.
- 4.36 The Appellant will present evidence specifically addressing the detailed submission against the proposals made by Dr Sarah Rutherford, alleging unacceptable harm to the Palace. Likewise the Appellant will frame its evidence with reference to the Council's SoC and that of any potential Rule 6 (6) Party. The Appellant assumes that the Council's evidence will be consistent with the analysis in the Committee Report, which the Appellant therefore takes as a starting place.
- 4.37 The Appellant does not accept that the scheme would cause any less than substantial harm to designated assets but will address the position if the Inspector identifies some.

Other Assets

- 4.38 The Appellant will seek to narrow the assets at issue with the LPA and any other parties who may take part in the appeal through the SoCG. However, and recognising that the decision maker has a statutory duty in relation to setting – section 66 (1) of the PLBCAA 1990 – will also consider the following listed buildings, and including other designated assets.

Hampton Court Bridge

- 4.39 The Appellant will provide evidence to demonstrate that the appeal proposal does not cause harm to the significance of the bridge or an ability to appreciate its significance, but will instead enhance a component of its setting by improving the visual quality and function of the site.

Ember Bridge

- 4.40 The Appellant will provide evidence to demonstrate that the appeal proposal does not cause harm to the significance of the bridge or an ability to appreciate its significance, as a consequence of distance, orientation, and screening.

East Molesey CA

- 4.41 The Appellant will provide evidence to demonstrate that overall, the appeal proposals enhance the character and appearance of the CA by improving the visual coherence and urban design quality of the site, creating an accessible and attractive green space that addresses the river bank, and enhancing the experience of arrival at Hampton Court Station.
- 4.42 In reaching that conclusion of net benefit the Appellant accepts a degree of harm to the character and appearance of the CA arising from the visibility of the roof of one of the new buildings above the gabled

frontage of the station in views from the west. The Appellant will provide evidence to demonstrate that the impact is limited and outweighed by the enhancements to the CA.

- 4.43 The Appellant recognises that whilst there is no conservation-area setting provision in statute (the PLBCAA 1990 cited above), there is NPPF policy which seeks to extend that provision to conservation areas and RPGs through policy and guidance.

Hampton Court CA

- 4.44 The Appellant will provide evidence to demonstrate that the proposals do not affect the character or appearance of the CA but improve a component in its wider setting.

Hampton Court Station

- 4.45 The Appellant will provide evidence to demonstrate that there will likewise be an enhancement to the ability to appreciate the interest of the locally listed station, accepting a degree of harm to its setting from the visibility of part of the proposals in views of it from the west. The extent and nature of the harm is limited and outweighed by the creation of a high quality setting for the building.

The River Thames

- 4.46 The Appellant acknowledges that the River Thames falls within two CAs. However, whilst in the Appellant's view the river is a very important element of landscape character which also makes a significant contribution to the appreciation of the palace, the Thames is not a designated asset or, in the Appellant's view, even a non-designated asset. Rather, it is an attribute of landscape character, and so properly considered in the design part of the evidence, treating character and appearance.

- 4.47 The Appellant does, however, acknowledge that all of the assets, excepting possibly the station, either draw some significance from their relationship/proximity to the river and/or that the river contributes to an appreciation of significance. The proposals do not, the Appellant's evidence will demonstrate, harm that contribution in any event.

- 4.48 It is the Appellant's position in any event that there is no harm to any designated or non-designated asset through change to its relationship with the river, or to the character or appearance of the river itself as a landscape element.

APPEAL A: THE THIRD AND FOURTH REASONS FOR REFUSAL

- 4.49 The third and fourth reasons for refusal are solely concerned with the fact that a S106 Agreement has not been entered into, committing to the affordable housing and highway improvements. It is agreed that with a binding S106 Agreement the third and fourth reasons for refusal would be overcome.

ONGOING DISCUSSIONS

4.50 There are no ongoing discussions to resolve the first and second reasons for refusal. Extensive discussions have already been held with the Council's Officers at the pre-submission stage, with the design of the proposal evolving to respond to the comments made at that time, such that the height, bulk, massing and design were considered to be acceptable at the time of the submission. Discussions continued post submission. When concerns were raised just prior to the committee, a further discussion was held between the main parties and it was clear that there was no prospect of resolving matters.

APPEAL B: THE TWO REASONS FOR REFUSAL FOR THE TEMPORARY CAR PARKING

4.51 In the event that the main redevelopment proposal ref: 2018/3810 in Appeal A is allowed, the two reasons for refusal fall away.

4.52 Any impacts in respect of the temporary station car park will be temporary in nature and outweighed by the benefits of the reduced construction period. At the end of the period (up to two years), the western strip of Cigarette Island subject to the proposal, will be restored to its current position.

CONCLUSION ON THE KEY MATTERS

4.53 Having regard to the presumption in favour of sustainable development, set out within the NPPF, the Appellant's case is that paragraph 11d applies. Footnote 8 makes it clear that the most important development plan policies are considered to be out of date where there is not a five year supply of deliverable housing sites, with the appropriate buffer. As such permission should be granted, as there are not clear reasons for refusing the proposed development, nor adverse impacts that demonstrably outweigh the benefits. The presumption is not dis-applied by any heritage matter as the application of paragraph 202 would show a positive balance (even if harm is identified, and contrary to the Appellant's position). Thus, there is no policy in the Framework which would resist the development.

Section 5: Other Matters Raised by Interested Parties

- 5.1 In the 2.5 years following submission, the Council is reporting that in respect of the main redevelopment proposal in Appeal A; 1,818 letters of objection were lodged from 1,276 properties (with multiple representations by some individuals/households). 151 letters of support from 129 different properties were also lodged.
- 5.2 A group of objectors coalescing under the banner of 'Hampton Court Rescue Campaign', an interest group originally set up to object to the previous comprehensive application (now the extant permission 2018/1600), have challenged and questioned almost every aspect of the proposal throughout and submitted a large number of objections, questions and other comments. It is anticipated that they will want an opportunity to be heard at the appeal and are anticipated to take an active role. This fact and the large number of objections provide part of the justification as to why a public inquiry is considered to be appropriate.
- 5.3 In addition to the reasons for refusal, interested parties are likely to continue to raise a wide range of other matters, including, but not limited to:
- Car parking
 - Coach parking
 - Servicing
 - The offsite highway works
 - Viability
 - The South Western Railways Act 2013
 - The buffer along the River Ember
 - A variety of flood related matters
 - Air quality
 - The design of the buildings, the access and the open space
 - Biodiversity
 - A range of issues relating to the temporary car parking proposal.
- 5.4 During the same period, the Council has recorded 157 objections having been lodged to the temporary car parking application, with multiple objections from some households. The matters raised include the use of open space for car parking, harm to green space and its ecology, traffic impacts, impacts on views, whether the land would be reinstated, risk of harm to trees and possible damage to an air raid shelter. With the proposal directly related to the main redevelopment in Appeal A, it is not surprising that many of the objections lodged are also (and in some cases – solely) related to the mixed-use development itself, rather than to the temporary parking.
- 5.5 The Appellant will seek to address each of these objections lodged in respect of both appeals, for the benefit of the Inspector, by cross referring to the technical reports and other information that has been submitted

to Elmbridge Borough Council. Those elements most at risk of change, such as the viability, will be updated closer to the inquiry, to provide the Inspector with the latest information possible.

Section 6: Inquiry Procedures

- 6.1 The Appellant requests that the appeals being lodged in respect of applications 2018/3810 and 2018/3803 be conjoined as they are directly related to one another. It is agreed between the main parties, that planning permission for the temporary station car parking (Appeal B) is only required if the main mixed use redevelopment proposal in Appeal A is permitted.
- 6.2 Section 4 identifies that in respect of Appeal A, the differences between the main parties are concerned with the effect that the proposed height, bulk, mass and design will have on the character of the local area and on the wider heritage assets. The Appellant considers these matters need to be cross examined to enable the Inspector to come to a view on the different opinions being expressed on both townscape and heritage matters.
- 6.3 Planning evidence will also need to be given to set out the background of the proposal, assess it against relevant planning policy and provide the planning balance that needs to be weighed up. The Appellant considers that this element of the evidence should also be given verbally to enable questions to be asked and answered.
- 6.4 In respect of the raft of other matters that will be raised by interested parties, these could be dealt with by way of written representation, should those interested parties be agreeable to that.
- 6.5 There should not be questions arising in respect of the housing land supply or affordable housing, with both the main parties in agreement. However, if needed, both matters could be dealt with via roundtable discussions or written representations. The Appellant will continue to work with the Council to reduce the issues between the main parties on these and other matters. As such, the draft Statement of Common Ground can be expanded accordingly.
- 6.6 In respect of Appeal B, the temporary loss of the public open space and the alleged harm to heritage assets would be outweighed by public benefit in the event that Appeal A (ref: 2018/3810) is allowed. Therefore the amount of time required at the inquiry should be minimal if the two appeals are conjoined. The background to the temporary proposal and the merits of it, can be set out in writing within the planning proof of evidence.
- 6.7 At this stage, the Appellant envisages calling up to four witnesses, but this will in part be dependent upon the role interested parties play at the inquiry.
- 6.8 The Appellant will refer to the documents below:
- The Application Documents, updated where required.
 - The consultation responses.
 - The Officer's reports (draft and final).
 - The National Planning Policy Framework.

- The National Planning Practice Guidance.
- The Development Plan for Elmbridge comprising the Core Strategy 2011 and the Development Management Plan 2015.
- The site specific Planning Brief 1999.
- The design and character SPD 2012.
- The East Molesey Town Conservation Area Appraisal and Management Proposals 2012.
- The parking SPD 2012.
- Development Contributions SPD 2020.
- Other background Council documents.
- The Thames Landscape Strategy and the Landscape Character Reach 02 Hampton Court.
- Historic England Good Practice Advice in Planning Note, No. 3 – The Setting of Heritage Assets
- Historic England Good Practice Advice Note, No. 2, 'Managing Significance in Decision-Taking in the Historic Environment'
- Relevant statutory list entries
- Appeal decisions - subject to discussions with the Local Planning Authority and others, these are likely to include:
 - Inspector's Report, Units 1&2 Hampton Court Trading Estate, Summer Road, Thames Ditton KT7
ORG: APP/K3605/W/20/3257401
 - Bedford BC v SSCLG [2013] EWHC 2847 (Admin)
 - City and Country Bramshill Limited v SSCLG [2021] EWCA CW 320
 - SoS Decision and Inspector's Report, Citroen Site: APP/G6100/V/19/3226914
 - SoS Decision and Inspector's Report, 40 and 40A High Street Brentford: APP/F5540/V/19/3226900
- The extant permission

Section 7: Summary of Conclusions

- 7.1 Of the four reasons for refusal for the main redevelopment proposal in Appeal A, it is common ground between the two main parties that reasons 3 and 4 would be overcome with a binding S106 Agreement. The transport related improvements and the affordable housing always formed part of the Appellant's proposals and a S106 Agreement will be entered into to commit to them.
- 7.2 In respect of the first reason for refusal in Appeal A, it is the Appellant's case that the proposed development would cause no harm to the character or appearance of the local area.
- 7.3 In terms of the second reason for refusal in Appeal A, the Appellant's case is that there would be no adverse impact on the Palace or the ability to appreciate the significance of the Palace or any part of it. It is also the Appellant's case that any visibility from the Privy Garden will not cause harm by means of distraction through visual character. The potential visibility of the development from the Privy Garden is considered by Historic England to cause a degree of less than substantial harm, but not sufficient to generate an objection. Should the Inspector come to the conclusion that there is a low level of harm, of the kind suggested by Historic England, then the Appellant considers that it would be outweighed by the benefits.
- 7.4 In respect of other heritage assets, the Appellant's case is that the proposal does not cause harm to the significance of either Hampton Court Bridge or Ember Bridge, or an ability to appreciate their significance. In respect of East Molesey Conservation Area and the station building, the appeal proposal enhances its character and appearance overall, and the setting of the station, by improving the visual coherence and urban design quality of the site, creating an accessible and attractive green space that addresses the riverbank and enhancing the arrival experience at Hampton Court Station.
- 7.5 The Council accepts that it does not have a five year housing land supply. As such, the most important development plan policies are considered to be out of date under the NPPF paragraph 11d, footnote 8. With it being the Appellant's case that there would not be an adverse impact on Hampton Court Palace, the Privy Garden, Hampton Court Bridge and Ember Bridge, and an enhancement overall to the Conservation Area and Station Building, it is the Appellant's case that the "tilted balance" applies under paragraph 11d of the NPPF and planning permission should be granted. The presumption is not dis-applied by any heritage matter as the application of paragraph 202 would show a positive balance (even if harm is identified, and contrary to the Appellant's position). Thus, there is no policy in the Framework which would resist the development.
- 7.6 The Appellant considers that the improvement to the setting of the Palace and the approach experience as a consequence of the appeal proposal, offer benefits and the ability to appreciate the Palace.
- 7.7 In addition to the heritage benefits, there are also a range of significant other benefits offered by the proposal, which should also be weighed into the planning balance. These include the following, which are agreed by the Council:

1 The economic benefits that would arise from the development include:

- The creation of job opportunities - through the provision of retail, hotel and café uses - for local residents to work locally;
- The strengthening of the economic base of East Molesey and delivery of qualitative improvements to the retail offer through the small supermarket and café, together with the hotel;
- The generation through construction of an estimated 297 years of temporary construction employment, which equates to 29 full time equivalent construction jobs;
- The provision, at operational stage of some 47 – 127 net additional jobs, depending upon the end occupiers of the retail, café and hotel space;
- The generation of additional expenditure both from those working within the commercial space and from those living in the new homes, with a net additional expenditure spend within the Borough of around £1.7 million;
- The generation of additional Business Rates and Council Tax revenue on an annual basis; and
- The contribution of over £2.1m to the Borough CIL, to fund a wide range of infrastructure improvements, with additional funds for improvements to Cigarette Island Park and other matters also secured through a S106.

2 Other public benefits that would arise from the proposal include:

- The delivery of 97 homes in a highly accessible location, within a defined centre. With the Council unable to demonstrate a five year housing supply, it is agreed that the provision of housing on the site should be given significant weight as a planning benefit;
- The affordable housing offered, which it is agreed carries significant weight as a planning benefit;
- The release of the previously developed brownfield land (site of the former Jolly and permitted hotel) as an attractive new landscaped public square as one exits the station and on the approach route to Hampton Court Palace;
- The creation of a new, landscaped route linking Cigarette Island Park with Hampton Court Way;
- Reduction in congestion and improved highway safety as a result of the highway works that form part of the proposal and which are entirely funded by it. The proposed works include removing the gyratory, controlling the key junctions and re-landscaping the verges. The offsite highway improvements are agreed by Surrey County Council;
- The contribution of £25,000 towards improvements in Cigarette Island Park; and
- The provision of secure, well-lit car parking spaces for station users that will have CCTV, and the introduction of both dedicated disabled bays and electric charging facilities.

- 7.8 The significant benefits offered by the development will not be outweighed by any significant and demonstrable harm. As such, the Appellant will be requesting that Appeal A be allowed, subject to appropriate conditions and a S106 Agreement.
- 7.9 In respect of Appeal B for the temporary replacement car parking for the station during construction of Appeal A, it is agreed by both the main parties that there is only a need for the temporary spaces if planning permission is granted for the main redevelopment. The Appellant will describe the nature of the proposed construction (with interlocking mats made of recycled plastic being placed over the existing ground to provide the temporary car parking spaces, rather than concrete or tarmac being laid), how it would enable the construction period for the main proposal to be shortened and the local support that led to this application being submitted.
- 7.10 Any impacts in respect of the temporary spaces will be temporary in nature and will be outweighed by the benefits of a reduced construction period. At the end of the period (up to two years), the land will be restored to its current condition. As such, the Appellant will also be requesting that this appeal be allowed, subject to appropriate conditions and a S106 Agreement.



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