



HAMPTON COURT RESCUE CAMPAIGN WRITTEN SUBMISSION ON APPEALS LISTED BELOW TO BE DECIDED BY PUBLIC INQUIRY STARTING ON 14TH JUNE 2022

Application Ref: 2018/3810

Appeal Ref: APP/K3605/W/22/3291461

Site: Former Jolly Boatman and Land adjoining Hampton Court Station

Development: Development to provide 97 residential units, a hotel (84 bedrooms) and retail units (within use classes A1, A2 and/or A3) together with access, station interchange, car parking, servicing, new public realm, landscaping and other associated works following demolition of some existing buildings and structures.

Application Ref: 2018/3803

Appeal Ref: APP/K3605/W/22/3290981

Site: Western part of Cigarette Island, East of Jolly Boatman and Hampton Court Station site

Development: Temporary car parking and associated works for Hampton Court Station to provide 110 spaces, for a period not exceeding 2 years from date of first use, and subsequent reinstatement.

20th MARCH 2022



A computer-generated model from the appellants Daylighting and Sunlight Study

SUMMARY

HCRC asks that the Inspector considers the following:-

1. Our objection is to the principle of any development on the appeal sites for the following reasons:-
 - a. The sites have an important function and character as part of the whole island and its setting with the Palace, which is physically and visually divorced from the urban settlement of East Molesey and Thames Ditton;
 - b. The sites are not designated as Brownfield Land; they do not fit the definition; the criteria for including these sites on the Brownfield Register must have regard to the effect on the natural environment and built heritage which in this case makes them ineligible;
 - c. The adopted Local Plan does not designate these sites for development; the existing policies are sufficient to resist the proposal; the emerging matter of resolving housing need must take into consideration the local housing need and environmental circumstances; the Draft new Local Plan should not be given weight as the consultation process towards adoption has not commenced and will not conclude until Summer 2023;
 - d. The 1999 Planning Brief is wholly outdated, except in its reference to the sensitivity of its setting with the Palace and the requirements of the 1913 South Western Railway Act (1913 SWRA), and has failed to produce a comprehensive development of these sites, and simply resulted in 40 years of planning blight;
 - e. The 2008/1600 proposal is not financially or practically viable and will not be implemented; and the viability of the appeal proposal is not proven;
 - f. It is of great weight that the significance of the locally listed station is seriously harmed by being engulfed in built forms that will dominate it, plus the proposal does not include a programme of restoration and reuse of station building as required in the 1999 Brief;
 - g. The long-term community vision to extend Cigarette Island Park to include the Jolly Boatman and the eastern station car park has gained wide support, is in development, and is entirely achievable with the co-operation of Network Rail; this would ensure the long-term protection of the Palace setting and of the station as well as the conservation area
2. Our concerns regarding the impact of the proposal are:-
 - a. The height of predominately 4 and 5 storeys will breach the 1913 South Western Railway Act put in place to preserve the setting of the Palace;
 - b. The urban design elements of massing, layout, footprint, building lines, and overshadowing will create a scale of urban forms that bear no relationship to the surrounding urban grain which is part of a sensitive historic environment;
 - c. The excessively large outline and mass of the proposal will be dominant in the preserved landscaped views out of the Palace grounds and buildings as well as in the key historic approaches by road, river and rail; and will result in a loss of views towards the Palace from southern aspects; both causing an unacceptable level of harm to the setting of the Palace. The numerous heritage assets within the Palace complex and its landscaped grounds are of the highest significance and the cumulative damage to them by this proposal is unacceptable to the community and nation;
 - d. The level of harm to the heritage assets south of the river is unacceptable including the dominating and intrusive relationship to the station building, the two Lutyens bridges, Cigarette Island Park, and the eastern parts of the East Molesey (Kent Town) Conservation Area;
 - e. We have carefully weighed the effects on the historic environment, taking into account previous assessments and decisions in other comparable cases, and conclude that the level of harm to heritage assets falls between substantial and less than substantial, and it falls at least the upper end of less than substantial;
3. Excessive weight has been given to the scale of public benefits derived from the riverside open space and the off-site highway works.
4. The Planning Balance case should not result in the demonstrated serious level of harm to heritage assets being outweighed by the limited public benefits, neither should the balance be driven by questionable housing need which could be fulfilled elsewhere in the borough to better effect.
5. The temporary car parking on Cigarette Island Park will cause permanent harm to locally significant heritage assets within the park, and is unacceptably damaging even if permission is granted under 2018/3810.
6. There are four matters of procedural concern that may compromise the Inspectors decision making remit, and the ability to implement an upheld appeal in regard to:- the need for Listed Building Consent; the exclusion of the off-site highway proposals from the application boundary; and subsequent applications necessary under the South Western Railway Act 1913 and the 1938 Covenant on Cigarette Island Park.
7. The Inspector is duly requested to dismiss both of these appeals

1. INTRODUCTION & SCOPE

1.1 The Author

- I am Karen Liddell, BA(Hons) MRTPI (rtd) & IHBC (rtd)
- I am a retired town planner and heritage specialist with 30years experience as a senior conservation & design manager in 3 planning authorities, where I dealt with many complex development sites containing historic buildings and areas.
- I am representing Hampton Court Rescue Campaign (HCRC) as a volunteer having been an active member of their committee for 15 years;
- I am a local resident living within a 7minute walk of the appeal site, and have known the site for 35 years;
- I am active in community planning matters as a member of the East Molesey Conservation Area Advisory Committee (CAAC); a participant in the Elmbridge Users Group; and a committee member of Summer Road Action Group;
- The above planning interests and activities, together with my professional status giving access to planning and heritage media, ensure that I maintain an informal level of continuing professional development;
- I commissioned Piotr Hennig to produce visualisations of the appellants Miller Hare wireline views, and other visual representation;
- I made a contribution to the Dr Sarah Rutherford Historic Environment Impact Assessment (HEIA)
- I am the co-author of the Cigarette Island Local Listing Nomination submitted to Surrey C.C. in Nov 2021
- I have read all application and appeal documents on heritage, urban design and related planning issues.

1.2 Scope

This representation will;-

- identify documents that are relevant but were not available, or were not addressed at the application stage;
- support and amplify the Council's Reasons for Refusal Nos. 1 & 2;
- focus on matters that are in dispute between the appellant and Council;
- identify matters that the Council did not give sufficient weight to, or has given an inaccurate representation on;
- bring together the numerous HCRC objections and give an overview of the issues of concerns;
- focus on heritage and urban design issues, and other planning related matters;
- I understand my colleague from HCRC Andrew Roberts has recently had Rule 6 party status agreed and will cover primarily non heritage and design matters although inevitably there will some aspects of the proposal and material consideration that overlap.

1.3 Documents and references

- I will reference the application and appeal documents, including representation by HCRC and others by title or an abbreviation, and date stated in the online case, with an EBC online link only, and not provide as an appendix;
- I was the author of the representations forming an objection to the proposal listed and linked in Appendices 1 & 12, and prepared the representation for the East Molesey Conservation Area Advisory Committee (CAAC) in the link at Appendix 1j);
- My appendices contain documents that I will reference most frequently only;
- The Inspector should have regard to the Planning Committee debate and minutes of 19 July 2021 which are not available on the Elmbridge online case or on the Committee Webcast site. The minutes show that the vote was 21 votes (with 2 abstentions) for the amendments proposed by the Portfolio for Planning, which were based on my drafting and briefing. Matters were discussed that are not in the officer's report. See Appendix 2 with highlights. The webcast is available from this community link, please listen at https://summer-road-action-group.co.uk/wp-content/uploads/2021/07/elmbridge13jul21_85152_en_GB.mp4
- Hampton Court Rescue Campaign (HCRC) has a website [Hampton Court Rescue Campaign](#) and a database of 1700+ member, a Facebook Group (1.1K members) ([7\) Hampton Court Rescue Campaign | Facebook](#)) and a Twitter feed (995 followers) [Hampton Court Rescue \(@HCRCMary\) / Twitter](#)
- A HCRC member, Piotr Hennig has produced 12 videos to inform the public on the proposal [Hampton Court - YouTube](#)
- Piotr Hennig voluntarily produced at least eight visualisations using the appellant's HTVIA images contained in the Dr Sarah Rutherford HIA & HCRC submissions, plus two aerial visualisations using the appellant's axonometric block montages which may not be found in representations so are reproduced at Appendix 3. It is recognised that these representations may not be verified but they use the appellants base images and at the

time of the written representations deadline no alternative representations that might become available for the Inquiry were available.

1.4 Related Procedural Matters

Emboldened issues at paras. 3.1.5, 3.7.2, 3.7.4 and 4.6 raise four matters of procedure relating the need for additional consents both within planning regulations and those within other legal regimes administered we believe by the Department of Culture Media and Sport.

2. OBJECTION TO PRINCIPLE OF ANY DEVELOPMENT ON THE SITE

2.1 Misunderstanding of the character and function of area

- 2.1 1 Neither the appellant in the various application documents, nor the Council in the Planning Committee report of 9/7/21 have demonstrated an appropriate understanding of the historical development and function of the application site in its surroundings which has led to misguided judgements on the principle of development on this site.
- 2.1 2 Please see the **Local Listing Nomination** document (in Appendix 4) which was submitted to Surrey County Council Local Listing project on 14th November 2021, see [Local heritage list project - Surrey County Council \(surreycc.gov.uk\)](https://www.surreycc.gov.uk). The Project Officer Charlotte Parker has confirmed receipt and will produce a Draft List for Elmbridge in early summer 2022. A web-capture of the form and nomination map can be provided if needed and an email chain. The application is for the whole of the application site together with all lands bounded by Hampton Court Way, the River Thames south bank and the River Ember north bank, including Cigarette Island Park (CI). Separate nominations are made for the former Coal Store, currently Hampton Court Motors, Hampton Court Way; the Cigarette Island Park (CIP) entrance obelisks, by Sir Edwin Luytens (probably already part of the bridge Grade II listing, included as a safeguard; and the air-raid shelter in CI Park. These four nominations should be treated as non-designated heritage assets until a decision is formally made otherwise as part of the Local Plan Review process some years away.
- 2.1 3 The whole island (see Fig 1 page 4 of Appendix 4) has multiple and integral features in serving visitors to Hampton Court Palace including functions of transport and recreation, and as the backdrop to the Palace setting. These facets are manifestly united and reflected in the purposes, fabric and design of the entire island, and other cultural significances. Thus, the rural foreground setting of the palace has been protected with the intent derived from the 1913 South Wester Railway Act restricting the height of building on the station site, and the 1938 CI Park covenant. The island survives largely intact as developed in the mid-C19 (the station site) and 1930s (park, landing stage and attached bridges) which brought it to the zenith of its design by 1950. It retains the key elements from which the historic character of those phases is derived including its essential island character, detachment from the East Molesey urban environment and strong visual relationship with Hampton Court Palace and its grounds and setting.

2.2 Previously Developed Land/Brownfield Land

- 2.2.1 For the reasons set out in 2.1.3 above, the application site should not be considered for the purpose of this appeal to be Brownfield land, nor should it be included in the Brownfield Land Register at any future date. It is a fact that the sites are not on the current on the Brownfield Land Register held by the Council, see [Elmbridge Borough Council](https://www.elmbridgeboroughcouncil.gov.uk). We believe these sites do not fall within the definition of Brownfield Land which in the NPPF is defined as Previously Developed Land, see [Annex 2: Glossary - National Planning Policy Framework - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426273/Annex_2_-_Glossary_-_National_Planning_Policy_Framework_-_Guidance_-_GOV.UK.pdf).
- 2.2.2 The Jolly Boatman part of the site had only approximately 40% site coverage with a single storey structure from the early 1950's to the mid 1980's when it was destroyed by fire. The site has been open land for nearing 40 years, and the 35+ years of low site coverage are a minor element of its historic function. The station and its car parks and subsidiary structures are all operational land as they have been since 1849. The two car park sites contain structures that cover approximately 3-5% of the land only, these being the Hampton Court Motors, the former Coal Store single storey building, and the office/store single storey structure attached to the northern screen wall. The station sites are not previously developed land that they are being used and are not covered by structures. The definition states "*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed).*" and "*This excludes:.....; land in built-up areas such as land that was previously developed but where the remains of the permanent structure have blended into the landscape.*" This suggests to us that there is an intention that previous structures should only be replaced at a similar site

coverage, and that the right to replace a structure can disappear over time if they have been demolished for some years, the length of which is undefined. The first two images below show the diminutive nature of the demolished structure known as The Jolly Boatman for a period of only 35 years. We ask the Inspector to look at the third image of the site in 2012 and agree that the site had "*blended into the landscape*", and that the erection of the current hoarding shortly after has not created a right to replace the previous structure, or use the site as a primary access for a major development.

Jolly Boatman 1960's, note the palace roofline rising above the trees



Jolly Boatman Summer 2012



- 2.2.3 Notwithstanding our conviction that these sites do not fall within the definition of previously developed land, if the Council is proposing to include these sites in the Brownfield Land Register it must meet certain criteria set out in the Brownfield Land Register Regulations 2017, see [The Town and Country Planning \(Brownfield Land Register\) Regulations 2017 \(legislation.gov.uk\)](#). The criteria stem from the guidance and policies in the NPPF to protect the built, natural and historic environment. There is no evidence that a Strategic Environmental Assessment has been made if there is any intention to include these sites in the Brownfield Land register. The criteria at clause 4.(1) (b) [The Town and Country Planning \(Brownfield Land Register\) Regulations 2017 \(legislation.gov.uk\)](#) requires due regard to be given to whether *“the land is suitable for residential development”* which is defined as being *“appropriate for residential development, having regards to – (i) any adverse impact on (aa) the natural environment and (bb) the local built environment including in particular on heritage assets”*. We maintain in our previous submissions and this evidence, and that of The Garden Trust, Historic Royal Palaces, the Rule 6 Party Keith Garner, and the Council agree that there are adverse impacts of this residential development on both the natural environment, being the River Thames and adjacent park and riverside, and the built environment, specifically numerous heritage assets of the highest significance. Therefore, this site does not meet those criteria.
- 2.2.4 The nearby land and buildings at Units 1 & 2 Hampton Court Estate, Summer Road, Thames Ditton is by comparison definitively Brownfield Land, although its use is not redundant as much of the floorspace is in use. The redevelopment proposal granted on appeal in September 2021 (2019/2005), quoted by the appellant, should not be considered to set a precedent. The existing site coverage is high and its use continuous by comparison, and the character and relationship to surrounding heritage assets is vastly different. The approved proposal is under 50 feet high to ensure it complies with the 1913 South Western Railway Act (1913 SWRA). The local community made significant objections to this proposal but the HCRC did not submit an objection.

2.3 Local Plan Issues

- 2.3.1 The Elmbridge adopted Local Plan Core Strategy and supporting documents do not designate any part of this site as a development or opportunities site, nor is the site identified for residential use. Neither does the local plan identify where hotel accommodation is needed in the Borough. The Local Plan policies set out in the Reasons for Refusal 1 & 2 take precedence and provide sufficient policy grounds to protect the built, natural and historic environment. We will suggest below that the historic environment assets in the vicinity of the site are of such high significance that the historic environment policies should be given greatest weight.
- 2.3.2 The East Molesey (Kent Town) Conservation Area Appraisal and Management Plan (CAMP) does not in our opinion include a full and proper assessment of the eastern part of the area, and the policies and proposals within were curtailed by the approval and challenge of the permission in 2008/1600. The Local Listing Nomination should be used as an in-depth appraisal of this part of the conservation area to supersede that part of the CAMP.
- 2.3.3 The Core Strategy CS1 suggests the site is in the built-up area of East Molesey. For the reasons set out in 2.1 & 2.2.1 above, it is a fact that the site is not part of the urban settlement of East Molesey and never has been. It is part of an island site, described in the Local List Nomination, that was a riverine island until the Rover Mole was diverted and now the Hampton Court Way fulfils this strong function instead. The station does not exist to serve an urban residential area, its primary function is to serve tourism at Hampton Court Palace. The residential communities to the west have grown up since the arrival of the station and have remained distant since 1849, some being up to 3 miles away, and thus a car park is needed to make this station function to serve the community and remain a viable service. The urban settlements of the Molesey's are segregated from the settlement of Thames Ditton by the railway and the open land around it, and should remain segregated to safeguard the identity of the two settlements and to safeguard the foreground setting of the Palace as will be explored below.
- 2.3.4 Whilst the NPPF may give great weight to the national housing need, and the Council can only demonstrate under a 4 year supply of housing land supply, we ask that the local housing requirements be taken into consideration. The borough wide need is presented as a need for smaller units but this is not broken down to districts or wards. It must be a fact that the northern part of the borough and the Molesey's and Thames Ditton have a good balance of small units and that further provision should not be used to offset the deficit of small units in the south of the borough. The Council has not adopted a policy of intensification of the north of the borough to protect the green belt in the south. Housing need should also be established on the basis of the quality of the units that can be provided on a site. We maintain that this site will provide units that are not fit for 21st century living as they will suffer from:- excessive noise and emissions from both the railway service and the extremely busy highway within an Air Quality Management Area (AQMA) resulting in sealed units using mechanical ventilation only; plus a basement that is designed to flood putting both owners vehicles at risk and the potential to hinder evacuation; and a likelihood of high service charges and insurance costs.

2.4 Planning Brief 1999

- 2.4.1 The Committee report of July 2021 states that the 1999 Planning Brief is of moderate weight even though many parts have been superseded by more recently adopted policy. This Planning Brief and its predecessors from 1986 have failed to achieve a viable implemented development of the site, and have merely resulted in nearly 40 years of planning blight to both parts of the site, and the surrounding park and riverside. No party can believe this is successful master planning. The 1999 Planning Brief is outdated and should have been withdrawn.
- 2.4.2 The current Officers have no regard to the weight of objections at the time of the adoption of the Brief at Town Planning Committee 2nd November 1999. The Committee Report is attached in Appendix 5 and attention is drawn to the objections from English Heritage to the principle of any development, and to those of Hampton Court Palace, The Garden History Society (now The Gardens Trust an objector) and Molesey CAAC, all listed at pages 4-7. Additionally, the group of bodies presented an alternative master planning approach to the site to achieve a landscape connected to Cigarette Island Park and preserving the setting of Hampton Court Palace at paras 13-16. English Heritage continued to object to the principle of development of the site until they were pressurised and persuaded by the introduction of an architect of national reputation in the 2008/1600 application. The Council has historically shown no regard to the objectives of Hampton Court Palace to preserve its setting, and has offered tokenism in its adoption of the Thames Landscape Strategy containing an assessment of the Hampton Court Reach 02, included at Appendix 6, which also references the Palace's 2004 Views Management Plan included at Appendix 7. The Council's attitude to Hampton Court Palace is misguided and disrespectful.
- 2.4.3 The Community including HCRC and past and present Councillors have asked for the planning brief to be reviewed for at least a decade, since the approval of 2008/1600 and following the withdrawal of site construction which suggested that the presentation of an alternative scheme would become inevitable. Officers have never presented a report to the appropriate committee thus denying the elected Members the opportunity to review or withdraw the Brief. There is plenty of email evidence of HCRC's requests to withdraw the brief should the Inspector request to see it. The current planning officers have agreed informally that the brief is outdated and sought a legal opinion on withdrawing the brief prior to determining this application but were advised against it. The Planning Brief is wholly outdated except in its reference to the sensitivity the setting of the palace and the requirements of the 1913 South Western Railway Act (1913 SWRA), as set out in paras. 6.2 & 6.3. A comprehensive development of these sites has not been achieved and will not be achieved, as it is entirely inappropriate for this site. We ask the Inspector to give minimum weight to the 1999 Planning Brief.

2.5 Comparison to 2008/1600 & Financial Viability

- 2.5.1 HCRC agrees with the opinion of Andrew Parkinson of Landmark Chamber at paras. 28-32 (copy attached Appendix 8) that 2008/1600 should not be a material consideration. HCRC provided the Network Rail documented evidence, referenced in this opinion, which put it in the public domain that 2008/1600 "*did not proceed at the time because it was not financially viable*" (NR 18/11/2016). The appellants have not denied the need to amend the application to ensure it is economically viable. We know the 2008 scheme was not viable because of the high cost of constructing the two-storey underground car park, which tunnelled under the railway line and needed a very long entrance ramp. (documentary evidence is available). Additionally, the appellants could not implement the care home element as the Star & Garter withdrew and built their new facility in Surbiton. Hence a hotel element has been included which the community belief would remain unoccupied and converted to further poor quality residential units.
- 2.5.2 Whilst there may be an extant planning permission there is no prospect of it being implemented and thus it cannot be a fall-back option. Whilst the theory is valid that the current proposal must be considered on its merits, without comparison to the 2008 scheme, the Council must have a duty to ensure the continuation of the planning blight it has created ceases and that a viable scheme only is approved.
- 2.5.3 The Financial Viability documents submitted with the application are a requirement of the affordable housing policy to justify a reduced level of provision. HCRC has submitted several objections to the unbelievable detail and conclusions in these submissions. The last of these objections by my colleague Andrew Roberts, a Rule 6 Party, is linked in Appendix 1.m. where we note the appellant's own expert is stating in 2021 that the original 2018 predictions for a £1.1million profit, to be shared between the two applicants, will have diminished due to increases in costs and no increase in the value of the completed assets. The credibility of the Isle of Man off-shore developer is a cause for concern, and one that the current government is in the process of legislating for to achieve a register of declarations of land and property owned by off-shore companies. See

Draft Registration of Overseas Entities Bill [House of Lords - Draft Registration of Overseas Entities Bill - Joint Committee on the Draft Registration of Overseas Entities Bill \(parliament.uk\)](#). It is quite possible that if planning permission is granted on appeal, it could not be completed if a Local Authority does not have an ability to enter a Section 106 Agreement with an off-shore registered company. Similarly, it is looking probable that Surrey CC would not be entitled to enter an agreement under the Highways Act to seek the implementation of the costly highway improvement works. Local Authorities are already under protocols to protect against money laundering. We ask why does the appellant persist in calling itself Alexpo Ltd, when they have no interest or relationship with this company, rather than the registered name of the landowner which is Alexpo I.O.M Ltd? There must be transparency and credibility in any scheme approved to ensure implementation is achievable and will not promote the continuation of the planning blight suffered by the north Elmbridge community. The strong uncertainty of implementation is amongst the reasons we object to the principle of the development of this site.

2.6 Station Building

- 2.6.1 The refurbishment of the station is a requirement of the Planning Brief at paras 9.4, 10.2 & 10.3, and was a significant element of 2008/1600 as covered and approved under Condition 14. The station has been underused and poorly maintained for decades, the two upper floors have not been used and from the accounts of others do not have safe staircase access. The appeal application contains no proposals to restore the station and reuse the floorspace, neither does it address the associated service needs for the ticket office, toilets or indoor waiting facilities. The joint applicant Network Rail does not appear to want to commit to a restoration programme, and suggests a restoration can be achieved using permitted development rights. This has not been achieved over the past decades and will not happen unless it is part of an approved development. We question how any works to the station would relate to the proposed scheme if decision makers are not simultaneously given details of these works
- 2.6.2 The station is a locally listed building and is part of a wider landscape that is being considered for local listing as set out in the Nomination document at Appendix 4, see para 3.3 and 4.1-4.5. The station dominated the island site when built in its historicist style and positioned to evoke a lodge to the Palace, its raison d'être, and it still remains to a great degree the only and most important built form on the island, and that position and function should continue. The significance and sensitively designed inter-relationship between the station and the Palace must be respected and should not be lost forever.
- 2.6.3 The 1st April 2019 rejection for spot listing was an exercise in tokenism as it was only an "Initial Assessment" with no site visit conducted or further research. There appears to us to be a lack of consistency in the previous listing research and the listing of other stations of lesser significance, which is most probably connected to the English Heritage/Historic England total change of position between the 1999 Planning Brief and 2008/1600 application.
- 2.6.4 The English Heritage Report on Hampton Court Station, 2003, concluded at page 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.'* As stated in Dr Rutherford's Historic Environment Impact Assessment (HEIA) included at Appendix 9 *"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."*
- 2.6.5 For the reasons set out above, and in the documents referenced, the station building must be subject to an approved restoration programme, and the significance and prominence of this historic building must be retained and not engulfed in urban built forms, as will be addressed in Part 3 below.

2.7 Community Vision

- 2.7.1 Historic Royal Palaces (HRP) and HCRC have been campaigning and promoting a public landscape scheme for both the Jolly Boatman and station car parks elements of the site since the time of the 1999 Planning Brief. This objective has wide support from the community and from past and current administrations at Elmbridge Borough Council. We have taken positive steps to progress our objective and will continue to do so, hopefully with the support of central government.

- 2.7.2 As stated at 2.4.2 above HRP presented an alternative approach covering a landscaping scheme as part of the 1999 Planning Brief. This approach is set out in the October 1999 Response to Draft Development Brief document included in Appendix 10, please see Part 3 and Illustrations 14-20. This is in effect an extension of the Cigarette Island Park landscape to return the whole island to more open and useable green space.
- 2.7.3 In pursuit of the objectives above one of the HRP 1999 report authors, Keith Garner and HCRC member Andrew Roberts submitted a planning application to landscape the Jolly Boatman part of the site in 2012. The application documents for 2012/2362 can be found online at Elmbridge Borough Council. The officers report at [1475099.pdf \(elmbridge.gov.uk\)](http://1475099.pdf(elmbridge.gov.uk)) states that the proposals would enhance the setting of the site and the station and be in keeping with the Development Brief. With the intentions of implementing this scheme HCRC and HRP on learning of the intentions of the applicants for 2008/1600 to dispose of the site in 2014 sought to purchase the site, and obtained the agreement of the HRP Trustees. It is understood that the then owners, Gladedale chose to sell to Alexpo IOM Ltd over a higher offer from HRP. We understand there were company financial reasons why Alexpo IOM Ltd were successful.
- 2.7.4 HCRC, HRP & Keith Garner have had meetings with Network Rail and others over recent years regarding the objective to achieve the community vision of a wider landscape around the station. Network Rail have indicated a willingness to discuss these objectives once their commitment to Alexpo IOM Ltd has expired. It is a fact that the Licence to Dispose of Land granted on 19/11/2016 expired on 18/11/2021 so Network Rail should be in a position to open a discussion unless they have unbeknown to us been granted an extension to the licence, copy in Appendix 11.
- 2.7.5 HCRC and others are aware that the vision is only achievable if the Jolly Boatman part of the site is acquired from Alexpo IOM Ltd. If the value of the land has not increased since they paid £1.2million in 2014, and is it quite possible that the value has decreased as it has since been declared to have no implementable planning permission, acquisition is likely to be achievable. The strength of the community's long-term support, together with the objectives of HRP, albeit they are in a tough financial position, make it realistic that many funding opportunities could be tapped at both a local and national level which have objectives to improve the nation's access to open space. The community vision in itself should be together with the above issues a justification to resist the principle of any development on the site.

3. IMPACT OF THE APPEAL PROPOSAL

3.1 The 1913 Act & Heights

3.1.1 Notwithstanding HCRC's objection to the principle of any development on the sites, we are firmly of the opinion that the 50 foot height limitation established in the 1913 SWRA is a material consideration and is breached. This is clearly concluded at 5.(1) in the Andrew Parkinson opinion at Appendix 8

"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."

3.1.2 The July 21 Committee report appears to agree as it states at 11.9.8.8. "*It (is) therefore considered that the intention of the Act to protect the setting of the Palace is a material consideration in the determination of the planning application.*" However, the report sits on the fence on whether the building heights factually breach the 1913 Act limit of 50 feet. We firmly believe they do, and as described at para 11.8.9.5 of the Committee report each of the buildings breaches the 50 foot limit by up to nearly 5 feet. This analysis is taken from Appendix 7 of the Dr Rutherford HIA, see our Appendix 9, to which I contributed significantly. The appellant has no basis to challenge in an appeal the 2015 GDPO definition that height is measured from ground level, which is the level of the surface of the ground immediately adjacent to the building. The definition does not state from a group of buildings. The proposal is for three separate buildings which can and must be measured separately.

3.1.3. HCRC's first submission on design and heritage issues linked at Appendix 1.b. included in Section 4 the applicants drawing below with is annotated at 17089mm high which equates to 56.06 feet from proposed ground level. The GDPO does not state whether measurements are from existing or proposed ground level but in this instance the proposed roadway is just over one foot lower than the adjacent park so the best case is that the villas are 54.8 feet high at this point.



Part North Elevation (from drawing no. 451_01_07_204)

3.1.4 In any event the Committee report concluded at 11.9.8.12 -19 that each of the proposed three buildings are of excessive height which is reflected in Reason for Refusal 1. HCRC accords with this conclusion.

3.1.5. HCRC is concerned that if the appeal is upheld and planning permission granted, that any developer would be required to apply to the Department for Digital, Culture, Media & Sport (DCMS) for authority to breach the 1913 Act, as advised in the Andrew Parkinson opinion. DCMS would seek an input from Historic Royal Palaces (HRP) who have delegated powers in respect of managing the crown land at Hampton Court Palace under the jurisdiction of DCMS. It is clear that HRP would object to a breach of the clause as stated in their response to questioning at the July Committee meeting (see webcast link at 1.3 above) and it is anticipated that DCMS would act on their advice. **Can the Inspector consider if they are in a position to make a decision on this appeal that could potentially compromise the authority and decision of another government department.**

3.2 Urban Design Issues - Bulk, Massing, Layout and Footprints of three Buildings

3.2.1 The July Committee report at 11.9.8. considers height and massing issues concluding that the impact of each of the three buildings is unacceptable. However, it does not give due regard to the reasons the massing has evolved from the site layout and footprints of the three buildings, although these issues were included in the Reason for Refusal 1 on Councillor's instructions. The 1999 Planning Brief is misguided in identifying building lines and landmark opportunities that have guided this proposal. The site layout and building footprints are designed around the railway line axis only, with the objective only of filling the sites, and have no regard to the urban grain in the immediate area to the west. Of course, we maintain that the sites have no relationship to these areas and should remain part of an open landscape. Our urban design analysis is detailed in Sections 4-6 of our main objection linked at Appendix 1b. and the Councillors Briefing Note at Appendix 3.

3.2.2 The grain and heights of buildings in the immediate area can be seen from the Emu Analytics Building Heights data base, not included in our previous submissions, see [Building Heights in England from Emu Analytics \(emu-analytics.net\)](http://emu-analytics.net). All buildings facing the Hampton Court Way are approximately 12-14m in height, and each building has a much smaller footprint in depth and frontage width than any of the three proposed buildings. The Palace is measuring at nearer 20m high, although it is a fact that the Wren Building fronting the Privy Garden is the highest element at 60 feet/18m, which is probably the reason the 1913 Act set the height limit at 50 feet so that any built forms to the south did not compete.



Extract from Emu Analytic Building Heights website.

3.2.3 The aerial montages presented by HCRC in Appendix 3 extracted below, even if not 100% accurate, demonstrate that the urban grain of the surrounding area has not been given due regard and that the proposal will compete in scale with the palace's complex of heritage assets. The matter of the impact on heritage assets will be discussed below. The key failure of the urban design approach has been led by the outdated Design Brief, and a need to strive for economic viability requiring over development of the site. The urban design issues should have been the subject of an impartial professional opinion such as that of an approved Design Review Panel. It was a requirement of the Planning Brief that CABA, the predecessor of the Design Council, should be involved in proposals for this site, see [DC Caba Design Review 13 W 0.pdf \(designcouncil.org.uk\)](#). HCRC made this request many times but did not get a rational answer why such a process had not been engaged. We also asked for an architectural model and a 3D computer generated model, as did the CAAC, which also fell on deaf ears.

3.2.4 Montage by Piotr Hennig of HCRC- from south showing context with Palace



3.2.5 Montage by Piotr Hennig of HCRC - from west showing context with East Molesey built forms



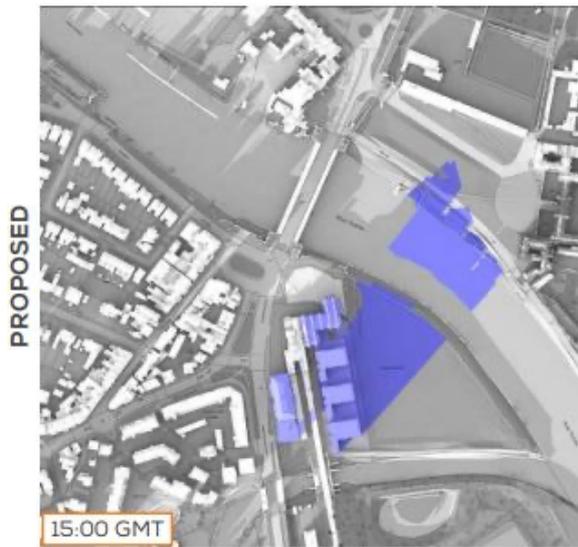
3.2.6 The other urban design issue that has not been recognised by the July Committee report is the impact of the massing of each building on the quality and amenity of the adjoining spaces, in particular the park and the riverside open space and the station platforms. The following extracts from ES Appendix 16.3 Overshadowing Results at [APPENDIX 1 \(elmburgh.gov.uk\)](http://elmburgh.gov.uk) illustrate that the park will be cast in shadow for much of the year at the times the space would be most used. This is wholly unacceptable to the community and will be referenced again below.



March 5pm



June 8pm



December 3pm

3.3 Impact on heritage assets, north of the river and at Hampton Court Palace

- 3.3.1 HCRC in its original submission in Appendix 1. b. did not address the impact of the proposal on the setting of Hampton Court Palace and other heritage assets north of the River Thames. In our naivety we made an assumption that Historic England (HE), together with HRP, would present a robust case that the proposal was harmful to the setting of the Palace. However, we soon realised that Historic England were giving very limited resources to this important case, assigning the case to an archaeologist to co-ordinate and were not prepared to object to the scale of the proposal. The HE historic landscape expert was not involved at pre-application stage (evidence available on request), and thus the HE response demonstrates that the concept of setting and preserving the historic landscape was not understood. This contrasts with the approach of former HE officers involved particularly in 1999 when they provided a robust objection to the Planning Brief (see Dr SR HEIA Appendix 5 Endorsement by Chris Sumner, former English Heritage Inspector). HRP did not have the support needed to object to the principle of the proposal until they saw the Andrew Parkinson legal opinion (Appendix 8), and had the opportunity to co-ordinate their concerns with The Garden Trust. Dr Sarah Rutherford produced the professional and thorough Historic Environment Impact Assessment (Dr SR HEIA) in March 21, with amendments in May 21 as found at Appendix 9. I contributed to this assessment as a critical commentator, and supplied the rendered visualisation by Piotr Henning in Appendix 2 as I had commissioned them some time before. This report and its analysis appear to HCRC by a long stretch far more rigorous and objective than the appellant in the Montague Evans HTVI (MEHTVI), and in the July Committee report containing the assessment of the Conservation Officer.
- 3.3.2 HCRC is supportive of the objectives of HRP to protect its setting from the encroachment of urban settlement. The vistas within and without from both the Palace windows and roof, and the magnificent formal and informal grounds are remarkably intact and still give an impression of a royal rural retreat on a majestic stretch of the River Thames, the reason for its location. It is imperative that this prospect is maintained to ensure both a secure economic future for the palace, and to aid the understanding and appreciation of future visitors. Additionally, the protection of the setting will give greater weight to a future application for World Heritage

status as has been an objective of the Thames Landscape Strategy and GLA for many years. To this end it is anticipated that HRP will provide evidence to demonstrate the long-term objectives and vision to preserve the outlook. I would urge the inspector to read the Palaces Views Management Plan from March 2005, and in particular the Foreword, Section 3 pages 22-27 & 40-43, Section 4, pages 44- 46, see my Appendix 7.

3.3.3 I have visited the palace many times and when stationary or moving in the grounds within the East Front Gardens, to the south of the main complex, and parallel to the river I have enjoyed the 180 degree view towards the Surrey Hills of the heavy tree line unbroken by urban built forms. These views start with the foreground of the southern bank of the Thames, which for the complete stretch from Hampton Court Bridge towards Kingston are still mainly open landscapes, including Cigarette Island, Albany Reach and Ditton Field, and substantial gardens to domestic properties beyond that are well landscaped. The urban settlement of East Molesey is set behind the station to the west of the bridge. The station is visible in many views and could be better connected if the public landscape at Cigarette Island was managed in a more planned and strategic manner. I have been working with Dr Rutherford and Thames Landscape Strategy to influence the management regime in the park, and achieve a short and medium programme of works that would restore the historic character as intended in the 1930's and complement the community vision for an extended parkland around the station site. It is my opinion that the management has been lacking direction in the last 5-10 years to the extent that it has had both a negative impact on the setting of the palace and the amenity value for users. To this end the Local List Nomination, in Appendix 4, is seen as a starting point for a Conservation Management Plan that should be commissioned, and its outputs implemented with an established working group.

3.3.4 The views out of the Palace that define the setting should not be limited to Views 1-6 in the ME HTVI. These are simplistic and limited selection. Visitors do not naturally, or by direction, stop at these points only, and if they were to, they would see a much wider view. Views within and beyond the palace grounds are dynamic, panoramic and influential in the holistic experience of understanding royal history. It is understood a Rule 6 party, Keith Garner, has commissioned some additional verified views. I agree that there are long views towards the appeal site from outside the Privy Garden, within the East Front Gardens including on the formal Long Walk promenade along the wall to the north of the Privy Gardens running towards the river, and from the radiating avenues of yews and the connecting banks and paths. There are also views from many other points within the Privy Garden and Pond Garden that are equally important. The tree line within the Cigarette Island Park and around the station are prominent in these views, and the built fabric of East Molesey is in the main low level and recessive, being a maximum of three storeys, and of subdued red or dark materials. There are very few distracting breaks in the skyline; one is the 20m high telecom tower just south of the River Ember road bridge, which is a useful guide to the height line of the proposed long 17+m high horizontal roofline just to the north; another is the sudden distraction of the white rendered parapet of the four storey block within Queens Reach that sits some 150m back from the eastern application boundary behind the Hampton Court parade three storey block. This block impinges on the otherwise soft green horizon as far back as the East Front Garden where the grass lawns rise and are connected by the formal avenues of yew trees forming part of the 17th century Daniel Marot Great Fountain Garden. The Queens Reach block is that ringed in the image below, and it is hoped that it can be identified on a site visit to demonstrate the insensitive impact of a high structure topped with a light coloured material. It can only be assumed that the planning application assessment considered that a higher storey within the site would not impact on the surrounding townscape, without giving due regard to the longer views and the impact on the setting of the palace. Any built forms 150m closer to the palace will inevitably have a more damaging impact. The use of white render demonstrates that recessive darker colours would have been less damaging. The use of render and yellow brickwork in the appeal proposal will accentuate the excessive masses in the views from the Palace.



Queens Reach 4 storey block visible from the Privy & Pond Garden

- 3.3.5 The Dr SR HEIA, sets out the proportionate approach to assessing the magnitude of the impact on the heritage assets, identifying Nos. 1-13 all north of the river. All 13 are of the highest significance and all will suffer a moderate scale of change. This highly regarded professional judgement was made on the basis of the appellants submitted Hare Miller views, and the fuller rendering of the same images by Piotr Hennig. It is most likely the AVR's being commissioned by Keith Garner will support these judgements, and hopefully make the impact clearer to the Inspector and all parties. The conclusion is that the cumulative magnitude of the harm is substantial as 11 of 13 are identified as having a large impact, and I would suggest that the Pond Garden suffers a large impact too. HCRC agrees with the list of specific harms listed at para. 7.7. We suggest that if this is challenged it is because there is a lack of understanding and appreciation the importance of the contribution the Surrey Hills and its foreground has to the setting of the Palace, its visitors experience, and the enjoyment of large numbers of Barge Walk and river users.
- 3.3.6 The July Committee report contains a heritage assessment that that is opaque in its methodology and the assessment and conclusions do not appear to be based on a recognised methodology and is excessively complex covering a judgement on 70 listed buildings many of which are not relevant as they are not within the setting of the appeal site. Additionally, the assessment separates out character areas that are not defined, other heritage assets including conservation areas, and locally listed buildings plus the submitted viewpoints. It gives a judgement on both the "likely effect" and the level of harm but there is no drawing together of these numerous results reaching a leap in the judgement that the harm is "less than substantial". The para. at 11.10.8.1 is the most useful on the impact on the setting of the palace which states:- *"This scale and massing has been confirmed in the viewpoints and that it would be visible from the Palace and its grounds. The increase in massing has the effect of bringing the townscape on the south of the river closer to the Palace."* It appears that the judgement considers the impact to be significantly lessened by tree screening both within the palace grounds and on the southern banks. These trees are in the viewpoints and the proposed mass is shown to break the tree line in summer leaf, and will be highly visible through the tree canopies during six months of the year. The tree lines are part of the current landscape but may not be in future, in particular the horse chestnuts in Cigarette Island Park have been reduced from 32 to 20 with natural loss, and there is no strategy to replace these large specimen trees. We support the opinion of HRP that the views should be opened up by removing dense tree cover at agreed locations. It is a fundamental principle of urban design and heritage training that a development does not become acceptable by existing or new trees screening. The appellant has no control over the planting and future maintenance of trees outside the application boundary, even if funding was secure using a legal agreement. Additionally, residents are likely to object to large specimen trees blocking views and light. Moreover, we propose that a tree planting screen would compromise the historic character of the park.
- 3.3.7 HCRC concludes that there will be substantial harm to the setting of important heritage assets north of the River Thames.

3.4 Impact on the character and appearance of the Conservation Area and heritage assets south of the river

- 3.4.1 HCRC in its original submission, in Appendix 1. b, at Sections 4, 5 & 6 considered the impact of the Villa blocks, the hotel building and the riverside building respectively on the surrounding environment. I have read and contributed to the assessment in Dr SR's HEIA at assets Nos. 12 – 22 and agree with the values assigned and the conclusions that even though all of these assets are of lesser heritage significance, that the scale of change is predominately moderate and major, but in applying the proportionate scale of assessment the magnitude of the impact is large.
- 3.4.2 In particular we are concerned that the impact of the five storey blocks of villas alongside CI Park is extreme as these structures will dominate the park which is otherwise a tranquil green space away from urban living, and should remain so for the reasons set out in the Local Listing Nomination at Appendix 4. The Councillors at the July Committee (listen to the webcast linked at 1.3 above) were particularly disturbed by the evidence that the park will be cast in shadows for much of the year, including the summer evenings when the park is heavily used by local families and groups of young people, see the Overshadowing Results extracts at 3.2.6 above. This park already enjoys large areas of shade beneath the horse chestnut trees and its amenity value should not be undermined by being cast into more shade. Further tree planting cannot be agreed as an appropriate mitigation to screen these excessively large linked blocks, illustrated below, which was agreed by the Council's Conservation Officer.



Both images by Piotr Hennig Winter 2018/19

- 3.4.3 The hotel building on the Hampton Court Way has truly shocked the public as expressed in social media posts, attracting extreme criticism. The four- storey block with a minor angle change to its west elevation has a continuous unbroken roofline which will create a visual tunnel effect with the Hampton Court Parade opposite. The building line sits on the back of the footway reducing the pedestrian and cycle paths to 2.7m at a point where there are several entrance doors and a designated loading bay to replace current on-street parking. HCRC and others are likely to submit further evidence on these concerns. The north elevation of this building together with its attached mass touches the station canopy, and will intrude and dominate the diminutive locally listed station detracting from its architectural and historic interest. The images below should be used to replace the appellants image of View 11 in their Visual Assessment Addendum (previously used in their Design Statement) as it gives a more realistic wider angled view of the villa blocks to the east, that would be seen as one approaches the gateway out of Surrey. This view would seriously harm the setting of the Lutyens River Ember road bridge as it removes the soft landscape setting and destroys the visual link between the two Lutyens bridges presently harmoniously punctuated by the station buildings.



Both images by Piotr Hennig Winter 2018/19

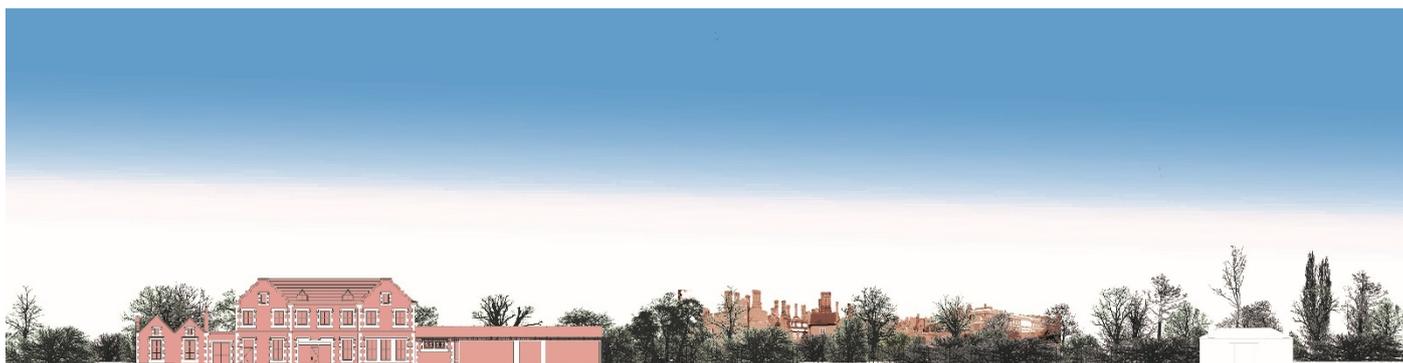
3.4.4 The Riverside building has not been designed to address the river, due to its alignment with the station platforms and not the river edge. It has a gabled wing projecting 12 metres beyond the station and sits at least 1m above the ground level of the station. The historic station sits on a podium up two steps and should remain, as its original design intent, the simple lodge to the palace without being engulfed by four storeys of fabric containing overlarge window openings and hanging balconies. The oversailing impact on a recognised view in the CA CAMP, along Creek Road, results in a harmful impact on the station, the conservation area and the River Thames. This building encloses the riverside open space, which is in effect a few segregated parcels left over adjacent to the misplaced access road, more of which will be assessed below as it is misidentified as a public benefit. The appellants image below is agreed by all parties, including the appellant, to constitute an unreasonable level of heritage harm. This image illustrates that the tree canopy is breached, particularly the 5 storey element to the right of the station. None of these damaged views within the conservation area, or towards the palace can be screened by planting.



Miller Hare View 10

- 3.4.5 The above assessment of the individual buildings must also be considered collectively, and in the context of the setting of the palace which as explained in the HRP View Management Plan in Appendix 7 (see Section 3.2, Plan 5 & Figs 3-8) also comprises views and the visitor arrival experience at both the station, and walking or driving via the southern Hampton Court Way route. These approach views are a recognised element of the place's setting. I am a regular pedestrian and driver of this route and the palace has a strong presence as one arrives on the River Ember bridge. There are many views of the palace roofline and chimneys together with the Great Chapel rooftop, often of the full complex with the juxta position of the Tudor and Baroque elements visible which often cannot be appreciated at closer proximity. The loss of the current views from the station platforms and waiting concourse, which could and should be opened up in the opinion of HRP and the community, will be tragic and seriously harmful to the setting of such a great set of heritage

assets, which the Council and nation should give greater weight to. The Inspector should be accompanied to walk the route from south of the Ember Bridge to appreciate the experience which is hard to illustrate with photography, although we consider the images below give a good flavour of the damage. To conclude we consider the level of harm to heritage assets south of the river to be of a magnitude of substantial harm.



Montages by Piotr Henning Spring 2019 (used for a poster)

3.5 Level of Harm to Heritage Assets

- 3.5.1 HCRC supports the conclusions of Dr SR's HEIA at Section 7.3 on the Level of Harm and notes the appeal and court cases quoted that set out an interpretation of the NPPF guidance. We agree that these identify that substantial harm can be a result of harm to the setting of heritage assets (Barnwell Manor), and that even if less than substantial harm is agreed by other parties, that it should still attract great weight in the planning balance (Chiswick Curve). We maintain that the moderate scale of change to assets of the highest significance in our country amounts to a large magnitude of damage which must be classed as substantial. Together with the major change around the lesser value heritage assets the magnitude of the damage is proportionately and cumulatively in totality "substantial harm".
- 3.5.2 The more recent Bramshill court case of 9/3/21 is relevant to defining the levels of substantial harm and/or less than substantial harm on a case-by-case basis. The recently dismissed appeal case of Bransford Road, Rushwick (6/4/21 APP/J1860/W/19/3242098) is comparable to this appeal in that it defines less than substantial harm to the setting of a grade II listed building where the setting relies on a rural aspect which would be harmed by a residential development contributing to the unidentified 5 years supply of housing. Clearly, we are considering a similar case but the impact is on multiple assets of much higher significance. "Cumulative and collective" harm to the setting of multiple heritage assets is also the key issues in the decisions on the Citroen site, Brentford, MHCLG decision of 10/9/2020; Anglia Square, Norwich MHCLG 12/11/2020; and Chiswick Roundabout 19/7/19 MHCLG; which are all relevant to the assessment of the level of harm to the multiple heritage assets around this site (see Appendix 9 for all references). I have also seen more recent appeal decision, not necessarily about the setting of buildings, conclude that the level of harm is defined as "the upper end of less than substantial harm". We ask that all relevant heritage asset cases are taken into consideration as the application of the NPPF guidance is still emerging over time and our heritage assets of national and international significance must not be sacrificed to establish a new interpretation.
- 3.5.3 HCRC disagrees with the Council's assessment in paras. 14.5-9 of the July Committee report, as we believe there are no heritage benefits arising from this proposal for the reasons set out above. We maintain that no weight should be given to heritage benefits as there are none, but do agree with the statement at 14.9 that "..

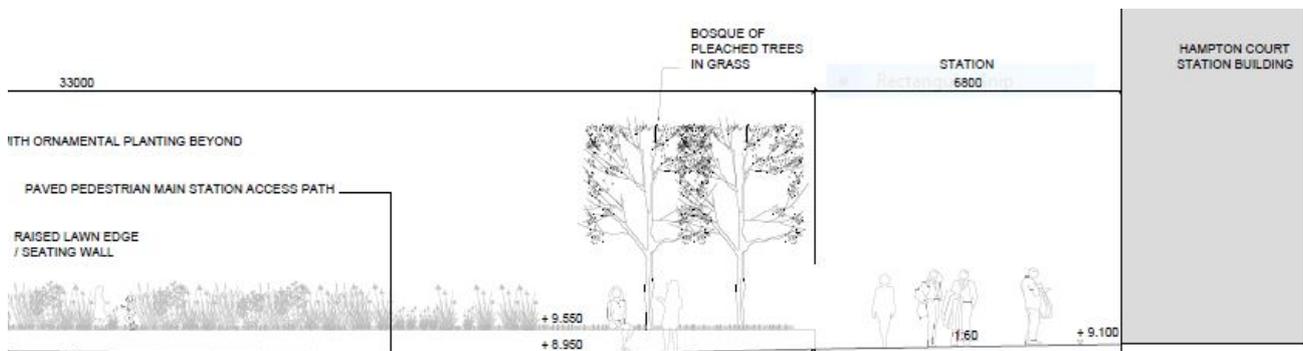
overall the proposal is considered to result in harm to the majority of the heritage assets” which we would we assess as “Substantial harm” or at least “the upper end of less than substantial harm”. This is based on the objective assessment of the historic environment significance both north and south of the river, and the effect of the proposal on those significances.

3.6 Excessive weight given to the public benefit of the public realm at the riverside open space

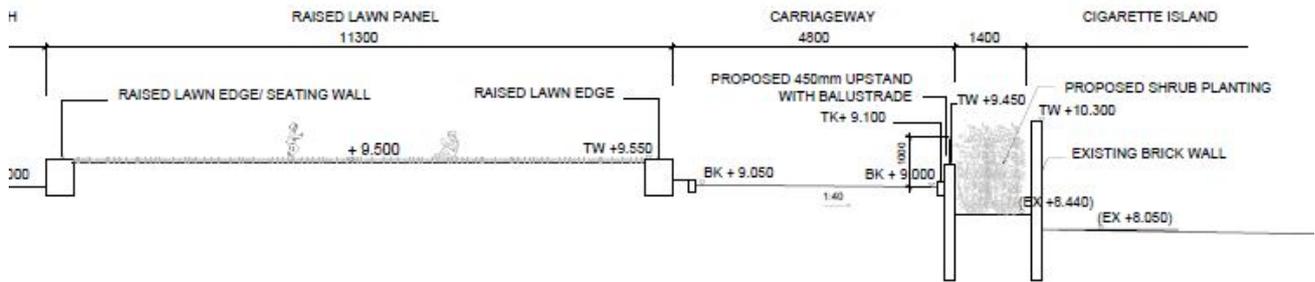
3.6.1 HCRC’s concerns regarding the impact of the open space are contained in our representations in the links in Appendix 1.b.c. & d. The July Committee report at para. 14.12 and in the earlier assessment on the public realm gives an ineffective account of the qualities of the riverside open space and its relationship to the surrounding environment. This open space is simply a collection of leftover parcels around the access road, which in itself is in a misconceived location too close to the river and bridge. The officers did not appreciate the level changes until HCRC provided section lines resulting in the submission of the section drawings L-507, 508, 509 & 510 submitted and uploaded on 27/6/2019. These need to be studied to fully appreciate the extent of the increase in levels which are up to 1.5m higher than existing and surrounding levels. We understand the design requires the ramp to the underground car park to be positioned above 9m AOD so that the entrance to the car park does not let water into the car park. This causes serious concerns with the relationship to the surrounding land and specific heritage assets. The following extracts from submitted drawings illustrate our concerns listed below.



Extract from Landscape Plan



Extract from L-509 showing relationship to the station (compare to the existing levels in full plan)



Extract from L-507 showing relationship to the park (compare to the existing levels in full plan)

- 3.6.2 The riverside open spaces cause more harm than public benefit for the reasons below:-
- a. The four separate spaces will remain in private ownership and management, and will be subject to the restrictions of the freeholder on use and maintenance;
 - b. The public realm is dominated by a road that will be require traffic signing, and markings, and a set of traffic signals that will be harmful to the setting of the bridge and its attached landing stage. The ambience of the spaces will not allow peaceful resting and appreciation of the views across the river;
 - c. The raised lawn annotated as point 3 and other spaces are not provided with any public seating. The raised edged with a wall marked as seating will encourage people to sit with their legs into the road which does not have a footpath, thus creating a safety hazard;
 - d. The station currently sits on a podium up two steeps raising it up 200mm to identify its position and standing as a lodge to the palace. This is to be removed and the levels will be raised by 500mm plus between the station and the river. The prominence of the station from the river's edge, the opposite bank, and parts of the bridge will be undermined to the detriment of its architectural and historic interest;
 - e. The green strip marked 13 and narrow footpath 8 do not relate to the listed landing stage and miss the opportunity to enhance the setting of the bridge. The enclosed sloped bank above the landing stage is Surrey CC land, identified within the red line adjacent to path 8, but it is not proposed to be incorporated into the green or open spaces. It is neglected, unmaintained and covered with self-seeded vegetation which is harming the structure of parts of the bridge. There is a missed opportunity to create a stepped seating area by relocating the railings to the lower level;
 - f. The section above from L-507 shows the massive changes in levels between the park, that sits at +8m, to the raised lawn that will sit at +9.5m. This change of 1.5m requires a substantial retaining structure the length of the boundary with the park, incorporating a new wall and railings to hold back a planting strip between the existing 1950's brick wall to contain the changes in levels. There is planning history evidence that this wall has been part of the buildings on the Jolly Boatman site, thus is in the ownership of the appellants and is beyond its useful life. The retaining structure and the changes in level create a visual barrier to the park contrary to the community vision to open up the riverside east of the bridge;
 - g. The retaining walls and changes in level will harm the setting of the Lutyens obelisks at the entrance to the park and the adjoining landing stage and bridge structure;
 - h. The objective has always been to open up the riverside between the park and the bridge and this landscape treatment fails to achieve and creates a visual block.
- 3.6.3 The objective to open up the landscaping at the river edge is shown in the visuals of the proposal approved scheme in 2012/2362 shown below.



Images by Rock Hunter forming part of application 2012/2362 prepared by Keith Garner & James Baneicki & submitted by Andrew Roberts

3.6.4 We ask the Inspector to visit both the landing stage and the Cigarette Island Park to identify the structures and areas described above. We maintain that the proposed riverside open space causes harm to the historic landscape and heritage assets and should not be recognised as a public benefit.

3.7 Excessive weight given to public benefits of the highway works

- 3.7.1 Serious concerns have been raised by HCRC and many of the 1800+ individual objectors to the potential for this proposal to worsen the existing extreme traffic congestion experienced in the local highway network, particularly on the approach to the bridge. The HCRC Rule 6 party, Andrew Roberts is likely to cover more general issues on parking and the impact on the transport network. HCRC has raised concerns regarding both the general approach to the off-site highway improvements, and to a specific element related to a set of traffic lights on the listed Hampton Court Bridge. These representations are linked in Appendix 1g, h, i & l.
- 3.7.2 The off-site highway works are not planning gain, they are a requirement of the appellant to get an access into the northern end of site. The 2008/1600 scheme did not have an access at this point and thus did not cause the harm described above to the nearby heritage assets. The works require such significant highway layout changes in the vicinity of the gyratory system opposite, utilising the green public open space, that we consider it likely that planning permission should be required and thus the works included within the application boundary. **Could the Inspector please identify if these works are highway permitted development under the GDPO?** The planning authority has failed to assess the impact of these works on the historic environment as required by much government and Historic England guidance. Paras. 34-37 of the HCRC submission of February 2021 (see link in Appendix 1 g & h) set out the Historic England and Department of Transport guidance on designing and assessing the impact of highway proposals on the historic environment, and this duty is regardless of the need for LB Consent or planning permission.
- 3.7.3 Paras 14-22 of our submission of July 21(Appendix 1.l) set out some concerns regarding the likely general failures and risks attached to the highway improvements. There is no evidence that alternative options have been considered that may be more beneficial for the congested highway network, and have a lesser impact on the surrounding heritage assets. The proposed scheme involves the installation of 15 traffic signal columns all within the setting of numerous heritage assets, including Hampton Court bridge, the locally listed station, and the East Molesey Kent Town Conservation Area. No doubt they will also necessitate much support equipment and road markings including yellow boxes. The opportunities to create an improved public realm around the northern end of Bridge Road have not been explored. There is potential to close the

exit from this end of the street and shorten the Creek Road access to create larger areas of useable public realm.

- 3.7.4** It is perverse that the Council has argued that the set of traffic signals proposed on the bridge do not require Listed Building Consent. Subsequent to our representations and lengthy exchanges Listed Building Consent has been granted for the raised kerbs and 150 bollards on the bridge being implemented under consent 2021/3214. These works involve elements that do not rise above the bridge parapet, unlike the traffic signals proposed within the curtilage of the bridge associated with the highway works covered by a S106 agreement. We believe the officers may have changed their stance and now agree Consent is required. The reason why these works require consent and are harmful to the bridge are set out at paras. 20-23 of our submission of Feb 21, see Appendix 1.g & h. **We ask the Inspector to consider the consequences of upholding this appeal and granting planning permission when there is no accompanying Listed Building Consent application?** The appellant would have a permission that is not implementable as the highway scheme would fail without a set of traffic signals on the bridge. These signals are required to stop the traffic to gain access for all vehicles using the units within the site, they are not a requirement of a highway improvement to improve the current network failures. We ask the Inspector to give limited weight to the public benefit of the off-site highway improvements.

3.8 Planning Balance

- 3.8.1** It is clear from the NPPF guidance and case law that the planning balance judgement is not an empirical or analytic exercise. There is no numerical weighting of the agreed harms and benefits to reach a calculated decision. It will be a judgement of the Inspector based on an understanding of the levels of harms and benefits, and an assigned weighting which must be transparent. We believe the decision on 18/2/20 in Bethnal Green (APP/E5900/W/19/3236184) stating *'When considering a proposal involving a number of heritage assets, if less than substantial harm is found to each, more weight can reasonably be attached in the overall planning balance to a number of 'less than substantial' harms than would be the case if only one asset would be harmed.'* confirms that the planning balance prevents harm to such a broad and significant element of the historic environment which is of importance nationally and internationally.
- 3.8.2** We hope our evidence and that of others, in particular The Gardens Trust and HRP, together with the Rule 6 Party Keith Garner and his commissioned verified images, will assist the Inspectors understanding and appreciation of the key issues so that the misrepresentations by the appellant, and the lack of appreciation of the issues by the Council can be robustly overridden.
- 3.8.3** In this case the matter of heritage harm to numerous assets has not been given due regard due to a lack of understanding of the character and function of the site in its surroundings, and an insufficient appreciation of the significance of the setting of the palace derived from its outlook and its approaches. HCRC is most disturbed that we cannot rely on Historic England to protect such an important part of our nation's heritage. We and others with such credible professional judgement have robustly demonstrated that the setting of numerous heritage assets will suffer substantial harm, and should this be concluded as the upper end of less than substantial harm to the cumulative set of heritage assets, as opposed to just substantial harm to the setting of the palace, this harm must be given weight over and above other national and local policy matters.
- 3.8.4** It appears to us that the planning balance in recent years has been excessively weighted towards achieving housing need, of which affordable housing is just an element. It is unfortunate that Elmbridge does not have an adopted plan in place to achieve a 5year supply of housing, and that debate will not be concluded until a new Local Plan is adopted at earliest in summer 2023. Similarly, it is bad fortune that our Council has failed to review or withdraw the 1999 Planning Brief at the appropriate time, and have allowed the historic landscape in the adjacent park to slip into a state of neglect breaching the 1938 Covenant. In the mean-time the 12 affordable units proposed will not contribute significantly to the critical affordable housing need for family units to provide homes for essential workers, nor small units for our younger generations. It will simply provide sealed units to protect from noise, vibration and pollution, in a flood plain, putting resident's health and possessions at risk with potential to be trapped in a building with a basement that is designed to flood. These homes are designed by an off-shore developer, to be purchased by off-shore owners attracted by the prestigious location and outlook.
- 3.8.5** We ask the Inspector to have due regard to the heavy weight of harm to heritage assets and local character, together with the zero heritage benefits balanced against the public benefits of limited and potentially damaging value. We see no logical reason why housing need should trump such a severe level of harm however it may be defined. We ask the Inspector to please dismiss Appeal A.

4. APPEAL 2 TEMPORARY CAR PARK ON CIGARETTE ISLAND PARK

4.1 HCRC has made six representations, found in the links in Appendix 12 a-f, objecting to the principle of the use of a large part of the park as a temporary car park to facilitate a quicker construction programme for the implementation of the appeal proposal. I have read the Officer Delegated decision report of 12th January 2022 and disagree with the conclusion inferred that the level of harm identified, particularly to heritage assets, would be acceptable if there was a permission for 2018/3810.

4.2 We have identified in the Local Listing Nomination, in Appendix 4, that the landscape of the whole of the island site including the park and the appeal sites are of inherent landscape value. The nomination additionally identifies the air-raid shelter as a separate local heritage asset which is already on the Surrey CC Historic Environment Record. We maintain that the harm from the necessary ground works will be permanent and not temporary, and should not be considered an acceptable level of harm.

4.3 The air-raid shelter is one of two in the north of Elmbridge and no others above or below ground are known of in other parts of the borough. The Elmbridge Museum and local history groups have much interest in physical evidence of war time activities as very few exist in Surrey. It is quite probably that this below ground trench shelter could be opened up and be conserved as a learning resource for future generations. See illustrations and photos in my emails of 23/2/21. The retention of this structure should be a requirement of any temporary planning permission but we do not believe this is possible. The structure has not been opened up since the mid 1980's and there is no record of the construction design of the fabric. It is most likely a precast concrete structure, the condition of which is unknown. The appellants cannot suggest that the access road into the car park can be ramped over the mound without surveying the structure. It is most likely that the structure would collapse with any weight loading from vehicles accessing a temporary car park. The collapse of the historic structure would amount to substantial harm as it would be totally lost. We ask the inspector to give much weight to the likely substantial harm to this non-designated heritage asset which is a feature of the East Molesey Conservation Area.

4.4 Similarly, there is harm to the natural environment, as identified in the officer report. The health of the Horse Chestnut T28 is at risk from root compression. It is part of the original 1930s-40s avenue of trees that is a key feature of the proposed locally registered parkland. This tree is one of the 20 remaining mature specimens from the 32 that form the planned 1930's avenue adjacent to the riverside promenade set out for the visitor to enjoy the views of the palace. This avenue is most likely to have been designed to reflect the avenues of Horse Chestnuts in Bushy Park to the north of the palace estate. The risk of displacing ecology and wildlife is equally a threat to the heritage value of the parklands as there is a risk it will not return in such close proximity to 5storey built forms that cast the grounds in shade, and emit high levels of night time artificial lighting.

4.5 The community has been working with other groups including The Thames Landscape Strategy to achieve an agreed list of improvements to the park, and changes to the long-term management to return the park to its intended highly managed and prestigious backdrop linking views between the station and the palace and visitor promenade. These plans would most likely be put on hold for more than two years if a temporary car park was to go ahead.

4.6 We ask the Inspector to be mindful of the 1938 Covenant setting out the restrictions in a schedule for the purpose of protecting the setting of the Palace, which can be found at our representation in Appendix 12.c. Please note that point 2 of the Schedule prohibits any buildings temporary or permanent without the consent of the Commissioner of Works, who we believe to be the current Department for Culture Media and Sport (see Section 6 of the legal opinion at Appendix 8). The ground works and structures for lighting columns and payment equipment must fall within the definition of "buildings". We understand that should an application be made to DCMS, by any developer or the Council, it is likely they would seek advice from HRP who would object on the grounds of harm to the setting of the palace. **As with the 1913 SWR Act can the Inspector consider if they are in a position to make a decision on this appeal that could potentially compromise the authority and decision of another government department.**

4.7 For the above reasons we ask the Inspector to dismiss Appeal B.

5. CONCLUSION

HCRC asks that the Inspector considers the following:-

1. Our objection is to the principle of any development on the appeal sites for the following reasons:-
 - a. The sites have an important function and character as part of the whole island and its setting with the Palace, which is physically and visually divorced from the urban settlement of East Molesey and Thames Ditton;
 - b. The sites are not designated as Brownfield Land; they do not fit the definition; the criteria for including these sites on the Brownfield Register must have regard to the effect on the natural environment and built heritage which in this case makes them ineligible;
 - c. The adopted Local Plan does not designate these sites for development; the existing policies are sufficient to resist the proposal; the emerging matter of resolving housing need must take into consideration the local housing need and environmental circumstances; the Draft new Local Plan should not be given weight as the consultation process towards adoption has not commenced and will not conclude until Summer 2023;
 - d. The 1999 Planning Brief is wholly outdated, except in its reference to the sensitivity of its setting with the Palace and the requirements of the 1913 South Western Railway Act (1913 SWRA), and has failed to produce a comprehensive development of these sites, and simply resulted in 40 years of planning blight;
 - e. The 2008/1600 proposal is not financially or practically viable and will not be implemented; and the viability of the appeal proposal is not proven;
 - f. It is of great weight that the significance of the locally listed station is seriously harmed by being engulfed in built forms that will dominate it, plus the proposal does not include a programme of restoration and reuse of station building as required in the 1999 Brief;
 - g. The long-term community vision to extend Cigarette Island Park to include the Jolly Boatman and the eastern station car park has gained wide support, is in development, and is entirely achievable with the co-operation of Network Rail; this would ensure the long-term protection of the Palace setting and of the station as well as the conservation area
2. Our concerns regarding the impact of the proposal are:-
 - a. The height of predominately 4 and 5 storeys will breach the 1913 South Western Railways Act put in place to preserve the setting of the Palace;
 - b. The urban design elements of massing, layout, footprint, building lines, and overshadowing will create a scale of urban forms that bear no relationship to the surrounding urban grain which is part of a sensitive historic environment;
 - c. The excessively large outline and mass of the proposal will be dominant in the preserved landscaped views out of the Palace grounds and buildings as well as in the key historic approaches by road, river and rail; and will result in a loss of views towards the Palace from southern aspects; both causing an unacceptable level of harm to the setting of the Palace. The numerous heritage assets within the Palace complex and its landscaped grounds are of the highest significance and the cumulative damage to them by this proposal is unacceptable to the community and nation;
 - d. The level of harm to the heritage assets south of the river is unacceptable including the dominating and intrusive relationship to the station building, the two Lutyens bridges, Cigarette Island Park, and the eastern parts of the East Molesey (Kent Town) Conservation Area;
 - e. We have carefully weighed the effects on the historic environment, taking into account previous assessments and decisions in other comparable cases, and conclude that the level of harm to heritage assets falls between substantial and less than substantial, and it falls at least the upper end of less than substantial;
3. Excessive weight has been given to the scale of public benefits derived from the riverside open space and the off-site highway works.
4. The Planning Balance case should not result in the demonstrated serious level of harm to heritage assets being outweighed by the limited public benefits, neither should the balance be driven by questionable housing need which could be fulfilled elsewhere in the borough to better effect.
5. The temporary car parking on Cigarette Island Park will cause permanent harm to locally significant heritage assets within the park, and is unacceptably damaging even if permission is granted under 2018/3810.
6. There are four matters of procedural concern that may compromise the Inspectors decision making remit, and the ability to implement an upheld appeal in regard to:- the need for Listed Building Consent; the exclusion of the off-site highway proposals from the application boundary; and subsequent applications necessary under the South Western Railways Act 1913 and the 1938 Covenant on Cigarette Island Park.
7. The Inspector is duly requested to dismiss both of these appeals

APPENDICES

1. Representations forming objections to 2018/3810 for HCRC by the author on heritage and urban design issues only:-
 - a. [3310526.pdf \(elmbridge.gov.uk\)](#) 19/3/19 Objection on Spot Listing Request including original research by David Turner, Heritage Railway expert, and Historic Royal Palaces 2005 Historic Landscape Assessment and Landscape Development Strategy for Hampton Court Station and Jolly Boatman site;
 - b. [Microsoft Word - HCRC Urban Design Heritage Issues Objection 2018 3810 Hampton Court Station \(elmbridge.gov.uk\)](#) 21/3/19 Objection..... Urban Design & Heritage Issues. This representation focussed on the harmful impact on the area and heritage assets south of the River Thames. This did not indicate the impact on heritage assets north of the Thames were insignificant, simply that other representations would cover these matters;
 - c. [3318441.pdf \(elmbridge.gov.uk\)](#) 23/3/19 Re the inter-relationship and boundary between the riverside open space and the park
 - d. [3396823.pdf \(elmbridge.gov.uk\)](#) 8/5/19 Further issues on the riverside open space
 - e. [3528796.pdf \(elmbridge.gov.uk\)](#) 15/1/20 CI Park 1938 Covenant copy & comments
 - f. [3789718.pdf \(elmbridge.gov.uk\)](#) 3/2/20 Concerns about treatment of The Garden Trusts objection
 - g. [3794280.pdf \(elmbridge.gov.uk\)](#) 10/2/21 Objection on heritage impact of traffic signals on HC Bridge
 - h. [3794282.pdf \(elmbridge.gov.uk\)](#) 10/2/21 Appendix 2 to accompany g. above
 - i. [3841924.pdf \(elmbridge.gov.uk\)](#) 6/4/21 further representation relating to g. above
 - j. [3924595.pdf \(elmbridge.gov.uk\)](#) 17/5/21 EM CAAC Further Objection on amended docs consultation
 - k. [3876594.pdf \(elmbridge.gov.uk\)](#) 20/5/21 comments on Draft Officers report to Planning Committee
 - l. [3924595.pdf \(elmbridge.gov.uk\)](#) 9/7/21 objection on highway scheme and traffic signals
 - m. [3790207.pdf \(elmbridge.gov.uk\)](#) 4/2/21 objection to Updated Viability

Appendices 2-11 are separate documents

2. A. & B. Two versions of Minutes of Planning Committee 19th July 2021
3. Two aerial visualisations by Piotr Hennig in Members Committee Briefing Note 9/7/21
4. Local Listing Nomination Nov 2021
5. 2/11/1999 Town Planning Committee report adopting the 1999 Planning Brief, and minutes
6. Thames Landscape Strategy Hampton Court
7. HCP Views Management Plan 2004
8. Andrew Parkinson opinion 15/1/21
9. Dr Rutherford Historic Environment Impact Assessment (HEIA) version 4th May 21
10. HRP October 1999 Response to Draft Planning Brief
11. Disposal of Land ORR 18/11/2016
12. Representations forming objections to 2018/3803 for HCRC by the author
 - a. [Microsoft Word - HCRC Objection 2018 3803-3 \(elmbridge.gov.uk\)](#) 21/3 19 1st Main Objection
 - b. [3414855.pdf \(elmbridge.gov.uk\)](#) 20/6/19 on Amended application
 - c. [Elmbridge Borough Council](#) 10/1/20 Re Park Covenant
 - d. [3805531.pdf \(elmbridge.gov.uk\)](#) 23/2/21 Request for amendments e air raid shelter
 - e. [3843657.pdf \(elmbridge.gov.uk\)](#) 15/4/21 Exchange with Open Spaces Manager
 - f. [4043756.pdf \(elmbridge.gov.uk\)](#) 20/12/21 Re Local Listing Nomination plus other matters