

**Hampton Court Station and Jolly Boatman sites**

Hampton Court Way KT8 9AW

References: 2018/38190 & 2018/3803

**Statement of Case**

Andrew Roberts

Hampton Court Rescue Campaign

March 2022

## **Hampton Court Station and Jolly Boatman sites Refs: 2018/38190 & 2018/3803**

Statement of case by Andrew Roberts (Hampton Court Rescue Campaign)

### **1.0 Introduction**

- 1.1 I am Andrew Roberts BA (Geography), M.Com (1<sup>st</sup>) I am a retired business person and Thames Ditton resident living within a 5 minute cycle ride of Hampton Court Station. With my family I make very regular trips past the site and in the summer months can be found on the Ember River kayaking and boating. From 1999 until 2019 I owned and operated a business on a number of Network Rail and other Train Operating Company (TOC) sites. Amongst other areas of knowledge, I have a detailed understanding of safety and operational issues on railway sites.
- 1.2 I am a member of Hampton Court Rescue Campaign (HCRC). I have liaised with the Appellant's representatives on a very frequent basis from the time that they bought the site in December 2014 until the application came to committee in July 2021. I have liaised with Elmbridge Council's CEO, Strategic Director and Case Officer and on a regular basis with Historic Royal Palaces Directors and other third parties.
- 1.2 In 2012 I brought a legal challenge against a planning condition regarding buffer zones as they relate to the 2008/1600 scheme. The challenge was unsuccessful but was heard in the High Court.

I agree with the Council's decision to refuse planning permission for this Scheme. However, I firmly hold the view that the reasons for refusal were inappropriately narrow and will make representations to that effect.

### **2.0 Areas of difference**

- 2.1 My differences with the Appellant are fundamental.

The Appellant's position is that the Scheme offers substantial benefits. I will set out that, on the contrary, other than a very small quantity of affordable housing (far below the Council's target for schemes such as this of 40%) the Scheme delivers almost no tangible benefits save a few minor alterations to the station facilities (for example, separation of car park access road and bus station) which should have been undertaken decades ago by the Highways Authority.

I will note the very serious shortcomings with the layout of the Scheme. I will make reference to relevant Council policy on parking, with which the Scheme fails to comply.

I will briefly explain the damage to local key heritage assets caused by the Scheme, and explain why the Appellant's position that this damage is more than offset by the meagre benefits offered by the Scheme is hopeless.

Beyond that, I will identify the very real shortcomings with the Scheme over and above the damage to key heritage assets, and the impact those shortcomings will have on local residents and the area generally. I will point to the Appellant's inappropriate reliance on the unviable 2008 scheme.

I will make reference to the considerable period of time the Appellant required to satisfy the reasonable requests from the Environment Agency.

I will question based on the viability information provided, and taking into account the lengths taken by the Appellant to remain anonymous, whether any accurate assessment can be made now or at a later date with regard to affordable housing or overall viability.

### **3.0 Viability – Affordable Housing**

Concerning viability and affordable housing I will discuss para 5.5 of the Appellant's Statement of Case (SoC):

*“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”.*

I will refer to my representations to Elmbridge Council, where I questioned the viability of the Scheme and the affordable housing provision. I will discuss the submitted viability documents justifying a very low level (12%) of affordable housing. I will discuss how I found the reports to be contrived, lacking key information and far from credible.

Regarding the Appellant's offer to update the viability report, I request that the following be included in any update:

- 2.1 Development management fees paid by the Appellant from the time that Alexpo IOM acquired the site in December 2014 until the date of the next viability update by the Appellant.
- 2.2 Agreed development management fees until such time as the scheme is implemented or the Jolly Boatman site is sold to a third party.
- 2.3 Updated forecast scheme profit (note that the September 2020 viability update included additional costs but did not re-calculate scheme profits).
- 2.4 Outline details of the profit share agreement between the Appellant and Network Rail Infrastructure Ltd.
- 2.5 A realistic asset value for the completed 208 space car park.

I will discuss how without transparency regarding this information, any late or early-stage review would not have sufficient teeth to claw back any additional affordable housing provision in the event that the scheme proves to be significantly more profitable than was originally estimated in the viability reports.

I will make reference to the Appellant's Development Manager (Rob Lane) and his 29 July 2020 email (attached) to the Environment Agency which questions the viability of the

Scheme. I will also make reference to the James Owens email (22 February 2021) and his statement that the late-stage review will use: "actual costs and actual values". I will refer to the Secretary of State for Transport's letter 17 March 2022 (attached) which states that Network Rail will receive £4m from this scheme and where this sits in relation to the submitted viability reports.

I will discuss my recent requests to Elmbridge Council for a financial assessment from the Appellant which confirms that the 2008 scheme is viable and deliverable.

I will also seek to consider the brief given to Dixon Searle Partnership (DSP) by Elmbridge Council, whose were instructed to assess the viability reports. I will discuss any conclusions DSP they did or did not make regarding the credibility of the scheme as at September 2020. I will refer to the schemes £56m plus of construction costs and a profit of less than £500,000. I will discuss any conclusions by DSP as to whether this scheme can reasonably be implemented.

#### **4.0 Financial Viability – Can the Scheme be Implemented?**

I will discuss my concern that based on the information provided, this Scheme, as with the 2008 scheme, has no possibility of being implemented and will remain derelict for the foreseeable future. I will refer to forecast profits as at September 2020 of circa £500,000 based on construction costs of in excess of £56m.

I would welcome an outline assessment from the applicant that addresses this concern. That is, details of the financial viability of the 2018 scheme using all costs and all revenues. Given that all relevant information will be at hand, including land registry values (£1.2m for Alexpo IOM and £2m for Network Rail) this should not be an onerous task, nor would it breach any commercial confidentiality or require significant resources.

#### **5.0 Beneficial Owners**

I am concerned as to the transparency of Alexpo IOM, which has gone to great lengths to hide its beneficial ownership. This is relevant to the third and fourth grounds for refusal by the Council: the Council cannot enter into any agreement, including a section 106 agreement, without carrying out appropriate due diligence on the contracting party. Alexpo IOM's resistance to transparency and its apparent reluctance to enter into a section 106 agreement prior to this appeal calls into question the Appellant's assertion that it will do so in the future.

It would therefore be appropriate for the Appellant to provide a list of Alexpo I.O.M.'s investors, directors, shareholders and ultimate beneficial owners, and to forward details of the company registration and domicile for Alexpo IOM. There would be no cost to this and no credible reason to not provide this information.

I will make reference to the UK company Alexpo Ltd (company registration number 11832863) which has no relationship with the Appellant.

## **6.0 Works to Station Building**

I will discuss my concern that if the Scheme proves to be unviable, or very marginal, any refurbishment works to the station would be compromised. I request a reasonable overview of any intended works to the station buildings which are not detailed in the planning application. I also request full unredacted copies of all structural or other surveys of the station building undertaken in the last 15 years.

I will discuss why interested parties have no means of assessing what work should be done and will be done if they do not have such reports. I will make reference to the James Owens 3 November 2020 email to Elmbridge Council:

*“The amount of expenditure that Network Rail estimate as being required for works to improve the station and the station facilities is a matter for their commercial judgement”.*

I will discuss how this statement is unnecessarily opaque.

## **7.0 Scheme Benefits**

I have read the appellant’s SoC and Draft Statement of Common Ground (SoCG) and disagree with many aspects of both documents. Concerning many of the suggested benefits listed in para 7.7 of the Appellant’s SoC I will discuss how it is highly questionable whether many of the suggested benefits are in fact benefits.

I will discuss the nature of Community Infrastructure Levy (CIL) which is a charge that local authorities set on new development in order to raise funds to help fund the infrastructure, facilities and services - such as schools or transport improvements - needed to support new homes and businesses. I will discuss how the developer is obliged to pay CIL and this should not be categorised as a benefit to the community or a public amenity; rather it is a charge to offset the costs generated by scheme users. I will discuss how the same principles apply to business rates, that is, it is not a benefit it is an off-set obligation.

I will refer to the addition of new retail units which will be unwelcome in East Molesey where existing retail operators struggle to remain viable. I will consider whether, if the Appellants had a genuine desire to maximise the public and economic benefits of the Scheme, they would have provided additional housing (and in particular a higher ratio of affordable housing) instead of a large and unnecessary hotel. I will discuss the Appellant’s decision to segregate all of the affordable housing in the HCW block in an area with poor air quality, no communal gardens, and no views.

I will discuss representations made by Karen Liddell (HCRC) confirming that this is not a brownfield site and I will discuss how the Scheme includes a new gyratory which should have been undertaken by Surrey Highways decades ago. I will discuss whether the gyratory would have been markedly more effective if it did not need to accommodate such a large and complex Scheme.

I will refer to the size of the £25,000 contribution for future improvement of Cigarette Island Park which the Appellant suggests (SoCG para 43): “Would weigh positively in the planning balance”.

## **8.0 Heritage – Bulk and Mass**

I will make reference to the Appellant’s para 3.3 (SOC):

*“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 assessment was only made available to the Applicant after the Planning Committee”.*

I will refer to the Officer Report which includes a verbatim copy of the Conservation Officer’s report which was available to all interested parties well in advance of the Planning Committee which met on 13 July 2021, and not 19 July 2021 as is noted by the Appellant in para 3.4 (S of C).

I will refer to representations on the height, bulk, massing and harm to heritage assets made by The Garden Trust, Historic Royal Palaces, HCRC, and others. I will discuss the Appellant’s reference to what is claimed or implied to be an unreasonably long passage of time (“nearly two and half years”) which allowed new evidence and additional representations (The Garden Trust, et al).

I will discuss how the Appellant was solely responsible for that delay, which would have been avoided had the Appellant complied more promptly with the reasonable requests from the Environment Agency.

## **9.0 Parking**

I will refer to my representations to Elmbridge on the proposed parking provision in the Scheme and make reference to the Appellant’s position in their DSoCG (page 15) points 11 to 13.

I will consider the various representations by Network Rail (including 21 February 2019) where they state that if there are capacity issues with the car park that they will ban access to the car park for visitors to Hampton Court Palace.

I will make representations in numerous areas in relation to parking:

- 1) I will consider Elmbridge Council parking policy.
- 2) I will consider the Appellant’s suggestions in relation to banning one type of user (Hampton Court Palace visitors) which they suggest can be dealt with in a car park management planning condition. I will consider whether it is realistic to ban one type of user in the manner suggested.

- 3) I will refer to the car park design (two underground levels).
- 4) I will discuss whether the specific heritage issues should be considered in isolation and make reference to the existing car park which provides significant levels of parking for Hampton Court Palace visitors and has done for the best part of a century.
- 5) I will refer to the income from these visitors and how it helps to fund the upkeep and restoration of HRP's palaces. I will consider the public amenity value of providing parking to palace visitors vis a vis providing parking for a budget hotel, apartment owners and café users.
- 6) I will discuss the Appellant's failure to provide an assessment of parking stress on surrounding roads and the lack of parking surveys in summer months.
- 7) I will discuss the Council's premise that Hampton Court Station is a "sustainable location" which provides justification to dismiss the Council's own parking policies.

### **10.0 Reliance on 2008 Scheme**

I will discuss the Appellant's reference to the 2008 scheme (SoC para 2.1):

*"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",*

I will discuss whether far too much weight was given to the 2008 scheme in pre-application discussions and by the case officer from January 2019 until just prior to the time the final officer report was written in mid-2021.

I will make reference to the passage of time and clear statements by Network Rail (ORR report) that the 2008 scheme was not viable.

I will discuss whether the Appellant was misled by Elmbridge Council and their own advisors and whether they should reasonably have taken legal advice to assess the weight they should attribute to the 2008 scheme.

I will make reference to the draft officer report obtained under FOI by HCRC which was annotated by the Council's QC, who gave clear instructions that the 2008 scheme should be given very little, if any, weight due to these issues.

I will discuss how I was misled by Elmbridge Council and the Appellant who both wrongly believed that significant weight should be given to the 2008 scheme. I will also discuss how statutory consultees (Surrey CC and Historic England) were very likely also misled with respect to the merits of the 2018 scheme in relation to the 2008 scheme and the reliance that any new scheme can place on the 2008 scheme.

### **11.0 South Western Railway Act 1913 (SWRA)**

I will explain how this location is virtually unique in the UK as being the subject of specific legislation designed to prevent overdevelopment around Hampton Court Palace. I will discuss how this legislation and other protections have served to protect and preserve the

environs of Hampton Court Palace from developments such as the Scheme for over a century.

I will discuss how the Council's 1999 Planning Brief for this site imposed further developmental restrictions beyond those in the SWRA 1913. I will then discuss how the Scheme breaches the restrictions in both the SWRA 1913 and the 1999 Planning Brief.

I will discuss my recent requests (email attached dated.. ) to Elmbridge Council requesting a copy of the legal advice the Council has received in relation to the SWRA 1913. I will refer to my concerns that the Council paraphrased this legal advice in the officer report; that they have refused my reasonable requests to share this legal advice; and how the Planning Committee's ability to fully determine this application was potentially compromised by not having access to this legal advice.

I reasonably request that the Council's legal advice on the SWRA 1913 is shared with all parties without further delay.

## **12.0 Bulk and Mass of the Scheme**

I will discuss my concerns with respect to the bulk and mass of the scheme:

### **12.1 Proximity of Hampton Court Way Building to Layby and the highway.**

I will make representations with respect to the proximity of the HCW building to the highway and layby. I request clarification from the Appellant (assume using their CAD system on an amended drawing) of the minimum distance between the layby and the building. I will refer to how public amenity would be significantly enhanced with a much smaller layby, or as per the 2008 scheme, with no layby.

### **12.2 Basement Car Park Ramp**

I will discuss the basement car park access road which rises to 9m AOD in relation to Cigarette Island Park which sits at 7.5m AOD. I will make reference to the Appellant's desire to retain a wall between the public open space on the Jolly Boatman site and Cigarette Island Park.

### **12.3 Proximity to Ember River**

I will discuss the location and height of the proposed building in close proximity (7.5m) to the Ember River which is some 8m closer to the Ember River than the 2008 scheme.

### **12.4 Building Footprint on Jolly Boatman Site**

I will consider why the café building projects 9m onto the Jolly Boatman site.



### **13.0 Amenity of Rail Users**

13.1 I will discuss the Kiss and Ride (station drop-off and pick up) provision which will be in the underground car park.

13.2 I will discuss the lack of space for a rail replacement service which cannot reasonably be accommodated using the layby.

13.3 I will discuss the loss of amenity from a car park designed to flood.

13.4 I will discuss the lack of sufficient parking spaces for commuters.

### **14.0 Case Management**

I will refer to the numerous extensions of time granted to the Appellant.

### **15.0 Facts and Arguments to be relied on**

I attended the meeting 13 July 2018/3810 Elmbridge Planning Committee on 13<sup>th</sup> July 2021 held virtually.

14.1 I will refer to my various representations to Elmbridge Council in relation to this matter.

I may also refer to the following emails:

- 29 July 2020 email from Rob Lane to Environment Agency.
- 17 March 2022 my email exchange with Elmbridge Council
- 17 March 2022 Letter from the Secretary of State for Transport to Dominic Raab.

### **16.0 Documents I Intend To Rely On**

16.11 The appellant's statement of case lists documents at paragraph 6.8 that they will refer to. I will also refer to these as appropriate and all other documents under on the Council's application portal.

### **17.0 Conclusions**

The Appellant's SoC is disingenuous. It overstates the level of agreement between the Council and the Appellant, cherry-picks favourable evidence whilst conveniently ignoring unfavourable evidence, overstates the benefits of the Scheme and understates the harm caused.

In my view the Scheme:

17.1 lacks sufficient affordable housing;

17.2 is likely to be unviable;

- 17.3 is advanced by a company shrouded in mystery, and which has offered no evidence to comfort the Council that it can or will be able to enter into a section 106 agreement with it;
- 17.4 offers no adequate assurances that the station buildings will be refurbished as a result;
- 17.5 offers only meagre benefits that fail to outweigh the considerable harm caused by the Scheme, including in particular to local key heritage assets;
- 17.6 is of excessive bulk and mass;
- 17.7 fails to include an adequate or appropriate allowance for car parking;
- 17.8 is inappropriately reliant on the 2008 scheme to justify this appeal;
- 17.9 fails to comply with either the letter or spirit of the South Western Railway Act 1913, which was designed to prevent exactly this kind of development impacting the environs of Hampton Court Palace; and
- 17.10 fails to provide appropriate or sufficient amenities for rail users.

**18.0 Documents and Information Requested from the Appellant and Elmbridge Council**

<b>Document or Drawing Details</b>	<b>Source of Information</b>
1) Details of Development management fees paid by the Appellant from the time that Alexpo IOM acquired the site in December 2014 until the date of the viability submitted by the Appellant.	Appellant
2) Agreed development management fees until such time as the scheme is implemented or the Jolly Boatman site is sold to a third party.	Appellant
3) Updated forecast scheme profit (note that the September 2020 viability update included additional costs but did not re-calculate scheme profits).	Appellant
4) Outline details of the profit share agreement between the Appellant and Network Rail Infrastructure Ltd.	Appellant
5) A realistic asset value for the completed 208 space car park.	Appellant
6) Details of the financial viability of the 2018 scheme using all costs and all revenues.	Appellant
7) Details of Alexpo I.O.M.'s investors, directors, and shareholders.	Appellant
8) Domicile and company registration number of	Appellant

Alexpo Ltd.	
9) Intended works to the station buildings which are not detailed in the planning application and which will form part of the “station refurbishment”.	Appellant
10 Copies of all structural or other surveys of the station building undertaken in the last 15 years.	Appellant
11) A summary financial assessment of the viability of the 2008 scheme.	Appellant
12) Drawing identifying the minimum distance between the HCW layby and the adjacent hotel.	Appellant
13) Elmbridge Council’s legal advice on the SWRA 1913.	Elmbridge Council
14) The Appellant’s legal advice, if they have any, on the SWRA 1913.	Appellant

The application which is the subject of both appeals should be dismissed.

Andrew Roberts

22<sup>nd</sup> March 2022

