

HCRC objection to application 2018/3810

1. Environment Agency

1.1 We assume that the Council will not reasonably determine the application or will refuse it until such time as the Environment Agency consultation response has been received by Elmbridge Borough Council. HCRC requests 14 days to review the EA consultation advice.

1.2 A key reason for the Environment Agency's objection to this development is that national policy now governs future developments situated on a flood plain. New developments must not increase the likelihood of flooding. The EA has explained that *"Whilst the applicant has stated that the new proposal is betterment in terms of flood risk in comparison to the extant permission....the NPPF now requires climate change to be considered and mitigated for. This was not a requirement at the time of the previous application, in 2008."* Has this issue been fully addressed by the applicant?

1.3 The revised Flood Risk Assessment (November 2019) refers to: Elmbridge Strategic Flood Risk Assessment (SFRA) 2015. HCRC requests that the Officer Report indicates whether there are material changes in the revised SFRA issued in February 2019 and whether these need to be addressed by the applicant and included in the revised FRA.

1.4 The Applicant's revised Flood Risk Assessment continues to refer to a very outdated flood risk map, in use in 2017 or before (see below from page 3).



This outdated flood map shows only a very small section of the site is designated in Zone 3 and would reasonably give comfort to the Council that on the face of it, the scheme fell outside Zone 3.

However, the Environment Agency revised their flood map in early 2018 before this application was submitted. The new flood map (see below) means that significantly more of the site is now in Zone 3.



This troubles HCRC and we believe it should trouble Elmbridge Council as building on Zone 3 is likely to have very serious consequences for our Borough in the future, particularly due to the climate change issues already identified in the Environment Agency's original objection.

2. Car Park Closure Trigger Level

HCRC has requested a flood level trigger point at which the car park will be closed in the likelihood of flooding. This is because by comparison with the current car park, the new scheme will be lowered by 1 meter and replaced with an under-croft car park which is much more prone to inundation. This needs to be agreed with the Environment Agency.

3. The 1913 Railways Act of Parliament

Legal advice provided to HCRC is that the Council cannot approve a scheme which breaches the 1913 Act which limits building height to 50 feet. We would encourage Elmbridge Council to publish any contrary legal advice it has on the 1913 Act. If this scheme is approved, HCRC will seek recourse to the Courts by way of a Judicial Review.

4. Parking

4.1 We are aware that Anthony Green (Network Rail) has requested drawings from Alexpo showing car park layouts with spaces allocated to residents. This contradicts Alexpo's insistence that no parking spaces will be allocated. We request that these drawings are made available prior to determination and any correspondence between the Council and the applicant with respect to these drawings is uploaded onto the application website.

4.2 HCRC requests that the Officer Report deals specifically with DM7 and the requirement to allocate car park spaces in relation to this application.

4.3 Network Rail, HRP, HCRC and Richmond Council have all highlighted weaknesses in parking studies. There is no assessment of parking stress and no assessment of summer demand. We request that the Officer Report should assess this issue with specific reference to DM7 (see below):

The proposed parking provision should be appropriate to the development and not result in an increase in on-street parking stress that would be detrimental to the amenities of local residents. In such instances, a minimum provision of one space per residential unit will be required.

4.4 Network Rail has stated that it will ban non-rail users if the car park approaches capacity. HCRC has requested that NR indicates just how they will implement a ban on non-rail users from the car park. Has the Officer asked NR for this? We are looking for a comprehensive solution on how the scheme will police the differences between all of the different types of users (café, hotel, rail, retail, resident, resident visitors, station drop-off, visitors to the riverside/Hampton Court Palace) and how non-rail users will be banned. Implementing ANPR does not equate to a comprehensive solution. This is a fundamental issue and should not be delegated to a planning condition.

5. Applicant Details

Legal advice provided to HCRC is that the identity of the applicant cannot be misleading or fraudulent. This relates to the applicant, the identity of land ownership and the CIL application forms which clearly state:

“It is an offence for a person to knowingly or recklessly supply information which is false or misleading in a material respect to a collecting or charging authority in response to a requirement under the Community Infrastructure Levy Regulations (2010) as amended (regulation 110, SI 2010/948). A person guilty of an offence under this regulation may face unlimited fines, two years imprisonment, or both”.

The declaration has been registered in the name of Alexpo Ltd. a legally registered UK company despite the applicant having no legal or other interest in this company. The correct applicant is an offshore company Alexpo (Isle of Man) Ltd. If Elmbridge Council permits this scheme, HCRC will challenge the legal basis of the scheme via Judicial Review

6. Covenants

6.1 EBC's Property Manager was not aware of the 1938 covenant on Cigarette Island Park, which limits the land to be used only “as open space for the use of the public for games and recreation” before inviting the planning application for the temporary car park (2018/3803) and has confirmed a “commercial rent” will be taken. Has the Council obtained the advice or authority of the Commissioners (now Ministry for Housing Communities and Local Government/MHCGL) on whether consent would be given to breach the covenant? This covenant was established for “the protection or maintenance of the amenities of Hampton Court Palace” who objected to the temporary car park unless certain works are included, which have been ignored. Please note HCRC's legal advice is that the Council cannot breach the covenant without expecting recourse and that granting planning permission would be an indication of an intention to allow a breach.

6.2 EBC would be accepting income for the commercial rent on CI Park from an offshore entity Alexpo (IOM) Ltd, and for Developer Contributions in a S106 Agreement. Has the Council had legal and financial advice on whether this would be breaching money laundering legislation? At the very least HCRC requests that a full list of Alexpo IOM Ltd's directors and shareholders is released to the public. If Alexpo is not prepared to do this, one has to question why not? (Please note that HCRC can only find a record of **nominee** directors of Alexpo (IOM) Ltd all of whom are Isle of Man based accountants working for Chancery Trust Company Limited).

7. Pollution

We are anticipating that the Officer Report will address the potential risk of approving a development (and associated highway scheme) that is likely to result in an increase in the pollution levels in an area (a designated AQMA) where the recognised standards are currently breached and thus can incur fines when introduced as a result of the proposed Environment Bill promised before 2022?

8. Setting and Policy

8.1 Has the Council sought specialist advice on the impact of the development on the setting of the listed Hampton Court Bridge? The Historic England response states that this is clearly an EBC function and responsibility? No such advice has been uploaded. The highway proposals require engineering works and traffic lights on the bridge, which may require listed building consent.

8.2 Has the future management of the new riverside public open space and Cigarette Island Park been decided? We would expect this to be made explicit and put in the public domain prior to a decision. The proposed layout maintains the open space on the JB site but its design discourages its public use. The layout of this open space is dominated by the car park access road therefore its function as open space should not be seen as a significant planning gain.

8.3 Will the Officer Report address the fact that the scale and appearance of this development will be contrary to i) Policy CS17 of 2011 Elmbridge Core Strategy, ii) Policy DM2 of 2015 Elmbridge Management Plan and also be contrary to the enhancement and integration objectives of iii) DM6 of 2015 Elmbridge Management Plan. The extant 1999 Planning Brief for the site stands for the Officer Report, but attention must be paid to the significant changes in national and local policy since the 2008 approval, specifically the issues of affordable housing targets, sustainable transport, the climate change agenda (including flood risk management) and the reduction of air pollution.

8.4 The CGI renders depicting the Jolly Boatman frontage are misleading and inaccurate. HCRC's view is that there should be continuity between the 'Jolly Boatman' (JB) site and Cigarette Island Park (CIP). The Alexpo (IOM) Ltd render below suggests that the land levels on CIP and the Jolly Boatman access road are broadly similar, whereas to prevent flooding of the basement car park, Alexpo has raised the access road by 1.5m above average land levels on CIP, which will present two different landscapes and a very unattractive raised hard landscape in the form of an elevated platform.



To help disguise this very unattractive feature Alexpo have insisted on the retention of a wall located between the JB and CIP parkland. HCRC's view is that this wall will be intrusive and will destroy the seamless continuity between CIP and the JB.

HCRC has requested renders of the view from CIP and towards the apartment blocks which would have highlighted their overwhelming scale and unattractive bulk as viewed from Hampton Court Palace and CIP. For obvious reasons the applicant has refused to provide these illustrations.

HCRC 9th January 2020