



The Heath & Hampstead Society

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The Society examines all Planning Applications relating to Hampstead, and assesses them for their impact on conservation and on the local environment.

To London Borough of Camden, Development Control Team

Planning Ref: 2013/7242/P

Address: Athlone House Hampstead Lane N6

Description: Demolition of Athlone House; New 8-bedroom house.

Case Officer: Charles Thuaire

Date 17 December 2013

Once again we have to spend time and money in objecting to this profoundly unpopular and damaging proposal, on behalf of all those who know and love Hampstead Heath. It is depressing that we have again to find means of opposing applicants with unlimited resources.

The extent of public concern about, and opposition to, the previous application 2009/3413/P, rightly refused by you, and rejected on Appeal in April 2011, was widespread and was vociferously expressed at that time. We are sure you are aware of the fact that public opinion remains unchanged, and so far as we can see unanimous, in the face of these new proposals.

The purpose and duty of the Planning system is to express and support public opinion, by its decisions: to act in the public interest.

This proposal, which follows the disappointing Appeal Inspector's April 2011 report, dismissing the Appeal, but leaving opportunities open for further application, is virtually identical to the previous design, albeit a little smaller. All the applicants' objectives remain unchanged, the site layout and architecture remains unchanged, and the harm caused to Hampstead Heath also remains unchanged.

A number of important issues are raised in the Report, relating to the impact of the proposed new house on the Heath, on which we comment in Part B below.

The major, and overriding issue, however, that involves no conflict with the Inspector's report, is that of **overdevelopment in Metropolitan Open Land**. We address this as follows:

A. METROPOLITAN OPEN LAND

The site incontrovertibly is within MOL. This was fully explored in the Appeal Report, especially in paras 14-30, and particularly in paras 21-22. Concluding para 72 makes it clear in fact that the Appeal was dismissed on the basis of MOL policy.

We have in Hampstead a particular, special, reason to place great importance on development, indeed overdevelopment, in MOL. The 2007 Judicial Review into development at The Garden House, Vale of Health was decided explicitly on the issue of a replacement house in MOL; a Planning permission for this house was revoked on the issue of overdevelopment. Guidance is given in NPPF, para 89:

“A LPA should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces”

Judgements of the High Court and of the Court of Appeal : Heath and Hampstead Society v. London Borough of Camden ; the Garden House case, ref CO/1454/2006

In the case of the previous proposals 2009/3413/P, the size of the proposed new house was very substantially larger than that of the existing Athlone House, and the Appeal decision was inevitably made on that basis. The precedent set by the Garden House case was conclusive.

In the case of the current proposals, the size of the proposed new house, although a little smaller than before, is still considerably-- i.e. **materially**-- larger than that of the existing Athlone House.

Great stress is given in the applicants' Planning Report to this reduction in size, but no comparison is made showing the disparity of floor areas between Athlone House and the new house. Plainly, they do not wish this decisive and embarrassing point to be emphasised.

These are the facts:

Athlone House as existing:	1,990 sq m.
Proposed new house:	3,336 sq m.
(excluding basement areas	2,751 sq m.)
Excess floor area	67.6%
(or, excluding basement areas	38.2%)

All area figures taken from application documents, not checked by us.

The Garden House decision ruled that basement floor areas should be taken into account. They are part of the development proposals, and are useable floorspace.

Whichever area is taken, the proposal is clearly **materially larger** than the existing building.

This in itself is conclusive evidence of the unacceptability of the application, and must lead to **Refusal**.

The Society would consider returning to the High Court in defence of this principle.

As indicated above, there are other issues which we wish to raise, to support our fundamental objections to this application. These are matters which are referred to in the April 2011 Appeal decision.

In the recent case of *R (Mid Counties Co Op Ltd) v Forest of Dean DC (2013) JPL 1551*, the Administrative Court said:

“A previous appeal decision was capable of being a material consideration. A previous decision was material unless it was distinguishable. A decision maker in a subsequent case therefore should decide whether the earlier decision was distinguishable and, if not distinguishable, where there was disagreement, weigh the earlier decision and give reasons for departure from it.”

We suggest that little weight should be attached to the April 2011 Appeal decision, for the reasons given below.

B. OTHER PLANNING ISSUES

1. Impact on Hampstead Heath.

This of course is the major issue, so far as the general public is concerned.

Many hundreds of thousands of visitors come each year, many (perhaps most) passing through this part of the Heath. These are spaces of national importance; some would say of international significance; we tamper with them at our peril. There is nowhere in London remotely like the Heath; probably nowhere in any British urban area; it is precious beyond words.

We make no apology for saying that we were surprised that the Appeal Inspector, erroneously, dealt with Hampstead Heath as if it were any open space in any park. He has not taken the matter seriously enough.

The impact of the proposed house, *designed to be* high-profile, conspicuous and self-important, would be a disaster, and we suggest that you should treat the Inspector's opinion and judgement as demonstrably wrong.

We do not criticise per se the choice of architectural style here, although we think it backward-looking, trying to evoke a period long-gone, but we do criticise the way in which this style is used to produce a pretentious pastiche, a reminder of Ceaucescu's Palace of the People in Bucharest rather than the quiet, restrained, truly classical architecture of Kenwood House, to which it has been compared by the applicants.

This is *wrong* in this context, and would be very harmful indeed to the character of this part of Hampstead Heath.

The report even suggests (para 51) that the brightly-toned Bath stone, in which the facades are constructed, would “darken in time”. Not in the lifetime of young children living today, it wont.

In another section, the Inspector (para 53) admits that “symmetricality adds to the impression of rigidity, bulk and *dominance*, whereas an asymmetric and/or eclectic more romantic scheme could be said to have an opposite effect” He also says that the new house “would not be reticent”! In other words, he admits that the new house would be dominant by comparison with the romantic asymmetry of Athlone House.

Yet he still says (para 57) that it would not be damaging to the character of the Heath. We can only respond, by pointing out the flaws and inconsistencies in his report.

We say that the proposal would be seriously intrusive, and damaging to the character of Hampstead Heath.

2. Section 106 Agreement

It is incomprehensible to us that the Inspector did not insist on the satisfaction of the Section 106 Agreement, designed to ensure the restoration of the existing house Athlone House. This was an integral part of the extremely lucrative Planning permission granted in 2005 for the demolition of the old wartime hospital buildings and the building of Caenwood Court; 22 luxury flats in 3 blocks.

The valuable part of this permission was implemented quickly, and the elegant David Chipperfield-designed flats were built, and occupied. The S 106 Agreement to restore Athlone House was ignored, and the house allowed to deteriorate, so that it is now dilapidated (though still in good structural condition). That part of the site was sold off, and the law flouted; the S106 Agreement has not been implemented.

A Section 106 Agreement attaches to the land concerned, not the owner, original or current.

The Appeal was an opportunity for this unlawful situation to be rectified, but the Inspector merely states (para 17) that “there is no realistic prospect of forcing the owner to carry out the refurbishment...”, going on to say that the costs of implementing the permitted refurbishment work are uneconomic. Since when has Planning law got to take into account the financial state of an applicant, or his liabilities arising from a 106 Agreement?

We say that the Inspector was surely incorrect in this assertion, and must have been unduly influenced by what the applicants said about the economics of the project.

We say that the S106 Agreement must be satisfied.

3. Refurbishment costs

We also challenge the basis and context of the figures presented by the applicants' QS for the refurbishment of Athlone House.

This is estimated at £14,564,800-00 net, plus fees and VAT; total £20,973,300-00. This amounts to £7,319 per sq m. net, (or £10,539 per sq m. gross)

For this money you could build a fine *new* house from scratch, of considerable luxury.

Refurbishment, of a house, albeit in a state of dilapidation due to the neglect of its owners, ought to be possible for substantially less. Why, for instance, might it be necessary to spend £623,400 net on foundations? The house already exists, and the refurbishment proposals involve only very minor additions. And why no less than £3,103,600 net on external walls? They already exist. There are other anomalies.

It is clear that these costs have been inflated, to make it appear that refurbishment is impossible---or at least not viable.

The decision on the implementation of the S106 Agreement is therefore suspect.

4. Disregard of evidence presented at the time of the Appeal

We are dismayed that, in the lists of documents considered by the Inspector, there is no mention either of the written objections made by this Society, the Highgate Society, English Heritage, the Victorian Society, and a succession of eminent architects and architectural historians, not to speak of the many hundreds of letters from members of the general public (we know of 650). This suggests to us that either these were unread, or were disregarded. If the latter, we think that some explanation of this ought to have been given.

In either case, public opinion seems to have played little part in the decision-making process.

We ask you to consider all our objections, notwithstanding the content of the Inspector's April 2011 Report.

Part A of our objections is incontrovertible

Part B is substantial support for objection

Both must lead to refusal.