

PLANNING SERVICES

**TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS)
(INQUIRIES) RULES 2000**

**RULE 6 STATEMENT OF CASE
FOR PUBLIC INQUIRY COMMENCING ON 24TH SEPTEMBER 2013**

APPEAL SITE

The Garden House, Vale of Health, London, NW3 1AN

APPELLANT

Mr Alex Vlachos

SUBJECT OF APPEAL

Appeal against London Borough of Camden's refusal of Planning Permission for 'Various alterations and extensions to existing dwelling house (Class C3), including erection of a front roof dormer with 2 windows and a rear roof dormer extension; replacement and installation of new windows to all elevations, relocation of chimney to flank wall, re-cladding with slate on all elevations and roof; creation of front lightwell; removal of part of eastern embankment and raised terrace to provide ground floor verandah with terrace above at first floor level; installation of timber cladding on outhouse'.

COUNCIL REFERENCES: 2011/6005/P

PLANNING INSPECTORATE REFERENCE: APP/X5210/A/13/2195530

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1.0 RELEVANT LEGISLATION

1.1 Town and Country Planning Act 1990 (as amended).

1.2 Planning and Compulsory Purchase Act 2004

1.3 Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI No. 1625)

1.4 Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009 (SI No. 455)

2.0 SITE AND SURROUNDINGS

- 2.1 The site contains a part 1, part 2-storey detached dwellinghouse located within the Vale of Health. The dwellinghouse, known as the Garden House, was built in the 1950's with brick walls and a pitched tiled roof. It is set back behind the terraced houses facing the east side of the Vale of Health street and is accessed via a narrow archway. It is sited within a large garden with a raised terrace bordering the Hampstead Ponds (to the east).
- 2.2 The building is considered to be unusual in that it has its front door on the west elevation facing the rear boundary wall and the main habitable room windows facing the garden and pond on the east elevation; the gabled south side elevation is the facade that faces one entering the site from the archway passage. The west, east and north sides partly have a raised terrace embankment at first floor level. Thus the house has a small ground floor (with 2 bedrooms) on the south side (i.e. facing the passage), and a first floor (with 2 bedrooms, open plan living/dining room and kitchen) across the whole house between north and south side elevations. To the south-west of the dwellinghouse, adjacent to the passageway, is a single storey brick outhouse.
- 2.3 The application site is located in Hampstead Conservation Area. Within the conservation area statement the building is not identified as either a listed building or a positive contributor to the character and appearance of the

conservation area. Furthermore, there is no reference to the building within the section of the conservation area statement which details 'buildings or features which detract from the character of the area and would benefit from enhancement' (page 47).

2.4 The appeal site adjoins Hampstead Heath and is located on Metropolitan Open Land (MOL) and Private Open Space (POS), as detailed on Map 7 (Open Space) of the Local Development Framework (LDF). The house enjoys some permitted development ('pd') rights, although an Article 4 Direction imposed in September 2010 restricts certain operations within Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

2.5 The Public Transport Accessibility Level (PTAL) rating at the passageway entrance point to the site is 2 (poor). The appeal site is also located within a controlled parking zone, (CPZ) CA-H(b), which operates Monday to Saturday from 0900-2000. More parking permits have been issued than there are spaces available, meaning the CPZ is considered to suffer from 'stress'.

2.6 The appeal site is located within an archaeological priority area (Hampstead Heath) and is also within all three of the hydrogeological constraint areas. More specifically this relates to subterranean (ground water) flow, land stability

and surface flow & flooding matters (as per the 2010 Camden Geological, Hydrogeological and Hydrological Study).

- 2.7 In terms of the nearby area the Conservation Area Statement provides a useful overview of the Vale of Health locality:

'The Vale of Health is a tightly knit enclave of modest houses in a hollow completely surrounded by the Heath. It stands on the edge of a large pond, built as a reservoir in 1777 by the Hampstead Water Company. Today a man-made island refuge for birds at the centre increases the pond's visual attraction. The development of the enclave began when the reservoir was created and the remaining drained land became available for building. The Vale is approached down a leafy lane from East Heath Road. Its narrow roads and alleyways create intimate vistas, with the added impact of views of the Heath, with its trees and vegetation. There is a delightful mixture of buildings. Early 19th century cottages, many weatherboarded, combine with larger villas and terraces. The secluded nature of this residential enclave, the varied scale and forms of the modest houses, contrasting with the natural backdrop of the Heath give the Vale of Health a unique charm. Apart from the older cottages the houses are predominantly late 19th century.'

- 2.8 Hampstead Heath is designated as MOL, public open space and also as a metropolitan Site of Nature Conservation Importance (SNCI) by English

Nature. It includes tracts of ancient woodland and Sites of Special Scientific Interest (SSSI).

3.0 APPEAL APPLICATION DETAILS

- 3.1 The appeal is against the London Borough of Camden's refusal of application for planning permission. The planning application reference 2012/6005/P was received on 29 November 2011 seeking planning permission for the following development: *Various alterations and extensions to existing dwelling house (Class C3), including erection of a front roof dormer with 2 windows and a rear roof dormer extension; replacement and installation of new windows to all elevations, relocation of chimney to flank wall, re-cladding with slate on all elevations and roof; creation of front lightwell; removal of part of eastern embankment and raised terrace to provide ground floor verandah with terrace above at first floor level; installation of timber cladding on outhouse.*
- 3.2 The application was registered on 21 December 2011 having been valid from 19 December 2011.
- 3.3 A site notice advertising the application was erected on 23 December 2011 (expiring on 13 January 2012) and a press notice published in the Ham & High newspaper on 5 January 2012 (expiring on 26 January 2012).
- 3.4 Written notification was produced to be sent to Hampstead Conservation Area Advisory Committee (CAAC), Superintendent of the Heath, Heath & Hampstead Society, Vale of Health Society and Councillor Kirsty Roberts on

22 December 2011. Written notification was sent to 38 neighbours on 22 December 2011.

3.5 During the consultation, 11 objections were received from various nearby addresses. Objections were also received from Hampstead CAAC, Superintendent of the Heath, Heath & Hampstead Society and Vale of Health Society. These responses have already been forwarded to the Planning Inspectorate.

3.6 During the course of the application the applicant (now appellant) submitted various revisions and additional supporting information to the planning application, summarised as follows:

- Revised location of lightwell to front elevation;
- Corrected plans to show context with Heath Villas accurately;
- Bat survey report;
- Construction management plan;
- Basement impact assessment report (with later addendum);
- New photomontages submitted;
- Correct Certificate B notices served on all relevant parties.

- 3.7 During the course of the application it was considered necessary to undertake a formal period of re-consultation owing to the amendments submitted by the applicant. Written re-notification was sent to 71 neighbours on 16 July 2012. Written re-notification was also sent to Hampstead Conservation Area Advisory Committee (CAAC), Superintendent of the Heath, Heath & Hampstead Society, Vale of Health Society and Councillor Kirsty Roberts on 16 July 2012.
- 3.8 During the re-consultation, 15 objections were received from various nearby addresses. Objections were also received from Superintendent of the Heath, Heath & Hampstead Society and Vale of Health Society. These responses have already been forwarded to the Planning Inspectorate.
- 3.9 The application was reported to the Development Control Committee on 20 December 2012. The officer level recommendation was to Grant Planning Permission, subject to a number of conditions and the applicant entering into a Section 106 Legal Agreement for a final construction management plan.
- 3.10 The Development Control Committee resolved to refuse the application and a decision notice was duly issued on 2 January 2013. There were two substantive reasons for refusal (Reasons 1 and 2) and a further reason relating to a Section 106 matter. The three reasons in full were:

- 3.11 **Reason 1.** *The proposed dormer extensions, by virtue of their size and cumulative increase in volume in conjunction with the extensions previously permitted under Certificates of Lawfulness for Existing/Proposed Developments, would result in disproportionate additions over and above the size of the original building and thus would be inappropriate on Metropolitan Open Land, contrary to policy CS15 (Protecting and improving open spaces & encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy.*
- 3.12 **Reason 2.** *The proposed alterations and extensions, by virtue of their design and form, would result in a visually intrusive and bulky dwelling in this prominent location, detrimental to the openness, appearance and setting of the surrounding conservation area, Metropolitan Open Land and Heath, contrary to policies CS14 (Promoting high quality places and conserving our heritage) and CS15 (Protecting and improving open spaces & encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.*
- 3.13 **Reason 3.** *The proposed development, in the absence of a legal agreement securing a construction management plan, would be likely to contribute unacceptably to traffic disruption and general highway and pedestrian safety and be detrimental to the amenities of the area generally, contrary to policies*

CS5 (Managing the impact of growth and development) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

- 3.14 An informative was also recorded on the decision notice, stating: *Without prejudice to any future application or appeal, the applicant is advised that reason for refusal no 3 could be overcome by entering into a S106 planning obligation with the Council.*
- 3.15 An appeal was lodged against this decision, with the start date being 7 June 2013.

4.0 RELEVANT PLANNING HISTORY

4.1 It is intended that the basic planning history will be set out in detail in the Statement of Common Ground.

5.0 PLANNING POLICY FRAMEWORK

5.1 The Development Plan for the area comprises the London Plan (July 2011) and the Local Development Framework, containing the Camden Core Strategy and the Camden Development Policies.

Local Development Framework

5.2 The Local Development Framework (LDF) was formally adopted on 8th November 2010. The policies of relevance to the appeal site as a whole, having regard to all material considerations are listed below:

LDF Core Strategy

- CS1 (Distribution of growth)
- CS4 (Areas of more limited change)
- CS5 (Managing the impact of growth and development)
- CS11 (Promoting sustainable and efficient travel)
- CS13 (Tackling climate change through promoting higher environmental standards)
- CS14 (Promoting high quality places and conserving our heritage)
- CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity)
- CS19 (Delivering and monitoring the Core Strategy)

LDF Development Policies

- DP20 (Movement of goods and materials)
- DP21 (Development connecting to the highway network)
- DP22 (Promoting sustainable design and construction)
- DP23 (Water)
- DP24 (Securing high quality design)
- DP26 (Managing the impact of development on occupiers and neighbours)
- DP27 (Basements and lightwells)
- DP28 (Noise and vibration)

Supplementary Planning Guidance

- 5.3 Where appropriate, the Council will also rely on supplementary planning guidance as set out in the Camden Planning Guidance 2011 (CPG) and Hampstead Conservation Area Statement insofar as it is material to the determination of the appeal (see Section 8 for further details).

London Plan

- 5.4 At the time of the planning application decision the adopted regional plan was the Mayor's London Plan, which was adopted in July 2011. This remains the most up to date adopted regional plan. The following London Plan policies were most relevant to the Council's decision to refuse planning permission at this site:

- 7.4 Local character

- 7.6 Architecture
- 7.8 Heritage assets and archaeology
- 7.15 Reducing noise and enhancing soundscapes
- 7.17 Metropolitan Open Land
- 7.18 Protecting local open space and addressing local deficiency
- 8.2 Planning obligations

5.5 Where appropriate the Council will also rely on supplementary planning guidance to the London Plan, such as the Housing Supplementary Planning Guidance (2012) insofar as it is material to the determination of the appeal (see section 8 for further details).

National Planning Policy

5.6 The Council has also taken into account the National Planning Policy Framework 2012, adopted on 27 March 2012.

5.7 The Council will expand upon and amplify the policies of the LDF upon which it bases its decision, to demonstrate that the appeal application are unacceptable.

6.0 SUBMISSIONS

6.1 The Council considers the main issues in the planning appeal to be as follows:

A. Reason 1 (Inappropriate additions on Metropolitan Open Land)

6.2 The appellant contends that the proposed roofspace would result in a 0.93% reduction in floorspace. This is based on the existing roofspace being included within the existing floorspace calculations. Although the case officer considering the application agreed with this presumption, the Council does not consider that approach to be sound. At present, the roofspace at the property is not in active use. Moreover, it is not considered to be in a usable form, given the limited access to and nature of the internal space.

6.3 Consequently, in the absence of the existing roof space presently being usable, the Council considers that the proposed dormer extensions represent additional floorspace within the building. Such additions, in conjunction with the increase in the building's volume, are considered to be disproportionate in the context of the original building and thereby inappropriate on Metropolitan Open Land.

6.4 In addition it will be shown that, owing to the context of previous extensions permitted under Certificates of Lawfulness for Existing (ref 2010/3118/P) / Proposed (ref 2011/3054/P) Developments, the proposed dormer extensions would cumulatively result in disproportionate additions in comparison with the original dwelling. This will be shown to be inappropriate development on Metropolitan Open Land. The proposal is considered to represent a gradual

accretion of extensions of the original building. The Council had limited control over the permitted development extensions approved at the site, but owing to this context, the proposed addition is considered to be cumulatively inappropriate, as well being inappropriate in itself as detailed above.

- 6.5 Metropolitan Open Land is treated in the same way as Green Belts for the purposes of national guidance and LDF policy. Hence, in particular, paragraphs 87-89 of the NPPF are material. It is considered that the appellant has failed to demonstrate the 'Very special circumstances' of the proposals and it will be shown that the dormer extensions result in disproportionate additions over and above the size of the original dwelling.

B. Reason 2 (Design and form)

- 6.6 The Council is committed to excellence in design and will not approve designs that are inappropriate to their context or fail to improve the character of an area. The Council considers that the design and form of the proposed development is detrimental to openness and appearance of the surrounding area, in particular Hampstead Conservation Area, Metropolitan Open Land, Private Open Space (Gardens adjacent to Hampstead Ponds) and the setting of Hampstead Heath (Public Open Space). It is acknowledged that the reason for refusal does not specifically refer to the impact on the Private Open Space. However, the policy from which it stems (CS15) is referred to in the reason for refusal and this designation is linked to the others raised. Consequently, in defending the appeal the Council will also refer to the Private Open Space.

- 6.7 The Council's policies regarding open space (CS15) and conservation areas (DP25) require development to protect and improve open spaces and preserve and enhance the character and appearance of conservations areas. It will be demonstrated that the proposed development fails these policy tests.
- 6.8 Whilst being of modest architectural quality the existing building has a self-effacing impact in views toward and across the appeal site. The Council will demonstrate that, in contrast, the proposed development will have a much more intrusive impact by virtue of its increased bulk, large areas of glazing, materials and more exposed elevations.

C. Reason 3 (Section 106 for Construction Management Plan).

- 6.9 The Council also refused to grant planning permission due to the absence of a suitable section 106 legal obligation to secure a construction management plan. The Council will co-operate with the appellant prior to the submission of evidence to prepare a legal agreement to address this reason for refusal of the planning application. In any event, the Council will provide evidence to demonstrate that the requirements are justified against planning policy (LDF policies CS5, CS19, DP20, DP21 and DP26) and meet the tests laid out in ODPM Circular 05/05 and the CIL Regulations 2010. In the absence of an appropriate planning obligation to secure a construction management plan, the appeal scheme is considered to be unacceptable as it would be likely to cause traffic disruption and general highway and pedestrian safety concerns, as well as harm to the amenities of the area generally. This is primarily owing

to the constrained nature of the Vale of Health and access to The Garden House, combined with the level of vehicular and associated works required to implement the proposed development.

7.0 APPROPRIATE CONDITIONS

7.1 In accordance with Government advice and without prejudice to the Council's case, appropriate planning conditions for the proposal will be set out at a later stage in conjunction with the submission of relevant proofs or the preparation of the statement of common ground, whichever is relevant.

8.0 DOCUMENTS

8.1 The Council may refer to all or part of the following list of legislation, national planning guidance, plans and documents and any other it considers relevant, having regard to the Appellant's case to be identified in its Statement of Case or any other change of circumstances:

- Acts of Parliament and Statutory Instruments
- Government Advice, especially Circulars issued by DCLG (or its predecessors) including, but not restricted to the following:
 - Circular 11/95 - The Use of Conditions in Planning Permission
 - Circular 03/05 - Changes Of Use of Buildings and Land - The Town and Country Planning (Use Classes) Order 1987
 - Circular 05/05 - Planning Obligations
 - Circular 03/09 - Costs Awards in Appeals and Other Planning Proceedings
 - National Planning Policy Framework 2012
- London Borough of Camden, Local Development Framework (2010)
- London Borough of Camden, Camden Planning Guidance (2011)

- London Borough of Camden, Hampstead Conservation Area Statement (2001)
- Mayor of London, London Plan (2011)
- Mayor of London, Supplementary Planning Guidance, including Housing (2012) and Shaping neighbourhoods: Character and Context (Draft 2013).
- DETR and CABA - By Design - Urban Design in the planning system: towards better practice (2000)
- Correspondence and notes in connection with the applications (from London Borough of Camden files, the applicants, external bodies and third parties).
- Relevant Inspector's appeal decisions

8.2 The Council reserve the right to refer to other documents in response to the Appellant's case should it prove necessary to do so.

8.3 Documents will be made available for inspection at the 1st Floor Reception, Council Offices, Camden Town Hall, Argyle Street, London, WC1H 8ND. Please be advised that if an appointment is made at least 24 hours prior to their arrival, that it will be ensured that documents are ready for inspection. The Council Offices are open 0900-1700 Monday to Friday.