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APPEAL by  
C and P ABBOTT et al.  
NORTH FAIRGROUND SITE,  
VALE OF HEALTH NW3

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# PROOF OF EVIDENCE

CHARLES THUAIRE BA (Hons), Dip. TP, MRTPI

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Inspectorate Ref: APP/x5210/A/97/283311  
LBC Ref: PW9702255



LONDON BOROUGH OF CAMDEN

TOWN AND COUNTRY PLANNING ACT 1990

Public Inquiry 17.2.98

**SITE:**

North fairground site, Vale of Health, London NW3

**APPELLANTS:**

C & P Abbott, M Biddall, V Miller, Vale Amusements North

**SUBJECT OF APPEAL:**

Appeal against non-determination of planning application dated 9.5.97 for erection of a 4 storey block of 15 self-contained flats with basement car parking for 15 cars on the northern half of the site, and change of use of the southern half to public open space.

**COUNCIL REF:**

PW9702255

**DoE REF:**

APP/x5210/A/97/283311

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**PROOF OF EVIDENCE**

**Witness:**

I am Charles Edouard Marcel Thuaire. I hold a BA (Hons) in Geography and a Diploma in Town Planning, and I am a Member of the Royal Town Planning Institute. I have worked for the Council's Planning Service of the Environment Department for over 10 years on a variety of development control, local plan & implementation, and policy issues. For the last 4 years, I have been Senior Planner in the Northwest Area Team doing solely development control work on applications and appeals.

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## 1. INTRODUCTION

### (a) Description of 1997 planning applications

- 1.1 On 24.3.97, an application for housing on the north site was submitted by the owners of the site, the Abbott family, and using local architect Peter Thomson as agent (ref PW9702255, referred to below as the "Abbott scheme"). It was for the erection of a 4 storey block of flats adjoining the eastern flank wall of The Gables. The block contained basement car parking, an open ground floor, and supported above this on columns, a 3 storey element containing twelve 4 person flats and three 6 person flats. There would be 2 staircase entrances from the ground floor and a ramp down to the basement carpark. The layout of the block is effectively articulated into 3 linked sections, the western section matching the height and depth of The Gables houses. The facades have pitched roofs and almost fully glazed gabled bays. The southern part of the north fairground site was proposed to be laid out as public open space. However no details were shown regarding the layout, boundary or treatment of this open space, nor the route across this open space for vehicular/pedestrian access to the flats that would be required. Similarly the layout of the flat floorplans and the design of the block's facades is very sketchy and unclear.
- 1.2 For the above reasons, the application was deemed incomplete until further details were provided, in particular sections, elevations at scale of 1:50 and contextual plans showing its relationship with surrounding houses. Additional information was subsequently provided and the application was registered as complete on 9.5.97. The plans on which the decision was taken are H6/01 (location plan), 02 (site plan), 03 (basement floorplan), 04 (ground floorplan), 05 (1st,2nd,3rd floorplans), 06 (north and east elevations), 07 (south elevation), 08 (elevation and section AA), 09 (composite elevations).
- 1.3 It should be noted that the drawings are still lacking in essential detail required for the proper consideration of applications, as explained by Joanna Parker in her Proof of Evidence. Nevertheless it was decided at that time to accept the plans and application as "complete" on the grounds that the proposal was unacceptable in principle and therefore it was considered inappropriate to negotiate on further detail or subsequent amendments. This issue of unacceptability is discussed in detail in my section 5B "Assessment" below.
- 1.4 On 13.5.97, an application for housing on the north site was also submitted by Fairview Homes (who had an option to purchase the site) using different agents (ref PW9702438).

This was for the erection of eight 4 storey houses in 3 separate blocks adjoining the flank wall of The Gables and on the eastern edge of the site, a 4 storey block of 8 flats on the northwest corner of the site in the form of a rotunda, and a carpark adjoining East View cottages.

**(b) Consultation**

- 1.5 A full programme of consultation was carried out for both applications, which both attracted substantial opposition from local residents, amenity societies and public bodies. The process of consultation and summary of responses received has already been discussed in paras 3.7 - 3.10 of my Statement of Case. Copies of the responses specific to the Abbott scheme are contained in Appendix 23.
- 1.6 On 9.7.97, P.Thomson lodged an appeal against non-determination of the Abbott scheme.

**(c) Decision**

- 1.7 On 11.9.97, the Environment Development Control SubCommittee considered a report which recommended refusal of permission for both applications submitted (see Appendix 24 for copy of report). With reference to the Abbott scheme, the Council stated in its decision letter of 12.9.97 that, had an appeal against non-determination not been received, it would have refused planning permission for the following reasons:
1. The proposal involves development on Private Open Space and Metropolitan Open Land, contrary to policies LE8, LE9, EN66, EN68 to protect such open space as contained in the London Borough of Camden Borough Plan and draft Unitary Development Plan.
  2. The proposal would be detrimental to the setting and character of Hampstead Heath, contrary to policies LE8, EN66, HR4 contained in the London Borough of Camden Borough Plan and draft Unitary Development Plan.
  3. The proposed development would result in a total density in excess of that indicated as appropriate in the London Borough of Camden Borough Plan and draft Unitary Development Plan.
  4. It is considered that the proposed scheme is excessively bulky and large in relation to the character of the area generally and is thus considered to be overdevelopment of the site.
  5. It is considered that the proposal is inappropriate in terms of detailed design, height, layout and massing, as well as its ground floor layout, and as such would be detrimental to the special character and appearance of this part of Hampstead Village conservation area.

6. The proposal does not contain sufficient family sized dwellings, contrary to policy HG20 contained in the draft LBC Unitary Development Plan.
  7. The proposal does not meet Development Standards contained in the draft LBC Unitary Development Plan in relation to car parking and servicing.
- 1.8 By decision letter dated 13.9.97, the Council also refused planning permission for the Fairview scheme for broadly similar reasons as above. The developers have not appealed.

**(d) Scope of my evidence**

- 1.9 I shall first describe the following matters relevant to the site and proposal: the site and its surroundings and their relevant planning designations; the status of the development plans for the Borough; the history of the site and previous planning decisions. I shall then assess the scheme by discussing the following: the site's lawful use; the reasons for refusal (as set out in para 1.7 above) concerning loss of open space (reason for refusal No 1), density (reason No 3), housing mix (reason No 6), carparking (reason No 7). I also raise some additional issues relating to amenity space and geology. I then conclude my assessment of the scheme on the basis of these issues.
- 1.10 Joanna Parker will separately deal with in her Proof of Evidence the other reasons for refusal, concerning the impact of the scheme on the setting of the Heath (reason No 2), its bulk (reason No 4), and its detailed design, form and impact on Hampstead Village conservation area (reason No 5).

## 2. DESCRIPTION OF SITE & SURROUNDINGS

### (a) Site

- 2.1 The north and south fairground sites consist of two open and semi-vacant sites on the eastern edge of the Vale of Health settlement, overlooking the Heath (see OS map, Appendix 1). The south site is vacant and overgrown (although self-sown vegetation was cleared in November 97) and surrounded by chainlink and corrugated iron fencing. The site is owned by an unknown private developer.
- 2.2 The north site is approximately 2214 square metres in size, almost 3 times the size of the south site, and is owned by the Abbott family. They live on the site in caravans and use it for storage and maintenance of fairground equipment as well as occasional fairground purposes on 3 Bank Holidays a year. The appellants will no doubt further elaborate on their exact useage of the site and the equipment/structures positioned there. According to Peter Thomson's letter dated 26.3.97, the site had at that time 10 caravans, 8 lorries, 4 trailers, 7 fairground stalls and rides, 2 refreshment kiosks, an oil tank on wheels, generator trucks, 10 cars, 3 WC's and a urinal connected to sewage. The site is connected to mains electricity, water and sewage, and telephones. At the time of my visit in August 97, the site was quite empty looking, presumably due to the fairground equipment and vehicles being used elsewhere on the Heath for the August Bank Holiday weekend fair. The site is covered mostly by a gravel hardstanding and bounded by a metal balustrade fence interspersed by corrugated iron sheds. As a whole, the site gives the impression of being rather untidy in the context of the adjoining Heath and Vale of Health village.

### (b) Surroundings

- 2.3 The western side of the "north fairground site" is bounded by 1-4 East View, four 3 storey cottages immediately facing the site, and the flank wall of 6 The Gables, a 4 storey terrace on the northern edge of the village. To the south is the "south fairground site", adjoining a modern 6 storey block of flats built in the 1960's called Spencer House. South of the latter sites lie the Hampstead ponds; north and east of the appeal site lies Hampstead Heath which is wooded at this point and rises uphill from the site.
- 2.4 The site lies on the north eastern edge of the Vale of Health, a small hamlet of mainly Victorian terraced and semi-detached cottages and houses enclosed by the Heath on all sides. It is accessed by one road southwest of the hamlet which links it to Hampstead village.

(c) **Planning designations**

- 2.5 The lawful use of the site in planning terms is a "showpeople's site", as defined by Circular 22/91 on "Travelling Showpeople" (copy in Appendix 20), which is a "sui generis" use as defined by the Town and Country Planning Use Classes Order 1987. This classification of use is based on the established history of fairground use with associated residential and storage on this site since before the war (see History section 4 below). The authorised use is further discussed in my section 5A "Assessment" below.
- 2.6 The site is designated as Private Open Space in Camden's Borough Plan 1987 and draft Unitary Development Plan 1993. This designation for the site is due to its open character and its relationship with the Heath as a "soft edge" to the village. Such a designation means that a site does not necessarily need to be publicly accessible nor have a landscaped appearance or recreational use. This issue is further discussed in the Assessment section below. The gardens of Spencer House, Heathurst/Faircroft and Manor Cottage are also designated as Private Open Space. The south fairground site is not so classified and guidelines were prepared in 1980 for its residential development (see History section 4 and para 5.26 below).
- 2.7 The site is designated as Metropolitan Open Land. The latter designation covers the whole of Hampstead Heath and all adjoining private/public open spaces and also covers the whole of the built-up area of Vale of Health and other outlying settlements outside Hampstead village.
- 2.8 The site lies within the Vale of Health part of the Hampstead Village Conservation Area which was designated by Camden on 29.1.68 (see map in Appendix 7). However no specific policies for its preservation or enhancement have been prepared or adopted for this area. It is characterised by a high density core of residential and commercial buildings in the nucleus of Hampstead village centre, surrounded by lower density housing and spacious gardens, and bounded by Hampstead Heath on its north and east sides. The "Vale of Health" part of this conservation area is unique in that it consists of a small separate community of Victorian houses arranged in the form of a close-knit village to the northeast of the main Hampstead centre, completely detached from it and surrounded by Hampstead Heath on all sides.
- 2.9 Finally the site also lies within the Hampstead & Highgate Ridge Area of Special Character as defined in the Greater London Development Plan 1976 and Camden's draft Unitary Development Plan 1993. The latter Plan states that Areas of Special Character are those areas which-

*"make a contribution to the attractiveness and variety of townscape and environment within London as a whole... They require special policies for the preservation of that special character and where conservation area designation would not afford sufficient protection."*

In this case, Hampstead Heath consists of varied woodland and grassland with ponds surrounded by development, on a high ridge between the hills of Highgate and Hampstead. It is considered that this is a unique feature in London and the relationship of natural country to its fringe in a highly built-up urban environment requires special policies for retention of this character.

2.10 These 4 designations are shown on the UDP proposals map extract in Appendix 8.



### 3. DEVELOPMENT PLAN

- 3.1 The statutory Development Plan is the Borough Plan read in conjunction with the 1976 Greater London Development Plan ("GLDP"). The latter is now somewhat outdated and has little weight in relation to the latest UDP policies (see below). The Borough Plan, which was adopted in 1987, consists of a Written Statement, Proposals Map and Open Space Map supported by a number of non-statutory documents, including the Environmental Code (published in 1979) which gives general design guidance on a number of issues.
- 3.2 In November 1993 the Council formally placed on deposit for consultation its draft Unitary Development Plan ("UDP"). This had been prepared in the light of strategic guidance contained in the DoE Regional Planning Guidance ("RPG"), published in final form in May 1996. The Inquiry into objections received to the UDP commenced on 7th March 1995 and closed on 21st December 1995. The Inspector's report on the Public Inquiry into objections to the deposit draft Unitary Development Plan was published in January 1997. Over the coming months, the Council will be considering the report's findings and preparing modifications to the draft UDP which will then be formally agreed at Committee and published for statutory consultation. In the meantime, the Inspector's report constitutes a material planning consideration to be taken into account alongside the Council's draft UDP policies and the policies contained within the statutory Borough Plan. The Inspector's comments and recommendations are summarised in the analysis of appropriate UDP policies in the Assessment sections below, and copied in Appendix 19. At present, for the purposes of applications and appeals, the Council attaches equal weight to both the Borough Plan and the draft UDP (read in conjunction with the Inspector's report), on account of the latter's advanced stage of preparation. It is intended that in due course the adopted UDP will replace both the Borough Plan and GLDP documents.
- 3.3 The UDP is accompanied by a non-statutory document, the Supplementary Planning Guidance ("SPG"), which will replace the Environmental Code. This has also been subject to public consultation and it gives more specific design guidance on a number of issues.
- 3.4 The most relevant policies and standards for this case are contained in the following documents. They are referred to later in the Assessment sections of both Proofs of Evidence and copies are contained in Appendices 13,14,15,17,18.
- (a) **GLDP**  
Chapter 3 on Housing (section on density)  
Chapter 6 on Urban landscape (section on Areas of Special character)  
Chapter 9 on Open space (section on Private Open Space)

- (b) **Borough Plan**
  - Chapter 2 on Housing (policies on density and family sized units)
  - Chapter 5 on Urban design (policies on design, bulk, conservation areas, areas of special character, and use of open space).
  - Chapter 7 on Leisure (policies on Metropolitan Open Land and open space).
  - Chapter 11 on Policy Implementation (policies on Fringes of Heath).
  
- (c) **Environmental Code**
  - Section 14 on Design
  - Sections 42,43 on Parking design and ramps
  
- (d) **Draft UDP**
  - Chapter 2 on Environment (policies on environmental quality, unstable land, design, bulk, site layout and coverage, views, landscape, conservation areas, Metropolitan Open Land, designated open space).
  - Chapter 4 on Housing (policies on density, housing mix).
  - Chapter 12 on Areas of Special Character (policies on Hampstead and Highgate ridge).
  - Chapter 13 on Development Standards (sections 1,9,10 on density, carparking and servicing).
  
- (e) **SPG**
  - Chapter 1 on Principles of Good Design.

#### 4. HISTORY

##### (a) Pre-application history

- 4.1 The Vale of Health started becoming developed in the 1770's following the draining of marshland here and various cottages and dwellings were built here. By 1851 it was a small hamlet with cottages providing teamaking facilities for visitors on summer weekends and bank holidays. In 1864, the Suburban Hotel was built next to the pond which had tea gardens on the adjoining land (now the south fairground site). This hotel, later renamed the Vale of Health Tavern, was demolished in 1964 and replaced by the 6 storey block of flats, Spencer House.
- 4.2 In 1920, the tavern and tea gardens was sold to Fred Gray who also ran a fair on both north and south fairground sites. The family also owned Nos 1-4 East View cottages on the western boundary of the north fairground site, which, according to the 1896 Hampstead Street Directory (copy in Appendix), also had tea gardens. Nevertheless this ownership and use of both open sites for primarily fairground purposes (with associated residential and storage use) continued until after the Second World War. According to the appellants, the north fairground site and No 4 East View cottages are now owned by the appellants Charlie Abbott, his wife and 2 aunts, who have continued until today the fairground use here and who live at No 4 and in caravans on the site. According to Council files, the southern site ceased to be in use for fairground purposes by 1977 and was sold by Mrs Bond in 1979 to private developers for the purposes of residential development.
- 4.3 It is clear therefore that both north and south sites remained as open fairground sites from well before the war until the 1970's. This shown on Ordnance Survey maps from 1866 to 1952 (see Appendix): the 1866 one shows the site as a landscaped part of the heath, the 1894 one shows it cleared with a definite boundary, the 1915 and 1934 ones show a row of 4 structures next to the Gables and north of East View cottages and also 2 separate buildings on the north fairground site, the 1952 one shows the whole site had been cleared after the war.
- 4.4 However the issue of what the above-mentioned structures exactly were is less clear. This matter was considered by the DoE Inspector at a public inquiry in 1988 (see para 4.5 below) at which photographic and documentary evidence proved to be inconclusive. An aerial photo dated 1937, used at this Inquiry, shows the fairground and associated single storey structures on both sites (see Appendix). The Secretary of State concluded on the balance of probabilities that there had been a complex of 4 cottages and additional timber structures before the war; that although the cottages were

originally in residential use, they later became used as tea gardens until the war; that the buildings suffered minor war damage by bomb blasts and were subsequently demolished. Therefore it is concluded that there have been no residential dwellings on the fairground site since the war and on the appointed day of 1st July 1948. As the Inspector stated in the appeal decision of 25.3.88,

*"any residential use which may once have subsisted at the appeal site has long since been abandoned".*

**(b) Planning history of north fairground site**

- 4.5 On 17.2.86, the owners of the north site applied for a Section 53 determination that planning permission was not required for rebuilding cottages following war damage. On 1.9.86, the Council issued a Section 53 determination that this proposal constituted development requiring planning permission for the reason that the evidence available did not demonstrate, beyond doubt, exactly what was on the site before demolition (copy in Appendix 22).
- 4.6 On 25.3.88, an appeal against the above determination was allowed by the Secretary of State. Documentary evidence proved that 4 cottages did exist, had suffered war damage, and could be rebuilt on part of the site, under the provisions of the Town and Country Planning General Development Order 1977 (Class XI referring to war damaged buildings). However the decision noted that the works could only be implemented under the provisions of the GDO then in force and that, if the decision was not acted upon promptly, any developer was advised to first check that the statutory provisions had not changed in the meantime (copy of decision in Appendix 22). It should be noted here that both the later GDO (adopted on 5.12.88) and the current one (General Permitted Development Order 1995) excluded reference to war damage. Therefore the decision would no longer be valid, even had it not been quashed as explained below.
- 4.7 An appeal by Camden was made to the High Court against the above decision on a point of law, ie. that the cottages had not suffered war damage necessitating demolition but rather dilapidation and disrepair, for instance with windows broken, and that the GDO did not entitle owners to rebuild such structures some 40 years after their demolition. The High Court agreed with the Council's position, quashed the decision letter and dismissed the appeal. Furthermore on 27.7.88, the Court of Appeal dismissed the appeal by the appellants against this decision (see Appendix 22).
- 4.8 On 27.6.90, an application for both north and south fairground sites was submitted proposing 10 dwellings and 11 garages and transfer of the southern part to the City

Corporation as public open space. This involved lengthy discussions with officers and attracted numerous objections from local people. The application was later withdrawn by the developers.

**(c) Planning history of south fairground site**

- 4.9 With reference to the south fairground site, the imminent sale of this site to private developers in 1979 (see para 4.2 above) prompted the Council on 24.7.80 to adopt design guidelines for its residential development, as this site was not identified as a Private Open Space in the District Plan (the local plan in force at that time). The guidelines note that the northern site is designated as open space and that Council policy is to retain as such (copy in Appendix 21).
- 4.10 On 28.10.85, planning permission was granted on appeal for a 5 storey block of flats on this site. On 9.9.91, planning permission was granted for a similar scheme to this one. By 9.9.96, no works had been started on site to implement this scheme thus the planning permission had expired. The site remains vacant and overgrown.

## 5. ASSESSMENT

### Introduction

5.1 This scheme on appeal was refused on several grounds:

(a) The loss of designated open space is the fundamental reason for the scheme's unacceptability as it contravenes policies in both the Borough Plan and draft UDP.

(b) The secondary reasons for refusal concern the scheme's bulk, design and layout and its impact on Hampstead Heath and Hampstead Village Conservation Area. These issues of urban design will be dealt with in Joanna Parker's Proof of Evidence.

(c) Finally there are some subsidiary reasons for refusal relating to detailed aspects of the scheme (density, housing mix, carparking)- I consider that the scheme could be revised to satisfactorily address the latter 2 issues but it was felt inappropriate to request revisions to the application in this case due to the fundamental objection on loss of open space.

(d) Additional matters relating to geology of the site and the appellants' proposed open space are also discussed at the end of this Proof of Evidence as they represent concerns of the Council although they do not warrant reasons for refusal.

### A. PLANNING USE OF SITE

5.2 The lawful use of the site should be first addressed here, as the appellants maintain in their statement that the site has established residential use by virtue of them living in No 4 East View and the caravans.

5.3 The history of the site as discussed above shows that both residential and recreational uses have been evident here before the War. However the appeal decision of 1988 is crucial in establishing that any residential use had been abandoned by the time of the Second World War and that the site was open containing a fairground. The planning use of the site can only be based on the uses evident on the appointed day of 1st July 1948. Although Nos 1-4 East View with their tea gardens (noted in the 1896 street directory in Appendix) may have been functionally and historically linked to the site before this time, I consider that these cottages as buildings are physically distinct from the fairground site: moreover, since the War, they have been solely used as living accommodation whereas the fairground site is characterised as a mix of residential caravans, vehicle and

equipment storage, and recreational activity. The fact that No 4 is owned and occupied by the same owners of the open site and that it shares the same water supply does not mean that the cottage's prime residential use stretches to cover the fairground site as well. I consider that the latter site should be separately considered from the adjoining cottages in landuse terms, and that it has a mixed use as described above, rather than a predominantly residential use. Furthermore the fact that they stay in caravans on the site cannot justify an intensification of the residential accommodation to the exclusion of other uses on the site, ie. a change of use to residential use, which is what the appellants are effectively seeking to do.

- 5.4 The established and lawful use of the site is as a "Showpeoples' site", as defined by the DoE Circular 22/91 (copy in Appendix 20). This defines showpeople as-

*"self-employed business people who travel the country holding fairs chiefly during the summer months. Although their work is of a peripatetic nature, they require secure permanent bases for the storage of their equipment and more particularly for residential purposes. Such bases are most intensively occupied during the winter... increasingly showpeoples' quarters need to be occupied by some members of the people permanently; older family members will stay on for most of the year.."*

- 5.5 Furthermore the Circular states that the

*"nature of showpeoples' sites is unusual in planning terms. The sites illustrate the showpeoples' characteristic self-sufficiency by combining residential, storage and maintenance uses. Typically a site comprises areas set aside for the showpeoples' accommodation- usually caravans and mobile homes- and areas where vehicles and fairground site equipment can be stored, repaired and tested. This means that the sites do not fit easily into existing land-use categories."*

- 5.6 The appeal site is a classic example of this landuse: the appellants are members of the Showmen's Guild of Great Britain and have used the site continuously since the war for this purpose. In particular the site has had a mixed use incorporating living accommodation, equipment repair and storage, and occasional fairground use, where no one particular use dominates. The appellants primarily use the site as "winter quarters" (as described in the Circular, quoted in para 5.4 above) and they use both the site and (the adjoining Heath) for fairground purposes on 3 Bank Holidays a year. The Circular highlights the fact that such uses do not fall within any particular Use Class as defined by the Town and Country Planning Use Classes Order 1987, and consequently this site can be defined as having a "sui generis" use.

*Regular use  
at weekends  
since 20 yrs ago.*



*absolve (not the Heath)*

**B. PRINCIPLE OF DEVELOPMENT ON DESIGNATED OPEN SPACE**

5.7 The site has been designated as open space in several ways:

(a) Firstly, the site, along with the south fairground site, is included within the area of Metropolitan Open Land as defined in the 1976 Greater London Development Plan and the above-mentioned Camden plans. Policies aim to protect such land from inappropriate development.

(b) Secondly, the site is designated as Private Open Space in the 1962 London County Council Initial Development Plan, as principal Private Open Space in the London Borough of Camden 1979 District Plan and 1987 Borough Plan, and as Private Open Space in Camden's 1993 deposit draft Unitary Development Plan. Policies aim to protect such open space from development. Map extracts of these plans are shown in Appendices 9-12.

(c) Finally, planning guidelines adopted by the Planning and Communications Committee in 1980 for the southern site gave design guidance for residential development here but confirmed that in contrast the northern site should be retained as open space (copy in Appendix 21).

5.8 Accordingly the proposal was refused permission for the reason that-

*The proposal involves development on Private Open Space and Metropolitan Open Land, contrary to policies LE8, LE9, EN66, EN68 to protect such open space as contained in the London Borough of Camden Borough Plan and draft Unitary Development Plan.*

These open space designations are discussed in more detail in turn below.

5.9 It is thus clear that the principle of retaining the site as an open space has been consistently established by the statutory planning framework since the war. It should be noted that the revised PPG1 states that-

*"where an adopted or approved development plan contains relevant policies, section 54A (of the Town and Country Planning Act 1990) requires that an application shall be determined in accordance with the plan unless material considerations indicate otherwise. Conversely applications which are not in accordance with relevant policies in the plan should not be allowed unless material considerations justify granting a planning permission".*

In this case, the Council considers that there are no material reasons to justify a departure from the adopted Local Plan.



(a) Metropolitan Open Land

5.10 The Greater London Development Plan in para 9.8 introduces the concept of Metropolitan Open Land ("MOL") which can provide useful and attractive breaks in the built-up area and which is of significance for Greater London as a whole. It states that it will be an objective of planning authorities to conserve and protect it and that it needs to be safeguarded just as much as the Green Belt. The Urban Landscape Diagram referred to in the GLDP shows the extent of such MOL (extract in Appendix 13). In this context, it should be noted that the inclusion of this fairground site as MOL does not mean that it should form an extension to the Heath as public open space or that it should be visually attractive. This designation should be regarded in the same way as a Green Belt which can include landuses of an open character such as golfcourses, allotments, cemeteries and scrapyards.

5.11 The 1996 RPG strategic guidance reinforces this designation by advising London Boroughs to show MOL boundaries on their UDP Proposals maps and to apply to MOL the same principles of control over development in the Green Belt. It states in para 7.8 that-

*" there is a presumption against inappropriate development including development which would be harmful to the open character of the land. Such development should only be allowed in very special circumstances "*.

5.12 Borough Plan policy LE8 resists development detrimental to the character of this MOL as defined in the GLDP. The draft UDP policy EN66 confirms and expands this policy by not permitting development which is

*"detrimental to the character, integrity, nature conservation interest, appearance and setting of MOL"*.

More specifically this latter policy only allows development here which is essential to the use of the land as open space, and which conserves the open nature and character of the area. It then lists uses that may be considered acceptable (based on the list in para 9.9 of the GLDP), including such items as private open space, playing fields, horticulture, allotments, nature conservation, reservoirs, and informal open air recreation and tourism where this cannot be adequately provided in developed areas. The UDP also defines MOL in the Glossary (see Appendix 17) as being

*"open land within the built-up area which has a wider than Borough significance and which receives the same presumption against development as the Green Belt"*.

- 5.13 The Inspector's report on the UDP Inquiry supports this designation and the general aims of the policy; however he recommends that the policy be reworded and that the list of appropriate uses be modified to reflect more closely the guidance in the 1996 RPG3. The proposed policy now reads that

*"there will be a general presumption against inappropriate development in MOL, which will only be permitted in very special circumstances".*

The list of appropriate uses now refers to, for instance, outdoor recreational facilities including arts and cultural activities, open air tourist facilities, and camping and caravanning sites (see Appendix 19 for full wording).

- 5.14 It is considered that the proposal completely conflicts with these policies on MOL. Although it involves donation of half of the site to the Heath, the remainder of the site will be built upon for a dense residential use which does not conserve the open character of the Heath nor is an essential use for the open space. With reference to "open air recreation and tourism" in the above lists of acceptable uses, the current use of the site as fairground clearly complies with this category and is appropriate to the MOL. As an alternative to this use, it could be argued that this site could also contain, for instance, toilets, tearooms, or carparking as being essential or ancillary to the recreational use of the Heath. However the policies are absolutely clear in that no unrelated commercial or residential development would be acceptable here.

**(b) Private open space**

- 5.15 The GLDP states in para 9.7 that it is important to ensure that Private Open Space is not lost to other uses without good cause. It advises Councils to safeguard such open space,

*"particularly in circumstances where it also has a strategic role as part of the system of Metropolitan Open Land."*

It is considered that the latter qualification is particularly relevant in this case as the site adjoins the Heath and is important as a buffer zone in terms of preserving its visual character and openness.

- 5.16 The 1996 RPG also refers to other open spaces which can be valuable in providing breaks in the built-up area and providing space for recreation for residents. It highlights in para 7.18 that-

"there is also green space where public access is restricted or not formally established but which contributes to local amenity or meets, or is capable of meeting, recreational needs. Such spaces are valuable and Boroughs should consider whether they should be protected."

5.17 Borough Plan policy LE9 states that

"the Council will generally resist the loss of valuable private open space".

5.18 Draft UDP policy EN68 repeats this in stronger terms by not permitting, save in exceptional circumstances, proposals that would result in loss of private and public open space. The justification to the latter policy explains further that "the exceptional circumstances" quoted here only apply where development proposals are ancillary to the open space use of the land and where equivalent open space provision is made elsewhere in the locality to replace that lost. Finally the UDP Glossary, as redrafted for the UDP Inquiry, defines Private Open Space as:

"urban green space, designated by the Council, as defined by LPAC where public access is generally not formally established, but which fulfils or is capable of fulfilling a recreational or non-recreational role (eg. amenity, ecological, educational, social or cultural)..."

This revised definition (full version in Appendix 19) was endorsed by the Inspector.

5.19 The Inspector at the UDP Inquiry supported the content and objectives of policy EN68 but recommended its redrafting as follows:

"The Council will not permit development of public or private open space identified in the Schedule of Open Land Proposals and on the Proposals Map, unless:  
(i) the proposal is for development ancillary to the use of the land as public or private open space, or  
(ii) on private open space, it is for development ancillary to a use taking place on land of which open space concerned forms part, and for which there is a demonstrable need that cannot reasonably be satisfied elsewhere.

In either case, the development must be sufficiently small in scale to enable the open character of the land to be retained".

5.20 It is considered that again the scheme completely conflicts with these policies to protect such designated open space,

and does not satisfy any of the criteria for exceptions listed either in the original policy or the Inspector's redrafted one: the residential proposal cannot be regarded as an ancillary use of the Heath or the fairground site, there is no demonstrable need for it to be located here, it does not retain the open character of the site, and it does not offer an equivalent acreage of open space in Hampstead to replace that lost.

- 5.21 The Inspector also recommended that additional work be carried out on open space deficiency in the Borough, ie. that the UDP include a development standard for open space provision and a list of wards where LPAC has identified deficiencies, and that the Schedule of Open Land be reviewed and modified in the light of these tabulations.
- 5.22 In accordance with these recommendations, the Council is currently applying Table 7.1 of RPG3's Hierarchy of Public Open Space to the Borough; it will also produce a crude deficiency map and a list of deficient wards as a result of this exercise. A more refined deficiency analysis will be undertaken in the future review of the UDP.
- 5.23 The Council recognises that the site, on account of its proximity to the Heath, is not in an area of deficiency and that its designation as Private Open Space would not be a proposal to remedy such a deficiency. However it is considered that the site accords with the Glossary definition of private open space by being "*capable of fulfilling a recreational or non-recreational role (eg. amenity, ecological, educational, social or cultural)*". Ancillary development required for its function as Private Open Space could enhance the site in either recreational use or visual terms as an adjunct to the Heath. Furthermore PPG17 on Sport and Recreation in para 25 supports this view that open space is worthy of protection-

*"once built upon, open space is likely to be lost to the community for ever; planning decisions resulting in the development of open space should therefore take into account the long-term impact of the loss of such space."*

- 5.24 Draft UDP policy EN72 resists development which is detrimental to the integrity, appearance and setting of public and private open space. The Inspector recommended its redrafting, in particular by referring to the detrimental effect of a development's height, scale and massing or the effect of a use intruding on the public enjoyment of such spaces. It is considered that the proposed scheme would be detrimental to the rural character and setting of the Heath by reason of its bulk and massing and would also be detrimental to the recreational use of the Heath and the private open space by removing the fairground activity.
- 5.25 Following on from the above discussion of this site's role in

open space terms, it is important to emphasise that this site contributes to the setting of the Heath in both visual and recreational terms. Furthermore the site could, if desired, be used to enlarge the Heath's acreage in the same way that the Heath has historically evolved and expanded elsewhere on its fringes through the purchase of open land for public use.

5.26 It is considered that the site fulfils a number of roles in this location:

(a) It provides space for informal open air recreation and tourist facilities on the periphery of the Heath, thus relieving pressure for such uses on the Heath itself and yet meeting the needs of local residents and visitors. This accords with the aims of policies for Metropolitan Open Land.

(b) The site provides a soft "edge" between the close knit village-like community of the Vale of Health and the vast open rural area of the Heath. The site forms a valuable part of the Heath's setting. Development here, enlarging the existing built-up area, would encroach on views into and out of the Heath woodland adjoining the site and would increase the Heath's visual enclosure and the awareness of built-up surroundings to people enjoying the rural seclusion of the Heath. The issue of the Heath's setting and the site's visual role in preserving this is further considered in Joanna Parker's Proof of Evidence.

(c) Finally, from a historical point of view, as discussed in the above History section, the site has always been unbuilt space and traditionally viewed as an important visual edge to the Heath. Although the present edge of the Vale of Health is somewhat ragged and unkempt on its eastern side, the Heath's setting is not preserved or enhanced by having buildings developed in front of it, nor should its current poor appearance be used to justify unacceptable development.

5.27 Finally reference should be made to the inclusion of the north fairground site in the UDP Schedule of existing Private Open Space (UDP Appendix PR2, site 102- see copy in Appendix 17), to which the Inspector made no objection. The comments in this Schedule state that the site should not be used for residential, storage or commercial purposes other than 3 Bank Holidays a year when it may be used as a small scale fairground. I am unclear as to the origin of this restriction which does not come from the Borough Plan and I consider that it does not have any legal basis, in the light of the above discussion on planning uses of the site. The lawful and established use of the site, as discussed in paras 5.4 - 5.5 above, is as a "showpeoples' site" with associated occasional fairground use, incorporating a mix of recreational, residential, commercial and storage uses. I am also unaware of any planning or other restrictions on the duration or frequency of fairs that can take place here.

5.28 The appellants refer to the fact that they had no opportunity to object to their site being included on such a schedule of open spaces. It is considered that ample opportunity has been given and that the Council has fulfilled its requirements for publicity under the Town and Country (Development Plan) Regulations 1991, with respect to the UDP. The site has been designated as private open space in 2 previously adopted Plans which both underwent considerable consultation. Consultation on the draft UDP took place in 1992 in the form of public meetings, exhibitions, press releases, letters to local groups, posters, articles in the "Camden Citizen", copies in libraries and community centres, as well as statutory advertisements in the local press. No objections were made to the site's designation as open space.

**(c) Planning guidelines for south site**

5.29 The Council on 24.7.80 adopted design guidelines which would act as a framework for residential development of the south fairground site, as a result of its imminent sale at that time. This guideline suggested that any development should be low rise to retain views from the south and to maintain the feeling of openness from the north. It also mentioned that the northern site, not on offer, was included in the District Plan open space map and that Council policy was to retain it as open space. Planning permission was subsequently granted in 1985 and 1991 for a residential block of flats on the south site.

5.30 The private gardens of adjoining houses (eg. Heath Villas, Athenaeum Hall) backing onto the pond are also designated as Private Open Space. The Inspector at the UDP Inquiry agreed with the Council's proposals to enlarge this designated area to include the adjoining gardens of Spencer House and also the proposed gardens around the footprint of the block granted planning permission in 1991 on the south site (see Appendix 19). Although this permission was still valid at the time of the Inquiry, it has now expired since September 1996, and the Council may, as part of a future review of the UDP, reconsider its position on development of this site and may extend the designation of Private Open Space to the whole of this site, in order to be consistent with other similar open sites and gardens in the Vale of Health.

C. DETAILED ISSUES

(a) Density

5.31 The third reason for refusal of the proposal was that-

*The proposed development would result in a total density in excess of that indicated as appropriate in the London Borough of Camden Borough Plan and draft Unitary Development Plan.*

5.32 The proposal involves twelve 4 person 2 bedroom flats and three 6 person 3 bedroom flats, deduced from the floorplans which are very sketchy. the site area has been recalculated to be 2214 sqm (0.55 acres); the addition of half of the adjoining roadway to the southwest does not make any difference to this figure. The adjoining public open space cannot be used for the purposes of density calculations. The scheme has a total of .48 habitable rooms giving a density of 87 HRA- I accept that therefore the figure of 87 quoted in P.Thomson's statement is correct. However I consider that flat 3 on the floorplans (repeated on all 3 storeys) has an extremely large living area which could be split into 2 average sized rooms so that the flat could be regarded as having 4, not 3, habitable rooms. On the basis of this assumption, the density figure is recalculated to be 92 HRA- the figure quoted in the Council's Statement of Case.

5.33 The Borough Plan in policy HG21 states that the density range for new development shall be 70-100 HRA, with 140 HRA used for non-family accomodation. This is based on the GLDP recommendations for density (see Appendix 13). Policy HG23 allows densities to exceed this maximum as an exception where for instance the site is within walking distance of public open space and where the need for compatibility with the existing character and scale of adjoining development dictates a higher density. Furthermore policy HG25 states that in conservation areas and the fringes of the heath, design policies will determine the scale of development.

5.34 The draft UDP in policy HG13 states the same exceptions to the density ranges. The development standard DS1 however states a lower range for the Hampstead & Highgate area, 40-70 HRA for both family and non-family accomodation. The Inspector in his report on the UDP Inquiry supported policy HG13 with the Council's latest proposed modifications and with some minor additions and agreed that it should relate to the Development Standard. He also supported the density figures in DS1 and their inclusion as a standard in the UDP rather than as SPG.

5.35 The proposed density of 87 HRA falls within the Borough Plan density range but outside that of the draft UDP. It is accepted that adjoining properties have similar or higher densities - P.Thomson quotes 238 HRA for East View and 135 HRA for The Gables, although I have not been able to verify these figures. However the density for Spencer House cannot be used as a "yardstick" as he suggests, as this 1960's block of flats is unacceptably large and bulky in townscape terms and should not set a precedent for future developments. I also accept that the site is fully accessible to adjoining public open space (the Heath). I therefore concur that the scheme can be regarded to comply with exception (b) listed in Borough Plan policy HG23 and UDP policy HG13. However the scale, form, bulk and massing of the scheme is unacceptable, as will be explained in Joanna Parker's Proof of Evidence, and it is considered that the scheme is too bulky in relation to the general townscape character of this area. Thus it is considered that the scheme does not accord with the other exceptions listed in the above 2 policies and with Borough Plan policy HG25.

5.36 It should be remembered that density alone cannot be used a sole reason for refusal- it is a theoretical tool used to highlight the acceptability or otherwise of other aspects of the development. In this case, it is considered that more important is the harm flowing from this high density figure: for instance, the excessive bulk and height of the scheme detrimental to the townscape character, and the large number of flats generating substantial vehicular traffic and leading to potential congestion of the local road network. As DS1 of the UDP states,

*"density standards...will not be used in isolation but in conjunction with townscape and amenity considerations".*

5.37 Also it should be borne in mind that the density figure of 87 HRA has been calculated on the basis of the whole site being used for private housing and private gardens. In reality, the application proposed the southern half of the site for public open space to be donated to the Heath. The proposed modification in the appellants' statement still suggests that this area will be used for public recreational or social facilities. In either case, if one assumes that the block of flats would stand alone with a very small area of private amenity space attached near the carpark entrance and that consequently the area of public open space was 875 sqm, it is calculated that the density would be almost twice the figure quoted above, ie. the exclusion of this open space would result in a new figure of 145 HRA. This more realistic density figure is well in excess of the maxima of 70 and 100 quoted for family accommodation in the Borough Plan and UDP policies respectively.



(b) **Housing mix**

5.38 The sixth reason for refusal of the proposal was that-

*The proposal does not contain sufficient family sized dwellings, contrary to policy HG20 contained in the draft LBC Unitary Development Plan.*

- 5.39 Borough Plan policy HG30 seeks to provide family sized accommodation in all new housing developments, family sized units defined as having 4 bedspaces in 2 or more bedrooms. Policy HG31 encourages development schemes to have family sized accommodation where there is access to amenity space. Policy HG32 requires all new development schemes to provide some family sized dwellings, but no minimum amount is specified. Draft UDP policy HG20, as amended at the Inquiry, is similar but encourages schemes to have 50% or more of accommodation suitable for families or larger households; it also defines such accommodation as having 4 bedspaces in 3 or more bedrooms. The Inspector agreed with this policy and the definition of family sized units but he recommended that the policy be amended to say the Council would "welcome" rather than "encourage" schemes to have 50% of accommodation suitable for families (see Appendix 19).
- 5.40 In this case, it is considered that the location of the block next to the Heath and the proposed layout on this site, which could include private gardens or public open space, would make the scheme appropriate for including a substantial proportion of family accommodation- I would suggest that at least a third of the total units should be so sized. Although the scheme appears to comply with Borough Plan policy on family sized units, by having 2 bedroom units, it does not comply with the new UDP policy. The Council considers that the draft UDP policies have an equal if not greater weight to the adopted plan policies, due to the advanced stage of preparation of the UDP; this is especially so in this case where the Inspector does not object to the UDP definition of family sized units. Consequently it is considered that the scheme does not contain sufficient family sized units as defined by the UDP: there would be only three 6 person/3 bedroom units out of total of 15 units, ie. 20% of the total accommodation. This is both well below the figure of 50%, encouraged in UDP policy HG20, and also below a lower figure such as 33% that I would expect to be reasonable for this site. I consider that the scheme could be easily amended to adjust the size and mix of units more in accordance with the aims of this UDP policy.

(c) **Carparking/servicing standards**

5.41 The final reason for refusal of the proposal was that-

*The proposal does not meet Development Standards contained in the draft LBC Unitary Development Plan in relation to car parking and servicing.*

5.42 Development Standards 9 and 10 of the UDP give detailed design standards for these issues. Although the Inspector did not disagree with these standards, he thought that they were too detailed for inclusion in the UDP and that they should be transferred to the SPG.

5.43 Traffic officers are concerned that the scheme does not meet minimum standards relating to basement carpark and ramped access design (see memo in Appendix 23). No objections are raised to the quantity or layout of carspaces provided. The specific problems are as follows: the basement headroom is 2.0m rather than the minimum 2.5m; as far as can be deduced from the drawings, the minimum standard for gradients (1:7 to 10) is not met; the radius of the ramp is too small; the ramp should be widened to allow for 2 way traffic or an electronic detection and signalling system should be installed; the ramp should also incorporate kerb requirements of DS9. Finally there is no indication of the access arrangement from the public highway to the ramp, or of servicing arrangements for refuse collection. However it is considered that the scheme could be amended to incorporate these design details.

(d) **Amenity space**

5.44 As already indicated, the submitted plans are very sketchy and in particular no details are given for the intentions of both the ground floor of the new building and the proposed open space. It is not clear whether the ground floor and any adjoining space will be used for additional carparking or private amenity space for the new residents of the block. With regard to the open space element, the applicants intend to transfer this to the City Corporation for management purposes as part of the Heath but no details are given on its landscape treatment, boundaries or access. However it is accepted that the agent wished to enter into discussions regarding the public use and landscaping of this open space, had the Council given him the opportunity to do so if the residential scheme had been acceptable in principle.

5.45 Although the proposal for donating half of this site as public open space is welcomed in principle, both officers of the Council and the City Corporation have doubts as to the usefulness of this part of the site to be used as an adjunct to the Heath, bearing in mind its proposed size and position

bordered closely by buildings on 2 sides, and they consider that it would not be conducive to public use or beneficial to the Heath. Furthermore any proposed roadway across the open space, which would be required to provide vehicular access from the public highway to the carpark, would further negate the usefulness and amenity value of this open space.

(e) **Geology**

5.46 A final consideration concerns the issue of development in unstable land, although it does not form a reason for refusal. The site lies within an area adjoining the Heath apparently notorious for its unstable geological/subsoil conditions and a history of local subsidences: in particular, local residents report that this site has a watercourse under it. No information has been provided with the application, as required by UDP policy EN12 regarding unstable land (see Appendix 17), to satisfy the Council that measures can be taken to overcome these problems and to protect adjoining properties. However, as with other detailed aspects of the scheme, the Council did not press for this information as it considered that the principle of development on open space was unacceptable in the first place.

5.47 In relation to the 2 matters of amenity space and geology discussed above, the Council requests that the following additional information should be provided to enable the Inspector to consider the detail of the application:

- foundation design of proposed block and its basement.
- engineer's method statement showing how adjoining properties would be protected from potential subsidence.
- details of use of ground floor of proposed block.
- details of location of proposed access by vehicles and pedestrians to the block.
- details of any proposed ancillary garden or service area.
- details of location of proposed "public open space", its landscaping, means of enclosure and access.
- statement of intent regarding applicant's proposed management and maintenance of proposed public open space or its transfer to the City Corporation of London.

5.48 Joanna Parker also refers in her statement to the need for additional information relating to architectural and landscaping detail.

6. CONCLUSION

- 6.1 Given the consistent and extensive statutory open space designations for this site, the support by the Inspector at the UDP Inquiry for open space policies, and the amenity value of the site contributing to the visual setting and recreational use of the Heath, the site should be protected from residential development. It is thus considered that the application should accordingly be refused permission on this ground in principle.
- 6.2 In addition to the above reason, there are numerous detailed objections relating to form, design, bulk, site layout, density, housing mix, access and carparking. Joanna Parker in her Proof of Evidence concludes that the scheme would neither preserve nor enhance the character and appearance of this part of the Hampstead Village conservation area or the setting of the Heath. Although certain details of the scheme could have been amended or clarified to comply with detailed policies and standards, the Council considered at that time that there was no realistic prospect of negotiating an acceptable scheme due to the overwhelming unacceptability of the proposal on landuse grounds.
- 6.3 For the reasons given above, the Inspector is requested to uphold the Council's recommendation and to refuse planning permission.

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Charles Thuaire.

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27.1.98

## APPENDICES

1. current OS site plan (scale 1:1250).
  2. old OS plan extracts (1814,1866,1894,1915,1934,1952).
  3. aerial photograph of Vale of Health (1991).
  4. photographs of views of site, plus location map.
  5. 1896 Hampstead street directory.
  6. Hampstead & Highgate Newspaper cutting 14.6.85.
  7. Conservation Area map extract, showing Vale of Health.
  8. planning designations of site, shown on draft UDP proposals map
  9. London County Council I.D.P. 1962 open space map extract.
  10. L.B.C. District Plan 1979 open space map extract.
  11. L.B.C. Borough Plan open space map extract.
  12. L.B.C. draft UDP proposals map extract.
  13. Greater London Development Plan 1976 written statement and urban landscape diagram extracts.
  14. Borough Plan 1987 written statement extracts.
  15. Environmental Code 1979 extracts.
  16. Policies for Fringes of the Heath document 1981 (extract).
  17. Deposit draft Unitary Development Plan 1993 (incorporating proposed changes at the Inquiry (1996)) written statement extracts.
  18. Supplementary Planning Guidance 1993 extracts.
  19. Inspector's report on UDP Public Inquiry 1996 (extracts).
  20. Circular 22/91 (Travelling Showpeople).
  21. Planning & Communications Committee design guidelines for south fairground site 24.7.80.
  22. planning decisions on north site: 1.9.86, 25.3.88, 27.7.88.
  23. responses to consultation exercise for Abbott scheme.
  24. application report to Development Control Subcommittee on 11.9.97.
  25. map of existing block structure in Vale of Health compared to proposed development.
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