

MJO/LE/LN3166

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19 February 2016

Charles Thuairé  
London Borough of Camden  
2nd Floor, 5 Pancras Square  
c/o Town Hall, Judd Street  
London  
WC1H 9JE

Dear Mr Thuairé,

**Address:** Heath House North End Way London NW3 7ET  
**Proposal:** Conversion of existing single dwellinghouse to 6 self-contained residential units; erection of new west side wing comprising basement, lower ground, ground and first floors; erection of rear conservatory extension; remodelling roofs of main house and east side wing; excavation of front forecourt to provide basement level carpark; various external alterations and associated landscaping (ref. 2015/6280/P and 2015/6447/L)

I write on behalf of my client, the City of London Corporation, to make a representation to the above planning and listed building applications. My client has concerns that, if permitted, the proposals would have an adverse effect on the designated Metropolitan Open Land as well as the historic fabric of the Grade II\* Listed Building and surrounding Conservation Area, and would therefore not be in accordance with the adopted Development Plan. Set out below are further reasons why the application should be refused.

### Background

This letter contains the basis of objections on behalf of The City of London Corporation ("the City"). In summary it is considered that the planning application cannot be supported as the City has a number of concerns relating to impacts on the character of the adjoining Metropolitan Open Land and the surrounding Conservation Area.

The City of London Corporation provides local government services for the City but has responsibilities that extend far beyond the Square Mile. It also provides a host of additional facilities, ranging from its Open Spaces such as Hampstead Heath to the Barbican Centre.

In the 1870s the City was concerned that access to the open countryside was being threatened and therefore promoted two Acts of Parliament. The Epping Forest Act and the City of London (Open Spaces) Act were passed in 1878 and enabled the City to acquire and protect threatened Open Spaces from future development. Since that time the City has acquired further Open Spaces under this and other legislation.

The City is statutorily obliged by virtue of various Acts of Parliament and, specifically, the provisions of the London Government Reorganisation (Hampstead Heath) Order 1989 as follows:-

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- i. for ever to keep the Heath open, unenclosed, unbuilt upon and by all lawful means prevent, resist and abate all encroachment on the Heath and attempted encroachment and protect the Heath and preserve it as an open space;
- ii. at all times preserve as far as maybe the natural aspect of the Heath and to that end protect the turf, gorse, heather, timber and other trees, shrubs and brushwood thereon;
- iii. not to sell, lease, grant or in any manner dispose of any part of the Heath; and
- iv. to provide active and passive recreational facilities and information for members of the public.

In total, the City owns and manages over 10,700 acres (4,330 hectares) of Open Spaces in and around London. The sites are used and enjoyed by millions of visitors each year. They are important wildlife habitats but also provide many facilities for visitors, including swimming and other sports, play areas, fishing and much more. The Open Spaces Department is committed to providing the best service possible within available resources, ensuring fair and efficient management, good communications and an open, learning culture.

The City took over title ownership and the responsibility for the management and protection of Hampstead Heath in 1989, and for making it available as open space. In addition the Local Government Reorganisation (Hampstead Heath) Order 1989 establishes a Trust Fund, the proceeds of which may be used to defray, in part, the cost of enhancing or replacing amenities on the Heath. The balance is met out of the City of London funds, at no cost to the public.

### **Objections**

The City has concerns in relation to the proposed development, which predominantly relate to the proposed development's impact on Metropolitan Open Land. This matter is discussed in further detail below.

#### Metropolitan Open Land

According to the adopted proposals map, whilst the existing building is not designated, the gardens up to the footprint of Heath House are designated as Open Space and Metropolitan Open Land (MOL) and form part of a wider area of MOL including Hampstead Heath, Kenwood, Parliament Hill and Highgate playing fields.

Metropolitan Open Land designation is unique to London, and protects strategically important open spaces within the built environment. MOL brings benefits to the whole of London and within the local urban area by providing useful and attractive breaks in the built up area and by retaining a variety of high quality open spaces, landscapes and areas important for recreation, nature conservation, cultural and historic values. There is a strong need to protect existing open land, both in terms of openness and visual impact, and a need to consider the nature and form of both development and land-uses in the vicinity of the MOL especially to protect its setting.

Policy prescribes that MOL be protected as a permanent feature, and afforded the same level of protection as the Green Belt. In particular, Policy CS15 of Camden's LDF refers to the protection of MOL. Paragraph 15.7 provides:





*"Camden's designated open spaces include Metropolitan Open Land. This is open space of London-wide significance that provides a break in the built up area and receives the same presumption against development as green belt land." (our emphasis).*

Further to the above, the London Plan (March 2015) echoes Camden's LDF, stating that the strongest protection should be given to London's Metropolitan Open Land and inappropriate development refused, except in very special circumstances, giving the same level of protection as in the Green Belt. Paragraph 87 of the NPPF reiterates this and identifies that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.

The key question in this instance is not whether the replacement dwelling would be more visually intrusive from the public realm, but whether it would be materially larger than the existing dwelling, as is evidenced within *Heath & Hampstead Society v London Borough of Camden* [2007] EWHC 977 (Admin) (3<sup>rd</sup> April 2007). In this case, the dispute before the Court was whether the Officers' report correctly identified and applied the test of materiality. According to paragraph 21 of the High Court decision:

*"There are good reasons why the relevant test for replacement dwellings in the Green Belt and Metropolitan Open Land is one of size rather than visual impact. The essential characteristic of Green Belts and Metropolitan Open Land is their openness ... The extent to which that openness is, or is not, visible from public vantage points and the extent to which a new building in the Green Belt would be visually intrusive are a separate issue."*

The application documents set out to compare the floorspace of the proposals with the floorspace of a previously consented scheme at Heath House (ref. 2008/0661/P) in an attempt to demonstrate that the proposed increase in floorspace is not materially larger. However, the City perceives this approach to be flawed as the consultant wrongly assesses whether the proposals are materially larger and, therefore, fails to accurately assess the impact on MOL. Notably, the basement extension floorspace has been eliminated from the calculations which significantly skews the results. The comparison calculation should consider the existing floorspace on site versus the floorspace of the proposed development to demonstrate the true impact.

The City therefore considers that the applicant has misinterpreted case law and recent appeal decisions. The application proposals would result in a materially larger development which would impact on the openness of the MOL. Consequently, the applicant is required to demonstrate that very special circumstances exist to justify planning permission being granted. The applicant does not identify any 'other consideration' which clearly outweighs the harm to the MOL. It is therefore considered that the applicant has not correctly applied the relevant tests required for development within MOL.

### Summary

The City is statutorily obliged by virtue of various Acts of Parliament and, specifically, the provisions of the London Government Reorganisation (Hampstead Heath) Order 1989 to "for ever to keep the Heath open, unenclosed, unbuilt upon and by all lawful means prevent, resist and abate all encroachment on the Heath and attempted encroachment and protect the Heath and preserve it as an open space". It therefore has concerns relating to the gradual encroachment of development on the Heath.



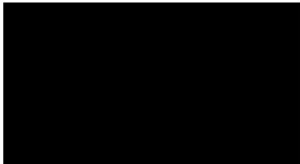


The fundamental aim of Green Belt and MOL policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. The proposed development would result in a significant increase in floorspace in comparison with the existing building, and it can therefore be considered that the proposal would result in a materially larger development. No special circumstances have been put forward in the applicant's case which would justify a grant of planning permission.

The proposed development is contrary to planning policy and it is, therefore, respectfully requested that the Council refuse permission for the proposals.

The City of London Corporation reserves the right to supplement the above objection in respect of specific matters relating to the applications and to be re-consulted regarding any further amendments or additional documentation submitted.

Yours sincerely,



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