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05 December 2017

Dear Mr Thuaire,

**RE: Application No. 2017/4346/P - North Fairground Site, Vale of Health, London, NW3 1AU**

Nexus Planning is acting on behalf of the City of London Corporation and makes the following objection in relation to Application No. 2017/4346/P at the North Fairground Site, Vale of Health. The City of London Corporation objects as it does not believe that the proposed use would be 'lawful', as the application would result in a material change of use of the site that would require planning permission.

**City of London Corporation**

The City of London Corporation ('the City') owns and manages over 10,700 acres (4,330 hectares) of Open Space in and around London, which are enjoyed by more than 23 million visitors each year. The open spaces owned and managed by the City include Hampstead Heath, the Hampstead Heath Extension, Golders Hill Park, Highgate Wood, Queen's Park, Epping Forest, and West Ham Park.

The open spaces managed by the City are important wildlife habitats but also provide many services and facilities, including outdoor swimming, sports pitches, tennis courts, play areas, fishing and much more.

This role was established in the 1870s, when the City was concerned that access to the open countryside was being threatened by development and therefore promoted two Acts of Parliament. The Epping Forest Act and the City of London (Open Spaces) Act received assent in 1878 and enabled the City to acquire and protect threatened Open Spaces from future development. Since this time, the City has acquired further open spaces, including Hampstead Heath.

The City is statutorily obliged, by virtue of various Acts of Parliament, and specifically by the provisions of the Hampstead Heath Act, 1871, 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;
- 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;
- not to sell, lease, grant or in any manner dispose of any part of the Heath; and
- to provide active and passive recreational facilities and information for members of the public.

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.

### Application Site Context

An indicative site location plan of the North Fairground Site, Vale of Health, London, NW3 1AU is shown below.



Figure 1: Site Location

The North Fairground Site is located at the east of two separate rows of terraced properties to the north-eastern extent of the Vale of Health. The application site contains stored equipment in connection with fairground and show equipment, external storage and some accommodation within caravans. The site is surrounded by Hampstead Heath to the north and east, with the Spencer House opposite to the south.

The site is located in the Hampstead Conservation Area, is within an Archaeological Priority Area, and is identified as an area of Open Space, and an area of Metropolitan Open Land under Camden's Planning Policy Map (Figure 2 below).

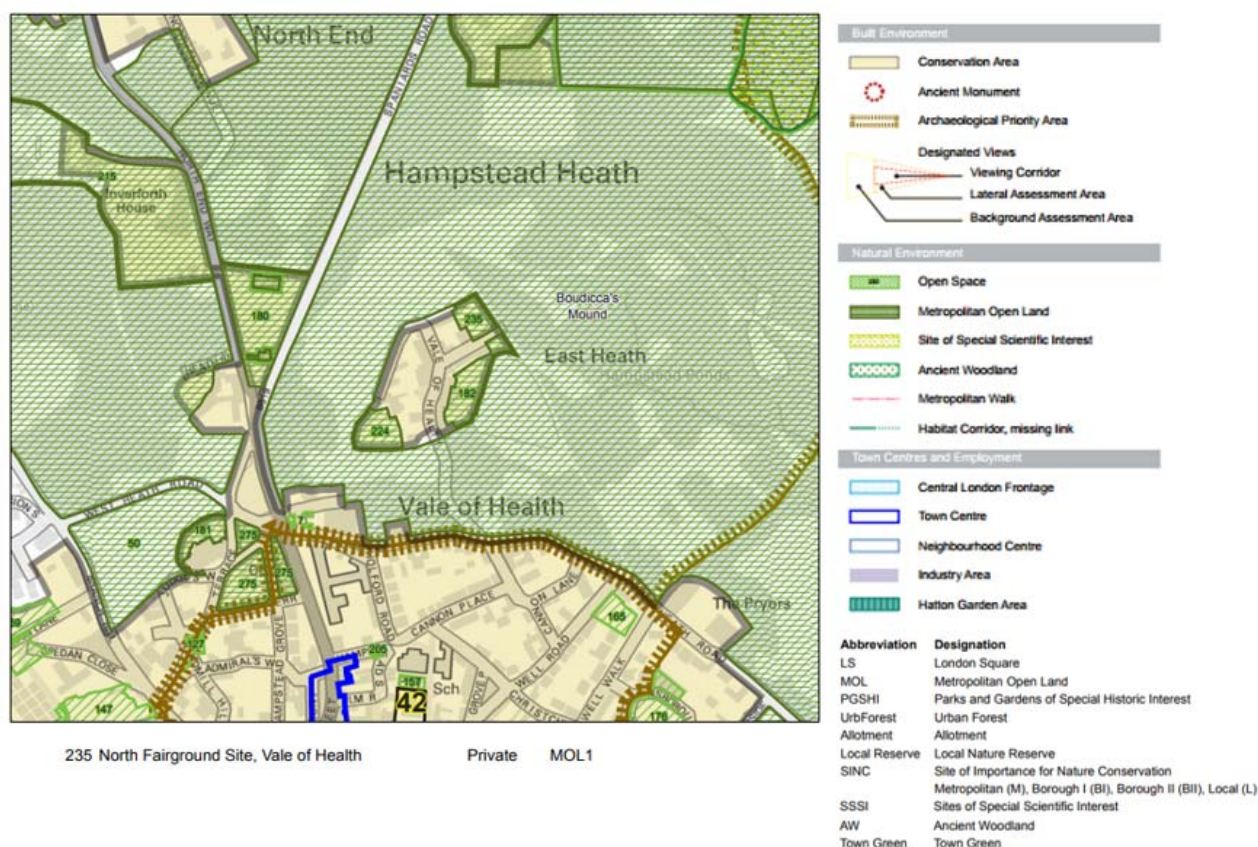


Figure 2: Extract of the Camden Council's Planning Policy Map

## Planning History

Table 1 below provides an overview of the planning history of the site.

Table 1: Determined Applications over the North Fairground Site, Vale of Health, NW3 1AU

APPLICATION NO.	PROPOSAL DESCRIPTION	DECISION	DATE
D7/3/1/33450	Erection of a five storey building to provide residential accommodation comprising three flats and two maisonettes.	Refused	02/10/1984
8905634	Approval of details pursuant to conditions 2 and 3 of the permission granted by the Department of the Environment dated 28.10.85 for the erection of a five storey building to provide three flats and two maisonettes the details as described in letters dated 02.08.89 subsequently amended by letters in February 7 and 21 March 1990 (Allowed Appeal).	Granted	30/05/1990

9005369	Erection of ten single occupancy dwellings eleven garages nine parking spaces landscaping vehicular and pedestrian pavings.	Withdrawn	08/05/2003
9005526	Approval of details of the pergola boundary fences and retaining wall to the pond pursuant to condition 02 of planning permission dated 28th October 1985.	Withdrawn	08/05/2003
9005692	Erection of a five storey building to provide three flats and two masionettes.	Granted	05/09/1991
PW9702438	Erection of eight 4 storey dwelling houses and a 4 storey block of 8 self-contained flats, together with surface car parking for 16 cars.	Refused	23/05/1997
PW9702255	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.	Appeal dismissed	07/05/1998
2010/2845/P	Application for a Certificate of Lawfulness (Existing) for the use as a residential caravan site for more than 10 years.	Withdrawn	2010

## Proposal

The current application undergoing assessment by Camden Council seeks a Certificate of Lawfulness (Proposed) for the use of the site for seven static caravans for residential occupation.

The applicant states that the current use of the site consists of three elements. The siting of caravans for the purposes of human habitation (residential caravans), storage of caravans, storage of equipment and vehicles for fairground purposes. In summary, the applicant contends that with the removal of the storage and fairground equipment, the only reasonable description of the site would be a 'caravan site' in accordance with the definition of the 1960 Act. The applicant contends further that no planning permission is needed for the removal of the fairground equipment and the cessation of this element of the mixed use, and as such, the use of the land as a caravan site with seven caravans would be lawful and that a certificate should be issued accordingly.

## Key Issues

While the City acknowledges that the site is currently used for the siting of caravans for the purposes of residential habitation, the storage of caravans, the storage of equipment and vehicles for fairground purposes, and the maintenance and repair of fairground equipment, the City is of the opinion that the applicant has not provided sufficient justification or evidence to support their case that the use of the site for seven static caravans would be 'lawful'. The City maintains that the application would result in a material change in use of the site that would require the submission of a full planning application, and therefore, the application for a Lawful Development Certificate for a Proposed use or development is not appropriate in this instance.

National Planning Practice Guidance (NPPG) states that:

*There are two types of lawful development certificate. A local planning authority can grant a certificate confirming that:*

*(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under [section 191 of the Town and Country Planning Act 1990](#); or*

*(b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under [section 192 of the Town and Country Planning Act 1990](#).*

The NPPG states further that in determining a lawful development certificate:

*A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.*

*In determining an application for a prospective development under [section 192](#) a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"*

In making their case that the proposed use would be lawful for planning purposes, the applicant makes a number of assumptions that are either not supported with facts and conclusive evidence, or are not relevant to their application. These assumptions include:

- The Council Tax records, photographs and site history formally establish the use of the site;
- The lack of enforcement action from Camden Council over the use of the site makes the land use lawful;
- The use of an inaccurate description of the proposal in the previous Certificate of Lawfulness Use or Development application would not prejudice whether the previous or proposed use would be lawful; and
- The use of the irrelevant Hertfordshire County Council example of case law.

These issues are discussed in further detail below.

#### Formally establishing the use of the site

The applicant maintains that the Council Tax records, photographs and site history all support their interpretation of the use of the site. It is not considered that the identification of caravans on the 2006 aerial photograph makes it 'reasonable' to conclude that the 2011 picture is representative of the last ten years of use of the site. If there was sufficient evidence to back up the applicant's assumptions, then the 2010 application for a Lawful Development Certificate for an Existing use would have not been withdrawn, and would have been approved by the Council. If the applicant wishes to formally establish the use of the site, this would need to be done through a Lawful Development Certificate through either Section 191 or Section 192 of the Town and Country Planning Act (as detailed earlier in this letter), rather than making unsubstantiated an statement in their planning statement.

#### Lack of enforcement action

The lack of enforcement action by Camden Council does not automatically establish the use of the site either. There may be many different reasons for a Council to not take enforcement action, whether it be staffing shortages, excessive workloads, lack of information from the public, or the matter not being brought to the attention of the Council. If the applicant wishes to formally establish the use of the site, this would need to be done through a Lawful Development Certificate through either Section 191 or Section 192 of the Town and Country Planning Act (TCPA) (as detailed earlier in this letter), rather than making an inaccurate statement in their planning statement.

#### Inaccurate description in previous application



While the accuracy of the description of development in the 2010 application would not prejudice whether the use of the site was lawful, in order to establish whether a previous use or a proposed use is lawful, the applicant would either need to make a Lawful Development Certificate application through either Section 191 or 192 of the TCPA, respectively.

#### Irrelevant use of Hertfordshire County Council (Herts CC) example

The operation of a scrapyard is irrelevant to the current application, particularly as the scrapyard already benefited from a planning permission. The circumstances and issues of the Herts CC case are also significantly different from the circumstances and issues being determined within the current application, and as such, the use of this example is considered to be irrelevant and inappropriate.

#### **Material change of use**


The City acknowledges that the site is currently used for the siting of caravans for the purposes of residential habitation, the storage of caravans, the storage of equipment and vehicles for fairground purposes, and the maintenance and repair of fairground equipment. On this basis, the City accepts the site's present use is 'mixed use'. In terms of classification under the Town and Country Planning (Use Classes) Order 1987 (as amended), this use could be described as 'Sui Generis' i.e. a use on its own to which any change of use will require planning permission.

Therefore, in the City's opinion, the change of use of the site from a mixed 'Sui Generis' use involving the siting of caravans for the purposes of residential habitation, the storage of caravans, the storage of equipment and vehicles for fairground purposes, and the maintenance and repair of fairground equipment to a sole use as a site for seven static caravans for residential occupation would result in a material change of use of the site. The City maintains that the application would result in a material change in use of the site that would require the submission of a full planning application, and therefore, the application for a Lawful Development Certificate for a Proposed use or development is not appropriate in this instance.

#### **Conclusion**

The City is of the opinion that the proposal would result in a material change of use that would constitute development under the Town and Country Planning Act 1990 (as amended), and therefore the City concludes that the application for a Certificate of Lawfulness should be refused.

Yours faithfully,

A handwritten signature in blue ink that reads "Nexus Planning". The signature is written in a cursive, flowing style.

**NEXUS PLANNING**