



The Planning Inspectorate

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Your Ref:

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T/APP/X5210/A/97/283311/P4

Date: 07 MAY 1998

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY C & P ABBOTT, MATILDA BIDDALL, VIOLET MILLER, AND VALE
AMUSEMENTS NORTH
APPLICATION NO: PW9702255

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the failure of the Council of the London Borough of Camden to give within the prescribed period notice of its decision in respect of an application for 15 appartement residential units, with ancillary basement car parking, and the creation of an area of public open space at the north fairground site, Vale of Health. I held a local inquiry into the appeal on 17th and 18th February 1998. At the inquiry an application was made by the Council for an award of costs against the appellants. This is the subject of a separate letter.
2. The appeal relates to a site of about 2,214 sq. metres on the edge of the Vale of Health, a small group of about 90 dwellings which is enclosed by Hampstead Heath, an extensive area of public open space administered by the Corporation of London. The site, which is hardsurfaced, is currently used for the storage and maintenance of fairground equipment. It also contains a number of residential caravans and several small structures. A small fair is held on the site several times per year. The site is served by mains electricity, water and sewage, and telephone. It is bounded to the west by 1-4 East View, a terrace of four three-storey cottages, and by the flank wall of 6 The Gables, the end property in a four-storey terrace. To the south is a vacant site, the south fairground site, and a six-storey block of flats which was erected in the 1960s called Spencer House. To the north and east of the site is Hampstead Heath. A number of footpaths across the Heath pass close to the site, including ones leading to the nearby ponds. The site is within the Hampstead Heath Conservation Area.
3. The appeal concerns your clients' proposal to erect a four-storey block of flats on the site, adjoining the eastern flank wall of The Gables. The application drawing shows that the building would have a basement car park and an open ground floor, and above this would be three floors containing 12 four-person flats and three six-person flats. Vehicular access to the site would be from its southern end through the Vale of Health. In response to criticism of the scheme you have proposed that the basement car park should be omitted and that

parking is provided at ground level under the block. In addition, you propose that space be provided under the building for some form of community use, such as a creche.

4. At the inquiry you clarified, at my request, the extent of the public open space which would be provided in the scheme and offered to the City Corporation, although that body has expressed no interest in acquiring this land. While you have previously suggested that up to half of the site would be donated to the City Corporation, you have made clear that this would in fact be the area of roadway at the southern end of the site which adjoins the south fairground site. This roadway appears to be in use already as an informal pedestrian access to the Heath.

5. Planning permission has been granted in the past for residential development on the south fairground site. However, that permission has now expired.

6. Section 54A of the 1990 Act requires that planning applications and appeals should be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise. In the present case the development plan is the Borough Plan, which was adopted in 1987, and the Greater London Development Plan (1976), although the latter is now somewhat dated and must carry little weight.

7. The Council is in the process of preparing a Unitary Development Plan (UDP), which will eventually become the development plan. This was placed on deposit in 1993, and objections to the UDP were the subject of a public inquiry in 1995. The Inspector's report into the inquiry was published in 1997. Although the UDP has not yet been adopted, I consider that in accordance with the advice in Planning Policy Guidance Note 1 (PPG1), it must be given considerable weight in view of its advanced stage.

8. Following the lodging of the appeal, the Council resolved that if it were still able to determine the appeal, planning permission would have been refused for the reasons that:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) It is considered that the proposal is inappropriate in terms of its 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 the Hampstead Village Conservation Area.

(f) The proposal does not contain sufficient family-sized dwellings, contrary to policy HG20 contained in the draft London Borough of Camden Unitary Development Plan.

(g) The proposal does not meet Development Control Standards contained in the draft Unitary Development Plan in relation to car parking and servicing.

9. Before I identify my view of the principal issues in this case, I feel it necessary to deal with a legal matter that arises from a principal plank of your case. The Borough Plan and the UDP apply a number of designations to the site, identifying it as being within Metropolitan Open Land and the Hampstead & Highgate Ridge Area of Special Character and comprising Private Open Space. As I understand the argument that you advanced at the inquiry, you believe that these designations should not prejudice the development of the site for residential purposes because they postdate the existing residential use of the site. Moreover, you suggest that the Council has failed to consult local residents such as your clients about the designations proposed in the UDP.

10. In my view your approach stems from a misunderstanding of the planning process. Designations within development plans do not alter current uses on a site but set out the policies which will be applied when applications for planning permission are made. Accordingly, your clients are able to continue any lawful use of the site. In that regard I share the Council's view that the evidence of the history of the site would appear to indicate that the lawful use is probably as winter quarters, as described in Circular 22/91 on travelling showpeople. This is a "sui generis" use which does not fall within any particular Use Class defined in the Town and Country Planning (Use Classes) Order 1987.

11. I do not accept that the Council has failed to carry out its duty to undertake public consultation on the UDP. The statutory procedures all appear to have undertaken, and there is no requirement for the Council to consult individual landowners as you seem to believe.

12. You expressed particular concern about the comment about the site in Appendix PR2 of the UDP, which identifies individual private open spaces. This states that the "site should not be used for residential purposes or used for the storage of trucks, lorries, caravans or trailers or used for commercial purposes other than three bank holidays each year when it may be used as a small scale fairground. Part of site MOL1". While I understand your concern, it is clear from the evidence given by the Council that no reliance is placed on this comment, which does not form part of policy C7. Moreover, the Council indicated that the desirability of retaining the comment will be carefully considered before the eventual adoption of the UDP. Accordingly, I do not regard the comment as being relevant to my determination of the appeal.

13. From my consideration of the matters raised at the inquiry, it is my opinion that the principal issues in this case are:

(a) whether the proposal would conflict with the designation of the site as Metropolitan Open Land and Private Open Space.

(b) the impact of the scheme on the Area of Special Character and the Hampstead Village Conservation Area.

(c) whether the proposal would result in the overdevelopment of the site.

- (d) whether the proposal would have an acceptable housing mix.
- (e) whether the proposal would prejudice the free flow of traffic.
- (f) whether the site is unsuitable for development for geological reasons.

14. With regard to the first issue, the designation of the site as Metropolitan Open Land goes back to the Greater London Development Plan, while the designation as Private Open Space is even older as the site is so indicated in the London County Council Initial Development Plan of 1962. Government Guidance makes clear that within Metropolitan Open Land there is the same presumption against development that applies in the Green Belt. Residential development is not within the list of appropriate uses given in guidance, and accordingly the proposal fundamentally conflicts with Metropolitan Open Land policy. The limited residential use of the site by the present occupiers does not in my opinion provide the very special circumstances needed to justify the redevelopment of the site as an exception to the policy, as you seem to suggest. Moreover, in my view the somewhat untidy appearance of the site does not preclude its valuable role as part of Metropolitan Open Land.

15. Similarly, the purpose of the designation of areas as Private Open Space is to protect the character of sites for which there is no public access, but whose open nature provides a public benefit. The occasional use of the site as a fairground accords with both Metropolitan Open Land policy and the Private Open Space designation. Moreover, I share the Council's view that the existing low intensity of its current use enables the site to provide a soft edge to the Heath and a transition to the built form of the dwellings in the Vale of Health. However, the erection of more substantial structures on the site, as you propose, would clearly not accord with the objectives of planning policies on this matter as it would inevitably alter its present open character. The scheme goes far beyond the ancillary type of development which might be acceptable.

16. Turning to the second issue, the Council considers that the development of this effectively open site would harm the setting and character of this part of the Conservation Area and adversely affect the Area of Special Character, whose principal feature is of course the Heath. Particular concern is expressed about the four-storey height of the proposed building, its proximity to public footpaths around the site, and the uncertainty about the use of the ground floor. A number of detailed criticisms are made of the proposed elevational treatment of the building. The Council is supported in this view by local residents and amenity societies.

17. I share these concerns. As the appeal site is currently undeveloped, in the sense of having no significant buildings upon it, the eastern edge of the Vale of Health is effectively set by Spencer House, East View and the flank wall of The Gables. In my view development beyond this line would inevitably intrude into a variety of views both into and out of the Vale of Health. It would thereby harm the setting of the Conservation Area and the character of this part of the Heath, whose protection is a major objective of the Borough Plan and the UDP. The substantial height and bulk of the proposal would increase that harm. While some of these views are partially restricted by topography and planting within the Heath, as you suggest, the impact of the building would nevertheless remain.

18. Moreover, the general character of the Vale of Health is one of dwellings on relatively narrow plots, usually two or three storeys in height. Accordingly, a four-storey block of flats

occupying a single large site would appear out of place. While I have noted the substantial bulk of Spencer House, that is widely agreed not to be an example of the type of sensitive development which could reasonably be expected on a site as significant as this. In addition, the proposed elevational treatment of the building would not in my view be sympathetic to the predominantly Victorian character of the Vale of the Health. Therefore, in my opinion the proposal would have an unacceptable impact on both the Conservation Area and the Area of Special Character.

19. Moving to the third issue, the Borough Plan sets a density standard of 70-100 habitable rooms per acre (hra), but this is reduced in the UDP to 40-70 hra. The calculations made at the inquiry after you had clarified the area of the site to become public open space suggest that the proposal would be above this figure (the Council gives a figure of 84.2 hra and you believe that it would be 89 hra). However, in both the Borough Plan and the UDP higher density figures are regarded as being acceptable for sites close to public open space (policies HG23 and HG13 of the Borough Plan and UDP respectively). This is clearly such a site, because of the close proximity of the Heath. Therefore, I do not regard the density of the scheme as unreasonable.

20. As regards the fourth issue, Borough Plan policies HG30-32 and UDP policy HG20 seek to provide family-sized accommodation in all new housing developments. UDP policy HG20 encourages such schemes to comprise at least 50% of units that are suitable for families or larger households, ie. having four bedspaces in three or more bedrooms. In the present case the Council suggests that at least one-third of the units should be of this size. As only three of the 16 flats in the present proposal would have three bedrooms, the development would not accord with current planning policies on this issue. Nevertheless, as it would appear to be a relatively easy matter to adjust the housing mix, this does not seem to be as significant an objection to the scheme as other matters raised by the Council.

21. In considering the question of parking, I have noted that the Council accepts that the scheme as submitted would provide sufficient parking spaces to meet its standards but raises concern about the layout of the proposed basement parking area. The deletion of this element of the scheme, as you now propose, should deal with this matter, and it would appear to be possible to provide an appropriate number of parking spaces at ground level under the building. My major concern on this issue is that the application does not make clear how much of the site will be taken up by vehicle circulation, and the impact of this provision on the open space left for the use of occupants of the scheme. However, this could be the subject of a planning condition.

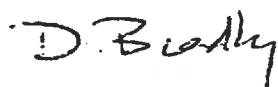
22. Local residents drew my attention at the inquiry to the extent of on-street parking on the narrow streets of the Vale of Health and the resulting difficulties experienced by motorists. However, I am not persuaded that your proposal would exacerbate these problems, since it would seem to be possible to make provision for parking within the site for the vehicles associated with the development. The period of construction of any building would inevitably generate some additional activity, but this would be balanced by the loss of traffic associated with the movement of the large vehicles currently used by your clients to carry fairground equipment to and from the site. Moreover, conditions could be imposed on the hours of construction work, the times of deliveries of building materials and the storage of such materials within the site to protect the amenity of local residents in this period. Therefore, I do not regard this as a determining issue in the appeal.

23. Turning to the final issue, Planning Policy Guidance Note 14 makes clear that the stability of the ground in so far as it affects land use is a material consideration which should be taken into account when deciding a planning application, and that it is not the responsibility of the local authority to investigate the ground conditions of any particular development site unless it proposes to develop it. In the present case substantial evidence was given by local residents to suggest that the site is in an area with unstable geological/subsoil conditions, and that it is also crossed by a watercourse, and is therefore unsuitable for development. Although I have noted the absence of problems of stability resulting from the present use of the site, the construction of a substantial building must raise additional considerations. Accordingly this must be a further concern about the proposal.

24. Therefore, to summarise, I consider that the scheme would conflict with the policies of the development plan and the emerging UDP which are designed to protect Metropolitan Open Land, Private Open Space, the Conservation Area and the Area of Special Character. Moreover, I am also concerned at the desirability of developing a site with a significant likelihood of geological problems. Accordingly, while I believe that the issues of housing mix, density and car parking can be resolved, I have concluded that the appeal should not be allowed. I have taken into account all the other matters raised at the inquiry and in the representations, including your clients' long history on the site and their offer to donate land for use as public open space. I have also noted the correspondence since the inquiry about the ownership of this land. However, these matters do not outweigh the considerations that have led to my decision

25. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal, and refuse planning permission for the development described in paragraph 1.

Yours faithfully



DENNIS BRADLEY BSc (Econ) DipTP MRTPI
Inspector