

LIST OF APPENDICES

- DOC PON 1 - Extract from Hampstead Heath Management Strategy 2018-2028
- DOC PON 2 - S.55 of the Town and Country Planning Act 1990 (as Amended)
- DOC PON 3 - Camden Local Plan 2017 Policy H11 para 3.287 and Supporting Text
- DOC PON 4 - Winchester City Council v SSLG 2013
- DOC PON 5 - 1998 Appeal Decision
- DOC PON 6 - Site Photographs since 2008
- DOC PON 7 - Site Photographs November - December 2018
- DOC PON 8 - Council Tax Records
- DOC PON 9 - Business Rates Records
- DOC PON 10 - Council Survey Plan 2011
- DOC PON 11 - Council Survey Plan 2017
- DOC PON 12 - Hampstead Conservation Area Statement

DOC PON 1

Extract from Hampstead Heath Management Strategy 2018-2028



Open
Spaces

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Hampstead Heath Management Strategy 2018 - 2028

help us to understand how well we are progressing towards achieving the Vision.

The aspirations of the Heath Vision are shared by the community and the City and express a sense of shared stewardship and of caring for the Heath together. This Strategy sets out the City's priorities for the next ten years and our commitment, as custodian of the Heath, to realising the Vision.

We will plan our work to ensure it contributes to achieving each of the four Vision themes and corresponding Outcomes, as set out below.

Heath Vision theme	Strategic Outcomes
We protect and conserve the Heath	(A) The Heath is maintained as a flourishing green space and historic landscape
The Heath enriches lives	(B) Improved quality of life for Heath visitors
The Heath is inclusive and welcoming	(C) The Heath is inclusive and welcoming to a diverse range of visitors
Together we care for the Heath	(D) Greater number and diversity of people taking care of the Heath

Achieving these Outcomes will depend on a range of enabling factors being in place, including the engagement of staff, volunteers and visitors to the Heath, as well as sufficient resources and skills to deliver activities and projects.

What we aim to achieve in the next ten years

This Strategy sets out ten strategic Priorities and the associated Commitments, which we will aim to achieve during the coming ten years.

Theme: The Heath is protected and conserved

At the heart of the Heath Vision is a conviction that the natural qualities of the Heath are its richest asset. The Heath must be conserved to ensure the lives of current and future generations may continue to be enriched by the Heath. The Heath Vision describes the Heath's varied landscape as having been shaped by human hands over centuries. It emphasises

careful management to conserve its unique mix of wild and natural spaces, rich mosaic of habitats, heritage, gardens, sporting, play and visitor facilities. In short, to ensure its rich mosaic of habitats continues to thrive and flourish, remaining resilient to changes over time.

Outcome A: The Heath is maintained as a flourishing green space and historic landscape

Striking a balance between enabling access for visitors to experience the many ways that the Heath enriches lives, alongside the conservation of its natural, built and cultural heritage, hinges on an integrated and multi-faceted approach. Recent monitoring has shown an increase in wildlife such as dragonflies, frogs and some bird species. Augmenting the well-established and effective conservation focus of the past ten or more years with the proactive management of visitor impacts and other impacts including those from outside the Heath boundary, will be key over the next ten years to build a shared sense of responsibility and collective care for the Heath.

Priority 1: A mosaic of natural habitats is maintained and flourishes

Effective ecological management by staff working with volunteers and partners will ensure habitats are biodiverse, and that their conservation value continues to be sustained and enhanced. Combining traditional and innovative conservation activities to manage natural ecological processes is essential to maintain the mosaic of diverse habitats. This includes active control of woodland succession and the corresponding reduction in heathland and meadow that has occurred over the past century. Monitoring and proactively managing other threatening processes such as invasive species, pests and diseases and the impacts of a changing climate, will build resilience to future challenges. As will enhancing habitat connectivity by looking beyond the Heath to realise its significance as an integral part of the wider green space network.

We will focus on ensuring:

- The extent of each broad habitat type is maintained at current levels.
- Nature conservation and biodiversity value are enhanced.
- Habitats are thriving and resilient to change.

Commitment

To achieve this, we will:

1. Continue proactive monitoring and management of natural habitats and proportionate interventions, in order to maintain the distribution of habitat types across the Heath with reference to the 2009 Vegetation Survey.
2. Conserve and manage habitats to enhance biodiversity, resilience and capacity to support diverse plants and wildlife.
3. Develop a long-term plan for the protection and succession of our veteran and ancient trees.
4. Enhance connectivity of areas of conservation value, both on the Heath and beyond its borders, to enhance the wider habitat network.
5. Proactively monitor and manage threatening processes to mitigate their impact, including invasive species, pests and disease, pollutants and impacts of climate change.

Priority 2: Heritage aspects and landscape character are maintained

The varied and open character of the Heath landscape is a function of its underlying geology and topography, overlaid with centuries of human intervention, resulting in distinctive views and vistas, both from and towards the Heath. The interplay between the landscape character, archaeological remnants and historical features, and the wider London context, is unique. A proactive approach to identifying and recording the Heath's heritage and archaeology will ensure the distinctive history of the Heath continues to be conserved. Co-operation among the local community and partner organisations to protect fringes from encroaching urbanisation will ensure this signature landscape character is valued and conserved. Connecting to the Heath landscape is an important aspect of mental health and well-being and enriching lives (as set out in Priority 4).

We will focus on ensuring:

- Historic assets are conserved, and sensitive areas are protected from impacts.
- Landscape character is maintained.
- Encroachment and detrimental development are resisted.

Commitment

To achieve this, we will:

6. Protect areas of high conservation value and develop conservation objectives for historic features, in order to inform their management and interpretation.
7. Ensure priority views and vistas of historic and cultural value are managed.
8. Proactively participate in local planning processes to resist development that would be detrimental to the landscape character, ecology and hydrology of Hampstead Heath and its environs.
9. Safeguard the Heath boundary by managing wayleaves, licences and covenants and work with partners to secure strategic land acquisitions.

Priority 3: A balance is maintained between visitor activities and the conservation of natural, built and heritage values

An integrated approach of proactively engaging with visitors and user groups to manage the potential impacts of their activities, and protecting sensitive sites and values from adverse impacts, is key to achieving our conservation outcomes. The legislative and statutory powers, including the Opens Spaces Act 2018, will be used to guide and regulate organised and commercial activities. With more diverse visitors treating the Heath with respect and sharing collective responsibility for its care, our ability to maintain a flourishing natural space can be achieved, despite the increasing pressures from a growing population.

We will focus on ensuring:

- Levels of organised activity are managed and controlled.
- Visitor and other impacts are mitigated, and sensitive areas and values are protected.
- A collaborative approach to monitoring activity levels, impacts and the effectiveness of mitigation.

Commitment

To achieve this, we will:

10. Establish a system of management zones across the Heath that sets out conservation objectives and defines areas or sites containing values that may be vulnerable to impacts, by developing the current system of Compartment Management Plans.

DOC PON 2

S.55 of the Town and Country Planning Act 1990 (as Amended)

PART III

CONTROL OVER DEVELOPMENT

Annotations:

Modifications etc. (not altering text)

- C1 Pt. III (ss. 55-106) except ss. 76, 90(2)(5) applied (with modifications) (17.7.1992) by [S.I. 1992/1492, regs. 2\(1\)\(b\), 3-11](#)
 Pt. III (ss. 55-106): power to modify conferred (10.11.1993) by [1993 c. 28, s. 171\(1\)\(a\)](#); [S.I. 1993/2762, art. 3](#)
 Pt. III (ss. 55-106) applied (5.11.1993) by [1993 c. 42, s. 24\(1\)](#) (with [ss. 2, 30\(1\)](#), [Sch. 2 para. 9](#))
 Pt. III (ss. 55-106) extended (1.11.1995) by [1995 c. 25, s. 96\(2\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1995/2765, art. 2](#)
 Pt. III (ss. 55-106) modified (1.4.1996) by [1994 c. 19, s. 20\(3\)](#), [Sch. 5 Pt. III paras. 15\(1\), 20](#) (with [ss. 54\(5\)\(7\), 55\(5\)](#), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1995/3198, art. 4, Sch. 2](#)
 Pt. III (ss. 55-106) modified (18.12.1996) by [1996 c. 61, s. 9\(1\)\(2\)](#)
 Pt. III (ss. 55-106) modified (18.12.1996) by [1996 c. 61, s. 51](#)
 Pt. III (ss. 55-106) modified (2.4.2004) by [The Docklands Light Railway \(Woolwich Arsenal Extension\) Order 2004 \(S.I. 2004/757\), art. 20\(1\)](#)
 Pt. III (ss. 55-106) modified (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\), art. 4](#)
 Pt. III (ss. 55-106) modified (25.11.2005) by [The Docklands Light Railway \(Capacity Enhancement\) Order 2005 \(S.I. 2005/3105\), art. 21\(1\)](#) (with [arts. 3\(5\), 15\(3\)](#))
 Pt. III (ss. 55-106) applied (7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), ss. 89, 121, Sch. 4 para. 3\(2\)](#) (with [s. 111](#)); [S.I. 2006/1281, art. 2](#)
 Pt. III (ss. 55-106) modified (22.11.2006) by [The Docklands Light Railway \(Stratford International Extension\) Order 2006 \(S.I. 2006/2905\), art. 17\(1\)](#) (with [art. 43](#))
 Pt. III (ss. 55-106) modified (13.12.2006) by [The Luton Dunstable Translink Order 2006 \(S.I. 2006/3118\), art. 18\(1\)](#)
 C2 Pt. III (ss. 55-106) modified (4.5.2005) by [The Telford Railfreight Terminal \(Donnington\) Order 2005 \(S.I. 2005/1163\), art. 25\(2\)](#) (with [art. 30](#))
 Pt. III modified (23.8.2007) by [The Docklands Light Railway \(Capacity Enhancement and 2012 Games Preparation\) Order 2007 \(S.I. 2007/2297\), art. 17\(1\)](#) (with [arts. 3\(6\), 12\(3\)](#))
 C3 Pt. III modified (28.9.2007) by [The London Gateway Logistics and Commercial Centre Order 2007 \(S.I. 2007/2657\), art. 27\(1\)](#) (with [art. 19, Sch. 3 para. 13\(2\)](#))
 C4 Pt. III modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\), s. 10\(1\)](#)
 C5 Pt. III modified (14.10.2008) by [The Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 \(S.I. 2008/2512\), art. 34\(1\)](#) (with [art. 36\(3\)](#))
 C6 Pt. 3 modified (20.7.2010) by [The Network Rail \(Nuneaton North Chord\) Order 2010 \(S.I. 2010/1721\), art. 28\(1\)](#)
 C7 Pt. 3 modified (27.8.2010) by [The Llangollen and Corwen Railway Order 2010 \(S.I. 2010/2136\), art. 11\(1\)](#)
 C8 Pt. III applied (1.2.2011) by [The River Mersey \(Mersey Gateway Bridge\) Order 2011 \(S.I. 2011/41\), arts. 1, 47\(1\)](#) (with [art. 51, Sch. 10 paras. 68, 85](#))
 C9 Pt. III modified (21.4.2011) by [The Network Rail \(Hitchin \(Cambridge Junction\)\) Order 2011 \(S.I. 2011/1072\), arts. 1, 36\(2\)](#)

Meaning of development

55

Meaning of "development" and "new development".

- (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

E1[(1A) For the purposes of this Act "building operations" includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.]

- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

- (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—
 - (i) affect only the interior of the building, or
 - (ii) do not materially affect the external appearance of the building,
 and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;
- (b) the carrying out on land within the boundaries of a road by a **E2**... highway authority of any works required for the maintenance or improvement of the road [**E3**but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];
- (c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;
- (e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
- (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.

E4[(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.]

E5(2A) The Secretary of State may in a development order specify any circumstances or description of circumstances in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified.

(2B) The development order may make different provision for different purposes.]

- (3) For the avoidance of doubt it is hereby declared that for the purposes of this section—

- (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;
- (b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—
 - (i) the superficial area of the deposit is extended, or
 - (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.

- (4) For the purposes of this Act mining operations include—

- (a) the removal of material of any description—
 - (i) from a mineral-working deposit;
 - (ii) from a deposit of pulverised fuel ash or other furnace ash or clinker; or
 - (iii) from a deposit of iron, steel or other metallic slags; and
- (b) the extraction of minerals from a disused railway embankment.

E6[(4A) Where the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the tank resulted from carrying out engineering operations over that land; and in this subsection—

"fish farming" means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean and mollusc);

"inland waters" means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and

“ tank ” includes any cage and any other structure for use in fish farming.]

- (5) Without prejudice to any regulations made under the provisions of this Act relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.

FZ(6)

Annotations:

Subordinate Legislation Made

P1 S. 55(2)(f); s. 55(2)(f) (with s. 333(7)) power exercised (5.7.1991) by [S.I. 1991/1567](#)

Amendments (Textual)

F1 S. 55(1A) inserted (27.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 13\(1\)](#) (with [s. 84\(5\)](#)); [S.I. 1992/1279](#), [art. 2](#) (with [art. 3](#))

F2 Word in s. 55(2)(b) repealed (7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 118, 120, 121](#), [Sch. 6 para. 1](#), [Sch. 9](#) (with s. 111); [S.I. 2006/1281](#), [art. 2](#)

F3 Words in s. 55(2)(b) inserted (14.3.1999) by [S.I. 1999/293](#), [reg. 35\(1\)7](#)

F4 S. 55(2)(g) inserted (25.11.1991 for certain purposes and otherwise 27.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 13\(2\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2728](#), [art. 2](#); [S.I. 1992/1279](#), [art. 2](#) (with [art. 3](#))

F5 S. 55(2A)(2B) inserted (6.8.2004 for certain purposes, 10.5.2006 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 49\(1\), 121](#) (with [ss. 49\(4\), 111](#)); [S.I. 2004/2097](#), [art. 2](#); [S.I. 2006/1061](#), [art. 2](#)

F6 S. 55(4A) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 14\(1\)\(2\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2905](#), [art. 3](#) (subject to [art. 4](#))

F7 S. 55(6) repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [ss. 31\(4\), 84\(6\)](#), [Sch. 6 para. 9](#), [Sch. 19](#), [Pts. I, II](#) (with [s. 84\(5\)](#)); [S.I. 1991/2067](#), [art. 3](#), [Sch. 1](#)

DOC PON 3
Camden Local Plan 2017 Policy H11 para 3.287
and Supporting Text

Camden Local Plan

2017

Accommodation for travellers

- 3.286 For planning purposes, the government's 'Planning policy for traveller sites' (revised August 2015) sets out definitions of travellers, gypsies and travellers, and travelling showpeople. In summary:
- 'Travellers' means 'travelling showpeople' and 'gypsies and travellers';
 - 'Travelling showpeople' are members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such);
 - 'Gypsies and travellers' are other persons of nomadic habit of life whatever their race or origin;
 - in all cases, people are still included if they have ceased to travel temporarily, for example due to health or education needs.
- 3.287 There is an established community of travellers in Camden that has lived in the borough for over twenty years. The Council recognises that this community has longstanding connections with local social networks and services. The Council currently provides five travellers pitches in Camden (four at Carol Street and one at Castlehaven Road). There is also a private site providing a five plots for travelling show people (the North Fairground Site at the Vale of Health). The Council will protect these sites from change to alternative uses unless they are replaced by equivalent or improved sites, plots and/or pitches in suitable locations, or are demonstrably no longer needed. The Council will also seek to plan for the existing and future accommodation needs of Camden's established traveller community.
- 3.288 Providing suitable accommodation for the established traveller community will help us to deliver the Camden Plan objective of tackling inequality and creating sustainable and resilient neighbourhoods by relieving the community's overcrowding, improving travellers' health and wellbeing and improving potential for children and young people to take advantage of education and training opportunities. Providing suitable accommodation will also help us to ensure the right housing for Camden's diverse communities in line with the recommendations of the Equality Taskforce.

Policy H11 Accommodation for travellers

The Council will aim to secure a sufficient supply of pitches/ plots to meet the existing and future needs of Camden's established traveller community.

We will protect existing lawful sites, plots and pitches for travellers. The redevelopment of such sites will not be permitted unless they are replaced by equivalent or improved sites, pitches and/or plots in suitable locations, or are demonstrably no longer needed.

We will identify deliverable sites to meet or exceed Camden's projected need for seven additional pitches for the established traveller community by 2020/21 and seek to identify developable sites or broad locations to meet Camden's projected need for a further nine additional pitches by 2030/31.

New sites, pitches and/or plots for travellers should:

- a. be accessible to public transport, services and facilities, and be capable of support by local social infrastructure;
- b. be capable of connection to energy, water and sewage infrastructure;
- c. provide safe access to and from the main road network;
- d. support the health and wellbeing of the occupiers;
- e. provide an appropriate layout and facilities;
- f. be attractive and of the highest design quality; and
- g. protect local amenity and the environment.

Assessing needs

- 3.289 The Camden Gypsy and Traveller and Travelling Showpeople Accommodation Assessment 2014 (the Accommodation Assessment) indicated that 16 additional pitches will be required for Camden's established traveller community by 2031. This is made up of households on the waiting list for pitches and the anticipated growth in the number of households from 2013 to 2031. Households on the waiting list include a number of households who currently live on an overcrowded site and do not have their own pitch, and a number of households who currently live in bricks and mortar homes.
- 3.290 The government's 'Planning policy for traveller sites' has been revised since the Accommodation Assessment was completed, and the Assessment is not fully consistent with all aspects of the policy. The Accommodation Assessment does not establish whether all the households on the waiting list and in bricks and mortar homes have a housing need or a nomadic habit of life. Consequently, the Council will engage with the established traveller community, representative bodies, support groups and the wider community to consider whether an updated assessment should be carried out, and what form it should take. In the interim, the Plan adopts the full need for additional pitches from the Accommodation Assessment, namely seven additional pitches by 2021 and a further nine additional pitches from 2021-31, to give a total of sixteen additional pitches minimum over the whole period.
- 3.291 The Accommodation Assessment also considered the need for transit sites (sites for travellers who are visiting or passing through an area) and the needs of travelling showpeople. The Accommodation Assessment concluded that there was no evidence of major travelling routes through Camden that would generate any need for a transit site. The Assessment also found that two of the existing plots for travelling showpeople are unoccupied and there is no evident need for additional plots.

Site allocations

- 3.292 To comply with the government's 'Planning policy for traveller sites', the Council should identify a supply of specific deliverable sites to meet needs for the first five years of the Plan period (deliverable sites are suitably located, available now, viable to develop, and have a realistic prospect of delivery within five years). The Council should also identify a supply of specific developable sites or

DOC PON 4
Winchester City Council v SSLG 2013

Neutral Citation Number: [2013] EWHC 101 (Admin)

Case No: CO/149/2012 & CO/532/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/02/2013

Before :

PHILIP MOTT QC
Sitting as a Deputy High Court Judge

Between :

WINCHESTER CITY COUNCIL	<u>Claimant /</u>
- and -	<u>Appellant</u>
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	<u>1st Defendant /</u>
- and -	<u>Respondent</u>
MR M WALL, MR M BLACK, MRS S WALL, MR D BIRCH, MR D CARTER, MR M JAMES	<u>2nd Defendants</u>
	<u>/ Respondents</u>

(Transcript of the Handed Down Judgment of
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Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Trevor Ward (instructed by **Winchester City Council**) for the **Claimant/Appellant**
Stephen Whale (instructed by **Treasury Solicitor**) for the **1st Defendant/Respondent**
Michael Rudd (instructed by direct access) for the **2nd Defendants/Respondents**

Hearing dates: 25 January 2013

Judgment
As Approved by the Court

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Philip Mott QC :

1. On 9 December 2011 a Planning Inspector appointed by the Secretary of State for Communities and Local Government (“SSCLG”) issued a Decision Letter in respect of six appeals against enforcement notices issued by the Winchester City Council (“WCC”) and one appeal against the failure of WCC to determine a planning application submitted to it (“the planning appeal”). The Inspector quashed the enforcement notices and took no further action on the planning appeal.
2. WCC now applies for permission to appeal under section 289 of the Town and Country Planning Act 1990 (“the 1990 Act”) against the quashing of the enforcement notices, and challenges under section 288 of the 1990 Act the decision on the planning appeal.
3. By consent it was ordered on 8 March 2012 that the two matters be heard together, and that the substantive and permission stage in relation to the section 289 appeal be held together as a rolled up hearing.
4. I have concluded that permission should be granted under section 289 and the appeals allowed. As a result, it is agreed, the matter will have to go back to the SSCLG to appoint another Inspector to determine the enforcement notice appeals afresh. As to the section 288 challenge, I dismiss this on the merits and on a discretionary basis.

Background

5. The premises concerned are at Carousel Park, Basingstoke Road, Micheldever, Hampshire. On 16 April 2002 a planning application was submitted for “Change of use of land to travelling showpeople’s use”. The existing use of the land was stated to be “Redundant agricultural”. A block and location plan was submitted which was not put before me.
6. On 2 October 2003 permission was granted for “Change of use of agricultural land to travelling showpeoples’ site” in accordance with the plans and particulars submitted with the application, subject to 15 conditions. The relevant conditions for present purposes are as follows:
 4. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan for each pitch indicating the positions, design, materials and type of boundary treatment and gates to be erected, the position of all areas of hardstanding and storage, the position and sizes of all residential caravans and any other temporary or permanent structures or buildings and the areas of open amenity space. Development shall be carried out in accordance with the approved details before the pitches are first occupied.
 5. No vehicles, equipment, caravans, mobile homes or other structures on the site are to exceed 4.5 metres in height above ground level.

7. No maintenance, repairs or testing of equipment or vehicles shall be carried out other than between the hours of 0730 and 1800 Monday to Friday and 0730 and 1800 Saturdays and at no time on Sundays and Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.

10. There shall be a maximum of three caravans or mobile homes occupied for residential purposes on each pitch. Any additional touring caravans used by the travelling showpeople may be stored within the defined storage areas but may not be occupied for residential purposes at any time.

11. There shall be no more than 9 family pitches on the site and the pitches may not be sub-divided at any time.

13. In the event that the site ceases to be used for the purposes of travelling showpeople, it shall be restored to its former condition. All structures, hardstandings, equipment, vehicles and materials brought onto the site in connection with the use shall be permanently removed from the land within 12 months of the use ceasing.

15. No more than 50 people shall occupy the site at any time.

7. None of the conditions attached to the planning permission expressly restricted the occupation of the site to travelling showpeople, as they could have done.
8. At the same time as the grant of the planning permission a section 106 agreement was entered into, which was designed to restrict the occupation of the site to travelling showpeople. However it appears to have been defective, and in any event was not expressly incorporated into the planning permission as it could have been.
9. Enforcement notices were issued by WCC on 6 September 2010 because it was thought that the site was being occupied by gypsies and travellers who were not travelling showpeople. Whether this is so in fact is disputed. The notices alleged that this constituted a material change of use from that permitted by the 2003 planning permission. Whether such a change of use would be “material” is also disputed. Neither issue has been the subject of any finding on appeal to the Inspector, and neither arises for determination in these proceedings.
10. The notices were appealed on a number of grounds, as follows:
 - (a) that planning permission should be granted for the breach of planning control alleged;
 - (b) that the matters alleged had not occurred;
 - (c) that the matters, if they occurred, did not constitute a breach of planning control;
 - (d) that at the date the enforcement notice was issued no enforcement action could be taken against the matters alleged to be in breach;

- (f) that the steps required by the enforcement notice to remedy the breach of planning control were excessive;
 - (g) that the period for compliance specified in the notice to remedy the breach of planning control fell short of what should reasonably be allowed.
11. At the appeal hearing the notices were amended by agreement, and Grounds (c) and (d) were withdrawn in their entirety. The Inspector decided the appeals only on one limb of Ground (b), namely that the planning permission should be interpreted as being simply “use as a residential caravan site” and not restricted to travelling showpeople. He made no findings in respect of the remaining limb of Ground (b), which was that the occupants were in fact travelling showpeople. He also did not consider Grounds (a), (f) or (g), and took no further action on the planning appeal.
12. The basis of the Inspector’s decision to allow the enforcement notice appeals was one of law, as he acknowledged. It arose from the decision of this court in *I’m Your Man Limited v Secretary of State for the Environment* (1999) 77 P&CR 251, a decision of Robin Purchas QC sitting as a Deputy High Court Judge. The Inspector set out his interpretation in paragraph 23 of his Decision Letter:

“I acknowledge that it is a matter of law but in my view, *I’m Your Man* decided a point of principle concerning limitations on planning permissions; it was not concerned with the detail of what type of limitation was being debated. In these circumstances I conclude that it is clear that the 2003 planning permission is not limited as there is no condition attached to it that restricts occupancy and the legal agreement, which does contain a restriction, was not incorporated into the permission.”

13. Having concluded that he could not look to the terms of the section 106 agreement as it was not incorporated into the terms of the planning permission (a conclusion which is not challenged in this appeal), he concluded in paragraph 26 of his Decision Letter:

“Taking all these factors into consideration I conclude that the 2003 permission, in line with the decision in *I’m Your Man*, is for the use of the land as a residential caravan site with no restrictions on who may occupy the site. In those circumstances the appeals succeed on ground (b) and the notices as corrected and varied will be quashed.”

Planning permission and enforcement notices

14. Section 57 of the 1990 Act provides that, in general, “permission is required for the carrying out of any development of land”. By section 55(1) “development” is defined as including “the making of any material change of use of any buildings or other land”.
15. Section 55(2) provides that certain operations and uses of land shall not be taken to involve development. They include, by paragraph (f), “in the case of buildings or other land which are used for a purpose of any class specified in an order made by the

Secretary of State under this section, the use of buildings or other land ... for any other purpose of the same class”.

16. The Secretary of State has made such an order setting out various categories known as “Use Classes” in the Town and Country Planning (Use Classes) Order 1987. Uses which do not fall within any use class are considered “sui generis”. These will include, for instance, theatres, scrapyards and petrol filling stations.
17. Section 75 of the 1990 Act sets out the effect of planning permission. It is a grant which enures for the benefit of the land, and thus runs with the land. The section continues:
 - (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used.
 - (3) If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.
18. Section 171A of the 1990 Act provides that:
 - (1) For the purposes of this Act –
 - (a) carrying out development without the required planning permission; or
 - (b) failing to comply with any condition or limitation subject to which planning permission has been granted,constitutes a breach of planning control.
19. Section 172 allows the local planning authority to issue an enforcement notice where it appears to them that there has been a breach of planning control, and that it is expedient to issue the notice.

I'm Your Man Limited

20. The case concerned a permission granted to use two aircraft hangers for sales, exhibitions and leisure activities “for a temporary period of seven years”. No condition was imposed to require cessation of that use at the end of the seven year period. The court held that there was no express or implied power for a local planning authority to impose limitations on a planning permission, and so the grant of permission was a permanent one.
21. The Judge noted that there is an express power, in section 60(1) of the 1990 Act, for permission granted by a Development Order to be subject to such conditions or limitations as may be specified in the Order. Section 70(1), which allows a local planning authority to grant permission, allows the imposition of conditions, but gives no power to impose limitations. Therefore, he concluded, there was no such express power, and none should be implied.

22. The Judge dealt with a submission that the time limit was part of the use authorised by the permission, so that “the use itself should be seen as a use limited for that period”. He rejected this submission, saying:

“I have doubt whether the character of a use for the purpose of section 55(1) of the 1990 Act can properly include without more whether the use was temporary or permanent. Change of use is from one use or non-use to another use and should be considered in terms of the character of the use of the land. Materiality for the purposes of section 55(1) should be judged as a matter of degree on a comparison between the use before and after the change. I do not consider that generally the character of a use would alter whether it was to last for one year or seven years or was permanent. In most cases the use of the land on each basis would be for planning purposes identical.” [emphasis added]

23. The appeal in *Jeffery v First Secretary of State & Teignbridge District Council* [2007] EWCA Civ 584 was decided on the basis of a concession that *I’m Your Man* applied and was correctly decided. Both Jacob LJ and Hughes LJ expressly reserved the question of whether that was so.

24. The Divisional Court in *R (Altunkaynak) v Northamptonshire Magistrates’ Court* [2012] EWHC 174 (Admin) expressly approved *I’m Your Man*, and applied it to a case where permission to use premises at 15B Silver Street Kettering as a hot food takeaway was expressed to be “as an extension to the present premises at number 15”. The Court held that these words were not valid to limit the way in which the new use of number 15B could be exercised. Indeed, in paragraph [39] Richards LJ said:

“But the reasoning in *I’m Your Man Limited* contains nothing to justify confining its application to temporal limitations. The relevant principle, drawn from the wording of the statute, is a general one: if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition.”

25. Clearly the *I’m Your Man* principle means that when permission is granted for a certain use, any limitation on the way in which that use is exercised must be imposed by condition. It does not matter whether the limitation is by way of a time limit (as in *I’m Your Man*), or by linking it to the use or occupation of other premises (as in *Altunkaynak*). Nor is the principle limited to those two examples.

26. The underlying principle, as explained in *I’m Your Man*, is that “limitation” is a technical term used in the statute only when imposed by Development Order. Any restriction seeking to have the effect of a limitation, but imposed by a local planning authority, can only be effective if included in a condition.

27. That leaves the question of what use is permitted by a grant of permission, as opposed to any restriction or limitation on that use. Where the permission is also for the erection of a building, section 75 applies. Where the use described is covered by one of the specified use classes, it will cover all uses within that class unless restricted by

conditions. But where, as here, the permitted use (however it is defined) is “sui generis”, the description or definition of the use permitted must come from somewhere.

28. It cannot be that, absent a specified use class, planning permission for change of use must be interpreted as permission to do absolutely anything, unless that freedom is circumscribed by conditions. Neither Respondent espoused such a proposition. Both argued that the grant is to be found from the planning permission as a whole, including the application and plans if (as here) they are incorporated into the permission by reference.

Submissions

29. Mr Ward submits on behalf of WCC that the 2003 grant of permission was for a “sui generis” use as a travelling showpeoples’ site. The *I’m Your Man* principle does not apply because WCC are not seeking to rely on any restriction or limitation on that use. The limits on permitted use come from the grant itself, not from any derogation from or limitation upon that grant, which it is accepted would have to be imposed by condition. The grant of permission for use as a travelling showpeoples’ site defines the character and nature of the use itself. If the words “travelling showpeople” have no functional significance in planning terms, there is nothing left in the grant to explain the use permitted.
30. In support of those submissions, Mr Ward relies additionally on *Wilson v West Sussex County Council* [1963] QB 764, where the word “agricultural” attached to the word “cottage” was held to be of “functional significance”, not merely architectural or descriptive. Whilst the case may be distinguishable, and I do not rely on it as authority for my conclusion, it points to the fact-specific issue of construction of the permission actually granted in an individual case.
31. In like manner, Mr Ward cites *Williamson and Stevens v Cambridgeshire County Council* (1977) 34 P&CR 117, a Lands Tribunal interim decision, and *Waverley District Council v Secretary of State for the Environment and Miller and Davies* [1982] JPL 105, where Hodgson J concluded on the particular facts that the word “cattle” when attached to “transport lorries” had a functional significance. I look on these cases as merely examples of the application of normal principles of construction to particular facts.
32. For the First Respondent, Mr Whale submitted that WCC could and should have imposed a condition. It is not doubted that it could have done so, and therefore there is no need to strain construction of the planning permission to accommodate its failure. The First Respondent relies heavily on *I’m Your Man* and *Altunkaynak*. In addition, reference is made to *Smout v Welsh Ministers* [2011] EWCA Civ 1750, in which a submission that permission to develop land in phases A-F meant that the development had to be carried out in alphabetical order was roundly dismissed by the Court of Appeal.
33. Mr Whale accepted that there must be some limit on the use to which the land could be put, and submitted that this came from the whole of the application, plans and permission. Whether a descriptive word was significant would depend on the circumstances. He agreed that *I’m Your Man* was not authority for a proposition that

the wording of the permission could simply be ignored, but the answer would come from the whole suite of documents.

34. Mr Whale also accepted that there was a practical and visual difference between a site for travelling showpeople and one for general residential use, or even one for gypsies and travellers, but did not accept that they would amount to a different planning use or that there was any significant land use distinction.
35. Mr Rudd, for the Second Respondents, made submissions similar to those of Mr Whale. He too submitted that there is no fundamental difference in land use terms between travelling showpeople, gypsies and travellers, or New Age travellers.

Travelling showpeople

36. There is a longstanding recognition of the particular needs of travelling showpeople. Circular 22/91 was effective at the time of the grant of permission in 2003. It described the category as follows:

“2. Showpeople are self-employed business people who travel the country holding fairs, chiefly during the summer months. Although their work is of a peripatetic nature, showpeople nevertheless 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, when many showpeople will return there with their caravans, vehicles and fairground equipment. For this reason, these sites traditionally have been referred to as “winter quarters”. But increasingly showpeople’s quarters need to be occupied by some members of the family permanently; older family members will stay on for most of the year and there are plainly advantages in children living there all year to benefit from uninterrupted education.”

37. The Circular goes on to distinguish showpeople from gypsies, and points out that:

“4. The nature of showpeople’s sites is unusual in planning terms. The sites illustrate the showpeople’s characteristic self-sufficiency by combining residential, storage and maintenance areas. Typically a site comprises areas set aside for the showpeople’s accommodation – usually caravans and mobile homes – and areas where vehicles and fairground equipment can be stored, repaired and tested. This means that the sites do not fit easily into existing land-use categories. Some of the difficulties showpeople have experienced with the planning system can be attributable to this.” [emphasis added]

38. In August 2007 new Guidance was issued, headed “Planning for Travelling Showpeople”. This was in force at the date of the appeal to the Inspector. It repeats the passages quoted above in substantially the same terms. It also comments, at paragraph 9(a), that “Travelling showpeople do not in general share the same culture or traditions as Gypsies and Travellers”.

39. In March 2012 a new document was issued by the Department for Communities and Local Government entitled “Planning policy for traveller sites”, which covers both travelling showpeople and gypsies and travellers. The Glossary makes clear that “travelling showpeople” are distinct from “gypsies and travellers”, who are excluded from the former group definition.
40. None of these documents can be used to change or even interpret the terms of the planning permission granted, but in my judgment they do point to the following conclusions:
 - i) Travelling showpeople are a distinct group, which does not include gypsies and travellers.
 - ii) As a group they have their own particular planning needs.
 - iii) There is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use by gypsies and travellers.
 - iv) Even more so, there is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use as a residential caravan site.

Discussion

41. Having concluded that a travelling showpeoples’ site may be a significant and separate land use in planning terms, the next question is whether the 2003 planning permission, on its proper construction, granted permission only for that use.
42. The fundamental question is whether this was a limited grant of permission to use the site as a travelling showpeople’s site, or an attempt (which would be ineffective as a result of the *I’m Your Man* principle) to impose a limitation or restriction on a more general grant.
43. The Inspector did not address this question, having come to his decision on the basis that *I’m Your Man* provided an entire answer as a matter of principle, regardless of the details of the particular case.
44. It would be possible simply to allow the appeal and leave a second Inspector to come to a conclusion. Since this is very much a question of law (though heavily fact-specific), I think it just and proportionate to come to a conclusion myself.
45. The unifying feature of *I’m Your Man*, *Altunkaynak* and *Smout* is that the use remained the same, with or without the purported restriction or limitation. The restrictions all related to the manner in which the use could be exercised, not as to the extent of the use itself. This case is very different, because the issue turns on the extent of the use itself.
46. In my judgment everything points to the 2003 grant being one of permission to use the land as a travelling showpeoples’ site. Not only is this what was applied for, and was granted in the short description, it is also consistent with the conditions which I have set out in paragraph 6 of this judgment. Nowhere is it described as a residential caravan site, nor are the conditions taken as a whole appropriate for such a site. The only sensible construction is that it was a site for travelling showpeople only.

47. In short, this was not the grant of permission to use the land as a residential caravan site, with an ineffective attempt to limit that use to travelling showpeople. It was the grant of permission to use the land as a travelling showpeople's site, which is a distinct and narrower use, without any further attempt to limit that use.

s.288 application

48. The planning appeal arose out of an application dated 7 October 2010 by Mr Black for permission for "Use of land as travelling showmans site". The existing use of the land was described on the application form as "Travelling Showperson site". WCC accepted and processed the application, but made no determination within the time provided under the law.

49. In those circumstances the applicant is entitled to appeal to the Secretary of State under section 78(2) of the 1990 Act. The powers of the Secretary of State (exercised through an Inspector) are set out in section 79(1) as follows:

(1) On an appeal under section 78 the Secretary of State may –

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

50. In the present case the Inspector decided that the permitted use was already wider than that applied for, and therefore took no further action on the section 78 appeal.

51. Mr Ward submits that the Inspector had no power to take no further action. He had either to allow or dismiss the appeal. The powers under section 79(1)(b) do not apply where there has been no decision by the local planning authority. Although the Inspector has the further power to deal with the application as if it had been made to him in the first instance, that did not include taking no action. The power of a local planning authority to decline to determine planning applications is very limited and none of the relevant circumstances applied here.

52. Mr Whale submits that this Court has no jurisdiction to entertain this challenge under section 288 of the 1990 Act. That section only applies (in a case such as this) where there has been "any decision on an appeal under section 78" (see section 284(3)(b)). It does not apply where the Inspector has taken no further action, and therefore not made any decision on the appeal. He cites, by parity of reasoning, *Golding v SSCLG* [2012] EWHC 1656 (Admin) at paragraphs [40] to [43]. WCC's only remedy would have been by judicial review, and it is now far too late for that.

53. Alternatively, Mr Whale submits, the Inspector had the power to act as he did by virtue of the concluding words of section 79(1), and it was a perfectly reasonable decision since the application was for the same use as was granted in 2003 on any interpretation of that permission.

54. In an attempt to understand the practical significance of the decision to take no further action, I asked Mr Whale what would happen if the section 289 appeals succeeded. He had no instructions, but expressed the view that the Secretary of State would be unlikely to reopen the planning appeal.
55. Mr Rudd submits that the 2010 application was wider in terms than the 2003 permission as interpreted by WCC, but became superfluous once the Inspector had decided as he did. Mr Rudd supported the submissions of Mr Whale and did not seek, on behalf of his client, to have the planning appeal reopened, even if the section 289 appeals succeeded.
56. I do not need to decide whether this challenge should have been brought by way of judicial review. My preliminary view is that a challenge under section 288 is available, because in my judgment the Inspector did make a decision on the appeal, but it was one which he was entitled to make.
57. WCC did not rely on any specific powers to decline to determine the 2010 application. As Mr Ward said, none of those circumstances applied. WCC simply made no decision and let the time for doing so elapse. In other words, they accepted and processed the application but then took no further action. The Inspector was entitled to deal with the appeal as if the application had been made to him in the first instance. He did exactly what WCC did.
58. If I am wrong about the legal position, I would also refuse relief under section 288 on discretionary grounds.
59. Mr Ward sought to argue that it was important to have the file closed. That is a curious submission when his own client did nothing to conclude the application. If Mr Black had not appealed, the file would still nominally be open. In any event, it seems to me that the only person with any interest in having the appeal re-opened is Mr Black, and Mr Rudd on his behalf has declined to support this challenge.

Conclusion

60. I will leave counsel to agree the appropriate form of order. If there are any issues about costs, these should if possible be decided on written submissions.

DOC PON 5
1998 Appeal Decision



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Your Ref:

Our Ref:
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.

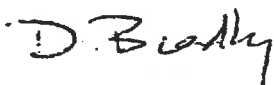
22. Local residents drew my attention at the inquiry to the extent of on-street parking on the narrow streets of the Vale of Health and the resulting difficulties experienced by motorists. However, I am not persuaded that your proposal would exacerbate these problems, since it would seem to be possible 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

DOC PON 6
Site Photographs since 2008

Photographic Record of Site Activity: 2011



Photographic Record of Site Activity: 2012



Photographic Record of Site Activity: 2012



Photographic Record of Site Activity: 2012



Photographic Record of Site Activity: 2014



Photographic Record of Site Activity: 2015



Photographic Record of Site Activity: Other



Photographic Record of Site Activity: Other



Photographic Record of Site Activity: Other



Photographic Record of Site Activity: Other



Photographic Record of Site Activity: Other



DOC PON 7

Site Photographs November - December 2018

Photographic Record of Site Activity: November - December 2018



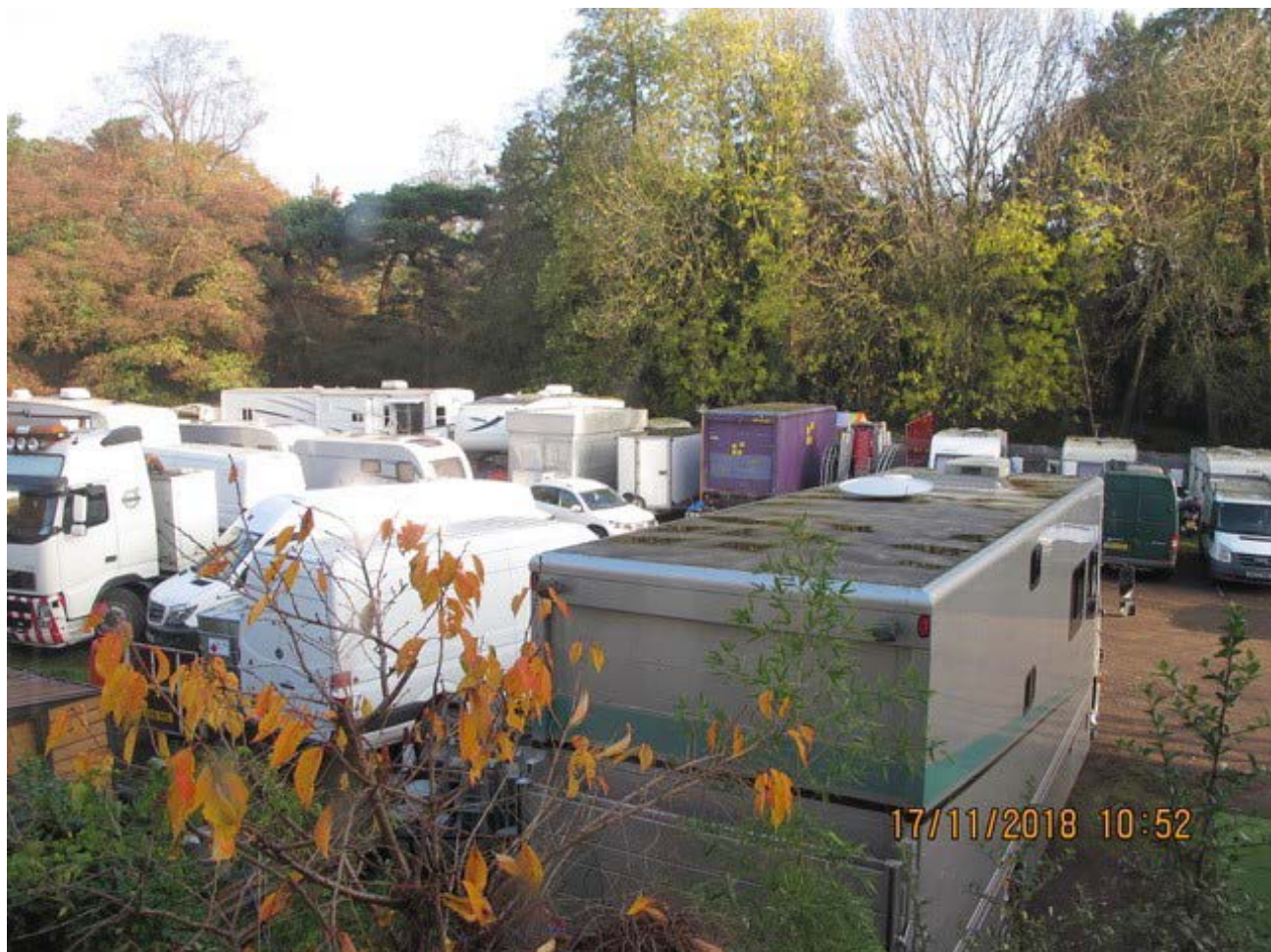
Photographic Record of Site Activity: November - December 2018



Photographic Record of Site Activity: November - December 2018



Photographic Record of Site Activity: November - December 2018



Photographic Record of Site Activity: November - December 2018



Photographic Record of Site Activity: November - December 2018



Photographic Record of Site Activity: November - December 2018



Photographic Record of Site Activity: November - December 2018



DOC PON 8
Council Tax Records

CARAVAN 1, FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

Last update on 26/08/2018

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5135728	Deleted		10/04/2014	No	

CARAVAN 2, FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

Last update on 26/08/2018

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5148393	Deleted		17/03/2017	Yes	

CARAVAN 3, FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

Last update on 26/08/2018

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5176745	A		01/02/2014	No	

CARVAN 3, FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

Last update on 26/08/2018

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5137449	Deleted		05/05/2008	No	

CARAVAN 5, FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

Last update on 26/08/2018

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5142614	Deleted		01/06/2008	No	

CARAVANS 4 & 5, FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

Last update on 26/08/2018

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5149321	A		05/05/2008	No	

CARAVAN 6, FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

Last update on 26/08/2018

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5139839	Deleted		10/04/2014	No	

CARAVAN 7, FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

Last update on 26/08/2018

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5138267	Deleted		10/04/2014	No	

DOC PON 9
Business Rates Records

VOA Ratings Records

Summary valuation for

Showpersons Site, Vale Of Health, London, NW3 1AT

Current valuation

Other valuations

Description	Caravan & pitch and premises	Special category code	048S
Local authority reference	00078000010008	Effective date	1 April 2017
Transitional Relief certificate No ? issued			

The rateable value is rounded down to

£18,000

This is not the amount you will pay. The rateable value is used to calculate your rates bill.

This is the summary valuation.

If you're the owner or occupier, you can register or sign in and claim this property to:

- view the detailed valuation
- confirm your property details or tell us that something is incorrect (check)
- tell us that you disagree with the valuation (challenge)

[Register](#)

Already registered? [Sign in](#)

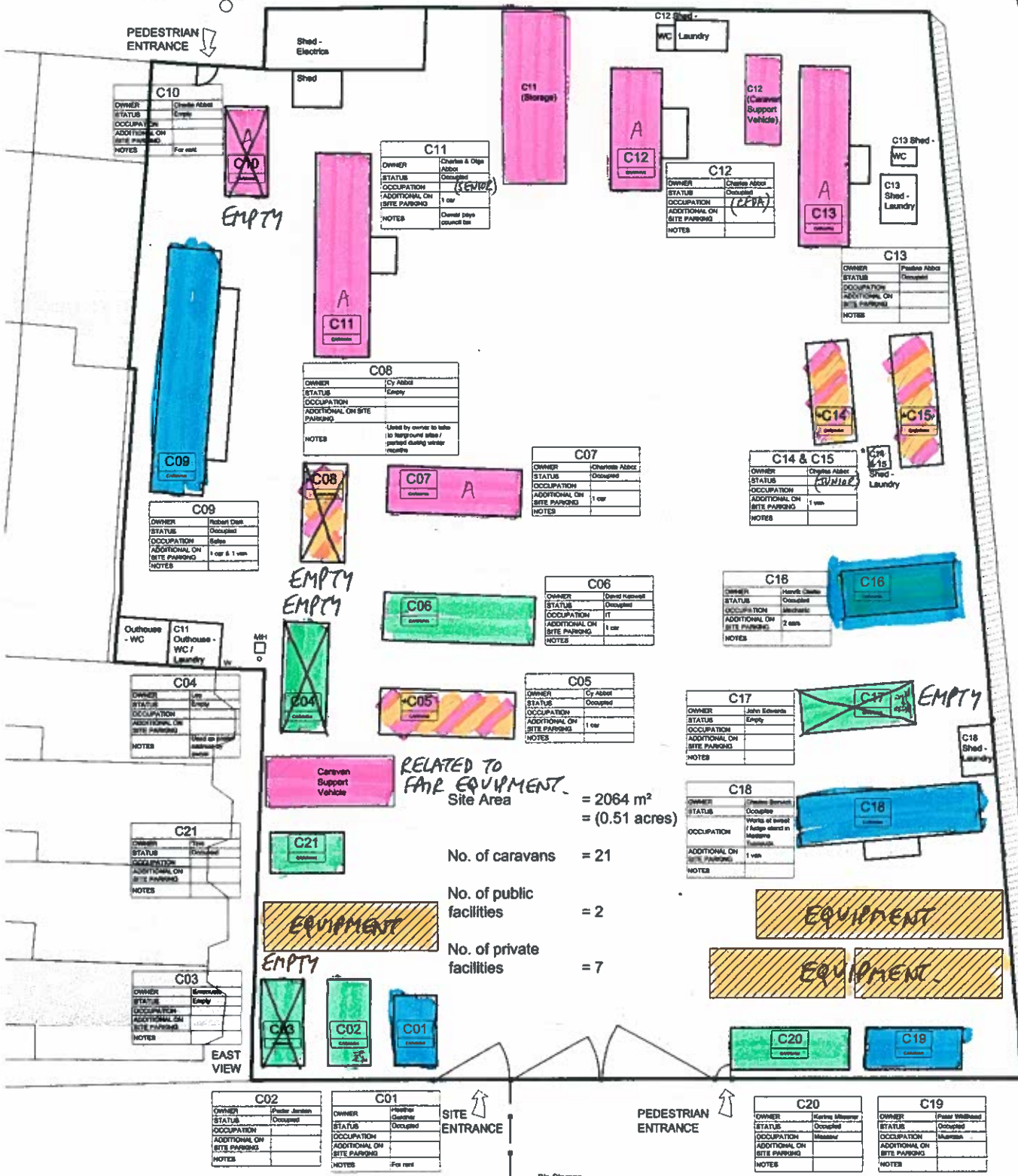
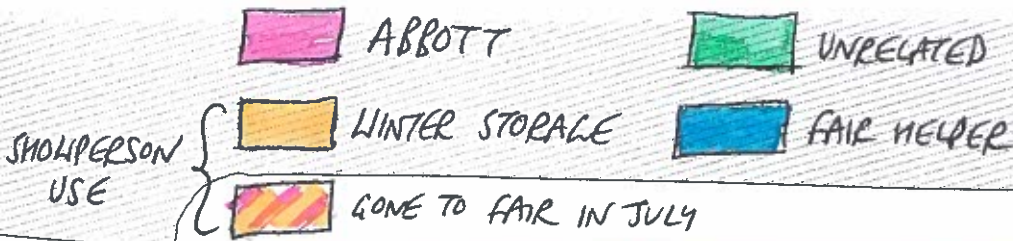
How the valuation was calculated

The Valuation Office Agency (VOA) puts similar properties into a group called a valuation scheme and:

- applies a range of values per m² (or unit) to the valuation scheme
- applies a base rate to individual properties in the scheme

The rateable value of this property is the sum of all the rates given to its different parts, rounded down to **£18,000**.

DOC PON 10
Council Survey Plan 2011



RELATED TO FAIR EQUIPMENT Site Area = 2064 m² = (0.51 acres)

No. of caravans = 21

No. of public facilities = 2

No. of private facilities = 7

(BASED ON SURVEY IN JULY 2010 + SUBSEQUENT INFORMATION)

Notes: Caravans and sheds marked with * are based at the site during the winter months only. Facilities include wc's and laundry.

NORTH FAIRGROUND SITE

PLANNING

DO NOT SCALE FROM THIS DRAWING - Verify all dimensions on site

VALE OF HEALTH

Site Plan

1:200 @ A3

FEB. 2010

001-01

REVISED MARCH 2011

DOC PON 11
Council Survey Plan 2017



- 1. ROBERT PARK
- 2. CHARLES + OLGA ABBOTT
- 3. CHARLES JUNIOR A.
- 4. C4 A
- 5. JOHN HAYES + CHARLOTTE + 3 CHILDREN
- 6. JOHN EDWARDS
- 7. HENRYK ELARK
- 8. W.H. WORKERS x 4
- = SHOW PEOPLE

RESIDENTS = 4 ABBOTTS (1 FULLTIME RETIRED)
4 HAYES

1 FAIRHELPER
4 FAIRWORKERS (TEMPORARY)
9 UNRELATED

- 4 ABBOTT } SHOW PEOPLE
- 4 HAYES }
- 14 EQUIPMENT/RIDES
- 5 STORAGE FOR FAIRS + RESIDENTS.

- 1/2 FAIR HELPER + VAN
- 4 FAIR WORKER (TEMPORARY AT WINTER WONDERLAND)
- 9 UNRELATED + LANDROVER OR EMPTY

NORTH FAIRGROUND
SITE SURVEY
NOV 2017
(10-11-17)

DOC PON 12
Hampstead Conservation Area Statement



Conservation
area statement ► **Hampstead**



PLANNING HISTORY

Hampstead was designated a Conservation Area (with North End, the Elms, Vale of Health, Downshire Hill) on 29 January 1968. The reasons given for its designation were:

- the large number of listed buildings of architectural interest, the historical association of these buildings in terms of former residents and of the village in the context of the history of London as a whole;
- the street pattern of the original village which is retained and is reflected in the fragmentation of the street blocks and close and irregular grouping of the old buildings;
- the striking topography which gives rise to the complex of narrow streets and steps characteristic of the village and provides an important skyline when viewed from other parts of London;
- the proximity of the unique open space of Hampstead Heath and its integration with the village on the northern side. (LB Camden, Planning & Development Committee - 30 October 1967, Report of the Planning Officer).

When designated the area was named Hampstead Village Conservation Area. As it has been extended beyond the original village it is now known as Hampstead Conservation Area.

Extensions to Area Since the original designation, there have been several extensions to the Conservation Area (see map) on 1.10.77, 1.4.1978, 1.6.1980, 1.6.85, 1.11.1985, 1.2.1988, 1.11.1991. An alteration to the boundary on Rosslyn Hill was agreed on 22.2.01 with some sections being transferred to Fitzjohns/ Netherhall Conservation Area.

On 19.10.76 an **Article 4 Direction** was made which took away certain development rights. A short summary is given here but the full text of the direction can be inspected at the Environment Department reception. "In order to preserve the diversity of age and style of listed buildings in the conservation area, including the variety of colours and textures used, of which the contrast between brick-faced and painted stucco properties is a key element, an article 4 direction was made that removed the permitted development rights of painting the brickwork on the exterior of named listed buildings in the conservation area." The following properties are included;

STREET	PROPERTY NOS/NAMES
Benham's Place	1-9 cons.
Church Row	5-12 cons. including 9A, 15-28 cons.
Downshire Hill	16-19 cons. 21-28 cons. 34-35 cons. 41, 43
East Heath Road	1-2
Elm Row	1-5 odd
Flask Walk	2-4 even, 9, 35-41 odd, 53-67 odd
Frognaal	49-51 odd, 104-106 even, 108
Hampstead Grove	26-28 even
Hampstead High Street	18-19, 24, 29-30, 31, 31A, 32, 72, 73, 82, 83, 85,
Hampstead Hill Gardens	105 cons. 7-11 odd
Hampstead Square	1, 7, 8, 8A, 9
Heath Side	Heath Side, Heath Lodge
Heath Street	60-73 odd, 86-90 even 92, 94
Holly Bush Hill	Alpine Cottage, 2-4 cons. Romney's House
Holly Hill	12-24 even 15-19 odd
Holly Mount	1-12 cons. 15, 18, 21, 23, 24
Keats Grove	19-22 cons.
Lower Terrace	1-4 cons.
The Mount	8, 9, 11, 12
The Mount Square	1-5 cons. 7, 8, 8A, 10-17 cons.
Mount Vernon	1-7 cons.
New End	10-14 even
New End Square	4-8 even 16-20 even
North End	1, 3
Perrin's Court	2, 6, 6A, 6B, 10, 12
Perrin's Lane	14-26 even

Buildings or features which detract from the character of the area and would benefit from enhancement

Inverforth Close: Heath Lodge,
Mount Tyndal, St Columba's

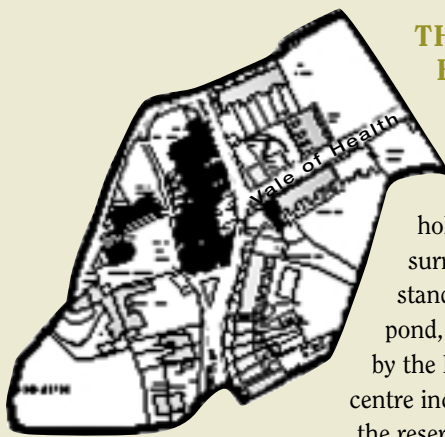
Neutral Buildings

Holford Road: Queen Mary's (Royal Free Hospital)
Whitestone Lane: garage doors to Gang Moor

SUB AREA EIGHT: Outlying Areas

This sub area comprises three 'outlying' character zones:

- Vale of Health
- North End
- The Elms



THE VALE OF HEALTH

The **Vale of Health** is a tightly knit enclave of modest houses in a hollow completely surrounded by the Heath. It stands on the edge of a large pond, built as a reservoir in 1777 by the Hampstead Water Company. Today a man-made island refuge for birds at the centre increases the pond's visual attraction. The development of the enclave began when the reservoir was created and the remaining drained land became available for building.

- *Listed buildings*
- *Buildings which make a positive contribution*

The Vale is approached down a leafy lane from East Heath Road. Its narrow roads and alleyways create intimate vistas, with the added impact of views of the Heath, with its trees and vegetation. There is a delightful mixture of buildings. Early 19th century cottages, many weatherboarded, combine with larger villas and terraces. The secluded nature of this residential enclave, the varied scale and forms of the modest houses, contrasting with the natural backdrop of the Heath give the Vale of Health a unique charm. Apart from the older cottages the houses are predominantly late 19th century.



At the entrance to the Vale on the east side is a curving terrace of late 19th century houses, some of red brick and others of London stocks. The houses are three or four storeys, some with nicely detailed dormers, bay windows and porches. One of the properties, Upfleet, is harmed by the full width roof extension of poor design. Atheneum Hall ends the terrace; it is a 1950s four storey block of flats with a semi-basement and a set back fifth floor. It replaced a large hall that is shown on the 1870 OS map and its scale relates to that historical context. The terrace has small front gardens enclosed by low brick walls and at the rear gardens stretch down to the pond. These gardens, together with those completing the crescent around the pond, are defined as Private Open Land in the UDP and designated as Metropolitan Open Land. The UDP comment is "It comprises the gardens of properties bordering the Vale of Health pond that make an important visual contribution to views from the Heath and act as a buffer between that and the

built environment". There are two other such designations in the Vale: around the well wooded Manor Cottage garden together with the adjoining gardens at Greenmoor and Fleet House, and the North Fairground site.



Coming into the Vale of Health on the western side of the road there are two pairs of semi-detached villas (Manor Cottage & Hollycot; Heathdene & Ashdown) and the early 19th century Manor Lodge, the largest house in the Vale. At Manor Lodge the road widens to include a green triangle, bordered at its northern end by Nos. 3-6 Villas on the Heath, roofed by two great gables with ornate bargeboards. The houses are stuccoed with hood moulds over the windows. A narrow path between No.3 and a high garden fence leads to the rest of the (listed, 1863) group, Nos. 1 & 2 Villas on the Heath. Then there is a pretty row of early 19th century two and three storey painted cottages with neat gardens (Old Cottage, Woodbine Cottage, Rose Cottage, North Villa, South Villa, Vale Cottage, Vale House - all listed). At the northern end of this row is Vale Lodge, a substantial two storey early 19th century stuccoed villa standing in a large garden (listed). A small modern studio built onto the high brick wall enclosing the garden forms a contrast on the corner. Looking back from the Heath the view is marred by a roof terrace at the third floor level of Vale Lodge.

The road into the Vale divides past the triangle. At the junction is Fig Tree House, a plain late 19th century house of stock brick with chamfered cream brick dressings to the window jambs. It is double fronted with a hipped roof and overhanging eaves. The modern additions of Willow Lodge and Blossom Villa try to mimic the brickwork and forms of Fig Tree House and fail. Across the road is Byron Villas, a terrace of two storey terraces, mostly with semi-basements. Redbrick with double height bays and a pitched roof. Nos.1&2 are listed. To the east is Heath Villas, a stucco terrace with moulded details over the front doors and windows, and pitched roofs with overhanging eaves. The symmetry has been broken with one dormer on No.5. Looking down the terrace the view is dominated by Spencer House, a 1960s block, which replaced the equally bulky Vale of Health Hotel (1860's). It has bold bay windows on the south side overlooking the pond but its north face looms over its neighbours. Originally the south side was detailed with green slate which was removed.



The western edge of the Vale of Health has low cottages and large, heavily wooded gardens with Chestnut Cottage, early 19th century (listed) and a pair of mid 19th century houses, Lavender Cottage and Vivary Cottage built in the cottage ornee style (listed). The 1860s Heathlands Lodge was altered in the Arts and Crafts style in the 1890s by George Birch and divided into three houses in the 1950s: Heathland Studio, Fleet House and Greenmoor, all of which have direct access to the Heath. To the north-west is a short terrace (Nos. 1-6 The Gables 1883) of red brick houses with gables with bargeboards, white dressings and small front gardens that face

outwards to the Heath. To the north-east another row, Nos. 1-4 East View overlook the open expanse of the North Fairground which marks the eastern edge of the Vale of Health. The fairground cannot be said to make a positive contribution to the appearance of the area although the use is long established and an important part of the Vale's character. It is designated as Private Open Space and Metropolitan Open Land.

There are two fairground sites on the edge of the Vale. The North Fairground, designated as Private Open Space in the UDP, lies on the northwest edge of the Vale and is still used as a fairground on Bank Holidays. The South Fairground is not designated as open space. Its southern and eastern frontages are designated as Private Open Space and Metropolitan Open Land in the UDP as part of the pond frontage. Any proposed development would need to recognise the sensitivity of this site.