



Est. 1897

The Heath & Hampstead Society

President Lord Hoffmann **Vice-President** Martin Humphery **Chair** Marc Hutchinson
Patrons Lady Hopkins Sir Simon Jenkins Bill Oddie OBE Tom Oliver Sir John Tusa

The Planning Inspectorate
Case Officer: Ms Zoe Day

25 March 2021

LAND ADJACENT TO JACK STRAW'S CASTLE, NORTH END WAY, LONDON NW3 7ES
APPEAL BY ALBANY HOMES UK LIMITED
APPEAL REFERENCES: APP/X5210/W/20/3261840 and APP/X5210/Y/20/3261841
APPLICATION NUMBERS: 2020/1828/P and 2020/2577/L

Dear Ms Day

Please find attached the Joint Representations (with six Appendices) of the Heath & Hampstead Society and the Hampstead Neighbourhood Forum.

We are against the appeal proposals.

We seek the Inspector's permission to appear at the hearing by way of a single representative, Mr David Altaras of Counsel.

Yours sincerely,



Marc Hutchinson
Chair

For and on behalf of the Society and the Forum

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**JOINT REPRESENTATIONS OF THE HEATH & HAMPSTEAD SOCIETY AND THE HAMPSTEAD
NEIGHBOURHOOD FORUM**

Introduction

1. These are the joint representations of the Heath & Hampstead Society ("HHS") and the Hampstead Neighbourhood Forum ("HNF"). Both HHS (letter dated 3rd July 2020) and HNF (letter dated 8th July 2020) objected to Albany's latest application for planning permission and both are against the appeal proposal for the reasons given below. Both will seek the Inspector's permission to appear at the hearing by way of a single representative.
2. Although we support the sole substantive ground of refusal given by the London Borough of Camden ("Camden"), it is our case that Camden's refusal should have included other grounds. The present appeal represents Albany's fourth attempt to squeeze housing into a manifestly unsuitable and highly sensitive site. We make it clear that we remain against any development on the car park site in principle.
3. These joint representations will:
 - (i) Explain who we are.
 - (ii) Consider briefly the relevant policies, but only insofar as they are not presently before the Inspector or have been insufficiently emphasised.
 - (iii) Give a short overview of the appeal site and its surroundings.
 - (iv) Set out our objections to the proposed development.
 - (v) End with our conclusion.

Who we are

4. HHS was established in 1897. It is a registered charity, whose objects are to preserve the parts of Hampstead Heath governed by section 16 of the Hampstead Heath Act 1871 in their wild and natural state; to preserve the natural and characteristic features of the other parts of the Heath; *to promote and maintain the amenities and characteristics of the environs of the Heath, and of the buildings and streets of Hampstead (emphasis added)*; and to promote public interest in the study of, inter alia, natural history. It has a membership of over 1,600. The emphasised words were adopted as an additional charitable object of the Society in 1933 specifically to address the threat of harmful building construction on the fringes of the Heath, as described in the attached extracts from the Society's Annual Reports of the time: Appendix 1 to these representations.
5. HNF was established in 2014 under the Localism Act 2011. It has more than 800 members and was re-designated by Camden in 2019 for a further period of five years. Its committee is drawn from a broad array of experience including education, business, finance, public relations, information technology, journalism, law and architecture. It authored the Hampstead Neighbourhood Plan 2018-2033 which was adopted after receiving 91.5% support in a public local referendum. Its Mission Statement includes furthering the vision expressed in the Neighbourhood Plan *"to conserve and foster Hampstead's charm and liveability by protecting the distinctive character of buildings and open spaces, the Heath, healthy living, community spirit and the local economy."*

Policies

6. We do not intend to repeat all the policies on which Albany and/or Camden seek to rely. Rather, we draw the Inspector's attention to the following provisions and policies which have either not been mentioned or not sufficiently emphasised. (However, it is not to be inferred that, because we have not mentioned one of the other policies upon which other parties rely, we consider it to be unimportant):

Openness of the Heath:

- (a) Hampstead Heath Act 1871: see in particular sections 12 and 16, which require the Heath to be kept open, its natural aspect to be preserved and any attempted encroachment to be prevented: Appendix 2 to these representations. Included with the statute is the famous map produced by Sir Lawrence Chubb showing accretions to the Heath. It will be seen that the land surrounding the appeal site was an original part of the Heath. Those statutory provisions are manifestly relevant to this appeal.
- (b) NPPF: paragraphs 133 and 144 (equally applicable to MOL) and 170 (a), (b) and (d).
- (c) London Plan (2021): Policy G3.
- (d) Camden Local Plan: Policy A2 (a), (c), (f), (g), (j); and paragraphs 6.40 and 6.43.
- (e) Hampstead Neighbourhood Plan 2018: Policy NE1¹; and paragraphs 4.2 and 4.8.

Biodiversity

- (a) NPPF: paragraph 175 (d). The proposed changes to the NPPF, presently in consultation, include the proposed new paragraph 179 (d): extract with changes marked in red at Appendix 3 to these representations.
- (b) The London Plan (2021): Policy G6 (D).
- (c) Camden Local Plan: Policy A3; and paragraphs 6.59 – 6.64.
- (d) Hampstead Neighbourhood Plan 2018: Policy NE4.

Design, listed buildings and Conservation Area

We have nothing to add to the policies already before the Inspector.

The Site

- 7. It is, or ought to be, common ground that the car park site is highly sensitive.
- 8. It lies on the immediate fringes of Hampstead Heath, as effectively illustrated by the aerial photograph in Albany's Archaeological Assessment.² The Heath's metropolitan

¹ Note: Hampstead Heath is regarded as an "open space": see App 4 to the Plan.

² Fig 2 page 27.

significance led to its designation as MOL, described in The London Plan (2021) in the following terms:

*"Metropolitan Open Land is strategic open land within the urban area. It plays an important role in London's green infrastructure – the network of green spaces, features and places around and within urban areas. MOL protects and enhances the open environment and improves Londoners' quality of life by providing localities which offer sporting and leisure use, heritage value, biodiversity, food growing, and health benefits through encouraging walking, running and other physical activity."*³

9. Hampstead Heath is described in the Camden Local Plan as *"the largest open space in the Borough providing nearly half of our total area of open space and many of our outdoor sporting facilities."* Camden undertakes to *"work with partners, including the City of London (who own and manage the Heath), to ensure it is properly safeguarded"* and to *"continue using guidance in conservation area appraisals and management strategies to preserve and enhance the built environment around the Heath and preserve outlooks and views from it."*⁴ Whether Camden has properly discharged its obligations in the context of the present case is a matter that the Inspector will need to consider.
10. In his report on the 2003 Appeal, the Inspector described the area surrounding the site as *"open, green and semi-rural"* in character and appearance; and suggested that *"the manner in which the listed building has been set away from the north boundary with the car park/service area left undeveloped contributes significantly to the openness of the surrounding area."*⁵ One of his reasons for rejecting Albany's then proposal was that it protruded *"into the openness of the surrounding area."*⁶
11. We submit that those observations apply equally to the present proposal, which continues to represent a threat to the Heath in this particular location, through

³ Paragraph 8.3.1.

⁴ Camden Local Plan, paragraph 6.43.

⁵ Paragraph 7.

⁶ Paragraph 6.

potential erosion of its atmosphere, its openness and the quality of its landscape setting.⁷

12. The car park site additionally lies within the setting of Jack Straw's Castle. We note that Raymond Erith had no plans to build on the car park site, but instead intended that, in views from the north, the general effect would be that of a castle sitting on top of a hill.⁸ The Inspector in the 2004 appeal described with approval the impression as being of "*a cliff-like wall facing over the car park.*"⁹ We share Camden's concern that the proposal would undermine that effect and would cause overall harm to the listed building by virtue of its adverse impact on the setting.
13. Finally, the appeal site lies within the Hampstead Conservation Area. We do not believe that the character or appearance of the Conservation Area would be preserved or enhanced by the proposal. On the contrary, it is inappropriate development that would harm the Conservation Area.
14. We cannot leave these general remarks about the site without addressing Albany's *in terrorem* argument about rebuilding the two garages on the car park. We suggest that such possibility can be discounted. Despite almost 20 years having passed since the grant of the 2002 planning permission and despite there having been two failed appeals against refusal to develop the car park, Albany has made no attempt to reinstate the garages and realistically is most unlikely to do so at any time in the future. We submit that little weight should be attached to this point.

Objections

15. We object to the proposed development on the following principal grounds:

⁷ Appendix 4 is the report of another Inspector who had to grapple with the issue of the impact on the openness of the Heath of a proposed development on its fringes - Appeal Ref: APP/X5210/A/14/2220872 Athlone House, Hampstead Lane, London N6 4RU, see paragraphs 50, 69 and 80.

⁸ See Lucy Archer's comments on the 2004 application to which metropolis refer on page 5 of their objection on behalf of the City of London Corporation.

⁹ Paragraph 7.

Openness

16. We submit that the proposal would inevitably have an adverse impact on the Heath in this particular locality, spoiling its essentially rural quality. It would harm the Heath's open character and its setting. It would be highly visible from three sides, namely from North End Road, from the semi-rural Heath Brow and, to the east, from the Heath itself.
17. The impact of the proposal on the openness of the approaches to the Heath and its character is best illustrated by the photographs at Appendix 5 to these representations to which we have added our comments. Also included are the viewpoints from which those photographs were taken. We respectfully invite the Inspector to view the appeal site for himself from the same points to appreciate the force of our submissions.
18. To construct two houses whose very walls would sit on the boundary of the Heath would be unique, no permission having been granted in modern times for such a house. The five houses that do directly abut the Heath in that way were built many years ago. Apart from Jack Straw's Castle itself, they are all pre-1947 and are shown in the photographs at Appendix 6 to these representations:
 - The clapboard house at the top of **Windmill Hill**, which has a two-storey elevation onto Judges Walk, the edge softened by the trees of the lime avenue. Photo 1.
 - Next to it is the two and a half-storey red brick **4 Upper Terrace Windmill Hill**, which again gives onto Judges Walk and is again screened by the limes. Photo 2.
 - **Cottage on the Heath** at Heathside, at the entrance to Gainsborough Gardens. Photo 3.
 - **Heathhurst** in the Vale of Health, whose side wall runs for approximately 20 metres along the Heath. Photo 4.

19. There is an additional point. Almost all of the houses which adjoin the Heath do so with an area of garden between the house itself and the wall or fence on the edge of the Heath. That contributes to the openness of the Heath by ensuring the absence of built development on its fringes. There is no such garden, indeed no garden at all, in the present proposal.
20. We were surprised that the impact of the proposal on the openness of the Heath was not included in Camden's reasons for refusal, particularly since this proposal is larger and, in our view, more obtrusive than the 2003 and 2004 proposals, both of which were rejected, amongst other reasons, because of their adverse impact on openness. We were concerned that the Statement of Common Ground at paragraph 8 (j) suggested agreement that *"the proposal will not have an adverse impact on the openness of MOL"*. We do, however, draw some comfort from the observations of the Case Officer at paragraph 3.17 of her Delegated Report where she refers to the fact that the proposal would be *"highly visible from the street....and from Heath open space on north and east sides.....it would dominate views from the street and adjoining Heath."* About that, we are in complete agreement.
21. We note that Albany's Statement of Case at paragraph 5.55 acknowledges that the development would affect views into and across the Heath: *"There is an additional conservation area point, relating to visual impact of public open space. The proposals do not sit on the public open space, which is Metropolitan Open Land, but they do affect views into and across it....."* However, having acknowledged there would be an effect on MOL, Albany discounts the impact solely by reference to the City of London car park, the visual and landscape qualities of which, Albany claims, are compromised and less sensitive to change. There is no attempt to expand the assessment to include areas of the Heath outside and beyond the City's car park. Given that rejections of the 2003 and 2004 appeals were based in part upon the impact on views and the harm to openness, it is noteworthy that the Architectural Statement at Appendix 1 to the Statement of Case fails to include relevant views. The images provided¹⁰ show

¹⁰ Pp 8-10.

only how the site looks at present, but give no assistance to an understanding of the visual intrusion with the proposed buildings (although mock-up views were provided in the Design and Heritage Statement).

22. In summary: legislation and policy support the preservation of the openness and character of MOL; two inspectors have upheld Camden's rejection of earlier proposals for smaller, less obtrusive developments; the inspectors' decisions included the adverse impact upon openness in the area of the appeal site; and, although the appeal site itself is not MOL, it is clear that the proposal would adversely affect the openness of MOL, not directly through any encroachment, but indirectly as a result of its impact upon the Heath's setting, views and approaches.
23. Mr John Beyer, a Vice-Chair of HHS, will be available at the hearing to deal with any points arising on the issue of openness.

Biodiversity

24. The potential ecological and biodiversity impact of the proposal is not mentioned as a factor in Camden's decision to refuse the planning application. Nor is it addressed in Albany's Statement of Case. It is nonetheless an important issue, particularly given the proximity of the site to Heath habitats.
25. Albany's case is based entirely on ecological and biodiversity impacts on the car park site itself and on the strip of woodland to the west of its back wall, between the site and the West Heath car park. This strip is erroneously treated by Albany as land that is not part of Hampstead Heath.
26. We assert that there would be a negative ecological and biodiversity impact beyond the boundaries of the site and the strip of woodland to the back of the west wall. This has not been properly assessed. (We say 'properly' as opposed to 'not at all' because the Preliminary Ecological Appraisal (Greengage, 2017)¹¹ does make

¹¹ Paragraphs 6.6 and 7.5.

reference to reducing the impact of construction and light spill on nearby Heath habitats.)

27. The three documents on which Albany's ecological and biodiversity case are based all contain features, including misrepresentations and errors, that cast doubt on their conclusions:
- (i) Tree Survey Report (RGCS Arboricultural Consultants, 2016). This survey is now badly out of date, and erroneously refers to the wooded strip on the west edge of the site as amenity land managed by the local authority, rather than as part of the Heath. The amenity-focused survey methods it uses, therefore, are inappropriate to an assessment of this woodland's ecological and biodiversity value. The specific recommendations made, namely to remove dead trees (elm, cherry) and ivy and to remove and prune other trees, in order to reduce tree density and height and reduce insects (sycamore aphids) may be sensible in an amenity context. In a biodiversity context, all of those actions would have negative impacts on biodiversity in this part of the Heath.
 - (ii) A Preliminary Ecological Appraisal (Greengage, 2017). This survey is also now out of date. As with the Tree Survey Report, it misrepresents the strip of woodland to the west of the site as not being part of Hampstead Heath. Its bat survey¹² was undertaken in daylight hours, an inappropriate time of day. Its recommendation¹³ that an additional bat assessment be made has not been carried out, to our understanding.
 - (iii) A Biodiversity Net Gain Assessment (Greengage, 2020). This assessment, by definition, considers only biodiversity loss and gain on the site itself, which presently has no biodiversity value except for some ivy overgrowing its back wall from Hampstead Heath land. The "net gain" is associated solely with a proposed hawthorn hedge along the east (main road) side of the site and a tiny green roof (6 m²) on a bike shed. Neither this busy roadside nor the bike shed habitat are likely to be used by wildlife. While these additions have a total score in biodiversity units of only 2.41 (cf. last column of Table 1.2, being the sum of

¹² Paragraph 4.9.

¹³ Paragraph 6.7.

2.10 + 0.22 + 0.09), their total is presented in that table as 78.32. This error creates a percentage biodiversity increase of 296.66% (78.32/26.4) when, based on the actual numbers, it should be only 9% ((26.4+2.41)/26.4). A text reference to a Table 4.1, which does not appear, also suggests some errors in procedure and presentation. Based on the information presented, we conclude that the maths is incorrect, the biodiversity net gain is grossly inflated, and the real biodiversity net gain is actually negligible.

28. None of these studies adequately assesses the adverse biodiversity impact of the planned development *on Hampstead Heath land bordering the site*. This adverse impact will undoubtedly arise from damage to Heath habitats during construction (along the west border of the site), and will impact on local wildlife from increased human activity around the homes and from increased light pollution at night. The Preliminary Ecological Appraisal recommends¹⁴ that the development “*should not result in increased light spills across the section of the Heath opposite the site*”, whereas the building plans clearly show a third storey of five windows that would be above the treeline and would unquestionably create new light spill.¹⁵ Furthermore, the five westward-facing windows on the next storey will certainly be obscured by foliage. Albany’s 2016 Tree Survey Report recommends pruning, ivy removal and felling of some of these trees, which would lead to increased light spill from that storey as well. Since the date of this Appraisal in 2017, a 2020 Nesting Bird Survey, undertaken jointly by HHS and the City of London, suggests that the Heath habitats within 100 metres of the site support ten nesting bird species, five of which are classified as at risk of loss from Heath habitats (viz. Song Thrush, Stock Dove, Dunnock, Chaffinch and Goldcrest.)¹⁶

¹⁴ Paragraph 6.6.

¹⁵ See verified view photo 2 on April 2020 Planning and Heritage Statement for an indication of tree and window height.

¹⁶ The 2020 Nesting Bird Survey is not a published document. It is a database (and Excel spreadsheet) with data on birds recorded showing nesting behaviour and their locations. It so happened that one part of the survey was within 100 metres of the site.

29. Professor Jeff Waage OBE, PhD, a trustee of HHS, will be available at the hearing to deal with any points arising on the issue of biodiversity.

Design and Heritage

30. We support Camden's ground for refusal both of planning permission and of listed building consent. The overall bulk, massing, height and incongruous detailed design of the present proposal render it inappropriate for this sensitive site.
31. We refer to the Case Officer's Delegated Report. We do not intend to repeat the cogent points there made, but simply to express our agreement, subject to our fundamental position that we oppose any development of the site in principle, with the objections to the present proposal at paragraphs 3.11 to 4.1, paragraphs 6.1 to 6.5 and paragraphs 13.1 to 13.3. However, we believe that the Officer underplayed the deficiency of the design and amenity considerations by failing to point to:
- (i) the clumsy junctions between the two roofs;
 - (ii) the unattractive junction between the proposed and the existing castellated west elevation;
 - (iii) the un-contextual pyramidal roof of House number 2;
 - (iv) the metal frames supporting the uncharacteristically large first-floor balconies;
 - (v) the dangers of pedestrian entry to the houses through an area to be used by cars and refuse vehicles and exacerbated by a tight turning circle into the parking and refuse area;
 - (vi) the fact that the main windows of House number 1 would only be two metres distant from parked cars with the associated danger of air pollution;
 - (vii) the fact that the view from the front of the houses would be of parked cars and refuse containers;
 - (viii) the fact that the room sizes are only just adequate – noting in particular that two bedrooms in each house are only 2.1 metres wide and that the outlook from the poorly-lit basement would be of a high concrete wall, little more than one metre away.

32. We also concur with the comments on the deficiency of the design, on heritage and on openness set out in the letter of objection dated 28th July 2020 from metropolis, on behalf of the City of London Corporation.
33. In our view the design of the proposal does not reflect the existing Old Court House or the Georgian houses on Downshire Hill. The proposed houses are more regular, have clashing roof shapes, larger first floor projecting terraces and no front garden.
34. We have certain additional criticisms with regard to the drawings and documents provided by Albany in its Application and its Statement of Case:
- (i) There has been no contextual analysis, we suspect because such analysis would not support the form, style and location of the proposed two houses.
 - (ii) The plans and elevations accompanying the application do not show the surrounding buildings and do not reveal the unsightly junction between the proposal and the existing west elevation.
 - (iii) Long west elevations showing the long three-storey wall on the Heath boundary are not provided.
35. Much is made by Albany of the Inspector's conclusion in his report on the 2004 appeal that a future proposal dreamt up by an imaginative architect might achieve an acceptable solution. We have two comments to make. First, we do not read the Inspector's comment as amounting to a green light for further development proposals. On the contrary, we believe that he was cautioning restraint and expressing the improbability of any future proposal being acceptable. Second, while we have no doubt that Mr Terry qualifies for the description of "an imaginative architect", he has in our submission failed to arrive at "an acceptable solution" which is perhaps an indication that it is unlikely that any future solution would prove acceptable.
36. For all the above reasons, we submit that the impact of the proposal on the listed building and on the Conservation Area would be unacceptable.

37. Mr David Castle, RIBA, Dip AA, Dip TP, a Vice-Chair of HHS, will be available at the hearing to deal with any points arising on the issue of design and heritage.


Conclusion

38. The Inspector is invited to dismiss the appeals.

Signed on behalf of HHS.....

Marc Hutchinson, Chair

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Signed on behalf of HNF.....

Janine Griffis, Secretary

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