

THE ENVIRONMENT COMMITTEE REPORT

by Michael Hammerson

Although our Planning Group, chaired by Elspeth Clements, benefits from the work of many people who give their professional experience and personal time so freely, its workload remains immense, sometimes almost intolerable, under the relentless pressure for development in Highgate, too often of the type fuelled by a signal indifference to impact on the wider area, and with pockets sufficiently deep to keep testing the planning system till it breaks.

Neither are we alone; reading the Parish Council notice board in a tiny village in Oxfordshire recently, I noted the following: "Many residents were very apprehensive about this development because of lack of infrastructure. The Chairman commented that the PC had very little influence on planning and were at a disadvantage when developers employed large aggressive companies."

The situation is similar across the country, and the Government's much-vaunted Localism agenda increasingly seems a hollow one. Even if the Neighbourhood Plan, on which we and other community groups have worked so long and hard, is adopted, it will only work if the local authorities charged with implementing it do so, and our experience is increasingly that they often fail to implement their existing policies; how will they cope with yet another tier?

■ Vacant offices and shops

While in recent reports I have spared you my usual tirades on our collapsing planning system, the assault remains, I will highlight yet another assault on our local democracy. You will be aware of the Government's 3-year "experiment" to allow shops and offices to be converted to housing without the need for planning permission: an initiative described by everyone with whom we have discussed it, including many professionals, as "madness", and underlined by a recent RICS survey showing a substantial impact on the areas surveyed. While the original purpose was to ensure that long-term vacant offices and shops could be converted to housing, the legislation omitted that proviso, and now many small thriving businesses are being thrown out by their landlords, for the simple reason that nowhere in the country is office space more valuable than residential.

Despite this growing evidence, the Government now propose not only to make it permanent, but to withdraw the exemptions given to the 18 local authorities who requested it. While the originator, previous planning minister Nick Boles, was replaced in the recent Cabinet changes, we expect no move towards planning sanity from his successor, Brandon Lewis. The staunch Conservative Borough of Richmond has already been badly hit by it, anticipate that they will lose 20% of the Borough's office space in this way, and are considering introducing special policies to withdraw the

right. Their cabinet member for the environment spoke for us all when she said: "Government reforms are completely at odds with what local communities want. Although appearing pro-business, they are the exact opposite. Government says this will give people a greater say over planning decisions that affect their local area. It is clear that the proposals will be very detrimental to our businesses and shops. They will permanently damage the vitality and viability of our high streets, lead to further losses of employment space and jobs that support the local economy. The reforms remove more of our ability to balance the community."

What is the point of communities putting huge amounts of time and effort into producing a Neighbourhood Plan, sold to them as allowing them to take more control, if the most basic decision – planning the right balance of shops, offices and residential – is taken out of their hands? Given house prices in Highgate, is it scaremongering to suggest that we could face seeing every shop and office in the High Street turned into residential?

■ Further Proposals

Also proposed are: the removal of local authorities' powers to prevent conversions to restaurants/cafés, which will reduce our power to keep high streets retail; the removal of English Heritage's remit for Grade II listed building applications in London, where there has been a huge loss of Conservation Officers in most Boroughs; and limiting the requirement to notify the National Amenity Societies about demolition of historic buildings. Conservation areas are not mentioned in several places where one would have expected them to occur. If that were not enough, the RIBA has issued a statement saying that the Green Belt should be built on; this has already created some dissension, as it was not approved by their Council, and some architects are already writing in to express their anger. See <http://andrewlainton.wordpress.com/2014/07/02/riba-says-build-on-greenbelt/>

■ One, Highgate

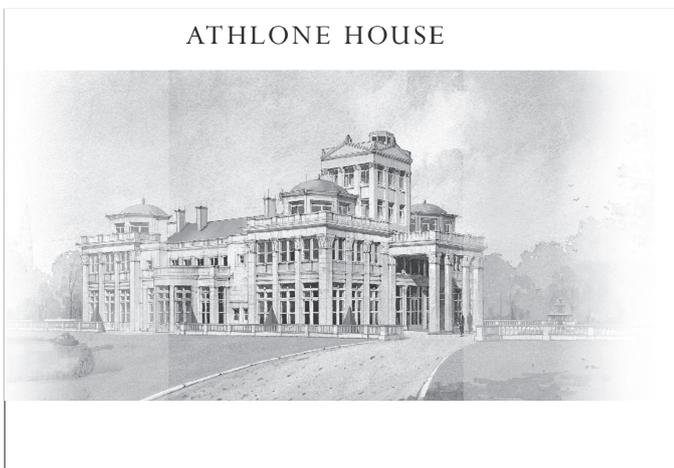
Highgate has been hit by a perfect example of the crassness which exemplifies a certain sector of the development industry, in the new name given to the fine 1915 Furnival House, in Cholmeley Park - "One, Highgate" - doubtless "inspired" by the obscenely-priced (and ugly) blocks of flats called "One, Hyde Park". My toes have yet to fully uncurl from this or the patronising tone of the selling agents' website: "Highgate and Highgate Village has proudly retained its historic character and charm. It is one of the most affluent suburbs of London in which to live. Many houses retain their period features, lending them a sense of uniqueness. Highgate Village boasts a number of

independent, luxury shopping amenities in a Georgian setting." I hope that everyone will continue to call it by its historic name, Furnival House, and decline to recognise "One Highgate" should any intending purchaser happen to ask you the way.

■ The Garden Centre Appeal

The most immediate call on our time has been the Garden Centre appeal, which will have been heard by the time you read this. At the time of writing, we are preparing for what will be a very difficult battle. We have taken on the services of a leading planning barrister, Nathalie Lieven, formerly a Camden Councillor and a local resident, who knows the area well and is personally interested in seeing the right outcomes. Our team, led by Susan Rose and Gail Waldman, has worked closely with her on the difficult and time-consuming task of preparing our documentation, our case, and us for the stress of facing well-resourced developers and their batteries of consultants across the table. The response to our appeal for donations to our legal costs has been encouraging, with some very generous donations from a few individuals. We are still some way from our target, and with the possible high costs of legal representation for the Athlone House appeal next February, we do not want to deplete our limited reserves any more than necessary. Therefore, please read our President/Chairman's appeal at the front of Buzz.

■ Athlone House



Drawing of the proposed new Athlone House

The disgraceful situation over Athlone House is, we now believe, a matter of national significance. On its outcome hangs the question of whether any future undertaking by a developer will be worth the paper it is written on. The public inquiry into the appeal against refusal of permission for the latest monstrosity is to be heard in February 2015, and the developers have demanded a 12 day hearing, hugely excessive for one single house, which will impose a huge burden of costs on Camden, and of time and effort on the part of the Society and its allies, in fighting the demolition of this valued house.

Worse was to come. Both Camden and the Planning Inspectorate (PINS) are under a legal duty to notify all objectors when the appeal is registered, and the date by which further objections should be submitted to PINS. The appeal was registered on 22nd July, and the deadline set for 26th September; but, having heard nothing from Camden, we sought an update at the end of August, to be told that a "technical error" had resulted in none of the objectors being notified. Following strong representations from us, the Heath Society, the CAAC and also Camden, pointing out that this would put objectors at a huge disadvantage against the developers and seriously damage public confidence in the planning system, PINS have responded, as we go to press, acknowledging our concerns, and granting an extension of the deadline to 31st October.

It is therefore critical that as many people as possible write to the Planning Inspectorate to register their objections to the demolition of the house – an important "heritage asset", and to the construction of a completely inappropriate "palace" in white stone which will seriously harm both the Highgate Conservation Area and the amenities of Hampstead Heath; and urging that the developers be compelled to fulfil the legal agreement they signed to restore it, in return for a lucrative planning permission from which they have now benefited.

It also appears, from Camden's reports monitoring the condition of the house between 2008 and 2014, just received, that the house is falling into disrepair.

Using your own words, e-mail your objections, by **October 31st**, to appeals@pins.gsi.gov.uk, or write to **The Planning Inspectorate, Room 3/19 Eagle, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN.**

Either way, quote reference **APP/X5210/A/14/2220872**

Athlone House: Our Objections

On July 31, Camden Development Control Committee discussed what they would have decided, had they done so in time (this will go forward to PINS as a deemed decision); we made a statement on behalf of the Athlone House Working Group. We referred them to our own detailed objections, and those of bodies such as English Heritage (who sent a particularly strong objection), the City of London, Save Britain's Heritage, the Ancient Monuments Society, the Victorian Society, and even the Greater London Authority – all opposing demolition.

We expressed our support of Camden's refusal on grounds of size, but our shock at the decision that they would no longer oppose demolition of the house, since their legal adviser made it clear to the Committee that, since demolition of the existing building was considered acceptable by the previous appeal Inspector, and there had been "no real changes" in local and national policy, he considered that the Council can no longer resist demolition. We warned that the 5,500 objectors, who were clear that their main outrage was against demolition, would be very angry.

We also expressed our outrage at the case officer telling Committee that the house was "derelict". We pointed out that it was not when we last saw it; that we had a photographic record to prove it; and, further, that

it could not be, because the developers undertook to maintain it in good condition, and Camden have not only monitored this but reported that it was in sound condition. We have now requested copies of Camden's monitoring reports.

As a quasi-legal document, an Appeal Inspector's decision does carry weight. However, our legal adviser (and English Heritage) agreed that it contained major flaws and failed to take proper account of objectors' evidence, and that we may challenge it. As regards national policy, Committee were misled; the new NPPF makes clear that there must be a demonstrable public benefit if "Heritage Assets", whether or not Listed, are to be demolished; and here there is clearly none. In declining to list the building some years ago, because they considered it had been too much altered – which we contest and consider that it is easily restorable – English Heritage added: "One rejects a building of this quality for listing with a heavy heart" (our italics), clearly showing that, far from accepting that it can be demolished, the building has great value and must be retained. We were therefore appalled at Camden's lack of resolve to defend the house against demolition which, as they are well aware, is the overwhelming wish of the public, as well as their disapproval of its proposed replacement.

We also raised enforcement of the S.106 Agreement to restore the house, citing the recent Court of Appeal decision of *Newham v Ali*, which made clear that, in the absence of exceptional circumstances – and there are none here – parties must be held to the legal commitments they have made under S.106 Agreements. The overwhelming public mood is of outrage at the developers' efforts to renege on their commitment to restore it. They built and sold the flats, doubtless at a huge profit which must have taken into account restoration of the house.

Athlone House: Sir David Chipperfield's statement

We reminded Committee that, at the 2011 public inquiry, the original architect, Sir David Chipperfield, one of the world's most respected architects, gave us the following statement:-

"I was responsible for the planning permission for the new development... The negotiations with the planners and with residents were based on two commitments. Firstly the refurbishment of Athlone House itself and secondly to landscape the grounds..."

"In all of our meetings with the planners and residents, the client... assured everyone that the existing house would be protected and restored. I very much doubt that permission... would have been granted without this commitment..."

"As you know, the developer removed us from the project as soon as permission was granted. By his actions it is clear that I was used cynically to obtain permission and I have no doubt that it was always the developer's intention to develop Athlone House."

"... There can be no justification for the demolition of Athlone House based on the supposed quality of the replacement... I believe that it... would be a mistake, and more importantly it would be a betrayal of the local residents and amenity groups, with whom I worked long and constructively on the project, who were assured that it would be restored when they were asked to support the previous planning application..."

The Court of Appeal Decision, Sir David's uncompromising statement, and an application little changed from the previous scheme refused on appeal, make it imperative that Camden now take steps to enforce the S.106 agreement without delay. The fact of an impending appeal, which they have continually pleaded, is actually irrelevant; *Newham v. Ali* makes clear that the S.106 is a contractual obligation which must be enforced.

Athlone House: Demolition Arguments

The developers' solicitor, David Cooper, then made a statement. He was quite clear; the previous Inspector had considered all the submissions and accepted that the house could be demolished and a new one, of the "correct" size, built; Camden's Case Officer was correct – there is only one issue, of bulk, and in his view the building was much smaller than that previously refused; Camden's calculations are wrong [we disagree]; legislation on building on Metropolitan Open Land was imprecise; the application meets the tests of the NPPF and Metropolitan Open Land rules; the scheme brings "significant benefits" [certainly, for the developers, in the form of a gigantic profit] and the Case Officer rightly recognises that there are no other grounds for refusal. He then shook Camden by informing them that his clients had requested an inquiry lasting 14-15 days – grossly excessive for a single house: the Garden Centre was one day and the whole Smithfield enquiry only 12 days – and surely aimed at cowing Camden into granting permission under the prospect of enormous legal costs.

Our Ward Councillor, Cllr. Sian Berry, objected strongly from the floor. She said that if the S.106 Agreement was not enforced, it would hugely damage public confidence in the planning process. The community's opposition to the scheme was enormous and should be taken into account. The Committee discussion followed. Cllr. Beales considered it "disgusting" that the S.106 has not been enforced, and the GLA's own objection letter made clear that the proposal is contrary to the London Plan for protection of Metropolitan Open Land. Cllr. Sue Vincent said that there were no "exceptional" circumstances why the S.106 should not be enforced; it was "outrageous" that it was not enforced after the flats were built, and Camden should be in Court straight away after this to enforce it. The house is an important heritage asset, even though not listed, and this must be used to fight the appeal.

Cllr. Johnson said that Camden were "engaging" on enforcement with a "leading Counsel" and will "run it past" them again, but that Counsel had agreed that including demolition as a reason for refusal would "not

be straightforward”, given the previous Inspector’s decision [despite English Heritage stating firmly that they disagreed with it].

Cllr. Phil Jones commended Haringey Conservation Officer’s description of the proposed building, in her own objection letter, as a “Stalinist Wedding Cake”. He thought it “grotesque” how the developer “has tried for years to evade their legal responsibility, led the council a merry dance and insulted the community”. The Council has resisted demolition; no-one but the applicant wants to see the property demolished; but Camden’s legal advice was not favourable. But he shared the community’s views, and Camden are keen to see the S.106 Agreement enforced. Their legal advice was that it is not wise to enforce it yet, but they “will keep looking at it”. Cllr. Flick Rea asked for an interim report on enforcement.

The vote to refuse, though only on the single ground of excessive size, was passed unanimously. However, Cllr. Vincent was keen to add opposition to demolition of a Heritage Asset, with no acceptable alternative, as a reason; but Camden’s Legal Adviser warned them against this, because of the costs risk as it might be deemed unreasonable behaviour in not following the previous inspector’s report. Cllr. Vincent responded that, if they were always to follow inspectors’ decisions, it was not worth turning up for these meetings; it was imperative that Committee supports the retention of the building and urged adding demolition as a reason for refusal; but her proposal was defeated 1-6.

We were assured that Camden would now pursue enforcement of the S.106; but we are not holding our breath. However, wider interest appears to be building up, with a double-page Ham and High feature, and coverage by both the Independent and the Architects Journal, during August, the latter showing considerable interest, and we are doing that we can to bring the whole issue of Enforcement of S.106 Agreements to the fore and to put pressure on Camden to take the enforcement action they should have taken years ago.

Athlone House: Further Action

In the meantime, please check our website and notice boards regularly for any news about the Appeal, and the date by which the public must send any further objections to the Inspector; it is absolutely critical that the response to the Inspector is as great as it was to Camden.

However, it would be advisable for you to get any further comments to the Planning Inspectorate as soon as possible: please write without delay – and ask everyone you know to write - quoting appeal reference APP/X5210/A/14/2220872, sending it to appeals@pins.gsi.gov.uk or The Planning Inspectorate, Room 3/19 Eagle, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN.

■ The Hampstead Heath Dams

Another major issue is the heated debate surrounding the works proposed for the Hampstead Heath Dams, with which we have been involved as a member of the

Stakeholders’ Group set up by the City to discuss the proposals and seek the community’s views and input into minimising their impact. While these discussions have been open and constructive, and some of the modifications sought by the stakeholders taken into account to varying extents, their context has been that the work must and will go ahead, and cannot be questioned.

The City have now submitted their Planning Application for the work to Camden. In our response, we raised a number of concerns about the impact on the Heath and, in particular, the necessity for, and long-term impact on the landscape of, raising the Model Boating Pond dam by over 2 metres and carrying out extensive excavations into the adjacent hillside to increase its storage capacity. However, these and other similar points about visual and physical impact have been strongly made by many other groups, and we therefore focussed on what we consider is the fundamental issue: the legal justification for the work.

The City’s Counsel’s opinion, we are told, confirms that they are interpreting the new legislation correctly and must do the works recommended by the Independent Panel Engineer in order to comply. However, The Heath and Hampstead Society’s own top Counsel’s opinion takes the opposite view - that the City are not interpreting either the Reservoirs legislation or the 1871 Hampstead Heath Act correctly. Further, the Society have shared their Counsel’s opinion with the City of London, but the City have declined to share theirs with the Society or the Stakeholders’ Group. People are therefore understandably concerned that Camden and the wider public are being required to accept the need for the works without question, which, given the disruption to public use of the Heath, and impact on its landscape, not to mention cost to the City, is clearly unacceptable, and the Heath and Hampstead Society is therefore seeking a Judicial Review of the proposals. We argued that, since the legal justification for the work has not been conclusively demonstrated, permission must be refused and that, until the outcome of the Judicial Review is known, any decision would be premature.

We are encouraged that Camden will seek their own independent assessment of the proposals - but they must also require the City of London to show them their Counsel’s Opinion so that they can compare it with the Heath and Hampstead Society’s. This seems essential in view of the comment by Philip Everett, the City’s Director of the Built Environment in overall charge of the project, at Camden’s June 5th public Development Management Forum. When pressed to say whether the City would welcome a Court decision that their interpretation of the legislation was incorrect, and that the work proposed was not necessary, potentially saving them some, or all, of the proposed £17 million cost, his answer was: “Yes.”

■ The Magistrates’ Court, Archway Road

There is so much more to report, and little space left to do so. Of great concern is the Archway Road Magistrates’ Court site, where Haringey’s own brief specified a maximum of 4-5 stories, yet they directed the developers

