

Appeal Decision

Inquiry opened on 10 February 2015

Site visit made on 26 February 2015

by **C J Ball** DArch DCons RIBA IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 June 2015

Appeal Ref: APP/X5210/A/14/2220872

Athlone House, Hampstead Lane, London N6 4RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to determine within the required period an application for planning permission.
 - The appeal is made by Athlone House Ltd against the Council of the London Borough of Camden.
 - The application Ref 2013/7242/P was dated 24 October 2013.
 - The development proposed is the demolition of Athlone House and the erection of an 8 bedroom single dwelling house together with ancillary underground parking, plant and landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary matters

2. A pre-inquiry meeting (PIM) was held on 22 October 2014, before which I made an unaccompanied visit to Hampstead Lane, the Kenwood Estate, Hampstead Heath and Highgate village. A note of the PIM and a subsequent update were circulated to all parties. The Corporation of the City of London (CLC) and the Athlone House Working Group (AHWG) were both granted Rule 6 status and appeared at the inquiry as objectors.
3. The inquiry sat for 12 days on 10-13, 17-20 and 24-27 February 2015. I made an accompanied pre-inquiry visit on 21 January to Athlone House and its grounds and a further accompanied visit on 26 February to the house, its grounds and agreed viewpoints. Because of the poor weather conditions on 26 February, I made another unaccompanied visit to agreed viewpoints on the afternoon of 27 February after closing the inquiry. I made a number of other unaccompanied visits to Highgate and Hampstead Heath before and during the inquiry.
4. Although this is an appeal against the failure to determine the application, on 1 August 2014 Camden Borough Council (CBC) issued a 'notification of decision when an appeal has been made' indicating that, had it been in a position to do so, it would have refused the application for 2 reasons:
 1. The new house, by reason of its size, bulk, form and design, is materially larger than the existing building it replaces on Metropolitan Open Land and is also more intrusive than the existing building on a previously developed site, in views from within the site and from the surrounding landscape and open spaces, resulting in a greater impact on the openness of Metropolitan Open Land. It is thus considered to be 'inappropriate development', as defined by

the NPPF and contrary to policy 7.17 of the London Plan and policies CS14 (Promoting high quality places and conserving our heritage) and CS15 (Protecting and improving open spaces and encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 (Securing high quality design) of the London Borough of Camden Local Development Framework Development Policies.

2. The proposed development, in the absence of a legal agreement requiring a post-construction sustainability review, would fail to ensure proper standards of sustainability in the development, contrary to policies CS13 (Tackling climate change), CS16 (Improving Camden's health and well-being) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP22 (Sustainable construction), DP23 (Water) and DP32 (Air quality) of the London Borough of Camden Local Development Framework Development Policies.
5. The notice advised the applicant that the 2nd reason for refusal could be overcome by entering into a s106 legal agreement for a scheme that was in all other respects acceptable.
6. A previous application, refused by CBC, was dismissed on appeal in 2011¹. That appeal decision is a material consideration in this appeal. Taking the findings of that decision into account, CBC's main reason for refusal, evidence to this inquiry and cross-examination related primarily to matters arising from the site's location in Metropolitan Open Land (MOL). Nonetheless, since the site lies within the Camden Highgate Conservation Area, I am required by s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (P(LBCA)A) to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. For that I have relied mainly on the evidence submitted by Athlone House Limited (AHL) and AHWG, and on my own assessment.

Agreed matters

7. On 26 September 2014 AHL and CBC agreed a statement of common ground. That statement gives a description of the site and surrounding area and sets out the planning history of the site, including its post-war use as hospital accommodation. In October 2005 planning permission was granted for the redevelopment of the site, including the conversion of Athlone House to a dwelling. A related s106 Agreement, varied in June 2006 and again in 2008, was intended to ensure the internal and external restoration of Athlone House.
8. In July 2009 AHL submitted a planning application for the replacement of Athlone House. The statement summarises the conclusions of my colleague in dismissing the subsequent 2011 appeal and gives details of the current planning application, which is intended to address the identified shortcomings. The statement indicates an intention to agree comparative measurements and lists the relevant planning policies. It describes the design approach and outlines matters to consider in assessing the impact on MOL.
9. The statement confirms the location of important views from the surrounding area, and identifies the considerations to be addressed in judging the impact on heritage assets. The statement then sets out the areas where, in some cases subject to s106 Agreement or condition, there are no real objections. These include

¹ Appeal decision ref APP/X5210/E/10/2135359 & APP/X5210/A/10/2135357 dated 21 April 2011.

biodiversity, affordable housing, sustainability, hydrology, amenity of neighbours, transport, access and parking. It indicates an intention to agree a s106 planning obligation and provides a list of draft conditions.

10. A further statement of common ground submitted at the inquiry confirmed that basement impact and hydrology were not contentious issues, that the form of the s106 Agreement had been agreed and that CBC did not take issue with AHL's evidence on the condition of the existing building or the estimated costs of restoration.
11. At the PIM I asked the parties to collaborate in agreeing further technical and factual matters. In the event, the AHL hydrology witness was withdrawn and his evidence was given in writing. It was not disputed at the inquiry. AHWG also found that their evidence on the measurements of existing and proposed buildings coincided with that of CBC so to avoid unnecessary repetition withdrew their evidence and intended witness on that subject.
12. Before the inquiry I asked the parties to provide statements on the current position regarding the 2006 s106 Agreement. These were submitted by CBC, AHWG and AHL. At the inquiry CBC and AHL submitted an agreed building measurement statement, indicating areas of agreement and disagreement.

Planning Obligation

13. Before the inquiry the main parties submitted an agreed draft of the s106 Agreement. A copy of the executed Agreement was provided at the inquiry. As a deed of planning obligation the Agreement is intended to ensure, if planning permission is granted, that a sustainability plan is agreed before commencement, that the required measures have been incorporated into the development before occupation and that it is thereafter occupied in accordance with the agreed sustainability plan. The Council considers that the Agreement would overcome the 2nd putative reason for refusal, so those matters are not at issue.

Main issues

14. Taking all that into account, I consider the main issues to be:
 - Whether, by reason of its size, bulk, form and design the proposal would be inappropriate development in MOL, having regard to the National Planning Policy Framework and relevant development plan policies;
 - Whether there are other considerations weighing against or in favour of the proposal, to include the effect on the openness of MOL and the purposes of MOL designation; the impact on heritage assets; the impact of the proposed building on the character and appearance of the area, including important views; the planning history of the building; the degree of compliance or conflict with national and local planning policy; and any other relevant matters; and
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Policy background

15. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The local development plan currently consists of The London Plan (LonP) and CBC's Local Development Framework including the Core Strategy 2010-2025 (CS); the Development Policies DPD 2010-2025 (DPDPD); the Site Allocations DPD (SADPD); and the Proposals Map 2010 (PM).
16. The adoption of Revised Early Minor Alterations (REMA) in 2013 and the recent adoption of Further Alterations to the London Plan (FALP) bring the LonP in line with the National Planning Policy Framework, published in March 2012, so it is up to date. At the heart of the Framework is the presumption in favour of sustainable development, encompassing economic, social and environmental roles. The environmental role includes the protection of the historic environment.
17. An extensive range of development plan policies was referred to at application stage but in this appeal the most relevant are LonP policies 7.4 (Local character), 7.6 (Architectural quality), 7.8 (Heritage assets), and 7.17 (Metropolitan Open Land); CS policies CS14 (Promoting high quality places and conserving our heritage) and CS15 (Protecting and improving open spaces and encouraging biodiversity); and DPDPD policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage). The relevant CS and DP policies are essentially consistent with Framework objectives so carry full weight.
18. A key consideration is national policy on Green Belts, and national policy objectives on this and other relevant matters are set out in the Framework. They are further clarified by subsequent Planning Policy Guidance, which is updated on a rolling basis.
19. Other considerations include supplementary planning guidance 'The Highgate Conservation Area Appraisal and Management Strategy' (CAAMS), adopted in 2007; the adjoining Haringey Conservation Area Character Appraisal and Management Plan 2013 (HCACAMP); and CBC's Local List of Buildings, Landscapes and Features of Heritage Value. The site itself is designated as Private Open Space and a Site of Metropolitan Nature Conservation Importance (SMINC). The site adjoins Hampstead Heath, an area of Public Open Space and a SMINC.
20. The Corporation of the City of London (CLC) has statutory responsibility for the management, protection and preservation of Hampstead Heath.
21. There have been a number of significant policy changes since the 2011 inquiry. CBC's UDP policy LU1, then saved and in force, has been superseded by SADPD. Importantly, the publication of the Framework in 2012 led to the cancellation of a wide range of Planning Policy Guidance documents, not least PPG2 'Green Belts'. While there has been no change in the degree of protection given to Green Belts, some of the relevant policy wording has changed.
22. The Framework also sets out a more balanced method of assessing the impact on heritage assets, with recent case law confirming the weight to be given in such assessments. In March 2015, 3 new Historic Environment Good Practice Advice (HEGPA) Notes were published by Historic England (successors to English Heritage (EH)). These notes are intended to underpin the advice in the Framework and supersede the PPS5 Practice Guide, which has been withdrawn.

Reasons

Background

23. Athlone House, originally Caenwood Towers, was completed in 1871 to designs by Edward Salomons and John Philpot Jones for Edward Brooke, a successful industrial chemist. It replaced the earlier Fitzroy House, which was set in landscaped parkland and gardens, some of which remains, on the north-eastern edge of Hampstead Heath. Caenwood Towers was designed in an exuberant picturesque Victorian style, in red brick with Douling stone dressings and a patterned tiled roof. It displayed an eclectic range of architectural traditions in an irregular layout. Essentially 2 storeys, with basement and attic accommodation, the house is set on high ground and is visible through trees from various parts of the Heath and from Hampstead Lane. A high square tower at the entrance provides a landmark in longer views. The layout included a Coach House and other cottages. The site lies in an area designated as MOL, which includes Hampstead Heath, Kenwood, Parliament Hill and Highgate School playing fields.
24. After a succession of distinguished owners, the property was requisitioned by the RAF during the war and was subsequently acquired by the NHS, when it was renamed as Athlone House. Both before and during this period the house was substantially altered. The original long conservatory and garden pavilion were lost and new extensions were built on the north side. Extensive single storey wards and nurses' accommodation were built in the grounds. The house was altered internally to meet institutional standards and, externally, many decorative features including chimneys, Dutch gables, verandahs, crenellations, finials and crests were removed, evidently to avoid repair and maintenance costs. Some of the remaining external decorative features have weathered badly, particularly the Douling Stone window mullions and dressings. The house has been empty and unused since 2003 and is now in a fairly run-down state.
25. EH considers Athlone House to be of some interest: survivals of opulent merchant houses in the inner suburbs are now relatively few and the survival of various internal features adds to its interest. It is prominently sited and makes a clear visual contribution to the environs of Hampstead Heath but, 'with a heavy heart', EH considers that the finely situated and highly eclectic house has undergone too many alterations to its exterior, just tipping it over the balance of being appropriate for listing.

Planning history

26. In 1999, in anticipation of the NHS use ending, the Council designated the Athlone House site as a Major Developed Site (MDS) and, in accordance with PPG2, promoted its development through UDP policy LU1 and a Planning Brief. Following closure of the hospital the site was acquired by developers and in October 2005 planning permission was granted for the conversion of Athlone House to a 7-bedroom dwelling; the conversion of the Coach House, Gate House and Caen Cottage to smaller dwellings; the demolition of all the post-war buildings; and the erection in the grounds of 3 new blocks providing 22 flats. A related s106 Agreement was intended to ensure the internal and external restoration of Athlone House in 2 timed phases, together with delivery of affordable housing, land donation and highways improvements.
27. The flats were constructed and sold and the immediate phase 1 urgent repairs to Athlone House were carried out. However the phase 2 restoration, required to be

completed within 42 months of the permission implementation date (ie: November 2010) was not undertaken, although the more recent northern extensions were demolished. The house was left empty and boarded up. In 2009 the appellants submitted an application for the demolition of Athlone House and the erection of a replacement 8-bedroom house with ancillary staff and guest accommodation and underground car parking. That application was refused by CBC and the subsequent appeal was dismissed in 2011.

The current proposal

28. Despite dismissal of the appeal, the appellants consider that they have responded to 'guidance' set out in that decision and the fundamental approach to the replacement of Athlone House has not changed. The proposed development now consists of a similar-sized house, designed in Prof Adam's unique neo-classical style, located in the position of the existing house. The main differences to the 2009 scheme are that the house would have a much smaller basement and no basement windows to the west; much of the 2nd storey accommodation would be within the roofspace; features of the elevations would be more articulated; and the large L-shaped garage/staff block and basement ramp would be omitted. There would be a large open forecourt in front of the main entrance. The cottages would provide staff accommodation, although they are not part of the proposed scheme. As before, the gardens would be restored.

Whether the proposal is inappropriate development in MOL

29. First, as LonP explains, MOL designation is unique to London and protects strategically important open spaces within the built environment. MOL is the same as the Green Belt in terms of protection from development and serves a similar purpose. There is a presumption against inappropriate development in MOL giving the same level of protection as the Green Belt and the provisions of the Framework apply equally to MOL.
30. The Government attaches great importance to Green Belts and their protection is one of the core principles of the Framework. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The purposes of the Green Belt include checking the unrestricted sprawl of large built-up areas and assisting in safeguarding the countryside from encroachment. Framework 87 confirms that, as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Framework 88 goes on to say that, when considering planning applications, decision makers should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
31. Framework 89 explains that the construction of new buildings is inappropriate in the Green Belt, but it allows 6 exceptions to this. The appellant relies on 2 of them:
- The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces (the replacement exception); and

- Limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development (the PDL exception).
32. This then provides the starting point – in order to make the proper comparison it is first necessary to define, in the replacement exception, ‘the building it replaces’ and, in the PDL exception, ‘the existing development’. There is no argument that Athlone House is essentially a dwelling so its replacement would be in the same use. There are 3 potential definitions of building size in this case – relating to the pre-2003 position, that is before any of the site was proposed to be redeveloped; the 2005 planning permission; and the house as it stands today.
33. My colleague in 2011 spent little time on these matters. First he considered the overall position. He gave substantial weight to saved policy LU1 as part of the then current development plan and, taking into account the extent of development already carried out, he assessed the proposal against PPG2.C4 as part of an MDS development. He found that the proposal overall would almost double the built volume on the site; as he puts it, a significant increase in built volume. He then went on to consider the proposal as a separate replacement dwelling under PPG.3.6, the Council’s preference. While he noted that what remained in 2011 was neither the original building, and nor could it be occupied without very substantial alteration, he addressed the suggested baselines of the pre-2003 position and the 2005 planning permission. He found that against these 2 alternatives, the floor area of the new house would be doubled or more. The new dwelling would be very significantly larger.
34. While the ‘existing building as it stands’ option was not specifically considered as a potential baseline in that Inspector’s decision, I do not believe that it can be claimed that it was ignored or given no weight. It was after all a main plank in the case of CBC and local objectors. I suspect that, as an even smaller baseline, there was simply no need to take it further. Having established material enlargement, as the appellant notes, the 2011 Inspector made no further reference to this matter and it formed no part of his decision or reasoning. In view of the changes in planning circumstances I consider it necessary for me to review all 3 options in the context of both the PDL exception and the replacement exception.

The PDL exception

35. The PDL exception in the Framework is effectively brought forward from PPG2, although it is much altered. Paragraph 3.4(5) of PPG2 allowed an exception for the limited redevelopment of existing MDS in the Green Belt identified in adopted local plans which met the criteria set out in paragraph C4 of Annex C. The site was identified as an MDS in Camden’s then UDP through policy LU1, which had been saved, and a Planning Brief was issued.
36. The outcome, in accordance with the Brief, was the proposed demolition of hospital wards and the 2005 planning permissions for 3 blocks of flats, the conversion of cottages and gatehouse and the conversion of Athlone House to a dwelling, to be secured by s106 Agreement. This was clearly seen very much as a package, on enabling development lines. The Council evidently considered that the planning objective had been achieved by this overall redevelopment proposal. UDP policy LU1 had served its purpose. It was subsequently superseded and the site is no longer designated as an MDS.

37. The pre-2003 position effectively regards the Athlone House site as a remnant part of the development of the MDS. Since the site no longer has MDS status, there is no policy basis for considering the house as part of the wider site. The Framework PDL exception now is not policy linked, and I consider that there is no justification for reassessing the house as part of the overall site under superseded MDS designation or for casting about for other areas of PDL in order to justify a larger site. Nonetheless the house itself is clearly PDL and its complete redevelopment would fall within the terms of this exception.
38. The appellants argue that, although carried out in 2006 at the same time as the hospital ward demolitions, the demolition of the northern service extensions of Athlone House was not required by condition attached to any planning permission and was undertaken for safety reasons. They maintain that, for the purposes of assessing PDL, the extensions should therefore be considered part of the existing house. However the removal of the extensions is part of the 'alteration, extensions and conversion' of Athlone House as part of the 2005 permission and they were expected to be demolished, as part of the Phase II requirement of the 2005 s106 Agreement, within 42 months of the implementation of the planning permission. The removal of the extensions was clearly a part of the careful overall balancing exercise carried out under PPG2.3.4 (5) and UDP policy LU1 and it would not be appropriate now to 'double count' them as part of the existing house. I therefore consider that the assessment of the size of Athlone House as the existing development in a PDL exception should follow the same lines as that for the building it replaces in the replacement exception.

The replacement exception – 2005 planning permission

39. This relates to the scheme for the alteration, extensions and conversion of Athlone House granted planning permission in 2005 as part of the overall redevelopment of the site (the Lincoln Campbell scheme). It includes the alteration and refurbishment of the interior, repair of the exterior, demolition of outbuildings, a small swimming pool extension and a new garage/accommodation block. This scheme was required to be carried out within 42 months of the implementation of the flats development by the 2005 s106 Agreement but, apart from the removal of the northern wings, it was not started.
40. The Council recognises that these plans may well require changes, and will need to 'evolve' to meet the needs of an individual owner. My colleague considered them to be no more than a holding position. Nonetheless they were carefully considered at the time and I consider them to be a respectable basis for a conservative repair and rehabilitation of the house. Despite initially promoting the permitted plans as a basis for comparison, the appellants now consider that the scheme as approved is unrealistic and will never be built, and reject it as a viable benchmark against which to consider the proposed dwelling. They argue that the appropriate comparators should be either the pre-2003 position or a more realistic version of the 2005 permitted scheme with the sort of extensions and alterations a purchaser would inevitably require. Both parties generally agree that the Lincoln Campbell scheme will not be realised in its permitted form. It is clearly unrealistic to think that the Lincoln Campbell scheme as designed will ever be constructed. I therefore reject the 2005 planning permission as a realistic baseline for comparison with the proposed new replacement dwelling.

The replacement exception – as it stands

41. Framework 89 expressly says that a replacement building should not be materially larger than the one it replaces and that the redevelopment of previously developed sites should not have a greater impact on the openness of the Green Belt than the existing development. I do not consider that the assessment of 'the one it replaces' or 'the existing development' can relate to something that does not currently exist. On a common sense approach, taking this policy objective on its face, it seems to me that the plain meaning of 'the one it replaces' and 'the existing development' must be the building as it exists on site now, at the time of the proposal.
42. In my judgement these words cannot be interpreted to mean the house as it may have existed before redevelopment of the MDS (the pre-2003 position), nor some discredited scheme of alteration and extension which is unlikely to be built (the 2005 permission), nor some future scheme of undefined extension. I take the firm view that the building to be replaced is the building as it stands now and that this is the proper baseline for comparison with the proposed replacement building in line with the terms of the exceptions in Framework 89.

Whether materially larger

43. The assessment of whether a replacement building would be materially larger is primarily, but not exclusively, a question of size. The intention is clearly that the new building should be similar in scale to that which it replaces. The starting point may be the factual comparison of floor area, including basements, and perhaps footprint and built volume, but that must be seen in context. 'Materially' allows for the exercise of some judgement as to the perception of an increase in size arising from the design, massing and disposition of the replacement building. In this respect I was referred to a range of case law examples. Most of the cases relate to PPG2 and specific development plan policies; while there are some common themes to provide guidance, their individual findings are of limited relevance in current planning circumstances.
44. At the inquiry the parties came to some degree of agreement on the calculation of size and the comparative effect.² There are some quibbles over the inclusion/exclusion of light wells, balconies and porches, but these have a relatively minor overall effect. The appellants' 'finessed' volume calculations apply only to the detail of the replacement building and are not a fair comparison – even so, they might make little more than 1-2% difference. I consider that, taken robustly, the agreed figures provide a sound basis for the factual comparison of size between existing and proposed buildings.
45. The increase in size of the proposed replacement building over the existing building is agreed as follows: the increase in total floor area, including basements, would be between 38.4% and 45.5%; the increase in footprint – the area of land occupied by the building – would be 26.7%; and the increase in total built volume would be between 50.1% and 51%. That is by any measure a significant increase in size. With regard to the impact on openness, it is agreed that the increase in above-ground volume (excluding basements) would be about 38%. On a simple mathematical basis the replacement building would occupy about 25% more land, adding to the built-up nature of the site, and 38% more air space, decreasing the openness of the site.

² Document AHL/115 Schedule of agreed figures – maths agreed, bases not agreed.

46. The replacement building is deliberately designed, in both its massing and appearance, to have a striking presence. While overall it may be no higher than the roofs of the existing building, the elevations would be longer and it would have considerably more bulk. It would be on a much grander scale than the existing building, indeed it is meant to be a grand building, large and impressive on its prominent site, and it would undoubtedly be perceived as such. All this would if anything increase the perception of a significant increase in size.
47. I therefore come to the view, having regard to the Framework and LonP policy 7.17, that the new building would be materially larger than the one it replaces. The proposal would meet neither of the claimed exceptions set out in Framework 89 and thus would be inappropriate development, by definition harmful to MOL.

Other considerations

48. I shall go on to consider whether there are other considerations weighing against or in favour of the proposal.

Impact on openness

49. The test set in Framework 89 for redevelopment – no greater impact on openness than the existing development – is strict. I have found that the new building would occupy more land so that it would increase the sprawl of the built-up area. The new building would be bulkier, with much of that additional bulk at 2nd floor level. While it may be essentially no higher overall than the main ridge height of the existing house, the parapet level of the replacement house would be higher than the existing eaves. Despite being set back from the parapet balustrades, the 2nd floor accommodation, including the 4 prominent domed pavilions, from any distance would be very much more apparent than the current attic accommodation within pitched roofs.
50. I recognise that the change in location of the similar-sized tower would have a 'swings and roundabouts' impact, and I accept that the building would in time be screened by trees from Highgate School playing fields. Nonetheless, the increase in bulk would be apparent in views from Hampstead Lane and from the Heath, giving the impression of encroachment into the countryside of the heathland and garden SMINCs. I consider that the new building would have a greater impact on the openness of MOL and the purpose of including land within it than the existing development. That would cause additional harm to MOL, weighing against the proposal.

Impact on heritage assets

51. Despite its deteriorated condition, Athlone House is of considerable architectural and historic interest and, although not listed, is recognised as an undesignated heritage asset. CBC's Local List includes the grounds of Athlone House as a natural feature or landscape having historic and townscape significance so the grounds represent a separate undesignated heritage asset. The site lies within the Camden Highgate Conservation Area (CA) and is visible from the contiguous Haringey Highgate CA, both designated heritage assets. The site is also visible from the eastern edge of the grade II* Kenwood Registered Park and Garden (RPG) so the proposal could potentially affect the setting of the RPG as an important designated heritage asset.
52. Guidance on assessing the impact of proposed development on heritage assets is given in Framework 126-138. This makes it clear that heritage assets are an

irreplaceable resource which should be conserved in a manner appropriate to their significance. This is one of the 12 core principles that define sustainable development. Matters to be taken into account include:

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- The desirability of new development making a positive contribution to local character and distinctiveness.

53. The significance of Athlone House lies primarily in the rare survival of an opulent Victorian merchant's house in the inner suburbs; its eclectic design, representative of a particular period of English architecture; and the survival of various original internal features. Despite the loss of some characteristic external features, which led to the decision not to list it, the house retains a high level of architectural, social and historic interest.
54. AHL seeks to justify its proposal to replace the house by the high costs of repair and conversion, which it considers makes such work unviable in today's market conditions. At the inquiry AHWG was able to show that, through a realistic programme of conservative repair, the building is capable of economic reuse as a dwelling. AHL's much higher estimate seems to me to reflect a much greater degree of replacement rather than repair and a much more extravagant level of fitting out, a matter of choice to suit an owner's aspirations.
55. While I recognise that the value of the house is such that it would only be of interest to the higher end of the market, I do not consider that an opulent level of finishes and fittings should be such a decisive factor in assessing viability. Although some upgrading is clearly necessary, the opportunity to sustain and enhance the significance of the house through conservative repair, putting it back into viable use as a dwelling, would be lost through complete demolition. That loss must weigh against the proposal in the overall balance.
56. The layout of the grounds originated with Fitzroy House and, after incorporation into the Athlone House estate, the pleasure gardens in particular were subsequently altered and updated by successive owners, including to plans by Gertrude Jekyll in the 1920s. The significance of the gardens rests in the many historic features remaining, although some are in poor condition. The parties agree that the restoration and repair of the grounds and original garden features would preserve and enhance them as an undesignated heritage asset and would also enhance the biodiversity of the area. That would meet the objectives of CDC policy CS15 and is a very positive feature of the proposed development, weighing in its favour.
57. Much of the significance of the Highgate CA lies in the clear illustration of the evolution of the village through its gradual expansion, reflected in the wide range of buildings. The closely built up village centre is surrounded by terraces of 18th, 19th and 20th century houses with outlying large villas in extensive grounds on the fringes of the Heath. There are good, and some outstanding, examples of buildings from every period. The exuberant design, romantic asymmetry and domestic scale of Athlone House is characteristic of its particular period and is a unique and important example of the small group of large Heath-side villas. I

consider that, despite its altered state, Athlone House makes a clear and positive contribution to the distinctive character and appearance of the Highgate CA. In line with the advice in Framework 132, and in concurrence with EH's view, I give this great weight.

58. CAAMS highlights the unprecedented pressure on the CA for residential development, often involving the demolition of existing single family dwellings to create luxury residences of high specification with potentially inappropriate scale and design for the character of the area. It also advises that there is a general presumption in favour of retaining all positive buildings and any proposals involving their demolition will require specific justification.
59. Against that background I consider that the loss of this building would lead to substantial harm to the significance of the CA as a designated heritage asset. As heritage assets are irreplaceable, any harm requires clear and convincing justification. As Framework 133 says, where a proposed development will lead to substantial harm to a designated heritage asset, consent should be refused unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm.
60. The public benefits of the proposal are fairly limited. They include an end to the long period of uncertainty over the future of the site; the currently dilapidated house and grounds would be replaced by a new house in improved grounds, improving public views of the site; residential use of the site would have social and economic benefits for the locality; and the proposed house would make a significant contribution to London's role as a World City. These benefits, while valuable, could all be provided by the restoration of the existing house and, in my view, are not sufficient to demonstrate that the substantial harm to the CA is necessary. The proposal would conflict with the aims of LonP policy 7.8, CDC policy CS14 and CAAMS. I therefore see no clear and convincing justification for the loss of Athlone House and the positive contribution it makes to the CA.

The impact of the proposed development on the character and appearance of the area, including important views

61. First, Framework 60 and 61 make it clear that decision makers should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is however proper to seek to promote or reinforce local distinctiveness. Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.
62. With that in mind I make no comment on Prof Adam's design for the replacement building and concentrate on how the overall scale, massing and materials of the proposed building in particular respond to local character and history, and reflect the identity of local surroundings and materials.
63. The site in its natural surroundings is best appreciated in views from Hampstead Heath. Views from the Heath are of particular interest because of its importance to London as public open space. A key concern of both CLC and CBC is the threat to the Heath from development on its fringes that could erode its atmosphere and the quality of its landscape setting. The parties agree that the most

representative, and most critical, public views are those obtained from the former gazebo site, and the paths leading south, on the eastern edge of the grade II* Kenwood RPG. I viewed the site in its surroundings from here on a number of occasions, in good and bad weather conditions.

64. The views take in the western, tree-covered hillside sloping from Highgate village to the more open land of the Heath itself. This area is characterised by the small number of large mansions on the edge of the village, within the trees, with the village buildings forming the skyline. Athlone House on its elevated site, seen through and above a screen of trees, is a prominent building in these views. However, it's highly picturesque composition, the informal articulation of its various elements, its modest scale and the mellowness of its materials help it blend successfully into its wooded background.
65. AHL's Landscape and Visual Impact Assessment (LVIA) concludes that the proposal would have a beneficial impact on these views. This conclusion largely rests on a finding that the existing building is seen to be in a degraded, semi-derelict state so that its replacement would be a significant improvement. I made a point of assessing this conclusion on several site visits and I found the negative impact of the existing building to be somewhat overstated. While the boarded-up ground floor windows are visible through the trees, indicating that the building is vacant, the detail of missing features is not particularly appreciable and the building displays little sense of dereliction. I consider that, as it stands, Athlone House makes a positive contribution to the views from the Heath.
66. The replacement building on much the same site would be physically and noticeably larger. I consider that the perception of size would be increased by the monolithic, four-square form of the building, by the light-coloured Bath stone of its external walls and by the striking copper roof (whether green or bronze). While there would be some articulation of the elevations and roofline, the neo-classical styling of the building, and the use of giant orders in particular, would give the wholly intended impression of enormous scale. In that respect I note that Prof Adam quotes as influences and sources for his design a range of palaces and large country houses. That rather grandiose approach would be very apparent in views from the Heath.
67. While the Bath stone would weather with time, I do not believe that it would significantly darken in colour, so that it would continue to be eye-catching. The appellants argue that the existing building, if restored, would be equally eye-catching, with its red brick walls, contrasting stone dressings and patterned tiled roofs. However, a variety of brick buildings with stone or stucco dressings predominates in the locality, including the recently cleaned Highgate School Chapel, so these materials are characteristic of the area and would not be seen as out of place. While I agree that the restoration of Athlone House could mean that the distinctive wall and roof materials would be more noticeable, in my experience, careful cleaning would not necessarily remove the weathered mellowness of their surfaces so that, bearing in mind the scale and articulated form of the building, it would still blend into its background.
68. The appellants also argue that they are following a tradition of replacing large houses on the site. That may be so but that took place in times when public interest was of no account, something planning laws were brought in to address. To support his approach, Prof Adam submitted to the inquiry examples of classicism in buildings in Highgate. I made a specific site visit during the inquiry

to see them in context. I found that, without exception, including the rather grand neo-Baroque Witanhurst, their classical detailing is in tune with an essentially domestic character and scale. Even the truly classical architecture of neighbouring Kenwood House, built to impress, displays quiet restraint on a human scale. I saw nothing to compare to the rather palatial scale of the proposed new house.

69. I therefore come to the view that the proposed replacement building would not respond appropriately to local character and history, and would not adequately reflect the distinctive identity of the local surroundings and materials. The proposed house would be noticeably out of place in views from the Heath and, because of its large scale, imposing form and increased prominence, would erode the quality of those views and the landscape setting of the Heath. That in turn, to a limited extent, would diminish the quality of the setting of the Kenwood Estate RPG. The replacement house would not be integrated into the natural, built and historic local environment, in conflict with LonP policies 7.4 and 7.6 and CBC policy DP24. Overall the proposed building would have an unacceptable impact on the character and appearance of its surroundings.
70. I recognise that my conclusions in some areas differ considerably from those of my colleague in 2011. The appellants saw his decision as plainly indicating the way forward and made changes to address the criticisms of that first scheme. While this is an altered scheme, they rely on public interest in the consistency of decision making. I have given weight to that decision, and to the appellants' approach but, while consistency of decision making is important, previous decisions cannot be a straitjacket, fettering the judgement of the decision maker in subsequent proposals. The appellants fully recognise that this decision must be taken afresh, particularly in the light of the significant changes in local and national planning policy, and that I am entitled to rely on my own judgement in assessing the impact of the proposal.
71. I spent considerable amounts of time at the inquiry on various site visits carefully assessing the nature of the conservation area, the qualities of the existing building in its setting and the views from the Heath. I made my judgement on the merits of the proposal and its impact on its surroundings based on the evidence before me, on what I saw on my site visits and on local and national policy objectives. I came to different conclusions to my colleague, particularly on aesthetic matters, despite the changes made to the scheme. My conclusions represent a departure from the earlier decision but, in the circumstances of this appeal, I consider that to be justified.

The 2006 s106 Agreement

72. It is clear that a key element of the decision to approve the comprehensive redevelopment of the hospital site, including the new blocks of flats in its grounds, was the appellant's undertaking to restore Athlone House. EH expressed reservations about the redevelopment scheme but concluded that its concerns over the potential harm to the historic environment were balanced by the proposed restoration of Athlone House. The commitment to converting the house back into a single dwelling led in good faith to the support of the local community, represented by AHWG, for the proposed redevelopment. Planning permission was accompanied by a binding s106 Agreement to first repair and then refurbish Athlone House in accordance with an agreed programme. Beneficial ownership of the property then changed. Repairs were made but no refurbishment took place. Instead the appellant submitted proposals to demolish and replace the house.

73. Many objectors consider the lack of compliance with the provisions of the s106 Agreement relating to the refurbishment of Athlone House to be an abuse of the planning system. In 2011 my colleague noted that there was no realistic prospect of forcing the owner to carry out the permitted refurbishment scheme and that CBC recognised that changes to the scheme would be necessary. Because of the uncertainty, just before the inquiry I asked the parties to submit position statements on this matter and I summarise them below.

AHL position

74. AHL points out that the Agreement required refurbishment in accordance with the Lincoln Campbell scheme, not a full restoration to its original design. This would result in a not particularly attractive house. The likely costs of refurbishment to suit the level of accommodation and degree of opulence required by the owner would be excessive so there is no realistic possibility of it being completed. It is agreed that the refurbishment scheme would need to be extensively reconsidered if it is to meet the needs of the owner. In the circumstances CBC would be bound, acting reasonably, to agree to an alternative scheme as determined on appeal or through a planning application. On the evidence that would mean the replacement of the existing house.

CBC position

75. CBC considers that the Phase 1 repair works have not yet been fully completed. The period for compliance with the phase 2 refurbishment works expired in November 2010. AHL is in breach of the obligation but CBC did not seek to enforce it while the applications and appeals remained to be determined. AHL now says restoration is not viable but it was clearly considered to be viable at the time of the application and it was on that basis that the adjacent blocks of flats were permitted. They have been built and sold. CBC accepts that there may need to be changes to the approved plans but that does not alter the fact that there remains an obligation to carry out refurbishment of the house. Enforcement has not been sought because of the live appeal but CBC recognises that, if AHL chooses not to comply with its obligations under the Agreement, the matter will need to be considered further and could be a question for the Court to decide.

AHWG position

76. AHWG considers that the appellant is in clear breach of the s106 Agreement; non-compliance is a source of major local frustration. CBC's view that compliance could not be sought during the planning application process is erroneous; this is not a matter to which CBC is required to have regard when deciding whether to seek an injunction to enforce³. The commitment to refurbish Athlone House was freely entered into; the agreed scheme at the time was clearly considered viable and economically worthwhile as part of the overall scheme of development. Nothing has changed and the Agreement should be enforced to ensure the original aim of restoring Athlone House.

Review

77. AHL maintains that, having regard to the cost and other factors, the obligation relating to the refurbishment of Athlone House can now only be met by replacing it. That seems to me to be a complete negation of the original intention agreed by both parties to the s106 Agreement. AHL has not sought to argue under s106A of

³ See *Ali v Newham LBC* [2014] 1 WLR 2743, [2014] JPEL 1236

the Act that the obligation no longer serves a useful planning purpose or that that purpose could be equally well served by a modified obligation. (In any event that is not something I can consider in a s78 appeal).

78. It is clear that the s106 Agreement is still in force, fulfilling a planning function. It is accepted by all parties that the Lincoln Campbell scheme cited in the Agreement could be altered, even substantially changed, to meet the requirements of the owner. That would be perfectly possible through an agreed Deed of Variation of the Agreement. It is perhaps pertinent to note here that the extension or alteration exception in bullet point 3 of Framework 89 refers to 'the original building', rather than 'the existing building', indicating scope for the consideration of an extension more in line with the size of the original building.
79. The Agreement remains in operation and is intended to secure a planning consideration which was an important factor in the original decision to grant planning permission for the scheme of redevelopment of the hospital site. It made the proposal acceptable in planning terms. The essential commitment is to refurbish Athlone House and there is a clear prospect of enforcement of that through injunction. While the details of a method of refurbishment and extension acceptable to both parties may change, I consider that despite the costs involved the obligation to refurbish cannot so easily be set aside.

The planning balance

80. I have found the proposal to be inappropriate development in the MOL which is, by definition, harmful and should not be approved except in very special circumstances. I have also found harm to the openness of MOL. As Framework 88 confirms, substantial weight must be given to any harm to MOL.
81. I have also found other harm. To reflect the requirement to have special regard to the desirability of preserving designated heritage assets I give great importance and weight to the substantial harm to the Highgate Conservation Area and to the less than substantial harm to the setting of the Kenwood Estate Registered Park and Garden. That is reinforced by the substantial weight I give to the unjustified loss of Athlone House as an undesignated heritage asset and to the lost opportunity to restore it to a dwelling. I give considerable weight to the loss of quality of views from the Heath and to the breach of the obligation to refurbish the existing house. I give full weight to the conflict with the local development plan and national planning policy.
82. Against that I give substantial weight to the benefit of the repair and restoration of the locally listed gardens and grounds of Athlone House. Since opinions are divided I give limited weight to the claim that the replacement building would be an architectural masterpiece. I give some weight to the value in bringing the site back into beneficial use, thereby ending the uncertainty about its future, and considerable weight to the social and economic benefits to the locality and to London's role as a World City. However, much of this would also follow restoration of the existing building.
83. Weighing all these factors in the balance I find that the benefits of the scheme are nowhere near sufficient to overcome the extensive harm it would cause.

Conclusions

84. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to

justify the development do not exist. For the reasons given above the appeal is dismissed.

Colin Ball

Inspector

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OTHER INTERESTED PERSONS:

| | |
|-------------------|--|
| Cllr Sally Gimson | CBC Ward member |
| Cllr Sian Berry | CBC Ward member. |
| Terence Ewing | Camden Association of Street Properties. |

ADDITIONAL DOCUMENTS SUBMITTED AT THE INQUIRY

Inquiry documents

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| INQ/100 | Agreed position statement in relation to building measurements. |
| INQ101 | Further statement of common ground. |
| INQ/102 | S106 position statement (30/1) submitted by AHWG. |
| INQ/103 | S106 position statement (30/1) submitted by CBC. |
| INQ/104 | S106 position statement (4/2) submitted by AHL. |
| INQ/105 | Agreed conditions. |
| INQ/106 | Copy of executed s106 Agreement. |
| INQ/107 | Agreed site visit itinerary. |

CBC documents

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| CBC/100 | Ms Ellis' opening statement. |
| CBC/101 | Revised tables 2 and 4 of Mr Hughes' proof with agreed figures. |
| CBC/102 | Figures for agreement on existing 2015 dwelling and proposed house. |
| CBC/103 | Mr Hughes' addition to Mr Hepher's materiality threshold graph. |
| CBC/104 | Ms Ellis' closing submissions. |

AHWG documents

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| AHWG/100 | Mr Altaras' opening submissions. |
| AHWG/101 | Extract from 'Private Eye' 6/2/15. |
| AHWG/102 | Details of weathervane (site visit curiosity). |
| AHWG/103 | Photographs of Athlone House from Hampstead Heath. |
| AHWG/104 | Photographs of Athlone House and Highpoint from Kenwood gazebo site. |
| AHWG/105 | Photographs of Highgate School Chapel following cleaning. |
| AHWG/106 | Note on discrepancy between submitted and approved plan 930/32 & 32A. |
| AHWG/107 | Copies of CBC site inspection notes 2008-2013. |
| AHWG/108 | Suggested conditions. |
| AHWG/109 | Letter from Dwyer plc 24/9/04 relating to submission of plan 930/32A. |
| AHWG/110 | Mr Altaras' closing submissions. |

CLC documents

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| CLC/100 | Mr Williams' opening submissions. |
| CLC/101 | Mr Williams' closing submissions. |

AHL documents

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| AHL/100 | Mr Purchas' opening statement. |
| AHL/101 | Letter from Withers LLP 9/2/15 'Statement of Intentions'. |
| AHL/102 | Figures contained in the schedule of agreed figures put in 10/2/15. |
| AHL/103 | Drawing 5021/201(D01) Impact of consented scheme. |
| AHL/104 | Extracts from Ms Wolton's books. |

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| AHL/105 | Photographs of the interior of Athlone House. |
| AHL/106 | Extract from the transcript of the 2011 inquiry. |
| AHL/107 | Mr Monie's 2011 inquiry rebuttal proof of evidence. |
| AHL/108 | Manufacturer's note on copper alloy. |
| AHL/109 | Prof Adam's note: The use of giant order pilasters in domestic buildings. |
| AHL/110 | RICS publication: Methodology to calculate embodied carbon. |
| AHL/111 | Agreed draft s106 Agreement. |
| AHL/112A | Revision to Mr Hepher's proof of evidence – amended figures. |
| AHL/112B | Revision to Mr Hepher's rebuttal proof of evidence – amended figures. |
| AHL/113 | Knight Frank publication: The Wealth Report 2014. |
| AHL/114 | Measurements 2005 approved garage block. |
| AHL/115 | Agreed figures AHL/102 19/2/15: (maths agreed, bases not agreed). |
| AHL/116 | Copper Development Association Inc publication: Copper alloys. |
| AHL/117 | Mr McCoy's note on sanitaryware costs. |
| AHL/118A | Mr Hepher's materiality threshold graph (house only). |
| AHL/118B | Mr Hepher's materiality threshold graph (PDS and MDS). |
| AHL/119 | Mr Purchas' closing submissions. |

Other interested persons' documents

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| TP/100 | John Graham's comment. |
| TP/101 | Cllr Gimson's statement. |
| TP/102 | Cllr Berry's statement. |
| TP/103 | Mr Ewing's additional references. |

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