



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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Your Ref: KMH/H767/1

Our Ref:
T/APP/Y5420/A/92/213438/P4
T/APP/Y5420/E/92/809393/P4

Date:

26 JUL 1993

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 SCHEDULE 6 AND
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
SECTION 20 AND SCHEDULE 3
APPEALS BY: HIGHGATE GARDEN CENTRE LTD
APPLICATION NOS: HGY/45419 AND HGY/45420

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals against the failure of the Council of the London Borough of Haringey to determine within the prescribed periods applications for planning permission and Conservation Area Consent for:

change of use from Garden Centre to Residential Use.
Existing buildings on site to be demolished, existing hard pavings to be excavated. New access road and path from Townsend Yard. Mixed development of houses, maisonettes and flats: a total of 28no. dwellings, ancillary parking areas and private and semi-private landscaped gardens. Existing trees generally retained and new trees planted.

on land at Highgate Garden Centre, Townsend Yard, Highgate High Street, London. I held a local Inquiry into the appeals on 18, 19 and 20 May 1993 and visited the site on 21 May 1993. At the Inquiry an application for costs was made on behalf of the Council against Highgate Garden Centre Ltd and this is the subject of a separate letter.

2. Notwithstanding the descriptions on the application forms, the applications were more correctly for full planning permission for the erection of 28 houses, maisonettes and flats with access road, car parking and landscaping, and Conservation Area Consent for the demolition of existing buildings, and I shall determine the appeals accordingly. It



was confirmed at the Inquiry that there was an error on the schedule of accommodation on drawing no. RSS83/300 in that there are only two 2 bedroom flats proposed making a revised total of 27 dwellings.

3. Although the Council did not determine the applications, the Planning Applications and Licensing Sub-Committee received a report from the planning officer on 16 March 1993 in respect of application no. HGY/45419 for Conservation Area Consent when it was decided that, had an appeal not been lodged, the consent would have been refused, although no reasons were given. At the same meeting the Committee considered the planning application no. HGY/45420 and decided that, had an appeal not been lodged, permission would have been refused for the following reasons:

1. The proposed development would result in a loss of open land which marks the physical limit of the growth of Highgate village and which makes a positive contribution to the character and nature of the locality, and its development would result in the coalescence of the built-up areas which would detract from the existing character, contrary to Reference 37 of Schedule 7 of the District Plan for the London Borough of Haringey.

2. The proposed development would detract from an Area of Special Character, The Hampstead and Highgate Ridge, as defined in paragraph 6.3 and Table 5 of the Greater London Development Plan, paragraphs 9.110 - 9.111 of the Haringey District Plan and Policy DES 2.7 of the Deposit Draft of the Haringey Unitary Development Plan.

3. The proposed development would as a result of the loss of open space detract from the character and appearance of the Highgate Conservation Area, contrary to paragraph 9.121 of the Haringey District Plan and Policy DES 2.2 of the Deposit Draft of the Haringey Unitary Development Plan.

4. The proposed development would result in the loss of valuable open land which is proposed as Metropolitan Open Land in the Deposit Draft of the Haringey Unitary Development Plan and to allow development would be premature and prejudice the outcome of the development plan process.

5. The proposed development would result in a loss of visual and other amenities to local residents and would be detrimental to the character of the area. The proposal would set an unwelcome precedent for the loss of open space in the area.

6. The proposed development would result in a net loss of employment and is therefore contrary to paragraph 3.11(c) of the District Plan for the London Borough of Haringey and Policy EMP 1.6 (Employment Protection) of

the Deposit Draft of the Haringey Unitary Development Plan.

4. The site lies in the area of open land and woodland known as the Highgate Bowl which is enclosed by the historic buildings on the ridge of Highgate High Street and Southwood Lane in the south and west, from where the land falls sharply down to the properties in Cholmeley Crescent to the north. The Garden Centre occupies approximately one-third of the area of the former nursery land in the west of the Bowl, while the centre section has become a self-sown woodland of sycamore trees and the eastern part is still used as an educational nursery under the Harrington Scheme. The whole area is part of the Hampstead and Highgate Ridge Area of Special Character and lies within the Highgate Conservation Area.

5. The appeal site comprises about 0.83 hectares of former nursery land to the rear of the properties in Highgate High Street. It was established at the Inquiry that, although no formal planning permission has been granted for the present use as a Garden Centre, the land has been used for this purpose for many years. The Council's witness recognised that a material change of use has taken place and agreed that the Council has taken no enforcement action, other than against the erection of 7 portacabins on the site in August 1991. The Garden Centre is set on the lower slopes of the land below Whistler's Cottage, a bungalow permitted in 1952 to serve the nursery but now in separate occupation, which is within the appeal site and due for demolition under the appeal proposals.

6. The access road passes this bungalow and turns left past a small parking area and various levels of hardstanding and gravel on which plants are displayed, to a larger car park at the bottom. The western boundary is defined by a long stepped brick retaining wall for most of its length against which the above mentioned portacabins are ranged, adjoining an area of concrete hardstandings. From the lower car park the road follows the northern boundary beside displays of garden ornaments, fencing and sheds before rising on the east boundary alongside a range of greenhouses to rejoin the access road at the entrance. The boundaries are marked by fences, walls and mature trees of varying sizes, while the central area is generally open, with a few willows and semi-mature plane trees and other varieties. This open character extends to the northern boundary, which is defined by a panel fence, and into the gardens of Cholmeley Crescent beyond.

7. There is a long history of planning applications on the various sites that form part of The Highgate Bowl, many of which were referred to during the Inquiry, and I shall take them into account in determining these appeals. Apart from the advice contained in Regional Planning Guidance 3 for London(RPG3) and Planning Policy Guidance(PPG) 1, 3 and 12, the most relevant policies in this case are contained in the Greater London Development Plan (GDLP) 1976 and the District Plan for the London Borough of Haringey (HDP) which was

adopted in 1982. The Deposit Draft Haringey Unitary Development Plan is not due to go to Inquiry until late 1993 or early 1994, so I have given less weight to the policies therein.

8. Although the GDLP is now somewhat dated it still forms part of the development plan for London. Paragraph 6.3 defines the purpose behind the designation of Areas of Special Character(ASC) and these are identified in Table 5. The Hampstead and Highgate Ridge was included primarily to protect the skyline and viewpoints, the historic and architectural village and rural character, together with the containment of traffic and parking. While each of the ASCs are individually important, paragraph 6.4 suggests that collectively their retention is essential to the preservation of London as a whole.

9. This aim has been brought forward into the Haringey District Plan under paragraphs 9.110 and 9.111 although the Highgate Bowl is not included as Metropolitan Open Land (MOL). Following the endorsement of the concept of MOL in RPG3, and opinions expressed by previous Inspectors that the land is of national importance, the Council have designated the Highgate Bowl as Metropolitan Open Land in the emerging UDP. I agree with the view of the Inspector in his decision on the enforcement appeal Inquiry (Ref:Y5420/C/91/614554/P6) that it would, at this stage in the preparation of the UDP, be premature to apply the additional presumption against development which would be implied by any Metropolitan Open Land designation. However, I understand that the UDP was on deposit during the course of this Inquiry with its own Inquiry to be held in early 1994.

APPEAL REF: A/92/213438

10. From the evidence submitted to the Inquiry, the written representations made and my inspection of the site and its surroundings, I consider that there are 2 main issues in this appeal. The first concerns the effect of the proposal on the character and appearance of the surrounding locality, the Hampstead and Highgate Ridge Area of Special Character, and the Highgate Conservation Area, bearing in mind local plan policies and national policy guidelines. In considering this issue and because of the close proximity of the site to Highgate High Street, I shall pay special regard to the desirability of preserving the setting of the nearby listed buildings, and of preserving or enhancing the character or appearance of the conservation area, as required of me by Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The second issue relates to the likely effect of the development on the living conditions of adjoining occupiers by reason of visual impact and loss of amenities.

11. The first issue turns on the status and value of the appeal site as part of the open land of the Highgate Bowl.

Policies 9.110 and 9.111 of the HDP set out the Council's aims and objectives in preserving the special character of the Hampstead and Highgate Ridge, while Policy 10.4 and Schedule 7 address the particular problems of the Highgate Bowl (Site 37). The appeal site forms the western part of the area in question which is considered to be directly linked to the historic core of the village. The schedule considers that its primary functions are to define the physical limit of the village; to enhance the skyline and protect distant views; to provide open land uses of benefit to the community, visual relief from development and the potential for recreation. Schedule 7 suggests that the eastern part may have some potential for limited residential development, as can be seen in the proposal on the Furnival House site which was allowed on appeal on 4 July 1989 (Ref:T/APP/Y5420/A/92/092738/P7).

12. All the parties acknowledged that the planning history of proposals to develop the area clearly indicates the importance of this open land as being of visual significance to the area as a break between the existing development. This view was confirmed by your witnesses at the Inquiry and also in the decision letters drawn to my attention. Notwithstanding the variety of surface materials within the Garden Centre, the goods for sale and even the recently allowed temporary portacabins, there is no doubt in my mind that the site is open in form and character and makes a valuable contribution to the open land and its surroundings. On the other hand its significance on the wider more distant views is less marked due to the low profile of the buildings on the site, the effect of the changes in level and the consequent predominance of the Highgate Ridge skyline.

13. All the land in the Highgate Bowl is in private ownership but this does not reduce its value as an open space. Public viewpoints are very limited but, in the Garden Centre, members of the public have access to the interior of this open space and are thereby able to appreciate its importance. The Bowl is surrounded by residential properties at various levels from where the residents have good views of the site, particularly in winter. Although the site is not readily seen from public places it is seen regularly by a considerable number of local residents who are representative of the local public. With the appeal proposals these views would remain while public accessibility to the site would be lost which, in my opinion, would diminish any contribution to community benefit and the opportunities for recreation that the existing use provides, contrary to the aims of Schedule 7 of the District Plan.

14. The main argument in favour of the appeal proposal is based on the improvements to the open land that would result. The development would involve the removal of the existing buildings that comprise the Garden Centre together with the variety of hard surfaces, which would be replaced with an landscaped area of private open space with tree planting. Your witness explained that this would effectively increase the open space and enhance the appeal site's contribution to

the area, as a major advantage in favour of the development. To reinforce this view a completed unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 was submitted to the Inquiry to ensure the continued maintenance of the landscaped areas.

15. While I accept this document as a confirmation of the Appellants' intentions, even if the landscaped proposals were implemented as proposed, it would involve the planting of a large number of mature trees which, even with current technology, would take many years to mature sufficiently to adequately screen the new dwellings. All the trees specified are small compared to the mature specimens indicated on the elevations and the model and, like most of the existing trees, are deciduous. This means that for about 6 months each year the screening effect of the improved landscaping would be very much reduced.

16. In contrast, the proposal would involve the erection of a terrace of 3 and 4 storey houses stepping down the steep slope effectively dividing the appeal site into two, thereby reducing the importance of each half to the open area as a whole. The separate detached houses and 4 storey flats terminate the development at the upper and lower levels to complete this sub-division. The new buildings might echo the scale of the properties in Highgate High Street but would be unrelated to them in any other way. The formation of a street frontage in isolation at this point would emphasise the vertical form of the dwellings which in this open area would, in my view, exaggerate the contrast between the proposal and the existing single storey garden centre buildings. While the proposed use of the levels would limit any impact on the skyline of the ridge, I consider that the continuity of these vertical forms across the centre of the site would have a very intrusive impact on the open character of the area, particularly when viewed from the lower levels and high points around the Bowl.

17. The Highgate Bowl is of historical importance as the setting of the listed buildings in Highgate High Street and Southwood Lane which no doubt led to its inclusion in the Conservation Area. Although the original use of the open land for grazing has long since been lost and much of it has been developed, the former nursery land retained a rural character which has largely been preserved in the Garden Centre. To the rear of the listed buildings on the north side of Highgate High Street, a variety of outbuildings, extensions and small workshops have grown up which do little to enhance their historic settings. The appeal proposal does nothing to improve the untidy appearance of these buildings but would be sufficiently lower in level to avoid any direct relationship with the listed buildings above.

18. While the immediate settings of the listed buildings would be largely unaffected by the proposed development, I take the view that the long terrace and individual houses and flats

would dominate the lower slopes in the foreground when viewed from the north and east. This would detract from the open rural character of the more general setting within the Bowl that so effectively complements the nucleus of old buildings along the ridge. In my opinion, the proposal would extend the physical limits of the village into this setting to the overall detriment of the listed buildings that surround it and the Highgate Conservation Area as a whole.

19. In concluding the first issue, I recognise that there could be considerable advantages in the improvements to part of the open area and in the removal of the untidy elements of the garden centre but, in my view, these are not sufficient to allow a prominent extension of development into this sensitive site.

20. Turning to the second issue, I viewed the appeal site from many positions around the Bowl and from a distance. I accept the screening effect of the existing trees but, as the Council's photographs indicate, this is severely reduced when they are not in leaf. Any clearance or management of the sycamore wood would reduce its effectiveness, particularly from the east, and any proposals for this land would be outside the control of the Appellants. The mass and height of the proposed dwellings would be very apparent to many of the surrounding occupiers despite it being below the skyline, and would appear to be introducing an element of high density development into the middle of this valuable open area. The open outlook from the nearest properties would be curtailed and, even though the loss of a private view is not normally a serious planning objection, I am of the opinion that the visual impact on the area of special character would be unacceptably intrusive. In addition, the proposal relies on open car parking for about 40 cars which would dominate the paved frontage area of the development immediately above the enhanced landscaped area.

21. While I do not consider overlooking to be a major problem there is no doubt that some of the private garden areas of adjoining houses would lose privacy from the higher windows, even from the distances proposed. Much of this effect could be moderated by adequate boundary fencing and screening but this itself would add to a sense of enclosure in this open space. In concluding the second issue I find that the proposal would be detrimental to the living conditions of adjoining occupiers by reason of visual impact and loss of amenities.

22. Although the reasons for making the application may have been prompted by the declining fortunes of the Garden Centre, it is apparent from the representations of interested persons that it is a highly valued local amenity the loss of which would be a further disadvantage of the scheme. I noted the views expressed at the Inquiry concerning the future survival of the Garden Centre and the extent of the local demand for the facility in this area, but no evidence was submitted to

support either viewpoint. In addition both the Council and The Highgate Society suggested at the Inquiry that there might be potential for some additional permanent buildings to serve the future needs of the Garden Centre.

23. In taking into account the other material considerations raised during the Inquiry, I have noted the Councils' view that the applications are premature pending the outcome of the UDP Inquiry. Clearly, if this appeal scheme were to be permitted the proposed designation of the land as MOL would be prejudiced by the substantial nature of the development within the open area. In view of the stage the UDP has reached, additional weight must be given to the harm this would cause, in the light of the advice in paragraphs 32 and 33 of Planning Policy Guidance No 1. With regard to setting a precedent, I am mindful of the possibilities of further applications on the remaining open area should this appeal be allowed, but each proposal would have to be considered on its own merits. I have noted the Council's concern over the possible loss of employment but the Appellants have indicated that the staff would be moved to another site in Haringey, and I have no reason to doubt that this would be the case.

24. I have taken special note of the considerable local interest in this proposal which ranges from the petition of local residents to the evidence of the Highgate Conservation Area Advisory Committee and the Highgate Society. While I have examined many of their concerns within the main issues, the traffic implications were examined in some detail at the Inquiry. I have studied the likely effects of the change from a garden centre use to residential and generally agree with the evidence submitted which resulted from the traffic surveys. I acknowledge that residential use could generate a concentration of vehicles on the narrow access to Townsend Yard during the worst rush hour periods, but this would be offset by the advantages of the loss of large vehicles delivering to the garden centre. However, it was admitted by your witness that the access would still be too narrow and too limited in visibility to be normally acceptable for a new development of this size.

25. I have therefore come to the overall conclusion that, while the appeal scheme is an ingenious design which makes good use of the available levels and would have little impact on the Highgate Ridge skyline, the height, bulk and siting of the built form would be unrelated to existing development and would divide and dominate the existing open space in an intrusive manner, notwithstanding any gains to be achieved from the enhancement of the open landscaped area.

26. I have taken all the other representations submitted into account, including those of the London Planning Advisory Committee and English Heritage and the other appeal decision letters drawn to my attention, but none outweigh the factors that have led me to my conclusions.

27. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal under Section 78 of the Town and Country Planning Act 1990, and refuse planning permission for change of use from a Garden Centre to Residential use on land at Highgate Garden Centre, Townsend Yard, Highgate High Steet, London.

APPEAL REF:E/92/809393

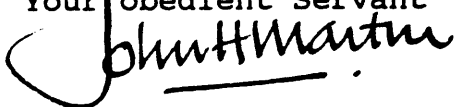
28. From my inspection of the site and its surroundings and the written representations submitted, I consider that the main issue in this appeal is the effect of the proposed demolitions on the character and appearance of the Highgate Conservation Area.

29. Because the proposal would remove the untidy elements of the Garden Centre, including the temporary portacabins, the proposed improvement in the landscaped areas would be an enhancement. However, as the existing buildings and hard pavings would only be demolished as part of the overall proposal, premature demolition without planning permission for a replacement development would result in an unsightly gap in this part of the conservation area which would be contrary to the advice in paragraph 95 of Circular 8/87. Bearing in mind my conclusions on the Section 78 appeal I find that, in the absence of a satisfactory alternative proposal, the large unsightly gap that would be created by the demolitions alone would be detrimental to the character and appearance of this valuable open space in the Highgate Conservation Area.

30. I have taken all the other representations submitted into account, but none outweigh the factors that have led me to my conclusion.

31. For the reasons given above and in exercise of the powers transferred to me, I hereby dismiss the appeal under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and refuse Conservation Area Consent for the demolition of the existing buildings and hard pavings on land at Highgate Garden Centre, Townsend Yard, Highgate High Street, London.

I am Gentlemen
Your Obedient Servant



JOHN H MARTIN RIBA
Inspector

APPEARANCES

FOR THE APPELLANTS

Mr Harry Wolton QC - instructed by Berwin Leighton -
Solicitors, Adelaide House,
London Bridge, LONDON EC4R 9HA

He Called:

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LONDON N1 8BS

Mrs Yvonne Phillips BA FRTPI - Phillips Planning
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1 Hassett Street,
BEDFORD MK40 1HA

Mr Patrick Gurner BSc CEng MICE Buchanan Consulting
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FOR THE LOCAL PLANNING AUTHORITY

Mr Timothy Straker - of Counsel, instructed by The Borough
Solicitor, London Borough of
Haringey, Alexandra House, 10 Station
Road, Wood Green, LONDON N22 4TR

He Called:

Mr Paul Smith ARICS MRTPI - West Team Leader,
Development Control
Division of the
Planning Service,
London Borough of
Haringey.

FOR THE HIGHGATE SOCIETY

Mr Charles Mynors - of Counsel, instructed by The
Highgate Conservation Area Advisory
Committee and The Highgate Society

He Called:

Mr David Lowe-Watson - 68 Milton Park, LONDON N6

Mr Marius Reynolds
RIBA March MCP FRSA - 2 Shepherds Close,
LONDON N6 5AG

26-7-93.

Ref Nos:T/APP/Y5420/A/92/213438/P4
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INTERESTED PERSONS

Mrs Jane Lister - 29 Cholmeley Crescent LONDON N6
Mr David Elworthy - 27 Cholmeley Crescent LONDON N6
Mrs Linzi Beuselinck - 12 Southwood Lane, Highgate, N6

DOCUMENTS

Documents 1,2 and 3 - Lists of persons present at the Inquiry
Document 4 - Letter of notification of the Inquiry and list of those notified
Document 5 - Mr Blee's proof of evidence and appendices
Document 6 - Mrs Phillips' proof of evidence and appendices
Document 7 - Mr Gurner's proof of evidence and appendices
Document 8 - Mr Smith's proof of evidence and appendices
Document 9 - Letter from English Heritage dated 17 May 1993
Document 10 - Petition of local Residents collected by Mrs M Seviars, 22A Hampstead Lane, Highgate, London N6
Document 11 - 3 letters of objection - submitted by the Council
Document 12 - Council's revised Document 10B extract from the Deposit Draft Haringey UDP
Document 13 - 2 Letters from the Council re: Highways
Document 14 - Unilateral Undertaking under Section 106 T&CP Act 1990 - submitted by the Appellants
Document 15 - Section 106 Agreement - St Columba's, Hampstead Heath - submitted by the Appellants
Document 16 - Proof of Evidence of Mr David Elworthy

DOCUMENTS continued

- Document 17 - Letter from London Planning Advisory Committee - submitted by Mr Elworthy
- Document 18 - Letters from English Heritage dated 11 December 1992 and 19 May 1993
- Document 19 - Council's list of suggested conditions and revised agreed conditions
- Document 20 - Proof of evidence and appendices of The Highgate Conservation Area Advisory Committee and the Highgate Society
- Document 21 - Proof of Evidence of Mrs Beuselinck
- Document 22 - Extract from the Journal of Planning Law, May 1990 relating to the Ward case - submitted by the Council
- Document 23 - Letter from the Council to Berwin Leighton dated 19 March 1993 regarding a costs application and their reply dated 29 March 1993
- Document 24 - Extract from Circular 8/93 - submitted by the Council

PLANS

- Plan A-Q - Application Plans Nos. RSS83/101,102,103,301,302,305,306,307,308,309,310,311,312,313,314, and coloured perspective
- Plan R - Landscaping Drawing No.180.01/A J & L Gibbons
- Plan S - Drawing No. RSS83/330 for panoramic photographs
- Plan T - Drawing No. RSS83/332 for local views
- Plan U - Council's Plans - Maps Nos. 1-9
- Plan V - Overlay of Drawings Nos. RSS83/102 and 305



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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T/APP/Y5420/E/92/809393/P4

Date:

26 JUL 1993

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990,
SECTION 20 AND SCHEDULE 3
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY LONDON BOROUGH OF HARINGEY

1. I refer to your application for an award of costs against Highgate Garden Centre Ltd which was made at the Inquiry held at Haringey Civic Centre on 18-21 May 1993. The Inquiry was in connection with appeals by Highgate Garden Centre Ltd against the failure of the Council of the London Borough of Haringey to determine within the prescribed periods applications for planning permission and Conservation Area Consent for:

change of use from Garden Centre to Residential Use. Existing buildings on site to be demolished, existing hard pavings to be excavated. New access road and path from Townsend Yard. Mixed development of houses, maisonettes and flats: a total of 27no. dwellings, ancillary parking areas and private and semi-private landscaped gardens. Existing trees retained and new trees planted

on land at Highgate Garden Centre, Townsend Yard, Highgate. A copy of my appeal decision letter is enclosed.

2. In support of their application the Council referred to Annex 3 of Circular 8/93. The statutory right of appeal was acknowledged, but in the history of appeal decisions on the area of land, of which the appeal site forms a part, the Secretary of State and Inspectors had made it plain that development of this order should not be permitted. There was



an operative and up to date Development Plan and no material considerations other than those that indicated refusal.

3. The Council considered that Paragraph 4 of Annex 3 of the Circular supports the view that, as the applications were premature, the grant of planning permission for the appeal proposals would prejudice the outcome of the development plan process. In the Councils view the material considerations, based on previous appeal decisions and the effect on the Conservation Area, would have made it obvious that the appeals had no reasonable prospect of success. To strengthen their case the Council made it clear in the Rule 6 Statement that the proposal would contravene the policy with no material considerations to outweigh the policy objections.

4. In their letter to the Agent, dated 19 March 1993, the Council drew the Appellants' attention to their view that large scale built form would be inappropriate on this important open land, that the proposal was premature pending the UDP Inquiry and warned of the consequent risks of persisting with the appeal. The Agent's reply dated 29 March 1993 stating that there was no question of prematurity because the Haringey UDP was not yet on deposit, and that much of the work on the appeal might not have been necessary had the Council dealt with the application in the allotted 8 week period, did not in any way diminish the Councils' case.

5. The full details of the Councils' letter and paragraphs 1-6 of Annex 3 of the Circular pointed to the unreasonable nature of these appeals, which put the Council to a lot of unnecessary expense, and were prayed in aid of the application for full costs or, at least, for those incurred since the letter of 19 March 1993.

6. In response, the Appellants were aware of the implications of risk in Circular 8/93. The Councils' letter of 19 March 1993 implied that, on the judgement of one person, the Appellants' team were negligent in pursuing the appeals, while it had been agreed between the parties that the consideration of the proposals was a matter of degree. There was no presumption against development, so the onus was on the local planning authority to show why the proposals were not acceptable. There was no statement of policy and no specific guidance particular to this site so the letter expressed the writer's opinion on a matter of judgement.

7. The Appellants did not agree that the appeals had no reasonable prospect of success. The importance of the open land was common ground but if the Council relied on previous appeal decisions they had not put forward the balanced argument necessary for the proper consideration of these appeals. The circumstances of the site had changed over the 30 year history of the appeals and were different for each site within the open land, but none were so critical as to prevent a new appeal succeeding. Of these the major change was the establishment of the garden centre use which the

Council only finally accepted in their evidence to this Inquiry.

8. With regard to the references in the Councils' letter of 19 March 1993, the Inspector in his decision letter on the Enforcement appeal (Ref:APP/Y5420/C/91/614554/P6) did not go so far as to describe the site as being of national importance and also did not recognise the prematurity argument. For all the above reasons the Appellants considered that they had not behaved unreasonably and that the application for costs was misguided and unacceptable.

9. The application for costs falls to be determined in accordance with the advice contained in Circular 2/87, which advice was current at the date the appeals were lodged, and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.

10. I consider that the outcome of this application turns on whether the up-to-date and operative development plan precludes the possibility of development on the appeal site and, if not, whether there are any material considerations, including the prematurity argument, to indicate that it was obvious that there was no reasonable prospect of the appeals succeeding.

11. Circular 2/87 clearly indicates that proposals that fly in the face of national policy guidelines and relevant local plan policies would be unreasonable. In this case the site is part of Site 37 in Schedule 7 of the adopted District Plan for Haringey 1982 which is described as predominantly open land where there has been pressure for residential development. The west, including the appeal site, and central areas should be retained as open land. This view has been consistently supported, to varying degrees of importance, in the appeal decisions referred to.

12. However, there is no presumption against development implied in the policies and the Council have not enforced against the gradual change of use from nursery land to garden centre on the appeal site. Even The Highgate Society accepted that, if the existing use were to remain, further permanent buildings would probably be required in the future.

13. Despite the universal acknowledgement of the importance of the open land to the Area of Special Character and the Conservation Area, which the Appellants accept, its value as an area of national significance appears to stem from the comments of the Inspector in paragraph 14 of his decision letter (Ref:T/APP/Y5420/A/87/082324/P5) on the Doonfiny site next door. The subsequent designation of most of the land as Proposed Metropolitan Open Land in the Draft Haringey UDP was taken into account by the Enforcement Appeal Inspector, in February 1993, who concluded that it would be premature to impose the additional presumption against development that

would come with the MOL designation. At that time the Draft UDP was not on deposit nor would it appear to have been so when the Council wrote the letter of 19 March 1993.

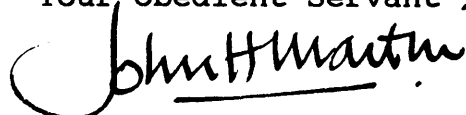
14. Notwithstanding my conclusions on the appeals, I consider that the Appellants submitted bone-fide applications for a totally new concept for this site which merited proper consideration. I have already stated, in my decision letter, that the adopted policies in this case do not presume against development on the appeal site. The Council have referred to the consistent dismissal of large scale built development in the open land, although none appear to be site specific to the Garden Centre. Even following the Councils' letter of 19 March 1993, the chances of success still depended largely on the possible conflict with the development plan and the prematurity argument both of which, as the Agents' reply suggested, were open to interpretation, and this was clearly demonstrated at the Inquiry.

15. In my view the Appellants did not act unreasonably either in making the applications or pursuing them to appeal. I acknowledge that the Council gave due warning of the risk of an application for costs and their reasons for doing so but, as I consider the appeals to be reasonable, it cannot be unreasonable for the Appellants to exercise their right to be heard at an Inquiry. I therefore conclude that your application for an award of costs is not justified.

FORMAL DECISION

16. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by the Council of the London Borough of Haringey for an award of costs against Highgate Garden Centre Ltd.

I am Sir
Your obedient Servant .

A handwritten signature in cursive script that reads "John H Martin". The signature is written in dark ink and is positioned below the typed name.

JOHN H MARTIN RIBA
Inspector