

PLANNING COMMITTEE REPORT

Development Management Service
Planning and Development Division
Environment and Regeneration Department
PO Box 333
222 Upper Street
LONDON N1 1YA

PLANNING SUB-COMMITTEE A	
Date:	1 st July 2014

Application number	P2014/0307/FUL
Application type	Full Planning Application
Ward	Holloway
Listed building	Unlisted
Conservation area	Hillmarton Conservation Area
Development Plan Context	Conservation Area
Licensing Implications	None
Site Address	523 Caledonian Road, London, N7 9RH
Proposal	Creation of roof terrace area to rear flat roof at second floor enclosed with railings and timber slats.

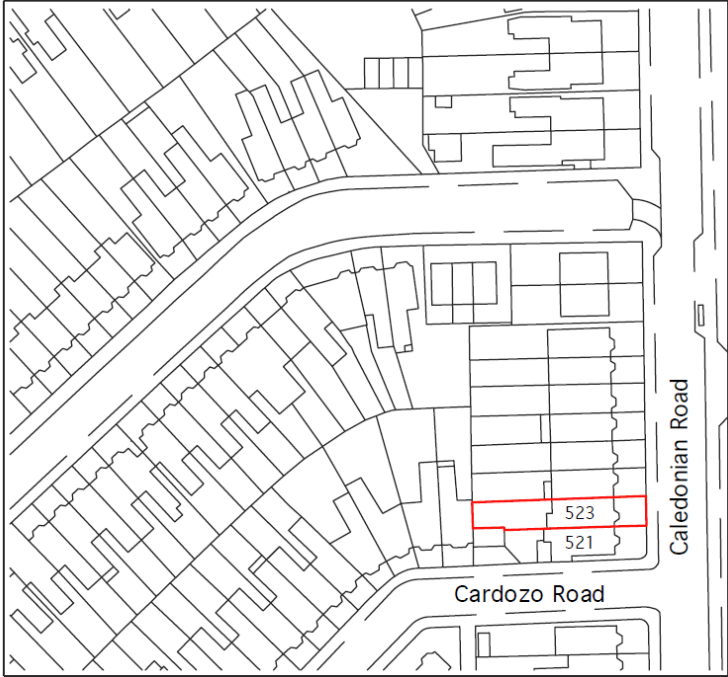
Case Officer	Krystyna Williams
Applicant	Mr Hywel Richards
Agent	Mr Tom Young

1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission:

1. subject to the conditions set out in Appendix 1;

2. SITE PLAN (site outlined in black)



3. PHOTOS OF SITE/STREET



Image 1: Aerial photograph showing the rear elevation



Image 2: Rear of the building viewed from Cardozo Road

4. SUMMARY

- 4.1 Full planning permission is sought for the creation of roof terrace area on an existing rear flat roof at second floor.
- 4.2 This application is being heard at Planning Committee after being called in by Councillors.
- 4.3 The proposed roof terrace would be situated to the rear of the building within a terrace of properties that have been significantly altered over time. The rear of the application building is visible from public views along Cardozo Road. There are a number of existing rear roof terraces in situ at adjoining property, No. 521 Caledonian Road, as well as an existing rear roof terrace to the rear of the host site.
- 4.4 The proposed rear terrace area would be enclosed on all sides with a combination of brick, metal railings and timber slats. When viewed in context the enclosed terrace would be in keeping with that which currently exists along this section of Caledonian Road and would not have any detrimental impact on the character and appearance of the Hillmarton Conservation Area.
- 4.5 The use of the existing flat roof as a terrace enclosed with appropriate screening is considered acceptable in planning terms and is not deemed to have any material adverse impact in terms of any undue sense of enclosure, loss of light and outlook, noise and disturbance, privacy or increased incidences of overlooking in relation to adjoining properties.
- 4.6 A section 52 legal agreement was entered into in 1987. Paragraph 7 of the agreement notes that the roof of the extension forming part of the development adjoining 525 Caledonian Road shall only be used for maintenance and emergency purposes only. It is noted that whilst section 52 of Town and Country Planning Act 1971 has been repealed, the general view (supported by

case law) is that such agreements are still enforceable. Accordingly, the obligation in clause 7 not to use the roof of the extension "as a roof terrace" still remains in force.

5. SITE AND SURROUNDING

- 5.1 The application site comprises a three-storey plus roof extension, mid terrace building located on the western side of Caledonian Road. The building is sub-divided into eight self-contained flats.
- 5.2 This application relates to Flat 8 which forms part of the third floor of the building. The surrounding area is mixed in character and appearance, although the immediate use is residential. The property is not listed but is located within the Hillmarton Conservation Area.

6. PROPOSAL (IN DETAIL)

- 6.1 Full planning permission is sought for the creation of roof terrace area to an existing rear flat roof at second floor to be enclosed with railings and timber slats.
- 6.2 The northern boundary with No. 525 Caledonian Road will be built up with a new brick wall measuring 1.2 metres including coping to match the existing found opposite in terms of height and appearance. The eastern (rear) elevation will be enclosed with a combination of metal railings and timber and the southern element will be enclosed by the existing brick pillar.

7. RELEVANT HISTORY:

PLANNING APPLICATIONS:

- 7.1 **861495** - Conversion to provide 5 No. two bedroom and 3 No. one bedroom flats involving new rear extensions at first floor level widened rear dormer on 523 re-cladding of both front dormers at 521-523 Caledonian Road. Approved: 21/09/1987.

P2013/3474/FUL - Replacement of existing single glazed timber windows to third floor flat with double glazed, timber framed windows to front and rear elevations to match existing at Flat 8, 523 Caledonian Road. Approved: 10/12/2013.

P2014/0982/FUL - Replacement of existing external windows and doors with new double glazed wooden-framed windows and doors, at third floor level (flat 4), 521 Caledonian Road. Approved: 10/06/2014.

ENFORCEMENT:

- 7.2 None

PRE-APPLICATION ADVICE:

7.3 None.

8. CONSULTATION

Public Consultation

8.1 A total of 16 letters were sent to occupants of adjoining and nearby properties dated 18/02/2014. Letters were sent to Flat 1 – 4, 521 Caledonian Road, Flats 5 – 8, 523 Caledonian Road, 525 Caledonian Road and 37 Cardozo Road. A site notice and press advert was also displayed on 13/03/2014.

8.2 There have been objections raised to this proposal from two occupiers of No. 525 Caledonian Road. There was objection to the proposed development based on a Section 52 at the site and also impact on residential amenity. The objections can be summarised as follows (with the relevant paragraph numbers of the evaluation listed):

- Loss of outlook due to proximity between terrace and existing windows at No. 525 Caledonian Road (See paragraphs 10.8 – 10.9);

- Loss of light to windows at No. 525 Caledonian Road (See paragraphs 10.8 – 10.9);

- Noise and disturbance (See paragraph 10.12)

- Proposed development contrary to section 52 legal agreement (See paragraphs 10.14 – 10.19).

External Consultees

8.4 None.

Internal Consultees

8.5 **Legal Services:** "Although section 52 of Town and Country Planning Act 1971 has been repealed, the general view (supported by case law) is that such agreements are still enforceable. Accordingly, the obligation in clause 7 not to use the roof of the extension "as a roof terrace" still remains in force. However, it is necessary to consider the current application taking into account current policies and all other material considerations. One of these considerations is the existence of the section 52 agreement and the reasons why the provision in clause 7 was felt to be necessary. If though, having taken the previous section 52 agreement into account, you feel that there are no planning reasons not to grant the current application then the appropriate course would be to go ahead and do so. There would then be a conflict between the planning permission which would have been granted and clause 7. However, in those circumstances, the Council ought to exercise its discretion so as not to enforce clause 7, as it would be irrational to grant permission on the one hand and then try to prevent it being put into effect on the other by enforcing under clause 7".

9. RELEVANT POLICIES

Details of all relevant policies and guidance notes are attached in Appendix 2. This report considers the proposal against the following development plan documents.

National Guidance

9.1 The National Planning Policy Framework 2012 seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.

9.2 Development Plan

The Development Plan is comprised of the London Plan 2011, Islington Core Strategy 2011, Development Management Policies 2013, The Finsbury Local Plan 2013 and Site Allocations 2013. The policies of the Development Plan are considered relevant to this application and are listed at Appendix 2 to this report.

9.3 Designations

The site has the following designations under the London Plan 2011, Islington Core Strategy 2011, Development Management Policies 2013, and Site Allocations 2013:

- **Hillmarton Conservation Area**

Supplementary Planning Guidance (SPG) / Document (SPD)

9.4 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

ENVIRONMENTAL IMPACT ASSESSMENT

9.5 Not required

10. ASSESSMENT

The main issues arising from this proposal relate to:

- Design and Appearance;
- Neighbouring amenity impacts; and
- Section 52 Agreement dated September 1987.

Design and Appearance

- 10.1 The application site comprises a three-storey plus roof extension, mid terrace building located on the western side of Caledonian Road. The application building and adjoining property, No 521 Caledonian Road, have been subdivided into self-contained flats. This application relates to Flat 8 which forms part of the third floor of the building.
- 10.2 The rear of the application building is visible from public views along Cardozo Road. There are a number of rear roof terraces in situ to the rear at No's 521-523 Caledonian Road. These include roof terraces at first and third floors, and a large roof terrace at No.521.
- 10.3 The proposed rear terrace area would be enclosed on all sides with a combination of brick, metal railings and timber slats. It is proposed to construct a brick wall/pillar with coping to match the height and appearance of the existing to the southern side of the flat roof. Black railings part in-filled with timber slats fitted between bars to obscure views enclose the terrace area to the west.
- 10.4 When viewed in context, taking into consideration the location and similar appearance of the existing rear terraces at the building, the proposed terrace would be in keeping with that which currently exists along this section of Caledonian Road. The scale and overall appearance of the materials are subsequently considered acceptable, and would not adversely impact upon the host building, adjoining terrace and surrounding Hillmarton Conservation Area.
- 10.5 The proposal is considered to be in accordance with policy CS9 of the Core Strategy 2011, and policies DM2.1 (Design) and DM2.3 (Heritage) of the Development Management Policies 2013.

Neighbouring Amenity

- 10.6 The proposed terrace area would be located to the rear of the application site at second floor. Consideration has been given to the effect of the proposed development on neighbouring amenities in terms of overlooking, noise and disturbance, loss of privacy, loss of light and outlook.
- 10.7 There has been objection raised to the proposed works from two occupiers of adjoining property, No 525 Caledonian Road, following the consultation period. Objection has been made to the loss of light, noise and disturbance and loss of outlook from the rear windows at No. 525 Caledonian Road.
- 10.8 Following a site visit it was identified that the closest windows at No. 525 to the boundary with the application site, and subsequently the windows that would be affected by the increase in height along the boundary, both serve a staircase.

- 10.9 Measurements have been taken from the submitted drawings and at present the rear second floor window serving a staircase currently marginally fails the 45 degree rule as a result of the existing rear projection at the application site. Whilst it is accepted that the increase in height of the proposed wall/pillar to enclose the terrace area would have some impact on light received and increase sense of enclosure to this window, it serves a staircase and therefore there is no loss of light or outlook to habitable rooms.
- 10.10 In addition, there is not considered to be any unacceptable loss of privacy to surrounding occupiers as a result of this development. The rear of the site is bounded by No. 37 Cardozo Road, however the side elevation of this building has no windows and therefore overlooking/loss of privacy is not an issue.
- 10.11 The terrace area would be appropriately screened with railings and timber slats to the rear elevation to alleviate any perceived overlooking/loss of privacy and a brick wall with coping along the boundary with No. 525. This is considered to overcome any loss of privacy to the occupants of No. 525 as there will be no direct overlooking from the terrace.
- 10.12 It is also important to note the prevalence of rear roof terraces within close proximity of the application site. It would consequently be unwarranted to refuse this application in terms of any potential adverse noise impacts emanating from the normal use of this area as a terrace space.
- 10.13 Overall, there is not considered to be an unacceptable adverse material impact on residential amenity in terms of loss of light, loss of privacy, noise and disturbance, sense of enclosure or overlooking as a result of the proposed development in compliance with policy DM2.1 of Islington's Development Management Policies 2013.

Section 52 Agreement

- 10.14 Planning permission, ref: 861495, for the conversion to provide 8 self-contained flats involving new rear extensions at first floor level widened rear dormer on 523 re-cladding of both front dormers, was approved on the 21st September 1987 with the following condition:
- “The roof of the extension forming part of the development adjoining 525, Caledonian Road shall only be used for maintenance and emergency purposes and shall not be used as a roof terrace or for any other purpose and the window leading onto the said roof shall be fixed shut and the parapet wall surrounding the said roof shall consist of two courses of brick with a concrete coping only”.
- 10.15 An objection has been raised that the proposed development breaches the content of a Section 52 legal agreement which was entered into in 1987. The Council's legal team have subsequently been consulted.
- 10.16 The Council's legal team advice that the Section 52 of the Town and Country Planning Act 1971 (under which the agreement was entered into) has been

repealed, the general view, supported by case law, is that such agreements are still enforceable. Accordingly, the obligation in clause 7 not to use the roof of the extension “as a roof terrace” still remains in force.

- 10.17 However, all applications should be considered on their individual merit, taking into account current planning policies and all other material considerations. One of these material considerations is the existence of the section 52 agreement and the reasons why the provision in clause 7 was felt to be necessary in the context of planning policies adopted in 1987 and the physical context of the site. The section 52 was agreed in 1987; however the specific reasons for the necessity of clause 7 are unknown but it is likely to relate to impacts upon the amenity of neighbours.
- 10.18 In this instance, and following the advice of the Council’s legal team, it is considered that having taken the section 52 into account, a decision should be made on the acceptability of the proposed roof terrace based on current planning policies and other material considerations. The Legal Team have advised that should planning consent be granted then there would be a conflict between the planning permission and clause 7. However, in those circumstances, the Council ought to exercise its discretion so as not to enforce clause 7, as it would be irrational to grant permission on the one hand and then try to prevent it being put into effect on the other by enforcing under clause 7.
- 10.19 In terms of whether to grant planning permission, planning policy and other material considerations must be considered. The proposed roof terrace and associated screening will not have any material adverse impact in terms of any undue sense of enclosure, loss of light and outlook, privacy or increased incidences of overlooking in relation to adjoining properties. It is also considered that due to the current prevalence of rear roof terraces within close proximity of the application site it would be unwarranted to refuse this application in terms of any potential adverse noise impacts emanating from the use of this area as a terrace space.

11.0 SUMMARY AND CONCLUSION

Summary

- 11.1 In accordance with the above assessment, it is considered that the proposed development is consistent with the policies of the London Plan, the Islington Core Strategy, the Islington Development Plan and associated Supplementary Planning Documents and should be approved accordingly.

Conclusion

- 11.2 When taking into consideration all the above, it is considered that there are no planning reasons not to grant the current application. The proposed development is considered to be acceptable as it would not have any detrimental impact on the character and appearance of the Hillmarton Conservation Area. Nor would it have an undue effect on the amenities of surrounding residents and would comply with policy CS9 (Protecting and

Enhancing Islington's Built and Historic Environment) of the Core Strategy; policies DM2.1 (Design) and DM2.3 (Heritage) of Islington's Development Management Policies June 2013 and Islington's Conservation Area Design Guidelines (2002).

- 11.3 It is recommended that planning permission be granted subject to conditions for the reasons and details as set out in Appendix 1 – RECOMMENDATIONS.

APPENDIX 1 – RECOMMENDATIONS

RECOMMENDATION A

That the grant of planning permission be subject to conditions to secure the following:

List of Conditions:

1	Commencement
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
2	Approved plans list
	<p>CONDITION: The development hereby approved shall be carried out in accordance with the following approved plans:</p> <p>Location Plan; Dwg No's: A 01 03; A 01 04; A01 05; A 01 06; A 01 07; A 01 10; A 02 05; A 02 10; A 03 05 - Existing Section aa; A 03 05 - Proposed Section aa; A 07 01; A 07 02; A 08 02.</p> <p>REASON: To comply with Section 70(1)(a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.</p>
3	Materials to Match
	<p>CONDITION: The new brick wall along the boundary with No. 525 Caledonian Road hereby approved shall match the existing building in terms of colour, texture, appearance and architectural detailing and the new metal railings to enclose the terrace shall be painted black and shall be maintained as such thereafter.</p> <p>REASON: To ensure that the appearance of the building is acceptable.</p>

List of Informatives:

1	Positive statement
	<p>To assist applicants in a positive manner, the Local Planning Authority has produced policies and written guidance, all of which is available on the Council's website. A pre-application advice service is also offered and encouraged. Whilst no pre-application discussions were entered into, the policy advice and guidance available</p>

on the website was followed by the applicant. The applicant therefore worked in a proactive manner taking into consideration the policies and guidance available to them, and therefore the LPA delivered a positive decision in a timely manner in accordance with the requirements of the NPPF.

APPENDIX 2: RELEVANT POLICIES

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

1. National Guidance

The National Planning Policy Framework 2012 seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.

2. Development Plan

The Development Plan is comprised of the London Plan 2011, Islington Core Strategy 2011, Development Management Policies 2013 and the Finsbury Local Plan 2013. The following policies of the Development Plan are considered relevant to this application:

A) The London Plan 2011 - Spatial Development Strategy for Greater London

**1 Context and strategy
Policy 1.1 Delivering the strategic vision and objectives for London**

**5 London's response to climate change
Policy 5.3 Sustainable design and construction**

**7 London's living places and spaces
Policy 7.1 Building London's neighbourhoods and communities
Policy 7.4 Local character
Policy 7.6 Architecture
Policy 7.8 Heritage assets and archaeology**

B) Islington Core Strategy 2011

**Spatial Strategy
Policy CS8 (Enhancing Islington's Character)**

**Strategic Policies
Policy CS9 (Protecting and Enhancing Islington's Built and Historic Environment)**

C) Development Management Policies June 2013

Design and Heritage

**DM2.1 Design
DM2.3 Heritage**

3. **Designations**

The site has the following designations under the London Plan 2011, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013:

- **Hillmarton Conservation Area**

4. **Supplementary Planning Guidance (SPG) / Document (SPD)**

The following SPGs and/or SPDs are relevant:

- | Islington Local Development Plan | London Plan |
|---|--|
| - Conservation Area Design Guidelines (2002) | - Sustainable Design & Construction |
| - Urban Design Guide (2006) | |