

PLANNING APPEAL STATEMENT OF CASE

Section 78 Town and Country Planning Act 1990,

Planning appeal against the refusal by Camden Council
of the planning application:

Alterations To Flat Roof At Rear Of 56 Hillway, London
N6

Application No: 2021/2253/P

Doc Ref: 2002 SOC

Issue Date: 15 December
2021

1 Introduction

1.1 Working with the LPA

The Applicant recognised that this application would be one that doesn't sit easily within current planning parameters and would require a careful dialogue with LPA due to its unique site conditions. Proceeding in accordance with clauses 38 and 39 of the National Planning Policy Framework, it was assumed that the LPA, Camden Council would take a positive and proactive approach to discuss development proposals focused on collaboration. In fact, the LPA has not entered into any dialogue or worked with Applicant's Agent in a positive and proactive manner. It has not provided any detailed pre-application advice, nor appropriate updating to the Applicants Agents of any issues that arose during the processing of the application or where possible suggested solutions to secure a successful outcome. It is accepted that we are all working under exceptional health regulations so face to face meetings were not possible, but combined with staffing shortages advised feel that the process has been extraordinarily long and disappointing as can be seen in further detail in the sections 1.2 and 1.3.

Normally before making an appeal, we would have entered into discussions with the LPA regarding a new application but based our experience so far which culminated in an impression that after neglecting any commentary, aA rushed refusal notice was issued for this application without due care and attention to the specifics of this application. Therefore, an appeal seems to be the only fair route to properly determine its viability.

1.2 Pre-Application Advice

This process commenced on 30 November 2020 when a submission for pre application advice was issued. This was registered on 9 December 2020. Despite repeated apologies and assurances that the application would be provided with feedback, there was a distinct lack of communication (specifically from the Case Officer) even though the Applicant's Agent contacted the LPA 5 times by email between 16 February 2021 and 20 April 2021 requesting some sort of update and dialogue. No constructive advice was offered apart from one brief telephone conversation on 21 April 2021 where the case officer reported that the scheme looked "*problematic*".

On 22 April 2021 the LPA advised that "*Unfortunately we are incredibly under-resourced at the moment. We are approximately 10 staff members below capacity, case loads are 2-3 times larger than normal and our IT equipment and systems are incredibly outdated and struggling. I've been partly responsible for recruiting new officers and we have made 8 formal offers. Our entire organisation is going to benefit from a roll out of new equipment starting this spring. We are also hoping to phase back a return to the office in late June (we've been working from home since early-mid March). In my 6+ years at Camden things are definitely at an unprecedented level in terms of the challenges we face*".

Therefore, it was agreed on 27 April 2021 that to save time and overcome resourcing issues it would be more prudent to refund part of that fee and submit a householder planning application instead and obtain advisory comments during that process.

1.3 Application Advice

The same case officer was appointed to review this application and sadly the previous methodology of no collaboration or contact continued. Between 10 May 2021 and 19 October 2021, the Applicant's Agent contacted the case officer on five occasions requesting some sort of dialogue. The only contact was an email on 19 October 2021 stating "*Apologies for the delay in getting back to you. Please be advised that your application would not be in accordance with the Local Plan as such it will be refused, if not withdrawn. The reason for refusal would be the same as was advised in your pre-app. A decision notice should be with you for some time next week. Thank you for your patience. Joshua Ogunleye*".

The Applicant's Agent immediately queried this statement as no reasons had been issued to date. The LPA response to this stated "*Joshua has had a very large case load and has been doing his best to work through these*".

Unfortunately, Joshua is leaving the Council on the 1st of November. He will attempt to write up your application before he goes (he has close to 50 outstanding cases now), but to be honest he has been prioritising cases for approval. You have known about our decision to refuse your proposal for some time now and we made it clear before submission that the proposals are unacceptable. As you're aware you have the right to appeal against the non-determination of a planning application and could've submitted this 8 weeks after the validation date. Alternatively, you can wait until you receive your refusal and lodge an appeal then.

Based on this message the Applicant's Agent advised LPA on 20 October 2021 that an appeal on the basis of the non-determination of the planning application would be submitted. On 21 October the LPA responded by email stating *"The application has now been refused. The final report and decision notice is attached. Therefore you cannot appeal against a non-determination. You will have to appeal against our refusal.*

2 Application Context

2.1 Physical and Social

This application relates to a unique problem due to the historic precedents and subsequent actions relevant only to this particular site. The key concern revolves around the proximity of a mansion block against the rear garden wall which created overlooking issues and the subsequent landscaping added, to try and overcome this issue. This landscaping has now substantially matured and is within a conservation area which places a high emphasis retaining its garden environment. Even if these trees could be cut down the issue of mansion blocks overlooking the site would return. Due to both of these the property's garden is generally shaded throughout the year even during the summer (see Figs. 3&4). Access to sunshine for health and leisure activities is recognised by the occupant's family's as being important to their well-being. So, this application is a carefully considered bespoke solution to overcome this issue.

No 56 is a rarity on the Estate in that it is one of the only two properties located on Hillway either side of the junction with Oakshott Avenue whose garden abuts the side elevation of one of the Estate's mansion blocks (in this instance 211-228 Holly Lodge Mansions). The massing and height of this four storey block is a total contrast visually to the houses around. The west facing side elevation is located almost on the boundary line on the eastern end of the garden. This elevation has numerous windows overlooking the adjacent private gardens. It has been softened by the planting of vegetation along its boundary which has matured over the years. The closeness of the mansion blocks to No 56's boundary fence has meant that though mature, the species planted is insufficient to provide an adequate level of privacy and so they have had to be supplemented by further trees planted within the garden of No 56 which have now grown to a level of maturity to adequately obscure the level of openness and overlooking from the mansion block. These trees blend in with the promoted concept of the Estate (see strategy below) to provide a green setting to the development in the Garden Suburb style. Diagonally adjacent to the garden is mansion block's communal gardens which were developed to provide separation and setting to the large mansion blocks. The supplementary planting in No 56's garden has been allowed to mature to such a degree as to blend in with these (see Fig. 2).

The rear garden spaces section of the Holly Lodge Management Strategy - states: *"The rear garden spaces of houses and mansion blocks in Holly Lodge Estate contain a very mature vegetation, including many tall trees. The relationship of this high-quality green space to the buildings is an essential part of the 'garden' character of the Estate. Development that results in the loss of private open spaces and causes harm to the garden character or the ratio of built to unbuilt space is unlikely to be acceptable due to the harmful impact this would have on the character and appearance of the conservation area."*

Having undertaken a comprehensive review process on the best way to overcome this issue it was felt the proposal put forward was the most appropriate considering all the site's restraints.



Fig 1. - Aerial view of application site. (Plot outline in red, building outline in blue)

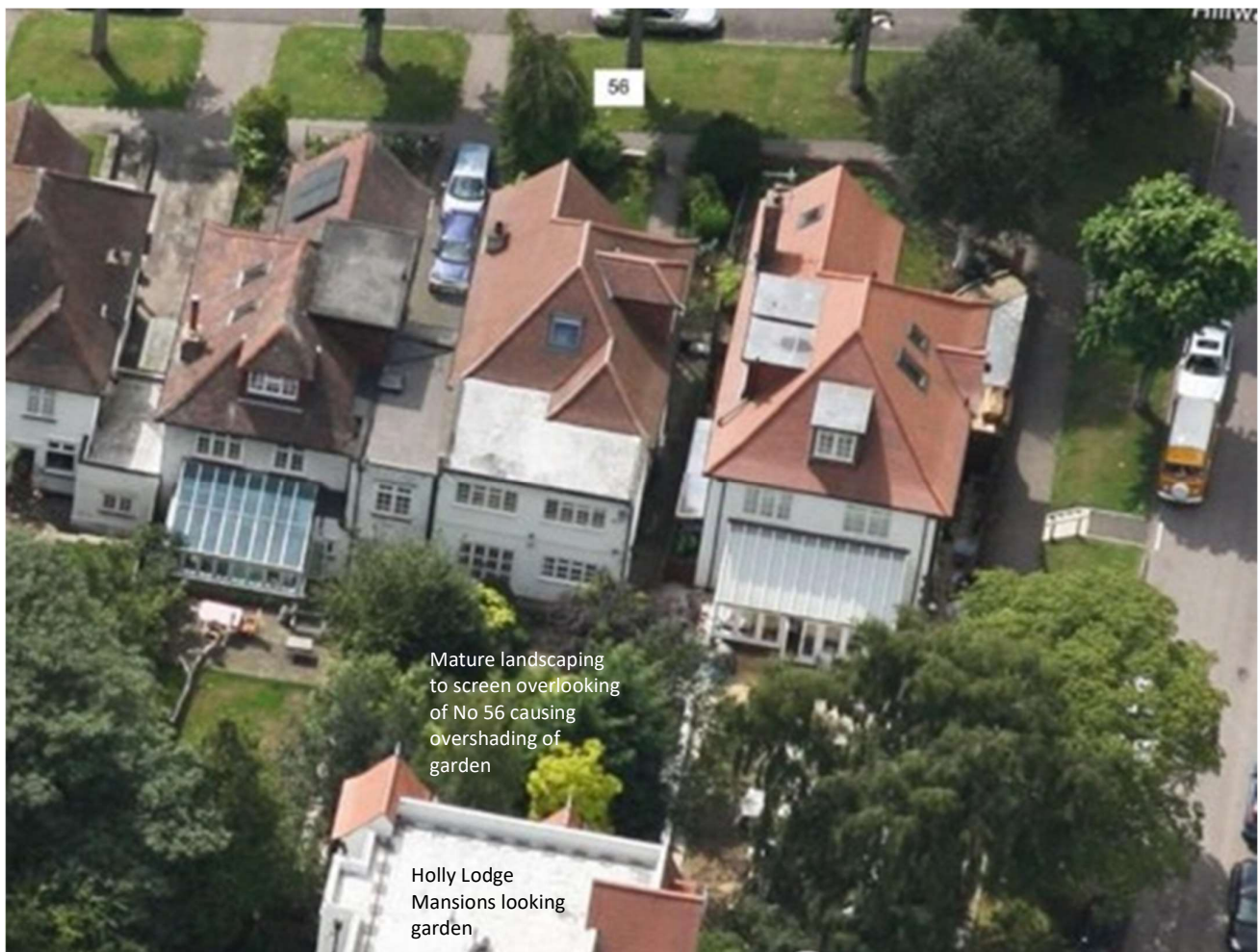


Fig 2. - Aerial view of application site (showing extent of mature landscaping).



Fig. 3. – Photograph taken on a sunny summers day looking towards the property showing the over shadowing of majority of the garden.

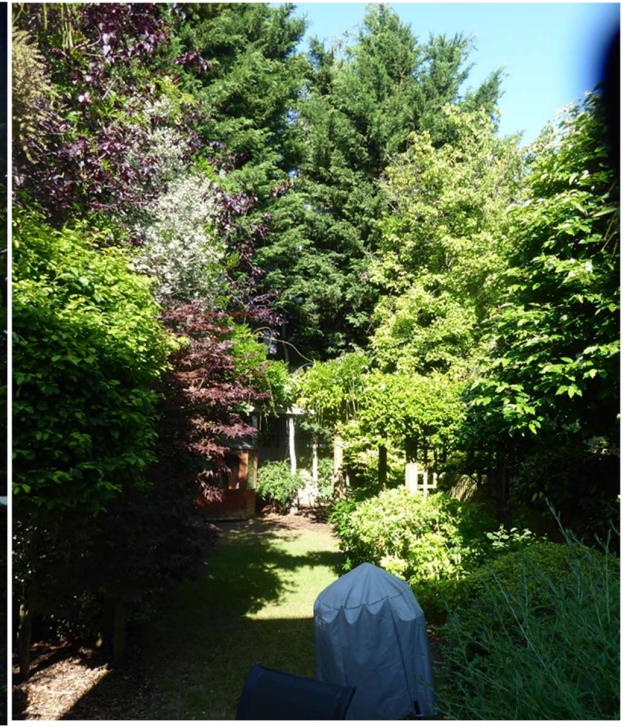


Fig. 4 – Photograph of garden looking towards mansion block showing screening of it and over shadowing.

Further information and photographs clarifying the above issues can be found in Section 2 of the Design Statement issued as part of the planning application.

3 Grounds for Appeal

The section below is the Applicants response to the reasons for refusal provided by the LPA within their Delegated Report dated 22 June 2021. The clause numbers listed below are in accordance with those in this document.

3.1 Design Issues

2.8 - The LPA has stated that *"The proposed opening would result in the loss of the eaves in this section of the roof"*. The section of eaves affected is in fact not visible due to the existing small hipped section of roof that protrudes on to the flat roof and the proposed upstand to the east elevation. This can be clearly seen looking at Figs. 7&9 of this document.

2.9. - The LPA has stated that *"The proposed scale would dominate the rear roof slope"*. The proposed rooflight is visible from primarily for the rear of gardens of Nos 54, 56 & 58 (see Fig. 7) and obliquely by looking over part of the garden fence along Oakeshott Avenue (see Fig 9). The latter being the only location in the public domain from where it can be partially seen. As can be seen in these artists impressions it is not detrimental to the roof's appearance.

The LPA has stated that *"its proximity to the sloping hip ridge would result in it appearing overly dominant, within the context of a modest roof form"*. The location of the proposed Terrace Access Panel is aligned deliberately to fit between the main roof and the lower roof with the northern edge aligned with the main roof ridge line while the southern edge has only moved slightly (240mm) southwards from the existing rooflight's location. The actual width of the panel is 27% narrower than the existing rooflight and would be located further away from Oakeshott Avenue making it less prominent from the streetscene (see Figs. 9&11).

The LPA has stated that *"The proposes(sic) scale would be contrary to section 2.1 of the Home Improvement CPG which states that developments should maintain a margin from the roof's eaves"*. The section referred to relates to Ground Extensions which is not relevant. Section 3.5 Rooflights does recommend considering their position taking into account other architectural roof elements, e.g. gables, chimneys, turrets but nothing finite on margins. Section 2.2. Roof Extensions recommends making an assessment by walking along your street and surrounding area to observe the roof forms and using online aerial maps to see historic types of development. The aerial shot of properties on Hillway shows that there is no consistency in the positioning and margins of installed sloping rooflights within the Holly Lodge Estate (see Fig 5). Section 2.2.3 Balconies and Terraces provides nothing further on this issue.



Fig. 5 - Aerial photo showing rooflights of a variety of sizes and relative locations within Holly Lodge Estate.



Fig. 6. – Existing view from eastern boundary looking towards rear of No 56.



Fig 7 – Artist impression of proposal. View from eastern boundary looking towards rear of No 56. See Fig 10 for close up view



Fig 8. - Existing view of development site from Oakeshott Avenue



Fig 9. - Artist impression of proposal. View from Oakeshott Avenue. See Fig. 11 for close up view



Fig 10. - Close up of artist impression of proposal. View from eastern boundary looking towards rear of No 56.



Fig 11. - Close up of artist impression of proposal. View from Oakeshott Avenue.

2.10. - The LPA has stated that *“the addition of glass balustrades here would not be considered appropriate within this setting where it would appear forward of the main roof from Oakeshott Avenue”*. An aerial map survey of the Holly Lodge Estate indicates that No 56 is one of a few properties with a storey flat roof extension forward of the main roof so it already does not fit within the “norms” elsewhere. The completion of the parapet to the east side helps regularize the existing extension’s form while the glass element is set back allowing a clean coping line to be seen. The upper edgeless glass panel would be so unobtrusive as to be almost invisible (see Figs. 12&13).

The LPA has stated that *“The extensive balustrading around this large terrace will create high level visual clutter”*. The frameless glass product incorporated was selected specifically to provide the opposite effect in that all fixings and supports would not be visible. The only visible element would be the 2 panel butt joints per elevation (see Figs.12&13).



Fig 12. - Photo of proposed product indicating a clutter free installation

The LPA has stated that *“the proposed materials would constitute an intrusive ultra-modern intervention within the context that would be visible from the surrounding streetscene”*. A search of the Camden Council’s website was conducted to find recent planning decisions that had granted for glass balustrading within local conservation areas. Within the Holly Lodge Estate and adjacent Dartmouth Park conservation areas nine instances of approved planning applications were found. Further particulars of the approvals and photographs can be found in Section 4.3 of the Design Statement submitted as part of the planning application. Therefore, examples of glass balustrading found in local conservation areas should entail at least a fair assessment, which is based on the merits of their appropriateness, rather than on pre-determined views and parameters.



Fig. 13 - Example of similar frameless glass balustrade within Dartmouth Park (Camden) conservation area.

2.11. - The LPA has stated that *"It is considered the proposed rear rooflight and rear balustrade additions would further detract from the character and appearance of the surrounding conservation area"*. This item seems to be repetition of the points raised and challenged under items 2.9 & 2.10.

2.12. - The LPA has stated that *"whilst it is noted that there are other flat roof structures associated with neighbouring properties, none appear to be in formal use as a flat roof terrace area"*. This is incorrect in reality (see Figs 14&15). A search of the Camden Council's website was conducted to find recent planning decisions that had been approved for roof terraces in local conservation areas. Within the Holly Lodge Estate and adjacent Dartmouth Park conservation areas eighteen instances of approved planning applications were found. Further particulars and photographs can be found in Section 4.3 of the Design Statement submitted as part of the planning application.



Fig. 14 – Aerial photograph of roof terraces being utilised within Holly Lodge Conservation Area.



Fig. 15 – Aerial photograph of roof terraces being utilised within Dartmouth Park Conservation Area.

The LPA has stated that *"the terrace will create further unwelcome visual clutter at this exposed high level"*. The Applicant is also not in favour ancillary paraphernalia on the terrace and would be happy to agree to conditions being included regarding this late concern as part of any determination but was never given the opportunity to enter into any dialogue with LPA.

2.13. - The LPA has stated that *"The provision of a roof terrace is considered to have limited public benefit"*. Though contrary to National Planning Practice Guidance which states that in general planning is concerned with land use in the public interest, the Applicant has always recognised that this application was a one-off exception based on an issue of health and well-being, pertinent only to this particular site. It was never expected that it set a precedent that could be considered elsewhere within the Holly Lodge Conservation Area and has always desired that the application should be considered on that basis.

3.2 Amenity Issues

2.14. – No comment

2.15. - No comment.

2.16. - The LPA has stated that *"The second floor roof terrace would adjoin the side roofs of Nos.54 and 58 Hillway"*. This is incorrect as there is a distinct gap between Nos. 56&58. This should have been considered in the determination of the application.

The LPA has stated that *"that both neighbouring properties have dormers with habitable rooms"*. Our understanding is that the affected windows are for non habitable rooms which are therefore of a less sensitive nature to overlooking. The fact that neither neighbour as raised this as an issue probably supports this point of view. This should have been considered in the determination of the application.

The LPA has stated that *"angled views would be possible into the side dormers of both neighbours of No.54 and 58"*. The angle of vision would be too oblique for 'easy' views to be possible. In addition, the affected windows are within dormer where the side cheeks would further reduce any visual intrusion (see Fig. 16). This should have been considered in the determination of the application.

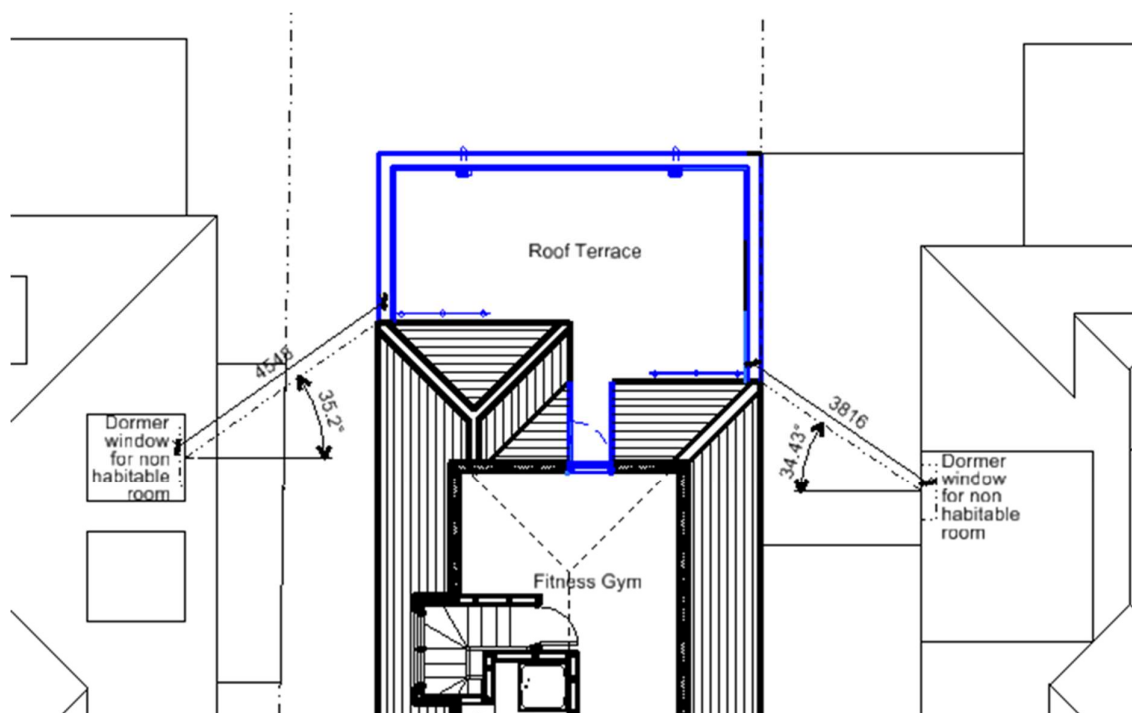


Fig 16 - Diagram showing location of adjacent neighbours windows.

The LPA has stated that “there is significant opportunity for intrusive overlooking down into the rear garden areas immediately at the rear of the adjoining houses”. The use of frameless glass balustrading without a hand rail will psychologically enforce anyone on the terrace to stand further back from the edge therefore indirectly mitigating the impact.

Also, to further mitigate this concerns raised by a neighbour, the Applicant entered into discussions to resolve this issue. These culminated in an agreement (noted below) which was forwarded to LPA on 9 July 2021 but sadly once again the LPA did not take up the opportunity to discuss this or any other conditions as part of any approval.

The Owner/Applicant of 56 Hillway has noted concerns expressed about overlooking and privacy with regards to the above application.

He has therefore undertaken an open dialogue with the Owner/Occupier of 54 Hillway, who would be most affected by the proposal. Out of this discussion there are two suggestions that they request be considered as part of the application and were felt to respond sensitively to this issue.

Firstly, the frameless glass balustrade to the south elevation (as indicated on drawing 2002 PL012 Proposed South Elevation) only be changed from clear to frosted glass. Both parties agree that this will provide greater privacy to No 54 while being in a position that will not affect all round views from anyone else in the neighbourhood.

Secondly, as part of this discussion the Applicant also has agreed that if as part of any permission, a condition be inserted that limits the use of the terrace specifically to health and wellness purposes, this would be acceptable to him. It has always been the Applicant’s case that this application is only relevant to this particular property due to its unique position where its garden is severely over shadowed by a large mansion block. It is not intended that this set a planning precedent, but provide a bespoke solution to this problem.

The Applicant requests that you include both the above points in your consideration of the proposal. Hopefully the latter enables you to grant a planning permission with such conditions as you think fit tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. The Applicant is happy to discuss this matter if so required.

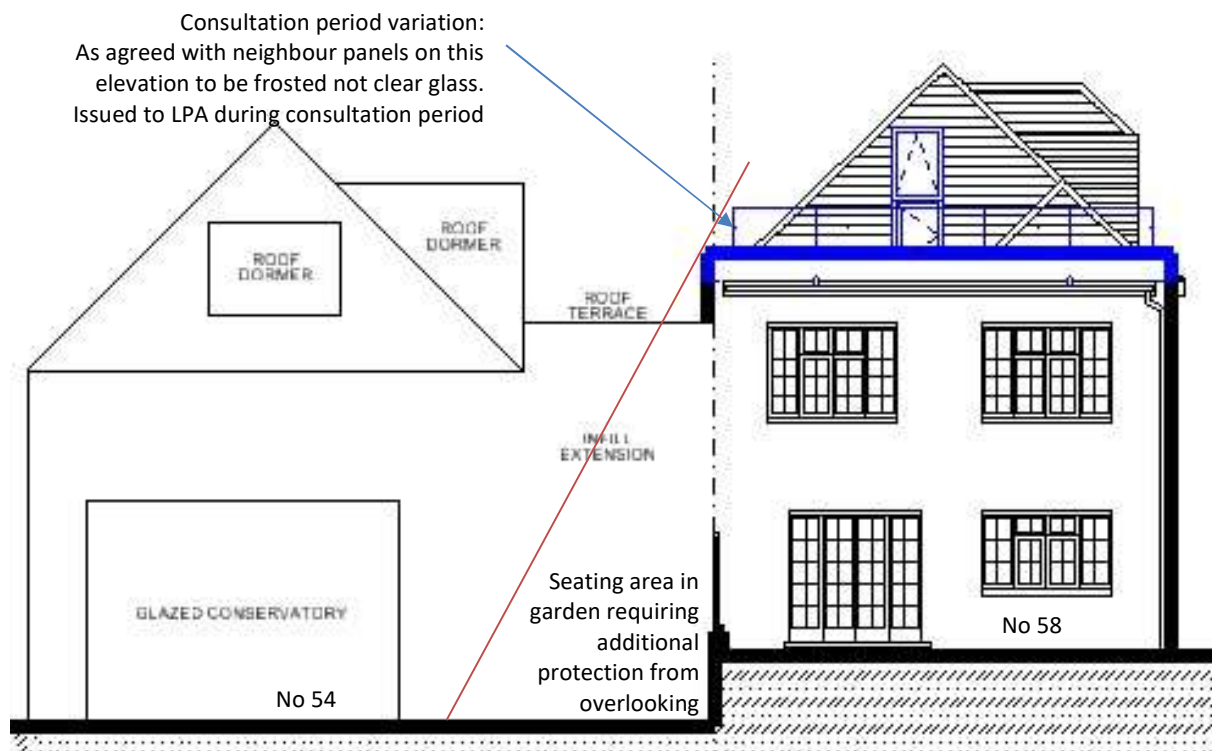


Fig. 19 - Diagram showing mitigation measures

2.17. See response to item 2.16.

2.18. This item seems to be repetition of the points previously raised and challenged under item 2.16.

4 Summary

4.1 - Reason for Refusal 1:

The proposed rear rooflight and balustrade enclosure, by virtue of their inappropriate scale, location and detailed design, would result in adverse visual clutter that would be detrimental to the character and appearance of the building and the Holly Lodge Estate Conservation Area, contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017 and policies DH2 and DH5 of the Highgate Neighbourhood Plan 2017.

LPA refers to policies from London Borough of Camden Local Plan 2017 and Highgate Neighbourhood Plan 2017 but fails to state explicitly how the proposed alterations fail to comply with those policies. Any issues gleaned from LPA's Delegated Report have already been challenged where necessary in section 3.1 of this statement.

The Appellant considers the proposal takes reference from the traditional form and materials of the host building with high quality contemporary detailing where necessary to an existing architecturally unexceptional rear extension that preserves both the character and appearance of the host property and the setting.

The alterations can only be partially apparent from a section of a secondary cul de sac (Oakeshott Avenue) within the Holly Lodge Estate, by looking over a 2 metre high rear garden wall to No 58 Hillway. Materials selected for the roof and wall parapet either replicate or reuse material from the host building. The only addition which complements the host building is a band of frameless glass fixed to the rear of the parapet to ensure safe access on the terrace. This consists of frameless glass panel whose detailing and materials are of the highest quality, complement the local character and neither would not be readily perceivable nor compromise the legibility of the host property.

The proposed alterations of the highest standard of design, respond positively and sensitively to the existing context by not affecting the host property's massing or roof lines and public realm views.

LPA refers to policies from the Highgate Neighbourhood Plan 2017. DH2 states Development proposals, including alterations or extensions to existing buildings, should preserve or enhance the character or appearance of Highgate's conservation areas, and respect the setting of its listed buildings and other heritage assets and DH5 states Roof extensions, dormers and rooflights should respect the existing roof form in terms of design, scale, materials and detail and be restricted to the rear. These are similar to the points already raised and responded to prove compliance with all these guidelines.

4.2 - Reason for Refusal 2:

The proposed rear roof terrace, by reason of its size, depth, and location, would result in overlooking to the side dormer windows and rear gardens of Nos.54 and No.58 Hillway to the detriment of the residential amenity of neighbouring properties, contrary to policy A1 (Amenity) of the London Borough of Camden Local Plan 2017.

LPA refers to policies from London Borough of Camden Local Plan 2017 but fails to state explicitly how the proposed alterations fail to comply with those policies. Any issues gleaned from LPA's Delegated Report have already been challenged where necessary in section 3.2 of this statement.

While the planning guidance provides specific criteria with which the design of roof terraces should normally comply, by use of the word 'normally' it appears to accept that there will be some circumstances where complying with the criteria would not be required. Camden Planning Guidance – Amenity July 2021: clauses 2.2 and 2.3 state “The extent of overlooking will be assessed on a case-by-case basis” and “The places most sensitive to overlooking are typically habitable rooms and gardens at the rear of residential buildings”. While Camden Planning Guidance – Amenity July 2020: clause 2.11 states “Balconies and roof terraces should therefore be carefully sited and designed to reduce potential overlooking of habitable rooms”. An initial assessment showing the both neighbouring properties indicate that the nearest window are for uninhabitable rooms with oblique back facing sight lines that minimise any loss of privacy.

As already explained the requirement for the roof terrace is that although the site includes a large garden it is not possible to provide suitable amenity place for leisure/well-being activities involving access to natural sunshine due to site specific overshadowing issues. Consideration that urban gardens are by nature overlooked from neighbouring dwellings therefore this issue requires considering. With respect to the adjacent windows, in normal day to day use of this terrace, rather than standing and looking back towards the neighbouring property to gain glimpses through their windows, it would be far more likely that users of the terrace would be using the space to relax and take in the views towards the east. The roof terrace would lead to a slight intensification of views over the neighbouring rear gardens, but mitigation measures have been discussed with the concerned neighbour, regarding the garden area adjacent to No 54. The use of screening (frosted glass etc) to the southern façade has been agreed to prevent overlooking of the nearby garden. This glazing between the adjacent roof terraces would be the same height the clear panels to ensure it would be hidden and seen as acceptable in the context of a traditional building.

4.3 Other Issues

Consideration of health and well-being needs to be included as part of this appeal which has not been mentioned as part of the original application.

The London Plan 2021 states: Policy GC3 states that “those involved in planning and development must ensure that the wider determinants of health are addressed in an integrated and co-ordinated way, taking a systematic approach to improving the mental and physical health of all Londoners and reducing health inequalities.” It also states that “assess the potential impacts of development proposals and Development Plans on the mental and physical health and wellbeing of communities, in order to mitigate any potential negative impacts, maximise potential positive impacts, and help reduce health inequalities, for example through the use of Health Impact Assessments.

The Camden Local Plan 2017 Policy C1 4.2 states: There is an important link between the physical and social environment in which we live and how healthy we are, both physically and mentally. This policy seeks to ensure that development in Camden considers local issues relating to health and wellbeing at an early stage of the planning process in order to positively improve outcomes for the people who live, work and visit the borough.

Camden Planning Guidance: Planning for health and wellbeing 2021 1.10 states: Planning for health involves thinking about the interrelated factors that affect health, including social and psychological elements, such as wellbeing and fulfilment. The wider determinants of health are the conditions in which people are born, grow, work, live and age, and the wider set of forces and systems shaping the conditions of daily life. A healthy place is one that can contribute to the prevention of ill health and provide the environmental conditions to support positive health and wellbeing.

5 Conclusion

The Appellant has concerns that the LPA has failed to give any advice on this application and proceeded to issue the decision notice in an untimely manner. Based on the time line, reported staffing issues, exception working conditions and errors within the Delegated Report has led to an impression that the Refusal Decision was rushed out for the sake of expediency and that case did not receive due attention

It is submitted in this Appeal Statement that the LPA’s reasons for refusal is not appreciative of the specifics of this site and its context. There would be minimal visual impact to the public realm from the proposed alterations. Als being positioned entirely at roof level with limited visibility from the rear, the alterations would scarcely be visible save from a handful of private properties.

A mitigation exercise on how the terrace would impinge on privacy of the adjacent neighbours has shown that there are dormer windows located either side with obliquely sight lines showing minimal impact and that the two closest windows are for non-habitable rooms. Consideration been added for opaque screening. to the southern side only It was felt this would be acceptable to the conservation character of the surroundings if kept to a low level. Finally, the

Appellant is content to agree set of conditions over the LPAs concerns around how the proposed terrace is used and what items may be stored on it which could be included as a planning condition to further mitigate these.

It is therefore respectfully requested that this application be reconsidered and planning permission is granted.

15 December 2021