

## **REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT**

**By Graham Self MA MSc FRTPI**

Appeal by Miss V C Bell against a grant of planning permission.

Reference Number: RP/2020/1571

Site at: 42 Roseville Street, St Helier, JE2 4PJ.

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### **Introduction**

1. The appeal is against the grant of planning permission for development described in the application as: "REVISED PLANS to P/2020/0090 (Convert 4 No. bedsits at first floor to create 1 No. two bed residential unit. Demolish and rebuild ground floor extension.) Demolish 2 storey extension and extend balcony to West elevation. Various alterations to ground floor fenestration." The application was by James Joseph, Kalmac Ltd.
2. Following consultation with the parties, the appeal is being decided by the written representations procedure. I carried out a site inspection on 22 June 2021.
3. This report includes a brief description of the appeal site and surroundings, summaries of the cases for the appeal parties, my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents including those submitted at application stage are in the case file for you to examine if necessary.
4. After my site inspection I arranged for an email to be sent through the Judicial Greffe to the applicant's agent, with copies to the appellant and to your Department, in which I raised a number of questions and invited responses. I have asked the Judicial Greffe to place copies of my email and all the responses on the case file so that you can see the full texts. I refer to the responses in my assessment below.

### **Planning Permission Reasons and Conditions**

5. In the Department's decision notice, the reason for approval was stated as:  
"Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received. Notably, the relationship with neighbours has been specifically considered in relation to potential noise and loss of privacy. Based on submissions and the condition ensuring the placement of a privacy screen, it is considered that the proposal will not result in unreasonable harm to the amenities of neighbours."
6. The permission was granted subject to standard conditions A and B, plus the following condition:  
"No part of the development hereby approved shall be occupied until the balcony/terrace in the West elevation at first floor level is fitted with an obscure privacy screen along the length of the Northern side, to a height of 1800mm from finished floor level. Once constructed, the screen shall be maintained as such thereafter."

7. A note was appended to the permission referring to the approved plans and warning that "Failure to comply with the approved plans or conditions may result in enforcement action".

### **Procedural Matters**

8. No application date is mentioned in the Department's planning permission decision notice, which is dated 11 February 2021. The application appears to be dated 7 October 2020 – that is the date of "document upload" on the online version of the application form. A time of "11:06 AM" appears next to that date on the form. However, this form is also dated 23 December 2020 (at the top of the first page).
9. The documents for this case include a letter which refers to the application - the letter is listed in the Department's records as a "cover letter" from the applicant's agent, and its opening sentence is: "Please find enclosed a revised application to the approved planning application P/2020/0090"). This letter is dated 30 July 2020. However, in the planning register<sup>1</sup> this document is listed as dated 23 December 2020.

### **Site and Surroundings**

10. The appeal property at 42 Roseville Street is on the west side of Roseville Street, north of the junction between that street and La Route du Fort. The property has been divided into flats. Part of the first floor flat is a kitchen/dining area, from which a doorway leads to a rear, west-facing balcony.<sup>2</sup> During my inspection I measured the area of the balcony structure and found it to be 4.6 metres wide (north to south)<sup>3</sup> and 3.2 metres deep (ie from the wall of the house to the outside edge of the balcony structure).
11. The balcony has a boarded surface. Near its northern, western and southern edges there is a three-sided balustrade consisting of obscured glass held in a metal framework which is fixed to the balcony floor and to the house wall. The western section of this balustrade (ie the outer part parallel to the wall of the main building) is set back about 42 centimetres from the outer edge of the balcony structure, so that the depth of balcony inside the balustrade is about 2.78 metres.
12. The west and south sections of the balustrade are about 1 metre high measured from the balcony floor to the top of the obscured glass and about 1.2 metres high measured to the top of the metal framing. On the north side, the balustrade is about 1.7 metre high to the top of the obscure glazing and is about 1.8 metre high measured to the top of the metal frame. There are horizontal and vertical gaps between the glazing and the frame. In the northern section of the balustrade, the gap immediately below the top part of the frame and the obscure glazing is about 30-35 millimetres; other gaps are about 25-30 millimetres<sup>4</sup>. The

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<sup>1</sup> In this report I use the term "planning register" to mean the database of planning applications as published on the Jersey government's website.

<sup>2</sup> For simplicity, the compass point references in this report are not intended to be precise; for example the west elevation of the property actually faces slightly north of west, and "north" refers to slightly east of north.

<sup>3</sup> At my request the applicant's and Department's representatives checked this dimension and agreed on a figure of 4.585 metres. The dimensions here refer to the area of the flat roof which forms the balcony structure; the area enclosed within the balustrade is smaller.

<sup>4</sup> These dimensions are approximate because the metal frame has a round cross-section, and when measuring the gap between the frame and the straight-edged glazing panels, a slight change in viewing angle affects the size of the gap.

top outer corner of the frame and attached obscure glazing has a "cut-off" shape angled at about 45 degrees.<sup>5</sup>

13. When standing near the outer edge of the balcony (inside the balustrade), there is a direct line of sight looking approximately north-north-west towards first floor windows in the rear of the appellant's dwelling. The intervening distance is between about 11 metres and 15 metres depending on the position on the balcony.<sup>6</sup> There is also a direct line of sight straight across from the balcony to windows at a distance of about 6-7 metres in the east (side) elevation of a neighbouring three-storey building on the north side of La Route du Fort. This building (named Villa Anniri) appears to be a block of flats.

### **Case for Appellant**

14. The appeal documents submitted by the appellant include the grounds for appeal, a statement of case, a "Comment Document" containing comments on the Department's statement, and an email drawing attention to the building of the balcony. In summary, the main points of the appellant's case are:
  - The height of the screen along the northern edge of the balcony is insufficient at 1800mm to prevent someone only a little above average height looking over it. A reasonable minimum height would be 2000mm from the balcony itself, not from the flat roof. The real remedy is not to grant planning permission for the revised plans.
  - Any screen along the north side of the balcony would not prevent a direct line of sight across a distance of only 15 metres into the bedroom in the western part of Ms Bell's property. This view could be prevented by a screen of minimum 2000mm height along the west edge of the balcony, which extends further than the original proposal. The western edge of the balcony should be retracted.
  - An unacceptable level of noise will be generated by virtue of the balcony being an outdoor social space level with the first floor of the appellant's property. Screens along the balcony edge should have acoustic damping and/or the size of the balcony should be reduced so that a smaller social space would generate less noise.
  - The Department's comparison with the height above floor level for roof windows is not useful; the purpose of a roof window is to provide light, whereas the main purpose of a balcony is to provide views.
  - The impact on Ms Bell's property as shown in submitted photographs would be unreasonable and therefore contrary to the policies quoted by the Department.
  - The north-western part of the appellant's house is positioned north-west of the balcony, not to the north as stated by the Department. Although people would enter the balcony from the east, they do not have to go to the west part of the balcony to look towards Ms Bell's bedroom window. There is no evidence to support the idea that people using the balcony would necessarily be seated or would be positioned back from the edge.

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<sup>5</sup> The shape of this structure can be seen in the photograph on the fifth page of the appellant's statement headed: "Comment Document".

<sup>6</sup> It was not possible to measure these distances on-site at first floor level; I have scaled them from the applicant's 1:100 scale drawing titled "Further Information – Revised Balcony to First Floor", subtitled "Revised First Floor Balcony". The 11 metres is between the north-west corner of the balcony and the appellant's bedroom window. The 15 metres is between the south-west corner of the balcony and the appellant's bedroom window.

### **Case for Planning Authority**

15. The appeal documents submitted by the Department include a statement in response to the appeal and the officer's report on the application. The planning authority's reasons for granting the planning permission now subject to the appeal are explained in the officer's report. Other points are summarised below.
- The site is in the built-up area where there is a policy presumption in favour of development at the highest reasonable density, subject to other factors including achieving good design and satisfactory quality of accommodation (under Policies GD1, GD7 and H6) and avoiding an unacceptable impact on adjoining properties (Policy GD3).
  - The relevant policy test is not whether development would have an impact on another property but whether such impact would be unreasonable. The Department considered that the privacy screen required by the conditional permission would adequately address overlooking so that any impact was not unreasonable.
  - With the screen in place, users of the balcony would be likely to be sat on the balcony, positioned back from the western edge and unable to see into the appellant's window, and vice versa. People on the balcony would be far more likely to look out towards the west than towards the appellant's property and would not be able to see into the appellant's bedroom.
  - The 1.8 metre required height of the screen is above the 1.7 metre height above floor level normally required for features such as roof windows and well above typical eye level even of people above average height.
  - The development will not have any detrimental effect on the wider setting of the site or the character of the area.

### **Response for Applicant**

16. The applicant (through an agent) has submitted comments in response to the appeal, summarised as follows:
- During construction in implementation of the previous approved application (Reference P/2020/0090) the applicant requested a revised application to demolish an existing structure and extend the first floor balcony. A 1800mm high privacy screen was introduced to address loss of privacy to the neighbouring property.
  - The previously approved balcony would have protruded from the northern structure by 600mm.<sup>7</sup> The revised scheme has increased the size of the balcony but will resolve and enhance the loss of privacy to the northern property.<sup>8</sup> The new balcony will affect the appellant much less than the previous approved scheme.
  - The development is in a built-up area where the delivery of quality dwellings is needed to deliver the shortfall in housing.
  - Users of the balcony would be most likely to be facing towards the south, which is the most exposed area to enjoy views from.

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<sup>7</sup> I have used the applicant's agent's wording here, but the agent is apparently referring to protrusion beyond a line drawn through the westernmost edge of what was an existing extension structure located north of the proposed balcony, not to protrusion "from" this northern structure.

<sup>8</sup> I report here what the applicant's agent has contended, but I think the agent intended to argue that privacy would be enhanced, not that the loss of privacy would be enhanced.

17. The applicant has also submitted drawings. The drawings (listed as "Appeal further comments – applicant further sketch" in the Department's planning applications register) are titled: "Further Information – Revised Balcony to First Floor" and show "Previous First Floor - Balcony" and "Revised First Floor – Balcony".
18. In a letter which apparently accompanied the application, the firm of architectural designers acting for the applicant described the changes proposed compared with the earlier approved proposal (P/2020/0090).

### **Other Representations**

19. Two written representations objecting to the proposal were submitted at application stage by three people - one representation is by Ms V Bell (the appellant), the other is by Mr D Aoutin on behalf of him and his wife as occupiers of Number 48 Roseville Street. The representations oppose the development with particular reference to the revised balcony, the potential for loss of privacy and the risk of noise and disturbance being caused to nearby residents.

### **Assessment and Conclusions**

#### **Procedural Matters – Plans**

20. Several of the plans relating to this proposal are listed in the planning register with titles different from the actual titles. For example, one of the items listed in the register is: "Grouped Plan Superseded Proposed Floor Plan & Elevation RevA". In fact this plan is titled: "Proposed Revised Floor Plan & Elevation" (Drawing Number 110 Rev B). Another set of drawings is listed in the register as: "Grouped Plan Proposed Ground First & Second Floor Plans South & East Elevations 110". In fact the drawings (Drawing Number 110) are titled: "Proposed Revised Floor Plan & Elevation". Thus there are two sets of drawings with the same title including the word "Revised" but with different numbers: 110 and 110 Rev B. I doubt that July 2020 is the correct date for all of the plans so dated.
21. In the decision notice granting the planning permission which has been suspended by the appeal, two drawings are named as approved. One is a location plan. The other is: "Proposed Floor Plan & Elevation RevB" (ie without the word "Revised").<sup>9</sup> These same two plans are named in the officer's report which led to the decision notice.
22. Standard Condition B in the decision notice stated: "The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission". However, I have taken it that Drawing 110 Rev B titled "Proposed Revised Floor Plan & Elevation" shows what was proposed for the application now subject to this appeal, even though the planning authority's decision notice named a different plan.

#### **Other Procedural Matters**

23. The planning authority treated application reference 1571 as a revised proposal with an "RP" reference number. That approach may have caused a

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<sup>9</sup> Under the heading "For your Information" this notice states: "The following plans have been approved: Location Plan. Proposed Floor Plan & Elevation RevB".

misunderstanding. In her email responding to my questions, the applicant's agent wrote: "The retrospective application....is to alter elements of the approved application". That is only partly correct – the "revised proposal" application was a fresh application seeking planning permission for the development as a whole. To explain this point another way: where two planning permissions exist covering the same site, they do not allow a developer to choose parts of one and parts of the other - the developer can only lawfully implement one or the other.

24. In any event the applicant's agent appears to accept that the conversion work which has been carried out at the appeal site is unauthorised, and states that this happened because "a contractor was unaware of" the 28 day period allowed for a possible appeal against planning permission. This explanation appears to be an attempt to blame a contractor, as if the contractor was acting independently without instructions from the applicant.
25. In response to my question asking whether occupiers have been made aware that the dwellings at the appeal property do not have planning permission, the answer given was that the tenants are "aware of the situation with the retrospective application". From that answer, I am uncertain whether occupiers are aware that the dwellings at the appeal property do not have planning permission.
26. At the time of writing this report, anybody looking at documents on the planning register as published online could find what appears to be an extant planning permission dated 11 February 2021, granted in response to application reference RP/2020/1571. The permission lists "approved plans", and the only cautionary note on it warns of the possible need to obtain other consents (such as Building Permission). There is no warning on the permission notice of any time period for possible appeals. Some people might therefore believe that the development was authorised; but in this particular case I think all those directly involved must have known that they were taking a risk by carrying out unauthorised development.

#### **Errors and Inconsistencies in Application**

27. As I established during my inspection and was agreed by all parties, a number of drawings are incorrect. The drawing labelled "Proposed Revised Floor Plan & Elevation" shows what is claimed to be "Proposed Side Elevation – North". This drawing appears to depict a proposed *south* elevation. On another sheet of drawings, titled "Further Information – Revised Balcony to First Floor"<sup>10</sup>, there are two drawings, one labelled "Previous Side Elevation – North" and the other labelled "Revised Side Elevation – North". These drawings appear to depict a previously proposed and revised *south* elevation.
28. Drawing Number 110 Rev B shows in plan form the proposed balcony with an indication of a privacy screen on its north side. The drawing is labelled: "Privacy Screen to North side only at 1,800mm high from balcony level". However, the elevation drawings on the same sheet of drawings show a screen (at lower height) along the other sides of the proposed balcony, not only the north side.
29. Drawing Number 110 Rev B also shows what is labelled as "decorative perforated metal privacy screen white colour finish" on the south side of the proposed balcony. (As mentioned above, this is apparently meant to indicate what was proposed on the north side.) This proposed feature is depicted and labelled as 1,800mm high, with a rectangular shape and level top, that is to say not angled at any corners.

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<sup>10</sup> These drawings are listed in the planning applications website as: Appeal Further Comments – Applicant Further Sketch".

30. On the drawing of the proposed first floor the front-to-back or west-to-east depth of the proposed balcony structure is shown as about 3 metres – slightly less than that to the line labelled “Application to extend balcony” and slightly more than that to the outer edge of the roof structure. The “Revised Side Elevation - North” drawing shows the western screen set back slightly from the outer edge of the structure so that the part of the roof covered with a raised timber surface structure and enclosed by screens would extend about 2.7 metres from the main building.
31. The width (north-to-south) of the proposed balcony as shown on Drawing Number 110 Rev B is shown as about 4.2 metres in the drawing of the proposed first floor and about 4.5 metres in the drawing of the proposed rear (west) elevation. The unnumbered drawing labelled “Revised First Floor – Balcony” depicts a width of about 4.2 metres. (These dimensions are between the line marked “Application to extend balcony” on the south side and the outside edge of the proposed privacy screen shown on the north side.)
32. Three main points arise from the above. First, there are inconsistencies between what appear to have been the application plans and the plans referred to in the permission which would have been granted in the absence of any appeal. Second, even setting aside the above point, because of the discrepancies within the application plans, it is impossible to carry out a development scheme in accordance with the application, since compliance with one drawing would mean not complying with another.
33. Third, even setting aside their incorrect labelling, the application drawings purporting to show the revised proposal do not depict what has been built. One reason for the dimensional differences mentioned above appears to be that the application drawings show a raised timber flooring structure placed above the main structural roof of the extension but not covering the whole flat roof and set well back from the edges of the roof; whereas the timber flooring structure as built covers virtually the whole of the southern part of the flat roof which extends from the main building, as can be seen in the photograph on the third page of the appellant’s “comment document”.
34. Another difference concerns the shape of the balustrade or screen on the north side of the balcony and the materials from which it is made. The description “perforated metal” is vague – it could apply to something with large holes providing clear visibility or to something with very small holes preventing any view. Even so, the structure which I saw, as described in paragraph 12 above, certainly did not accord with the application - it was not made from perforated metal, did not have a white colour finish, and did not have the rectangular shape of the structure depicted in the application.
35. It seems to me that the application should have been returned to the applicant or agent for correction before being considered. It is now too late to do that, as the proposal has been through all of the procedures leading to the appeal on the basis of the application as submitted. Yet as the situation now stands, the proposed development as depicted in the application is not capable of being implemented in conformity with the plans.
36. One way in which this matter can be tested is to consider whether, if planning permission were to be granted, a condition could be imposed to, in effect, change the titles of some of the application drawings. In my view such an approach would be of doubtful legal validity, since conditions cannot be imposed on planning permissions which have the effect of materially changing what was proposed in an application; and a complete reversal of proposed elevations from

north to south would be material. Changing the elevations in that way would also still leave questions about the planning status of the northern length of the balustrade.

37. Until I showed the application plans to those attending the site inspection and sought to check them against the on-site situation, none of the parties involved in this case appear to have noticed the errors relating to the elevations (ie the differences between the plans and what has been built) or realised the problems they cause; and if no appeal had been made, the planning permission which has been suspended because of the appeal would have become finalised. In my view that would have left the whole of the existing development in a kind of limbo, with some people believing it to have been permitted when in fact it would have been unauthorised (and therefore not subject to any condition requiring retention of screening).
38. Neither the Department nor the applicant has commented on whether the existing balustrade or screen on the north side of the balcony complies with the condition in the Department's decision notice. As noted above, it required "an obscure privacy screen....to a height of 1800mm above finished floor level". A problem with this condition is that it could leave room for argument about, for example, the size of any gaps in a screen and whether the obscure glazing itself has to reach 1800 millimetres above the balcony floor level. The existing obscure-glazed part of the existing balustrade or screen is lower than 1800 millimetres – only the metal frame, above a gap, reaches that height, and not for the whole of the structure because of its angled shape at the outer front corner.
39. In my email inviting comments, I referred to a court judgment (*Sage v Secretary of State for Environment, Transport & the Regions [2003], UKHL 22*) as applicable in Jersey in the absence of any contrary judgment by a Jersey court. A key finding of this judgment is that if a building operation is not carried out, both internally and externally, fully in accordance with the permission, the whole operation is unlawful. No comments were made about this judgment in the responses to my email.

#### **Planning Merits Issues**

40. I now consider the other issues raised by the appeal assuming that you may be prepared to "rescue" the application by retrospectively amending it.
41. There is some force in the argument for the applicant that the presence of a 1.8 metre high screen along the north side of the balcony, with lower screens to the west and south, would probably encourage people on the balcony to look more to the west and south than to the north or north-north-west. The scene southwards and south-westwards is also more open than it is to the north. The present occupier or occupiers of the first floor flat at the appeal property may well also have no particular intention of looking northwards. But future occupiers or visitors may behave differently, and I can understand why the development has caused the feeling of reduced privacy in the bedroom of the appellant's dwelling. In my view a situation which has made possible a direct line of level sight from what is in effect a warm-weather extension to a living room and kitchen of one dwelling to the bedroom window of another dwelling at a distance of as little as 11 metres is unsatisfactory. Privacy could be helped with net curtaining or blinds in the bedroom, but I think that would be an unreasonable imposition.
42. Part of the applicant's case is that the proposal subject to the current appeal would provide better screening than would have happened under a previous planning permission, which allowed a balcony about 1.8-1.9 metre deep without the removal of a first floor projection a little to the north and without the



screening now proposed. That is a point to consider; but the decision on this appeal has to be made on its own merits. Comparisons with a previous proposal or permission are relevant but not of compelling weight.

43. In terms of planning policy, what has to be assessed is not just whether the effect on the amenity of the appellant's dwelling would be detrimental, but whether it would be unreasonably detrimental. In making this judgment, it is necessary to take into account that although in some situations a window-to-window distance of 11 metres between different dwellings might be acceptable, the view from the balcony is not confined in the way that a view from a window would normally be. On balance, I consider that the effect would be unreasonably detrimental, so the development conflicts with Island Plan Policy GD1.
44. That said, I do not accept all of the appellant's case. Subject to details about the precise nature of the proposed "perforated metal" which could potentially be controlled by conditions, the balustrade structure on the north side of the balcony as shown in the application<sup>11</sup> with its 1.8 metre (or about 5 feet 11 inches) height above the balcony floor would have provided adequate screening, especially bearing in mind that normal eye height in adult humans is below total body height and that the higher the screen, the greater would be its intrusive visual impact. If the western length of balustrade were to be re-positioned to prevent the outer part of the balcony being used for normal balcony purposes (which could be controlled by a condition, allowing access only for maintenance or repair purposes), the view towards the appellant's bedroom could be made sufficiently restricted as would not unreasonably harm privacy or residential amenity.
45. From the checks I made during my inspection I judge that for this to be achieved the outer (western) balustrade would have to be positioned no more than 1.9 metres from the wall of the main building. (Coincidentally, this is about the same dimension as the balcony originally permitted under permission P/2020/0090.) The reduction in usable area of the balcony would also help to reduce the number of people who could normally gather on it, thereby helping to reduce the possibility of noise causing disturbance to neighbouring residents. Whether the existing screening along the balcony's north side, with its gaps and obscure glazing height of 1.7 metres (excluding the top gap and frame, and excluding the angled outer top corner), is adequate is in my judgment marginal; I judge that it might just be adequate if the usable size of the balcony were reduced by repositioning the western length of balustrade in the way just described.
46. The objections by the occupiers of Number 48 Roseville Street refer to loss of privacy in their garden and to noise arising from the use of the balcony at the appeal site. As far as I could tell from my inspection, any view of Number 48 or its garden from the balcony would be quite limited. I can see how – perhaps depending on weather conditions and wind direction - noise from the balcony could annoy local residents; but reducing the usable size of the balcony, preventing users from being near its outer edge and keeping them behind a full-depth screen on the north side should sufficiently reduce the likelihood of that happening as to be perhaps detrimental but not unreasonably detrimental to amenity. A minor benefit would also be slightly increasing the distance between balcony users and the flats at Villa Anniri.

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<sup>11</sup> Note: I am referring here to the structure shown in the application, not the structure in place at the time of my inspection.

## **Conclusion**

47. I conclude that the appeal should succeed and that the application should be refused for the essentially legal reasons explained above, using the powers available to you under Article 116(2)(d) of the Planning and Building (Jersey) Law 2002, in effect treating the application as if it had been made to you in the first place. There are too many errors and inconsistencies in the application for it to be properly determined, and at this stage, after it has been through all the application and appeal processes, the application cannot be returned to the applicant to be corrected and changed. In summary, the application was such a procedural and legal mess that it was not validly made.

## **Possible Alternatives and Possible Conditions**

48. It is standard practice to make suggestions for possible conditions for imposition if you were minded to grant planning permission. The difficulty in this case is that I do not know whether you will take a different view from mine about the validity of the application or if so, whether you will look to treat it as prospective (seeking permission for what is described in the application) or retrospective (seeking permission for what has been built). I have tried to allow for these alternatives in commenting on possible conditions below.
49. As is the case with all retrospective applications where conditions require approval of something and for resultant steps to be taken, the wording of conditions has to allow for the possibility that a developer may choose to do nothing, leaving the development in place. Therefore the possible need for a sanction requiring the whole development to be removed or reversed has to be considered if a conditional permission were to be retrospective.
50. If my recommendation is not accepted and you decide that planning permission should be granted, it would be necessary to decide, and to make clear in the permission, whether you would be permitting the development described in the application, or the development which has been carried out. If treated as a normal prospective application for development as described in the application, I suggest the following condition, in addition to standard conditions A and B covering commencement within three years and implementation entirely in accordance with approved details.
1. No development shall be begun until details of the proposed perforated metal privacy screen to be placed along the north side of the proposed balcony have been submitted to the planning authority for approval and have been approved. The development shall not be carried out other than in accordance with the approved details. All the screening forming part of the development shall be permanently retained in place.
51. If you are prepared to take the view that the proposed development as depicted in the application can be modified by conditions to make it match what has been constructed, but if you also consider that the existing screen/balustrade structure on the north side of the balcony should be replaced by a structure similar to that existing but with obscured glazing extending to 1.8 metres in height above the balcony floor (ie higher than the 1.7 metre high top of the existing obscured glazing panels and similar to the height of the metal screen depicted in the application), standard conditions A and B would not be relevant. (There would be no point in applying a three year start time limit on development already carried out, and no point in requiring the development to be carried out entirely in accordance with the plans, drawings and other details forming part of the permission whilst at the same time permitting development not complying with those conditions.) In those circumstances I suggest the following conditions:

1. Notwithstanding the details shown in the submitted application plans, the drawings showing "Proposed Side Elevation – North" and "Revised Side Elevation – North" shall be interpreted as if they showed the proposed and revised south elevation; and the drawing showing "Revised First Floor – Balcony" labelled "Privacy screen to north side only, at 1,800mm high from balcony level" shall be interpreted as if the word "only" in this label is deleted and on the basis that screening as shown in other drawings would also be erected to the west and south of the proposed balcony.
  - 2a Notwithstanding the part of the application relating to the proposed installation of a perforated metal privacy screen along the north side of the proposed balcony, details of an alternative structure with obscure glazed screening to a height of 1.8 metre above the balcony floor (excluding any frame or supporting structure) shall be submitted to the planning authority for approval within 1 month of the date of this permission. The structure as approved shall be installed within 2 months of approval and then permanently retained in position.
  - 2b If no details are submitted within the 1 month time period, or if submitted details are not approved, access to the balcony at the first floor of the property shall be permanently closed off, the flooring structure shall be removed within 2 months of the planning authority's decision to refuse approval of the details, and the resulting flat roof area shall not be used for any domestic, recreational or leisure purpose.
52. If you are prepared to consider granting planning permission for what has been constructed subject to the western length of balustrade being re-positioned as described in paragraph 39 above, I suggest that the following three conditions could be used instead of Conditions 2a and 2b above<sup>12</sup>:
1. Notwithstanding the proposal shown in the application to install a perforated metal privacy screen along the north side of the proposed balcony, the structure at this location which was present on the site on 22 June 2021 consisting of obscure glazed panels reaching a height of 1.7 metres above the balcony floor held in a metal frame reaching a height of 1.8 metres above the balcony floor shall be retained.
  2. Within 2 months of the date of this permission, the outer (western) length of balustrade parallel to the wall of the main building shall be re-positioned so that it is no more than 1.9 metres from the main wall of the building and shall be so retained.
  3. The area of balcony or flat roof outside the re-positioned balustrade shall not be used or accessed for any purpose other than for maintenance or repair of the building.
53. Finally, if planning permission were to be granted the decision notice should not repeat the part of the original decision specifying the titles of the approved plans, Depending on your decision, it might be appropriate to specify (in addition to the location plan) Drawing Number 110 Rev B titled "Proposed Revised Floor Plan & Elevation", or whatever plans you decide would be the correct ones in conjunction with the set of conditions you decide to impose.

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<sup>12</sup> In these circumstances re-numbering would obviously be required as appropriate, eg to combine Condition 1 in paragraph 45 with Conditions 1-3 in paragraph 46.

**Recommendation**

54. I recommend that the appeal be allowed and that planning permission be refused, for the reason that the application is invalid and cannot be properly determined.

*G F Self*

Inspector

15 July 2021