



Planning and Building (Jersey) Law 2002

Article 115(5)

Report to the Minister for Planning and Environment

by

Jonathan G King BA(Hons) DipTP MRTPI

an Inspector appointed by the Judicial Greffe.

Appeal

by

A Burnett Esq

Site at Balmoral Apartments, Clarendon Road, St Helier, JE2 3YW

Written representations case

Accompanied Site Inspection carried out on 7th January 2019

Department of the Environment Reference: P/2018/0812

Site at Balmoral Apartments, Clarendon Road, St Helier, JE2 3YW

- The appeal is made under Article 108 of the Law against a decision to refuse planning permission under Article 19.
 - The appeal is made by Spellbound Holdings Limited.
 - The application Ref P/2018/0812, received on 8th June 2018, was refused by the Planning Committee by notice dated 23rd October 2018.
 - The development is described on the refusal form as: to create one 3-bed unit with balcony to south elevation.
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Summary of Recommendations

1. I **recommend** that the appeal should be **dismissed**. However, in the event that the Minister is minded to allow it, planning permission should be granted subject to the conditions set out in the Annex to this report.
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The scope of the report

2. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendation of this report, unless he is satisfied that that there are reasons not to do so. The Minister may: (a) allow the appeal in full or in part; (b) refer the appeal back to the Inspector for further consideration of such issues as he may specify; (c) dismiss the appeal; and (d) reverse or vary any part of the decision-maker's decision. If the Minister does not give effect to the recommendation(s) of this report, notice of the decision shall include full reasons.
3. The purpose of this report is to provide the Minister with sufficient information to enable him to determine the appeal. It focuses principally on the matters raised in the appellant's grounds of appeal. However, other matters are also addressed where these are material to the determination, including in relation to the imposition of conditions, and in order to provide wider context.

Background and description of the proposals

4. The Balmoral Apartments ("the Apartments") were converted from a former hotel following the grant of planning permission in 2008. They front Clarendon Road, behind a small car parking area. To the rear they have been substantially extended creating a roughly L-shaped floor plan, with a garden area occupying the remainder of the site. The original front part is of 4-storey height, but the rear extensions are mixed 2 and 3 storey. The detailed layout is complex and the floor levels do not all relate directly to those in the front part.
5. To both sides and the rear, the Apartments are surrounded by existing residential development. Set back from Clarendon Road and level with its façade is St Hilda Court, a 2 - 3 storey residential building, which extends to the north-west to a side street, Palmyra Road. Attached to the rear of that building and taking access from the street is a more modern 2-storey extension shown on the submitted plans as "The Mews", which is separated from the side of the rear extensions to the Apartments by a small courtyard used for car parking. Beyond, and abutting the

northerly corner of the rear extensions of the Apartments is Balmoral Mews, a 3-storey residential building with a roof terrace that serves a town house within it. Behind the rear boundary of the Apartments, marked by a stone wall, lies another apartment block – St Helier Court, having 4 storeys, and a detached house, La Cachette.

6. Planning applications to build two new apartments above the most rearward, 3-storey element of the extensions were made in 2016 and 2017. The first was withdrawn and the second refused. Following pre-application advice and discussions with Departmental officers, the application which is the subject of this appeal was submitted. It would create a single 3-bedroom apartment within a new floor to be constructed above the extension block. In common with the floors below, it would have a balcony facing the garden to the south east and a blank wall on its other side, set back around 2 metres from the line of the existing wall. At the north-eastern end a spiral fire escape would be extended to serve the apartment, while a projecting tank room at the rear of the front part of the Apartments would be removed in order to permit access.

The reasons for refusal

7. The reasons for refusal are:

1. *The proposed development, by virtue of scale, mass and height, would represent a cramped and unsatisfactory overdevelopment of this relatively small site that would be harmful to the character and appearance of the surrounding area. As a consequence the proposed scheme fails to achieve a high standard of design and conflicts with Policies SP 3, GD 1, H 6, SP 7 and GD 7 of the Adopted Island Plan 2011 (Revised 2014).*
2. *By virtue of its scale, height, proximity and design, namely the blank elevation to the north west and the elevation to the north-east, the proposal would result in overbearing of the neighbouring properties. This would be contrary to Policy SP 7, GD 1 and GD 7 of the Adopted Island Plan 2011 (Revised 2014).*
3. *By virtue of its design and proximity to neighbours, the internal layout of the proposed unit would result in poor living conditions for future occupiers. This would be contrary to Policy H 6 of the adopted Island Plan 2011 (Revised 2014).*
4. *The submitted site plan fails to show an increase in the provision of car parking or cycle storage to promote alternative means of travel. Accordingly, the application fails to demonstrate that the proposal will not lead to unacceptable problems of highway safety. As such, the proposal conflicts with Policy SP 6, GD 1, TT 4 of the adopted Island Plan 2011 (Revised 2014).*

The grounds of appeal

8. The appellant's grounds of appeal, as set out on the appeal form, are:

- The design complies with key Policy tests under Policy GD 1(3), namely proposals must not unreasonably harm amenities of neighbouring users.
- The sun path information provided demonstrated clearly any sunlight or

shadowing impacts would be limited.

- The objectors' letters / comments are not supported by any evidence.
- A car parking space was included in the proposals together with cycle storage.

Main Issues

9. From my assessment of the papers submitted by the appellant and the Department, and from what I noted during the site visit, I consider that there are four main issues in this case, relating broadly to the reasons for refusal:
- (a) the effect of the proposed development on the character and appearance of the locality, having regard to the quality of its design;*
 - (b) the effect of the development on the living conditions of neighbouring occupiers;*
 - (c) whether the proposed accommodation would provide satisfactory living conditions for future occupiers; and*
 - (d) whether the proposed development would make appropriate provision for the parking of cars and cycles.*

Reasons

The principle of development

10. The site is in the Main Urban Settlement of St Helier identified in the Island Plan, where Policy SP 1 *Spatial Strategy* indicates that development will be concentrated and where Policy H 6 *Housing development within the Built-up Area* says that proposals for new dwellings will be permitted provided that they are in accordance with the required standards for housing. In general terms, there is no dispute between the parties that, as it is in a sustainable location, there is no in-principle objection to residential development in this area.

Issue (a) Character and appearance

11. Policy SP 7 *Better by Design* requires all development to be of high design quality that maintains and enhances the character and appearance of the area of Jersey in which it is located. Amongst other things, the following components of development will be assessed to ensure that the development makes a positive contribution to a number of urban design objectives: elevational treatment and form; density; scale, height and massing; and architectural detail. The policy provides the strategic basis for Policy GD 7 *Design Quality*, which similarly seeks high quality design in all development that respects, conserves and contributes positively to the diversity and distinctiveness of the built context. It should respond appropriately to a number of criteria, of which the following are particularly relevant: the relationship of the development to existing buildings and settlement character. Criterion (8), of Policy GD 1 *General development considerations* also requires development to be of a high quality of design, in accord with Policies SP 7 and GD 7.

12. With respect to the density of development, Policy SP 3 *Sequential approach to development* looks to support a sustainable pattern of development and the more effective use of land, energy and buildings. The supporting text says that the approach can ensure that maximum benefits are derived from existing infrastructure; that already developed land and buildings are most efficiently and effectively used, and that the need for travel is minimised. The policy provides the background to Policy H 6, which amongst other things gives general support to extensions or alterations to existing dwellings provided that it is in accordance with adopted standards for housing set out in Supplementary Planning Guidance (SPG).
13. This is consistent with the thrust of Policy SP 2 *Efficient use of resources*, the supporting text to which says that, if done well, imaginative design and layout of new development can produce a higher density of development – representing a more efficient use of land – without compromising the quality of the local environment. In locations with good access to amenities and services, it should be possible to ensure a more efficient use of land, without compromising local character or design quality. The policy itself states that new development should secure the highest viable resource efficiency, in terms of (amongst other things) the re-use of existing land and the density of development.
14. In a similar vein, Policy GD 3 *Density of development* says that, in order to contribute towards a more sustainable approach to the development and redevelopment of land, the Minister will require that the highest reasonable density is achieved for all developments, commensurate with good design, adequate amenity space and parking, and without unreasonable impact on adjoining properties. The same approach is taken in the introductory text to Policy SP 6 *Reducing dependence on the car*.
15. The first reason for refusal refers to the scale, mass and height of the proposed development and asserts that it would be cramped. I acknowledge that the area is already heavily built-up and a number of the buildings in the immediate vicinity, including the extensions to the Apartments, are close together. However, the development would not extend the footprint of what is presently there; and, though it would create a fourth floor, the resultant building would be broadly comparable in height both to the front part of the Apartments and to St Helier Court. In that context, and having regard to the support of the Island Plan for increased density of development, especially in the Built-Up Area, I conclude, first, that the additional apartment would not represent cramped overdevelopment in the limited sense of its scale and density.
16. However, the Island Plan's support for higher densities is not unconstrained: it should be commensurate with good design, adequate amenity space and parking, and without unreasonable impact on adjoining properties. I shall therefore proceed to consider these other matters before concluding on the acceptability of the proposed development overall.
17. With respect to design, the rear extensions to the Apartments reflect their mid twentieth century origins: they are flat roofed and in my view are of little or no intrinsic architectural merit. In terms of appearance, the existing elevation facing south-east, towards the garden, is dominated by the upper floor balconies extending along almost its whole length. The proposed apartment would in most respects replicate the design, which I regard that as broadly acceptable in context.

Moreover, situated on backland and substantially hemmed in by other residential development, many of similar or greater height, it would have the advantage of not being readily visible from public places.

18. On the other side, the existing elevation comprises a blank rendered wall 3 storeys high (approximately 8 metres). Together with a similar wall to the Balmoral Mews building, it serves to enclose a small car parking area to the rear of The Mews and St Hilda's Court. In my opinion, the wall is unsightly and, having no visual relief, tends to accentuate the height and mass of the building. The wall of the proposed apartment, 2.8 metres in height, though set back a little from the existing wall, would increase the overall impression of height; and, also being blank, would further emphasise its mass. However, as with the other main elevation, neither its size nor appearance would be readily experienced in public views. I conclude secondly that, owing to the degree of enclosure, the design of the development would not significantly harm the character and appearance of the surrounding streets.
19. Nonetheless, even though the effect on the public realm would be small, the tall, blank elevation would form a major part of the setting of St Hilda's Court and The Mews, together with the car park. In that particular context I do agree with the Department that the development would fail to achieve a high standard of design by reference to Policies SP 7, GD 1 and GD 7. It would have a very poor physical and visual relationship with those properties; and, rather than contributing positively to the diversity and distinctiveness of the built context or to any urban design objectives, it would serve only to perpetuate and aggravate the effects of an existing piece of very unsatisfactory design.
20. The flat roof of Balmoral Mews abuts and is roughly at the same height as that of the extension to the Apartments on which the proposed development would be constructed. It serves as a roof terrace for the dwelling below, surrounded by a parapet and glazed screen. The rear corner of the new apartment (the closest part of the development) would be located in the region of only 2 metres from the parapet. On my site visit I did not go on to the terrace, but I have seen photographs provided by the occupier of the property and I was able to stand on the roof of the Apartments in order to appreciate the situation. In my judgment, owing to its proximity, the proposed apartment would not have a satisfactory physical or visual relationship with the roof terrace. It is to that extent it may be regarded as cramped.
21. I conclude under this issue that although the development would not significantly harm the character or appearance of the wider surrounding area, it would nonetheless be cramped by reference to its immediate surroundings and fail to meet the policy requirements for good design.

Issue (b) The amenity of neighbours

22. Policy GD 1 sets out a number of criteria which apply to all development. Of greatest relevance to the present case, Section 3 says that the amenity of neighbouring uses, including the living conditions for nearby residents, should not be unreasonably harmed. Amongst other things, this includes any unreasonable impact on privacy and light levels that owners and occupiers might expect to enjoy.

23. With respect to privacy, all of the windows of the proposed apartment, together with the balcony, would face towards the south-east, away from surrounding development other than "La Cachette". That dwelling does not have any windows in its facing elevation, so there would be no opportunity for overlooking into the house itself. However, there would be views obtainable into its rear garden. The view would be similar to that obtainable from the balconies below, but from a higher level.
24. Views towards St Helier Court, which has numerous windows on its facing side, would be limited to those available from the very end of the balcony, and would again be similar to those obtainable from the balconies below. It would, however, be possible to prevent overlooking if a solid or obscure glazed end panel of suitable height were to be installed.
25. Balmoral Mews would be the closest neighbouring building to the proposed apartment. I have already considered the relationship between the two in design terms; and I make a distinction between that and the potential for impact on amenity. As there would be no windows or balconies on the elevations facing the terrace, there would be no opportunity for any overlooking. Close-range views would, however, be possible from the extended fire escape if that were to be used for general access. The appellant argues that this would be unlikely, but nonetheless would be prepared to install a screen on the fire escape landing to overcome the potential problem; and this could be ensured by way of condition attached to any planning permission granted.
26. It is a recognised dictum in planning that occupiers of buildings do not have a right to a view. Nonetheless, they are entitled to enjoy their homes without unreasonable harm to their amenities and living conditions. While I recognise that the outlook from the roof terrace would be substantially altered, I do not consider that the proposed apartment would be so tall or so imposing as to cause significant harm by reason of overbearing impact or shading. However, having regard to my conclusion under the previous issue, the occupiers would be affected by the incongruity of the design.
27. Overall, I conclude that the proposed apartment would not significantly increase the potential for loss of privacy for the occupiers of neighbouring properties. There would be some limited potential, but that would not be significantly greater than under present circumstances. As the buildings are in a densely developed urban location, a degree of overlooking, while naturally unwelcome, is often unavoidable.
28. Of rather greater concern to me is the likely effect of the development on the occupiers of The Mews and St Hilda's Court by reason of raising the height of the back wall of the extensions to the Apartments. The existing wall already creates a visually oppressive rear outlook for the occupiers of these properties, and raising the height of the building would only increase the likelihood of adding to the physical and visual dominance and overbearing impact on them. On my site visit I found it extremely useful that the appellant had erected a scaffolding framework indicating the outline of the proposed apartment. I was therefore able to obtain a very good impression of its likely height, mass and appearance when viewed from these properties. It would add about 2.8 metres to the overall height of the apartment building, and would be set back from the face of the blank wall by 2

metres, such that not all of it would be visible from ground level. However, I am in no doubt that the additional height, combined with its blank appearance, would significantly increase the impact of the existing wall, making an existing undesirable situation wholly unacceptable.

29. As for the issue of natural light, the application was accompanied by a number of drawings which sought to demonstrate that the proposed development would not significantly affect the levels enjoyed by neighbouring properties. The Department's report notes these, but limits its comments to saying that they are not sufficient to show that the proposed development would not represent overdevelopment, be overbearing and visually unattractive. No conclusions were drawn concerning the matter of lighting, and the reasons for refusal do not mention the issue.
30. However, the appellant's statement of case asserts that the submitted sunlight sections were designed in accordance with the document BRE (Building Research Establishment) 209 *Site layout planning for daylight and sunlight- a guide to good practice*. This does not have the status of formal policy or SPG, but it provides useful assistance in addressing the issue. The appellant says that the exercise was to "virtually eliminate any actual or perceived sunlight / daylight obstructions during the winter mid-morning – the only time of day / year this could occur", adding that "the attraction of the small area in front of the Mews facing the car park as a sun trap, viewing the sky overhead would not be unduly undermined or diminished in the presence of a proposed development". I confess to not having understood these statements, and I have therefore sought clarification from the appellant.
31. The response provided little clarity. Indeed, it would appear that a superseded version of BRE 209 was being used and, even then, the wrong parts had been referred to. It refers to a Figure 12 and angles of 25 and 43 degrees measured up from the horizontal as an aid to assessing the effects of shading. However, that Figure relates not to assessing the effect of a development on an existing building, but to safeguarding future development of adjoining land; and on the application plans (Drawings 20c and 24) the relevant 25 degree line has been drawn from an incorrect position: a point part way between the ground and first floor windows of the neighbouring properties being assessed (The Mews and St Helier Court) rather than from the centre of the lowest window, as advised in BRE 209. In short, the wrong approach had been taken. Moreover, no reference at all was made to the multi-factor "Decision Chart" for diffuse daylight in existing buildings (Figure 20 in the Second edition of BRE 209 and accompanying summary), which provides a step-by-step approach to deciding whether daylighting is likely to be significantly affected. I conclude that I can have no confidence in the appellant's material relating to the effect of the proposed building on light; and I accord it little weight in my consideration.
32. In commenting on the appellant's submissions, the Department has provided revised drawings which show that for both neighbouring buildings the existing relevant part of the Balmoral Apartments already breaches the relevant 25 degree line when measured from the centre of the ground floor windows. In my judgment, it is possible that the impact on light received by some of the windows in the neighbouring buildings could be greater once the proposed additional floor is taken into account. However, no further calculations have been carried out by

reference to the "Decision Chart" so, from the evidence before me I am unable to conclude firmly whether any such effect would be significant. Nonetheless, it is reasonable to conclude that any reduction of light would tend to emphasise the overbearing impact of the existing blank wall and the proposed extension.

33. For these reasons I conclude that the proposed development would give rise to an unacceptable impact on the living conditions of some neighbouring occupiers, contrary to the provisions of Policy GD 1.

Issue (c) Living conditions of occupiers of the proposed apartment

34. According to the appellant, the proposed apartment is aimed at the high-end unlicensed rental market. It is claimed to be designed to cater for "high-end professionals who provide significant short-term specialist services to the local finance industry", many of whom may spend weekends off the Island. It would include a combined living room / kitchen, three bedrooms, each with en-suite bathrooms, and a separate wc. All of the principal rooms would be accessed from a long (approximately 11.5 metres) corridor running along the north-western (blank) wall; and each would have French windows opening on to a balcony on the eastern side. It is an unusual arrangement. In particular the living room / kitchen is small in relative terms and, as acknowledged by the appellant, unlikely to be suitable for family use.
35. The living room / kitchen would have a floor area of 31.7 sq metres, which exceeds the minimum standards set out in SPG – Policy Note 6 *A Minimum Specification for New Housing Developments* 1994 (revised 2009) for 3-bedroom, 4-person and 3 bedroom 5-person dwellings, but not for a 3 bedroom, 6-person dwelling. As all three bedrooms exceed the minimum size for a main or first double bedroom, in theory the apartment could accommodate 6 people. However, I consider that to be unlikely. I therefore agree with the Department that the apartment would meet these standards. However, I note that no provision has been made for any internal storage, which the SPG requires (2 or 2.5 square metres). The standards allow any excess over the minimum space requirements to be counted towards general storage space though I would regard the absence of dedicated storage space to be less than ideal. Reference is made by the appellant to external storage space being provided in the communal basement once a redundant boiler has been removed. That may meet the standard for such space, but would be remote from the apartment and may be unsuitable for the storage of everyday items. However it would be possible to require its provision by way of a condition attached to any permission granted. This has been agreed between the main parties. The Department draws attention to the corridor which would not benefit from any natural light. It is certainly a poor design but, as the appellant says, could be simply rectified by the insertion of rooflights.
36. Adequate external amenity space would be provided by way of the balcony and the existing shared garden area, though access to the latter would be inconvenient. There could be the temptation to reach the garden, and the communal laundry area, by means of the fire escape that exits from the kitchen / living area, which is undesirable.
37. The Island Plan includes policies which promote good design (Policies SP 6 and GD 7), but these concentrate on external design rather than the provision of high

quality living conditions. I disagree with the Department's view that the provisions of Policy H 6 would be breached. Overall, I consider that the design of the apartment broadly meets the SPG standards and may be suitable for the target market. I do not believe that it represents high quality design, but it would nonetheless provide adequate living conditions; and there is insufficient reason to dismiss the appeal by reference to this issue.

Issue (d) Parking

38. Consistent with the principle of promoting development within urban areas at locations highly accessible by mean other than the private car, the Island Plan focuses development within the existing built-up urban area, by re-using brownfield sites and by encouraging higher density development in appropriate circumstances. By these means, there is the expectation that modes of transport other than the car will become more viable. This approach is expressed through Policies SP 6 *Reducing dependence on the private car* and TT 4 *Cycle parking*. The first looks to all development to reduce dependence on the car by providing for more environmentally-friendly modes; and the second requires cycle parking provision in line with adopted standards in all new developments in order to encourage cycle use.
39. Policy SP 6 sets out 6 numbered requirements. In my view, the present proposal meets them in most respects. Briefly, it would: (1 & 3) be well-related to the primary road network and accessible to pedestrian, cycle and public transport networks; (2 & 6) as a development of one apartment, it would not give rise to an unacceptable increase in vehicular traffic, air pollution / deterioration in air quality or parking on the public highway; and (5) the existing area provides a reasonably safe environment for pedestrians and cyclists and there would be no necessity for additional measures to control traffic speed.
40. The last criterion (4) of Policy SP 6 requires development to make "appropriate provision" for car and cycle parking, but does not elaborate. In this case, the 16 existing apartments are presently provided with 12 vehicle parking spaces located to the front of the building, but there is no designated cycle storage. The submitted plans do not show any additional provision, but a drawing (21B) submitted in the context of the appeal for illustrative purposes, suggests that one additional vehicle space could be provided on land presently occupied by a redundant oil tank, and that cycle parking could also be accommodated. It would be possible to require such provision by means of a condition attached to any permission. This has been agreed by the appellant
41. The Department's officer report, while acknowledging that the standards set out in Planning Policy Note 3 *Parking Guidelines* (PPN3) would require 2 car spaces to be provided for the proposed development, concedes that in view of the location close to the town centre and transport systems, the provision of secure cycle parking would help to offset the shortfall. I regard that as a pragmatic approach, since what may be considered "appropriate" in any particular case will depend substantially on the specific circumstances, and particularly the location. It is also noteworthy that PPN3 is in tension with the sustainability objectives of the Island Plan and to a large extent has become discredited, not least in a number of Inspectors' appeal reports.

42. Against that background, it is surprising to note that the fourth reason for refusal says that the application fails to demonstrate that the proposal will not lead to unacceptable problems of highway safety. It is true that Policy GD 1(5) includes a criterion that development should not lead to unacceptable problems of traffic generation, safety or parking, but neither that policy nor SP 6 or TT 4 also referenced explicitly require applications to provide such a demonstration. In my view it would be unreasonable to require such a demonstration to be made in respect of a single apartment, located in the Built-Up Area. The Department's report contains no evidence to suggest that the development, or its failure to meet PPN3 parking standards, would give rise to any reduction in highway safety. I am satisfied that the one additional space proposed, together with cycle parking, is appropriate for the purposes of Policy SP 6. Indeed, I take the view that to require parking provision strictly in line with PPN3 would encourage the use of the private car in the urban area, contrary to the objectives of the Island Plan, which I note places the use of car at the bottom of the Plan's "hierarchy of travel".

Conclusion

43. Overall, having regard to the relevant policies of the Island Plan, other guidance, and all other matters raised by both main parties and those having made representations, I conclude that the proposed development is not acceptable by reference to my conclusions in respect of my first and second issues. I therefore recommend that the appeal should be dismissed.

Conditions

44. In the event that the Minister decides to allow the appeal, any permission granted should be subject to conditions designed to ensure that the development is carried out appropriately. Recommended conditions, which have been agreed between the appellant and the Department, are set out in the annex to this report
45. In brief: Conditions (A) and (B) are standard conditions required in the interests of certainty, relating to the timescale for commencement and compliance with the approved plans. Condition (1) requires the submission of details of vehicle and cycle parking and storage. Although the application indicated the provision of these facilities, no such details were provided. Condition (2) relates to the provision of a privacy screen to protect the amenities of the occupiers of the roof terrace at Balmoral Court, for the reasons set out in this report.

Overall Conclusion

46. For the reasons given above, I recommend that the appeal should be dismissed, and planning permission refused. However, in the event that the Minister is minded to allow the appeal and grant planning permission, it should be granted subject to the conditions set out in the Annex to this report.

Jonathan G King

Inspector □

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ANNEX

CONDITIONS THAT MAY BE IMPOSED ON THE PLANNING PERMISSION IN THE EVENT THAT THE APPEAL IS ALLOWED

- A. The development shall commence within five years of the date of this decision.
- B. The development hereby permitted shall be carried out in full accordance with the approved plans.
- 1. No part of the development hereby permitted shall be begun until a new ground floor site plan at a scale of no less than 1:100 has been submitted to and agreed in writing by the Growth, Housing and Environment Department to show how the additional parking space is to be provided and the cycle parking and storage for the apartment is to be accommodated on site. Once agreed, the approved details shall be implemented in full prior to the first occupation of the apartment and thereafter retained as such.
- 2. No part of the development hereby permitted shall be occupied until the obscure privacy screen along the North Western side of the landing to the fire escape, shown on the approved drawings, is fixed in place. Once constructed, the screen shall be retained as such thereafter.

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