

<b>2.6 REFERENCE NO - 17/505078/FULL</b>			
<b>APPLICATION PROPOSAL</b> Add privacy screening to east and west sides of existing first floor parapet to overall height of 1.8m and add access doors within two existing window aperture widths, to create rear balcony.			
<b>ADDRESS</b> Bayshore 84 Scarborough Drive Minster-on-sea Sheerness Kent ME12 2NQ			
<b>RECOMMENDATION</b> GRANT subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposed development would not give rise to significant harm to visual or residential amenity that would justify refusal			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Applicant is a member of staff			
<b>WARD</b> Minster Cliffs	<b>PARISH/TOWN</b> Minster-On-Sea	<b>COUNCIL</b>	<b>APPLICANT</b> Mr Tony Potter <b>AGENT</b>
<b>DECISION DUE DATE</b> 07/12/17	<b>PUBLICITY EXPIRY DATE</b> 10/11/17		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/05/1166	Proposed ground and first floor extensions with new roof structure	Approved	8/2/06

**MAIN REPORT**

**1.0 BACKGROUND**

1.01 Members will recall this item being reported to the Planning Committee Meeting on 7<sup>th</sup> December. The Report is attached at Appendix 1. At that Meeting, Members raised concern in respect of overlooking, principally from the doorways proposed to be formed in the rear elevation of the dwelling, and in particular that when standing in the doorway, the occupiers of the dwelling would be able to see over the proposed screening and into the private garden areas of the adjacent dwellings. Members also raised concern regarding the small spaces between the screens where they are proposed to be attached to the supporting posts.

1.02 The resolution of the Planning Committee was to delegate authority to Officers to approve the application, subject to the height of the screening being increased along its full length on both sides of the flat roof to the height of the head of the doorway, and to the spaces between the screens being deleted.

**2.0 UPDATE**

2.01 My officers put the Committee resolution to the applicant and requested amended plans be submitted. The applicant has considered the decision of the Committee and has submitted the letter attached as Appendix 2 in response. In summary, he considers that:

- Overlooking from the doorway would be no worse than from the existing window;
- Screening at the height requested by Members would be oppressive when viewed from within the balcony;
- Constructing the screening without gaps between the panels is impractical and may cause issues with wind resistance;
- The panels at the height proposed would provide adequate privacy to the adjacent dwellings.

### **3.0 APPRAISAL**

3.01 As the decision of the Planning Committee only gave delegated authority to permit the scheme (as amended in accordance with the resolution of the Committee) the application must now be referred back to Members for a decision to be made.

3.02 The previous report sets out that I consider the scheme as submitted acceptable and I concur with the applicant that the overlooking Members are seeking to address would be no worse than the existing, which in itself is not at a level I consider to be materially harmful to the amenities of the occupiers of the adjacent dwellings. In addition, I do not consider it likely that the small spaces in between the screening panels are likely in themselves to give rise to significant overlooking to the neighbours.

3.03 Given the above, my recommendation remains that the application should be granted, for the reasons set out in the previous Committee report.

### **4.0 RECOMMENDATION – GRANT Subject to the following conditions**

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The screening shall be obscure glazed to not less than the equivalent of Pilkington Glass Privacy Level 3 and shall remain as such in perpetuity.

Reason: In the interests of residential amenity.

- 3) The flat roof area shall not be used as a balcony or sitting out area until the approved screening has been erected in full, running the entire length of the flat roof on both its east and west edges and being a height of 1.8 metres above the level of the flat roof. The screening shall be retained in perpetuity.

Reason: In the interests of residential amenity.

- 4) No alterations to the level or height of the flat roof shall take place, and upon completion no further development of the roof of the rear extension, whether permitted by Classes B and C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or not, shall take place.

Reason: In the interests of residential amenity.

**The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



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Planning Committee Report - 7 December 2017

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<b>2.7 REFERENCE NO - 17/505078/FULL</b>			
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<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/05/1166	Proposed ground and first floor extensions with new roof structure	Approved	8/2/06

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 84 Scarborough Drive is a large, detached house, located within the built up area of Minster. Originally a bungalow, the extensions and alterations carried out to the property were granted planning permission under reference SW/05/1166 in early 2006.
- 1.02 The property has a single storey rear extension, with a sunken flat roof with pitched roof elements to each side.
- 1.03 In 2006, it became apparent that the development at the site was not proceeding in accordance with the approved plans. Specifically, the openings above the roof to the single storey extensions had been constructed for doors giving access to this roof area, instead of the approved windows.
- 1.04 Following discussions with Officers, the owner agreed to build the openings in accordance with the approved plans, as it was clear that the use of this roof as a balcony would have significantly overlooked the private amenity spaces of the dwellings to either side. Once this had occurred, the Council secured an Article 4 Direction, removing permitted development rights for alterations to these openings, to give the Council control over any future, similar works, to enable an assessment to be made of the impact of the use of the flat roof as a balcony.

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1.05 As referred to above, the flat roof area, if used as a balcony, without sufficient screening, would give rise to substantial and harmful overlooking of the entire rear gardens of the dwellings either side.

**2.0 PROPOSAL**

2.01 The owner of the property has now applied to replace the existing rear facing windows with doors, and to erect obscuring screens to the east and west sides of the roof, projecting the entire length of the roof, and measuring 1.8 metres high from the finished floor level.

2.02 The existing single storey extension projects a total of 5.85 metres to the rear of no.84, although of this, only 4 metres is a flat roof. It projects 12 metres beyond the rear of no.70 Scarborough Drive, lying just under a metre from the boundary with this dwelling, although the flat roof area lies 3 metres from this boundary, projecting 10 metres to the rear. There is a change in levels between the application site and no.70, with the garden at no70 lying appreciably lower than the dwelling at no.84.

2.03 The rear extension projects by 7.2 metres beyond the rear of no.86 to the east of the application site, lying 6.6 metres from the boundary, although the flat roof area projects by just over 5 metres to the rear of no.86, lying just over 8 metres from this boundary.

**3.0 POLICY AND OTHER CONSIDERATIONS**

3.01 The following Policies of the adopted Local Plan are relevant:

DM14 – General Development Criteria  
DM16 – Alterations and Extensions

3.02 The Council's adopted Supplementary Planning Guidance, "Designing an Extension – A Guide for Householders" is pertinent here.

**4.0 LOCAL REPRESENTATIONS**

4.01 Eight representations have been received from four separate addresses, all raising objection, summarised as follows:

- The purpose of the Article 4 direction is to prevent this development and the application should therefore be refused;
- The screening will give rise to overshadowing;
- The screening is of insufficient height and will not prevent overlooking of the gardens to either side;
- The use of the flat roof as a balcony will give rise to noise and disturbance that will harm the amenity of the neighbours;
- This would amount to a roof terrace rather than a balcony;
- What if the applicant raises the floor level? This would negate the purpose of the screening;
- The applicant is taller than the screening proposed and it will therefore be ineffective;
- The occupier of one of the dwellings to the rear in Southsea Avenue, objects on the basis that the balcony would overlook their daughter's bedroom and result in harmful loss of privacy to them;

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**5.0 CONSULTATIONS**

5.01 Minster on Sea Parish Council support the application, commenting as follows:

*Minster-on-Sea Parish Council's support is subject to the whole screen being totally opaque and permanent with no gaps to completely obviate the possibility of any overlooking. The Site Plan Section - proposed screening -rear east side first floor suggests otherwise.*

**6.0 BACKGROUND PAPERS AND PLANS**

6.01 Application papers, plans and correspondence for application SW/05/1166 and 17/505078/FULL

6.02 Article 4 Direction affecting this site.

**7.0 APPRAISAL**

7.01 Members should be clear that the purpose of an Article 4 Direction is not to seek, in perpetuity, to prevent the development it controls. It is to give the Council control over development which would otherwise not require the express grant of planning permission – development which would otherwise be "permitted development". Contrary to the suggestion of the local residents, it is not therefore the case that the mere presence of the Article 4 direction here requires that planning permission should be refused. It means that the owner of the property must apply for planning permission for the development, which can then be scrutinised by the Council. The decision here must be based on the merits of the development proposed.

7.02 The change from windows to doors on the rear elevation is, in itself, unobjectionable. The key issues here are the impact of the development proposed on residential and visual amenity.

Impact on Visual Amenity

7.03 The proposed screens would appear somewhat obtrusive from the dwellings either side. The application property sits higher than both dwellings, but particularly more so than no.70 Scarborough Drive to the west. In addition, the rear extension lies closer to this boundary than to that of no.86 to the east.

7.04 However – the screens themselves would not be significantly higher than the top of the pitched roof – approximately 0.7 metres in height. I do not consider this to be significant, and whilst I am mindful that this would have some impact on the visual amenities of the neighbours, I do not consider that it would be so severe as to warrant refusal of planning permission. As Members will note, the proposed development lies entirely to the rear of the dwelling, and there would not be a pronounced impact on the character and appearance of the streetscene.

7.05 I conclude that the impact of the proposals on visual amenity is acceptable.

Impact on Residential Amenity

7.06 I do not consider, given the limited height of the panels above the existing roof, or their location to the north of what is a substantial dwelling, that they would give rise to overshadowing or loss of light.

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- 7.07 With regards overlooking, the properties to the rear in Southsea Avenue, lie in excess of 40 metres from the closest part of the proposed balcony area. As such, I do not consider that they would be significantly overlooked.
- 7.08 With regards the comments of the Parish Council, the screening is not shown extending the full length of the roof, as the rearmost part of it is pitched and therefore unusable as a balcony.
- 7.09 The use of the flat roof as a balcony, with the screening proposed, would give views into the rear areas of the neighbours gardens. However – These areas of the gardens are already overlooked by the dwelling at the application site, together with other neighbouring dwellings. As such, there would be no significant increase in overlooking in this regard.
- 7.10 I note the comments of residents in respect of the height of the screening and the height of the applicant. However – the total height of screening proposed is the height of a standard garden fence. It is designed to eliminate casual overlooking and the perception of overlooking.
- 7.11 The issue here is whether the screening should be of such a height that it removes the potential for deliberate and intrusive overlooking. The planning system does not generally take into account matters such as this, and cannot be used in this regard as a means of anticipating the actions of the applicant, particularly where there is no evidence to demonstrate that the applicant wishes to deliberately overlook his neighbours. If a neighbour is determined to overlook the properties next to them, there is little the planning system can do to prevent it, and even if the screening were to be increased in height to 2.5 metres, this would not prevent such an event occurring. In any case, a similar level of overlooking can be achieved simply by looking over one's garden fence. As such, whilst I understand the views of the objectors in this regard, I do not consider it necessary for the screens to be increased in height, nor do I consider this to amount to a reason for refusing planning permission. In my view, the screening proposed is adequate to prevent harmful overlooking into the private gardens of the dwellings either side – nos.70 and 86 Scarborough Drive.
- 7.12 I note the comments made regarding potential noise and disturbance from the use of the balcony. However – such a use is unlikely to give rise to noise levels in excess of what one might expect from a dwelling, and in any case, the screening proposed would provide an amount of acoustic mitigation. A similar level of noise could be generated from the normal use of the garden at the property.
- 7.13 Given the above, I conclude that the use of the balcony with the screening proposed would not give rise to significant harm to residential amenity.

Conditions

- 7.14 I have given consideration to the comments of the Parish Council and the local residents, particularly with regards the extent of the screening and the possibility of alterations to the finished floor level of the flat roof area. In my view, it is necessary to impose conditions to:
- Require the screening to run the entire length of the flat roof area on both sides
  - Prevent any change to the finished floor level of the flat roof;
  - Prevent any further alterations to the pitched roof that might increase the useable area of balcony, which would then not be adequately screened.



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- Require the screening to be erected, in full, prior to the first use of the balcony; and
- Require the screening to be retained in perpetuity.

**8.0 CONCLUSION**

8.01 I have given careful consideration to the potential impact of this proposal on residential and visual amenity, and to the comments and objections of local residents. However – I conclude that the scheme would not, if controlled by the proposed conditions below, give rise to such harm that planning permission should be refused. I therefore recommend approval.

**9.0 RECOMMENDATION – GRANT** Subject to the following conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The screening shall be obscure glazed to not less than the equivalent of Pilkington Glass Privacy Level 3 and shall remain as such in perpetuity.

Reason: In the interests of residential amenity.

- 3) The flat roof area shall not be used as a balcony or sitting out area until the approved screening has been erected in full, running the entire length of the flat roof on both its east and west edges and being a height of 1.8 metres above the level of the flat roof. The screening shall be retained in perpetuity.

Reason: In the interests of residential amenity.

- 4) No alterations to the level or height of the flat roof shall take place, and upon completion no further development of the roof of the rear extension, whether permitted by Classes B and C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or not, shall take place.

Reason: In the interests of residential amenity.

**The Council's approach to this application:**

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As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

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The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

**NB** For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

## APPENDIX B

16 December 2017

Dear Mr Bailey,

Re: 84 Scarborough Drive (Application 17/505078/FULL): ref your email dated 11/12/2017

Thank you for the feedback on the outcome of my planning application, noting that the Planning Committee have requested that in order to approve my application the screen height must be increased to the height of the door frame (2200mm) and the glazing must be continuous along its length.

**With regard to the imposed increased height:**

I understand that the justification behind the increase in height that you are imposing is based on my personal height and any increased view that I could gain of my neighbours properties should I choose to stand on the door sills, despite the fact that those views already exist.

As stated in my application the height of the fenestration on the first floor **has not been increased**. The current fenestration allows me to clearly view my neighbour's property and extend that view if I wished to view them from an open window. Furthermore I have considerably greater views from the loft level window as could be clearly ascertained from the site photographs presented to the planning committee and stated in your Report to Planning Committee – 7 December 2017, (hereafter referred to as your Report): 'these areas are already overlooked by the dwelling...' (point 7.09) As the fenestration heights have not changed I question the relevance and influence that 'standing on the door sill' has to this application and ask you for the justification?

Furthermore I've struggled to find anything in any planning policy legislation that would give me relevant guidance on the height and construction of balcony screening that supports your imposed changes to my application. Whilst not directly referencing balconies I came across *PPS 7 (Addendum): Residential Extensions and Alterations Annex A: Residential Amenity: Privacy*, to which I think you make reference. Whilst referencing buildings rather than balconies, I would accept that there is sufficient relevance here to dictate consideration of the following (and note the opening sentence: *Except in the most isolated rural location, few households can claim not to be overlooked to some degree....*);

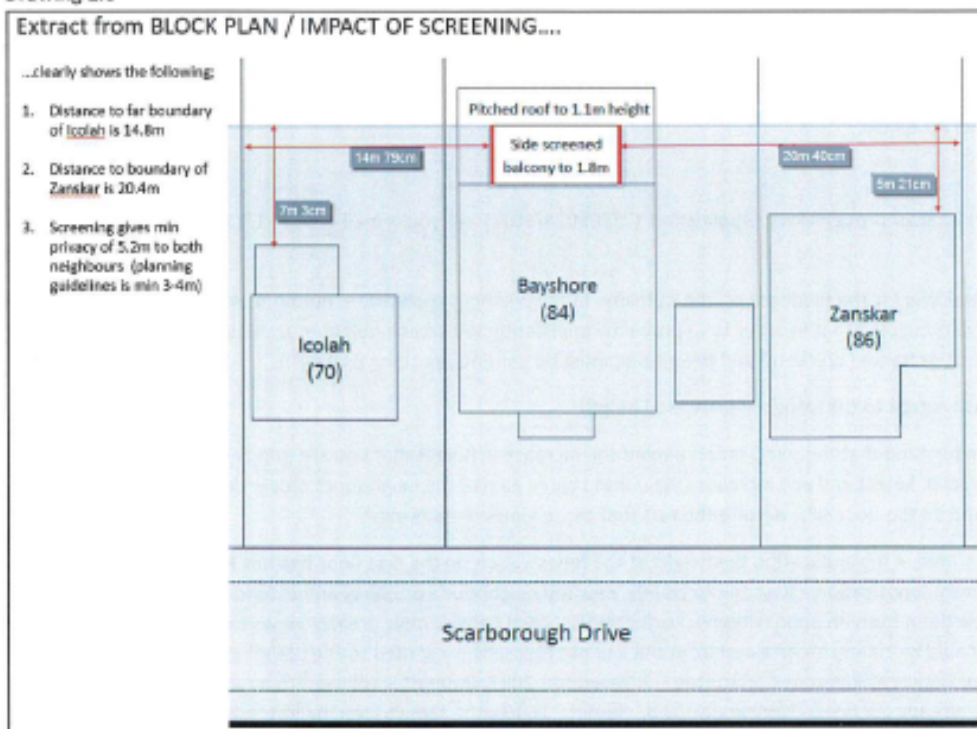
*A30 Overlooking of gardens may be unacceptable where it would result in an intrusive, direct and uninterrupted view from a main room, to the most private area of the garden, which is often the main sitting out area adjacent to the property, of your neighbours' house. As a general rule of thumb this area is the first 3-4 metres of a rear garden, closest to the residential property.*

With that regard may I draw your attention back to the Block Plan / Impact of Screening document that was included with my application. This showed the restricted view imposed by the proposed 1.8m screening, limiting my views to the rear gardens of my side neighbours: *areas that are already overlooked* as noted in your Report (7.09).

The extract drawing 1.0 below adds the distances to the furthest side boundaries of the adjacent side properties and can be verified using the measuring tool available in public access.

The proposed screening increases the private amenity space to the rear of Zanskar's property from 1.31m to 5.21m and the private amenity space to the rear of Icolah's property from 3.13m to 7.03m. This is both considerably greater than the guidance suggests is necessary and more than they are currently afforded.

Drawing 1.0



Whilst I have questioned the justification for the increased screening height above, I have used this as the worst case scenario for calculating any potential overlooking that the proposed screen height of 1.8m would allow.

Drawing 2.0 below assumes an absolute extreme case scenario if I would choose to stand on a door sill 20cm above the floor level, on tiptoes, to increase my eye-line height of 1.79m to an overall height of 2.05m (i.e. 25cm above the height of the proposed screen). The measured distance (and verifiable using the measuring tool in public access) between the middle of the door frame width and the screening is 2.35m.

Given the distance to Icolah's far boundary as per drawing 1.0 above, this shows that standing at an eye level height of 2.05m I will still not be able to see below a height of 3.25m across the width of Icolah's garden. These calculations are based on both properties being at the same level. Your Report (7.03) also notes that my property sits higher than Icolah which increases this view height limit still further.

Drawing 2.0: Impact of overlooking on Icolah from eye-line height of 2.05m

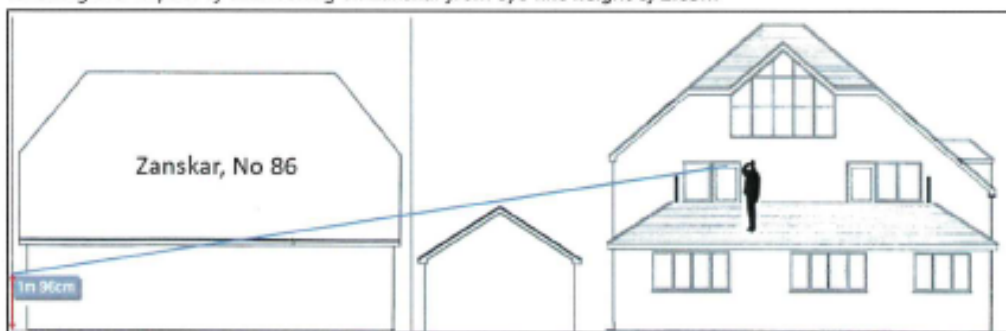


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With regard to the potential overlooking of Zanskar, were it considered that there was any merit in the justification for standing on a door sill to justify the height of the screening then I would have no issues with a request that the door be moved to the opposite side of the fenestration. Using the same methodology as in the example of Drawing 2.0 above, the measured distance (and verifiable using the measuring tool in public access) between the middle of the door frame width and the screening would be 2.35m.

Given the distance to Icolah's far boundary as per drawing 1.0 above, Drawing 3.0 below shows that standing on tiptoes at an eye level height of 2.05m I will still not be able to see below a height of 1.96m across the width of Zanskar's garden. These calculations are based on both properties being at the same level. As with Icolah your Report (7.03) also notes that my property sits higher than Zanskar which increases this view height limit still further.

*Drawing 3.0: Impact of overlooking on Zanskar from eye-line height of 2.05m*



In conclusion of this point I would ask you to consider the unnecessary additional visual obstruction that a screen height of 2.2m would give and how oppressive this would appear from within the balcony side. I also draw your attention to photographs 1 – 7 that are included as appendix A. These show the following;

1. The overlooking potential from the loft level window
2. Overlooking from loft level window with 1.8m screening in place (taken from waste height)
3. Overlooking from loft level window with 2.2m screening in place (taken from chest height to show that the difference in height makes no difference from this viewpoint)
4. View of applicant's height with 1.8m screening when applicant stands with nose against the screen.
5. Current view from ground level head height showing existing overlooking potential.
6. View from ground level head height with 1.8m screening (and the view of the applicant standing immediately behind)
7. View from ground level head height with obtrusive 2.2m screening

In the absence of any other guidance from Planning Policy, I humbly suggest that I have proven that a screen height of 1.8m is wholly adequate and appropriate to address and improve on the current overlooking opportunities as per your Report (7.11).

Continued...

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**With regard to the imposed continuous length of screening:**

Once again I draw your attention back to the fact that I already overlook my neighbour's properties as recognised in your Report (7.09) and the purpose of screening (7.10), such that any amount of screening is an improvement to the current scenario.



However, in order to address your request for continuous glazing I went back to the specialist structural engineer from my chosen supplier Diomet Fabrications, who suggested the original design.

Diomet Fabrications specialise in the design and manufacture of balustrades, balconies and canopies. They supply commercial and residential solutions to numerous county and local authorities, housing associations, architects, designers and house builders.

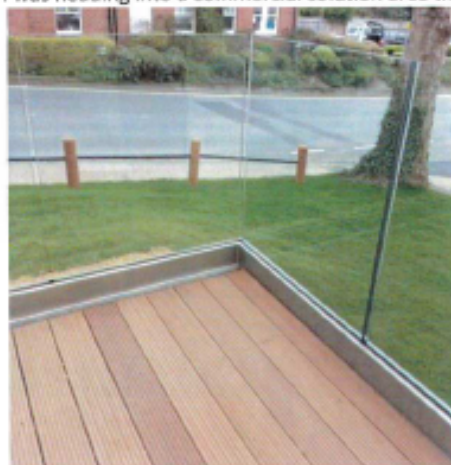
They confirmed that my original design is the **usual residential screening solution accepted by planning authorities throughout the UK**. The size and number of sheets of glass that they have proposed are all key aspects of the design that are dictated by the structural integrity of the glass when secured and impacted by exterior elements, wind being the key factor in this case.



They also stated that whilst the design is dictated somewhat by the materials and the way in which they are joined, the gaps also play a key part in reducing wind resistance. They advised that reducing the number of sheets of glass by increasing their width greater than 1 metre for installation levels above 3 metres in exposed locations was a risk they would not recommend.

*Photos courtesy of Diomet Fabrications, showing examples of their residential applications of screening up to 1800mm heights.*

I asked the engineer if he could recommend a different solution that didn't have any gaps. He suggested that I was heading into a commercial solution area that was unnecessary and unviable in a residential setting.



He suggested that there was an alternative solution that could reduce but not remove the gapping between the glass panes but he had not recommended in my circumstances given the height of the installation and potential exposure to gale force winds.

A 'frameless' solution could be installed however he stated that the maximum exposed height of the glass should be 750mm maximum and there must be gaps between the panes of glass that are a minimum 15mm wide (they recommend 20mm). In response to my suggestion that I could butt the glass together and join it with silicon or put an H section joiner in-between he suggested this would be totally unadvisable; He advised that the panes would move

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and flex in the wind. This would have the same effect as having a single sheet of glass in place which, in gale force wind conditions, would most likely cause the glass to snap or break it from the mounting points.

When pushed and reminded that I was not installing a full height screen he conceded that I may choose to risk a minimum 10mm gap between the panes if the exposed glass height was no greater than 700mm but that this was not their recommendation.

In considering this alternative solution it is both cheaper and aesthetically preferential. However I must give consideration to the limitations of the solution and the recommendations of the engineer.

*Photos courtesy of Diomet Fabrications, showing examples of their frameless balustrade solutions (installed at ground level.)*

Turning to the Internet for other solutions I searched for pictures of opaque balustrade screening. As you would expect there are thousands of pictures available and 99% of them are using exactly the same solution recommended by the engineer that I have proposed, that have gaps between the glass and the frame.

Looking at other planning applications that have been approved for balconies within Swale I have been unable to find a single one that has imposed this conditional requirement.

In conclusion of this point, your Report (7.10) highlights the purpose of screening and agrees that the screening I have proposed is adequate (7.11). Whilst it may be my decision to take a risk and implement a frameless solution with a reduced gap I don't feel that you have sufficient justification to impose such a solution.

**Conclusion**

Through the commentary, photographs and drawings in this document and appendix I have demonstrated that;

1. The proposed screening height of 1.8m is sufficient to resolve the potential for overlooking and that any argument for increasing this height is unfounded.
2. The request for a continuous length of screening is both unreasonable, unjustifiable and technically not achievable (given the location and constraints of the existing parapet infrastructure.)

I therefore ask that you make a decision on my planning application as per my original application without further delay. I ask that if you decide to grant permission but impose changes to my application then these are imposed as Conditions to that decision.

Thank you.

Regards,

Tony Potter

Appendix A attached...

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Appendix A – Additional photographs 1-7

Photo 1. Overlooking potential from loft level window



Photo 2. Overlooking from loft level window with 1.8m screening (from waste level viewpoint)



Photo 3. Overlooking from loft level window with 2.2m screening (from chest level viewpoint)





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Photo 4. View of applicant's height with 1.8m screening when applicant stands with nose against the screen.



Photo 5. Current view from ground level head height showing existing overlooking potential.



Photo 6. View from ground level head height with 1.8m screening (applicant stood behind)



Photo 7. View from ground level head height with obtrusive 2.2m screening

