

# DCL/21/29

**Application No:** 21/1113/FH

**Location of Site:** Apartment 5, Bay, 98 St Leonards Road, Hythe, CT21 6HE

**Development:** Retrospective application for the use of the roof space area as a roof terrace along with the installation of a combined visual screen and guard rail re-submission of 21/0097/FH

**Applicant:** Mr Pierre Condou

**Agent:** Hollaway Architects

**Officer Contact:** Rob Bailey

## SUMMARY

This application seeks retrospective permission for the use of a flat as a roof terrace, together with a screen around the perimeter of the roof to obscure views into neighbouring properties. The use of the roof area as a terrace does not in itself require planning permission, the means of enclosure (a timber louvered screen) would not harm the character and appearance of the building itself nor the wider streetscene and would have a neutral impact on the adjacent listed building. The scheme is considered to be acceptable in all respects and the proposal is therefore considered to amount to sustainable development which is in accordance with the Development Plan.

## RECOMMENDATION:

**That planning permission be granted subject to the conditions set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.**

## 1. INTRODUCTION

1.1. The application is reported to Committee because it has been called in by Councillor Whybrow

## 2. SITE AND SURROUNDINGS

2.1. The application site comprises a three storey development of flats, located within the settlement boundary of Hythe. The area is generally residential in nature, although there is a café located immediately to the west of the site, in the grade II listed Lifeboat Station.

2.2. The building in question is of a modern design, with its principle façade facing the beach to the south. It addresses St Leonards Road to the east with a curved facade, and is predominantly white rendered with the top floor set in from the perimeter of the building and clad in vertical timber.

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- 2.3. The flat the subject of this application is set within the eastern first and second floors, with a balcony facing the beach and an existing roof terrace serving the the second floor's southern façade. It has existing doors to the roof area to the front and rear of the second floor block, affording access across the eastern part of the roof of the building and the areas to the front and rear.
- 2.4. The area the subject of this application amounts to approximately 50% of the roof area of the building, which is currently open and has no screen or barriers around its edge, other than a 0.3 metre wide, 0.2 metre high parapet wall.
- 2.5. To the east of the application site (approximately 19m away) lies Haytor bungalow which has rooms in the roof served by rootlight windows. To the north is 96 St Leonard Road which is located approximately 24 metres away. The private garden area serving no 96 is 26 metres away. To the northwest lies no. 96A St Leonard Road. No.96A has a first floor bedroom window facing the application, which is approximately 20 metres away as the crow flies. The garden and balcony serving no.96A are 18m from the application site.
- 2.6. A site location plan is attached to this report as **Appendix 1**.

## 3. PROPOSAL

- 3.1 Planning permission is sought for the use of part of the roof of the building as a roof terrace, for the erection of a small railing to the front of the roof area, and the erection of a timber screen around the outer edge of the building. The timber louvered screen would be set behind the existing parapet wall and therefore approximately 0.2 – 0.3 metres from the very edge of the building. It would run from the rear of the roof area, following the curved line of the roof around to the front of the building, rising in height from 1.1 metres to the rear to a maximum of 1.8 metres in height along the majority of the elevation facing St Leonards Road, before falling to 1.1 metres towards the front of the site, although it would appear approximately 0.2 metres lower when viewed from the street due to the height of the parapet it would sit behind. The plans have been amended slightly increasing the height of the screen. Figures 1 to 3 below show the proposed elevations.

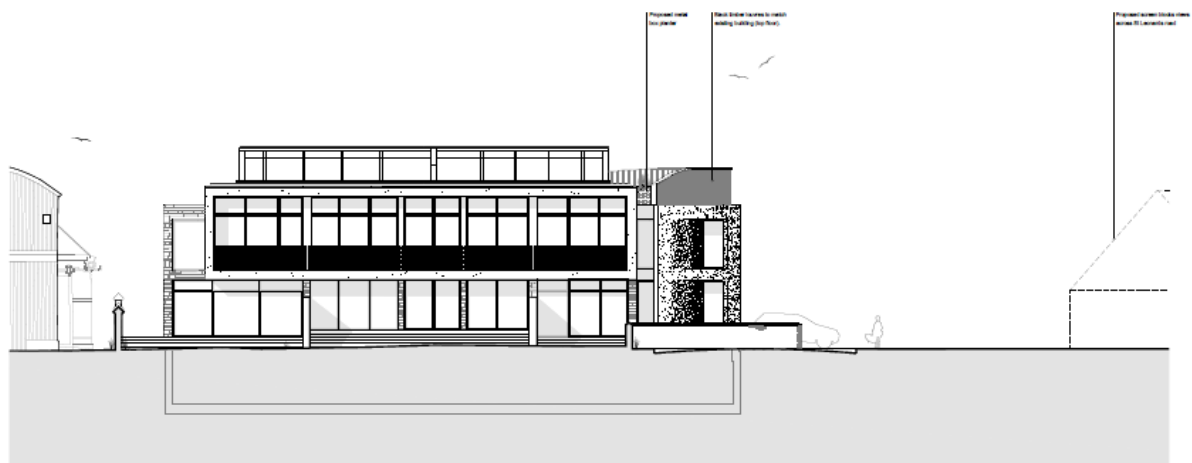


Figure 1 – Proposed south elevation

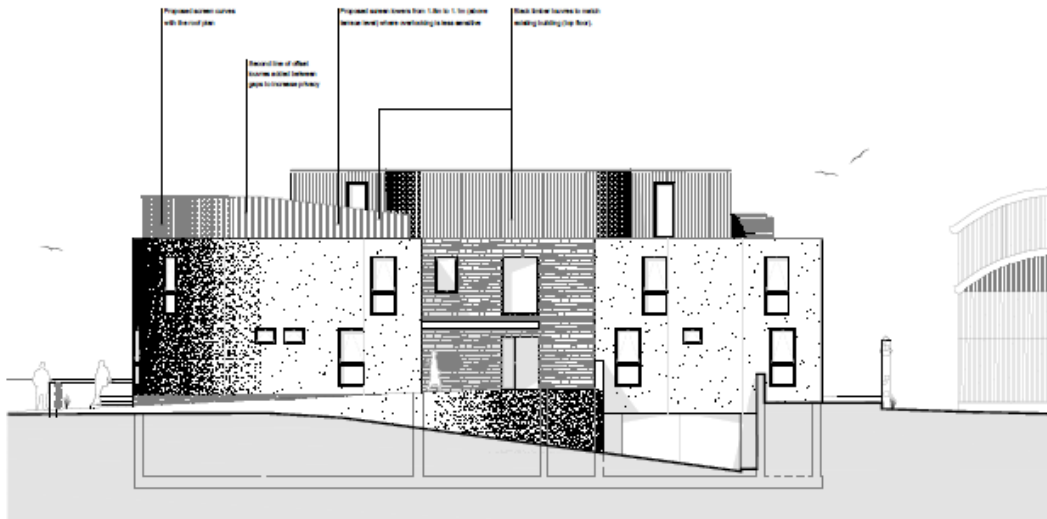


Figure 2 – Proposed north elevation

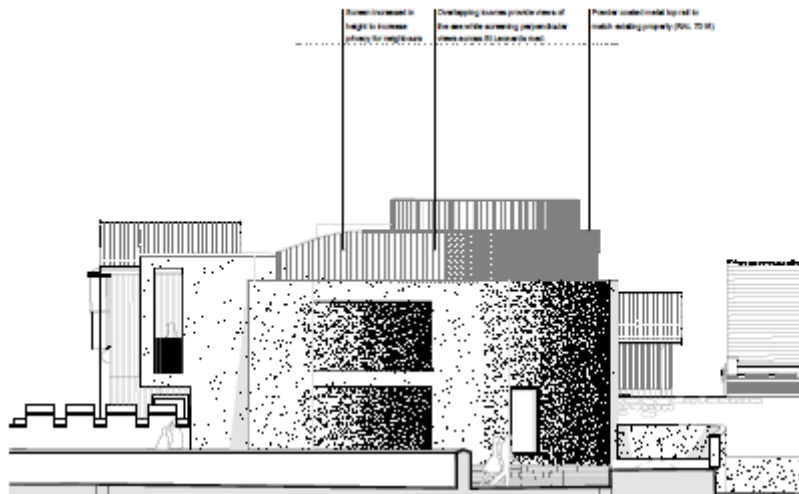


Figure 3 – proposed east elevation

- 3.2 The louvre would be constructed of a double, staggered row of vertical hit and miss timber with a powder coated metal rail to the top. The staggering of the timber is intended to provide privacy to the dwellings opposite the site on St Leonards Road and fronting West Parade, whilst maintaining sea views for users of the roof terrace and allowing wind to pass through to maintain structural stability. The staggering of the panels is set out in figure 4 below.

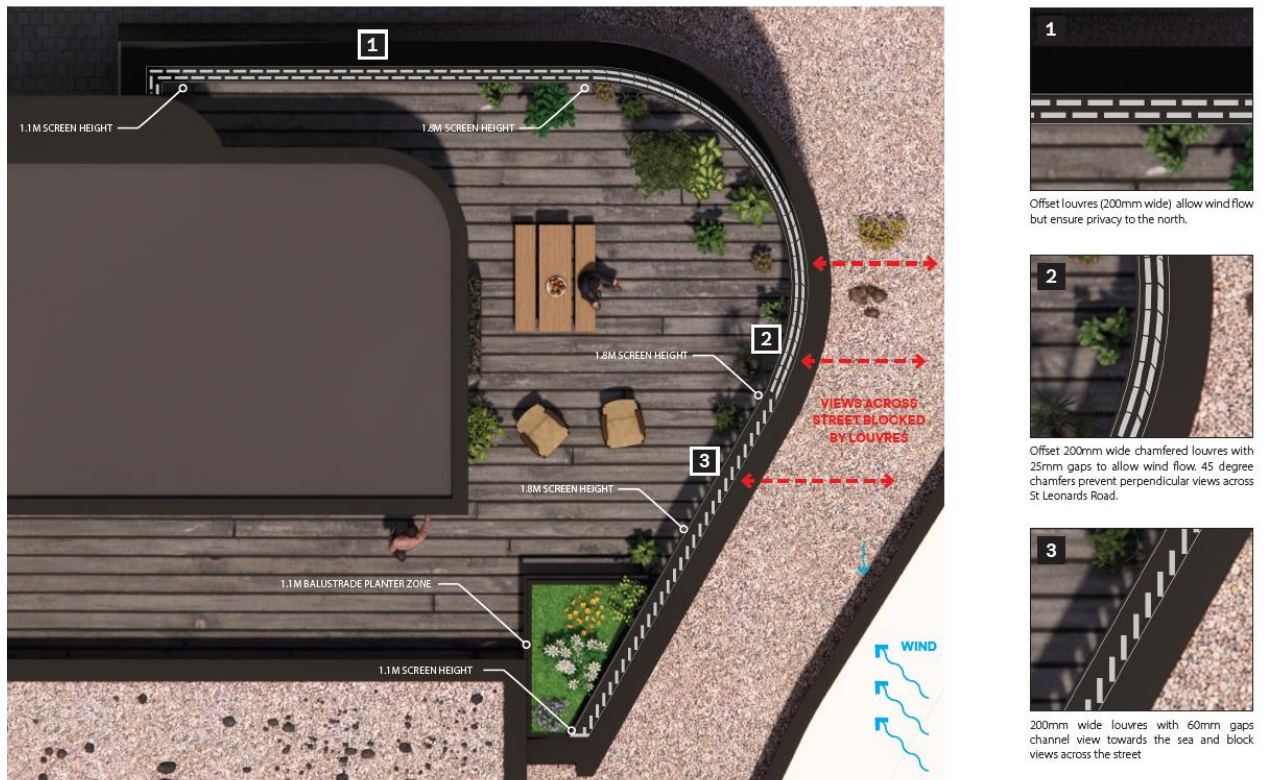


Figure 4 – Layout of timber screen

3.3 To the front, a low safety handrail would be installed, with planters beyond, in order to prevent the use of a small area of the roof to the front where the screen reduces in height.

3.4 The following reports were submitted by the applicant in support of the proposals:

### Design and Access Statement

3.5 This document sets out the design rationale for the development proposed, namely that the proposed screen is intended to echo the timber cladding of the top floor of the host building, that it is designed to enhance the privacy of neighbouring dwellings whilst still affording views of the beach and sea.

## 4. RELEVANT PLANNING HISTORY

4.1 The relevant planning history for the site is as follows:

21/0097/FH	Installation of combined visual screening and handrailing to enable the rooftop to be utilised as a terrace.	Refused
Y15/0507/SH	Erection of a 3 storey block of 6 apartments including a basement level for underground parking, following demolition of existing dwelling together associated parking and landscaping.	Approved

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4.2 Of relevance here is application 21/0097/FH, where permission was refused for a similar development to that proposed here. The proposal in that case was a horizontally arranged brise-soleil, 1.6 metres in height, designed to screen the roof area from view and limit views towards neighbours, together with a lower glazed barrier to the front and rear. Planning permission was refused for the following reasons:

- 1) The proposed use of the flat-roofed area as terrace in connection with apartment 5 would give rise to unacceptable levels of overlooking to nearby neighbouring properties without adequate privacy screens in place. The proposed 1.6m (approximately) high brise soleil and 1m (approximately) high frameless glass guarding (non-obscure) screens together with evergreen shrub pot plants would not offer the required level of mitigation to successfully prevent instances of overlooking due to the design, height and non-permanent nature (evergreen shrub pot plants) of the proposed screening, contrary to policies HB1 and HB8 of the PPLP which seek to protect neighbouring amenity.
- 2) The proposed balustrade (brise soleil), by reason of its height, design and material, would result in development which would appear as an foreign 'bolt-on', considered to be at a discord and detrimental to the original design of the symmetric host building, adding significant bulk to the eastern side of the building, in a position that would be highly visible on approach from the north, east and south, forming development that would appear incongruous within the streetscene, contrary to policies HB1 and HB8 of the PPLP which seek to approve development that makes a positive contribution to its location and surroundings, where development reflects the scale, proportions, materials, roof line and detailing of the original building and does not have a detrimental impact on the street scene, either by themselves or cumulatively.

## 5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

### Consultees

**Hythe Town Council:** No objection to the proposal as amended.

### Local Residents Comments

5.2 14 neighbours directly consulted. 5 letters of objection, 1 letter of support received and no letters neither supporting nor objecting to the application.

5.3 I have read all of the letters received. The key issues are summarised below:

### Objections

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- Overlooking to dwellings to side and rear of site, including into private garden areas;
- Harm to character and appearance of building;
- Harm to character and appearance of streetscene;

## Support

- Will enhance the architectural design of the building and the surrounding area.

## Ward Member

5.5 Councillor Whybrow called the application in to Committee, commenting as follows:

*If you are minded to approve this application I would like to call it in please. Reason: loss of privacy for the neighbours.*

5.6 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

## **6. RELEVANT PLANNING POLICY**

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Local Plan 2013.

6.2 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was submitted to the Secretary of State on 10 March 2020. Inspectors were appointed to examine the plan on 19<sup>th</sup> March 2020 and public hearings were held from 15<sup>th</sup> to 18<sup>th</sup> December 2020, from 5<sup>th</sup> to 12<sup>th</sup> January 2021 and from 29<sup>th</sup> June to 1<sup>st</sup> July 2021. The Inspectors wrote to the council on 1<sup>st</sup> July 2021 to state that the Core Strategy Review complies with the duty to cooperate and can be made 'sound' by amendment through main modifications. The Inspectors followed up their initial assessment by letter on 16<sup>th</sup> July 2021, stating that, subject to main modifications concerning detailed policy wording, they consider that the plan's spatial strategy and overall approach to the district's character areas and settlements is sound. The Inspectors find that the housing requirement is justified and that the Core Strategy Review will provide an adequate supply of housing over the plan period and at least a five year supply of housing land at the point of adoption. In accordance with National Planning Policy Framework (2021) paragraph 48, the policies in the Core Strategy Review should therefore be afforded significant weight, having regard to the Inspectors' outline of main modifications required.

6.3 The relevant development plan policies are as follows:-

### Places and Policies Local Plan 2020

HB1 – Quality places through design.

This policy states that permission will be granted where, amongst other things, the proposal:

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- Makes a positive contribution to its location and surroundings, enhancing integration while also respecting existing buildings and land uses, particularly with regard to layout, scale, proportions, massing, form, density, materiality and mix of uses so as to ensure all proposals create places of character;
- Does not lead to an adverse impact on the amenity of future occupiers, neighbours, or the surrounding area, taking account of loss of privacy, loss of light and poor outlook. In assessing the potential impacts of new build residential development on neighbouring dwellings,

HB8 – alterations and extensions to buildings.

The policy sets out that:

- Alterations and extensions should seek to reflect the scale, proportions, materials, roof line and detailing of the original building and not have a detrimental impact on the street scene, either by themselves or cumulatively. Alterations and extensions should protect the residential amenity of the occupants of neighbouring properties and ensure avoidance of unacceptable overlooking and inter-looking.
- The extension should be subordinate to the building;
- The extension should be of materials that complement those of the existing building
- Alterations and extensions respect the character of the host building and its location and should not result in unacceptable harm to heritage assets (whether designated or not) or their setting;

6.4 The following are also material considerations to the determination of this application.

## **Government Advice**

### National Planning Policy Framework (NPPF) 2019

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF are relevant to this application:-

Paragraph 11 - Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

Paragraphs 189 – 208 – Conserving and enhancing the historic environment

## 7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

- a) Design and impact on visual amenity
- b) Impact on the setting of the listed building
- c) Impact on residential amenity

### **a) Design and impact on visual amenity**

7.2 Whilst the proposed timber screen would be visible in views of the site from the beach, on approach from West Parade and in views from the north and south in St Leonards Road. It would though be limited in height when viewed from outside the site, and would be visible in the context of the existing second floor of the building. Given the proposals variation in height from front to rear, it would not appear overly bulky nor obtrusive and would not visually unbalance the composition of the building. In addition, the design and form of the screen which echoes the form of the original building would well to the existing top floor of the building.

7.3 The small railing proposed to the front of the roof area is unobjectionable in this regard and would not have any impact on the building itself or the wider area.

7.4 Subject to conditions to secure the appropriate materials as set out in the application particulars I am satisfied that the proposal is well designed and complies with Policies HB1 and HB8 of the Local Plan.

### **b) Impact on the setting of the listed building**

7.5 The wider application site lies adjacent to a grade II listed building, and the Council therefore must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The proposed development would not be readily visible from the adjacent listed building, and although the timber screen and the listed building would be visible in conjunction from limited viewpoints (mainly to the very front and rear of the application site) it is not considered that it would have a harmful impact on the historic/architectural importance of the building or its setting. The development is considered to comply with Policy HB8 of the Local Plan, and the NPPF and is acceptable in this regard.

### **c) Impact on residential amenity**

7.6 The timber screen would be at an internal height of 1.8 metres where it faces Haytor, on the opposite side of St Leonards Road, and views towards this dwellings would therefore be blocked such that no loss of privacy would occur.



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- 7.7 Turning to no. 96St Leonards Road to the rear. Whilst the screen is lower in height facing this dwelling, the properties are in excess of 21 metres apart and the private garden serving this dwelling is 26 metres from the edge of the roof at the application site. This relationship is acceptable and would not give rise to mutual overlooking or loss of privacy.
- 7.8 The relationship with no.96A St Leonards Road is closer, at approximately 18 metres to the balcony and 20 metres to the facing bedroom window at this dwelling. It is however notable that the area of roof closest to this dwelling is narrow, in shade for much of the day, and unlikely to be used for sitting out nor for any other purpose than access. Also of relevance is that this window is already overlooked by the existing second floor rear facing window serving the application dwelling, by three first floor bedroom windows and, albeit to a lesser degree, three ground floor bedroom windows at the application site.
- 7.9 Taking the above into account, on balance I am satisfied that the lower height of the screen to the rear of the roof would not give rise to a harmful degree of additional overlooking to this dwelling.
- 7.10 The provision of the smaller railing to the front of the roof would prevent the area, where the screen reduces in height, being used as a sitting out area, and its provision is necessary and is recommended to be secured by condition.
- 7.11 It is therefore considered that, subject to a condition requiring compliance with the submitted plans, and timely construction of the screen, the proposal would not give rise to a materially worse degree of overlooking/interlooking than existing and as such it complies with Policies HB1 and HB8 of the Local Plan.

## **Environmental Impact Assessment**

- 7.12 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

## **Human Rights**

- 7.13 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

## **Public Sector Equality Duty**

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7.14 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

## **Working with the applicant**

7.15 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner..

## **8. CONCLUSION**

8.1 The design and visual impact on the proposed development is acceptable and it is not considered to give rise to harm to residential amenity. It would have a neutral impact on the adjacent listed building.

## **9. BACKGROUND DOCUMENTS**

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

## **10. RECOMMENDATIONS**

**That planning permission be granted subject to the following conditions and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.**

### Conditions:

1) The development hereby approved shall be carried out in accordance with the details of materials as specified in the application, unless otherwise agreed in writing by the Local Planning Authority.

**Reason:** In the interests of visual amenity.

2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans:

21.001 The Bay Design Statement  
21.001.001 Existing & Proposed Plans Rev A  
21.001.002 Proposed Elevations Rev A

**Reason:** For the avoidance of doubt and in order to ensure the satisfactory implementation of the development in accordance with the aims of Places and Policies Local Plan.

- 3) The timber screen and balustrade railing shall be constructed strictly in accordance with the details shown on the "Proposed Terrace Plan" contained within the approved Design and Access Statement within 6 months of the date of this decision, unless an alternative implementation programme has been submitted to and approved in writing by the Local Planning Authority. Both the screen and railing shall be maintained at the approved height and in accordance with the approved details in perpetuity.

**Reason:** In the interests of residential amenity.