

<b>4/00755/19/FHA</b>	<b>ENCLOSED OUTDOOR SEATING AREA</b>
<b>Site Address</b>	<b>28 SILVERTHORN DRIVE, HEMEL HEMPSTEAD, HP3 8BU</b>
<b>Applicant</b>	<b>Mr &amp; Mrs Icleanu, 28 Silverthorn Drive</b>
<b>Case Officer</b>	<b>Will Collier</b>
<b>Referral to Committee</b>	<b>Recommendation contrary to parish objection</b>

## **1. Recommendation**

1.1 That planning permission be **GRANTED**.

## **2. Summary**

2.1 The proposed development would be acceptable in principle and would be satisfactory in terms of overcoming original concerns regarding the impact on the living conditions of neighbouring properties with respect to overlooking, odour and noise. The proposal would not have an adverse impact on the character of the area. It follows the proposal would accord with the aims of Policies CS4, CS11 and CS12 of the Dacorum Core Strategy 2013.

## **3. Site Description**

3.1 The application site is occupied by a two-storey detached dwelling recently subject to extensions, located on the eastern side of Silverthorn Drive within the residential area of Longdean Park. The street is characterised by large detached dwellings sited on large plots displaying generous spacing between buildings. Levels fall steeply in an easterly direction (towards the site's rear boundary from the street frontage) and also fall slightly north so that the adjacent dwelling at No. 30 is located on lower ground relative to the application site.

## **4. Proposal**

4.1 The application seeks planning permission for the retention of an existing outdoor seating area and proposed amendments comprising the removal of existing flues and ovens/stoves and insertion of cavity walls on the southern and eastern elevations.

4.2 During the course of the application, the design of the structure has been amended by removing the ovens and flues and inserting cavity walls on the southern and eastern elevations. The proposal description has also changed from outdoor barbecue area and flues to 'enclosed outdoor seating area'.

## **5. Relevant Planning History**

5.1 The relevant planning history is as follows:

- Appeal (ref 18/3213188) in relation to planning application 4/00028/18/FHA. The appeal decision was issued on 17th January 2019 dismissing the outdoor barbecue area and flues but allowing the remaining parts of the development.
- Planning application for extensions and alterations including barbecue structure and flues (4/00028/18/FHA) refused at Planning Committee (committee overturn).
- Permission for replacement roof including partly raised ridge with two rear dormer

windows, rear conservatory, alterations to openings, extension of rear terrace and installation of metal fence and gates to sides of dwelling was granted on 9 May 2014 (4/00532/14/FHA). This planning permission has been implemented.

## **6. Policies**

### **6.1 National Policy Guidance**

National Planning Policy Framework (NPPF)  
National Planning Policy Guidance (NPPG)

### **6.2 Adopted Core Strategy –**

Policies NP1, CS1, CS4, CS11, CS12, CS29, CS31

### **6.3 Saved Policies of the Dacorum Borough Local Plan**

Saved Policies 13, 58, 99  
Saved Appendices 3 and 5

### **6.4 Supplementary Planning Guidance / Documents**

- Environmental Guidelines (May 2004)
- Area Based Policies (May 2004) - Residential Character Area HCA25 Longdean Park

### **6.5 Advice Notes and Appraisals [include only those relevant to case]**

- Sustainable Development Advice Note (March 2011)

## **7. Constraints**

- Residential area
- CIL Zone 3

## **8. Representations**

### **Consultation responses**

8.1 These are reproduced in full at Appendix A

### **Neighbour notification/site notice responses**

8.2 These are reproduced in full at Appendix B

## **9. Considerations**

### **Main issues**

9.1 The main issues to consider are:

- Policy and principle
- Character and appearance
- Impact on neighbouring properties
- Other considerations

### Policy and Principle

9.2 The proposal for extensions and alterations associated with an existing dwelling within a designated residential area would be acceptable in principle under Policy CS4 of the Core Strategy.

9.3 This application follows an appeal which was dismissed by the inspector insofar as it related to the addition of the BBQ structure and addition of three flues, but allowed insofar as it related to the remaining parts (eg glazed structure and CCTV). It should be noted, therefore, that the glazed structure and CCTV has planning consent and does not form part of the current application.

9.4 The reason for dismissing the barbecue structure was the 'potential to result in significant and unacceptable noise, disturbance, smoke, fumes and loss of privacy for the occupiers of No. 26' (para. 17 Appeal Decision 3213188).

9.5 Following the appeal the council served an enforcement notice on the owner on 22nd March which took effect on 23rd of April 2019 requiring the removal of the flues and barbecue structure.

### Character and Appearance

9.6 In making an assessment of the character and visual appearance of the proposal, the following comments by the planning inspector on the appeal should be taken into account:

- *The proposed BBQ structure is large. However, it sits below the raised terrace and has a shallow pitched roof. Having regard to the size of the host dwelling, the size of the rear garden and its siting below the raised terrace, the proposed BBQ structure does not have a material impact on the character and appearance of the host property and respects the overall character and appearance of the surrounding area (para. 11 Appeal Decision).*
- *Collectively, all of the elements of the proposal do have an urbanising impact on the character and appearance of the property. However, due to the size of the plot, the resultant property respects the overall character of the surrounding area and respects the layout, site coverage, scale, height, bulk, materials, landscaping and amenity space of the adjoining and nearby properties (para. 12 Appeal Decision).*

9.7 The proposal in the current application remains the same in terms of siting, height and massing, except for the removal of the flues/ovens and insertion of cavity walls on the southern and eastern boundaries. It is considered these changes do not affect the overall height, massing and scale of the development and the new cavity walls are appropriate in terms of appearance. Furthermore, the removal of the flues is considered an improvement by removing visual clutter. Therefore the proposal is considered to be acceptable in terms of character and appearance.

9.8 With respect to materials, a condition is recommended to ensure the cavity walls are constructed of brickwork matching the appearance of the brickwork on the northern elevation.

#### Impact on living conditions of neighbouring properties

9.9 It should be noted that the recent appeal was dismissed for the barbecue structure because of the potential impact on the living conditions of No. 26 in relation to noise, smoke and privacy. In particular the following comment was made by the inspector:

*‘Notwithstanding this, the BBQ structure is large, has seating for at least 20 people and is served by three wood fired ovens/stoves and associated flues. In addition, it is open sided and affords direct views towards the rear glazed doors, patio area and garden at No.26. As such its use has considerable potential to result in significant and unacceptable levels of noise, disturbance, smoke, fumes and loss of privacy for the occupiers of No.26. For these reasons the proposed BBQ structure and flues, as proposed, are unacceptable. The harm that could be caused would materially outweigh the benefits for the Appellant and their family from the use of the BBQ structure.’ (para 17).*

#### *Odour and smoke*

9.10 The proposal now includes the removal of the ovens and flues and insertion of cavity walls on the southern and eastern elevations. It is considered that this amendment sufficiently alleviates original concerns about odour, as the main sources of the odour are now removed. Furthermore, there are no longer objections from the council’s environmental health officer on this matter.

#### *Noise*

9.11 At the appeal for the barbecue structure, the Planning Inspector dismissed the council’s suggestion of conditions requiring construction of a solid boundary wall and submission of details for the siting and specification of the three flue, as it was considered a solid wall would materially change the appearance of the BBQ structure, and no details had been provided on the acoustic benefits of the wall and siting of flues. Thus the Inspector stated *‘there is no guarantee that the proposed conditions would be able to satisfactorily address concerns relating to noise, disturbance, fumes, smoke and visual impact’* (para 18 of Appeal Decision).

9.12 In contrast, the current planning application has been submitted with a noise assessment report which provides an assessment of the likely noise levels generated and recommended mitigation measures. The proposed mitigation measures comprise cavity walls on both the southern and eastern elevations and the removal of the ovens/flues, reflected in the amended plans. It should be noted the walls are floor-to-ceiling, double brick with acoustic absorbent material along the cavity. It is considered these measures are sufficient to ensure that noise would be mitigated to acceptable levels, as evidenced in the submitted noise report (July 2019). Furthermore, the findings and recommendations of the noise report are accepted by DBC Environmental Health, who have no objections.

9.13 A planning condition is recommended to ensure no use of the structure until such

measures have been implemented.

### *Outlook*

9.14 The appeal decision found that the existing structure did not result in an adverse loss of outlook at No. 26:

*The BBQ structure is large and abuts the boundary with No.26. Due to its mass and projection above the boundary wall the roof of the BBQ structure is clearly visible in views from the adjacent ground floor room, patio area and garden area. However, the dwelling at No.26 is orientated slightly away from the Appeal property and, as with the Appeal property, it has a large and open rear garden, with views across the valley to the countryside beyond. As a consequence, the BBQ structure does not have a materially adverse impact on the outlook from No.26. (para 16 of appeal decision)*

9.15 The proposed insertion of solid walls on the southern and eastern elevations do not change the overall height and massing of the structure and therefore are not considered to significantly change the above assessment in terms of visual intrusion. Furthermore it can be argued that the removal of the flues helps improve the appearance of the proposal by removing visual clutter.

### *Privacy*

9.16 Loss of privacy is no longer considered a concern, due to the proposed cavity walls on the southern and eastern elevations.

### Other considerations

9.17 A number of other issues were raised in representations received:

- Accuracy of plans – the accuracy of the plans has been questioned in comments received and whether certain elements are existing or proposed. Officers are clear which are the Proposed Plans and have considered the application accordingly.
- Sewage – concerns about the proposal's impact on mains sewage directly below the structure. This is not a material planning consideration, but would come under building regulations.
- Position of CCTV cameras – concern that the position of the CCTV cameras conflicts with the condition on the appeal decision, causing ambiguity. The CCTV cameras do not form part of this application and therefore do not fall to be considered in this report. Any concerns relating to breaches of condition can be considered by the Planning Enforcement team.
- Concern about appearance of the existing breeze blocks on the southern elevation. This wall formed part of the Inspector's considerations at the appeal and no concerns were raised in respect of the choice of materials (para.12 Appeal Decision). Furthermore, in the previous refusal, the choice of materials was not a reason for refusal.

**11. RECOMMENDATION** – That planning permission be **GRANTED** for the reasons referred to above and subject to the following conditions:

**Conditions**

No	Condition
1	<p><b>The development hereby permitted shall be begun before the expiration of three years from the date of this permission.</b></p> <p><u>Reason:</u> To comply with the requirements of Section 91 (1) of the Town and Country Planning Act 1990 as amended by Section 51 (1) of the Planning and Compulsory Purchase Act 2004.</p>
2	<p><b>The development hereby permitted shall be carried out in accordance with the following approved plans/documents:</b></p> <p><b>DA-BR 001-A3-REV B</b>  <b>DA-PL/005 02 REV B</b>  <b>DA-PL 006 REV A</b>  <b>DA-PL/008 02 REV B</b>  <b>DA-PL/009 02 REV C</b></p> <p>DESIGN AND ACCESS STATEMENT July 2019  NOISE REPORT (Ref 297479-02(00) July 2019)</p> <p><u>Reason:</u> For the avoidance of doubt and in the interests of proper planning.</p>
3	<p><b>There shall be no use of the enclosed outdoor seating area before the full implementation of the noise mitigation measures specified in the RSK report 'Enclosed Outdoor Seating Area' - 28 Silverthorn Drive Noise Assessment 297479-02(00) July 2019. Mitigation measures shall be implemented in accordance with Plan DA-PL009-02-REV-B Proposed elevations which include a double-brick wall up to ceiling level with an acoustic absorbent material along the cavity, extended along the length of the southern (boundary facing No. 26) and eastern sides of the structure; and shall be retained thereafter.</b></p> <p><u>Reason:</u> To mitigate harm from noise associated with the outdoor seating area in accordance with Policy CS32 of the adopted Dacorum Borough Core Strategy.</p>
4	<p><b>Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending or re-enacting that Order with or without modification) no development falling within the following classes of the Order shall be carried out on the development hereby permitted (outdoor seating area) without the prior written approval of the local planning authority:</b></p> <p>Schedule 2 Part 1 Class A, B and C</p> <p><u>Reason:</u> To enable the local planning authority to retain control over the</p>

	development in the interests of safeguarding the residential and visual amenity of the locality.
5	<p><b>The external brickwork of the proposed cavity walls on the southern and eastern elevations shall be of a similar appearance in size, colour and texture the existing external brickwork on the northern elevation of the structure.</b></p> <p><u>Reason:</u> To ensure a satisfactory appearance to the development.</p> <p><u>Article 35 Statement</u></p> <p>Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2015.</p>

## Appendix A

### Consultation responses

DBC - NOISE POLLUTION & HOUSING	<p>Thank you for sending through the updated information.</p> <p>I have read the accompanying acoustic report and revised proposals for mitigation. This now proposes a double brick wall along the southern and eastern boundary up to ceiling level thereby removing air gaps provided by the current (glazed) arrangement.</p> <p>From the proposals now put forward, which includes removal of the flues / outdoor cooking facilities I would recommend the development be conditioned to offset any impacts due to noise. The relevant statements from the RSK report are;</p> <p>The southern and eastern wall design has been revised to incorporate a second brick layer with an acoustic soundproofing foam sheet in between and the full enclosure of the eastern side with the elevation of the existing brick wall up to ceiling level.</p>
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	<p>Proposed mitigation measures encompass a significant enhancement of the insulation against noise provided by the existing brick wall elevation design (southern boundary facing No.26) by proposing a double-brick wall with an acoustic absorbent material along the cavity, extended also to the eastern side of the structure to reduce noise diffraction.</p> <p>I have taken the statements contained in the RSK report and transposed this into a condition. I think it needs some work if you want to review wording initially.</p> <p>The use of the outdoor area shall not be permitted until the noise mitigation measures specified in the RSK report 'Enclosed Outdoor Seating Area – 28 Silverthorn Drive, Hemel Hempstead, HP3 8BU; Noise Assessment 297479-02(00), July 2019' have been incorporated into the development. Mitigation measures shall be implemented in accordance with plan DA-PL009-02-Rev-B-Proposed elevations and which shall include a double-brick wall up to ceiling level with an acoustic absorbent material along the cavity, extended along the length of the southern (boundary facing No.26) and eastern side of the structure. The measures shall be retained thereafter.</p>
<p><b>NASH MILLS PARISH COUNCIL</b></p>	<p>Parish strongly objects to this application Original parish comment unchanged as this application shows no significant material change to the original application or comments noted at the subsequent appeal hearing. We support the findings of the planning inspectorate and decision to uphold the original decision by development management committee. We support the enforcement actions relating to this structure. In addition to the original Parish comment (original objection under CS12) and following a review of this application NMPC also submits additional objections on the following criteria in the DBC local plan CS32 (air,soil,water quality) . NMPC feels that there will be harm caused by the significant increase into the air by virtue of the emissions and the increase in light/noise pollution will also be detrimental under this category. Parish Council strongly object to this application. Further detail to support this to follow. Further Parish comment following on from our earlier comment NMPC strongly objects on the basis of our original objection in addition to the following;</p> <ul style="list-style-type: none"> <li>• The accuracy of the plans- are the measurements and elevations accurate and showing the correct view?</li> </ul>

	<ul style="list-style-type: none"> <li>The quality of the build i.e. no evidence of the proposed 'final finish?', (pertinent due to the proximity to the boundary).</li> </ul> <p>CS12, (g) vii,viii</p> <ul style="list-style-type: none"> <li>respect adjoining properties in terms of: materials landscaping)</li> <li>This case was originally refused at the highest level (planning inspectorate) on a wide range of factors and there is no evidence that NMPC should change its original objection.</li> </ul> <p>Resolved, proposed Cllr Briggs, seconded Cllr Berkeley that NMPC original objection stands.</p>
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## Appendix B

### Neighbour notification/site notice responses

#### Objections

Address	Comments
26 SILVERTHORN DRIVE,HEMEL HEMPSTEAD,,,HP3 8BU	<p>I am writing to object against this planning application on the following grounds.</p> <p>(1) This development was already subject to a planning application Ref 4/00028/18/FHA in January 2018 and was REFUSED by the Dacorum Planning Development Committee on 11 July 2018. The decision went to appeal and the decision of REFUSAL was upheld by the Planning Inspectorate on 17 January 2019. Appeal Reference APP/A1910/D/18/3213188.</p> <p>(2) The dismissal of this application was based on the effect on the character and appearance of the surrounding area in addition the effect on the living conditions of the occupiers of No. 26 with particular regard to visual impact, privacy, noise and disturbance. Specifically, the structure is large and is served by three wood fire ovens/stoves and associated flues. Its use has considerable potential to result in significant and unacceptable levels of noise, disturbance, smoke, fumes and loss of privacy. For these reasons the Planning Inspectorate concluded as unacceptable.</p> <p>(3) The application itself is missing material facts which are relevant to this case:</p> <p>a. The existing plans and elevations are omitted from the application. In fact prior to the development this location was a lavender bed with multiple bushes and the boundary with No 26 comprised mature cotoneaster hedges.</p> <p>b. The application states no trees or hedges need to be</p>

	<p>removed which is incorrect. The householder chopped down and removed all these hedges and lavender bushes, raised the ground level with concrete and built a breeze block wall on the boundary with No 26.</p> <p>c. The mains sewage and rainwater drains for Silverthorn Drive run directly below where this construction has been made and concerns have already been previously raised by a number of residents.</p> <p>(4) This application is yet again further evidence whereby the householder of 28 Silverthorn Drive chooses to ignore the regulations and decisions of the Borough and have no regard to the impact on the residents or the environment. This construction was built before any application was made for approval and continues to ignore the decision of the Dacorum Planning Committee and the decision of the Planning Inspectorate.</p> <p>(5) The principle objections to this development relate to the size of the construction, the impact of smoke and fumes from the three wood burning ovens/stoves and the impact of noise and disturbance to neighbours. These matters remain and therefore this application must be REFUSED.</p>
<p>22 SILVERTHORN DRIVE,HEMEL HEMPSTEAD,,,HP3 8BU</p>	<p>This bbq structure was built without planning permission or building regulations and the owners have submitted multiple plans none of which are accurate.</p> <p>The owners state this is a bbq area that is to be used predominately by their young family. This is not the case, the owners have used it for substantial parties on numerous occasions and certainly not in the manner they describe in both the reports provided by RSK. The disturbance to residents is considerable (we can hear the noise from their parties clearly in our garden and we are some distance away). A pizza oven can easily cater for 25 people, and with the addition of the bbq this would bring the number of 'covers' that the area could serve to around 50. It is not unreasonable to suppose that numbers will rise to this level or else why bother to build such a large structure.</p>
<p>26 SILVERTHORN DRIVE,HEMEL HEMPSTEAD,,,HP3 8BU</p>	<p>Further to my objection notice submitted on 13 April 2019, as more information has now been provided, I am responding thus.</p> <p>I would also like to point out the title of this application is incorrect and misleading. This application relates to an "outdoor kitchen and entertainment area" which includes three wood burning ovens and not what one would normally identify as a BBQ.</p>

1. The planning application now includes a noise report performed by RSK on 16th April 2019, commissioned by the occupants of 28 Silverthorn Drive to support their application. I commissioned an independent review of this work with one of the UK's leading consultancies in environmental and acoustics. Their response raises a number of concerns regarding the basis on which the work was undertaken and the interpretation of the results as misleading and incorrect. A copy of the independent report has been given to Dacorum's Environmental Health Team (Mr N Polden), I will send another copy of this report to Dacorum Planning Team by email (Mr Will Collier)

2. We reviewed the RSK "Odour and Smoke Amenity Assessment" on 20th May 2019 and note the report confirms the high impact from both Smoke and Odour affecting No26. We note however they were informed the impact is mitigated by the infrequent use of the facility. However facts as we have identified note the use is far more frequent and the duration longer than claimed by the occupants at No28. I want to stress the use of these facilities is not infrequent in fact I would assert it is in regular use.

I want to reiterate this proposal which now includes a flank wall, does not mitigate any noise disturbance on 26 Silverthorn Drive and to confirm again the continuing use of this structure is committing a statutory nuisance as the disturbance (noise, smoke and odour) and significantly interferes with our rights to enjoy our home and amenities in peace.

3. We have had a number of Environmental Reports carried out by Dacorum Council. All of which have raised concerns regarding the structure and the resultant disturbance caused by its continued use:

- i. On 23rd August 2017, Richard Swann (Dacorum EHO) submitted an email to Intan Keen (Dacorum Planning) raising concerns about the roof likely to amplify the noise and the question as to why the development was sited right against the boundary with the neighbours. Mr Swann commented from a purely acoustic point of view a "proper additional room would have almost certainly be far better than what has been constructed".
- ii. On 27th March 2018, Justin Strange (Dacorum EHO) submitted in an email response to Intan Keen. Mr Strange stressed the concern about noise levels generated from the use of the structure and also raising the statutory nuisance issue under the Environmental Protection Act 1990 Section 80. Mr Strange also

	<p>supported the concerns regarding the nuisance from odour/smoke and raising the need for enforcement action to effectively stop the continuing use of this equipment.</p> <p>iii. On 20th May 2019, a visit was made by Mr Neil Polden (Dacorum EHO) who undertook a physical review of the structure from the viewpoint of No 26. We have no feedback at this point from Mr Polden's visit.</p> <p>4. The construction of this structure contravenes a number of Council Policies namely:</p> <p>i. Appendix 7 of the Dacorum Local Plan. "If the extension is on or near a flank it should not extend for an excessive distance beyond the rear wall of the adjoining house". This structure extends 11metres beyond the neighbouring property.</p> <p>ii. Council Policy CS12 (c), (d), (e) and (f). I would like to point out the application refers to hedges in the application, however these hedges are not on the property of no 28 but in the diagram the hedges referred to are on the neighbouring property at No 26. The application cut down all the existing hedges and shrubs on the site to build a concrete base and a breeze block wall on the boundary with No 26.</p> <p>iii. Longdean Park has restrictive covenants in the title deeds to uphold and maintain high standards and the ethos of Longdean Park. One requirement is for each householder to maintain hedges on all sides of the gardens. Specifically the removal of the hedges by No 28 is a contravention of the covenant. Whilst these covenants are not a planning issue they illustrate how Longdean Park residents are required to maintain high standards and compliance for the benefit of all. Therefore I am objecting to this latest application</p>
<p>46 silverthorn drive,hemel hempstead,,hp3 8bu</p>	<p>On behalf of Longdean Park Residents Association:          Whilst we welcome the bricking up of the glazed area on the boundary wall with No 26 we wish to register our objection and comment to some of the other works proposed at No 28 Silverthorn Drive.</p> <p>1.The property was subject to an appeal decision earlier in the rear which made specific reference within point 17 of the decision, to the flues resulting "in significant and unacceptable level of noise, disturbance, smoke, fumes....." it then goes on to say that "For these reasons the proposed BBQ structure and flues, as proposed, are unacceptable". From the submitted drawings the same number of flues are provided. The application has been supported by a consultants report. This report states that the smoke from the flues could provide a substantial adverse effect in certain conditions and then</p>

	<p>recommends remedial work required to the flues to reduce impact. It is suggested that this work be made a condition should planning permission be obtained. The LPRA are concerned that this work , even if undertaken, could easily be forgotten over time with maintenance becoming less regular and the matter becoming more and more difficult to enforce. If the flues produce such an effect surely they must be considered unacceptable. After all this is a residential area, not a commercial concern and one must ask the question of suitability of such an installation if extensive air control measures are required.</p> <p>2. As previously mentioned the LPRA welcome the bricking up of the flank wall but there is little detail on the submitted drawings about how this is to be undertaken. The note just refers to "brickwork along the entire barbecue length of the boundary" but there is no specification as to thickness or appearance.</p> <p>3. The plans are ambiguous regarding the CCTV points. The Inspectors Decision clearly states that no cameras should be placed on southern elevation or on the north elevation, the latter still seem to be shown.</p> <p>We would be grateful if these concerns could be taken into account during the decision making process.</p> <p>On behalf of LPRA</p>
<p>26 SILVERTHORN DRIVE,HEMEL HEMPSTEAD,,,HP3 8BU</p>	<p>I strongly object to Planning Application ref 4/00755/19 FHA "Outdoor BBQ area &amp; Associated Flues".</p> <p>1. No Material Difference to 3rd Application ref 4/000/28/18/FHA "External Covered BBQ Structure and Addition of 3 Flues"</p> <p>The relevant element of the scheme appears unchanged from that refused by the Council in 2018 (4/00028/18/FHA) and subsequently dismissed at Appeal (Ref: APP/A1910/D/18/3213188) on 17th January 2019, with the Inspector stating;</p> <p>'I conclude on this main issue that the proposed BBQ structure and associated flues have the potential to materially and unacceptably harm the living conditions of the occupiers of No.26. Accordingly, this aspect of the proposal would conflict with policy CS12 of the Core Strategy.'</p> <p>The new plans, like the old plans, continue to omit that the applicant has already raised (without planning permission) both the floor level and the flank wall, the</p>

latter topped with coping stones and glazed panels on spacer fittings. The case officer of the previous application communicated by email that this submission included revised plans showing "a notation on the barbecue area floor plan stating the wall would be fully enclosed. The revisions are therefore minor however I thought it best to issue formal consultations on the new information. "

The heading of this latest application is misleading; far from an outdoor barbecue area, it is an external kitchen/entertainment area (c11metres in length) and thus contravenes Appendix 7 section (iv) and (v) of the Dacorum Local Plan. It is also used all-year round. There is seating for 20 people, 3 wood burning stoves, a sink, lighting and a speaker; at times it is used as an extension of the gym. This area was previously a lavender garden. The previous refusal upheld by the Inspectorate is subject to an enforcement notice, yet to be enforced. The reasoning for the resubmission is unclear insofar as the proposal was found to be contrary to policy in 2018 and early 2019, thus I consider that it remains contrary to policy which remains unchanged since these earlier refusals, namely Paragraph 2 of the National Planning Policy (revised February 2019) (NPPF) states; 'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise'. It is important to note this new application should in fact be for consideration of the structure as a whole and not just the changes to the flank wall.

## 2. Submitted Plans Conflict with Key National Planning Policies

One of the policy considerations is Paragraph 127 of the NPPF. The relevant section of Paragraph 127 of the NPPF states;

'Planning policies and decisions should ensure that developments:

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;  
f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.'

The in-situ structure is on the boundary line, only separated visually by way of a seasonal hedge wholly within our land (greatly cut back by the applicant) with no effort to reduce the impact via landscaping within the applicants land. The application presents a plain

concrete-block wall of no visual quality and of poor ad hoc construction to our garden, failing to be visually attractive as a result of good materials, architecture, layout and appropriate and effective landscaping. The new application also fails to indicate the type or quality of materials to be used leaving any new construction open to interpretation.

The raised wall is not only made of poor quality materials, but has been built "over hand" without any finishing materials to the external face. The materials facing our garden are raw breeze blocks with mortar spilling from the joints as shown in the accompanying photographs. It is my understanding that poor quality design and/or materials should not be allowed simply due to planting/screening given the hedge is solely on our land. Thus, the application fails the test at Paragraph 127(b).

I can confirm the Inspector's concerns highlighted within the Decision Notice have been borne out. There is much disruption to our amenity in terms of noise created by the use and occupation of the structure, as well as odour and smoke from the flues (confirmed by my kept diary sheets which I have been submitting to Environmental Health since December 2017). We are unable to enjoy our garden, patio or even have our windows open when in use. It is therefore the case that the application does not create a place with a high standard of amenity for existing and future users, thus failing the test at Paragraph 127(f).

As stated in each of our prior objections noises of all kinds from the barbecue area are amplified by the design of structure, noted by Environmental Health in August 2017 and May 2018.

Finally, Section 180 of the NPPF states that: "Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life." None of the details in this application demonstrate adherence to this policy.

### 3. Submitted Plans Conflict with Key Local Planning Policies

As pointed out by the Inspector, the structure fails to comply with Local Policy Considerations. These are laid down in Policy CS12 of the Dacorum Borough Council

Core Strategy 2013, the specific elements of which note:  
'On each site development should:

c) Avoid visual intrusion, loss of sunlight and daylight, loss of privacy and disturbance to the surrounding properties;

g) Respect adjoining properties in terms of item i - viii'

The structure causes detriment to my property visually, as well as in terms of noise, fumes and odour which directly affects my privacy and causes disturbance to the enjoyment of my property, directly contradicting strand c) of Policy CS12. In addition, the proposal presents a blank and poorly detailed wall to my property and thus does not respect my property in terms of strand g (vii Materials & viii Landscaping & Amenity Space) specifically relating to the impact of the utilised materials and also the lack of any landscaping on the applicants land to screen their development.

I do not believe bricking up the wall will go far enough to alleviate the disturbances of noise, odour and smoke currently endured when the structure is in use. The Enforcement Notice already states the existing structure contravenes CS32: Air, Soil and Water Quality: "any development proposals which would cause harm from a significant increase in pollution (into the air, soil or any water body) by virtue of the emissions of fumes, particles, effluent, radiation, smell, heat, light, noise or noxious substances, will not be permitted". Not least the applicant's own Odour and Smoke Report suggests "the covered barbecue area should not be used until a smoke and odour mitigation scheme has been submitted to the council and approved". Not only has no such scheme been admitted in the application, but the structure continues to be used regularly. The applicant additionally submitted a Noise Report, upon assessment of which, an independent acoustic organisation (Vanguardia) raised concerns over the work carried out and the findings produced (already submitted).

Conclusion

In light of the above I consider that nothing has changed to overcome the substantial concerns raised by the Council in refusing the previous application, nor by the appointed Inspector in dismissing this element of the appeal. The proposals are still contrary to adopted national and local planning policies and should be refused. As predicted, I can confirm the structure has resulted in "significant and unacceptable levels of noise, disturbance, smoke, fumes and loss of privacy" for which the Inspector deemed the "BBQ structure and flues, as proposed, are unacceptable" adding that "the harm that could be caused [to No. 26] would materially outweigh the benefits" for the applicant. The enforcement notice to the previous refusal should be actioned to stop the

	<p>constant use of this poorly designed structure. We do not wish to take away any enjoyment of our neighbour and his young family in their home, but my family and I have a right to peaceful enjoyment of all our possessions including home and garden and a mutual respect for both families' privacy.</p>
<p>26 SILVERTHORN DRIVE,HEMEL HEMPSTEAD,,,HP3 8BU</p>	<p>4/00755/19/FHA   ENCLOSED OUTDOOR SEATING AREA   28 SILVERTHORN DRIVE, HEMEL HEMPSTEAD, HP3 8BU</p> <p>The revised application dated 3-4/7/2019 contains a number of important amendments to the earlier application. The application has also been renamed as "Enclosed Outdoor Seating Area" from "Outdoor BBQ Area and associated flues". Therefore in addition to my previous objection I am now responding to these amendments.</p> <p>Firstly, under Design and Access Statement the following points have been clearly incorporated in the application</p> <ol style="list-style-type: none"> <li>1. "the applicant has taken the decision to remove the three (wood burning) ovens and their associated flues from the proposed development". Section 1.4.4, page 6</li> <li>2. "in terms of the noise assessment, feedback was provided by Neil Polden via Will Collier on 6th June 2019 and again on the 20th June 2019 resulting in the applicant seeking to increase the level of noise insulation with the proposals southern elevation and also enclose the eastern elevation using brick and acoustic foam insulation". Section 1.5.4, page 6</li> <li>3. "Both the southern and eastern elevation would incorporate a double layered wall with an acoustic interlayer in the form of a soundproofing sheet compliant with Class 0 as defined within the Approved Document B (Fire Safety) Volume 1 - Dwelling Houses (The Building Regulations 2010)". Section 3.3.3 page 13</li> <li>4. "The application seeks to regularize the development of an existing outdoor BBQ Area by removing the three existing ovens and associated flues and proposing a revised building design with fully sealed brick-built elevations to the south and east creating and enclosed seating area". Section 6.1.1, page 19.</li> </ol> <p>Secondly, under Additional Information now contains reference to</p> <ol style="list-style-type: none"> <li>1. incorporate "full enclosure along the structure's southern and eastern side (double-brick wall with absorbent foam sheets in between)" section 5, para 1, page 13</li> <li>2. The noise modelling concludes "minor impact on the</li> </ol>

noise environment on outdoor amenity areas and a moderate impact outside most exposed windows at first floor level and be unlikely to cause any sleep disturbance inside the property". Section 7, para 9, page 27

3. "The proposed design, in the form of elevation and reinforcement of the existing brick wall (double wall with acoustic foam material in the cavity) would need to ensure the full enclosure of the southern and eastern section of the outdoor seating area with no air gaps being left". Section 7, para 10, page 27

This information is critical addressing the noise and the smoke and odour impacts on 26 Silverthorn Drive along with many other residents currently affected by this structure.

However, looking at the proposed plans

1. Document PL/008-02 A the proposed elevations do NOT show the southern and eastern walls being fully enclosed and clearly shows there to be material gaps remaining. The drawings show brickwork between the wooden pillars supporting the roof however these are not part of the wall and thereby does not reflect the statements made in the report.

2. Document PL/009-02 B the proposed elevations show the structure from the northern side (side elevation A-A) and not the southern side which is the subject of the material amendment. They also show the eastern elevation (side elevation B-B) however again the drawings only show brickwork between the wooden roof support pillars and NOT the eastern wall. The wooden pillars sit within the structure and do not form part of the said wall.

3. The drawings do not show clearly the southern and eastern walls having the acoustic interlayer incorporated in the design.

It is important the plans should include the impacted parts of the structure as to the current and proposed changes to avoid any misrepresentation. The impacted walls both eastern and southern should be the primary elevations shown clearly in the plans detailing exactly what the changes will be.

Finally, given the history of the applicant's disregard for compliance with planning regulations and in addition the impacts and damage to others and their property as well as the environment. What compliance steps will Dacorum Planning impose to ensure any approved designs are duly carried out according to the instructions. It is important the applicant is held accountable for due compliance.