

<b>REFERENCE NO - 22/500345/FULL</b>			
<b>APPLICATION PROPOSAL</b> Retrospective application for the replacement and reconfiguration of patio to the rear of the house with proposed privacy screen; the erection of a gazebo with surrounding decking; the erection of an orangery; and the part conversion of the integral garage to a utility room and WC			
<b>ADDRESS</b> 8 Nethermount Bearsted Maidstone Kent ME14 4FE			
<b>RECOMMENDATION</b> Approval with Conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> Subject to conditions being imposed with regard to the provision and retention of the proposed privacy screening, the development complies with the relevant development plan policies.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Councillor Springett called in the proposal and also raised objections.			
<b>WARD</b> Bearsted	<b>PARISH/TOWN</b> Bearsted	<b>COUNCIL</b>	<b>APPLICANT</b> Mr T Croom <b>AGENT</b> Kent Design Studio Ltd
<b>TARGET DECISION DATE</b> 30/06/22		<b>PUBLICITY EXPIRY DATE</b> 26/05/22	

### **Relevant Planning History**

**13/1795** - Loft conversion with dormer window to rear elevation, and rooflights to front and side elevations Approved 16.12.2013

**13/1560** - An application for a Certificate of Lawfulness for a Proposed Development being the introduction of rooflights to front and side elevations and rear dormer Refused 26.09.2013

**09/2222** - Part retrospective planning permission for construction of timber decking, raising of ground levels and erection of 2.4m fencing and trellis to plots 1, 2 and 3 - Approved 04.02.2010

**08/1183** - Amendments to approved scheme MA/07/0152 for the erection of three detached houses and six semi-detached houses with associated garaging - Approved 01.08.2008

**07/0152** - Erection of three detached houses and six semi-detached houses with associated garaging - Approved 19.06.2007

### **Enforcement History:**

21/500972/OPDEV – Unauthorised erection of a raised deck – pending consideration (subject of this application)

### **Appeal History:**

N/A

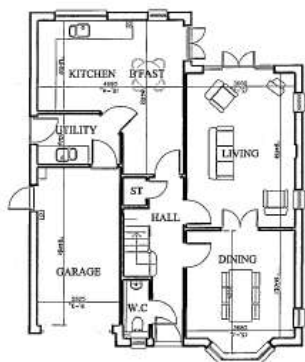
### **MAIN REPORT**

## 1. DESCRIPTION OF SITE

- 1.01 The application site comprises a detached house located to the north-eastern side of Nethermount. The land levels fall heading to the north-east and consequently, the rear garden is on a lower level than the floor level of the dwelling and continues to drop towards the boundary with 2 Little Orchard to the rear. The dwelling has previously been the subject of a loft conversion and orangery extension as well as internal and external alterations to convert part of the integral garage to a utility room and WC.
- 1.02 Nethermount itself is located within Bearsted and is a relatively new development of 9 houses located to the north-west of Church Lane.

## 2. PROPOSAL

- 2.01 This is a retrospective planning application that was initially submitted to regularise matters relating to the construction of a raised patio and gazebo addition to the rear of the property. During the assessment of the proposal, it transpired that the orangery was a later addition to the dwelling and also part of the original integral garage had been converted to a utility room and WC. As the original planning consent for Nethermount includes conditions that withdraw householder permitted development rights from Classes A to E; and that the approved parking spaces remain available for such use at all times, these items were added to the application to regularise matters.
- 2.02 As originally approved, 8 Nethermount had an irregular footprint to the ground floor and according to the evidence provided by the applicant, the previous owners of the house constructed an orangery extension in 2012 to effectively 'square - off' the ground floor. Internal alterations were also made in 2011 to enlarge the kitchen and reposition the utility room within the garage area:



**Original Layout**

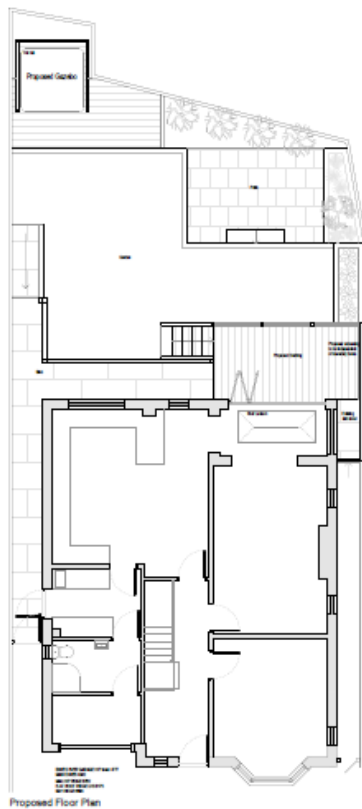


**Layout Following Orangery Extension and garage alterations**

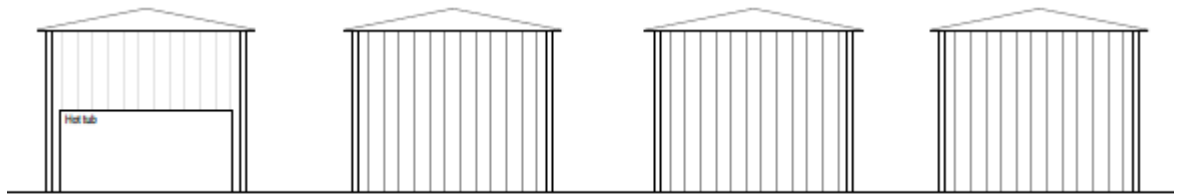
- 2.03 Further alterations have since been carried out to relocate the downstairs WC to within the former garage space, including the insertion of a small window:



- 2.04 In terms of the patio, given the land level differences in the rear garden, the original design of the dwellings in this part of Nethermount incorporated a patio and stepped access down to the main garden areas (approved as an amendment to the original scheme under reference 09/2222). The construction of the orangery at no.8 had reduced the patio space and the current occupants of the dwelling wished to increase its size. Consequently, the area to the rear of the orangery was replaced and enlarged. The original area projected approximately 1.5m from the rear elevation of the orangery and the new addition increases this depth to approximately 2.3m. The maximum height of the original patio at approximately 1.15m is retained in the current proposal. The original patio incorporated steps into the garden to the north-eastern elevation and these have been repositioned to the north-western elevation. The orangery addition has also been altered to incorporate glazed bi-folding doors across the rear elevation leading onto the patio as well as amendments to the window on the flank elevation. Due to the higher ground levels in the garden for the application property when compared to no.9 (the adjacent property to the east) an obscure glazed privacy screen of 1.8m in height is proposed along the eastern boundary. A glazed balustrade of 1.1m in height is also proposed along the end of the patio and adjacent the stairs:



- 2.04 At the present time, the raised patio has been constructed but the proposed balustrading has not been installed as the applicants stopped any further works when advised that planning permission is required.
- 2.05 In addition to the alterations to the patio, a gazebo has been constructed at the end of the rear garden to house a hot tub. The ground immediately adjacent to the gazebo has been surfaced with decking:



### Proposed Gazebo

- 2.06 The gazebo has a height to eaves of approximately 1.9m and a maximum height of 2.15m. The building is 2.3m in width and 2.3m in depth. The exterior walls are finished in timber. The gazebo is open to the elevation facing into the garden and is used to house a hot tub.

## 3. POLICY AND OTHER CONSIDERATIONS

**Maidstone Borough Local Plan 2017:** DM1; DM9

**Emerging Policy:** The Regulation 22 draft is a material consideration and some weight must be attached to the document because of the stage it is at, but its weight is limited, as it has yet to be the subject of an examination in public. The following policies within the draft are relevant to this application: Policy LPRSP15 – Principles of Good Design; Policy LPRHOU 2 - Residential extensions, conversions, annexes and redevelopment in the built-up area; Policy LPRTRA4 – Assessing the Transport Impacts of Development

**Supplementary Planning Documents:** Residential Extensions (2009)

**National Planning Policy Framework (NPPF)**

**National Planning Practice Guidance (NPPG)**

## 4. LOCAL REPRESENTATIONS

### Local Residents:

- 4.01 The consultations on the initial application, which related only to the patio and gazebo, resulted in representations from no.9 Nethermount, the adjacent property to the south-east, expressing the following (summarised) objections:
- The application is inaccurate and misleading, it doesn't show measurements and implies that there was a patio whereas it was just a narrow path in front of the conservatory and steps into the garden;
  - We were not consulted about this proposed building work but became concerned when, whilst in our house, workmen appeared head and shoulders above our boundary fence;
  - The decking extends up to and touches our boundary fence which does not allow any room for maintenance and no provision has been made for water to disperse away from our fence. Previously, there was a gap;
  - The top of our boundary fence to the decking below, nearest the conservatory, measures approximately 140cm high and reduces to 110cm at the 2.6m point due to the sloping boundary fence. Therefore, a torso of an adult standing on the deck can be clearly seen above the top of the fence. This gives then a clear line of sight down into our property and garden, especially if the decking is used

recreationally as a patio with table, chairs, BBQ etc. This results in a total lack of privacy both visually and audibly;

- The storage area under the patio may be predisposed to vermin;
- The conservatory has been significantly changed, with a new brick pillar, walls removed to incorporate floor to ceiling bi-folding doors, and an enlarged side window facing our garden that now opens;
- We have concerns regarding both visual and audible privacy, especially as the conservatory has no internal walls or doors between the kitchen and lounge;
- The conservatory was originally constructed without planning permission;
- We explained our concern to our neighbour and they suggested that they would erect a higher fence, albeit that we own the fence and we consider this to be unacceptable;
- We request that the planning application in respect of the raised decking be refused and request that any decking is lowered so that it maintains privacy; any development be sited an appropriate distance from the fence to maintain privacy and allow maintenance; the conservatory windows be addressed such that privacy is maintained.

4.02 Following amendments to the application, which include the introduction of a proposed privacy screen adjacent to the boundary with no.9 Nethermount and the inclusion of the orangery and alterations to the integral garage, a second round of consultations was undertaken and this resulted in objections from no.9 Nethermount, which are summarised as follows:

- We wish to make no comment in relation to the gazebo and conversion of the garage space into habitable accommodation other than the fact that the property now has only two parking spaces at the front of the property for a, now, five-bedroom house. We should also point out that we first raised our concerns in November 2021 with Maidstone Borough Council (ref DIG381234738). The time taken to raise the retrospective planning (i.e. certificate of lawfulness) has subsequently created a lapse of 10 years;
- We have significant concerns relating to the side windows of the conservatory and the raised decking that extends from the conservatory out into the garden. Our comments below should also be read in conjunction with comments relating to the original application (22/500345FULL) which we submitted on 14 March 2022 and are still valid;
- The placement of no.8 sits back in its plot 5m compared to no.9 which means the side windows of the conservatory are adjacent to our garden and overlook it;
- Both nos.8 and 9 are situated on land which significantly slopes away from the rear of the houses down into the back gardens. Our boundary fence, at 1.8m high starts from the edge of the original house at no.8 and the top of the fence maintains the 1.8m height as it travels down the incline, thus providing privacy without being overbearing;
- The new raised decking does not replace an existing patio and is approximately 0.7m in height at the furthest point into the garden. Its level is approximately half way up our boundary fence so the torso of any adult standing on the raised decking is visible above the top of the fence and has a clear view of our garden and house;
- There are inaccuracies in the plans in terms of the window positions and boundary length;
- The proposed opaque screen would result in a construction of around 2.5m – 2.6m in height above our ground level and we assume it would be fixed to the decking and not our boundary fence. According to the plans, it would only partially obscure the side windows starting half way along the side of the conservatory;

- Previously all three side windows to the conservatory were non-opening and the replacements include one opening window;
- The bi-folding doors and ability to open the side window will increase the level of noise emanating from the property and the proposed screen would be unlikely to prevent this;
- The raised decking is likely to be used for social activities that would have a greater impact on us rather than using the existing patio at the bottom of the garden;
- The screen would not prevent diagonal views across the rest of our garden and patio;
- No details have been given of the level of obscurity of the glass;
- No details have been given of the method of construction and we would object to any alterations to or for anything being attached to our boundary fence;
- The proposed screening when viewed from no.9 would be overbearing;
- The location of the screen could impact water run-off causing rotting of our fence and it would make it difficult to maintain the fence;
- The proposed screen would appear incongruous and does not have sufficient regard for the context or setting and would not conserve or enhance the character and appearance of our property;
- The resultant increase height of the boundary would be overpowering and over-dominating, our garden is small and would be surrounded by tall fences/boundaries and would feel like being contained within a box;
- Considering the staggered placement of our property the view and outlook from no.9 would be severely curtailed;
- Upon our objection being upheld, we request that the raised decking outside the conservatory be removed or lowered to no more than 30cm above ground level; any revised construction of any such decking be constructed away from our fence; we would not insist on obscure glass being inserted into the side windows of the conservatory but would insist on the side windows having no openings below 1.7m above finished floor level.

4.03 The issues raised relating to potential for vermin to inhabit the storage area and ability to maintain the fence are not material planning considerations and therefore cannot be taken into account in the determination of this application. The other matters raised by neighbours and other objectors are discussed in the detailed assessment below.

## **5. CONSULTATIONS**

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

### Bearsted Parish Council

5.01 Recommend refusal, loss of privacy to neighbour.

### Bearsted Parish Council – Response to Consultations on Revisions

- 5.02 BPC feels that all elements of the application are acceptable except the height of the decking as this infringes on the neighbour's privacy. Therefore we recommend refusal, although if the decking height could be reduced BPC would happily recommend approval for the application.

Councillor Springett

- 5.02 Cllr Springett submitted the following neighbour comments on the proposal:

"I have no comment to make on the garage conversion or the gazebo. However, although I have no particular objection to the orangery extension to the original property, as if applied for in isolation, would probably be permitted with the inclusion of obscure glass in the side window, I strongly object to the revised patio, which is in the form of a large area of raised decking. The creation of this decking on the sloping plot has created an unacceptable loss of privacy for the adjacent property, and the proposed screen is visually intrusive and affects the openness of the outlook and amenity of the adjacent property. At 1.8 metre height above the decking, it is effectively 2.5 metres above the garden height of the adjacent garden, and although formed of obscure glass, will create an overbearing element to the neighbour's garden. It appears to extend about two-thirds of the length of the neighbour's garden. The decking should be rebuilt at a lower level to reinstate the existing privacy and amenity of the adjoining neighbour".

- 5.03 Cllr Springett also emailed the Planning Officer and requested that the application be called in on the following grounds:

*"I have just submitted comments on the above application. Although I have no objections to the bulk of the application, which is for the garage conversion, the 'orangery' extension and the gazebo, I do have serious concerns about the decking area and the unusual screening proposal which I consider a 'botch' to correct a botch. Because of this, I would ask that this application is referred to planning committee should you be minded to approve it."*

- 5.04 As the application was reconsulted upon, due to the submission of amended plans, the application was within the call in period.

## **6. APPRAISAL**

### **Main Issues**

- 6.01 The key issues for consideration relate to:

- The principle and visual impact of the orangery extension; alterations to the garage; and raised patio addition;
- The impact on the amenities, privacy and outlook of the neighbouring householders.

### **Principle and Visual Impact**

- 6.02 As set out above, the original planning consent for the residential development of Nethermount included a condition that withdrew the permitted development rights that dwellings would usually enjoy as well as a condition to protect the parking provision for each property. Regardless of this, the raised patio would require consent because it does not fall within the limitations of permitted development due to its height. The initial application related only to the raised patio however a consideration of the history of the dwelling brought up the requirement to regularise

the additional works carried out and the application was subsequently amended. The revised application is accompanied by a supporting statement which sets out a timeline of when the orangery extension and initial works to the garage were completed. This provides evidence that the orangery extension was originally completed in 2012 and the initial works to the garage were carried out in 2011.

- 6.03 In the context of policies DM1 and DM9 as well as the SPD guidelines relating to domestic extensions, the design and appearance of the orangery extension is reflective of the existing dwelling and the addition is also subservient to the original property. The alterations to the garage have seen the retention of the original garage door and consequently, the appearance to the street facing elevation of the dwelling remains unchanged. The small ground floor window serving the new WC does not make a significant or unacceptable change to the appearance of the dwelling.
- 6.04 The internal alterations to the garage reduce its length to the extent that it can no longer accommodate a vehicle. In reviewing the application documents associated with the loft conversion approved in 2013, the plans from that time indicate that the garage would not be suitably sized for the parking of a vehicle and as such, the application was approved on the basis that the off-street parking on the driveway was sufficient for the increased number of bedrooms. Whilst the Local Plan has been updated since that approval, it is the case that the current policies and guidelines would not support an alternative view on this issue.
- 6.05 The gazebo style addition that has been constructed at the end of the rear garden is a relatively modest building that is comprised of timber. The addition has a shallow pitched roof that is hipped on all sides. Its position within the garden is such that the building is seen against the backdrop of the boundary fence and this in combination with its overall scale and massing means that it is not visually dominating in its setting. The decking path that has been added around the gazebo is also visually acceptable and is not significantly greater in height than the established ground level.
- 6.06 In terms of the raised patio, the design, which incorporates a light grey composite decking material together with a glazed balustrade and privacy screen is of a relatively modern appearance and would not therefore appear at odds with the contemporary style of the dwelling. It would appear that originally, the area to the rear elevation of the orangery was approximately 1.5m in length and approximately 4.6m in width. The alterations proposed in this application increase the length to approximately 2.5m and approximately 4.7m in width (plus the stairs down to the garden). The additional pathway across the rear of the house and ramp down to the garden remain as originally constructed when the house was built. The sales details from 2018 provide the following photograph of the original patio/walkway and steps:





- 6.07 The present construction, at the time of the site visit, had been developed to the following extent, with work having been halted when the applicants were advised that planning permission is necessary:



- 6.08 On balance, the overall size of the proposed patio area is not disproportionate or overly sized in relation to the dwelling. The glazed privacy screen will not appear visually intrusive in its setting. The size of the patio, relative to the overall dimensions of the rear garden, will not encompass an excessive amount of space and ultimately, is not significantly greater in footprint than the original raised area and steps. By virtue of its location, the addition will not generally be visible from the street. I therefore conclude that the patio and associated balustrade and privacy screen will not be materially harmful to the visual character of the application property or its surroundings.

#### **Impact on Neighbouring Amenities**

- 6.09 The application property has neighbours to all sides of the rear garden, being no.9 Nethermount to the east/south-east; no.7 Nethermount to the north-west; 2 Little Orchard to the north-east; and a small part of the rear boundary of 24 The Orchard to the north-west. The gazebo addition is closest to no.2 Little Orchard and no.24 The Orchard. Given its height relative to the boundary fences and the design of the roof form, this addition does not present an overbearing feature in the general outlook from these dwellings. The pathway that has been installed around the gazebo is marginally above the original ground level and consequently, does not create any greater issues of overlooking to the neighbouring gardens. The distance from no.7 Nethermount together with the height of the fence that separates the properties sees that there are no adverse impacts on the amenities of these particular occupants. Similarly, the distance and position of the gazebo in relation to no. 9 Nethermount is such that the relationships are acceptable.
- 6.10 The alterations to the integral garage were largely internal asides from the introduction of a small ground floor window to the flank elevation which has not resulted in any adverse relationships.
- 6.11 The orangery extension that was completed in 2012 is closest to the boundary with no.9 Nethermount. The footprint is quite modest and the extension itself would comply with the BRE 45 degree rule. The addition incorporates a window to the flank elevation and this currently faces the boundary fence. It is however the case that although the fence drops in height at this point, the fence is higher where it is closer to the rear elevation of no.9 and this partially obstructs the views. The angled relationship with the windows at no.9 also sees that the window does not look directly into the windows on the rear elevation of no.9. In considering the relationships, it is also the case that consideration must be given to the fact that this addition has been proven to be in place for 10 years and whilst it would seem that the window was recently replaced, the principle of a window in this location is long established.
- 6.12 The patio addition has undoubtedly altered the relationship between nos.8 and 9 Nethermount in the sense that there are increased opportunities for overlooking

into the private garden area of no.9 by virtue of the enlarged length. The originally approved walkway/patio and steps to the rear of the property did not incorporate any screening (as approved in the original planning consent for the dwellings) and the fence has not (it would appear) been altered in height since the houses at Nethermount were originally constructed. It is therefore the case that to some degree, there has always been a situation of overlooking from the rear of no.8 towards the garden of no.9. The patio as installed aligns with the floor level of the dwelling, the same as the original and therefore it is the increase in the length of approximately 0.8m that is the source of the issues.

- 6.13 In response to the overlooking problems, the applicant proposes to install an obscure glazed privacy screen of 1.8m in height along the length of the patio, adjacent to the boundary with no.9. The privacy screen has also been located such that it will extend in front of the window to the flank elevation of the orangery thereby obscuring the views from this window as well. Specific details of the screen have not been provided however they can be requested via a condition. The wording of the condition should specify that the obscurity level of the glass should not be less than 3 on the Pilkington Scale (or equivalent) as this is the accepted minimum standard. In view of the retrospective nature of this application, the applicant should also be required to submit the details of the privacy screen within 2 months of the date of the decision being issued and following approval, the screen should be required to be installed within 2 months. I also recommend that the privacy screen is conditioned to be maintained as approved on a permanent basis.
- 6.14 The SPD Residential Extensions (2009) determines that the private garden area of a property will be classed as the area within 5m of the rear elevation of a property. In this regard, any views across the latter parts of the neighbouring gardens would not be contrary to policy. It is also the case that the original walkway/patio would have allowed views in this direction.
- 6.15 The objections received from no.9 and the Local Ward Councillor refer to the proposed privacy screen as being overbearing in the outlook from the neighbouring property as well as generally appearing incongruous and out of character. The proposed elevation drawing is also said to be inaccurate and suggests that the boundary is greater in length than it actually is. In assessing this issue, it must be considered that to a large extent, the privacy screen will be obscured by the boundary fence, with only the upper section being visible. The fact that no.8 is on a slightly higher ground level than no.9 is the reason for need to consider an enhanced boundary treatment and a glazed form of screening is a common solution to this type of situation. In balancing the issues of this case, it would appear that the privacy screen would present a suitable way to overcome the issues raised in the objection.
- 6.16 In terms of the points relating to the accuracy of the plans, the proposals are clearly set out on the block and elevation plans, it is the 2D nature of the elevation drawing that is perhaps suggesting a greater boundary length as the boundary turns to the north-west. The objection also referred to the ground floor flank windows being incorrectly positioned. In reviewing the drawings, the windows are correctly placed, it was in fact that the extent of the first floor of the property that was not correctly positioned and this has been rectified since the consultations took place.
- 6.17 The objections received also refer to the potential for greater noise generation due to the patio being used for social activities etc. and also, because the bi-folding doors and flank window open the house to a greater extent than before. The patio relates to a single dwellinghouse and there is nothing within the application submission to suggest that it will be used for any alternative purposes. In planning terms, it would be difficult to substantiate a refusal on this ground, particularly in an appeal situation, as the patio will be part of the domestic use of the site and no change of use is proposed. The applicant also states that the previous window to the

flank elevation was always capable of being opened. Essentially, as with all residential dwellings, should noise and disturbance become an issue, this would be dealt with by the appropriate environmental health controls and not planning regulations.

- 6.18 In terms of the relationship with no.7, the fence along this boundary is greater in height than along the boundary with no.9. In view of this together with the distance of the patio from the boundary, there are no adverse relationships.

## **PUBLIC SECTOR EQUALITY DUTY**

- 6.19 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7. CONCLUSION**

- 7.01 On balance, whilst it is regrettable that planning permission was not sought prior to the development works taking place, it is the case that subject to the conditions set out above, the proposal is acceptable in the context of the relevant development plan policies and SPD guidelines. The initial alterations to the garage and the construction of the orangery took place over 10 years ago and were not reported to Planning Enforcement at the time. Under the terms of Section 191 of the Town and Country Planning Act 1990, such development would be exempt from enforcement action after a period of 10 years. Whilst these additions have been the subject of more recent alterations, the general principle is long established.
- 7.02 In considering the objections received, as well as carrying out an assessment on site, the patio construction in its present form undoubtedly results in an unacceptable relationship between no.8 and no.9 by virtue of the ground level differences and the resulting inability of the established boundary treatment to maintain a satisfactory level of privacy for the occupants of no.9. It therefore becomes necessary to consider whether the use of conditions could overcome this issue. The amended proposal relating to the provision of a privacy screen within the application site along the boundary will remedy the situation and can be conditioned to be maintained on a permanent basis. Whilst this proposal has raised an objection from the Local Ward Councillor, Parish Council and the occupants of no.9, the amount of the screen that will be visible from this property is not so significant as to be considered overbearing. The continued use of the property as a single dwellinghouse would also see that the issues regarding noise could not be substantiated as a reason for refusal.
- 7.03 In assessing the details of the proposal and the objections raised, it is recommended that subject to imposing a suitably worded condition regarding the appearance of the screening and its retention on a permanent basis, this is an acceptable scheme.

## **8. RECOMMENDATION**

GRANT planning permission subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 3859-01D; 3859-02I; 3859-03A; 3859-04B.

Reason: To clarify which plans have been approved.

- 2) Within 2 months of the date of this decision notice, details of the design and appearance of the proposed obscure glazed privacy screen shall be submitted to the Local Planning Authority and shall incorporate glazing with an obscurity level of not less than 3 on the Pilkington Privacy Glass Scale (or equivalent). The privacy screening shall subsequently be installed and fully completed within 2 months of being approved and shall thereafter be maintained on a permanent basis;

Reason: In the interests of the privacy and amenities of the neighbouring householders.

### **INFORMATIVES**

- 1) It is the responsibility of the developer to ensure, before the development hereby approved is commenced, that approval under the Building Regulations (where required) and any other necessary approvals have been obtained, and that the details shown on the plans hereby approved agree in every aspect with those approved under such legislation.

Case Officer: Georgina Quinn