

Meeting: Planning and Development Agenda Item:

Committee

Date: 5 October 2021

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Application No: 21/00357/FP

Location: 37 Fellowes Way, Stevenage.

Proposal: Part change of use of ground floor of the main house to use as a dance

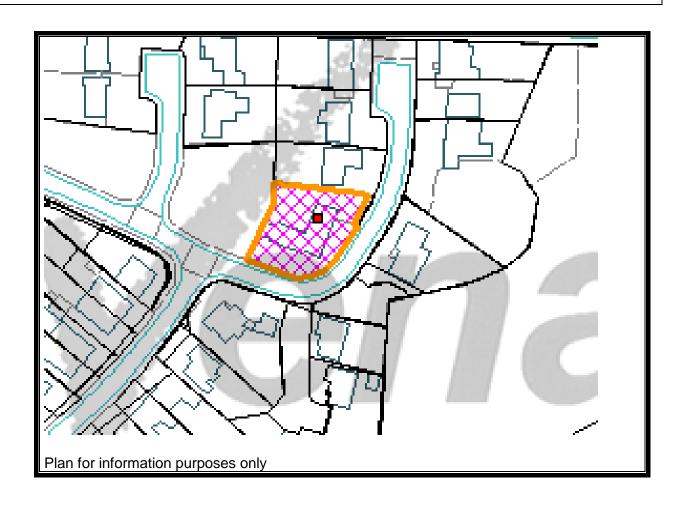
studio.

Drawing Nos.: 2121 P0001; 2121 P004.

Applicant: Mrs Kimberly Creak

Date Valid: 7 April 2021

Recommendation: GRANT PLANNING PERMISSION.



1. SITE DESCRIPTION

- 1.1 The site is a detached dwelling with attached garage and annexe. The property occupies a large corner plot at the eastern end of Fellowes Way a residential road in the Broadwater area of the town. The road leads to a small cul-de-sac to which the application site is visible on entry. The two storey brick and tile constructed dwelling faces south with the annexe and garage located to the north east of the dwelling and facing the road as it bends in to the cul-de-sac layout.
- 1.2 The area is characterised by large detached dwellings at the far eastern end of the road, with terraced dwellings and green open spaces to the frontages on entry to Fellowes Way from Broadwater Crescent. The area is also characterised by large numbers of mature trees, in particular towards the eastern end where neighbouring roads such as Woodland Way intersects with Fellowes Way.

2. RELEVANT PLANNING HISTORY

- 2.1 The property is part of an open enforcement investigation ref: 20/00454/ENF for the unauthorised use of the property for the running of a dance school. The current application follows this investigation to try and establish an authorised use.
- 2.2 03/00405/FP Two storey side extension, construction of pitched roof over and single storey extension to side of existing double garage and conversion of garage to living accommodation. This application was approved in 2003.

3. THE CURRENT APPLICATION

- 3.1 The application seeks planning permission for the use of the former annexe as a dance studio associated with the running of the owners dance school Premiere School of Dance. The proposal is not seeking to authorise the use in accordance with the operations as identified as part of the enforcement investigations.
- The application being considered proposes a reduced number of classes and pupil numbers than the numbers documented during COVID, when the dance school used the facilities at 37 Fellowes Way for dance classes at such an intensity it was considered a material change of use to part of the property had occurred.
- 3.3 The application is being considered at Planning and Development Committee following a call-in from Councillor John Gardner and Councillor Nicholas Leech in respect of concerns over impact on the highway and parking, and neighbour amenity.

4. PUBLIC REPRESENTATIONS

4.1 The application has been publicised by neighbour letter. There have been 7 letters objecting to and 9 letters supporting the proposal.

4.2 Objections –

- Parking issues location on a corner and at the junction with Woodland Way leaves little or no convenient parking spaces. Inevitable that parking, dropping off and collection will spill over in to Woodland Way. Levels of parking and dangerous parking last year during operation of the dance school.
- Narrow roads Fellowes Way and Woodland Way are narrow roads and much of Fellowes Way is inhabited by parked cars on the road belonging to residents who have no garage space.
- Unacceptable location for use this type of use should not be within a residential area.

- Noise nuisance and disruption comings and goings of pupils, with parents and children congregating whilst waiting to enter the studio and music being played.
- Dance school limitations concern the referenced limitations will not be adhered to given the operations of the studio during COVID restrictions.
- Conflict between classes during changeover likelihood that cars will be trying to leave from one class whilst the next class arrives.

4.3 Support –

- The use of 37 Fellowes Way has provided much needed small scale space for children with special educational needs and disabilities to participate in dance lessons.
- Professionalism and help of the owner with students studying dance degrees and other dance exams.
- Fully support this small business who offer reasonable and practicable solutions to operating from their property.
- The level of parking should not cause problems given pupil numbers and hours proposed.
- Provide an important educational service for children reducing the social and educational impact of the pandemic.
- 4.4 Please note the above is not a verbatim copy of the representations which have been received. A full copy of all representations which have been received regarding this application can be viewed on the Council's website.

5. CONSULTATIONS

5.1 Hertfordshire County Council as Highways Authority

5.1.1 The County Council as the Highways Authority consider the proposals to use part of the ground floor of the dwelling as a dance studio have no immediate safety concerns in terms of highway issues. There is parking for 2-3 vehicles and available off-street parking nearby. Therefore, subject to the informatives, this level of development is unlikely to generate any extra movements which would ultimately lead to demonstrable harm to the highway network in terms of free flow and capacity therefore, the highway authority does not wish to restrict the granting of permission.

5.2 Council's Environmental Health Section

- 5.2.1 I have concerns regarding likely noise nuisance caused to neighbouring residents from the activities at the dance studio. The hard surfaces within a dance studio offer little sound attenuation. Given the requirements under Covid for workplaces to be well ventilated, opening the doors and windows will allow breakout of sound from amplified music, the voice of the dance tutor giving instructions to be heard above the sound of the amplified music as well as any noise generated by the dancers.
 - 5.2.2 There were complaints from a former commercial premises used as a dance studio from the 'people' noise outside, pupils entering and leaving and parents chatting outside. There were also complaints about the amplified noise and this dance studio relocated.
 - 5.2.3 I am happy to look at any proposals by the applicant to mitigate the noise generated from these activities at the dance studio. I confirm that to date, no noise complaints have been received by environmental health regarding the activities of the dance studio at this property.

6. RELEVANT PLANNING POLICIES

6.1 Background to the development plan

- 6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the decision on the planning application should be in accordance with the development plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:
 - The Stevenage Borough Council Local Plan 2011-2031
 - Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014); and
 - Hertfordshire Minerals Local Plan 2002 2016 (adopted 2007).

6.2 Central Government Advice

A revised National Planning Policy Framework (NPPF) was published in July 2021. This largely reordered the policy substance of the earlier 2012 and 2019 versions of the NPPF albeit with some revisions to policy. The Council are content that the policies in the Local Plan are in conformity with the revised NPPF and that the Local Plan should be considered up to date for the purpose of determining planning applications. The NPPF provides that proposals which accord with an up to date development plan should be approved without delay (para.11) and that where a planning application conflicts with an up to date development plan, permission should not usually be granted (para.12). This indicates the weight which should be given to an up to date development plan, reflecting the requirements of section 38(6) of the 2004 Act. The NPPF and the PPG, with which Members are fully familiar, are both material considerations to be taken into account in determining this application.

6.3 Planning Practice Guidance

The PPG contains guidance supplementing the NPPF and with which Members are fully familiar. The PPG is a material consideration to be taken into account together with the National Design Guide (2019) which has the same status as the PPG.

6.4 Stevenage Borough Local Plan 2011-2031 (Adopted 2019)

Policy SP1: Presumption in favour of sustainable development;

Policy SP2: Sustainable Development in Stevenage;

Policy SP6: Sustainable Transport; Policy SP9: Healthy Communities; Policy IT5: Parking and Access; Policy GD1: High Quality Design.

Policy FP7: Pollution

Policy TC13: Retail impact assessments

6.5 Supplementary Planning Documents

Council's Design Guide SPD (2009); Parking Provision and Sustainable Transport SPD (2020)

6.6 Community infrastructure levy

Stevenage Borough Council adopted a Community Infrastructure Levy Charging Schedule in 2020. This allows the Council to collect a levy to fund infrastructure projects based on the type, location and floorspace of a development. As the proposal would fall within planning use class E – commercial, business and service use, which is the same use class as retail,

this proposal would be CIL liable at £60/m². However, it is recognised that the building would not be in a retail use and therefore would be liable for CIL at £0m² as 'other development' under the CIL charging schedule. In order to exempt the applicant from paying the higher rate of CIL, the use of the building would need to be restricted to a Dance Studio used under class E (d) of the Town and County Planning (Use Classes) (Amendment) (England) Regulations 2020. This can be done by way of a planning condition, should planning permission be granted. The applicant has agreed to such a condition being imposed.

7. APPRAISAL

7.1 The main issues for consideration in the determination of this application are its acceptability in land use policy terms, impact on the amenity of neighbouring properties and impact on the highway network and parking.

7.2 Land Use Policy Considerations

- 7.2.1 The detached two storey dwelling is occupied as a Class C3 dwellinghouse, with the annexe fitted out as a dance studio. The former use of the site for dance lessons has ceased and it is proposed to use the former annexe for dance lessons of a reduced capacity and pupil numbers. The dance studio use is deemed to fall under the new Use Class E (formerly Use Class D1 for recreation and leisure purposes). The proposal would account to 12% of the total use of the site, with the remaining 88% being a family home use. Furthermore, the proposed use is to assist in the operation of Premiere Dance School which also uses local community facilities such as the Leisure Centre.
- 7.2.2 Paragraph 81 of the NPPF states that 'planning decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.'
- 7.2.3 Paragraphs 88 and 89 of the NPPF state that where a town centre use is being proposed neither in a town centre or edge of centre site then a sequential test should be applied to demonstrate there are not sequentially preferable sites for the use proposed.
- 7.2.4 Furthermore in accordance with paragraph 90 of the NPPF, policy TC13 of the Local Plan seek the operation of main town centre uses be located in the town centre, then in edge of centre locations areas, including district and neighbourhood centres. Where the proposal is for an out-of-centre site a retail impact assessment (RIA) is necessary where the site meets a certain size. For sites outside the town centre and district/neighbourhood centres the threshold for a RIA is 300 square metres. The proposed floor area for the dance studio is approximately 57 square metres and therefore an RIA is not required in this case.
- 7.2.5 The applicant has submitted a brief statement in terms of sequentially viable sites. This highlights the fact the partial use of 37 Fellowes Way as a dance studio is a small side arm of the existing operation of Premiere School of Dance from the Stevenage Leisure Centre. The majority of the classes run by the school are operated from two different rooms at the leisure centre. The statement details the schools desire to use facilities that have a sprung floor to best protect students against injuries, and explains that other community centre locations do not have this type of flooring and thus are not viable for the school to operate out of. Furthermore, the school prides itself on being inclusive and works with many disabled or special needs children. This is supported by the third party letters received as part of the application from parents of such children.
- 7.2.6 The dance studio at 37 Fellowes Way provides adequate access for disable students and also provides a smaller and quieter area for persons who have conditions that make larger,

louder settings difficult to manage. Given the more specific requirements of the school and the fact the proposed studio use is a small area of the larger business, the information provided is considered acceptable, on balance, for this application and the merits of the case.

- 7.2.7 During COVID lockdowns in 2020 the dance school operated from 37 Fellowes Way as all public buildings were closed. At this time the site operated within the COVID restrictions as follows
 - Mondays: 5 x 30 minute private lessons after school
 - Tuesdays: Seniors Ballet & Modern, a total of 9 students over a couple of hours after school
 - Wednesdays: Acro, Seniors Ballet & Modern, a total of 18 students spread across the classes after school
 - Thursdays: Senior Ballet, a total of 11 students over a couple of hours after school
 - Fridays: Senior Tap and Street, a total of 24 students spread across the classes after school, inclusive classes for students with disabilities
 - Saturdays: Senior Ballet & Modern, a total of 18 students during the day, inclusive classes for students with disabilities
- 7.2.8 This level of operation having regard to available case law and appeal decisions was considered to form a material change of use of the annexe area and that planning permission would be required. The operations ceased at the premises, and following professional advice the applicant has submitted the current application to approve the use of the annexe at 37 Fellowes way for the following operations
 - Monday Thursday: 4pm-8pm (with a maximum of 8 students per day/4 hour window)
 - Friday no lessons
 - Saturday 12pm 4pm (with a maximum of 8 students per day/4 hour window)
 - Sundav/Bank Holidav no lessons
- 7.2.9 The Local Plan has no set policies on businesses operating from a residential property, and as such it is at the discretion of the Local Planning Authority as to whether the proposal is acceptable. In this regard, and taking account of the town centre policies for uses in out of centre areas, the principle of a dance studio operating at 37 Fellowes Way is acceptable for land use purposes. The acceptability of the proposed dance studio use in this location also needs to be determined on its own merits based on intensification and the impact on neighbour amenity and highways/parking.

7.3 Impact upon Neighbouring Amenity

- 7.3.1 The application has received numerous objections to the proposal, largely based on the impact of additional traffic and car parking. This is considered in section 7.4. In respect of the impact on the amenity of neighbouring properties, the main issue here relates to noise disturbance. This would be from the comings and goings of students and parents, and also amplified music.
- 7.3.2 The Environmental Health officer has raised concerns about potential nuisance, but also notes that at no time during the unauthorised use being undertaken were any noise complaints raised. The supporting information submitted does advise that amplified music from a home music system would be played during lessons. With approximately 2 pupils per lesson (maximum of 8 per day) it would be a sensible assumption that the music would not need to be played loudly, nor would the teacher need to raise their voice in comparison with a class where higher numbers were being taught.
- 7.3.3 In determining whether a material change of use has occurred and at which point a use may be harmful to the amenities of neighbours officers need to consider how the use differs from the intensity and use of the property as a family home. This relates to both noise and vehicle

movements. Furthermore, officers must consider whether any matters that arise can be suitably controlled through the imposition of planning conditions.

- 7.3.4 An appeal decision for a similar use where dance classes were operating from an extension at a residential property were enforced against, was allowed after the Inspector concluded that disturbance had occurred and at times this was beyond the degree to which home working was supported. However, it was felt that conditions could regulate the activity to the extent that it would be acceptable (Appeal ref APP/E5330/C/09/2119325).
- 7.3.5 In considering the extent of the use being proposed (notably, not how it was previously operating), with the imposition of conditions, the use could operate from the site at an intensity not much different from a family home. Whilst noise may be audible and at a more regular interval than one might expect from a domestic setting, again the imposition of conditions to allow for a temporary period and to allow for monitoring of the use are considered acceptable and would meet the relevant tests.
- 7.3.6 It is notable that no complaints were made in respect of noise to Environmental Health during lockdown when the classes were running in accordance with lockdown parameters at 37 Fellowes Way. This was of course whilst more intense classes and pupil numbers were noted. It is considered reasonable therefore to assume that a reduced class number and attendance would create less noise. Furthermore, the proposal would be acceptable and would not adversely impact on the amenities of neighbouring properties with appropriate conditions put in place. These would relate to class times, class sizes including a class register to be maintained and be available for inspection at any time by the LPA, along with a temporary period of operation and the possibility for noise insulation if deemed necessary once the use starts.

7.4 Impact on the Highway Network and Parking

- 7.4.1 The impact of the proposal on the highway network and parking has been the main cause for concern with objectors who commented on the application. Evidence has been provided by neighbours showing the extent of problems from the unauthorised use, mainly in respect of cars parking on the highway and at junctions in the immediate vicinity of the site which caused brief periods of congestion. The main issue to emphasise here is that this application is a proposed position with much reduced ass times and pupil numbers. The current application is not being determined based on the unauthorised use and its impacts.
- 7.4.2 Hertfordshire County Council as the local highway authority has assessed the application and given the proposed use intensity has raised no objections to the proposal stating that 'this level of development is unlikely to generate any extra movements which would ultimately lead to demonstrable harm to the highway network in terms of free flow and capacity'.
- 7.4.3 The supporting information submitted with the application asserts that there will be some level of crossover as one class finishes and the next class begins but that with approximately two pupils per class and the availability of two parking spaces on site this should not lead to an unreasonable level of traffic. Furthermore, pupils and their parents are being encouraged to use non-private car modes of transport such as cycling or walking. It is considered reasonable to seek this information as part of an attendance register to understand how pupils travel to the class.
- 7.4.4 The existing property has provision for four cars to be parked on the driveway. The supporting statement suggests two spaces will be made available throughout the four hour time slots for classes on each of the respective days. The remaining two spaces would be for use by the occupiers of the house, with all four spaces available by the homeowners outside of class hours.

- 7.4.5 The Council's adopted Parking Provision and Sustainable Transport SPD (2020) advises that for mixed-use development the higher ratio provision be considered in terms of car parking spaces. In this case a floor area of approximately 57 square metres for the dance studio would equate a need for four spaces. This is on the understanding a dance studio is considered a Class E use. The dwelling would require a maximum of three parking spaces. Therefore, whilst two spaces have been allocated the property could allow for additional provision on this understanding of the parking standards. However, given the low numbers of pupils advised for each class and throughout each day/4 hour period of operation, the need for more than two spaces is unlikely. Notwithstanding, an emphasis on non-car travel will be placed on all pupils and parents, and it may be appropriate to seek a small delay between each class to avoid a changeover situation between classes. This was a condition on the appeal decision discussed in paragraph 7.3.4.
- 7.4.6 Furthermore, in considering the day to day 'running' of a family home, it is not considered the likely number of trips generated would be significantly higher such that harm would be caused. The added security of the permission being temporary and therefore allowing the LPA to further consider the impacts after a certain period of time will allow for the studio to operate and for greater management to be held by the LPA in terms of monitoring any impact.

7.5 Human Rights and Equalities

- 7.5.1 Consideration has been given to Articles 1 and 8 of the First Protocol of the European Convention on Human Rights. It is not considered that the decision would result in a violation of any person's rights under the Convention.
- 7.5.2 When considering proposals placed before Members it is important that they are fully aware of and have themselves rigorously considered the equalities implications of the decision that they are taking. Rigorous consideration will ensure that proper appreciation of any potential impact of that decision on the Council's obligations under the Public Sector Equalities Duty. As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment (EqIA) produced by officers
- 7.5.3 The Equalities Act 2010 requires the Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share protected characteristics under the Equality Act and persons who do not share it. The protected characteristics under the Equality Act are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex and sexual orientation.
- 7.5.4 It is not considered the proposed development would impact upon the protected characteristics under the Equality Act. This is because the proposal does not comprise the removal of disabled parking spaces and there would be sufficient space on the public footpath for person(s) who are disabled to safely pass the outdoor seating area without hindrance.

8. CONCLUSIONS

8.1 In conclusion, it is considered that on balance, the proposed use of the annexe at 37 Fellowes Way for use as a dance studio for operation Monday – Thursday 4pm – 8pm and Saturday 12pm – 4pm is acceptable. Matters pertaining to noise nuisance and highway safety/parking can be adequately controlled through the imposition of conditions. The level of harm is unlikely to be significant in this residential area given the limitations in which the application has been submitted on.

9. RECOMMENDATIONS

- 9.1 That planning permission be GRANTED subject to the following conditions with any amendments to the conditions listed in this report be delegated to the Assistant Director of Planning and Regulation:-
 - 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

2121 P001; 2121 P004.

REASON:- For the avoidance of doubt and in the interests of proper planning.

The use hereby approved shall be for a limited period of one year only from the date of implementation, expiring on or before that date after which time the use hereby permitted shall be discontinued, unless otherwise agreed in writing by the Local Planning Authority, in the form of an application.

REASON:- To enable the Local Planning Authority to monitor and reconsider the impact and appropriateness of the dance studio use in the residential area of Fellowes Way.

The use hereby permitted shall operate only between the hours of 16:00-20:00 Monday to Thursday and 12:00-16:00 on Saturday.

REASON:- To safeguard the amenities of the occupiers of neighbouring properties.

Between the permitted hours of use set out in condition 3, no more than 8 students in total shall attend the dance studio daily, with no more than 3 students in total per class. A record shall be kept of all students referred to in this condition by listing the student's name and their arrival/departure times and mode of arrival/departure. The record shall be kept and made available for inspection on request.

REASON:- To allow the Local Planning Authority to monitor the use and to safeguard the amenities of the occupiers of neighbouring properties and in the interests of highway safety from increased vehicle trips.

During the permitted hours of use set out in condition 3, the two parking spaces indicated on drawing 2121 P004 shall be kept permanently available for the parking of cars in association with the use of the dance studio.

REASON:- To prevent cars from parking on the highway during drop off and pick up of pupils from the dance studio in the interests of highway safety.

There shall be an interval of at least fifteen minutes between the end of one class and the start of another class.

REASON:- To prevent foot and vehicular traffic to and from the dance studio from overlapping in the interests of safeguarding the amenities of neighbouring properties and controlling parking at the site.

7 The converted annexe shall only be used for dance classes or as part of the Property's living accommodation and for no other purpose.

REASON:- To safeguard the amenities of the occupiers of neighbouring properties.

- There shall be no more than 1 dance teacher operating from the dance studio per day. **REASON:-** To ensure the number of staff is limited to protect parking arrangements.
- Noise and music from the dance studio shall not be audible from the boundaries of the site at any time during the hours of use as set out in condition 3.

REASON:- To safeguard the amenities of the occupiers of neighbouring properties.

INFORMATIVE

Hertfordshire County Council as Highways Authority.

AN1) Storage of materials: The applicant is advised that the storage of materials associated with the construction of this development should be provided within the site on land which is not public highway, and the use of such areas must not interfere with the public highway. If this is not possible, authorisation should be sought from the Highway Authority before construction works commence.

Further information is available via the website

https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx or by telephoning 0300 1234047.

AN2) Obstruction of public highway land: It is an offence under section 137 of the Highways Act 1980 for any person, without lawful authority or excuse, in any way to wilfully obstruct the free passage along a highway or public right of way. If this development is likely to result in the public highway or public right of way network becoming routinely blocked (fully or partly) the applicant must contact the Highway Authority to obtain their permission and requirements before construction works commence. Further information is available via the website

https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx telephoning 0300 1234047.#

Community Infrastructure Levy

Stevenage Borough Council adopted a Community Infrastructure Levy (CIL) Charging Schedule at Full Council on 27 January 2020 and started implementing CIL on 01 April 2020. This application may be liable for CIL payments and you are advised to contact the CIL Team for clarification with regard to this. If your development is CIL liable, even if you are granted an exemption from the levy, please be advised that it is a requirement under Regulation 67 of The Community Infrastructure Levy Regulations 2010 (as amended) that CIL Form 6 (Commencement Notice) must be completed, returned and acknowledged by Stevenage Borough Council before building works start. Failure to do so will mean you risk losing the right to payment by instalments and a surcharge will be imposed. NB, please note that a Commencement Notice is not required for residential extensions if relief has been granted. Stevenage's adopted CIL Charging Schedule and further details of CIL can be found on the Council's webpages at www.stevenage.gov.uk/CIL or by contacting the Council's CIL Team at CIL@Stevenage.gov.uk.

Building Regulations

To obtain advice regarding current Building Regulations please contact Hertfordshire Building Control Ltd. by emailing us at buildingcontrol@hertfordshirebc.co.uk or phoning us on 01438 879990. To make a building regulations application please apply through our website portal at https://www.hertfordshirebc.co.uk/contact-us/ payment can be made online or by phoning the above number after the application has been uploaded. Please phone Hertfordshire Building Control for fees guidance on 01438 879990. Hertfordshire Building Control can also be contacted by post at Hertfordshire Building control Ltd., 4th Floor, Campus West, Welwyn Garden City, Hertfordshire, AL8 6BX. Once a building regulations application has been deposited with relevant drawings and fee building work may commence. You will be advised in their acknowledgement letter of the work stages we need to inspect but in most instances these are usually:

- Excavation for foundations;
- Damp proof course;
- Concrete oversite Insulation;
- Drains (when laid or tested);

- Floor and Roof construction;
- Work relating to fire safety;
- Work affecting access and facilities for disabled people;
- Completion.

Please phone Hertfordshire Building Control on 01438 879990 before 10.00am to ensure a same day inspection (Mon - Fri).

10. BACKGROUND DOCUMENTS

- 1. The application file, forms, plans and supporting documents having the reference number relating to this item.
- 2. Stevenage Borough Local Plan 2011 to 2031 adopted 2019.
- 3. Stevenage Borough Council Supplementary Planning Documents Parking Provision adopted October 2020, Developer Contributions adopted March 2021.
- 4. Responses to consultations with statutory undertakers and other interested parties referred to in this report.
- 5. Hertfordshire County Council's Local Transport Plan 4 adopted May 2018
- 6. Central Government advice contained in the National Planning Policy Framework July 2021 and Planning Policy Guidance March 2014.