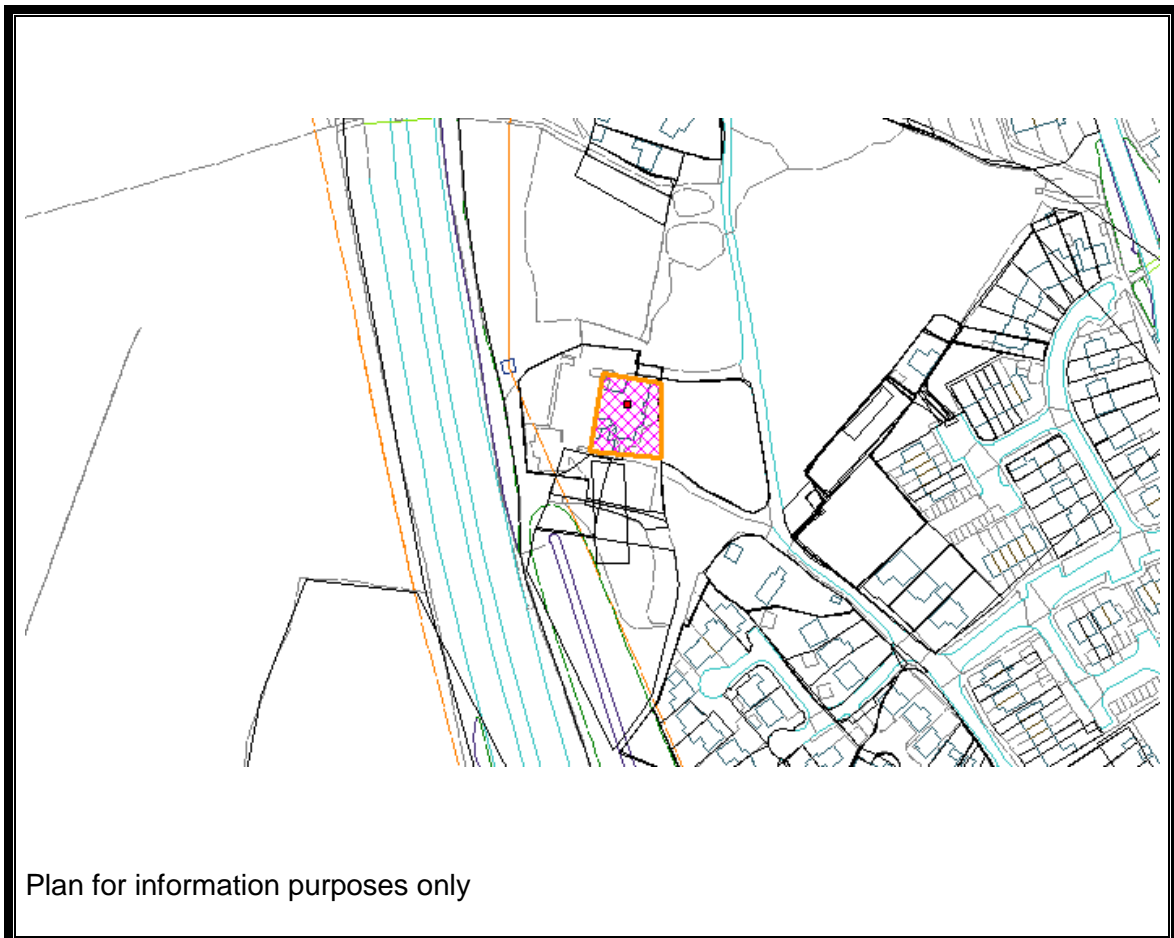


Meeting: Planning and Development Committee **Agenda Item:**
Date: 15 February 2023
Author: James Chettleburgh 01438 242242
Lead Officer: Zayd Al-Jawad 01438 242242
Contact Officer: James Chettleburgh 01438 242242

Application No:	22/00902/ENF
Location:	Tranquil Turtle, Symonds Green Lane, Stevenage
Proposal:	Unauthorised erection of large outdoor structure without planning permission.
Drawing Nos.:	N/a
Applicant:	N/a
Date Valid:	N/a
Recommendation:	SERVE AN ENFORCEMENT NOTICE



Plan for information purposes only

1. BACKGROUND

- 1.1 The enforcement site is located off Symonds Green Lane which forms part of the Symonds Green Conservation Area and Common. The site comprises a public house operated by Tranquil Turtle (formerly the Crooked Billet) set in a large plot with a large parking area, on the western side of the road, but set well back from the road. The surrounding area comprises the central Common which is bordered by residential development with the A1(M) motorway located west of the site.

Site history

Reference number	Description	Date and outcome
01/00561/FP	Single storey side and rear extension	06.12.2001 PERMISSION
13/00272/AD	Installation of 1no externally illuminated totem sign, 1no externally illuminated fascia sign, 1no logo sign, 2no amenity signs, 3no welcome signs, 4no car park sign and 2no storm boards.	13.09.2013 ADVERTISEMENT GRANTED
21/00653/FP	Removal of existing timber structure and replaced with new timber structure with 50% open walls, removal of existing smoking shelter located to the front of the building	29.07.2021 PERMISSION
21/01109/LIC	To change the layout and design of the premises in accordance with the submitted plan, drawing number BHB/BA/02. The change is a slight reduction in the bar servery To extend the supply of alcohol Sunday to Thursday until 00.00 (currently permitted until 23.00) and on Friday and Saturday until 01.00 (currently permitted until 00.00) To extend late night refreshment Sunday to Thursday until 00.00 (currently permitted until 23.30) and on Friday and Saturday until 01.00 (currently permitted until 00.00) To allow the premises to open 30 minutes following the end of licensable activity	19.10.2021 CLOSED
22/00044/LIC	Application from Greene King Retailing Limited for the minor variation of premises licence for the Tranquil Turtle, Symonds Green Lane, Stevenage, SG1 2HP	25.01.2023 RAISE OBJECTION
22/00045/LIC	Application from Greene King Retailing Limited for the full variation of premises licence for the Tranquil Turtle, Symonds Green Lane, Stevenage, SG1 2HP	25.01.2023 RAISE OBJECTION

2. Consultation with the Council's Conservation and Heritage Advisor (BEAMS)

2.1 I would agree that the structure is harmful to the character and appearance of the Symonds Green Conservation Area by virtue of its size and makeshift / scaffolded, poor quality appearance. I would recommend enforcement action is taken to remove the structure.

3. POLICY

3.1.1 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).

3.1.2 Dealing specifically with development in Conservation Areas, The *Planning (Listed Buildings and Conservation Areas) Act 1990* imposes several 'statutory duties' for decision-makers, all of which are applicable to the unauthorised development:

- "Section 72(1): the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area".

3.1.3 Case law (South Lakeland, 1992) has determined that 'preserve' means 'to do no harm'. However, if harm is identified, the NPPF provides a means of weighing either 'substantial harm' or 'less than substantial harm' to the significance of a designated heritage asset against the public benefits of the proposal. In doing so, case law has emphasised the need to give "considerable importance and weight" to preserving listed buildings or the character and appearance of conservation areas (Barnwell Manor, Case No: C1/2013/0843). However, the presumption 'to preserve' is not irrebuttable and "can be outweighed by material considerations powerful enough to do so" (Forge Field (Case Nos: CO/735/2013; CO/16932/2013) and a decision maker that has followed the process set out in the NPPF, in respect to weighing harm and benefits, can reasonably be expected to have complied with the 'statutory duties' of the 1990 Act (Mordue, Case No. C1/2015/1067).

3.2 Central Government Advice

3.2.1 A revised National Planning Policy Framework (NPPF) was published in July 2021. This largely reordered the policy substance of the earlier 2012 version 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.

3.2.2 In relation to development in conservation areas, Paragraphs 199 to 202 of the NPPF (2021) have to be considered in the determination of this planning application. As

established through case law, if there is any harm to designated heritage assets, great weight should be given as to the impact the development may have on these assets. Dealing with Paragraph 199, it stipulates that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. Paragraph 200 sets out that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

- 3.2.3 Paragraph 201 sets out that where a proposed development would lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss. In reference to paragraph 202 of the NPPF (2021), this sets out that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

3.3 Planning Practice Guidance

- 3.3.1 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.

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

Policy SP8: Good design
Policy GD1: High Quality Design
Policy SP13: Historic Environment
Policy NH10: Conservation Areas

3.5 Supplementary Planning Documents

Stevenage Design Guide SPD (2009)
Symonds Green Conservation Area Management Plans SPD (2009)

4. DISCUSSION

4.1 Unauthorised erection of large outdoor structure without planning permission.

Policy background – Conservation Areas

- 4.1.1 Dealing firstly with development in Conservation Areas, consideration should be given to Section 72(1) of The *Planning (Listed Buildings and Conservation Areas) Act 1990* (see paragraph 3.1.2 of this report) and paragraphs 199 to 202 of the NPPF (2021) (see paragraph 3.2.2 to 3.2.3). In addition, consideration is made to Policy SP13 of the Stevenage Borough Local Plan 2011-2031 (2019). This policy stipulates that the Council will seek to preserve and enhance the most important areas and characteristics of Stevenage. Criterion b. of this policy states “*We will use national guidance and legislation to review, designate and determine planning applications affecting heritage*”. Policy NH10 Conservation Areas states those development proposals within or affecting a conservation

area should have regard to the guidance provided by the relevant Conservation Area Management Plan Supplementary Planning Document.

The Symonds Green Conservation Area

- 4.1.2 The enforcement site is located within the Symonds Green Conservation Area as defined by the Local Plan (2019) policies map. The conservation area is centred around the Green, the ponds and the Crooked Billet (now Tranquil Turtle) public house. These provide an attractive focal point to the area and depict its rural character.
- 4.1.3 The area is defined by a mixture of historic properties. The oldest structure in the conservation area is Oakfield Farm which dates back to the 16th Century. In the 17th Century, a road which ran north from Old Stevenage to Titmore Green led to the dwellings of Willow Cottage and the Thatched Cottage.
- 4.1.4 In the latter half of the 20th Century, Newlyn Close, Dunwich Farm and Southwold Close were developed and this area has a leafy and regular character and appearance. The 20th Century properties are laid out in a cul-de-sac arrangement with higher densities, which have significantly altered the character and appearance of the conservation area.

Policy background – Design and visual impact

- 4.1.5 Paragraph 126 of the NPPF states that “The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve”. It goes on to state that “good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.
- 4.1.6 Paragraph 130 of the NPPF sets out several requirements for new development, including that development:
- will function well and add to the overall quality of an area;
 - is visually attractive as a result of good architecture; layout and appropriate and effective landscaping;
 - is sympathetic to local character and history;
 - establishes or maintains a strong sense of place;
 - optimises the potential of the site to accommodate and sustain an appropriate amount and mix of development;
 - creates 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.
- 4.1.7 Paragraph 131 of the NPPF places great importance on the role of trees in helping to shape quality, well designed places “Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change”.
- 4.1.8 Paragraph 132 of the NPPF states that applicants “should work closely with those affected by their proposals to evolve designs that take into account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot”.
- 4.1.9 Policy SP8 of the adopted Local Plan (2019) requires new development to achieve the highest standards of design and sustainability which can deliver substantial improvements to the image and quality of the town’s built fabric. Policy GD1 of the Local Plan generally requires all forms of development to meet a high standard of design which includes form of

built development, elevational treatment and materials along with how the development would integrate with the urban fabric, its relationship between buildings, landscape design and relevant aspects of sustainable design.

4.1.10 The Council's Design Guide SPD (2023) generally reflects the policies set out in the National Design Guide.

Assessment of the existing unauthorised structure

4.1.11 It was reported to the Council that an unauthorised structure had been erected at Tranquil Turtle which covers the outdoor seating area of the premises (See Figure 1).



Figure 1: Photograph of unauthorised structure within outdoor seat area of Tranquil Turtle.

4.1.12 In terms of timeframes, it can be evidenced that structure has been in place for more than 28 consecutive days when the Council as Local Planning Authority (LPA) was originally notified. For reference, it is of note that the scaffolding has not been erected in relation to any construction works which are taking place at the property, as it clearly covers the outdoor seating area and no works are taking place underneath it.

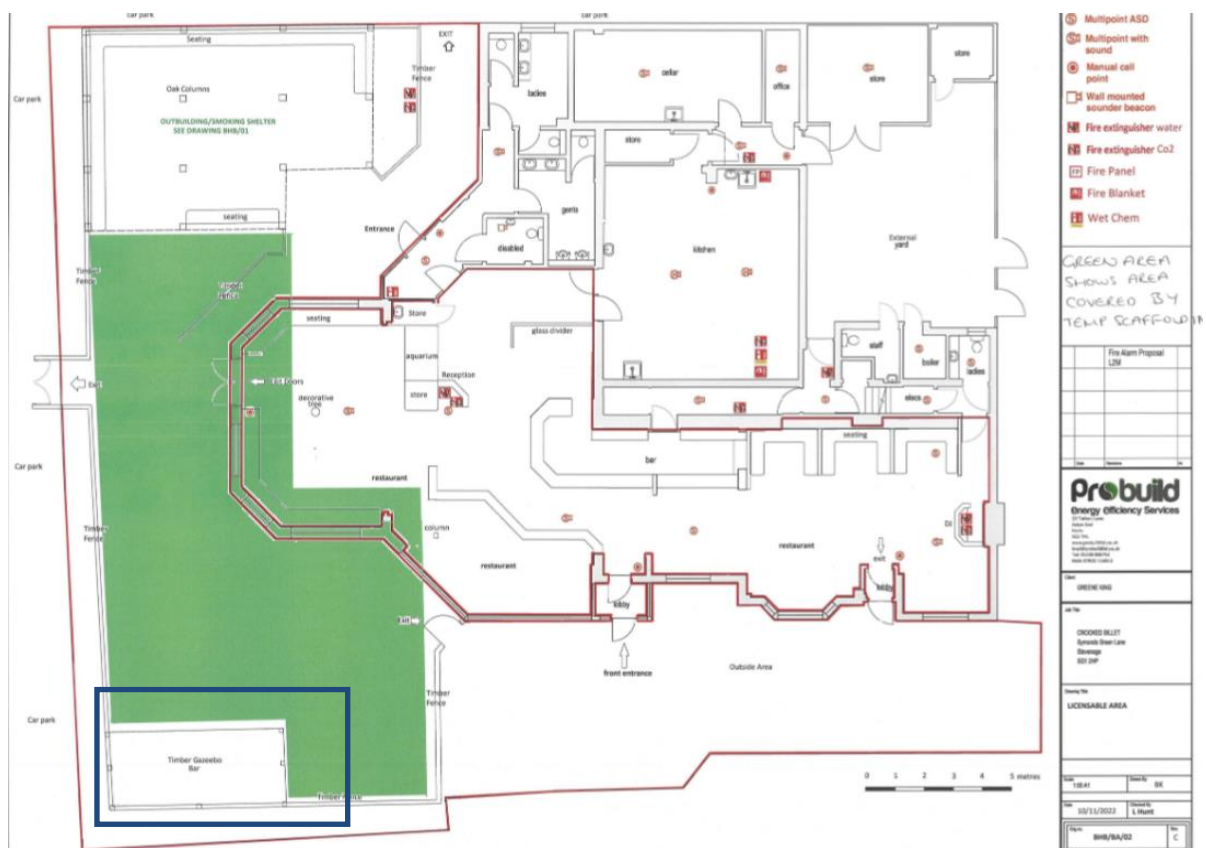
4.1.13 Further to the above, the enforcement file relating to the structure in question was opened on 11th October 2023 and the photograph in Figure 1 was taken on the 24th January 2023. Consequently, the structure in question has been place for a considerable period of time especially given it is not associated with any construction works. Given this, the Council has also served a Planning Contravention Notice (PCN) on the owners of the site Greene King on the 12th October 2022. The PCN required the owner to respond within 21 days and provide the following information:

- a) The name and postal address of any other person known to you to have an interest in the land;
- b) Any reasons why you consider that the structure already benefits from planning permission, or does not require it;
- c) Any offer you wish to make to apply for planning permission for the structure; and,

- d) Any offer you wish to make to remove the structure and return the land to its former condition.

4.1.14 To date, no response has been received from Greene King with respect to the PCN. Recently, the Council as Local Planning Authority were consulted by the Council as Licensing Authority regarding an application to vary the premises licence. The application for a Major Variation of the premises Licence (Planning Reference: 22/00045/LIC) identified on a plan the retention of the unauthorised structure to continue to be used as a cover for the outdoor seating area. It would also provide cover for the timber gazebo which was to be used as an outdoor servery and the sale of alcohol.

4.1.15 Turning to the Licensing application itself, the timber gazebo / bar area is outlined in drawing number BHB/BA/02 Rev C which accompanied the application in the blue square. The existing temporary scaffolding which is currently being utilised to cover the outdoor seating area is shown green on the plan and in the photograph in Figure 1.



4.1.16 Therefore, it is evident that the operators of Tranquil Turtle and the landowners Greene King have no intention to remove the structure. Consequently, it can be established that on the balance of probability, it is the intention of the operator of the premises to permanently retain this unauthorised structure to provide cover from the elements the outdoor seating area and external servery / bar area.

4.1.17 Given the aforementioned, it can be concluded that as a permanent structure, it would be classed as development under Section 55 of the Town and Country Planning Act 1990 (as amended), especially as it is not associated with any construction works which are taking place at the Public House. Therefore, as development, it would require planning permission

from the Council as Local Planning Authority (LPA). As the Council as LPA has not received an application to seek permission for the unauthorised structure, it has been established that a breach of planning control has occurred in this instance.

- 4.1.18 As it can be demonstrated that the existing structure requires planning permission and that there is evidence that a clear breach of planning control has taken place, an assessment needs to be made as to whether it is expedient to take enforcement action against the unauthorised works.
- 4.1.19 Given the enforcement property is located within the Symonds Green Conservation Area, an assessment needs to be made as to whether the works cause harm to the character of the Conservation Area. Looking at the unauthorised structure in question, it is constructed from scaffolding with a corrugated sheet metal roof with plastic sheeting on the side. It is considered the structure represents an unsympathetic and incongruous design, which does not reflect the architectural characteristics of the host property. Furthermore, it is of a significant size and scale and is not deemed proportionate in scale or form to the Public House. Furthermore, it is an incongruous form of development within the Conservation Area and widely visible within the street scene, especially the Common.
- 4.1.20 In addition, the Council's Conservation and Heritage Advisor considers the unauthorised structure to be harmful to the character and appearance of the Symonds Green Conservation Area by virtue of its size and makeshift / scaffolded, poor quality appearance. It is therefore, deemed that the structure causes a level of harm which is at the higher end of the scale of Less than Substantial Harm. As the development works which have taken place are deemed to have no real public benefit which would outweigh the harm which has been caused, it considered that the development fails to accord with paragraphs 199 to 202 of the National Planning Policy Framework (NPPF) 2021. Moreover, it does not accord with policies SP13 and NH10 of the adopted Local Plan (2019) and the Symonds Green Conservation Area Management Plan SPD (2012).
- 4.1.21 Further to the above, given the development works are unsympathetic and incongruous forms of development, they also have a detrimental impact on the character and appearance of the Public House and the visual amenity of the wider street scene of Symonds Green Lane. As such, the development works as constructed do not accord with paragraph 126 of the NPPF (2021) and associated PPG, policies SP8 and GD1 of the adopted Local Plan (2019) and the Council's Design Guide SPD (2009).

5. RECOMMENDATION

- 5.1 That an Enforcement Notice be issued and served by the Assistant Director of Planning and Regulation and subject to an appointed solicitor by the Council being satisfied as to the evidence requiring the removal of the existing structure in the outdoor seating area of the Tranquil Turtle. The precise terms of the Enforcement Notice, including all time periods, to be delegated to the Assistant Director of Planning and Regulation.
- 5.2 That, subject to an appointed solicitor by the Council being satisfied as to the evidence, the Assistant Director of Planning and Regulation be authorised to take all steps necessary, including prosecution or any other litigation/works in default to secure compliance with the Enforcement Notice.
- 5.3 That in the event of any appeal against the Enforcement Notice, the Assistant Director of Planning and Regulation be authorised to take any action required to defend the Enforcement Notice and any appeal against the refusal of planning permission.

6. REMEDY REQUIRED

- 6.1 Within six months of the date of any Enforcement Notice served, the entirety of the scaffolded structure which forms a cover for the outdoor seating area shall be removed in its entirety and the land made good where required.

7. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents associated with reference.
2. Stevenage Borough Local Plan 2011-2031 (2019)
3. Stevenage Borough Council Supplementary Planning Documents – Stevenage Design Guide SPD (2023); The Council's Symonds Green Conservation Area Management Plan SPD (2012).
4. Central Government advice contained in the National Planning Policy Framework July 2021 and Planning Policy Guidance.