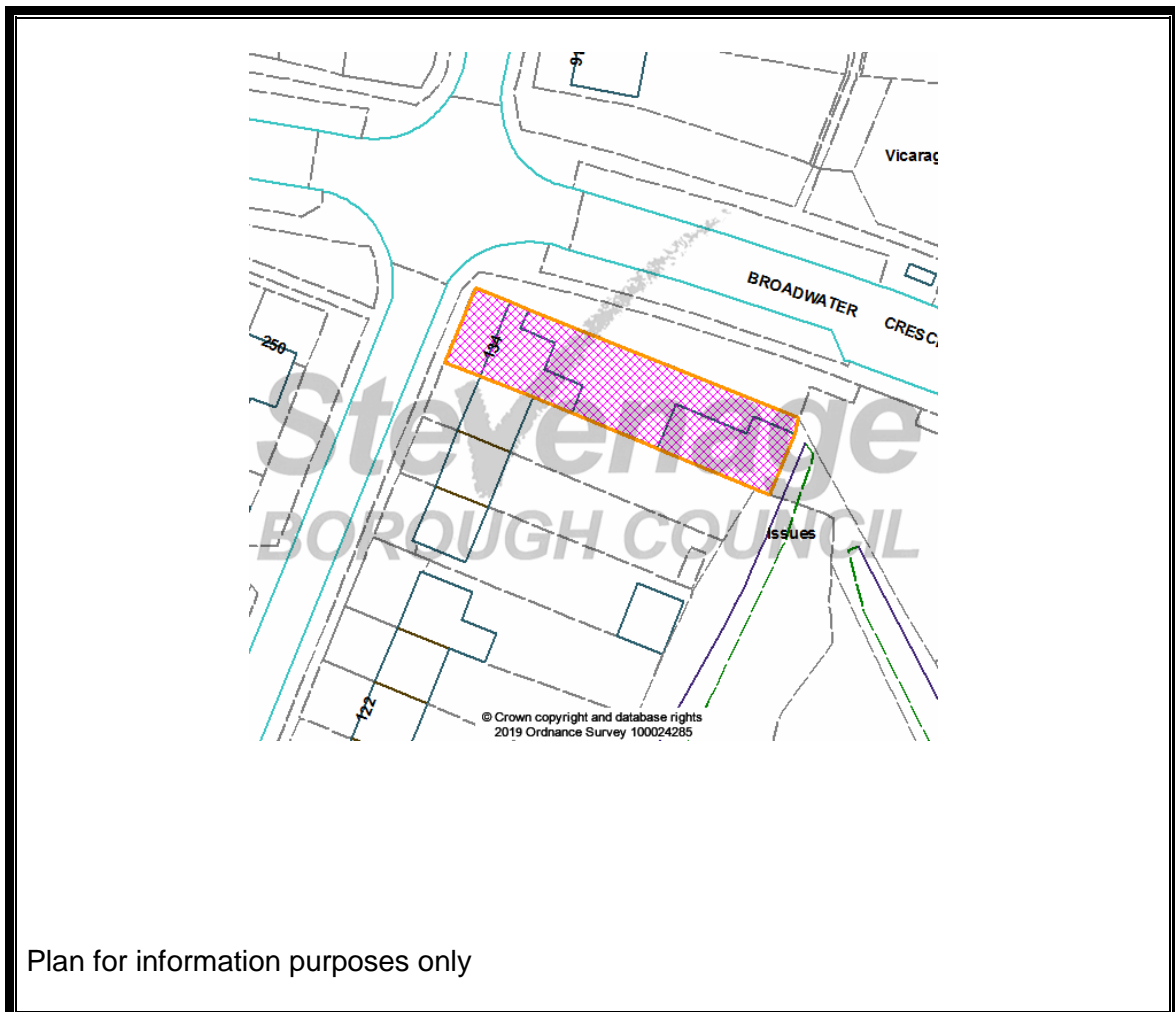


**Meeting:** Planning and Development Committee     **Agenda Item:**  
**Date:** 26 May 2022  
**Author:** James Chettleburgh     01438 242266  
**Lead Officer:** Zayd Al-Jawad     01438 242257  
**Contact Officer:** Rebecca Elliott     01438 242266

Application No:	21/00717/ENF
Location:	134 Marymead Drive, Stevenage
Proposal:	Unauthorised use of the property as a House of Multiple Occupation (HMO); unauthorised erection of bollards on SBC land; flytipping; unauthorised erection of outbuildings and front extensions.
Drawing Nos.:	N/a
Applicant:	N/a
Date Valid:	N/a
Recommendation:	SERVE AN ENFORCEMENT NOTICE



## 1. BACKGROUND

- 1.1 The enforcement site is located on the junction of Marymead Drive and Broadwater Crescent which forms part of the Broadwater Conservation Area. The site itself comprises a two-storey, end of terrace property with a gable-end roof. The property appears to be constructed out of pebble dash render with the roof clad in concrete inter-locking tiles. To the front of the property is a front extension constructed from timber with a perspex roof which is partially screened by a mature hedge. To the rear of the property are various outbuildings and structures which have been built over a number of years.
- 1.2 The surrounding area is characterised by residential development of predominantly terraced properties. To the east of the site lies Stevenage Motor Centre Limited which lies opposite the Marymead Neighbourhood centre.

### Site history

- 1.3 The site has a long history of enforcement investigations which have been undertaken by the Council. These are set out in further detail below.
- 1.4 Enforcement reference 10/00198/ENF - unauthorised change of use where the residential rear garden being used as a commercial/storage yard. It was identified from this investigation that a large section of land at end of rear garden was being used as a commercial yard/storage area. This case was originally dealt with in 2004/5 by the Borough Council. It was decided that enforcement action was not appropriate as the householder stated they had been using the yard in this manner for over 10 years. Therefore, this enforcement investigation was closed.
- 1.5 Enforcement reference 12/00397/ENF - Rear garden in untidy state, material stored in significant quantities. Investigations were undertaken over a lengthy period of time (including as part of enforcement case 10/00198/ENF) and was considered that whilst the land was untidy, it was not severe enough to serve a Section 215 Notice.
- 1.6 Enforcement reference 19/00682/ENF - Structure being built in back garden which may be for property for rental and structure to the front of the property. This case was amalgamated with enforcement reference 21/00717/ENF.
- 1.7 Enforcement reference 20/00490/ENF Alleged use of the property as an HMO, construction of a large wood and Perspex canopy across the front of the property, in the rear garden are several timber constructions appear to be unsafe. This case was amalgamated with enforcement reference 21/00717/ENF.

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

- 2.1 Given the property is located within the Broadwater Conservation Area, consultation was undertaken with the Council's Conservation and Heritage Advisor with respect to the unauthorised works which have been undertaken at the property. The Conservation and Heritage Advisor advised officers on the 22<sup>nd</sup> April 2022 as follows:

*A lightweight timber structure with clear corrugated plastic covering to the roof and south side has been constructed upon the front elevation of the property; this is visible from the south but is largely concealed by the tall hedges that grow up around the front garden. It is not clear whether the front door and ground floor window have been changed / altered in size?*

*A conservation area is an area of "special architectural or historic interest, the character of which it is desirable to preserve or enhance". The local planning authority has a duty to identify and designate conservation areas under Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990.*

*Broadwater (Marymead) Conservation Area was designated in 2007 as a good example of one of Stevenage's Mark 1 'New Town' neighbourhoods. It focuses on the Marymead neighbourhood centre with shops / church etc and some of the surrounding residential development.*

*Adding a modest porch / front extension to the front of 134 Marymead Drive would not be objected to. However, the current corrugated plastic structure is not acceptable. It is of poor quality both in terms of its design / appearance and material construction. It does not represent an appropriate addition to the host property; as a consequence it harms the significance of the Broadwater (Marymead) Conservation Area contrary to National and Local Plan Policy. BEAMS would recommend refusal of this if plans were submitted to regularise this breach of planning regulations.*

2.2 Following further correspondence with the Heritage Advisor, they state the following:

*The whole rear garden appears to be filled with timber / covered areas / large sheds etc. As part of this, the structure you highlight in the photo below does stand out due to its height and although it has open sides it is a visible element in the street scene and one that does nothing to preserve the character and appearance of the CA **(Conservation Area – Officer Comment)** – particularly when seen with other development that has occurred within the rear garden.*



Figure 1: Photograph referred to in Conservation and Heritage Advisor Comments.

### **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 has to 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 will 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 will 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)  
Broadwater Conservation Area Management Plans SPD (2009)

## **4. DISCUSSION**

- 4.1 Aspects of the Enforcement Investigation where it is deemed there is no breach in planning control / it is not considered expedient to take enforcement action.**

#### House of Multiple of Occupation (HMO)

- 4.1.1 The Council introduced an Article 4 Direction on the 20 September 2017 which removed permitted development rights to convert a residential dwellinghouse (Use Class C3) to a House of Multiple Occupation (HMO). Following correspondence with the Council's Environmental Health Department, it is understood that the property was converted to a HMO prior to the introduction of the Article Direction back in 2010. As such, planning permission was not required at the time as it would have been classed as permitted development. Therefore, for the purposes of planning, it is not considered there has been a breach in planning control in this instance. As such, it was agreed that this part of the enforcement investigation was to be closed.

#### Erection of bollard on public highway

- 4.1.2 The Planning Department was informed that a number of bollards had been installed on land / highway verge adjacent to the property's driveway located to the rear. Following an investigation into this aspect of the enforcement report, the Council's Engineers have

advised that no permission was ever given for the installation of these bollards. However, the Council Engineers have confirmed to officer in writing that they have no concerns with the bollards which have been installed on this land / highway verge.

- 4.1.3 Further to the above, the Planning Department does not have sufficient evidence to demonstrate it was the owner who had installed the bollards on the aforementioned land. Consequently, officers consider it is not expedient to take any enforcement action on this matter. Consequently, officers consider this aspect of the enforcement investigation to be closed.

#### Fly tipping

- 4.1.4 Following a visit to the site by officers, there was no evidence of fly tipping on land outside of the enforcement property. In addition, the Planning Department to date have not received any further reports in relation to fly tipping outside of this property. Therefore, officers consider this part of the enforcement investigation to be closed.

#### **4.2 Aspects of the Enforcement Investigation where it is considered a breach in planning control has occurred.**

##### Erection of new structure within storage yard / dwellinghouse and erection of front extension.

##### *Policy background – Conservation Areas*

- 4.2.1 Dealing firstly with development in Conservation Areas, consideration has to 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 Broadwater Crescent Conservation Area*

- 4.2.2 The enforcement site is located within the Broadwater Crescent Conservation Area as defined by the Local Plan (2019) policies map. The Conservation Area Management Plan SPD (2012) that the area is defined by low-density, two-storey dwellings with a three-storey neighbourhood which was delivered as part of Stevenage New Town. The Broadwater Area, in which the enforcement site forms part of, is a good example of Mark 1 New Town Neighbourhood which comprises of early Stevenage Development Corporation Architecture in the form of housing, garaging, a church, retail units and a community centre.
- 4.2.3 Given the above, the Conservation Management Plan seeks to protect the 1950's style architecture where unsympathetic alterations detract from the key features of the Conservation Area. Therefore, alterations or extensions should not dominate an existing building's scale or alter the composition of its main elevations.

*Policy background – Design and visual impact*

- 4.2.4 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”.
- 4.2.5 Paragraph 130 of the NPPF sets out a number of 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.
- 4.2.6 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”.
- 4.2.7 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”.
- 4.2.8 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.
- 4.2.9 Chapter 6 of the Council’s Design Guide SPD (2009) states that it is important for all extensions to respect the size, height, materials, features and layout of the building concerned, as well as surrounding buildings. It goes onto to state that extensions should as part as possible, look like a part of the main building rather than an obvious addition to it. Section 6.1 of the Guide sets out that for all types of extensions, the Council will assess the impact upon:
- The appearance of the existing property;
  - The amenity of neighbours;
  - The character and appearance of the surrounding area.

*Assessment of the existing works*

- 4.2.10 It was reported to the Council a further outbuilding / structure had been constructed within the rear garden area of the enforcement property. Following officer’s investigation and a



review of the planning / enforcement history, it was noted that an investigation was undertaken in 2010 under reference 10/00198/ENF (see paragraph 1.4). It was noted on this file that the use of the land including the original outbuilding (See photograph below for reference) were exempt from enforcement action. Therefore, this existing structure and the use of the land for storage of materials etc. is deemed to be exempt from enforcement action.



*Figure 2: Photograph of existing outbuilding from enforcement file 10/00198/ENF.*

4.2.11 However, upon visiting the site, officers had noted that a further structure had been erected within the rear garden area of 134 Marymead Road (see Figure 3 below for reference) as per the enforcement report which was raised.



*Figure 3: Photograph of recent constructed structure within rear garden*

4.2.12 Having reviewed the planning history file for this property, there are no records of this recently constructed light framed structure being granted any form of permission from the Council as Local Planning Authority. Moreover, the structure itself appears to be located within 2m of the boundary of the site and over 2.5m which combined with a number of other structures within the curtilage of the dwelling, would cover more than 50% of the curtilage of the dwellinghouse which is covered by buildings, enclosure and containers.

4.2.13 Given the aforementioned, the existing structure would not be classed as permitted development in accordance with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 (As amended). As such, the structure would appear to require planning permission. Consequently, it is evident a breach in planning control has occurred in this instance.



4.2.14 Turning to the front extension / porch which has been constructed (See figure 4), it is appreciated that a small porch can be constructed under permitted development in line with Schedule 2, Part 1, Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended). However, in order for a porch to be classed as permitted development it must meet the following criteria:

- the ground area (measured externally) of the structure does not exceed 3 square metres;
- any part of the structure should not be more than 3 metres above ground level or;
- any part of the structure if located within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway would not be permitted development.

4.2.15 Based on the above, it appears the extension / porch is larger than 3 square metres and it does appear to be within 2 metres of the boundary of the house and a highway. Therefore, this structure would not be classed as permitted development and requires planning permission from the Council.



*Figure 4:* Existing front extension / porch which has been constructed at 134 Marymead Drive.

4.2.16 As it can be demonstrated that the existing structure and front extension / porch require planning permission and that it is evidence that a clear breach of planning control has taken place, an assessment needs to be made as to whether or not it is expedient to take enforcement action against these unauthorised works.

4.2.17 Given the enforcement property is located within the Broadwater Conservation Area, an assessment needs to be made as to whether or not the works cause harm to the overall historic character of the Conservation Area. Dealing firstly with the front extension, it is constructed from unsympathetic and incongruous materials and is of a poor design which does not reflect the architectural characteristics of the host property. Furthermore, it is an incongruous form of development within the Conservation Area and the wider street scene. Therefore, it is considered to be an unacceptable addition to the enforcement property, contrary to the Broadwater Conservation Area Management Plan SPD (2012) nor Chapter 6 of the Design Guide SPD (2009).

- 4.2.18 Turning to the structure in the rear garden, this is deemed to be an incongruous form of development which also fails to respect the historic character of the Conservation Area. In addition, this structure, along with a number of other structures / outbuildings which have been constructed within the rear garden area over the years, cumulatively have a detrimental impact to the historic character of the conservation area.
- 4.2.19 Taking the aforementioned into consideration and as advised by the Council's Conservation and Heritage Advisor, both the front extension and structure in the rear garden neither preserve or enhance the historic character of the Broadwater Conservation Area. It is therefore, deemed that the extensions and existing structure cause 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 public benefit which would outweigh the harm which has been caused, it considered that the development as whole 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 Broadwater Conservation Area Management Plan SPD (2012).
- 4.2.20 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 dwellinghouse and the visual amenity of the wider street scene of Marymead Drive and Broadwater Crescent. 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 rear garden and the front extension. 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 structure as built in the rear garden area with the land made good and the front extension to also be removed in its entirety with the elevation of the dwellinghouse the extension is attached to made good following its removal.

## **7. BACKGROUND DOCUMENTS**

1. The application file, forms, plans and supporting documents associated with reference.

2. Stevenage Borough Local Plan 2011-2031 (2020)
3. Stevenage Borough Council Supplementary Planning Documents – Stevenage Design Guide 2009.
4. Central Government advice contained in the National Planning Policy Framework July 2021 and Planning Policy Guidance March 2014.