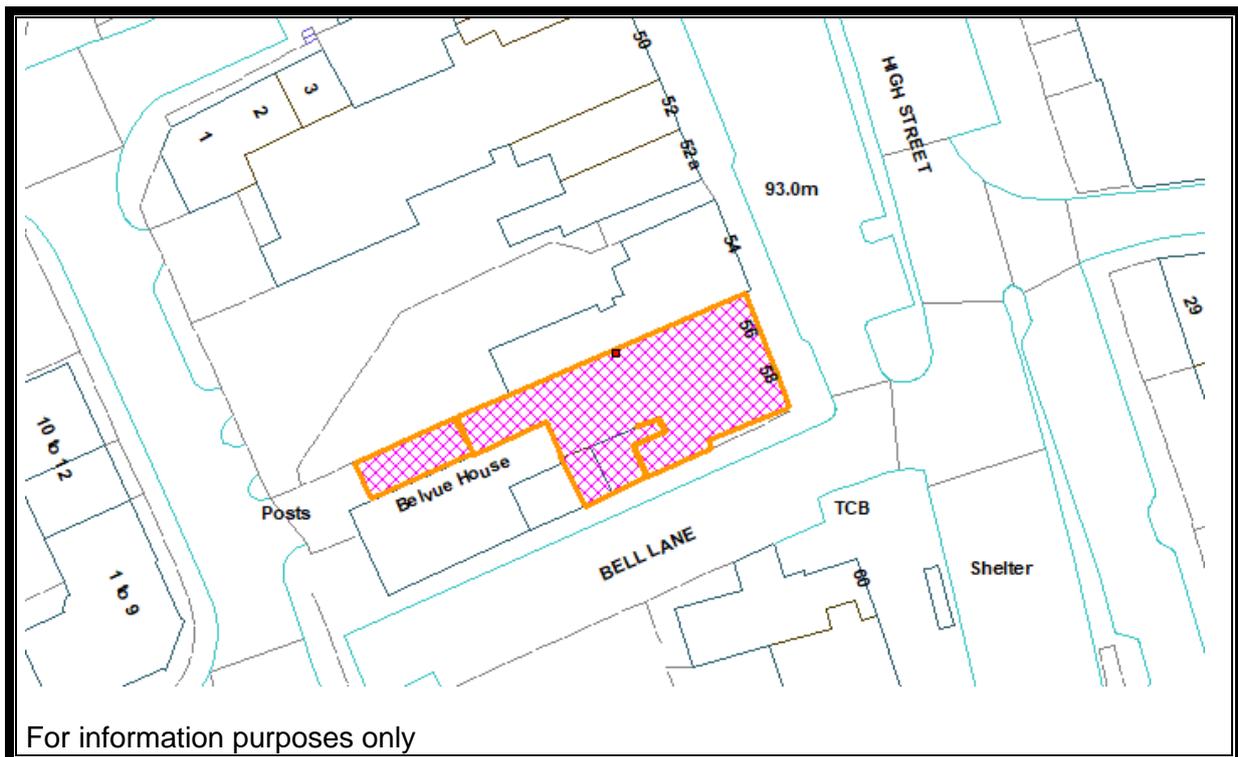


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|-------------------------|---|---------------------|
| Meeting: | Planning and Development Committee | Agenda Item: |
| Date: | 7 December 2023 | |
| Author: | Linda Sparrow | 07931 863551 |
| Lead Officer: | Zayd Al-Jawad | 01438 245257 |
| Contact Officer: | Linda Sparrow | 07931 863551 |

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|------------------|--|
| Application No : | 23/00482/FP |
| Location : | Cinnabar, 56-58 High Street, Stevenage |
| Proposal : | Change of use of parking bays to facilitate construction of outdoor seating area associated with 56-58 High street |
| Drawing Nos.: | RL3883-02; 457-09-Rev B; |
| Applicant : | Russell Linard |
| Date Valid: | 14 July 2023 |
| Recommendation : | GRANT PLANNING PERMISSION |



1. SITE DESCRIPTION

- 1.1 The site comprises an unlisted building, in use as a bar/restaurant known as Cinnabar, on the western side of the Old Town High Street within the Old Town High Street Conservation Area. This area of the High Street is characterised by public houses, restaurants, bars and retail uses. There is likely some residential use above some of the High Street premises and there are some residential blocks of flats to the rear of the High Street along Primett Road. Adjacent to the southern flank elevation of the building is the small no-through road of Bell Lane.

- 1.2 To the eastern frontage of the site is a small parking area which serves the retail premises of Nos. 44-58. This area is separated from the High Street by a narrow footpath/kerb on the eastern side.
- 1.3 The High Street in general is served by parking bays along both sides of the highway. The bays allow for parking of vehicles perpendicular to the footpath and in places slope upwards from the carriageway to the footway. In the case of the application site, the parking bays in question run along the southern side elevation of the application property.
- 1.4 The Old Town High Street Conservation Area has a distinctive historic character and contains many Listed Buildings. Pavements and kerbs are typically finished with traditional materials, including small conservation kerb stones (tegular blocks). Bell Lane is a narrow road which allows for parking on both sides and traffic to pass through the centre and has the rear access yard for The Mulberry Tree public house on the southern side. This road also provides the access to the parking area to the front of the application site.

2. RELEVANT PLANNING HISTORY

- 2.1 99/00117/AD Externally Illuminated Shop Sign and Awning Sign. Withdrawn 24.06.2003.
- 2.2 05/00235/FP Change of use from A1 to A3. Approved 08.07.2005.
- 2.3 05/00501/FP Internal and external alterations including new shopfront to facilitate change of use from A1(Retail) to A3 (Restaurant). New 2.5m rear boundary fence. Approved 15.12.2005.
- 2.4 05/00615/FP Change of use of ground floor from A1 (Retail) to A4 (Drinking Establishment). Approved 08.02.2006.
- 2.5 09/00196/AD Display of 1no. non-illuminated canopy sign. Approved 14.08.2009.
- 2.6 14/00467/FP Change of use of Belvue House from B1 (Offices) to C1 (Hotel) and new extension to link with Cinnabar Café. Approved 24.10.2014.
- 2.7 19/00741/FP Proposed replacement external door sets. Approved 16.03.2020.
- 2.8 22/00552/FP Change of use of parking bays on Bell Lane frontage to use as ancillary seating area and construction of associated seating area structure, together with the installation of 3no. awnings. Withdrawn 18.07.2022.

3. APPLICATION DEFERRAL

- 3.1 The current application was heard at the Planning and Development Committee on 31st October 2023. Members elected on this committee voted to have the application deferred. The reasons for deferral stated in the minutes for this meeting are as follows:
 1. To seek clarity on the implications of the newly adopted Levelling-Up and Regeneration Act 2023 in terms of the issuance of licences for outdoor seating on pavements.
- 3.2 Following the application deferral, the proposals remain unchanged from that which was presented at committee on 31 October 2023, and are set out in the following paragraphs.
- 3.3 The proposed works would see the formalised, marked out parking bays immediately adjacent to the southern flank elevation of Cinnabar being closed, and the road level being raised up to meet the existing footway level. The extent of the closure would be 22m in length and 2.4m in width, which when taken with the existing footpath (2.1m wide) would provide a new widened footpath area of 4.5m wide. The area is to be used for informal seating comprising tables and

chairs. The boundary of the area adjacent to the vehicular highway would be bounded by removable bollards which would also hold low level fabric banner signs no more than 0.6m in height.

- 3.4 Additionally, a small area of highway to the front of the premises would be filled in to widen the existing footpath by approximately 0.67m for a length of approximately 6m.
- 3.5 The area to the southern side of the premises would see the loss of 4no. marked out parking spaces. The works to the front of the premises would not result in the loss of any formalised marked out parking spaces, however, it is noted that cars do park in this area. As a non-marked out designated car parking space, the works to the front of the premises are not considered to result in the loss of any formalised parking spaces.
- 3.6 The applicant engaged in separate pre-application discussions with Herts County Council (HCC) as Highways Authority prior to the submission of the planning application. HCC advised at that stage that the built-up area of footpath along the south of the application site should be constructed in tarmac whilst the smaller built-up area to the eastern frontage of the site should be constructed in Tegula blocks to match existing.
- 3.7 It is emphasised that the application is only seeking permission for engineering works comprising the removal of 4 no. on-street parking bays, and the construction of a public footpath, associated kerbs and ancillary works. The provision of the outside seating area itself is assessed and controlled by the Local Authority (as defined under the Business and Planning Act 2020 (as amended)) under the relevant Pavement Licence. The following assessment does not therefore take account of the actual proposed seating arrangements but only the use of the land for this purpose more generally.
- 3.8 The application comes before the Planning and Development Committee as it has been called-in by Councillor Rossati. The Councillor called in the application due to the potential impact on neighbouring properties, car parking and highway safety.
- 3.9 This report must be read in conjunction with the report presented at committee on 31 October 2023 which is attached as an appendix to this report.

4. PUBLIC REPRESENTATIONS

- 4.1 Following publicity of the application via letters, a site notice and press notice, public representations were received as follows:
- 4.1.1 There were 53 letters received in support of the application. A summary of their key points follows below:
- This is necessary and needed;
 - Will provide a safe and enhanced experience for customers;
 - More effective use of the area;
 - Excellent idea and long overdue;
 - Great for socialising and community spirit to engage with others within and outside the seating area;
 - Will be very popular;
 - Look forward to using it;
 - Most people working or socialising in the High Street do not come via car so no impact on majority of users;
 - Will improve service provided by Cinnabar and increase their customer base therefore increasing people into the High Street generally;
 - The outside areas at the southern end of High Street have greatly improved that area so I think this application will improve the northern end's offerings;

- Great for entertaining clients for work;
- Will look good and improve the visual appearance of the area;
- Staff and food are excellent, this will encourage more people to visit;
- Will calm traffic in the area;
- Great for warmer evenings to enjoy a coffee and take in the ambience of the High Street;
- Will bring attractive café culture to the High Street.

4.1.2 There were 73 letters received objecting to the application. A summary of their points follows below:

- Will worsen parking issues;
- Not enough parking outside Tesco as it is;
- Longer free parking in Primett Road would help;
- Access to shops will be harder for disabled people as won't be able to park outside of the shops;
- How will this affect traffic flows?
- Will they pay additional business rates for enlarged area and will they pay rent on it?
- Yet more parking spaces being removed;
- People will be forced to park on double yellow lines as nowhere else to park;
- Pedestrians will struggle to navigate around tables;
- Takes valuable public space for what will be occasional and seasonal use;
- The parking spaces are public property and should not be taken over by a private business;
- You cannot favour hospitality uses over retail, office, services etc
- British weather is not conducive to outdoor eating and drinking;
- Have SBC asked any other business if they have been impacted by the temporary use?
- Businesses will collapse if there is no parking, just look at Hoddesden High Street;
- Will not preserve the conservation area;
- Only one disabled parking space in the vicinity;
- Primett Road is not an alternative for elderly, disabled or wheelchair user as its too far away;
- Canopies are not in keeping with the area;
- Less revenue for Traffic wardens;
- Permit parking in surrounding roads and removal of spaces on High Street makes it hard for staff of shops to be able to park without paying large daily car park fees;
- Will infringe on the Charter Fair unless it is fully dismantlable;
- Why favour one company to the detriment of all other businesses;
- HCC have a scheme proposed that will drastically harm the High Street and this application will not help the situation;
- Will set a precedence for more parking to be lost to outdoor seating areas;
- This area is used by the Charter Fair to house their generating equipment, and this must not be impeded;
- They've managed this long without outdoor seating so they can continue to go without;
- Nobody in Stevenage wants this;
- Eating outside next to parking spaces will be terrible for health from the pollution and exhaust fumes;
- How does a business just acquire land they don't own and put seating on it?
- Prioritising pedestrians and cyclists over cars will be disastrous to the High Street;
- Put in more electric vehicle charging points;

4.2 Full copies of the representations received can be viewed on the Council's website.

5. CONSULTATIONS

5.1 SBC Engineering Department

- 5.1.1 As local parking authority, we have supported the applicant for the last two summer seasons by providing temporary barriers on Bell Lane for an outside seating area. The loss of parking during these periods has not cause problems in the area and we remain supportive of permanently extending the footway width in this area. The change of use would not remove the highway status of the land and it would therefore remain highways land, maintainable at public expense and any tables and chairs would need a licence. New parking restrictions would be required along the seating area and the applicant will be required to cover the Council's costs in making the Traffic Regulation Order.
- 5.1.2 Following comments sent to Herts County Council by the Eastern Counties Section of the Charter Fair, the engineering department confirmed that the Showman's Guild does not have any rights to specifically occupy the parking bays in question, only a general right to hold a fair in the High Street. As there are to be no permanent structures on the land then there should be no issues caused to the Charter Fair.

5.2 Herts County Council as Highways Authority

- 5.2.1 Notice is given under article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that Hertfordshire County Council as Highway Authority does not wish to restrict the grant of permission.
- 5.2.2 A plan was first submitted in June 2023 which did not quite match up with the pre-app discussions the applicant had with us a few months earlier. The Highway Authority queried this with the applicant, and they have now submitted a revised plan which shows tapered edges either side of the proposed footway build-out. Removable bollards are proposed along the new footway edge (set 0.5m back from the kerb, with reflective bandings). Canvas sheets are shown to be attached between these bollards, with a maximum height of 600mm. This ensures that pedestrians crossing over Bell Lane will have a clear view of approaching vehicles and vice versa. The proposed tables at the two ends of the build out have been reduced down from double tables to single to ensure the new footway along here provides a continuous usable width of 2 metres.
- 5.2.3 Overall, the broad principle of removing the small number of roadside parking bays here is acceptable to the Highway Authority, recognising a shift away from private motorcar use and the need to embrace more sustainable modes of travel to tackle the urgent climate crisis. The County Council is also supportive of the High Street recovery.
- 5.2.4 The latest plan has been reviewed by our Safety team. The comments raised have been largely addressed in the revised plan, although vehicle tracking information was suggested. It has now been confirmed by Stevenage's refuse & recycling service that they do not route a refuse vehicle along Bell Lane. It is also noted that the Mulberry Tree pub, which has a vehicle access onto Bell lane, has another main vehicle access onto Primett Road, and that overall, the other properties which front onto Bell Lane seem to have full vehicle access from other parts of the network. With this in mind, and given the footway build-out largely replicates the location of the existing parking bays, it is not considered that existing routine vehicle movements along Bell Lane will be adversely affected by this proposal.
- 5.2.5 There is an existing vehicle crossover at the western end of the proposed build-out and this will be closed off (with the raised kerb reinstated) as shown on the plan. The applicant says

this crossover leads to now redundant storeroom used by Cinnabar - however the storeroom / building that the access leads to sits outside the applicant's red line. The LPA may want to double check that the removal of this crossover will not have consequences in the future for other occupiers.

5.2.6 Additionally, there will be a small footway build-out to the front of the site onto the High Street service road. Extension of the double yellow lines is proposed here, as well as along the Bell Lane footway build-out - as shown on the submitted plan.

5.3 B.E.A.M.S

5.3.1 If the seating area can be justified then BEAMS can, in principle support the change of use. The use of tarmac is not sufficiently sympathetic to the Conservation Area and enhancements should be sought through the use of tegula blocks to match the existing High Street footpaths. Are 13 bollards needed as this seems excessive? The proposal could result in visual clutter which will result in less in substantial harm to the significance of the conservation area.

5.4 SBC Environmental Health

5.4.1 No comments received.

6. REASONS FOR DEFERRAL

6.1 At the last meeting, members deferred consideration of the application: *To seek clarity on the implications of the newly adopted Levelling-Up and Regeneration Act 2023 in terms of the issuance of licences for outdoor seating on pavements.*

6.2 It has been possible to grant licences to place tables and chairs on the highway since 1982, when powers were added to the Highways Act 1980. Without a licence, placing tables and chairs on the highway would be likely to be unlawful as an obstruction of the highway.

6.3 The Business and Planning Act 2020 introduced a simpler procedure for obtaining consent for a "pavement licence" permitting removable furniture to be placed on the highway in connection with the service of food and drink. This was intended as a temporary measure to help the hospitality industry during Covid. The Levelling Up and Regeneration Act, 2023 made some changes to the 2020 Act. The key change is that the time-limited pavement licence provisions are made permanent. (NB: Licenses are not made permanent – it's the legislation.)

6.4 Key points regarding pavement licences are:

- They last for a maximum of two years.
- They can be renewed.
- They can be granted subject to conditions.
- They can be revoked.
- They will override conflicting uses of the highway, such as use as a footpath, and so licensed activities will not constitute an obstruction.
- They will also grant deemed planning consent for licensed activities, for as long as the licence is in force. But pavement licenses will not give planning permission for works amounting to development – deemed consent will only extend to the placing of temporary furniture and its use.

6.5 The Planning Committee should note that the grant of a pavement licence under the 2020 Act would overrule a refusal decision by the Planning Committee.

6.6 If this application is approved, the land is still highway, which has the following consequences:

- The applicant would still need a pavement licence in order to place tables and chairs on the highway.
- The land would remain subject to parking regulations made by the County Council, unless revoked in order to construct a public footpath.
- The applicant would need to obtain the consent of the County Council as highway authority to carry out works in the highway.
- The land will retain its highway status unless the County Council makes a stopping up order, which would need the approval of either the Secretary of State or the Magistrates.

6.7 Business and Planning Act 2020

6.7.1 Chapter 16 of the Business and Planning Act 2020 (B&P Act) deals with Pavement Licences and states in section 1(2) that the licence grants the licence-holder permission to put removable furniture on part of a relevant highway adjacent to the premises for either or both the purposes in section 1(3). Section 1(3) states:

- a) Use of the furniture by the licence-holder to sell or serve food or drink supplied from, or in connection with relevant use of, the premises;
- b) Use of the furniture by other persons for the purpose of consuming food or drink supplied from, or in connection with relevant use of, the premises.

6.7.2 Under section 3(5) the B&P Act states that a licence may be granted so long as nothing is done by the licence-holder that would have an effect as specified in 3(6). The effects listed in 3(6), such as to be relevant to this planning application, are as follows:

- (a) Preventing traffic, other than vehicular traffic, from –
 - i) Entering the relevant highway at a place where such traffic could otherwise enter
 - ii) Passing along the relevant highway; or
 - iii) Having normal access to premises adjoining the relevant highway.

6.7.3 The B&P Act, through Chapter 16 for the issuing of pavement licences, makes no allowances to refuse to issue a licence where it would utilise on-street parking spaces. It very clearly states in 3(6)(a) that vehicular traffic is excluded from consideration when determining impacts that could prevent the issuing of the licence.

6.7.4 The B&P Act was set to expire on 30 September 2024, however, the Levelling-Up and Regeneration Act 2023 amended this Act as set out in paragraph 6.2.1 below.

6.7.5 Licences issued under this Act are issued for a period of 2 years, however, there is provision to apply for renewals.

6.7.6 The land itself will maintain its status as a public highway unless an application is made to 'Stop Up' (remove) the highway status. This can be done through Herts County Council applying to the Magistrates Court, or anybody applying to the Secretary of State for Transport.

6.7.7 Section 7(2) of the B&P Act grants deemed planning permission for anything done by the licence-holder on the land which would constitute development (as set out in Part 3, Section 55 of the Town and Country Planning Act 1990 (as amended)). If authorised by the pavement licence authority, then further planning applications would not be required. However, the licence does only grant the holder permission to install removable furniture on the highway in connection with the consumption of food and drink. If planning permission was needed for the installation of said furniture, then the granting of the licence confers this permission such that the licence-holder does not need to seek separate planning permission.

6.8 Levelling-Up Act 2023

- 6.8.1 Under Schedule 22, Section 2(1), the Levelling-Up and Regeneration Act 2023 has removed Section 10 of Chapter 16 of the B&P Act which related to its expiry. Previously, this Act was set to expire on 30 September 2024; it is now a permanent piece of Legislation with no expiry date imposed.
- 6.8.2 As such, the issuing of pavement licences is now a permanent proposal within Government Legislation under the Business and Planning Act 2020 (as amended).

7. CONCLUSIONS

- 7.1 In summary, this report sets out that the Business and Planning Act 2020 deals with the issuing of pavement licences on highway land and the Levelling-Up and Regeneration Act 2023 removed the 2024 expiry of the aforementioned Act. As such, Government has brought into Law such Legislation that will provide for the issuance of pavement licences on a permanent basis.
- 7.2 The issuing of pavement licences is a separate function of the Council and is not a Planning matter.
- 7.3 Members are advised that, given the issue of the change of use of the land would be covered by the pavement licence, this application is therefore only concerned with the proposed engineering works which comprise the removal of 4no. on-street parking bays, construction of a widened public footpath and associated kerbs and ancillary works.
- 7.4 The provision of the outdoor seating and the required change of use of the land to facilitate said seating are separate matters that will be dealt with by the Council under the pavement licence and could be granted under such licence even if this application is refused.
- 7.5 Taking all the aforementioned into account, it is clear that the provision of the outdoor seating is covered by the Business and Planning Act 2020 and that the Levelling-Up and Regeneration Act 2023 has sought to make pavement licences a permanent proposal. These matters are not a key material consideration in the determination of the planning application at hand, which is solely for the engineering works to create a raised highway footpath, to expand the existing footpath.

8. RECOMMENDATIONS

- 9.1 That planning permission be GRANTED subject to the following conditions:-
- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:
RL3883-02; 457-09-Rev B
REASON:- For the avoidance of doubt and in the interests of proper planning
 - 2 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
REASON:- To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

- 3 Prior to the first use of the seating area hereby approved, the removable bollards and removable banners shall be installed, the existing crossover to the west of the site shall be closed and double yellow lines shall be implemented as shown on approved plan 457-09-Rev B. No other furniture other than that shown on the approved plan shall be installed or erected unless an application for planning permission is first sought from the Local Planning Authority.
REASON:- In the interests of highway safety and to ensure the development has an acceptable appearance and preserves the character and appearance of the Conservation Area.
- 4 The materials to be used in the construction of the built out seating area and the built out area to the eastern frontage of the application site shall be as per approved plan 457-09-Rev B to the satisfaction of the Local Planning Authority.
REASON:- To ensure the development has an acceptable appearance.
- 5 Unless otherwise agreed in writing by the Local Planning Authority, the outdoor seating area hereby approved shall not be in operation before 08:00 hours or after 23:00 hours on any day. Outside of these times, all tables and chairs shall be removed to leave a clear and unobstructed area to the front and side of the building.
REASON:- in the interests of pedestrian and highway safety and to protect the amenities of the occupiers of neighbouring properties.

For the Following Reason(s):-

- 1 Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively in line with the requirements of the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

INFORMATIVE

1 Public Information on Planning Applications

Warning: all information provided on your planning application is now publicly available. Individuals and organisations offering their services may contact you. The Council does not endorse or approve any builders, surveyors, trades persons or other supplier, and advises householders to obtain quotes/references, and check the legitimacy of any contractor who contacts them before making payment.

2 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 .

3 **Building Regulations**

To obtain advice regarding current Building Regulations please contact Hertfordshire Building Control Ltd. by emailing us at building.control@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).

4 **Party Wall etc. Act 1996**

Any work that affects a party wall, including foundations dug within 3.0m of a neighbouring building, may be controllable under the Act and may require approval from the adjoining owner(s). Party Wall Act matters are always civil matters and it is neither Stevenage Borough Council's nor Hertfordshire Building Control Ltd's remit to control or enforce Party Wall act matters. Please refer to the Government's explanatory booklet The Party Wall etc. Act 1996, a copy of which is available online at <https://www.gov.uk/government/publications/the-party-wall-etc-act-1996-revised-explanatory-booklet>

5 **Hertfordshire County Council as Highways Authority**

The applicant is advised that in order to comply with this permission it will be necessary for the developer of the site to enter into an agreement with Hertfordshire County Council as Highway Authority under Section 278 of the Highways Act 1980 to ensure the satisfactory completion of the access and associated road improvements. The construction of such works must be undertaken to the satisfaction and specification of the Highway Authority, and by a contractor who is authorised to work in the public highway. Before works commence the applicant will need to apply to the Highway Authority to obtain their permission and requirements. Further information is available via the website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/businessanddeveloper-information/development-management/highways-developmentmanagement.aspx> or by telephoning 0300 1234047.

9. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.
2. Stevenage Borough Council Supplementary Planning Documents – Parking Provision adopted October 2020, Stevenage Design Guide adopted January 2023, The Impact of Development on Biodiversity adopted March 2021, Stevenage Borough Council Developer Contributions adopted March 2021.
3. Stevenage Borough Local Plan 2011 – 2031 adopted 2019.
4. Hertfordshire County Council’s Local Transport Plan 4 adopted May 2019.
5. Responses to consultations with statutory undertakers and other interested parties referred to in this report.
6. Central Government advice contained in the National Planning Policy Framework September 2023 and Planning Practice Guidance.