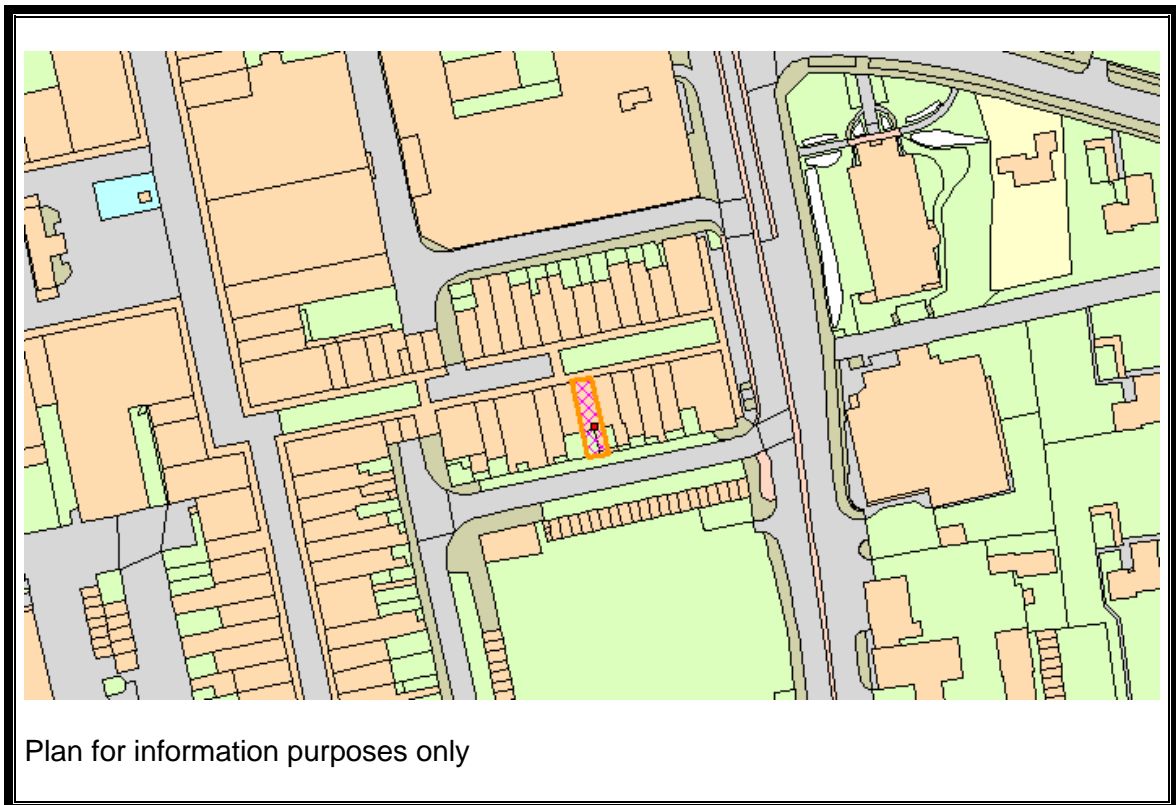


Meeting: Planning and Development Committee **Agenda Item:**
Date: 8 February 2024
Author: James Chettleburgh
Lead Officer: Zayd Al-Jawad
Contact Officer: James Chettleburgh

Application No:	22/01052/ENF
Location:	20 Market Place, Stevenage
Proposal:	Unauthorised construction of a single-storey rear extension.
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 eastern side of Market Place which forms part of the pedestrianised town centre of Stevenage. The premises which is the subject of enforcement comprises a ground floor retail unit (Ehi Afro Caribbean Foods) with flats above. To the rear of the building, subject to the proposed enforcement action, is an unauthorised single-storey

extension, which is timber framed and finished in fibreboard timber with the roof clad in Perspex. This structure infills the service area to the retail premises (Figures 1 and 2).

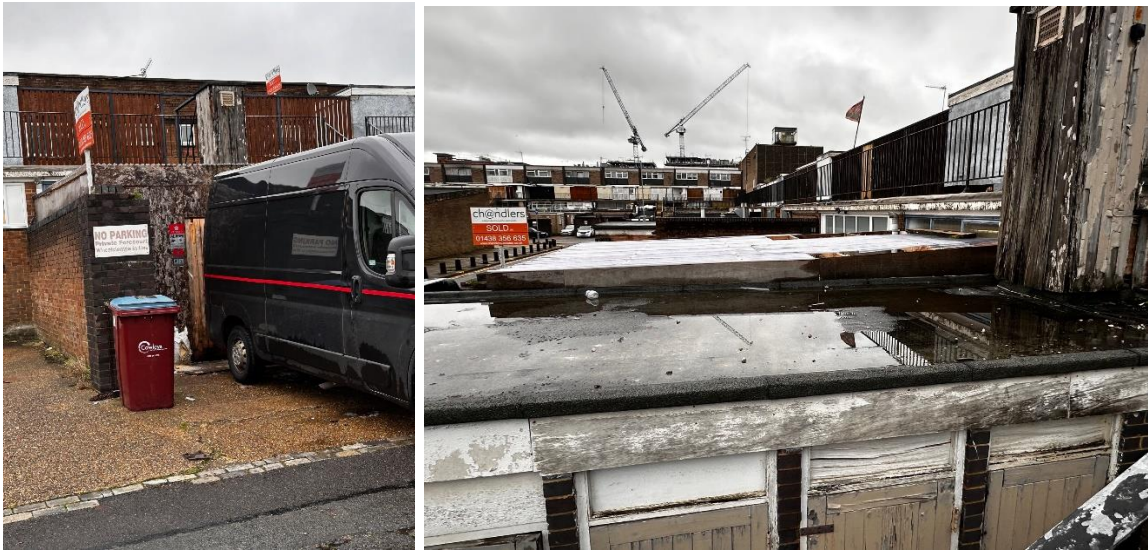


Figure 1: Photographs of existing extension (Photograph taken on 13/12/2023).



Figure 2: Photographs of existing extension (Photographs taken on 25/11/2022).

- 1.2 The surrounding area comprises Stevenage Town Centre which includes a mixture of retail, commercial and residential development. The enforcement site is located within the Town Square Conservation Area (Figure 3) and Stevenage Town Centre Shopping Area.

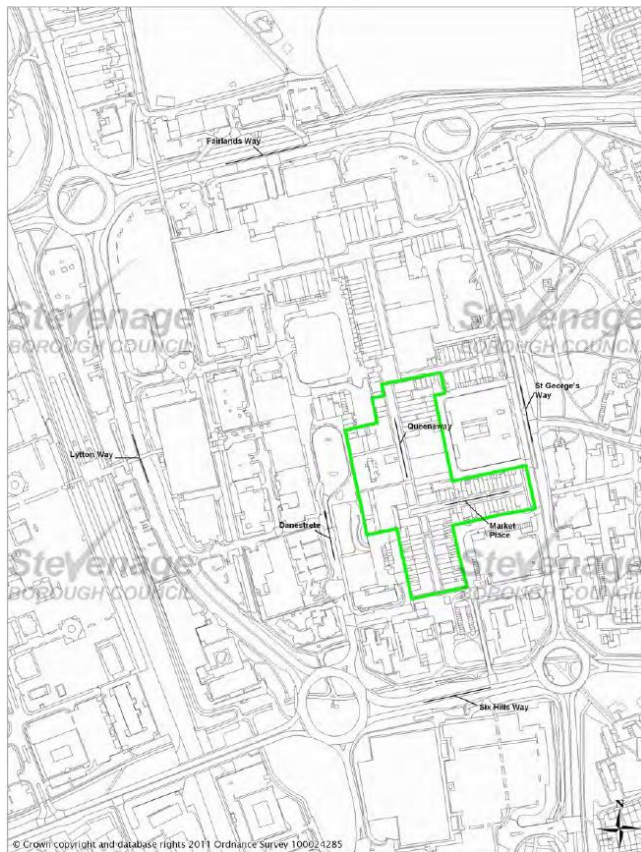


Figure 3: Town Square Conservation Area map – green line denotes boundary (source: Town Square Conservation Area Management Plan SPD 2012).

Site history

1.3 No relevant planning history.

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

2.1 The structure appears to be of poor material / appearance as seen from East Gate, so it is not considered to be acceptable.

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 December 2023. This made significant changes to the September 2023 version and revised policy with respect to the following:

- maintaining supply and delivery of housing.
- making effective use of land with the allowance of mansard roof extensions to suitable properties.
- significant uplift in the average density of residential development can be seen as being inappropriate if the built form is out of character.
- strengthening policies around achieving well-designed and beautiful places.
- requirement for councils to prepare Local Design Codes.
- no longer a requirement to review or change Green Belt boundaries when plans are being prepared or updated.
- local planning authorities should now give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings, both domestic and non-domestic.
- change to policies on Biodiversity.

3.2.2 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).

3.2.3 In relation to development in conservation areas, Paragraphs 205 to 208 of the NPPF (2023) have to be considered in respect to this unauthorised extension at 20 Market Place. 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 205, 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.

- 3.2.4 Paragraph 206 of the Framework 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.
- 3.2.5 Paragraph 207 of the NPPF (2023) 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 208 of the Framework, 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 (2023)
Town Square Conservation Area Management Plan SPD (2012)

4. DISCUSSION

4.1 Assessment of the planning breach - the unauthorised extension.

Policy background – Conservation Areas

- 4.1.1 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 205 to 208 of the NPPF (2023) (see paragraph 3.2.3 to 3.2.5). 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 Town Square Conservation Area

- 4.1.2 The enforcement site is located within the Town Square Conservation Area as defined by the Local Plan (2019) policies map as reflected in the Conservation Area Management Plan SPD (see figure 3). The Conservation Area was originally designated in 1988. The boundary of this was extended in 2010 following a review and is drawn tightly around the properties that enclose Queensway. This is the main north-south spine which runs through the retail area. It also includes Market Place which extends east from Queensway and there are also the properties on the northern and south side of Town Square which form its enclosure.
- 4.1.3 The conservation area reflects Stevenage being designated as the UK's first New Town in 1946. As such, the town centre was planned as part of the product of contemporary thinking on planning and architecture in the 1950's. For this reason, Stevenage town centre has a unique and distinctive architectural form, reminiscent of post war town planning. The town centre was constructed over three phases and was completed by the late 1960s, presenting a continual retail frontage of low rise, three storey buildings arranged in a block of rectilinear plots. The retail streets were designed as traffic free pedestrianised routes, to create a safe shopping environment.
- 4.1.4 The Town Square Conservation Area Appraisal 2010 confirms the principal features of the conservation area. These are the buildings which are three-storeys in height, flat roofed, with metal framed windows, primary coloured panels and flat roofed canopies above ground level. It also sets out that the pedestrianised precincts are of a consistent width, which is enclosed by the three-storey buildings on both sides of the street. There are subtle public art features and street furniture with an overall unique New Town Design and architecture.
- 4.1.5 The Town Square Conservation Area Management Plan SPD (2012) provides a non-exhaustive list of strengths that are considered to warrant the designation of the Conservation Area. One of the key features of the conservation area is the large open square in the middle to the town centre with a central raised platform. This square is enclosed by retail outlets and it is punctuated by trees and shrub planting around its edges. It is noted that Queensway is the primary retail parade which forms Phase 1 of the Town Centre combined with the provision of key features as detailed in the Conservation Area. There is also the low rise buildings (being three storeys) which have a strong co-ordinating element. They are arranged in a rectilinear block form throughout the conservation area which present a uniform frontage.
- 4.1.6 There is also the presence of the canopies which run along the building frontages which provide protection along the pedestrianised precincts. The canopies themselves are generally constructed from timber and are supported with metal poles. The paving throughout is generally block paved concrete which is broken by smaller block paving.
- 4.1.7 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

- 4.1.8 Paragraph 131 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. 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. Being clear about design expectations, and how these will be tested, is essential for achieving this. So

too is effective engagement with applicants, communities, local planning authorities and other interests throughout the process”.

4.1.9 Paragraph 135 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.

4.1.10 Paragraph 137 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”. Paragraph 139 of the Framework sets out that where development is not well designed it should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents.

4.1.11 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.

4.1.12 The Council recently adopted an updated Design Guide SPD (Jan 2023) and Sections B (Built Form) and H (Homes and Buildings) are particularly pertinent to the design of extensions to commercial premises. An understanding and analysis of the original New Town design concepts led to some key issues becoming apparent. These have been used as key themes, which run throughout the entirety of this guidance. Considering these concepts at all stages of the development process will provide a good basis for the creation of a successful place; based on the recognised principles of urban design, but also building on the existing fabric of the town without taking away from Stevenage’s history as Britain’s first Mark One New Town. The themes have been identified as follows:

- Sustainability – incorporate principles of sustainable development from a town-wide perspective to measures incorporated into an individual property;
- Increasing densities – encourage high densities in accessible locations;
- Respecting existing characteristics – respect local characteristics and preserve and enhance existing features, where appropriate;
- Legibility – provide landmark developments at nodal points;
- Design innovation – showcase Stevenage as an example of high-quality design, creating safer places through urban design techniques.

Assessment of the existing works

- 4.1.13 It was reported to the Council that an extension had been constructed within the rear service yard area of the enforcement property. Following officer's investigation and a review of the planning history, no application has been received for the existing extension. In addition, as the extension is not classed as permitted development (see section 4.2 for further details), it would require planning permission. Therefore, it is evident that there has been a clear breach in planning control. As such, an assessment needs to be made as to whether it is expedient to take enforcement action against the unauthorised extension works.
- 4.1.14 Given the enforcement property is located within the Town Square 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. Following a detailed review of the extension, it is considered that the extension has been constructed from unsympathetic and incongruous materials i.e., fibreboard timber with a Perspex roof, 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 as viewed from East Gate. Therefore, it is considered to be an unacceptable addition to the enforcement property, contrary to the Town Square Conservation Area Management Plan SPD (2012) and the Council's Design Guide SPD (2023).
- 4.1.15 Taking the aforementioned into consideration and as supported by the Council's Conservation and Heritage Advisor, the rear extension neither preserves or enhances the historic character of the Town Square Conservation Area. It is therefore, deemed that the extension 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 limited public benefit which would outweigh the harm which has been caused, it is considered that the development as whole fails to accord with paragraphs 205 to 208 of the National Planning Policy Framework (NPPF) 2023. Moreover, it does not accord with policies SP13 and NH10 of the adopted Local Plan (2019) and the Town Square Conservation Area Management Plan SPD (2012).
- 4.1.16 Further to the above, given the development works are unsympathetic and is deemed to incongruous, they also have a detrimental impact on the character and appearance of the premises and the visual amenity of the wider street scene of East Gate which is located to the rear of Market Place. As such, the development works as constructed do not accord with paragraph 131 of the NPPF (2023) and associated PPG, policies SP8 and GD1 of the adopted Local Plan (2019) and the Council's Design Guide SPD (2023).

Conclusion

- 4.1.17 In summary, it is considered that the existing extension, being an incongruous form of development being constructed in unsympathetic materials, significantly detracts from the historic character of the Town Square. The extension is deemed to have an impact which is at the upper end of the scale of 'Less than Substantial Harm' and that the extensions overall benefits do not outweigh the harm caused.

4.2 Whether the existing extension would be classed as permitted development.

- 4.2.1 The existing extension has been considered against the criteria specified under Article 3, Schedule 2, Part 7 (Non-domestic extensions, alterations etc), Class A (The extension or alteration of a commercial, business, or service establishment) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This is because the existing premises is a shop as falls under Class E (commercial, business, or service establishment) of the Use Classes Order 1987 (as amended).
- 4.2.2 It has been determined that the existing fails to accord with A.2 (conditions) of the aforementioned, whereby development is permitted by Class A subject to the following conditions.....(b) any extension is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the building being extended.
- 4.2.3 Taking the above into consideration, the existing extension as shown in figures 1 and 2 has not been constructed using materials which have a similar external appearance to those used for the building being extended. As a consequence, the existing extension would not benefit from being classed as permitted development and would require planning permission from the Council as Local Planning Authority.

4.3 Is the extension exempt from enforcement action under Section 171B of the Town and Country Planning Act 1990 (as amended).

- 4.3.1 Section 171B Time Limits of the Town and Country Planning Act 1990 (as amended) states as follows:

(1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2)Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(2A)There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3)In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4)The preceding subsections do not prevent—

(a)the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b)taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

- 4.3.2 Based on the evidence collected by officers to date, the extension appears to only have been in place for 13 months (since November 2022). In addition, the landowner(s) have not submitted a Lawful Development Certificate (Existing) to the Council to demonstrate that on the balance of probability, the operation was substantially completed more than 4 years.

Therefore, it is officers opinion that the extension would not be immune from enforcement action under Section 171B of the Town and Country Planning Act 1990 (as amended).

4.4 Consideration of European Convention on Human Rights and the Equalities Act 2010.

- 4.4.1 Consideration has been given to Articles 1 and 8 of the First Protocol of the European Convention on Human Rights (ECHR). It is not considered that the decision would result in a violation of any person's rights under the Convention. This is because the unauthorised extension relates to a premises i.e. 20 Market Place which is operated by a retailer Vitago Foods Multi International Ltd which is a commercial business. In addition, the property is managed by a commercial landlord Brocklease (Stevenage) Ltd. As such, the serving of an enforcement notice does not affect an individual person's rights under Articles 1 and 8 of ECHR.
- 4.4.2 Turning now to equalities, 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 (This has been established as a key requirement in planning decision making by case law through the relevant courts). 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 ("PSED"). As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment ("EqIA") produced by officers.
- 4.4.3 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.
- 4.4.4 As set out under paragraph 4.5.1, the enforcement site i.e., 20 Market Place, is occupied by a retail operator i.e. Vitago Foods Multi International Ltd. As a consequence, whilst there maybe persons who are employed or work for the retail operator who have a protected characteristic as defined under the Equalities Act, the serving of an enforcement notice relating to the unauthorised extension would not discriminate against those who have protected characteristics. More specifically, the unauthorised extension relates to a commercial business with it being used by the commercial business for the storage and refrigeration of goods. This is clearly evidenced in the photograph detailed in figure 4.



Figure 4: Extension being used for storage and refrigeration of goods.

- 4.4.5 Therefore, it is not considered that serving an enforcement notice would discriminate persons who have protected characteristics.

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 extension located within the rear service area to the property known as 20 Market Place. 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 service yard with the land made good and returned to its previous state before the extension was constructed.

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 2023, Town Square Conservation Area Management Plan 2012.
4. Central Government advice contained in the National Planning Policy Framework December 2023 and Planning Policy Guidance.