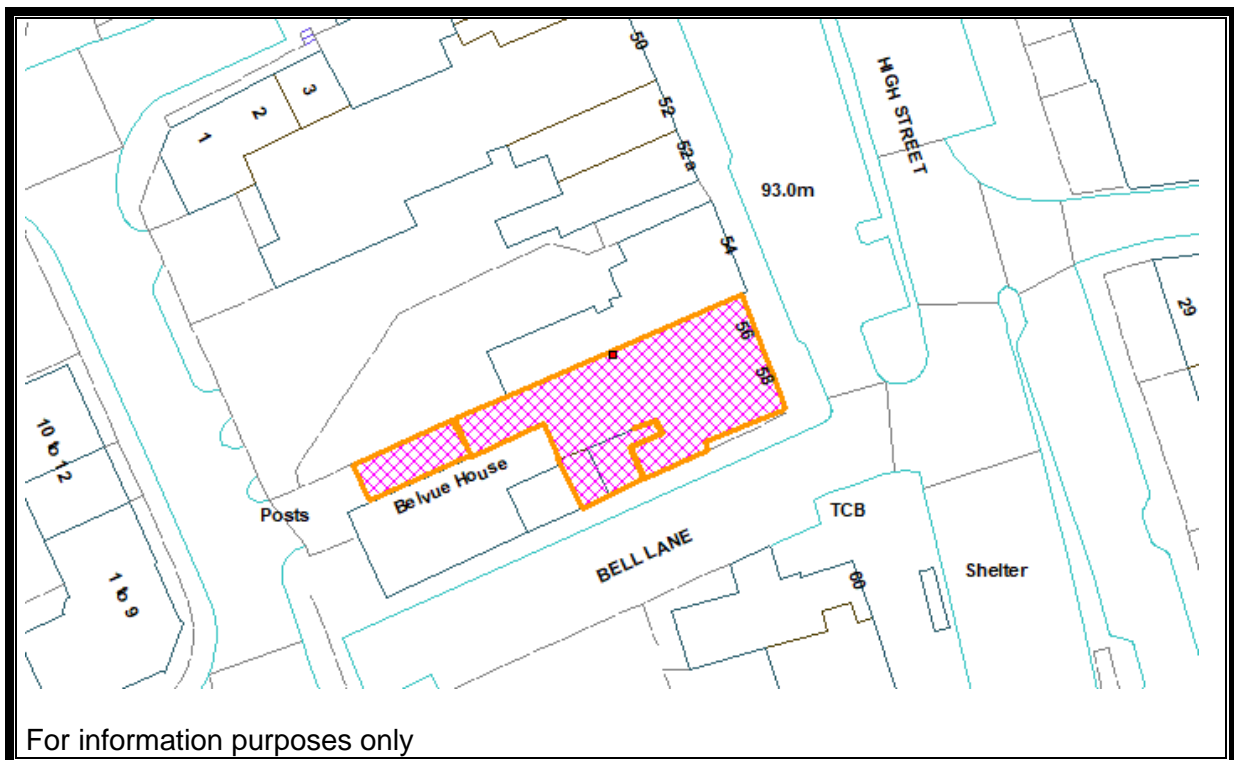


<b>Meeting:</b>	<b>Planning and Development Committee</b>	<b>Agenda Item:</b>
<b>Date:</b>	<b>8 February 2024</b>	
<b>Author:</b>	<b>Linda Sparrow</b>	07931 863551
<b>Lead Officer:</b>	<b>Zayd Al-Jawad</b>	01438 245257
<b>Contact Officer:</b>	<b>Linda Sparrow</b>	07931 863551

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 C;
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 HISORY**

- 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 DEFERRALS**

- 3.1 The current application was heard at the Planning and Development Committees on 31<sup>st</sup> October 2023 and 7<sup>th</sup> December 2023. Members elected to this committee voted to have the application deferred at both meetings. The reasons for deferral stated in the minutes are as follows:
  1. 31<sup>st</sup> October 2023: 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.
  2. 7<sup>th</sup> December 2023: To seek amended plans to remove the proposed highways works to the front (east) of the building.
- 3.2 Following the application deferral, the proposals have been amended from that which was originally presented at committee on 31 October 2023 and subsequently at the Planning and Development Committee on the 7<sup>th</sup> December 2023. The proposal, including the proposed changes 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 In order to address the concerns of the Planning and Development Committee, the previously sought works to the front (east) of the property have been removed from the application.
- 3.5 The area to the southern side of the premises would comprise the loss of 4no. marked out parking spaces. It should be noted that it has always been the applicant's intention to remove the existing dropped kerb to the west of the proposed works on the southern side of the building which will subsequently generate 1no. parking space, however, this was not shown on the original plans but was included on the now superseded plan 457-09-B and is shown on the latest amended plan number 457-09-C. Accordingly, the proposed development results in a net loss of 3no. 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, which as discussed in paragraph 3.5 above is a net loss of 3no. spaces due to the creation of 1no. space once the existing dropped kerb is closed, 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 reports presented at committee on 31 October 2023 (Appendix 1) and 7 December 2023 (Appendix 2) which are attached as appendices 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.

5.1.3 The Engineering Department were asked to comment on the removal of the works to the front of the premises and had the following comments to make:

I think it is regrettable that the works to the front are no longer proceeding as removal of the single kerbside parking space at the front of the premises would have improved the footway width for pedestrians and would have given proper clearance for vehicles to turn into and out of the disabled bays. But if the application is amended to remove this part of the project, then it is only relevant for me to comment on the remaining part in Bell Lane. I remain supportive of the proposal to widen the footway here to better allow for tables and chairs and for the passage of pedestrians along Bell Lane accessing the High Street from the Lytton Way car parks.

### **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.
- 5.2.7 HCC Highways were asked to comment on the removal of the works to the front of the premises and had the following comments to make:

We'd have no objection to this change.

### 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. RELEVANT POLICIES

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.

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).

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Stevenage Borough Council comprises the following documents:

- The Stevenage Borough Council Local Plan 2011-2031 (adopted 2019)
- 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).

## **7. REASONS FOR DEFERRAL**

- 7.1 At the last meeting, members deferred consideration of the application: *to seek amended plans to remove the proposed works to the front of the site in order to safeguard the parking arrangements which exist in the parking area located between the curtilage of the site and High Street.*
- 7.2 The applicant has since provided an amended plan, 457-09-C, which no longer includes the works to the front of the premises and also makes clear with annotations that the existing dropped kerb to the west of the proposed works on the southern side of the property will be removed and made good. As a result of the removal of this dropped kerb, 1no. parking space will be generated on the highway and therefore whilst the application seeks removal of 4no. parking spaces, there would be a net loss of only 3no. spaces.
- 7.3 Since the applications' deferral at the previous two Committee meetings, a new NPPF has been published in December 2023. The paragraphs within the NPPF that the application was assessed against in October and December 2023, namely paras. 197, 199, 200, and 202 have not been amended under the new NPPF, although they are now numbered as paras. 203, 205, 206, and 208. As such, the assessment of the application under the previous committee reports is considered not to have changed as a result of the latest revision of the NPPF (2023) (See the reports under Appendix 1 which provides a detailed assessment regarding the developments impact on the Old Town Conservation Area).

7.4 Neither HCC as Highways Authority, nor Stevenage Borough Council's Engineering department, have raised any concerns or objections to the latest amendment to remove the works to the front of the property. Neither consultee raised objections under the original iteration to the overall proposed development.

## 8. CONCLUSIONS

8.1 In summary, this report sets out the changes to the submitted plans as requested by Members of the Committee.

8.2 The previous report of 7 December 2023 set 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.

8.3 The issuing of pavement licences is a separate function of the Council and is not a Planning matter.

8.4 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.

8.5 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.

8.6 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.

## 9 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](http://www.stevenage.gov.uk/CIL) or by contacting the Council's CIL Team at [CIL@Stevenage.gov.uk](mailto: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](mailto: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.

## **10. 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 December 2023 and Planning Practice Guidance.