

Meeting: Planning and Development Committee
Date: 2 April 2024
Author: Thomas Frankland-Wells
Lead Officer: Zayd Al-Jawad
Contact Officer: Thomas Frankland-Wells
Agenda Item:

Application No:	23/00477/OP
Location:	Land between 146 & 225 Hopton Road, Stevenage, Herts, SG1 2LF
Proposal:	Outline planning permission with all matters reserved for the erection of 1no. detached three bedroom dwelling with associated car parking
Drawing Nos.:	01 Rev A; 02; 03 Rev B;
Applicant:	Stevenage Borough Council
Date Valid:	21 June 2023
Recommendation:	GRANT OUTLINE PLANNING PERMISSION



The above plan is for illustrative purposes only.

1 UPDATE

- 1.1 On 31 October 2023, members resolved to grant outline planning permission for this application, subject to the completion of a memorandum of understanding to secure off-site area habitat creation equal to 0.55 biodiversity units. A copy of the original committee report is attached under Appendix 1.
- 1.1.1 Following the resolution to grant permission by the Planning Committee, it was found that the vast majority of the habitat loss associated with the proposal was attributable to the felling of a single Silver Birch tree, which is located on the verge to the front of the site, adjacent to the proposed car parking spaces. The Council's Estates Department, who are the applicant in this case, have amended the proposal such that the tree would be retained.
- 1.1.2 As well as retaining the existing tree, the planting of an additional tree is also now proposed. A 5.5m section of non-native hedgerow would be lost in its place. In all other respects, the proposal remains as previously presented. The application comes before the Committee again to consider the effects of the amendments.
- 1.1.3 In addition to these changes to the application itself, there have also been two material changes in the planning policy context. The first of these is that a revised NPPF was published in December 2023, which made significant changes to the previous September 2023 version. The second is that new Housing Delivery Test results have been published and in light of the Council's performance, it is now necessary to apply the so-called tilted balance in the determination of planning applications.
- 1.1.4 These changes should only serve to reinforce the Committee's original resolution to grant permission. However, it is nonetheless necessary to provide an explanation of the changes and relevant case law.

2 MATERIAL CONSIDERATIONS

2.1 Legislation

2.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Council to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

2.1.2 Section 70(2) of the Town and Country Planning Act 1990 further clarifies the matters that must be taken into consideration when determining a planning application:

"In dealing with an application for planning permission or permission in principle the [local planning] authority shall have regard to-

- (a) the provisions of the development plan, so far as material to consider application,*
- (b) a post-examination draft neighbourhood development plan, so far as material to the application,*
- (c) any local finance considerations, so far as material to the application, and*
- (d) any other material considerations."*

2.1.3 There is no written definition of what constitutes a material consideration. However, the courts have held that anything can be a material consideration provided it relates to the

character of the use of land. Of particular relevance to this application is the NPPF, along with other national policies and guidance.

2.1.4 It is important to note that there are no statutory provisions which expressly require planning applications to be referred back to a committee in the event of a material change in planning policy. However, the courts have determined that it is necessary where that is significant enough that it may result in a different decision being made.

2.1.5 Officers do not consider that the above applies to the current application, since the changes in planning policy should only serve to reinforce the original resolution to grant. However, since the application must be brought before the committee again in any event (to consider the changes to the application itself), it is necessary for officers to set out the changes in planning policy context as well.

2.1.6 Relevant case law includes the following:

- R. (on the application of Kides) v South Cambridgeshire District Council [2002] EWCA Civ 1370 (this decision has been applied by the Courts on several occasions where challenges have been brought against applications on the basis that there has been “material changes” in circumstances which required an application, in the appellants view, to be referred back to committee for reconsideration).
- R (on the application Dry) v West Oxfordshire District Council [2010] EWCA Civ 1143.
- Wakil and Others V London Borough of Hammersmith and Fulham [2013] EWHC 2833 (Admin).

2.2 National Planning Policy Framework

2.2.1 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.

2.2.2 The Council are content that the policies in the Local Plan are in conformity with the revised NPPF. They should therefore be given full weight in the determination of planning applications unless some other material consideration (e.g. the NPPF) directs otherwise.

2.3 Housing Delivery Test and 5 Year Land Supply

2.3.1 Since November 2018, housing delivery has been measured against the Housing Delivery Test (HDT) as set out by the Government planning policy and guidance. The

results of the HDT dictate whether a local planning authority should be subject to consequences to help increase their housing delivery. Where an authority's HDT score is less than 95%, the authority should prepare an action plan to assess the causes of under delivery and identify actions to increase delivery in future years. Where an authority's HDT score is less than 85% of its housing requirement, the Council must incorporate a 20% buffer into its housing supply calculations in line with paragraph 79 of the NPPF. This will be in addition to the preparation of an Action Plan. Where an authority's score is below 75%, the Council will be subject to the HDT's most severe penalty and must apply the presumption in favour of sustainable development under paragraph 11(d) of the NPPF.

2.3.2 When the application was originally determined by the Planning and Development Committee on 31st October 2023, the Council's HDT score as published by Department for Levelling Up, Housing and Communities (DLUHC) in January 2022 was 79%. This exceeded the minimum requirement of 75%. In addition, the Council could demonstrate a 5 year land supply of 5.91 years (including a 20% buffer). This meant that at the time the application was originally determined by the Committee, paragraph 11(d) of the NPPF was not engaged and the Council did not have to apply the tilted balance.

2.3.3 Since the application was determined by the Planning and Development Committee, the latest HDT results published by DLUHC in December 2023 identifies that Stevenage delivered 57% of its housing requirement. Accordingly, the Council must now apply the tilted balance in the determination of planning applications which involve the provision of housing. This means that planning permission should be granted for the proposal unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reasoning for refusing the development proposed; or
- ii. any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

2.3.4 In terms of 5 year housing land supply, there is no updated data which has been formally published by the Council and any data it has in draft. As such, until such time the Council publishes updated information on its 5 year land supply, it can still demonstrate 5.91 years supply of land (including a 20% buffer).

3 APPRAISAL

3.1 Biodiversity and Arboriculture

3.1.1 In terms of biodiversity, the amendments result in an almost complete reversal of the on-site area habitat loss. There would still be a slight on-site net loss but it would amount to less than -0.01 units.

3.1.2 The loss of the hedgerow would however result in a slight loss in linear habitats. As previously presented, there was no loss whatsoever; as amended, there would be a net loss of -0.01 units.

3.1.3 Overall, therefore, the amendments reduce the on-site habitat loss from -0.55 units to a little more than -0.01 units. This represents a considerable overall improvement.

3.1.4 The Council's Arboriculture and Conservation Manager was consulted on the amended proposal because the retained tree is in close proximity to the proposed car parking spaces. He has confirmed that he has no objections, subject to a condition being imposed to secure a tree protection plan prior to the commencement of the development.

It is considered that the existing tree protection plan condition, which was recommended to protect nearby off-site trees, is suitable for this purpose.

3.2 Conclusion

3.2.1 Aside from the above, the amendments do not give rise to any material planning considerations. The conclusions on all other aspects of the proposal therefore remain as previously presented to the Committee.

3.2.2 Having regard to the above, it is considered that the proposal, as amended, remains in accordance with the development plan when read as a whole. The NPPF is a material consideration but there are considered to be no adverse impacts of granting permission which might significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

3.2.3 The amendments to the original recommendation are underlined below.

4 **RECOMMENDATION**

4.1 That planning permission be GRANTED subject to the following conditions and the authorisation of a transfer to secure:

- Off-site linear habitat creation equal to 0.01 units

4.2 With delegated powers be given to the Assistant Director of Planning and Regulation in consultation with the Chair of Planning Committee to negotiate and secure the obligation detailed above (including triggers where appropriate), and to amend or add to the suggested draft conditions set out in this report, prior to the decision notice being issued, where such amendments or additions would be legally sound and most effectively deliver the development that the Planning Committee has resolved to approve.

Conditions

General Conditions

1. The development to which this permission relates shall be carried out in accordance with the following approved plans unless otherwise agreed in writing by the local planning authority:

01 Rev A

02

03 Rev B

REASON: For the avoidance of doubt and in the interests of proper planning.

2. Approval of the details of the layout, scale and appearance of the building, the means of access thereto and the landscaping of the site (hereinafter “the reserved matters”) shall be obtained in writing from the local planning authority before any development is commenced.

REASON: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 (as amended).

3. In the case of any reserved matter, application for approval must be made to the local planning authority not later than the expiration of three years from the date of this permission.

REASON: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 (as amended).

4. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

REASON: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 (as amended).

5. Unless otherwise agreed in writing by the Local Planning Authority, no demolition or construction activities audible at the site boundary shall be carried out except between the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays. For the avoidance of doubt, no such work shall be carried out on Sundays or Bank Holidays.

REASON: In the interests of the living conditions of neighbouring occupiers.

6. Any external lighting installed at the site shall be angled so as to avoid any spillage beyond the site boundaries unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of the living conditions of neighbouring occupiers and highway safety.

7. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report must be submitted to and approved in writing by the local planning authority.

REASON: To prevent unacceptable risks to human health as a result of contamination

8. The development to which this permission relates shall be carried out in accordance with the mitigation measures as specified in Section 5 of "Preliminary Ecological Appraisal" authored by CSA Environmental and dated June 2023 unless otherwise agreed in writing by the Local Planning Authority.

REASON: To prevent unacceptable harm to habitats and species.

Prior to Commencement

9. No development shall take place (including site clearance or demolition) until a construction management plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved construction management plan. The construction management plan shall include details of the following:

- a) Construction vehicle numbers, type, routing;
- b) Access arrangements to site;
- c) Traffic and pedestrian management requirements;
- d) Construction and storage compounds (including areas designated for car parking, loading / unloading and turning areas);
- e) Siting and details of wheel washing facilities;
- f) Cleaning of site entrances, site tracks and the adjacent public highway;

- g) Timing of construction activities (including delivery times and removal of waste) and to avoid school pick up/drop off times;
- h) Provision of sufficient on-site parking prior to commencement of construction activities;
- i) Post construction restoration/reinstatement of the working areas and temporary access to the public highway;
- j) Where works cannot be contained wholly within the site, a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes and remaining road width for vehicle movements;
- k) Measures to deal with environmental impacts such as vehicle emissions, dust, noise, vibration, light, and odour.

REASON: In the interests of the living conditions of neighbouring occupiers and highway safety.

10. No development shall take place (including site clearance or demolition) until a tree protection plan has been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved plan.

REASON: In the interests of the health and longevity of trees worthy of retention.

Prior to Occupation

11. Prior to the beneficial occupation of the development to which this permission relates, the car parking shall be provided as shown on the approved plans. It shall be permanently kept free from obstruction and maintained for its intended purpose thereafter unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of the living conditions of neighbouring occupiers and highway safety.

12. Prior to beneficial occupation of the development to which this permission relates, details of cycle parking shall be submitted to and approved in writing by the local planning authority. The approved cycle parking shall be provided prior to beneficial occupation and shall thereafter be permanently kept free from obstruction and maintained for its intended purpose unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that sustainable modes of transport are adequately promoted.

13. Prior to beneficial occupation of the development to which this permission relates, details of refuse stores, including drawings of the elevations of any enclosures and the number, type, size and siting of bins, shall be submitted to and approved in writing by the Local Planning Authority. The refuse stores shall then be provided in accordance with the approved details prior to beneficial occupation and permanently retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure the proper storage and disposal of waste.

14. Prior to beneficial occupation of the development to which this permission relates, a scheme for low and zero carbon technologies, detailing the savings in regulated carbon dioxide emissions to be achieved versus Part L of the Building Regulations, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to beneficial occupation and permanently retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that the development is adaptable to climate change and to ensure a satisfactory appearance on completion of the development.

INFORMATIVES

1. The applicant is advised that the storage of materials associated with the construction of this development should be provided within the site on land which is not public highway, and the use of such areas must not interfere with the public highway. If this is not possible, authorisation should be sought from the Highway Authority before construction works commence. Further information is available via the County Council website at:

<https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx>

or by telephoning 0300 1234047.

2. It is an offence under section 137 of the Highways Act 1980 for any person, without lawful authority or excuse, in any way to wilfully obstruct the free passage along a highway or public right of way. If this development is likely to result in the public highway or public right of way network becoming routinely blocked (fully or partly) the applicant must contact the Highway Authority to obtain their permission and requirements before construction works commence. Further information is available via the County Council website at:

<https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx>

or by telephoning 0300 1234047.

3. It is an offence under section 148 of the Highways Act 1980 to deposit compost, dung or other material for dressing land, or any rubbish on a made up carriageway, or any or other debris on a highway to the interruption of any highway user. Section 149 of the same Act gives the Highway Authority powers to remove such material at the expense of the party responsible.

Therefore, best practical means shall be taken at all times to ensure that all vehicles leaving the site during construction of the development and use thereafter are in a condition such as not to emit dust or deposit mud, slurry or other debris on the highway. Further information is available by telephoning 0300 1234047.

4. **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).

5. 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.

Pro-active Statement

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant at the pre-application stage and during the determination process which lead 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.

10. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.
2. The Stevenage Local Plan 2011-2031.
4. Stevenage Borough Council Supplementary Planning Documents – Parking Provision and Sustainable Transport SPD (2020); Developer Contributions SPD (2021); The impact of Development on Biodiversity SPD (2020); Design Guide SPD (2023).

5. Hertfordshire County Council Local Transport Plan LTP4 2018-2031
6. Central Government advice contained in the National Planning Policy Framework 2023 and the National Planning Practice Guidance.
7. Responses to consultations with statutory undertakers and other interested parties referred to in this report.