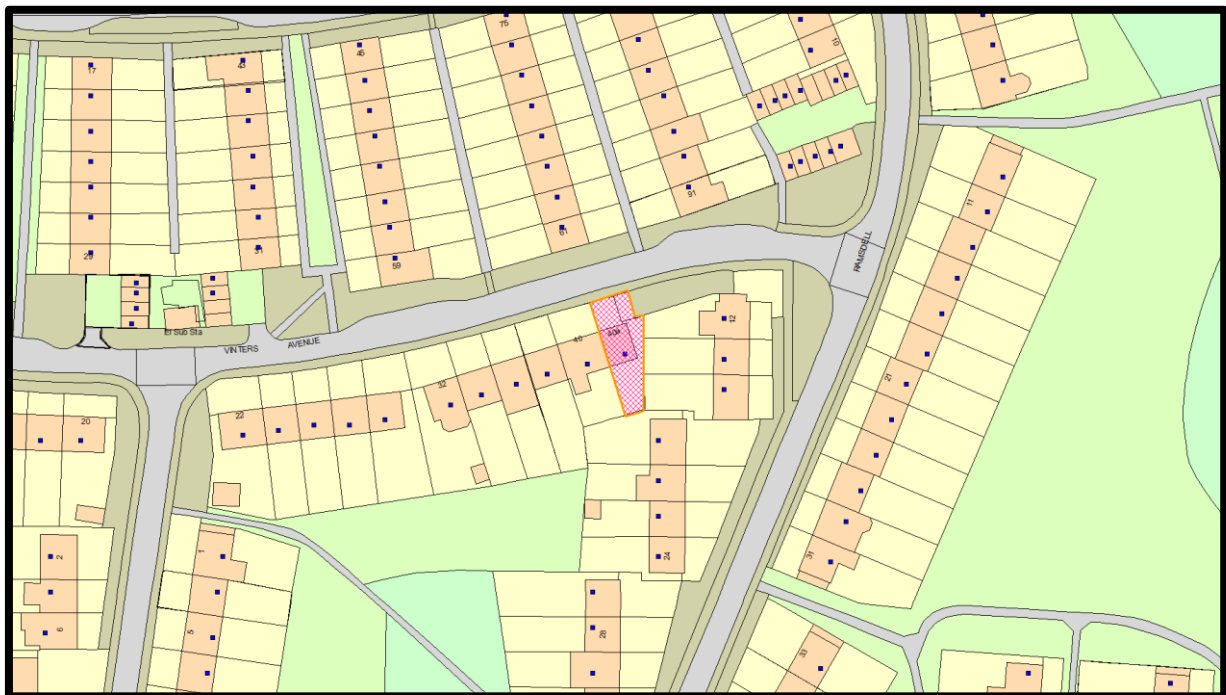


Meeting: Planning and Development Agenda Item:
Committee
Date: 2 April 2024
Author: Thomas Frankland-Wells
Lead Officer: Zayd Al-Jawad
Contact Officer: Thomas Frankland-Wells

Application No:	23/00824/CLEU
Location:	40A Vinters Avenue, Stevenage, Herts, SG1 1QU
Proposal:	Certificate of Lawfulness for existing use as 4no. self-contained studio flats.
Drawing Nos.:	Site location plan; 368-01;
Applicant:	Mr A. Shamsi
Date Valid:	10 November 2023
Recommendation:	REFUSE CERTIFICATE AND ISSUE ENFORCEMENT NOTICE



The above plan is for illustrative purposes only.

1 SITE DESCRIPTION

- 1.1 The site comprises the easternmost part of a short terrace of residential properties on the southern side of Vinters Avenue, which is currently in use as four flats. The frontage is given over to parking, with space for three cars, whilst the rear is a garden. The sole access to the site is from Vinters Avenue.
- 1.2 The site is not subject to any notable Local Plan designations or other environmental constraints.
- 1.3 Land use in the surrounding area is predominantly residential, consisting of two storey dwellings laid out in terraces of varying lengths. The Bedwell Crescent Local Centre lies a short distance to the north.

2 RELEVANT PLANNING HISTORY

- 2.1 There relevant planning history is set out below.

Reference	Description	Decision & Date
15/00125/FP	Erection of 1no. two bed dwelling	Granted 30/04/2015

3 THE CURRENT APPLICATION

- 3.1 The application seeks a certificate of lawfulness for the existing use of the site as four flats.
- 3.2 The application is made on the grounds that the time limit for enforcement action has expired.
- 3.3 The application comes before the Planning and Development Committee because officers are recommending enforcement action.

4 PUBLIC REPRESENTATIONS

- 4.1 There is no statutory duty to publicise applications for certificates of lawfulness, although where an application relates to an existing use or development, a local planning authority may do so if there is good reason to believe that neighbouring residents may hold relevant evidence.
- 4.2 For the current application, this step was not considered to be necessary. Consequently, the application was not publicised.

5 CONSULTATIONS

- 5.1 As with publicity, there is no statutory requirement to consult any third parties on applications for certificates of lawfulness, although where an application relates to an existing use or development, a local planning authority may seek evidence from other sources if there is good reason to believe this may bring relevant evidence to light.
- 5.2 For the current application, officers consulted Hertfordshire Building Control and The Council's Council Tax Department. The outcome of these consultations is explained in section 7 of this report.

6 RELEVANT PLANNING POLICIES

6.1 In considering an application for a certificate of lawfulness of existing use, the sole determinative issue is whether, on the balance of probabilities, that use is lawful. The planning merits of the use are not relevant at any stage in this process and as a result, the development plan and the policies it contains are immaterial.

6.2 However, in the event that the committee resolve to refuse the application for a certificate of lawfulness and subsequently have to consider whether it is expedient to take enforcement action, the planning merits will be relevant insofar as enforcement action should only be taken to remedy demonstrable harm. That decision should therefore be made with regard to the development plan.

6.3 Background to the Development Plan

6.3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For Stevenage, the statutory development plan comprises the following documents:

- The Stevenage Borough Council Local Plan 2011-2031 (adopted 2019)
- The Hertfordshire Waste Core Strategy & Development Management Policies Development Plan Document 2011-2026 (adopted 2012)
- The Hertfordshire Waste Site Allocations Development Plan Document 2011-2026 (adopted 2014)
- The Hertfordshire Minerals Local Plan Review 2002-2016 (adopted 2007)

6.4 National Planning Policy Framework

6.4.1 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.

6.4.2 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). This indicates the weight which

should be given to an up-to-date development plan, reflecting the requirements of section 38(6) of the 2004 Act.

- 6.4.3 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 11d) of the NPPF. The latest HDT results published by the Department for Levelling Up, Housing and Communities (DLUHC) in December 2023 identifies that Stevenage delivered 57% of its housing requirement.
- 6.4.4 Turning to 5-year housing land supply, the Council published an Addendum Report in May 2022. The report set out that the Borough Council could demonstrate a housing supply of 5.91 years (including 20% buffer) for the period 1 April 2022 to 31 March 2027. However, since the Land West of Lytton Way appeal was allowed by the Planning Inspectorate for a development of 576 residential units (Appeal Reference: APP/K1935/W/20/3255692), the Council's Policy Department confirmed the Council at the time of the decision could demonstrate a housing supply of 6.68 years (including 20% buffer).
- 6.4.5 The Council, based on its HDT score is currently subject to the most severe penalty under paragraph 11(d) of the NPPF (2023). For reference, as this policy is now engaged, it means Local Plan policies would be classed as out-of-date. Consequently, Stevenage Borough Council must apply the presumption in favour of sustainable development in its decision making and give great weight towards the need to deliver housing. The Council must also apply a 20% buffer in its 5-year housing supply calculations and it also has to produce an Action Plan in order to boost housing delivery.
- 6.4.6 The Council is now commencing preliminary work into a review of its Local Plan, last adopted in May 2019. This is to ensure the policies within the Local Plan are up to date in accordance with the NPPF as well as ensuring the Council is delivering a sufficient supply of housing and employment. In addition, it will now prepare an updated Action Plan to assess the causes of under-delivery and identify actions to increase delivery in future years. Moreover, the Council is also preparing updated statements with respect to 5 year housing land supply given the last monitoring report was published in 2022.
- 6.5 Planning Practice Guidance
- 6.5.1 The Planning Practice Guidance ("PPG"), with which Members are fully familiar, is an online resource containing guidance supplementing the NPPF. The PPG is a material consideration which should be taken into account in determining planning applications.
- 6.6 National Design Guide
- 6.6.1 The National Design Guide 2021 is Government guidance on the characteristics of well-designed places and demonstrates what good design means in practice. It has the same status as the PPG and should similarly be taken into account when determining planning applications.
- 6.7 Stevenage Borough Local Plan

6.7.1 The Local Plan policies most relevant in considering whether to take enforcement action are as follows:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Sustainable Development in Stevenage
- SP5 Infrastructure
- SP6 Sustainable Transport
- SP7 High Quality Homes
- SP8 Good Design
- SP11 Climate Change, Flooding and Pollution
- SP12 Green Infrastructure and the Natural Environment
- IT4 Transport Assessments and Travel Plans
- IT5 Parking and Access
- IT6 Sustainable Transport
- HO5 Windfall Sites
- HO9 Housing Types and Sizes
- GD1 High Quality Design
- FP1 Climate Change
- FP2 Flood Risk in Flood Zone 1
- FP7 Pollution
- FP8 Pollution Sensitive Uses
- NH5 Trees and Woodland

6.8 Supplementary Planning Documents

6.8.1 The following supplementary planning documents are relevant to determining the application:

- Parking Provision and Sustainable Transport SPD 2020
- The impact of Development on Biodiversity SPD 2020
- Developer Contributions SPD 2021
- Design Guide SPD 2023

6.9 Community Infrastructure Levy

6.9.1 Stevenage Borough Council adopted a Community Infrastructure Levy ("CIL") Charging Schedule in 2020. This allows the Council to collect a levy to fund infrastructure projects based on the type, location, and floor space of a development. The proposal would be liable for CIL at a rate of £100/m².

7 APPRAISAL - CERTIFICATE

7.1 The application is made pursuant to section 191 of the Town and Country Planning Act 1990 (as amended) ('the Act'). For the purposes of that section, a use or operation is lawful at any time if no enforcement action may be taken in respect of it.

7.2 There are a number of reasons why it might not be possible to take enforcement action against a use or operation which has not been expressly authorised by the Council. The most common are:

- a) It does not constitute "development" as defined by section 55 of the Act;
- b) It constituted permitted development when it was carried out; or
- c) The time limit for taking enforcement action has expired.

7.3 The current application for a certificate is made on ground (c) i.e. that the time limit for taking enforcement action has expired.

7.4 Time Limits

7.4.1 The time limits for taking enforcement action are set out at section 171B of the Act. These vary according to the nature of the breach of planning control.

7.4.2 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.

7.4.3 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.

7.4.4 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.

7.4.5 For the current application, it is therefore necessary to determine the relevant time limit for enforcement action, with regard to the nature of the breach.

7.4.6 The applicant says that the limit is four years because the breach consists of the change of use of a building to a single dwellinghouse per 7.4.3 above. In this context, it is well established that "single dwellinghouse" may in practice apply to more than one dwellinghouse because the word "building" in the Act is defined so as to include any individual part of a building as well as the entire structure. In other words, the change of use of the entire building may be treated as four individual changes of use of separate parts of the building to single dwellinghouses.

7.4.7 However, officers are of the opinion that the building did not change use at all. This is because in order for the building to have changed use to four flats, it must have been in another use at some point in the past. Officers consider it more likely that the building was originally constructed for use as flats and was never used for any other purpose. In this case, the breach would consist of a change of use of the *land* i.e. not the *building*. To such a breach, the ten year limit would apply per 7.4.4 above.

7.5 Timeline of Events

7.5.1 On 30 April 2015, planning permission was granted under reference 15/00125/FP for the erection of a two bedroom dwelling on land adjacent to 40 Vinters Avenue.

7.5.2 It is common ground that the building works associated with that permission were commenced on or around 30 November 2015 and completed on or around 17 January 2017. This is evidenced by building control records held by both the Council and Hertfordshire Building Control, which show those dates as the first and final inspections respectively.

7.5.3 Hertfordshire Building Control have advised that had flats been discovered at the final inspection, this would have been recorded in the inspection notes but was not. This is evidence that by 17 January 2017, the building works had been carried out according to the approved plans i.e. as a two bedroom dwelling. Following receipt of the final outstanding documents, on 16 March 2017, a completion certificate was issued by Hertfordshire Building Control to that effect.

7.5.4 The applicant has provided a schedule of tenants and the dates on which they moved in, along with the corresponding tenancy agreements and statements of rent accounts, in support of the application. These show that the first tenant moved into Studio 1 on 4 March 2017, some 12 days before the completion certificate was issued and only 46 days after the final building control inspection was carried out. It is only during these 46 days that the building could have been used for an authorised purpose.

7.5.5 The agreements show further tenancies commencing on 1 October 2017 (Studio 4), 28 July 2018 (Studio 2) and 28 August 2018 (Studio 3). These are the earliest tenancy agreements provided by the applicant for each of the rooms.

7.5.6 According to the applicant's version of events, he himself moved into the property whilst it was still a two bedroom house at some point prior to the completion certificate being issued on 16 March 2017. He then added a bathroom and rented out a single room as a self-contained studio. Whilst still living there, he then added two further bathrooms and rented out those additional rooms as self-contained studios, finally living in the last remaining studio until moving out. The applicant has set out this version of events in a statutory declaration.

7.5.7 On the face of it, this is an improbable, albeit not impossible, sequence of events. There would have been nothing to physically prevent the applicant from moving into a newly constructed home and then almost immediately commencing further building work whilst still residing there but it does seem unusual that anyone would suffer the inevitable inconvenience for the sake of a little more than a year's worth of accommodation.

7.6 Evidence to the Contrary – Address History

7.6.1 Other pieces of evidence give officers further cause for scepticism, in particular documentary evidence of the applicant's address. When the applicant originally applied for planning permission in March 2015, his address was given as a property in west London. HM Land Registry records show that he has held sole freehold interest in that property from December 2000 to the present day.

7.6.2 Some of the tenancy agreements provided by the applicant also show his address. Most notably, those signed on 1 March 2017, 26 September 2017 and 29 August 2018 – i.e. the period during which the applicant says he lived at the application site – all give his address as that same address in west London. This continues until the most recent tenancy agreement provided, which was signed on 3 October 2023.

- 7.6.3 The statements of rent accounts provided by the applicant cover the period from 4 November 2018 to 3 October 2023. These consistently give the applicant's address as the address in west London. It is however noted that they do not cover the period when the applicant says he lived at the application site.
- 7.6.4 The applicant is also the sole shareholder and director of a limited company. The registered office address of this company was changed on 2 August 2023 to the west London address. One day later, it was changed again to a so-called "virtual" office address in east London. Two other previous addresses are recorded by Companies House, one being another virtual office and the other being the premises of a tax consultancy.
- 7.6.5 In short, officers have been unable to find evidence to support the claim that the applicant lived at the application site at all, let alone during those crucial 46 days in early 2017. In contrast, there is a wealth of evidence to link the applicant to the address in west London, including evidence which was provided by the applicant himself and covers that period. Given that the registered office address of his business was, for the most part, located elsewhere, it would also seem more likely than not that the west London address is his main residence.
- 7.7 Evidence to the Contrary – Other Ventures
- 7.7.1 Returning to the applicant's business, the nature of that business is recorded by Companies House as being "other accommodation", "buying and selling of own real estate" and "management of real estate on a fee or contract basis". The company has remained dormant since incorporation in October 2017 but it nonetheless demonstrates where the applicant's commercial interests lie.
- 7.7.2 The applicant is also involved with other properties within the Borough. He is the owner of the property adjacent to the application site, 40 Vinters Avenue, and when the 2015 planning application was submitted, a neighbouring resident commented on the application alleging that this property had already been converted into flats. The Council holds no planning records for this conversion. However, it is important to note that the applicant rejects the allegation that this property has been converted and officers have yet to verify the situation.
- 7.7.3 Another application was submitted to the Council in May 2023, this time for the conversion of a property to six self-contained flats. In that case, which was registered under 23/00407/CLED, the application was granted and a certificate was issued. What is of note is that the earliest tenancy agreement provided by the applicant in support of that application had a tenancy commencement date of 28 October 2015, which is only a short time before works to construct the application property commenced.
- 7.7.4 In summary, there is clear evidence (provided in support of 23/00407/CLED) that the applicant's interest in the development and renting of flats extends beyond the application site. There is also clear evidence that these interests existed prior to the commencement of the use for which a certificate is now sought.
- 7.8 Evidence to the Contrary – The Plans
- 7.8.1 A comparison of the latest set of approved plans against the existing plans casts further doubt on the applicant's version of events. The alterations required to facilitate the building's use as four flats were by no means minor and in the case of the ground floor, amount to comprehensive changes.
- 7.8.2 At ground floor level, the alterations involved removal of the WC, removal of the kitchen, removal of the bifold doors to the rear, their replacement with two new entrance doors,

the repositioning of the bottom of the staircase, the removal and replacement of every single internal wall, and the fitting of two new bathrooms and kitchenettes. It is difficult to imagine how anyone could occupy the ground floor whilst these works were being carried out and anyone occupying the first floor would have suffered tremendous inconvenience.

7.8.3 At first floor the alterations were less extensive but still required significant changes to the internal walls, the removal of a bathroom, and the fitting of two new bathrooms and kitchenettes. Again, it is difficult to imagine how these works could be carried out with anyone residing in the property.

7.9 Evidence to the Contrary – Timing of Lettings

7.9.1 The evidence provided by the applicant, notably the statutory declaration, gives the impression that the studio flats were constructed and let out gradually. However, the tenancy agreements show that Studio 4 was the second unit to be rented out, in September 2017. This suggests that all of the studios had been completed by this date.

7.10 Council Tax Evidence

7.10.1 Officers were unable to obtain any Council tax records to assist with the assessment of the application.

7.11 Overall Assessment

7.11.1 In summary, officers are satisfied that the application building was initially constructed according to the approved plans and that these works were completed on or around 17 January 2017. Officers are similarly satisfied that the use of the buildings as flats commenced on 4 March 2017, which is now some seven years ago.

7.11.2 However, it is far from clear that the building was ever used for any other purpose. The applicant says that he lived in the property and used it as a two bedroom house but there is no documentary evidence to support that assertion. The only evidence he has provided which might support it – i.e. the statutory declaration – is decidedly vague, providing no specific dates as to when he moved in or out, what “living” there precisely entailed, why he chose to move there when he had another, presumably much more tranquil, property available within a reasonable distance, how the alterations were managed whilst both he and other tenants were residing there, or even which room or rooms he occupied. He has been presented with multiple opportunities to provide greater detail on these matters but has been far from forthcoming, providing only brief statements, generally by email, and has been unable to produce a single piece of corroborating evidence, for example photographs, bank statements, utility bills, etc.

7.11.3 What is clear is that the applicant has a longstanding interest in the conversion and letting out of properties as flats. Evidence he himself has provided to the Council shows that by the time work commenced to build the application property, he had already converted another property within the Borough to flats without the requisite planning permission and begun renting them out. Neighbour representations on the 2015 application suggest that the adjoining property at 40 Vinters Avenue had also undergone the same process by that time.

7.11.4 With all of this in mind, it appears highly unlikely that the applicant ever did or had any intention of occupying the application building for the purposes for which it was granted permission. It is rather more likely that the building was never occupied as a two bedroom dwellinghouse and was instead altered at the earliest opportunity to provide flats for the applicant to rent out. This is the simplest version of events that would answer the

unresolved questions surrounding the case and it is supported by a much greater weight of evidence than the applicant's own account of what transpired.

- 7.11.5 With that said, it is not necessary for the Council to set out an alternative, more probable version of events in order to be justified in refusing the application. The Planning Practice Guidance is clear that the applicant is responsible for providing sufficient information to support an application and the absence of sufficient or precise information alone may justify refusal by a local planning authority.
- 7.11.6 The guidance goes on to explain that where the Council has no evidence itself, nor from any others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse an application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. In this case, the applicant's evidence is both vague and ambiguous, and the Council has its own evidence, evidence from others and indeed from the applicant himself, which makes his version of events less than probable and in some cases, directly contradicts them.
- 7.11.7 With that in mind, and having regard to the available evidence in its entirety, officers conclude, on the balance of probability, that: a) the time limit for taking enforcement action against the unauthorised use of the building is ten years; and b) that the unauthorised use commenced within the last ten years. It follows that the time limit for taking enforcement action has not expired and the use is therefore unlawful. Accordingly, it is recommended that the application be refused.

8 APPRAISAL – PLANNING MERITS

- 8.1 Should members be minded to accept the above recommendation, it will then be necessary to consider whether it is expedient to take enforcement action to remedy the breach. The most appropriate way to do this is to consider the likelihood of retrospective planning permission being granted for the unauthorised development.
- 8.2 The main issues in assessing such an application would be:
- The principle of the development
 - Standard of accommodation
 - Character and appearance
 - Impact on neighbouring amenities
 - Parking
 - Highway safety
 - Developer obligations and CIL
- 8.3 Principle of Development
- 8.3.1 The unauthorised development comprises the subdivision of the garden of 40 Vinters Avenue and the erection of a building for use as four flats.
- 8.3.2 The development amounts to windfall development i.e. residential development of a site not allocated for any specific purpose within the Local Plan. Policy HO5 sets out a range of criteria that windfall development should meet in order to be considered acceptable. One of these concerns detail rather than land use and will therefore be considered later on in this report.
- 8.3.3 The first relevant criterion is that the site should be either previously developed land or a small, underutilised urban site. Before the unauthorised development was carried out, the development site would have met neither of these criteria because residential

gardens do not fall within the definition of previously developed land as set out in the NPPF and the use as a residential garden is considered to be an effective use of land. On this basis, the development conflicts with criterion (a) of Policy HO5.

- 8.3.4 The second relevant criterion is that the site should have good access to local facilities. This is true of the development site, which is located within only a short distance of the Bedwell Crescent neighbourhood centre. The development therefore accords with criterion (b).
- 8.3.5 The third relevant criterion is that windfall development should not prejudice the delivery of housing on allocated sites. The development site is not located in close proximity to any allocated sites and in any event, it is of a scale that would not be disruptive. The development therefore accords with criterion (d) of the policy.
- 8.3.6 The fourth and final relevant criterion is that windfall development should not overburden existing infrastructure. The development would, if granted permission now, be liable CIL and the purpose of CIL is to mitigate impacts on infrastructure. With this in mind and in the absence of any other evidence to suggest that the development would overburden infrastructure, the development is considered to accord with criterion (e).
- 8.3.7 The development is therefore contrary to Policy HO5 on the basis that the site is neither previously developed land nor a small, underused urban site. This will be weighed against the benefits of the proposal in the conclusion of this report. The only criterion which has not been considered, criterion (c), concerns impacts on the environment and surrounding properties and will therefore be considered later.
- 8.3.8 The proposed mix of dwellings – i.e. four studio flats – is also a relevant consideration in terms of land use. Policy HO9 of the Local Plan requires residential development to provide an appropriate range of dwelling types and sizes with regard to the most up-to-date evidence of need. That evidence shows a lack of smaller properties in the Borough's housing stock and the development would help to mitigate this. On that basis, the development is considered to accord with Policy HO9.

8.4 Standard of Accommodation

- 8.4.1 Policy GD1 of the Local Plan requires development proposals to provide for the amenities of occupants. It also requires residential developments to accord with the Government's nationally described space standard.
- 8.4.2 According to the standard, a one bedroom dwelling with one bed space set over a single storey should have a gross internal area (GIA) of at least 37m². Where a bath is provided instead of a shower, that standard increases to 39m². All such dwellings should be provided with 1m² of built-in storage space and single bedrooms should measure at least 7.5m² in area with a width of at least 2.15m.
- 8.4.3 The flats within the development have GIAs ranging in size from 12.9m² to 14.4m² i.e. roughly one third of the required minimum. One of these contains a bath, where the higher 39m² standard applies.
- 8.4.4 Built-in storage space ranges from non-existent to an assumed 1m² for the ground floor flat which benefits from space under the stairs. These deficiencies cannot be made up for by an excess of overall GIA, as they can in some instances.
- 8.4.5 The bedrooms, if indeed they can be called that in this case, do however meet the necessary standards in terms of overall size and width.

- 8.4.6 Moving beyond the standards to other amenity considerations, it is noted that all but one of the flats is single aspect, which would limit opportunities for passive ventilation and cooling. The only flat which is dual aspect is only dual aspect by virtue of the bathroom window.
- 8.4.7 This unobscured window looks directly out onto the shared driveway and public highway, which is problematic from a privacy perspective. The rear windows for both ground floor flats look out onto the shared garden with no defensible space or screening whatsoever, again offering the occupants limited privacy.
- 8.4.8 The occupants of the flats on the upper floors would benefit from adequate privacy. All of the flats provide a reasonable outlook.
- 8.4.9 The availability of natural light has not been thoroughly assessed but is also likely to be acceptable for the first floor flats. The ground floor flats however, benefit from limited glazing, particularly the flat which is single aspect.
- 8.4.10 The size of the garden, at 50m², is adequate.
- 8.4.11 Having regard to the above, it is considered that the development provides a wholly inadequate standard of accommodation for the occupants. The flats are exceptionally cramped, being roughly one third of an appropriate overall size, most also lack sufficient storage space and are single aspect. Occupants of the ground floor flats also suffer from a lack of privacy and potentially natural light. In these respects, the development is contrary to Policy GD1 of the Local Plan.

8.5 Character and Appearance

- 8.5.1 Policy SP8 of the Local Plan requires new development to achieve the highest standards of design and sustainability. Policy GD1 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 surrounding urban fabric, its relationship between buildings, landscape design and relevant aspects of sustainable design.
- 8.5.2 The National Design Guide 2019, which was published by the Government, is a material consideration in the determination of planning applications. It states that buildings are an important component of places and proposals for built development are a focus of the development management system. However, good design involves careful attention to other important components of places. These include:
- the context for places and buildings;
 - hard and soft landscape;
 - technical infrastructure – transport, utilities, services such as drainage; and
 - social infrastructure – social, commercial, leisure uses and activities.
- 8.5.3 A well-designed place is unlikely to be achieved by focusing only on the appearance, materials and detailing of buildings. It comes about through making the right choices at all levels, including:
- the layout;
 - the form and scale of buildings;
 - their appearance;
 - landscape;
 - materials; and
 - their detailing.

8.5.4 The Guide goes on to state that all developments are made up of these components put together in a particular way. As such, the choices made in the design process contribute towards achieving the ten characteristics and shape the character of a place. For reference, these ten characteristics are as follows:

- Context – enhances the surroundings;
- Identity – attractive and distinctive;
- Built form – a coherent pattern of built form;
- Movement – accessible and easy to move around;
- Nature – enhanced and optimised;
- Public spaces – safe, social and inclusive;
- Uses – mixed and integrated;
- Homes and buildings – functional, healthy and sustainable;
- Resources – efficient and resilient;
- Lifespan – made to last.

8.5.5 The Council's Design Guide SPD (2023) sets out that a high-quality environment is essential for providing a good quality of life. A well-designed and managed space not only provides a visually attractive environment but can also help to ensure that a place is easy to move around and within, is safe and secure, and is useful for all members of the community.

8.5.6 The development effectively amounts to a continuation of the terrace running from 32 to 40 Vinters Avenue. It appears distinctly more modern than the other dwellings in the row but is otherwise in keeping, having approximately the same eaves and ridge heights, similar fenestration and material finishes.

8.5.7 The frontage is dominated by car parking, which is regrettable. However, this is also in keeping with neighbouring properties.

8.5.8 Having regard to the above, it is considered that the development has an acceptable impact on the character and appearance of the area. In this respect, the development accords with Policies SP8 and GD1 of the Local Plan.

8.6 Impact on Neighbouring Occupiers

8.6.1 Policy FP7 requires all development proposals to minimise, and where possible, reduce air, water, light, and noise pollution. Planning permission will be granted when it can be demonstrated that the development will not have unacceptable impacts on general amenity and the tranquillity of the wider area.

8.6.2 Policies GD1 and HO5 also require that developments do not have an adverse impact on neighbouring uses or the surrounding area.

8.6.3 The relationship between the development and surrounding buildings is typical for the area. It appears to pass the 45 degree and 25 degree tests in respect of its neighbours and is not sited so as to appear overbearing. The upper floor windows in the rear elevation do provide views over the gardens of neighbouring properties, most notably 18 Randell but again, the established relationship in the area is one where neighbours are afforded a degree of aspect over one another.

8.6.4 Noise is a relevant consideration but there is no evidence to suggest that the development has given rise to any noise over and above what might ordinarily be expected from a residential property. Within a residential area, this is considered to be appropriate.

8.6.5 Having regard to the above, the development is considered to have an acceptable impact on the amenities of neighbouring occupiers and the surrounding environment. In these respects, the development accords with Policies HO5, GD1 and FP7 of the Local Plan.

8.7 Parking

8.7.1 Policy IT5 of the Local Plan requires development proposals to comply with the parking standards set out in the Stevenage Borough Council Parking Provision and Sustainable Transport SPD 2020.

8.7.2 According to the standard, a one bedroom flat should be provided with one car parking spaces, meaning the starting point for the development is four spaces. A reduction of up to 25% can then be applied owing to the site's location in Residential Parking Accessibility Zone 3. The final requirement is therefore three spaces.

8.7.3 The development provides three spaces, which meets the standard. In this respect, the development accords with Policy IT5.

8.7.4 In terms of cycle parking, each flat should be provided with a cycle parking space. No reductions are applied for accessibility. The development does not currently provide any cycle parking but it is clear that the garden provides sufficient space to provide it. This matter could therefore be dealt with by condition.

8.8 Highway Safety

8.8.1 Policy IT4 of the Local Plan 2019 states that planning permission will be granted where development will not have an adverse impact on highway safety.

8.8.2 There is no evidence to suggest that the development gives rise to any unacceptable impacts on highway safety. Vinters Avenue is a low speed residential access road and the number of vehicle movements generated by the development are likely to be very low. The provision of car parking above the standard also means that the development is unlikely to generate inconsiderate overspill parking on the street.

8.8.3 Having regard to the above, it is considered that the development has an acceptable impact on highway safety. In this respect, it is considered to accord with Policy IT4.

8.9 CIL

8.9.1.1 Stevenage Borough Council adopted a Community Infrastructure Levy Charging Schedule on 1 April 2020. This allows the Council to collect a levy to fund infrastructure projects based on the type, location and floor space of a development, in line with the rates shown in the table below.

Development Type	CIL Rate (£ per square metre)	
	Zone 1: Stevenage Central, Stevenage West Urban Extension and North of Stevenage Extension	Zone 2: Everywhere else
Residential		
Market housing	£40/m ²	£100/m ²
Sheltered housing	£100/m ²	
Extra care housing	£40/m ²	
Retail development	£60/m ²	
All other development	£0/m ²	

8.9.1.2 The development, if approved today, would be liable for CIL at a rate of £100/m².

8.10 Planning Balance

8.10.1 The Council's latest housing delivery test result was 57%. Consequently, paragraph 11(d) of the NPPF is engaged and permission ought to be granted for the development unless:

- a) The application of policies in the NPPF which protect assets or areas of particular importance provide a clear reason for refusing permission; or
- b) The adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

8.10.2 The development provides four dwellings, which makes a modest contribution towards housing supply within the Borough. The Government aims to significantly boost the supply of housing and this is reflected throughout the NPPF. The provision of four dwellings at a time when housing delivery is constrained should therefore be seen as a benefit carrying significant weight in favour of granting permission.

8.10.3 However, housing must also be of an acceptable quality, providing occupants with an environment conducive to a dignified and healthy life. The NPPF consistently emphasises the importance of good design, which includes the internal layout of dwellings, and explicitly states that developments should provide for the wellbeing of occupants. In this case, the standard of the accommodation provided by the development is exceptionally poor, being cramped and providing only limited privacy, natural light and outlook, resulting in unacceptable living conditions for the occupants of the development. This carries significant weight against granting permission for the development.

8.10.4 Housing must also be provided in appropriate locations. Prior to the unauthorised development taking place, the site was not considered to be previously developed or underutilised, as is required by the Local Plan. The NPPF takes a balanced approach to this issue, recognising both the importance of gardens to local character and also emphasising the need to use land effectively. Referring back to the 2015 permission, the proposal for the two bedroom dwelling was considered to be contrary to the equivalent policy in the local plan which was then in force but was justified on the basis that it would integrate well with its surroundings. Officers see no reason to depart from that view now, especially in view of the fact that had that permission been implemented, the development would not now be before the Council. Accordingly, limited weight is afforded to the conflict with Policy HO5.

8.10.5 In all other respects, the development is considered to be acceptable. These are neutral matters.

8.10.6 Having regard to all of the above, it is considered that the harms arising from the exceptionally poor quality of the accommodation provided by the development greatly outweigh the benefits to overall housing delivery. On this basis, the development is considered to be contrary to the development plan when read as a whole.

8.10.7 The NPPF is a material consideration but it is considered that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies it contains as a whole. Therefore, the NPPF does not indicate that a decision should be made other than in accordance with the development plan.

- 8.10.8 In the absence of any other material considerations which indicate that permission ought to be granted for the development, officers would recommend that planning permission be refused in the event that retrospective planning permission were to be sought.

9 CONCLUSIONS

- 9.1 The development is considered to be unlawful on the basis that it requires planning permission, does not have planning permission, and the time limit for taking enforcement action has not expired. Following an assessment of the planning merits of the proposal, it is considered that retrospective planning permission for the development ought not to be granted in the event that it is sought. This is on the basis of the exceptionally poor standard of accommodation it provides to occupants.
- 9.2 In determining whether enforcement action should then be taken against the development, members must be mindful of the potential adverse impacts of doing so, which in this case comprise the effects on the current occupants of the building. Any enforcement action requiring the accommodation to be brought up to standard would inevitably require them to move out, resulting in considerable disruption and potentially financial hardship.
- 9.3 On the other hand, allowing substandard and unauthorised development to be carried out unchecked would have a significant adverse impact on the public at large. It would serve to undermine the quality of the Borough's housing stock and potentially encourage other unscrupulous developers to follow in the applicant's footsteps. It would also serve to put responsible developers at an unfair disadvantage.
- 9.4 Overall, officers are of the opinion that these considerations weigh heavily in favour of taking enforcement action. It is then necessary to consider what actions should be required by the enforcement notice.
- 9.5 The action required should be the minimum necessary to alleviate the harms identified as arising from the development. In this case, those harms arise solely from the poor standard of accommodation. Alleviating those harms would require the accommodation to be brought into line with the original permission.
- 9.6 The enforcement notice should therefore require the use of the building as four flats to cease. It should further require the building to be reinstated to a two bedroom dwellinghouse in accordance with the plans approved under application reference 15/00125/FP. It is considered that six months is a reasonable timeframe for these works to be carried out.

10 HUMAN RIGHTS AND EQUALITIES

- 10.1.1 Consideration has been given to Articles 1 and 8 of the First Protocol of the European Convention on Human Rights. It is not considered that the decision would result in a violation of any person's rights under the Convention.
- 10.1.2 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.

- 10.1.3 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.
- 10.1.4 Neither the development as built nor as approved provide any specific measures to improve accessibility for those with disabilities. Consequently, it is considered that requiring the building to be returned to its approved would not have any impact on persons with disabilities. In all other respects, there would be no apparent impact on persons with protected characteristics.

11 RECOMMENDATION

- 11.1 That the application for a certificate of lawfulness be refused for the reason below, with delegated powers given to the Assistant Director of Planning and Regulation, in consultation with the Chair of Planning Committee, to add to the reasons for refusal prior to the decision notice being issued, where such additions would be legally sound and reflect advice received by statutory consultees and/or the Council's appointed consultants.

11.1.1 Reason

- 11.1.2 On the balance of probability, the development does not amount to the change of use of a building and the time limit for taking enforcement action is therefore ten years. Having been carried out within the last ten years, the development is not immune from enforcement action. It follows that the development is not lawful.

- 11.2 That an enforcement notice be issued and served by the Assistant Director for Planning and Regulation, subject to a solicitor appointed by the Council being satisfied that the evidence requires the cease of the use of the building as four flats and the reinstatement of the building as a two bedroom dwellinghouse at the property known as 40A Vinters Avenue. The precise terms of the enforcement notice, including all time periods, to be delegated to the Assistant Director of Planning and Regulation.

- 11.3 That, subject to a solicitor appointed by the Council being satisfied as to the evidence, the Assistant Director for 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.

- 11.4 That in the event of any appeal against the enforcement notice, the Assistant Director for Planning and Regulation be authorised to take any action required to defend the Enforcement Notice and any appeal against the refusal to issue a certificate of lawfulness.

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); 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 other interested parties referred to in this report.