

**WELWYN HATFIELD BOROUGH COUNCIL  
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

**DELEGATED APPLICATION**

**Application No:** 6/2019/1452/MAJ  
**Location:** 26 Stonehills Welwyn Garden City AL8 6NA  
**Proposal:** Change of use for conversion of first and second floors from (A1 Use) Retail to (C3 use) Residential and additional storey for 27 dwellings; the retention of the ground floor for Class A use  
**Officer:** Ms Clare Howe

**Recommendation:** Granted

6/2019/1452/MAJ

<b>Context</b>	
<b>Site and Application description</b>	<p>The application site is approximately 0.114ha and comprises of a three storey retail building with a floor space of approximately 3,148sq m.</p> <p>The building occupies a key corner within the Welwyn Garden City Stonehills off of Howardsgate, and forms the setting to Sir Theodore's Way, adjacent a secondary public open space (Anniversary Gardens). The building abuts other buildings which have retail at ground floor and residential above.</p> <p>The site itself falls within the Welwyn Garden Conservation Area, but is not a listed building.</p> <p>The applicant seeks planning permission for the change of use of the first and second floor from retail (A1 Use) to residential (C3 use), together with an additional storey which shall include 22 dormer window. Across the first, second and third floor a total of 27 dwellings shall be provided, whilst the ground floor is proposed to be retained for Class A Uses.</p> <p>The 27 residential units proposed shall include the following mix:</p> <ul style="list-style-type: none"> <li>• 18 x 1 bedroom units</li> <li>• 9 x 2 bedroom units</li> </ul> <p>The basement floor and ground floor shall be retained within the existing Class A1 use.</p> <p>A viability report has been submitted by Savills on behalf of the applicant of which concludes that the scheme is not considered commercially viable in development viability terms, and therefore does not propose any affordable housing.</p>
<b>Constraints (as defined within WHDP 2005)</b>	<p>CA - Conservation Area: WGC1; - Distance: 0</p> <p>PRC - Primary Retail Core (Primary Retail Core) - Distance: 0</p> <p>Town - Welwyn Garden City Town Centre - Distance: 0</p>

	<p>Wards - Handside - Distance: 0</p> <p>FM00 - Flood Zone Surface Water 1000mm (7567039) - Distance: 0</p> <p>HEN - No known habitats present (medium priority for habitat creation) - Distance: 0</p> <p>SAGB - Sand and Gravel Belt - Distance: 0</p> <p>BLR - Brownfield Land Registry (Welwyn Garden City - Town Centre North SPD Site) - Distance: 0</p>		
<b>Relevant planning history</b>	<p>Application Number: 6/2017/1493/PA      Decision: Refused  Decision Date: 18 August 2017</p> <p>Proposal: Conversion of existing first and second floors and erection of a third storey to provide residential accommodation, creating 24 dwellings</p>		
<b>Consultations</b>			
<b>Neighbour representations</b>	Support: 0	Object: 1	Other: 1
<b>Publicity</b>	<p>Site Notice Display Date: 24 July 2019</p> <p>Site Notice Expiry Date: 14 August 2019</p> <p>Press Advert Display Date: 17 July 2019</p> <p>Press Advert Expiry Date: 31 July 2019</p>		
<b>Summary of neighbour responses</b>	<p>A neighbour objection was received for the following reasons:</p> <ul style="list-style-type: none"> <li>• The loading bay opposite John Lewis car park entrance currently has traffic congestion and the refuse vehicles will add to this;</li> <li>• Construction noise - how will WBHC ensure the construction work adheres to its own rules and Pollution Act 1974;</li> </ul> <p>A neighbour comment was received stating that:</p> <ul style="list-style-type: none"> <li>• There is a lack of car parking currently;</li> <li>• The proposed redevelopment would mirror adjacent developments and would respect the style of the conservation area;</li> <li>• Alternative uses would be appropriate, but the ground floor should have an active frontage.</li> </ul>		
<b>Consultees and responses</b>	<p>No objections have been received from the following consultees, subject to conditions, informatives or S106 obligations:</p> <ul style="list-style-type: none"> <li>• Welwyn Hatfield Borough Council (WHBC) - Public Health and Protection;</li> <li>• WHBC Client Services;</li> <li>• WHBC Public Health and Protection;</li> <li>• Hertfordshire County Council Growth Team;</li> <li>• Hertfordshire Ecology</li> <li>• Place Services – Heritage Consultant;</li> <li>• Lead Local Flood Authority;</li> <li>• Thames Water</li> <li>• Historic England</li> <li>• Hertfordshire Gardens Trust</li> </ul>		

	WHBC Parking Services objects to the development as there is no car parking proposed.
<b>Relevant Policies</b>	
<input checked="" type="checkbox"/> NPPF <input checked="" type="checkbox"/> D1 <input checked="" type="checkbox"/> D2 <input type="checkbox"/> GBSP1 <input checked="" type="checkbox"/> GBSP2 <input checked="" type="checkbox"/> M14 <input checked="" type="checkbox"/> Supplementary Design Guidance <input checked="" type="checkbox"/> Supplementary Parking Guidance <input checked="" type="checkbox"/> Interim Policy for car parking and garage sizes Others      H2, H6, R1, R2, R3, R4, R7, R11, R19, R29, TCR7, IM2, D8  Emerging Local Plan: SADM1, SADM 4, SADM18, SP 9, SP 7, SADM 11, SADM 12, SADM 14, SADM 16	
<b>Main Issues</b>	
<b>Principle of Development</b>	<p>The proposed development includes the reuse of previously developed land, within the settlement of Welwyn Garden City. Whilst in principle this is supported by the National Planning Policy Framework (Framework) and Policies GBSP2 and R1 of the District, the principle of development also includes the change of use of retail to residential and the principle of residential within the application site. These are therefore assessed below, before concluding on the principle of development.</p> <p><u>Principle of Change of Use</u></p> <p>The development proposes the change of use from retail (class A1 use) to residential (class C3 use) at first and second floor. The application site is located within the town centre of Welwyn Garden City. Within town centres, the Framework supports a suitable mix of uses and states that planning policies should define the extent of town centres and primary shopping areas and make it clear the range of uses permitted in such locations as part of a positive strategy for the future of each centre.</p> <p>Within the District Plan Policy TCR7 seeks to strike a balance between the protection of the predominant retail function of the primary retail core, its supporting text recognises that other uses still play a valuable role. Policy TCR7 states that within the primary retail core of Welwyn Garden City a minimum of 70% of any one linear frontage must remain in Class A1 retail use. Planning permission will therefore be granted for change of uses from Class A1, A2 or A3 uses subject to a maximum of 30% of any one linear frontage remaining in a Use Class A1. Policy TCR7 is therefore broadly consistent with the aims of the Framework.</p> <p>The application site is located within an area where a predominant retail presence exists within the linear frontages to the east and west of the site.</p> <p>The proposed development seeks to retain the ground floor in class A use. For clarity, by definition, within the Cambridge Dictionary the word retention means the ability to keep or continue having something. The continued use of class A at ground floor therefore relates to Use Class A1 (retail). The linear frontage of the ground floor within the town centre would therefore alter.</p> <p>It is noted that the wording of the description is vague, in that it refers to the retention of class A uses. Due to the size of the application site, if the ground floor were not to be in a Use Class A1, the change of use would result in a noticeable cluster of other 'centre uses' in the particular part of the primary frontages that contains the site, thus failing</p>

to promote a strong retail character. Negotiations were therefore undertaken with the applicant to alter the description such that it included the retention of Use Class A1 (retail) at ground floor, however, the applicant was not willing to do this.

Nevertheless, the applicant agreed that a condition could be applied restricting the ground floor to be used within a Use Class A1 (retail) only. This is considered to meet the tests outline within Paragraph 55 of the Framework, as it is necessary, reasonable and relevant to the development to apply a condition restricting the ground floor to Class A1 (retail) use only, to ensure the scheme does not conflict with Policy TCR7 of the District Plan. In addition to this, if the ground floor were to have a material change of use to another Class A use other material considerations would need to be assessed to ensure the scheme was policy compliant such as, but not exclusive to, the impact upon neighbour amenity from noise generation.

As for the change of use at first and second floor, the supporting text of Policy TCR7 identifies that the retail frontage of 26 Stonehills relates to ground floor only. As such, the change of use of first and second floor would not conflict with Policy TCR7.

In terms of the Emerging Local Plan (eLP), Policy SADM 4 defines the site as an Anchor Store. Policy SADM 4 states that development will not be permitted which would lead to the loss of all or a significant part of an Anchor Store from an A1 retail use, unless it can be clearly demonstrated that the loss would not have a detrimental effect on the vitality and viability of the town centre. This policy was not subject to any objections during the Local Plan process and therefore, limited weight can be given towards it in its current form.

The proposed development would result in the loss of retail at first and second floor. Retail use would be retained at ground level. The proposed development is therefore contrary to Policy SADM 4 of the eLP, unless it can be clearly demonstrated that the loss would not have a detrimental effect on the vitality and viability of the town centre.

A marketing report by Brasier Freeth has been submitted on behalf of the application to address the vitality and viability of the development upon town centre, to satisfy Policy SADM 4. Within the report it argues that the '*decline of department stores has been well documented in recent times...*' This has resulted in Debenhams company voluntary arrangement (CVA) announcing the closure of 50 stores, with the applicant being advised of their intention to close the store on 24th January 2020. Since the submission of this application Debenhams has now closed and the unit remains derelict.

Subsequently, Brasier Freeth have provided information regarding the retail operators they have contacted who could trade from the entire building and operators who could trade from part of the building. Whilst some of the businesses have just expressed no interest, and not expanded upon why, others have provided justification. These reasons typically include that the overall floor space is too small, that there is no requirement for a shop in Welwyn Garden City, and as the property does not have dedicated car parking.

Whilst the marketing report justifies why the building is no longer desirable as a whole unit or as individual floors to other retailer operators, extensive marketing of at least 12 months has not been

	<p>undertaken as required under Policy SADM 4 of the eLP. The application would therefore not accord with Policy SADM 4 of the eLP. A balancing act shall therefore be undertaken at the end of this report, before concluding.</p> <p><u>Principle of Residential Development</u></p> <p>The proposed development seeks to introduce residential units within a site which is not an allocated housing site within the District Plan. Policy H2 of the District Plan is therefore relevant, which relates to applications for windfall residential development. SADM1 of the eLP is also relevant and differs from Policy H2 of the District Plan in that criteria (iv) and (v) now require developments on unallocated sites to not undermine the delivery of allocated sites or to result in disproportionate growth compared to the settlement's position in the settlement hierarchy.</p> <p>The proposed development seeks permission for the change of use of an existing building located within the town centre of Welwyn Garden City (WGC), whereby sustainable modes of transport are accessible and there are limited physical and environmental constraints on development of land. Albeit, it does fall within the Welwyn Garden City Conservation Area and is identified within the eLP as an Anchor Store under Policy SADM 4. There are also no known infrastructure constraints and financial contributions are sought via a S106 Agreement.</p> <p>Furthermore, the proposed addition of 27 residential units is not of a scale to either undermine the delivery of allocated sites or to adversely affect the position of WGC in the Borough's settlement hierarchy.</p> <p>Accordingly taking the site on its own, and subject to the provision of a S106, the proposal would accord with District Plan policies H2, GBSP2, SD1, R1 and R2 and Local Plan policies SADM1 and SADM18.</p> <p><u>Conclusion on the Principle of Development</u></p> <p>The proposed scheme fails to comply with Policy SADM 4 of the eLP. However, as stated within the Annual Monitoring Report February 2019 the borough has a housing land supply of 3.63 years against the standard methodology and under the 2016-based household projections, and therefore the LPA cannot demonstrate a 5 year housing land supply.</p> <p>As this scheme includes 27 residential units, Paragraph 11 of the Framework comes to the fore. This sets out that where a local planning authority cannot demonstrate a 5 year land supply of deliverable sites it is considered to be out of date and as such planning permission for schemes should be granted unless:</p> <p><i>“i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or</i></p> <p><i>ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”</i></p> <p>A balancing act shall therefore be undertaken at the end of this report, before concluding.</p>
<p><b>Design (form, size, scale,</b></p>	<p>The site lies within Welwyn Garden City Conservation Area. Section 72 of the Listed Buildings and Conservations Areas Act (1990) states that</p>

<p><b>siting) and Character (appearance within the streetscene)</b></p>	<p>special attention shall be paid to the desirability of preserving or enhancing the character or the appearance of that area.</p> <p>Section 185 of the Framework also states that in determining planning applications, local planning authorities should take account of:</p> <ul style="list-style-type: none"> <li>a) the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;</li> <li>b) the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;</li> <li>c) the desirability of new development making a positive contribution to local character and distinctiveness; and</li> <li>d) opportunities to draw on the contribution made by the historic environment to the character of a place.</li> </ul> <p>The Welwyn Garden City Conservation Area Appraisal 2007 explains that WGC is a fine example of Ebenezer Howard’s Garden City, and that, more than most towns, generous open spaces, and the associated spatial interrelationships, are at the heart of WGC’s planned layout.</p> <p>Further to this, Policy GBSP2 seeks to limit development to that which is compatible with the maintenance and enhancement of the character of the area. Additionally, Policies D1 and D2 of the District Plan, Policy SP9 of the eLP and the Supplementary Design Guidance (SDG), which supplements the policies contained in the District Plan, seek to ensure a high quality of design which relates to the character and context of the surrounding area.</p> <p>In addition to the above, the Government attaches great importance to the design of the built environment. The Framework notes good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.</p> <p>In terms of the proposed density, this would exceed the range set out in Policy H6 of the Local Plan (30 to 50 dwellings per Hectare). However, as the site is within a central area with good accessibility, provided that the proposal does not have an adverse impact upon the surrounding area, the density would not be objected to.</p> <p>The existing building is considered to be a non-designated heritage asset under the provisions of the Framework (para. 197) as well as directly contributing to the overall significance of the conservation area, as a designated heritage asset.</p> <p>The building’s main contribution to the Conservation Area is as a non-designated heritage asset, principally embodied in its historical value as being part of the commercial zone of the planned Garden City and its association with the with the original architect and planner of the Garden City, de Soissons, who approved the architectural style, materials and design of each building at the time of its construction.</p> <p>The significance of the Conservation Area lies in its aesthetic value of its planned harmonious form, its historical value with its association with the Sir Ebenezer Howard, Louis de Soissons and the Garden City Movement. Due to both its aesthetic and historical value the Conservation Area will also have a degree of communal value for both the local community and wider national and international communities</p>
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	<p>with an interest in architecture and town planning.</p> <p>A Heritage Statement has been submitted by Pegasus Group, on behalf of the applicant, to justify the proposal. The Heritage Statement has documented the history of the building and dates it to the 1950s; a later phase of the Garden City development.</p> <p>The existing building adheres to the characteristic pared-back neo-Georgian architectural style of the Garden City and utilises red brick and pantiles, both typical of the Garden City and the conservation area. The building originally shared a symmetrical appearance with the building opposite on Stonehills. This symmetry has been interrupted by the addition of dormers to Stonehills House opposite (granted permission in 2016).</p> <p>The introduction of the dormer windows, would retain the historic authenticity of the character of the original building, whilst reinstating the symmetry with the building opposite, such that it would not lead to harm to the Conservation Area. However, it is necessary to apply a condition that requires the submission of any external materials of the dormers to be submitted to the LPA prior to development to ensure the materials used preserve or enhance the Conservation Area. As for the change of use internally this would not be visible.</p> <p>In terms of the internal layout, the proposed dwellings would satisfy the nationally described space standard, which is supported.</p> <p>In light of the above, the proposal would not harm the character or appearance of the Conservation Area, as the significance of the building principally derives from its historic fabric and landscape setting. It is therefore considered that there is no conflict with Policies D1 and D2 of the District Plan 2005, as expanded upon by the Supplementary Design Guidance 2005, Policy SP 9 of the eLP, and the Framework.</p>
<p><b>Impact on neighbours</b></p>	<p>Policy D1 and the SDG provide the local policy framework when assessing the impact of development on the residential amenity of neighbouring properties, as well as providing sufficient amenity for potential future occupiers of the proposed development. All new development should not cause a loss of light to or unduly dominate adjoining properties. In addition, development should be designed, oriented and positioned in such a way as to minimise overlooking between dwellings.</p> <p>With regard to neighbour amenity, this is considered in two parts, firstly the impact on adjoining occupiers and secondly the impact of the scheme on future occupiers of the proposed dwellings. The objections raised by neighbouring properties regarding the impact of development upon their amenity spaces are also taken into account within this section.</p> <p>The proposed development would result in the change of use of the upper floors as well as the installation of an additional floor, whereby several dormer windows are proposed. Due to the type and size of development proposed it would not result in adverse harm upon neighbouring occupier's amenity by way of, loss of light or overbearing. In addition, the dwellings would be set back from neighbouring occupiers and orientated such that it would not result in overlooking.</p> <p>In terms of the future occupant's amenity, whilst residential relationships, in respect of privacy and overlooking, are important, there</p>

	<p>should be a large degree of buyer beware on a scheme such as this which features some substantial buildings located in fairly close proximity to each other. In any event, the layout of the buildings and the positioning of windows seeks to address matters, such as, overlooking and loss of privacy. The layout also ensures that, with regard to overshadowing, daylight and sunlight, the scheme has been designed to achieve acceptable conditions, including satisfying the nationally described space standards.</p> <p>The SDG also requires that all residential development should incorporate private open space for the use of residents. In this instance no open space is provided, however adjacent the site, to the east, is a public open space (Anniversary Gardens).</p> <p>In terms of noise, the noise impact assessment provided with the application shows significantly high LAMAX noise levels during the night from the delivery area to the rear of the building along with relatively high LEQ noise levels. The recommended noise insulation does bring these levels down to 8 to 13dB below the levels within BS8233, which should, with windows closed ensure that a suitable internal amenity standard is provided.</p> <p>To ensure that a suitable standard of amenity is provided in accordance with Policies D1 and R19 of the District Plan, a condition shall be applied to any permission granted requiring that details are submitted for sound insulation and mechanical ventilation shall be applied.</p> <p>Accordingly, it is considered that subject to compliance with both of these reports and conditions, the proposed development would not impact unduly on future residents of these properties or existing neighbouring occupants, in line with the Framework and Policies D1 and R19 of the District Plan and the SDG.</p>
<p><b>Access, car parking and highway considerations</b></p>	<p>Policy M14 of the District Plan and the Parking Standards SPG use maximum standards and are not consistent with the Framework and are therefore afforded less weight.</p> <p>In light of the above, the Council have produced an Interim Policy for Car Parking Standards that states that parking provision will be assessed on a case by case basis and the existing maximum parking standards within the SPG should be taken as guidance only. This means that higher or lower car parking standards than those set out in the SPG can be proposed and determined on a case by case basis taking into account the relevant circumstances of the proposal its size context and its wider surroundings as well as the Framework guidance.</p> <p>An objection was received from WHBC Parking Services, who commented that they are aware of parking issues in the town centre which are preventing customers visiting the night time establishments, such as restaurant due to existing residents parking in the roads.</p> <p>As the site falls within zone 1, 0-25% of the car parking provision is required. In total 0-7 car parking spaces are required for the residential units and 0-7 car parking spaces are required for the A1 use, in order for the site to be policy compliant.</p> <p>The current site is a retail unit and is required to provide between 0-8 car parking spaces, however does not provide any car parking provision.</p> <p>For the above reasons, whilst this scheme would result in the additional</p>



	<p>need of 0-6 car parking spaces, it falls within zone 1 and therefore does not require car parking for the retail or residential units to be policy compliant.</p> <p>Notwithstanding this, Paragraph 105 of the Framework states that parking standards should take into account various matters including the accessibility of the development, the type, mix and use of the development, and the availability of and opportunities for public transport'.</p> <p>In this instance, the site has access to a range of sustainable modes of transport such as the bus station, which is 80m from the site and provides 23 bus services. A rail station which is 0.2m to the south east of the site which provides access to approximately 10 trains per hour, providing services to London Kings Cross, Cambridge and Moorgate.</p> <p>A secure cycle store will also be provided on ground floor level with provision of 28 cycle spaces for the residential units. This is in accordance with standards of one cycle space per residential unit outlined within WHBC standards. A condition shall be applied to secure this.</p> <p>The site is also within the town centre, which is a walkable distance to an array of services, from retail, leisure, health services and other restaurants.</p> <p>In addition to this, there are other residential schemes within close proximity, such as 1-7 Fountain House, which have been granted permission for residential units with no parking. Notwithstanding this, there are also parking restrictions within the town centre, which would prevent residents parking during the day on the highway.</p> <p>Therefore, whilst the scheme would not provide any car parking, it is well served by other sustainable modes of transport, is situated in close proximity to a range of services and amenities and provides sufficient cycle parking provision. Because of the site's location, occupants of the existing and proposed development need not be wholly reliant on the private car to access services and facilities including commuting to places of work.</p> <p>Furthermore, as advised by HCC Highways Authority it is not considered that it is likely to give rise to unacceptable impacts on highway safety locally.</p> <p>The development is therefore considered acceptable in regards to car parking, cycle parking and highway matters.</p>
<b>Other Material considerations</b>	
<b>Waste Management</b>	<p>Details of the location, design and specification of the refuse bin and recycling materials storage bins and areas to serve the residential units have been submitted and are considered acceptable. A condition will be applied to ensure the refuse and recycling materials storage bins and areas shall be constructed, equipped and made available for use prior to first occupation and retained in that form thereafter.</p>
<b>Lifetime Homes</b>	<p>Policy H10 of the District Plan and SP 7 of the eLP require a provision of accessible housing. Policy SP 7 of the emerging Local Plan requires at least 20% of all new dwellings on sites involving 5 or more new dwellings will be required to meet Building Regulations Part M4(2) standards for 'accessible and adaptable dwellings' (or as subsequently</p>

	<p>amended), the delivery of which should be distributed across market and affordable tenures.</p> <p>As this development is for 27 residential units proposed, a minimum of 5 units shall be built to lifetime homes standard ensuring the creation of accessible housing for all members of the community. This would be an appropriate proportion in line with Policy SP 7.</p> <p>To ensure that suitable housing is provided for households in need of accessible housing in accordance with Policies D1 and H10 of the Welwyn Hatfield district Plan 2005 and SP 7 of the eLP a condition will be applied a scheme setting out the arrangements for delivery of accessible housing is to be supplied to the LPA and agreed.</p>
<b>Ecology</b>	<p>Hertfordshire Environmental Records Centre does not have any existing habitat or species data for this site. Given the location and nature of the site, lack of associated records and apparent characteristics of the building, on this occasion it is not considered that there is sufficient likelihood of bats being present and affected for the LPA to require a formal survey prior to determination. However, in the unlikely event that bats are found, given the proposal will involve some modification to the roof, a precautionary approach to the works should be adopted and therefore an Informative shall be added to any permission granted. The scheme would therefore accord with Policy R11 of the District Plan and SADM 16 of the eLP.</p>
<b>Foul Sewage Disposal</b>	<p>From a review of the Environment Agency's Risk of Flooding from Surface Water maps, the site is at very low predicted surface water flood risk. In addition to this, the site does not include an extensions to the existing footprint of the building, nor additional hard surfacing externally. As such, the scheme would not conflict with Policy R7 of the District Plan.</p>
<b>Environmental Impact Assessment</b>	<p>Whilst the applicant has not submitted an Environmental Impact Assessment (EIA) screening request, the Local Planning Authority has undertaken one.</p> <p>In this instance, the development is not contained within Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the Regulations). The development does not fall either within Schedule 2 of the Regulations. Whilst the proposal is considered an Urban Development Project, as listed at 10(b) of Schedule 2, the development would take place on a site less than 5 hectares, would not include more than 150 dwellings and would not include more than 1 hectare of urban development which is not dwellinghouse development. An EIA is therefore not required.</p>
<b>Planning Obligations</b>	<p>Where a planning obligation is proposed for a development, the Community Infrastructure Levy Regulations 2010, which came into effect from 6 April 2010 has introduced regulation 122, which provides limitations on the use of planning obligations. In summary, a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:</p> <ul style="list-style-type: none"> <li>(a) Necessary to make the development acceptable in planning terms;</li> <li>(b) Directly related to the development; and</li> <li>(c) Fairly and reasonably related in scale and kind to the development.</li> </ul>

Regulation 123 introduces further limitations and these relate to the use of planning obligations for the purpose of infrastructure. Where a Local Authority has a published list for infrastructure projects, the authority may not seek contributions through a legal agreement through section 106 of the Town and Country Planning Act 1990 (S106).

In this case Welwyn Hatfield Borough Council does not have a published list of infrastructure projects and it is, therefore, appropriate to seek contributions through a S106 legal agreement. This is in accordance with Saved Policy IM2 of the District Plan 2005, the Planning Obligations SPD and the eLP.

*i) Affordable Housing*

The proposed development seeks permission for 27 residential units and in accordance with Policy H7 of the District Plan, the Council will expect the site to include the provision of affordable housing to meet the needs of local people who cannot afford to occupy dwellings generally available on the open market. That policy requires a minimum of 30% to be sought which should comprise subsidised housing. Additionally Policy SP 7 of the emerging Local Plan also requires that for a proposal of 11 or more new dwellings, 30% of the houses should be affordable.

Paragraph 64 of the Framework states that “*where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership*”.

However, as set out in the Council's Planning Obligations SPD, the Council recognises that in certain market conditions, the overall level of contribution attributed to a scheme can affect the financial viability of a development proposal. In these circumstances an applicant would be expected to submit a viability appraisal and to pay for the Council to have this appraisal independently checked and verified.

In the context of this advice and the policy position that it creates, the Council was informed by the applicant that the scheme designed is not able to deliver any affordable housing and remain viable. A Financial Viability Statement was submitted and this was assessed by an independent advisor BNP Paribas (BNP) on behalf of the Council.

BNP advised that the proposed development could not support on-site provision of affordable housing. BNP considered that the overall development would result in a 19.7% profit. This is a blended profit as the residential development would produce a cash amount of £1,541,350 which is 20% profit on gross development value (GDV), whilst the profit from the commercial GDV would be 15%.

The Framework indicates a suitable developer's profit margin of between 15 and 20 per cent of GDV, though it recognises that different levels of profit may be appropriate. To test whether a lower percentage of GDV was achievable, with the contribution of affordable housing, appraisal summaries were undertaken by BNP for a local policy compliant affordable housing (30%) scheme, and a national compliant

affordable housing scheme (10%). As advised by BNP, both of these appraisals demonstrated that the scheme would be unviable if 30% or 10% affordable housing was sought. On this basis, it can therefore be concluded that the proposed development is not viable when providing a contribution for affordable housing.

Notwithstanding this, the viability of the development may improve due to a number of potential factors. These could include but are not limited to:

- An assumption of growth in sales values over the development period;
- or
- A reduction in construction costs through value engineering of the proposed development prior to commencement; or
- Improvement in the efficiency of the floor plates of the development prior to commitment.

BNP therefore recommend that the Council secure a late stage review mechanism via the Section 106 Agreement to ensure an appropriate proportion of any improvement in the viability of the development is captured in order to make an appropriate contribution towards affordable housing.

In conclusion the proposed development does not include affordable housing. Results however from the viability assessment process demonstrate that on-site provision of affordable housing units (whether affordable rent or shared ownership) would undermine the viability of the scheme. The level of financial contribution that the scheme could render may increase in the future, for example as a result of changes in market conditions, and it is recommended that a proportion of any increase be secured for affordable housing purposes by a S106 Agreement obligation. A review mechanism has been included as part of the S106 and agreed to by the applicant. Any additional affordable housing contribution is based on the formula included within Schedule 2 of the S106 agreement.

*ii) Hertfordshire County Council Contributions*

The proposed development gives rise to the necessity for the following obligations from Hertfordshire county council Growth and Infrastructure Unit:

- Library Service - £2,547.00 (plus PubSec indexation at 175);

*iii) Welwyn Hatfield Borough Council Contributions*

The proposed development gives rise to the necessity for the following obligations from the Local Planning Authority:

- Play Space - £6,624.00 (plus PubSec indexation at 178);
- Waste and Recycling – £1,730 (no indexation at 178);
- Open Space/Green Space - £2,525.40 (plus PubSec indexation);

These requested contributions are considered to be reasonable and to pass the necessary Community Infrastructure Levy 122 tests as the

	<p>works are considered necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.</p> <p>The applicant has been made aware of these obligations and has agreed to them. A signed and completed S106 Agreement to secure these obligations has been received.</p>
<p><b>Any other considerations</b></p>	<p>The age of the building raises the potential for asbestos within materials, as such the applicant will need to ensure that the works are carried out in a way that takes this into account such as found within BS6187-2011. Waste materials (especially asbestos containing materials) will need to be disposed of by a licensed contractor. This will be added as an informative.</p>
<p><b>Planning Balance</b></p>	<p>Within the Annual Monitoring Report February 2019 the borough has a housing land supply of 3.63 years against the standard methodology and under the 2016-based household projections.</p> <p>As such, Paragraph 11 of the Framework applies, which states that where an LPA cannot demonstrate a 5 year land supply of deliverable sites its plan is considered to be out of date and as such planning permission for schemes should be granted unless it conflicts with the criteria outlined with para. 11.</p> <p>The scheme fails to provide any affordable housing and would result in the loss of an anchor store.</p> <p>The application has however presented a viability case, of which BNP have advised the LPA is reasonable and sound. Notwithstanding this, a review mechanism was secured within the s106 to ensure an appropriate proportion of any improvement in the viability of the development is captured in order to make an appropriate contribution towards affordable housing.</p> <p>In terms of the loss of the anchor store, this would result in the scheme being contrary to Policy TCR7 of the eLP. However, due to the stage of the eLP, limited weight is afforded to this policy. Furthermore, the site is now derelict, and the marketing report submitted identified a lack of retail interest for the entire store. As such, the site could become vacant for a prolonged period, which would have an adverse impact on the overall retail circuit and the vitality and viability of the town centre.</p> <p>Turning to paragraph 85(a) of the Framework, it recognises the need to be able to respond to rapid changes in the retail and leisure industries. Paragraph 85(f) of the Framework continues stating that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.</p> <p>In addition to this, the materiality of housing undersupply is given greater weight in decisions and the delivery of housing is an important objective in keeping pace with household growth and meeting housing targets.</p> <p>In this instance the proposed development would retain retail at ground floor, contributing to the vitality and viability of the town centre, whilst also providing urgently needed housing. The site is also deliverable in accordance with the definition contained in Annex 2 of the Framework (February 2019).</p> <p>The proposed development would therefore be consistent with the</p>

	<p>Government's objective of boosting the housing supply, the efficient use of land and promoting the long-term vitality and viability of the town centre – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries.</p> <p>Overall, the retention of retail at ground floor and particularly the housing supply at first, second and third floor, would significantly and demonstrably outweigh the loss of the anchor store, of which limited weight can be afforded, when assessed against the policies in this Framework as a whole.</p> <p>On this basis, whilst the scheme would be contrary to Policy SADM 4 of the eLP, the adverse harm of granting planning permission would not significantly and demonstrably outweigh the benefits, which includes much needed market housing, when assessed against the policies of the Framework taken as a whole. Therefore, the proposal benefits from the presumption in favour of sustainable development set out in paragraph 11d).</p>
<b>Conclusion</b>	
<p>It is considered, that the proposed development constitutes sustainable development and that there are no compelling objections to the use of this site for residential purposes, nor to the design and appearance of the development. The impacts of the proposal have also been considered in relation to the provision of affordable housing, visual impact on the area, amenity of future occupants, amenity of neighbouring uses, and other material consideration (highways, car and cycle parking, refuse and recycling, landscaping, drainage and contamination).</p> <p>The proposal does not provide on-site affordable housing, however detailed consideration has been given to the viability of the proposed scheme and it is the Council's view, having been advised by an independent advisor BNP Paribas, that the provision of on-site affordable housing units, would in this case threaten the viability of the proposal. However, the Applicants have agreed to a review mechanism being included in a S106 agreement to secure a proportion of any uplift in profit.</p> <p>In conclusion the proposed development is therefore acceptable and accords with the relevant policies of the adopted Welwyn Hatfield District Plan 2005, adopted supplementary planning and design guidance and with the Framework and NPPG.</p>	

**Conditions:**

NO DEVELOPMENT

1. No development shall commence until a scheme setting out the arrangements for the delivery of accessible housing must be submitted to and approved in writing by the Local Planning Authority in accordance with the following requirement:
  - a) A schedule of at least 20% of residential buildings, together with appropriate plans and drawings setting out details of the number, layout and location of all units that will comply, shall be submitted to and be approved by the Local Planning Authority, with Part M4(2) of the Building Regulations 2010.

b) All units specified as M4(2) in the agreed schedule and plans shall be implemented in accordance with that approval.

REASON: To ensure that suitable housing is provided for households in need of accessible in accordance with Policies D1 and H10 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework.

2. No development shall commence until a scheme to protect future occupiers of the development from traffic and commercial/industrial noise is submitted to and approved in writing by the Local Planning Authority. The approved details shall be subsequently implemented before any part of the accommodation hereby approved is occupied, unless the Local Planning Authority otherwise agrees in writing. The scheme shall ensure the indoor ambient noise levels in living rooms and bedrooms meet the standards in BS 8233:2014 and commercial and industrial noise must be 10dB below levels within BS8233. Any associated mechanical ventilation will need to meet the ventilation requirements found with The Noise Insulation Regulations 1975 (or a similar alternative to be agreed with the Local Planning Authority).

REASON: To protect the occupants of the new development from noise disturbance in accordance with Policies D1 and R19 of the Welwyn Hatfield District Plan and the National Planning Policy Framework.

3. No work relating to the roof domers shall take place until samples of the materials, including full details of window frames, to be used in the construction of the external surfaces of the building hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

REASON: To ensure a satisfactory standard of development in the interests of visual amenity in accordance with the National Planning Policy Framework and Policies D1 and D2 of the Welwyn Hatfield District Plan 2005.

#### PRIOR TO OCCUPATION

4. No occupation of the development hereby permitted shall be undertaken until the provision of refuse and recycling has been constructed, equipped and made available for use prior to the occupation of each resident unit which it is associated with, in accordance with drawing number 7654/P101, and retained in that form thereafter.

REASON: In order to ensure that there is adequate provision for refuse and recycling in accordance with Policy R5 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework.

5. No occupation of the development hereby permitted shall be undertaken until the provision of secure cycle parking has been constructed, equipped and made available for use prior to the occupation of each resident unit which it is associated with, in accordance with drawing number 7654/P101, and retained in that form thereafter.

REASON: In order to ensure that there is adequate provision for secure cycle accommodation within the application site, encouraging alternative modes of transport in accordance Policy M6 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework.

6. Notwithstanding the provisions of Article 3 of the Town and Country Planning Use Classes Order 1987 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any orders revoking or re-enacting these Orders) this permission hereby granted shall only permit the use of the ground floor of this building as retail Use Class A1. Any alteration to this approved use will require planning permission.

Reason: To accord with the requirements of Policies D1 and TCR7 of the Welwyn Hatfield District Plan and the National Planning Policy Framework.

#### DRAWING NUMBERS

7. The development/works shall not be started and completed other than in accordance with the approved plans and details:

<b>Plan Number</b>	<b>Revision Number</b>	<b>Details</b>	<b>Received Date</b>
7654 P003		Existing First Floor Plan	17 June 2019
7654 P007		Existing Elevations	17 June 2019
7654 P002		Existing Basement And Ground Floor Plans	17 June 2019
7654 P005		Existing Roof	17 June 2019
7654 P004		Existing Second Floor Plan	17 June 2019
7654 P009		Existing Site Plan	17 June 2019
7654 P006		Existing Elevations	17 June 2019
7654 P008		Existing Sections	17 June 2019
7654 P105		Proposed Roof Plan	17 June 2019
7654 P104		Proposed Third Floor Plan	17 June 2019
7654 P310		Street Level Visual Northeast	17 June 2019
7654 P303		Proposed Sections	17 June 2019
7654 P102		Proposed First Floor Plan	17 June 2019
7654 P103		Proposed Second Floor Plan	17 June 2019
7654 P101		Proposed Basement And Ground Floor Plans	17 June 2019
7654 P301		Proposed Elevations East And North	17 June 2019
7654 P302		Proposed Elevations West And South	17 June 2019
7654 P001		Location Plan	17 June 2019



7654 P109	Proposed Site Plan	28 June 2019
7654 P301	Proposed Elevations East and North	28 June 2019
7654 P302	Proposed Elevations West and South	28 June 2019
7654 P303	Proposed Sections	28 June 2019
7654 P310	Street Level Visual Northeast	28 June 2019

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

1. **POSITIVE AND PROACTIVE STATEMENT**

The decision has been made taking into account, where practicable and appropriate the requirements of paragraph 38 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

**Informatives:**

1. The development will involve the numbering of properties and/or the naming of new streets. The applicant **MUST** contact Welwyn Hatfield Borough Council, Environmental Services (01707 357 000) before any name or number is proposed. This is a requirement of the Public Health Act 1875 and Public Health (Amendment) Act 1907.
2. This planning decision letter should be read in conjunction with the S106 Legal Agreement.
3. This permission does not convey any consent which may be required under any legislation other than the Town and Country Planning Acts. Any permission required under the Building Regulations or under any other Act, must be obtained from the relevant authority or body e.g. Fire Officer, Health and Safety Executive, Environment Agency (Water interest etc. Neither does this permission negate or override any private covenants which may affect the land.
4. If bats, or evidence for them, are discovered during the course of roof works, work must stop immediately and advice sought on how to proceed lawfully from an appropriately qualified and experienced Ecologist or Natural England, to avoid an offence being committed."
5. 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 website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-anddeveloper-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.
6. 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 website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-anddeveloper-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.

7. It is an offence under section 148 of the Highways Act 1980 to deposit mud or other debris on the public highway, and 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 are in a condition such as not to emit dust or deposit mud, slurry or other debris on the highway. Further information is available via the website <https://www.hertfordshire.gov.uk/services/highways-roads-andpavements/highways-roads-and-pavements.aspx> or by telephoning 0300 1234047.
8. 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/business-anddeveloper-information/development-management/highways-developmentmanagement.aspx> or by telephoning 0300 1234047.
9. The applicant is advised that if it is the intention to request that Hertfordshire County Council as Highway Authority adopt any of the highways included as part of this application as maintainable at the public expense then details of the specification, layout and alignment, width and levels of the said highways, together with all the necessary highway and drainage arrangements, including run off calculations must be submitted to the Highway Authority. No development shall commence until the details have been approved in writing and an Agreement made under Section 38 of the Highways Act 1980 is in place. The applicant is further advised that the County Council will only consider roads for adoption where a wider public benefit can be demonstrated. The extent of adoption as public highway must be clearly illustrated on a plan. Further information is available via the website <https://www.hertfordshire.gov.uk/services/highways-roads-andpavements/business-and-developer-information/development-management/highwaysdevelopment-management.aspx> or by telephoning 0300 1234047.
10. All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Council, shall be carried out only between the hours of :  
8.00am and 6.00pm on Mondays to Fridays  
8.00am and 1.00pm Saturdays

and at no time on Sundays and Bank Holidays

11. The best practicable means, as defined in section 72 of the Control of Pollution Act 1974, to reduce noise to a minimum shall be employed at all times
12. All plant and machinery in use shall be properly silenced and maintained in accordance with the manufacturers' instructions.
13. All compressors shall be sound reduced models, fitted with properly lined and sealed acoustic covers, which shall be kept closed whenever the machines are in use. All ancillary pneumatic percussive tools shall be fitted with mufflers or silencers of the type recommended by the manufactures.
14. All machines in intermittent use shall be shut down during intervening periods between work, or throttled down to a minimum. Noise emitting equipment, which is required to operate continuously, shall be housed in suitable acoustic enclosures.
15. Items of plant and equipment shall be maintained in good condition so that extraneous noise from mechanical vibration, squeaking or creaking is reduced to a minimum.
16. All pile driving shall be carried out by a recognised noise reducing system.
17. Where practical, rotary drills and bursters, actuated by hydraulic or electric power shall be used for excavating hard material.
18. In general, equipment for breaking concrete and the like, shall be hydraulically actuated.
19. 'BS 5228 Noise Control on Construction Sites' should be referred to for guidance in respect of all work carried out by the developer, their main contractor and any sub contractors.
20. Any emergency deviation from these conditions shall be notified to the Council without delay
21. Any planned deviations from these conditions for special technical reasons, shall be negotiated with Council at least 14 days prior to the commencement of the specific work.
22. Permissible noise levels are not specified at this stage.
23. All efforts shall be made to reduce dust generation to a minimum.
24. Stock piles of materials for use on the site or disposal, that are likely to generate dust, shall be sited so as to minimise any nuisance to residents or neighbouring businesses. Materials for disposal shall be moved off site as quickly as possible.
25. Waste materials (especially asbestos containing materials) will need to be disposed of by a licensed contractor.
26. Water sprays shall be used, as and when necessary, to reduce dust from particularly "dusty" activities or stock piles.

**Determined By:**

Mr Colin Haigh  
7 February 2020