

WELWYN HATFIELD BOROUGH COUNCIL  
DEVELOPMENT MANAGEMENT COMMITTEE – 15 SEPTEMBER 2016  
REPORT OF THE DIRECTOR (GOVERNANCE)

6/2016/1068/FULL

BARHAM COURT, 80 STATION ROAD, CUFFLEY, POTTERS BAR, EN6 4HY

ADDITION OF A3 (RESTAURANT AND CAFE) USE ALONGSIDE PREVIOUSLY GRANTED USES A1 (RETAIL), A2 (FINANCIAL AND PROFESSIONAL SERVICES) AND B1 (BUSINESS) TO THE COMMERCIAL UNIT TO GROUND FLOOR

APPLICANT: Mr A Barham

(Northaw and Cuffley)

**1 Site Description**

- 1.1 The application site comprises the ground floor commercial unit in the approved redevelopment of No. 80 Station Road, which is under construction. The approved scheme is for 24 residential units in a part three/part four storey building. The commercial unit is on the western half of the ground floor of the building and has a floor area of 452sqm. This unit has permission for flexible use as Use Classes A1 (Retail), A2 (Financial and Professional Services) or B1 (Business). Along the frontage of the site the approved plans (Drwg No JC:2014.02.01/02RevD) show fifteen car parking spaces (including three disabled parking bays) allocated for use by the commercial unit. There are also cycle parking facilities shown on the concrete paving and a loading bay on the bitumen access road in front of the commercial unit.

**2 The Proposal**

- 2.1 Full planning permission is sought to include A3 (restaurant use) in the range of permitted uses for the commercial ground floor unit. Submitted details are as follows:

- The floor area would be 420sqm (gross internal)
- Hours of opening 9am-11.30pm Mondays-Sundays and Bank Holidays.
- An estimated 20 full time and 10 part time jobs would be created
- 15 car parking spaces (including three disabled bays) provided on site frontage.
- The shop frontage has not been submitted

- 2.2 The building is currently under construction and when complete there will be two flats below the rear half of the commercial unit, orientated to the south, and four flats directly above the unit on the first floor. The flats on the ground floor on the

eastern half of the building would be separated from the commercial unit by the entrance hall and internal stairways.

### **3 Reason for Committee Consideration**

- 3.1 This application is presented to the Development Management Committee because Northaw and Cuffley Parish Council have objected to the proposal.

### **4 Relevant Planning History**

- 4.1 S6/1983/0090/ - New control buildings to petrol forecourt, change of use of car showroom to 7 retail shops with stores below and use of vehicle wkshp as light industrial. Refused 14.4.1983
- 4.2 S6/1983/0549/ - Four light industrial workshops. Refused 27.10.1983.
- 4.3 S6/1983/0721/ - Extension to existing control building. Granted 31.12.1983
- 4.4 S6/1987/0236/FP - Erection of building to contain Low Bake Oven in association with Auto Body Repairs. Granted 5.6.1987
- 4.5 S6/1992/0809/FP - Installation of 2000 gallon underground diesel tank and associated pipework. Granted 1.2.1993.
- 4.6 S6/2014/0243/MA - Demolition of existing buildings and redevelopment to provide 24 residential apartments with 452m2 GEA of either A1, A2 retail or B1 commercial use at ground floor level, together with provision of car and cycle parking and bin storage, and minor works to formalise access and egress points into the site. Approval subject to S106 5.8.2014.
- 4.7 S6/2015/0299/DS - Approval of details reserved by condition 5 (noise assessment), 7 (energy statement) and 9 (external lighting) on planning application S6/2014/0243/MA. Approved 9.6.2015.
- 4.8 S6/2015/0487/DS - Approval of details reserved by condition 3 (Landscaping), condition 4 (Materials), condition 8 (Construction phase method statement) and condition 10 (Vehicle cross over) of S6/2014/0243/MA. Under consultation.
- 4.9 S6/2015/0799/DS - Approval of details reserved by condition 6 (Ground Investigation & Remediation Strategy) & 13 (Surface Water Drainage) of planning permission S6/2014/0243/MA. Approved 17.5.2015.

### **5 Planning Policy**

- 5.1 National Planning Policy Framework
- 5.2 Welwyn Hatfield District Plan 2005
- 5.3 Supplementary Design Guidance, February 2005
- 5.4 Supplementary Planning Guidance, Parking Standards, January 2004
- 5.5 Interim Policy for Car Parking Standards and Garage Sizes, August 2014

## **6 Site Designation**

- 6.1 The site lies within Employment Area 9 (Sopers Road) within Cuffley as designated in the Welwyn Hatfield District Plan 2005.

## **7 Representations Received**

- 7.1 The application was advertised by means of neighbour notification letters. Seven representations have been received –two from prospective occupants, five from neighbours and one from Northaw and Cuffley Residents Association. Their comments may be summarised as:

- Neighbours have not been informed of the application;
- Object to noise from customers in the restaurant and outside it especially smoking outside;
- Alcohol will be served and cause nuisance;
- Traffic nuisance and noise from such a large restaurant ;
- Conversion to A3 would cause smells
- Already many food outlets in Cuffley
- Heavy traffic and overcrowding
- Devalue the area
- Inadequate parking in an area subject to parking restrictions.

- 7.2 The occupants of existing residential properties on Station Road were consulted by letter.

## **8 Consultations Received**

- 8.1 **Hertfordshire County Council Transport Programmes and Strategy (HCCTPS)** - no objection. The Highway Authority provided recommendations on the original application (S6/2014/0243/MA). The proposed use would not generate significantly more traffic than the already permitted uses and most trips would occur off-peak. The servicing requirements would not differ significantly from the already permitted uses.
- 8.2 **Welwyn Hatfield Borough Council Environmental Health Department (EH)** – no objection subject to conditions over assessment noise from plant and equipment pre-construction and post-construction, odour control from the kitchen, hours of use and hours of deliveries.

## **9 Town / Parish Council Representations**

- 9.1 Northaw and Cuffley Parish Council object to the proposal for the following reason:

*“We do not support A3 development. We object because there are already many food outlets in Cuffley. There is a need to maintain a mixed retail offer in the village - Ref, Parish emerging Local Plan. Car parking is inadequate and the local area is subject to car parking restrictions. There would be late night noise and disturbance detracting from the residential amenity of the surrounding properties.”*

## **10 Analysis**

10.1 The main planning issues to be considered are:

- 1. The principle of the proposed use (GBSP1, GBSP2, TCR26)**
- 2. Respects and relates to the character and context of the area, as a minimum maintaining and where possible enhancing or improving the character of the existing area (D1,D2, SDG 2005)**
- 3. Impact on the living conditions and amenity of existing and future neighbouring residents (D1, R19, SDG 2005)**
- 4. Other planning matters**
  - (i) Highways and parking (M14, SPG 2004, Interim Policy 2014)**
  - (ii) Refuse and recycling**
  - (iii)**

### **1. The principle of the proposed use**

10.2 The site is within Cuffley settlement where Policy GBSP2 encourages development to be located, provided it is in accordance with the Policies for urban areas in the adopted Plan and is compatible with the maintenance and enhancement of its character.

10.3 The site is within the Sopers Road Employment Area and involves the redevelopment of a former petrol station and garage. The site already has planning permission for residential use with a mixed (A1, A2, B1) use unit and the impact on Employment Land Policies has been previously considered.

10.4 Policy TCR26 relates to large village centres, and seeks to retain the range of everyday convenience shopping and service facilities for local people by retaining a minimum of 60% of the frontage within each centre in Class A1. The unit would create additional A Class floor-space in the village over and above the shops that were in existence when the Policy was adopted. However, the application site lies outside the village centre of Cuffley and would not involve a loss of A1 in the centre of the village. The permitted use allows for uses within Classes A2 and B1 and it is, therefore, not considered that loss of A1 use under Policy TCR26 is a material consideration in the inclusion of an A3 (cafe or restaurant) use on this site.

10.5 However, the criteria in Policy TCR26 regarding the introduction of non-retail uses, such as A2 and A3, include the following relevant considerations:

- The proposal would not harm the amenities of any nearby residential properties;
- The proposal would not be detrimental to the highway network, including highway safety.
- The Council will impose conditions to control the use of premises where planning permission may otherwise be refused.

10.6 The impact on neighbouring residential occupiers is dealt with in Section 3 below and highway matters in Section 4(i) below,

**2. Respects and relates to the character and context of the area, as a minimum, maintaining and, where possible, enhancing or improving the character of the existing area**

- 10.7 Details of the shop-front treatment have not been provided. Policy D1 requires development to be in accordance with design guidance in the Supplementary Design Guidance 2005 (SDG ). Section 7 of the SDG relates to shop-fronts and these are required to be of a high standard and harmonise with the character of the existing building and street-scene and provide easy, dignified access to disabled and mobility impaired people. A condition requiring these details to be submitted and approved prior to installation is recommended to ensure an appropriate appearance to the building.

**3. Impact on the living conditions and amenity of existing and future neighbouring residents**

- 10.8 Policy D1 aims to improve and enhance the quality of the existing environment and requires development to incorporate the guidance in the Supplementary Design Guidance. In particular it refers to Policy R19 of the District Plan 2005, which relates to Noise and Vibration Pollution and Section 4 of the SDG requires developments to minimise odours from buildings and plant.
- 10.9 Matters of noise of plant, cars and customers and smells from cooking were raised by prospective residents of the development. The Environmental Health Department has not objected to the proposed use but identified potential noise and odour issues. They have recommended that the noise impact be fully assessed and mitigated and odours be controlled. In addition they have expressed concern about the hours of operation and hours of delivery.
- 10.10 Noise – The Environmental Health Department has advised that noise emitted from the plant and equipment to be installed for the A3 use will need to be at least 10dB below the background noise level at the nearest residential property. This should be achievable with the right choice of plant, installation and mitigation measures. A condition is recommended requiring compliance with this noise level criteria and proof that it can be complied with (through an acoustic assessment) before the unit is occupied.
- 10.11 Noise and Odour from Kitchen Extraction – Smells from extraction systems can cause nuisance to neighbouring occupiers and the Environmental Health (EH) Department has advised that the extraction system from the kitchen of the proposed A3 use would need to be controlled in line with advice from Defra. The extent of odour suppression will depend on the type of food being prepared. Information about the type of food to be prepared has not been supplied (is not yet known). As such, the EH Department have recommended a condition requiring details of odour suppression systems be submitted before building works associated with the use commence and be installed before the use commences. The extraction system will need to comply with the noise control conditions.
- 10.12 Noise from activities associated with the A3 use – there is potential for noise to be generated by the A3 use in terms of customers arriving and leaving and music being played. The impact is difficult to assess without knowing the business that would be running the A3 use. However, the scale of the proposed unit would indicate that it would have many customers (seating up to 100 at one time) who,

cumulatively, could generate a considerable amount of noise on arrival and departure. Controlling the hours of operation would limit the potential for loss of amenity, resulting from this source of noise, at the nearest residential properties. The proposed hours of opening (or operation) are 9am to 11.30pm every day. In practice customers leaving at closing time may take additional time to leave the site. The potential for noise from these activities could, therefore, extend beyond hours, over weekdays, weekends and bank holidays when residents could normally and reasonably expect to be free from such noise. EH Department, therefore, recommended that the hours of operation (which includes opening and closing of the facility outside of opening hours to customers) should be limited to between the hours of 8am to 11pm on any day.

- 10.13 Delivery vehicles arriving and leaving the site are likely to be large vehicles and to generate significant amounts of noise when manoeuvring and unloading. It is therefore recommended that hours of delivery are restricted to between the hours of 8am to 8pm Mondays to Fridays, 8am to 5pm on Saturdays and no time on Sundays, Bank and Public holidays.

#### **4. Other planning matters**

##### **(i) Highways and parking**

- 10.14 The development was provided with vehicle and pedestrian access from Station Road with a separate in/out arrangement using the previously existing site accesses. The current proposal would not alter the approved details. The Highway Authority have commented that the use as A3 would not generate a significantly different level of trips from the approved uses and considers that most would occur off-peak. They conclude the proposal would not materially impact on the highway or transportation network. In addition the servicing requirements would not differ significantly from those for an A1, A2 or B1 use so the details approved under Planning Permission Reference Number S6/2014/0243/MA are considered acceptable.
- 10.15 Parking - The Council's Local Plan Policy M14 and the Parking Standard Supplementary Planning Guidance (SPG) use maximum standards which are not consistent with the NPPF and are, therefore, not afforded significant weight. In light of the above the Council has produced an Interim Policy for Car Parking Standards and Garage Sizes that states that parking provision will be assessed on a case by case basis and the existing maximum standards within the SPG should be taken as guidance only.
- 10.16 The car parking standards require customer and staff parking; customer parking at 1 space per 5sqm of dining area and staff at 3 spaces per employee. The dining area of 240sqm requires 48 parking spaces. The equivalent of 25 full time staff would require 19 spaces. The total parking requirement would be 67 spaces. There would be a shortfall of 52 on-site spaces. These standards are higher than for the previously-approved uses, which average 1 space per 30sqm of gross floor-space thus requiring 15 spaces in total, which would be provided on the front of the site.
- 10.17 A large part of the parking shortfall could be met in the vicinity of the site for example in the Parish run car park on the land adjacent to the application site, which has over 70 spaces and caters for short-term parking. In addition the railway station car park has 260 spaces, many of which would become available

in the evening, as with the Parish Council Car Park. Officers have noted that these car parks have a generally low occupancy rate at weekends and in the evenings.

- 10.18 Cycle parking provisions were shown on the plans accompanying the previously approved application (6/2014/2/FP). These were located outside the front of the unit. Adopted cycle parking standards require 4 spaces for customers (based on floor area) and 3 spaces for staff. Cycle parking provision for seven secure and weatherproof spaces is required. This could be accommodated on the concrete paving in the front of the unit and it is recommended that this be secured by condition.

### **Conditions**

- 10.18 Planning Practice Guidance Policy governs the use of conditions in planning and the power to impose conditions when granting planning permission is very wide. If used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The objectives of planning, however, are best served when that power is exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable. Conditions should only be imposed where they are both necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted. In considering whether a particular condition is necessary, both officers and members should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification.
- 10.19 In this case the proposed development would only be acceptable subject to conditions controlling its impact on the surrounding uses and environment as set out in this report: provision of car parking and cycle parking, noise assessment and abatement measures, odour suppression, hours of operation and hours of delivery, details of shop-front.

### **S106 Agreements**

- 10.20 The S106 Agreement relating to the original planning permission will require updating by a deed of Variation to include reference to the current planning application and the proposed inclusion of use A3 (restaurant) in the permitted uses of the commercial unit. The proposed development does not give rise to any further S106 obligations on behalf of the parties to the original agreement.

### **Conclusion**

- 10.21 The application has been considered in terms of the principle of the proposed use and found to be acceptable subject to the impacts on residential amenity and highway and parking issues being adequately controlled.

## **11 Recommendation**

- 11.1 It is recommended that planning permission be approved subject to:
- 11.2 A deed of variation to include reference to the current planning application and the proposed inclusion of use A3 (restaurant) in the permitted uses of the commercial unit;

AND

11.3 The following conditions:

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

JC.2014.02.01 & BEV-171-WD-001 & BEV-171-MK-001 & 160422/G1A received and dated 31.5.2016.

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

2. The area set aside for fifteen car parking spaces shall be laid out, surfaced and marked out, in accordance with approved Drawing Number BEV-171-MK-001 before the first use of the premises and shall be retained permanently thereafter for the free parking of vehicles for customers/occupiers of the development permitted and shall not be used for any other purpose.

REASON: To ensure that the spaces are provided prior to the occupation of the units in the interests of highway safety in accordance with the National Planning Policy Framework.

3. No development shall commence until a scheme for the provision of secure cycle parking for seven cycles on site for staff and customers of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved scheme and shall be retained in that condition 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 Policies M6 and M8 of the Welwyn Hatfield District Plan 2005. Cycle parking for seven

4. The fitting out of the unit for the use hereby permitted shall not commence until details of noise from the plant and equipment to be installed at the premises have been submitted to and approved by the Local Planning Authority. The use shall not commence other than in accordance with the approved scheme and shall be maintained in that condition thereafter.

The details shall include a noise assessment of the plant and equipment and evidence in the form of an acoustic report showing that noise emissions from plant and equipment will be 10dB (L<sub>aeq</sub>) below the background noise level (L<sub>a90</sub>) at the nearest residential properties (using the methodology outlined within BS 4142:2014).

REASON: To protect the amenity and living conditions of the residents within the site and in other nearby residential properties in accordance with Policy R19 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework.

5. Prior to working occupation of the building, a manned measured noise survey shall be carried out of all plant and equipment under usual operating



conditions. The survey must reference an agreed measured background level at agreed monitoring locations.

Noise measurements must be taken at the nearest sensitive receptors and demonstrate that the combined operation of all plant and equipment is 10dBA (LAeq) below the background noise level (LA90). Measurement parameters must include the LA90, LAeq, LAMax and frequency analysis. Measurements must demonstrate that there is no distinct tonal element from the plant equipment that could have a detrimental effect on the nearest sensitive receptor.

If noise measurements demonstrate that this criteria cannot be achieved, noise mitigation measures must be implemented to ensure that Condition 4 can be met.

Monitoring locations must be agreed with the Local Planning Authority. They shall be at 1 metre from the facade at 1.2metres above the ground level and at first floor level of the nearest noise sensitive properties. Monitoring shall also be carried out at the boundary of these properties using the same height criteria. Monitoring shall be carried out at identified representative times and hours of use of the development.

REASON: To carry out testing to prove compliance with Condition 4 in the interest of protecting the amenity and living conditions of the residents within the site and in other nearby residential properties in accordance with Policy R19 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework.

6. Prior to the fitting out of the unit for the use hereby permitted, a scheme for odour control shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include evidence of how the odour abatement control measures have been chosen, including information on dwell times, flow rates and type of filters. The unit shall not be occupied until the approved scheme has been fully implemented. The scheme shall be retained in that condition thereafter.

REASON: To protect the amenity and living conditions of the residents within the site and in other nearby residential properties in accordance with Policies D1 and R18 of the Welwyn Hatfield District Plan 2005 and the Supplementary Design Guidance 2005.

7. The use of the premises for the purposes hereby permitted shall not operate other than between the hours of 08.00 and 23.00 on any day and no customer shall be permitted to be on the premises outside of these times.

REASON: To protect the residential amenity of adjoining occupiers in accordance with Policy D1 of the Welwyn Hatfield District Plan 2005.

8. No loading, unloading, deliveries or collections shall take place other than between the hours of 08.00 and 20.00 Mondays to Fridays, 08.00 and 17.00 Saturdays nor at any time on Sundays, Bank or Public Holidays.

REASON: To protect the residential amenity of adjoining occupiers in accordance with Policy D1 of the Welwyn Hatfield District Plan 2005.

9. No development shall take place until details of the proposed shop front of the unit have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented using the approved details and subsequently shall not be changed.

The details shall include scaled elevation drawings and plans together with samples of the materials to be used in the construction of the external surfaces of the unit.

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.

### **Positive and Proactive Statement**

The decision has also been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 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 inspected at these offices).

OR REFUSE if a Deed of Variation (of the S106 Agreement dated 31<sup>st</sup> July 2014) is not completed on or before 15<sup>th</sup> December 2016 for the following reason:

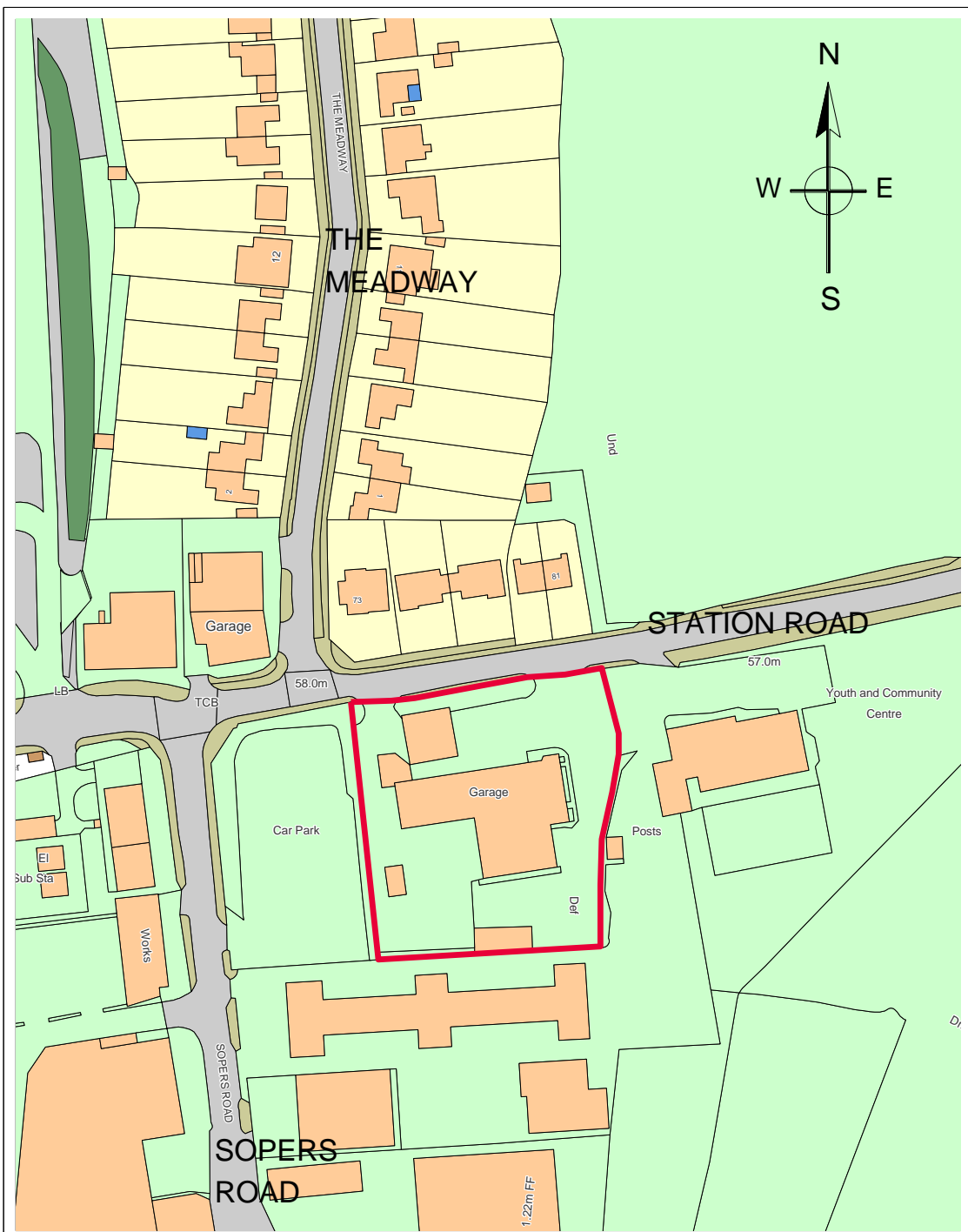
1. The applicant has failed to satisfy the sustainability aims of the plan and to secure the proper planning of the area by failing to ensure that the development proposed would provide a sustainable form of development in mitigating the impact on local infrastructure and services which directly relate to the proposal and which is necessary for the grant of planning permission. The applicant has failed to provide a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended). The Local Planning Authority considers that it would be inappropriate to secure the required financial and non-financial contributions by any method other than a legal agreement and the proposal is, therefore, contrary to Policies of the Welwyn Hatfield District Plan 2005.


*June Pagdin*, (Strategy and Development)

Date 25.8.2016

Expiry Date 31.05.2016

Background papers: S6/2014/0243/MA



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|---|--|--|-----------------------------------|
| <br>Council Offices, The Campus,<br>Welwyn Garden City, Herts. AL8 6AE | Title: <b>Barham Court, 80 Station Road, Cuffley</b> |  | Scale: DNS                        |
|   | Project: <b>DMC Meeting</b>                          |  | Date: 2016                        |
|   | Drawing Number: <b>6/2016/1068/FULL</b>              |  | Drawn: <b>Andrew Windscheffel</b> |
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