

# **Report to District Area Plans East Sub-Committee**



**Epping Forest  
District Council**

**Date of meeting: 14 May 2014**

**Subject: EPF/2660/13 119 Theydon Park Road, Theydon Bois**

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## **Recommendation(s):**

That Members review their decision on application EPF/2660/13 in the light of additional factual information, representations by the applicant and legal advice.

## **Report Detail**

1. On 12 February 2014 this Sub-Committee refused to remove an extant section 52 legal agreement attached to planning permission ref EPF/1127/82. The proposal was put forward under application EPF/2660/13.
2. Planning permission EPF/1127/82 permitted the use of a building within the Theydon Park Road Chalet Estate as a dwellinghouse. No conditions limiting the use were included on the permission but its occupation was restricted to named individuals by a S52 Agreement.
3. Those persons have since passed away and as a consequence, the s.52 agreement in effect prohibits the use of the dwellinghouse for its lawful purpose.
4. The minutes for the meeting of the Sub-Committee state *"Members refused to agree the removal of the Section 52 agreement, as they considered that the agreement was serving its intended purpose of preventing the permanent residential occupation of what had been a recreational chalet. No very special circumstances had been put forward that would warrant the removal of the agreement."*
5. Although Members were advised that the applicant had a right of appeal to the Secretary of State against the decision, that is incorrect. That is because the agreement is under the 1971 Town and Country Planning Act and neither that Act nor the 1990 Act allow for such an appeal. Such a right of appeal only exists in respect of the refusal of such applications concerning an agreement under section 106 of the 1990 Act.
6. Consequently, the applicants' only recourse is either to seek a judicial review of the decision or to apply to the Upper Tier Land Chamber under S84 of the Law of Property Act 1925 for the s.52 agreement to be removed. Both courses of action would involve significant legal costs and the applicant would therefore almost certainly seek to recover them from the Council if he were successful. The Council would be liable for its own legal costs in defending its position against such an application.

7. The Council is at risk of an award of costs if it is found to have been unreasonable in refusing to remove the agreement and therefore causing the applicant to apply for judicial review or to the Lands Tribunal.

8. The applicant has put the Council on notice of his intention to make an application to the Upper Tier Land Chamber but has agreed to delay the application until after this meeting of the Sub-Committee.

9. The Council's reason for refusing to remove the s.52 agreement will clearly be closely examined at any hearing. The reason currently given for refusing to lift the S52 Agreement does not make clear what planning objective the Council wishes to achieve in refusing to withhold consent. The decision acknowledges the house is not a leisure chalet by referring to its previous use as a residential chalet. The s.52 agreement does not of itself remove the lawful use of the building as a dwellinghouse but serves to restrict the occupation to named individuals.

10. It appears from the previous decision that Members seek to reinstate the use of the building as a leisure chalet and bring to an end its lawful use as a dwellinghouse. However the, the retention of the s.52 agreement cannot serve to achieve that because it does not require the building to be used for leisure purposes or for the full time residential use to cease following the cessation of its occupation by the named persons. Consequently, what it actually achieves now is an empty house.

11. If the Council refuses to lift the S52 Agreement it will be required at any hearing to set out what planning purpose it seeks to achieve by preventing the occupation of the house by seeking to retain in leisure use

12. Following the earlier refusal officers have now researched the planning status of the other properties within the estate and the details are included on the attached Spreadsheet (Appendix One). It can now be seen that the majority of the properties have either planning permission for unrestricted residential use or have established a lawful residential use, No other property was found to have a similar S52 Agreement restricting occupation in any way.

13. This particular part of Theydon Park Road, which has been designated as a site for recreational use by the Epping Forest Proposals Map is formed of twenty-six plots. Of this, seven are vacant; one of which has permission for a recreational use. Ten have been granted unrestricted planning permission by the Council for a dwelling house, including 119 Theydon Park Road. Eight have no planning history and therefore have been on site pre 1948 and have established use rights. One plot has a hutment on site that is restricted to recreational use.

14. Nineteen of the plots contain a form of development. Of this eighteen have permanent residential use rights. The application site is the only one which has permanent rights, but is unoccupied.

15. Given that the vast majority of the road currently has permanent residential use, the planning purpose that this legal agreement seeks to retain is unclear. From the original officer's report in respect of EPF/1127/82 it appears that the agreement was required to preserve the character of the Green Belt by restricting residential use. However as the majority of the dwellings along Theydon Park Road are unrestricted, many of which are large two storey detached dwellings, the harm to the Green Belt by removing the legal agreement would be minimal in any case.

16. Furthermore, many of the permanent dwellings on Theydon Park Road have been established through express planning consent by the Council throughout the last fifty years. As such the position of the Council on this road has been favourable to unrestricted residential use.

17. Further Legal advice has been sought and the advice is that if an application is made to the Upper Tribunal there is a very good prospect of the S52 Agreement being discharged on the basis that it is now obsolete.

18. Therefore Members have the following options when reviewing this application;

*Option 1:*

In light of the new information presented in this report, agree to remove the legal agreement so as to allow the dwelling to be used permanently by persons other than those mentioned in the aforementioned legal agreement.

*Option 2:*

Refuse to remove the legal agreement and explain what planning purpose it seeks to retain, as this will form the basis for the Councils defence in any proceedings which should follow.