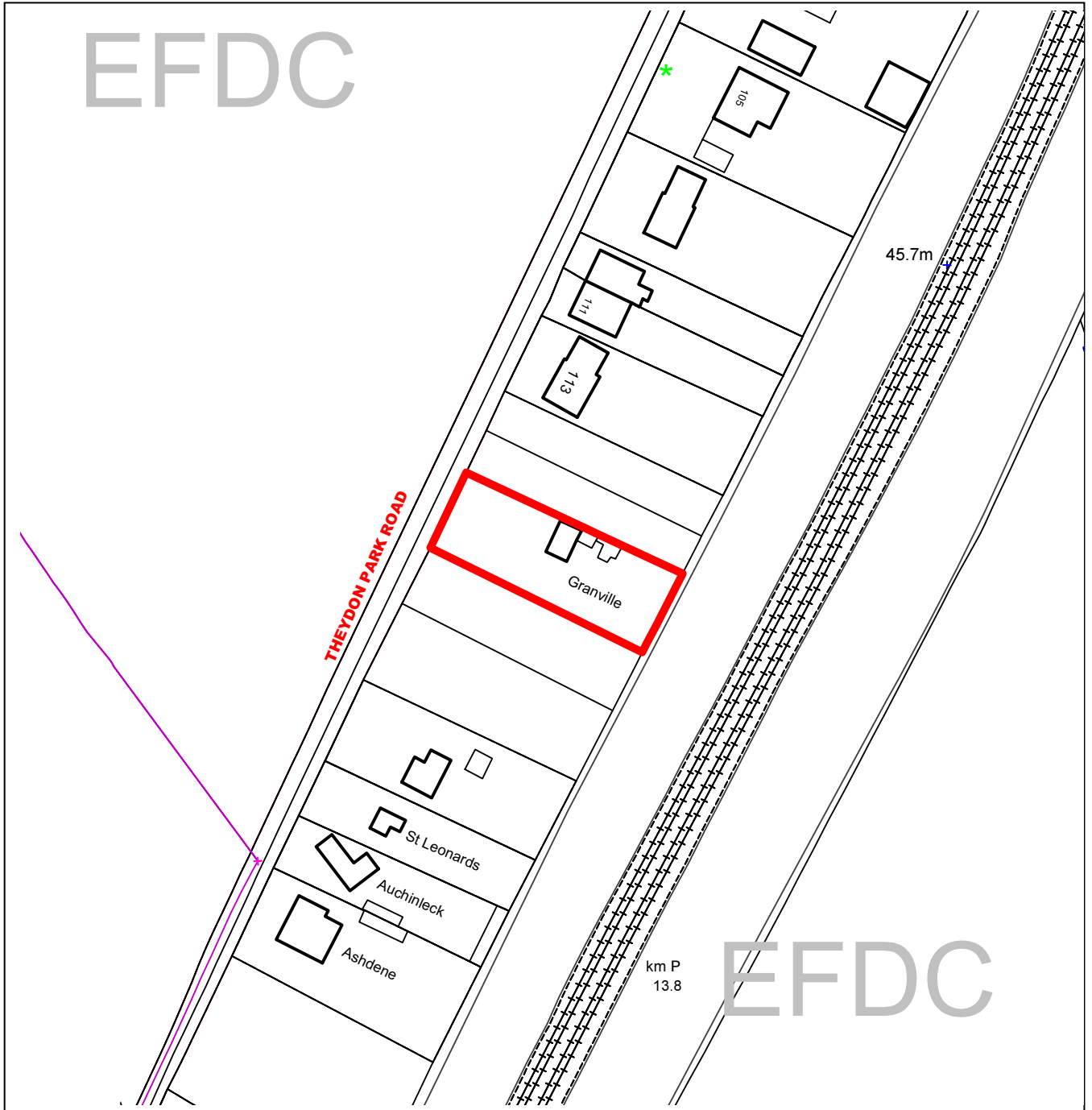




# Epping Forest District Council

## AGENDA ITEM NUMBER 9



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Application Number:	EPF/2660/13
Site Name:	119 Theydon Park Road, Theydon Bois, CM5 9AR
Scale of Plot:	1/1250

**Report Item No: 9**

<b>APPLICATION No:</b>	EPF/2660/13
<b>SITE ADDRESS:</b>	119 Theydon Park Road Theydon Bois Epping Essex CM5 9AR
<b>PARISH:</b>	Theydon Bois
<b>WARD:</b>	Theydon Bois
<b>APPLICANT:</b>	Mr Mohamed Vankad
<b>DESCRIPTION OF PROPOSAL:</b>	Removal of section 52 Agreement relating to EPF/1127/82 (Continued use of dwelling for residential purposes).
<b>RECOMMENDED DECISION:</b>	Grant Permission

**Click on the link below to view related plans and documents for this case:**

[http://planpub.eppingforestdc.gov.uk/AniteIM.websearch/ExternalEntryPoint.aspx?SEARCH\\_TYPE=1&DOC\\_CLASS\\_CODE=PL&FOLDER1\\_REF=557970](http://planpub.eppingforestdc.gov.uk/AniteIM.websearch/ExternalEntryPoint.aspx?SEARCH_TYPE=1&DOC_CLASS_CODE=PL&FOLDER1_REF=557970)

**CONDITIONS**

NONE

*This application is before this Committee since the recommendation is for approval contrary to an objection from a local council which is material to the planning merits of the proposal (Pursuant to The Constitution, Part Three: Planning Directorate – Delegation of Council function, Schedule 1, Appendix A.(g))*

**Description of Site:**

Theydon Park Road is located within an area of sporadic development within the village of Theydon Bois. The existing building is a single storey chalet style dwelling which is located within the centre of a relatively modest plot. The surrounding area is formed of a mixture of single storey and two storey dwellings, many of which are used for permanent residential purposes. The application site is located within the boundaries of the Metropolitan Green Belt and it is not located within a conservation area.

**Description of proposal**

The application is to remove an extant section 52 legal agreement, which is attached to planning permission ref EPF/1127/82. The terms of the agreement require the permanent residential use of the dwelling only be undertaken by specific named individuals, who have since passed away. The removal of the agreement will allow the dwelling to be used freely by persons other than those named within the legal agreement.

**Relevant History**

The site has a long and complex history. The structure that exists on site at the moment has a current lawful use as a permanent dwellinghouse.

EPR/0020/48 – Erection of Bungalow – Refused

EPO/0262/56 – Erection of Bungalow – Refused

EPO/0040/59 – Erection of additional structure – Refused

Planning Enforcement Notice issued 6 October 1980 requiring the discontinuance of the buildings on the land for residential purposes.

EPF/1127/82 - Continued use of dwelling for residential purposes. – Approved

EPF/0822/01 - Restoration of residential use to existing dwelling. – Refused

### **Policies Applied:**

CP1 Achieving Sustainable Development Objectives

The site in question has been designated by the Epping Forest District Council's proposals map as an area for leisure plots rather than for permanent residential use. However, it is a fact that planning permission EPF/1127/82 is for use as a dwellinghouse on a permanent basis since it does not include any condition requiring its use to change back to leisure use in any circumstance or after any specific period of time. Since the lawful use of the site is as a dwellinghouse it is found that policies RST11 and RST12, which seek to control leisure uses in the locality, are not applicable. Furthermore, since the proposal to remove the planning obligation does not involve any actual development it is found that no Green Belt or Highways policies are applicable.

The National Planning Policy Framework (NPPF) has been adopted as national policy since March 2012. Paragraph 214 states that due weight should be given to the relevant policies in existing plans according to the degree of consistency with the framework. The above policies are broadly consistent with the NPPF and should therefore be given appropriate weight

### **Consultation Carried Out and Summary of Representations Received:**

Site Notice Displayed – No neighbour comments received

THEYDON BOIS PARISH COUNCIL - OBJECTION We note that the existing Section 52 Agreement provides for residential use personal to the named applicants and your comment that this Agreement was given on the basis that the then applicant had demonstrated 'Very Special Circumstances' to overcome the harm within this area of Theydon Park Road. We have not had the benefit of seeing the Agreement and are not privy to the reasons put forward at the relevant time. We can only deduce however that the particular personal circumstances of the then applicant must have been such as to satisfy you on that occasion. We see no reason why the Section 52 Agreement should be overturned based on this application; no 'Very Special Circumstances' have been put forward by this applicant to justify not following recent precedent. Accordingly, our reasons for objection (with the exception of the first point) and for ease of reference repeated below still stand and we do not consider that change of use to permanent residential use is appropriate for the following reasons:

1. It is apparent that the property does not meet modern day living standards and would be unsuitable as a permanent home.

2. We are concerned that a permanent change of use would lead to an encroachment of residential development in this sensitive location. The area of Green Belt between Theydon Bois and Debden has been designated as a 'strategic buffer zone' in the preparatory documentation for the new Local Plan. This recognises the desire to avoid any further development 'sprawl' leading to the loss of the individual and rural character of the village of Theydon Bois.

3. The access comprises an unmade unadopted road. The surface is in very poor condition and would not meet the demands of further intensification of use which an additional permanent dwelling would bring.

Please note that historically the property has also been known as 116 Theydon Park Road and 'Grandville'.

For consistency we would also draw your attention to the recent application concerning 121 Theydon Park Road and to our objection to that application which is repeated below:

*'This property is situated in a sensitive location and forms part of an area of special designation under the Local Plan (RST 11 and RST 12). These policies clearly state what is allowable in this Green Belt location. This proposal does not comply with these policies. Directly adjacent to this plot lies Auchinleck and St Leonards both of which are subject to the above designation and both of which have been subject of applications for extension that have been refused by Epping Forest District Council and upheld by the Planning Inspectorate on Appeal.*

*We see no distinction with this application and thus there is no reason why this application should be granted when clear precedents apply as detailed above. The National Planning Policy Framework is also consistent in that it states that the Green Belt should maintain its openness and this proposal would harm and reduce said openness. Our views are consistent with those expressed in relation to the recent application EPF/2110/13 RE 119 Theydon Park Road.*

*We would also comment that this is a sensitive area of the Village and the new Local Plan contains a recommendation that this area should be designated as a 'Strategic Buffer Zone' in which no development should take place. The rationale behind this is to maintain the clear distinction between the 'urban conurbation' of Loughton/Debden and the distinctive and unique character of the village of Theydon Bois, surrounded as it is by Green Belt and Forest land.*

Theydon Bois and District Rural Preservation Society – OBJECTION – This part of Theydon Park Road, know colloquially as 'Tin Town', falls under a section of the present Local Plan that restricts these holiday chalets to seasonal occupation from the months of April to October and then only if kept in a good state of repair. The NPPF states that the Green Belt should retain its openness in this part of Theydon Park Road which forms a buffer between Theydon and Debden. The new local plan currently under preparation has earmarked the site as a strategic gap in which no development should take place.

### **Issues and Considerations**

The Council's solicitor has advised that, as a consequence of the 1982 planning permission, ref EPF/1127/82, the lawful use of the building is for permanent residential purposes. As the application site enjoys a lawful permanent residential use, the main issue to consider is maintaining the restriction on occupation of the dwellinghouse serves any planning purpose and whether allowing the occupation of the dwelling by persons other than those named in the S.52 agreement would be in the interests of securing sustainable development. Members should note that since the lawful use of the site is as a dwellinghouse the 2001 application that was essentially for use as a dwellinghouse, ref EPF/0822/01, was unnecessary.

The dwelling is currently unoccupied as the persons named on the extant section 52 agreement have passed away. The effect of the S.52 agreement is the dwelling cannot be occupied by any other persons. The NPPF seeks to ensure development is sustainable. It is unclear what planning purpose was intended to be secured by the 1982 planning permission in limiting the occupation of the dwelling to named persons only. It appears that consent for the use as a dwellinghouse was given solely on the basis of weight attached to the personal circumstances of the then applicants. However, without any corresponding requirement that the use as a

dwellinghouse cease the site is now in a position where its lawful use is a dwellinghouse but the requirements of the S.52 agreement prohibit its occupation but do not require its removal. The terms of the agreement do not cause the planning permission and the lawful use given by it to cease to exist.

Such a requirement in a planning obligation does not meet the test of reasonableness. Moreover, since it results in a house not capable of lawful occupation it also results in an unsustainable situation in circumstances where there is an acknowledged general need for housing. Consequently the obligation also does not serve any planning purpose and, indeed, works against the purposes of the planning system.

Policies RST11 and RST12 relate to existing leisure plots and cannot be applied to this site which is lawfully a permanent dwelling.

### **Conclusion**

The removal of the section 52 legal agreement which restricts the permanent residential use to named persons does not involve any development. The reasons for imposing the planning obligation do not appear to have anything to do with a planning matter and were solely to avoid making homeless those occupants of the house in 1982. Since the lawful use of the application site is as a dwellinghouse the effect of the planning obligation restricting occupancy to named persons is to prohibit the occupation of a lawful dwellinghouse. That serves no planning purpose and is in fact counter to the interests of achieving sustainable development. Removal of the planning obligation would free a house for general occupation where there is a general need for housing and is therefore in the interests of sustainability. As such the proposal complies with the provisions of the Adopted Local Plan and Alterations and with the objectives of the National Planning Policy Framework. It is therefore recommended to the committee that the legal agreement is removed.

***Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:***

***Planning Application Case Officer: James Rogers  
Direct Line Telephone Number: 01992 564371***

***or if no direct contact can be made please email: [contactplanning@eppingforestdc.gov.uk](mailto:contactplanning@eppingforestdc.gov.uk)***