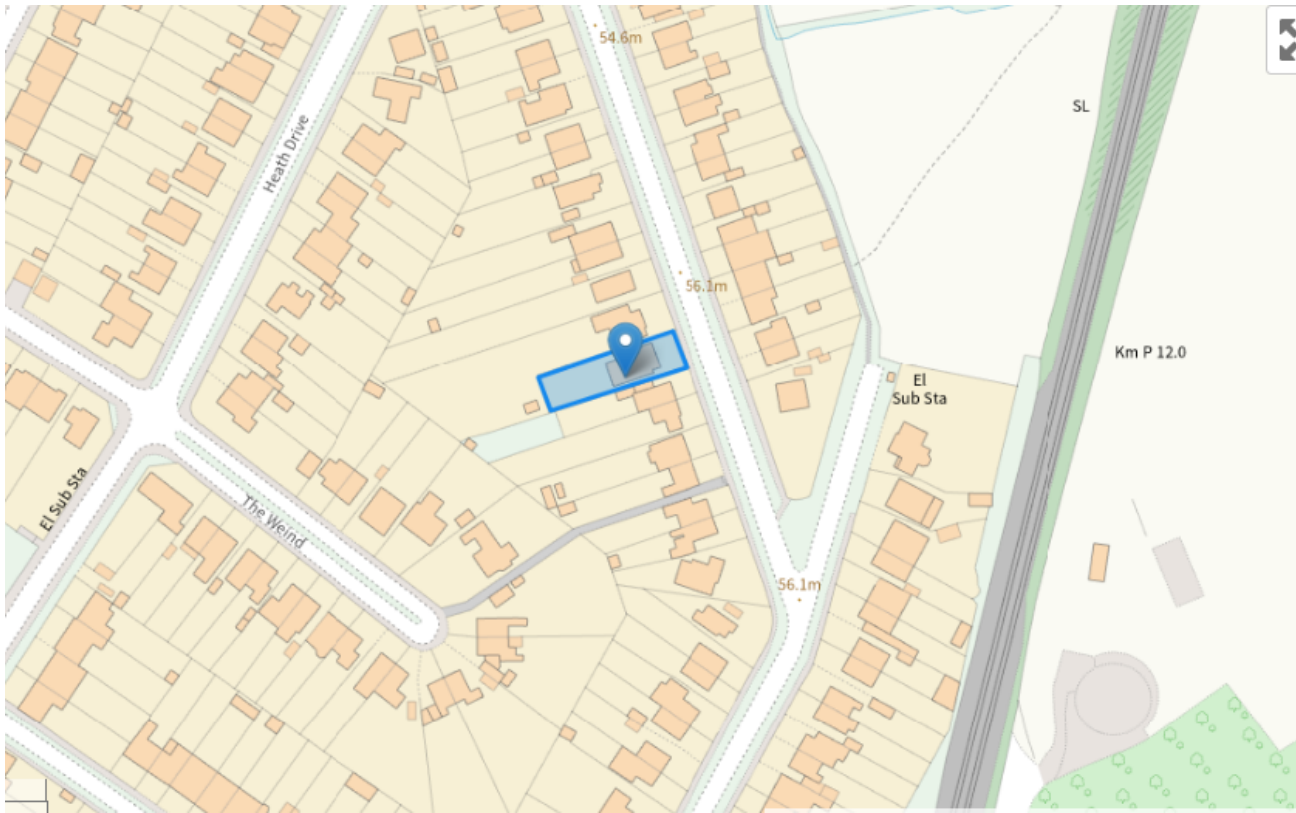




# Epping Forest District Council

# EFDC



# EFDC

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Application Number:	EPF/1203/22
Site Name:	13 Dukes Avenue Theydon Bois CM16 7HG

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# OFFICER REPORT

**Application Ref:** EPF/1203/22  
**Application Type:** Householder planning permission  
**Applicant:** Sukhbir Kaur  
**Case Officer:** Rhian Thorley  
**Site Address:** 13 Dukes Avenue  
Theydon Bois  
Epping  
CM16 7HG  
**Proposal:** Retention of decorative railings at first floor level  
**Ward:**  
**Parish:** Theydon Bois  
**View Plans:** <https://eppingforestdcpr.force.com/pr/s/planning-application/a0h8d000000NzMA>  
**Recommendation:** Approve with Conditions

*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, and the Local Council confirms it intends to attend and speak at the meeting where the application will be considered (Pursuant to The Constitution, Part 3: Scheme of Delegation to Officers from Full Council).*

## **Site and Surroundings**

The site comprises a former bungalow which has been extensively extended and is now a two-storey detached dwelling located to the south of Dukes Avenue. It is not a locally listed building nor is it within a Conservation Area. It is not within the Metropolitan Green Belt. Site Visit was conducted on 1 August 2022 however access was not gained inside or to the rear of the property.

## **Proposal**

The proposal seeks retrospective consent for the installation of black painted metal railings which are 900mm high.

## **Relevant Planning History**

EPF/2368/21 - Erection of two side dormer windows and one rear dormer window to facilitate a loft conversion – Approve with conditions.

EPF/3041/20 - Double hip to gable roof alteration (both sides) and rear dormer including Juliet balcony – Refuse.

EPF/3040/20 - Single storey rear conservatory extension – Refuse.

EPF/1940/20 - Certificate of Lawful Development for a proposed rear dormer window in connection with a loft conversion – Not Lawful.

EPF/1675/98 - Extensions to convert bungalow to dwellinghouse – Approve with conditions.

EPF/0402/98 - Conversion of existing bungalow into house – Refuse.

EPF/1268/75 - Erection of a single storey rear extension – Approve with conditions.

EPR/0032/49 – Extension – Approve.

### **Planning Enforcement History**

ENF/0128/22 - Erection of metal roofing around flat roof – In progress.

### **Development Plan Context**

#### *Local Plan & Alterations 1998 & 2006 (LP)*

Section 38(6) Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan currently comprises the Epping Forest District Council Adopted Local Plan (1998) and Alterations (2006).

The following policies within the current Development Plan are considered to be of relevance to this application:

CP2	Protecting the Quality of the Rural and Built Environment
CP7	Urban Form & Quality
DBE9	Loss of Amenity

#### *National Planning Policy Framework 2021 (NPPF)*

The NPPF is a material consideration in determining planning applications. As with its predecessor, the presumption in favour of sustainable development remains at the heart of the NPPF. Paragraph 11 of the NPPF provides that for determining planning applications this means either;

- a. approving development proposals that accord with an up-to-date development plan without delay; or
- b. where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making, but policies within the development plan need to be considered and applied in terms of their degree of consistency with the NPPF.

#### *Epping Forest District Local Plan Submission Version 2017 (LPSV)*

Although the LPSV does not currently form part of the statutory development plan for the district, on 14th December 2017 the Council resolved that the LPSV be endorsed as a material consideration to be used in the determination of planning applications.

Paragraph 48 of the NPPF provides that decision-takers may give weight to relevant policies in emerging plans according to:

The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The LPSV has been submitted for Independent Examination and hearing sessions were held on various dates from February 2019 to June 2019. On the 2nd August, the appointed inspector provided her interim advice to the Council covering the substantive matters raised at the hearing and the necessary actions required of the Council to enable her to address issues of soundness with the plan without prejudice to her final conclusions.

Following the Examination Hearing Sessions for the emerging Local Plan, the Council has prepared a number of changes, known as Main Modifications, to the Epping Forest District Local Plan Submission Version (2017) to address issues of soundness and/or legal compliance identified by the Inspector. These are put forward without prejudice to the Inspector's final conclusions on the Plan.

As the preparation of the emerging Local Plan has reached a very advanced stage, subject to the Inspector's Advice regarding the need for additional Main Modifications, the highest weight should be accorded to LPSV policies in accordance with paragraph 48 of the NPPF. The following policies are relevant to the determination of this application;

DM9	High Quality Design
DM10	Housing Design and Quality

### **Summary of Representations**

Number of neighbours Consulted: 2. 1 response received.

Site notice posted: No, not required.

#### **15 DUKES AVENUE – OBJECTION**

THEYDON BOIS PARISH COUNCIL – STRONG OBJECTION. The Parish Council objects to this proposal, which it is concerned could become an unwelcome precedent for development of this nature in Theydon Bois. This current retrospective planning application seeks to regularise a previous report submitted to EFDC's Enforcement Team at the time when the development was first being carried out. The addition of railings has effectively created a roof terrace to the rear of 13 Dukes Avenue, directly above the flat roofed part of the ground floor rear extension of that property. The railings would facilitate use of the roof in question as an outdoor living or recreation space. The Planning Committee did not feel that these would be simply 'decorative'. Railings are not usually inserted around single-storey flat-roofed structures and these would appear to be there to facilitate use of the flat roof. The negative impact of this development on the amenity and privacy of residents at adjacent property 15 Dukes Avenue is severe, as outlined by the neighbours in their letter to EFDC dated 22 July, which they have shared with the Planning Committee. The flat roof around which the railings have been constructed directly overlooks primary ground and first floor habitable rooms of 15 Dukes Avenue, and the railings are visually conspicuous above the garden patio area of that property in an overly dominant manner. The level of consequent intrusion suffered by the residents of 15 Dukes Avenue can be deduced from the photographs provided with their letter to EFDC of 22 July. It is also possible that the amenity of the neighbouring property at 11 Dukes Avenue could be negatively affected by this development, albeit to a lesser extent. The Planning Committee of the Parish Council has raised objection to this application. We would be prepared to send a representative to an Area Planning Subcommittee of EFDC, if this method of determination is deemed appropriate. It should be noted that when 13 Dukes Avenue was extensively extended from being a bungalow to a substantial dwellinghouse, no windows were permitted to be added to the flank walls of the dwelling under Condition 3 of the Grant of Planning Permission for planning application EPF/1675/98, with the stated given reason being "To safeguard the privacy of adjacent properties." Therefore, this development has a detrimental effect on neighbour amenity. The Parish Council is of the view that it also represents an intensification of use that has resulted in a

significant loss of amenity to at least one adjacent neighbouring property in terms of visual impact, overlooking, and potential light and noise nuisance. The Committee noted that the proposal may also be of poor, and potentially unsafe, design and that it fails to safeguard and enhance the setting and character of the local environment. The roof around which the railings have been installed was unlikely to have been constructed to be a weight bearing terrace. As a result, the Planning Committee finds no part of this proposal to be acceptable in terms of its effect on the immediate neighbouring properties, and that its construction, and the use it facilitates, are both out of keeping with built development within the vicinity. The Committee therefore strongly objects to this proposal, believing it to be contrary to Policies CP2(iv), DBE1, DBE2, DBE9 and DBE10 of the Epping Forest District Local Plan 1998 with alterations of 2006 (the Current Local Plan), with policies DM9 and DM10E of the Epping Forest District Local Plan, Submission Version 2017 (the New Local Plan), and provisions of the National Planning Policy Framework, 2021.

### **Planning Considerations**

The main issues for consideration in this case are:

- a) The impact on the character and appearance of the locality;
- b) The impact on the living conditions of neighbouring properties;
- c) Representations received

#### *Character and Appearance*

The railings are located to the rear of the application site and are not visible from the highway. They project from the first-floor rear elevation and wrap around a ground floor extension. In terms of their character and appearance, the railings are not at odds with the application dwelling and are therefore considered acceptable. The railings are not visible from the highway and are not considered to disrupt or set an unwanted precedent in the street scene.

#### *Living Conditions*

The main properties to consider as part of this application are No.15 and No.11 Dukes Avenue, and No.3 The Weind.

##### No.15 Dukes Ave:

Whilst the application dwelling is detached, it is in very close proximity to No.15, leaving very little space between the two properties. No.15 has a ground-floor flank window and first-floor flank window which face the application dwelling. Whilst visible from No.15, the railings are less than 1m high and are not therefore considered to have a detrimental impact on the occupants in terms of visual impact or loss of daylight/sunlight.

Should the area enclosed by these railings be used as balcony or terrace however, the users would have a direct view of No.15's ground-floor lounge window and first-floor bedroom window. The impact of such overlooking into habitable rooms is considered an excessive loss of privacy for the occupants of No.15. Further, any users of the enclosed area would overlook much of No.15's rear garden which wraps around the application site's northern and western boundaries.

Notwithstanding the above, the submitted plans show no access from the host dwelling to the area enclosed by the railings. This has been confirmed by the Enforcement Officer who attended site in April 2022. Given that this demonstrates that the railings have been installed for decorative purposes only, the impact on neighbour amenity in terms of overlooking, loss of privacy and increased noise and disturbance is negated. In light of this, the proposal is deemed acceptable, and a condition will be recommended to prevent the use of this area for amenity purposes.

No.11 Dukes Ave:

This property sits further back than the application dwelling. It is separated from the application dwelling by a driveway and from the enclosed area by the application dwelling's existing extension. Its impact is therefore considered limited in terms of overlooking, loss of privacy, visual amenity, and loss of daylight/sunlight.

No.3 The Weind:

Given that the site is separated from this property by No.15 Dukes Avenue's rear garden, and the distance between the properties, it is not considered to have a detrimental impact on the amenities of the occupants.

### *Representations Received*

#### No.15 Dukes Avenue

- *“The railings have substantially harmed the visual amenity of our property. They are particularly visible from our ground and first floor bedrooms, lounge, dining area and patio, in a position where you would not normally expect to see railings (decorative or otherwise) and we believe have no architectural or decorative merit. Due to the slope of Dukes Avenue, the first floor of 13 Dukes Avenue starts at a level half way up the first floor of our property (15 Dukes Ave). This results in the railings having an even more imposing presence.”*

The railings are less than 1m high and are of a relatively simple design. They are not considered to cause an excessive loss of amenity and do not therefore warrant a refusal on these grounds.

- *“Whilst the planning application refers to these as ‘decorative railings’ it is clear that their presence provides a means for a change of use to the first-floor flat roof, either for plants or relaxation. Anyone on this roof area would look directly into our bedroom windows on ground and first floor level, our downstairs living room, downstairs dining area, and completely overlook our patio. We believe this would be an unacceptable invasion of our privacy.”*

The speculative use of the railings is not material to the determination of this application. The submitted plans show no access from the host dwelling to the area enclosed by the railings, as confirmed and photographed by the Enforcement Officer who attended site in April 2022. A condition is recommended preventing any future use of the area for amenity purposes.

- *“When the original bungalow on the 13 Dukes Ave site was converted to a 4 bedroom house, it was on condition that only a single storey extension was built on our side to avoid unacceptable invasion of privacy to habitable rooms.”*

Whilst the use of the area as a balcony or first-floor terrace would have an unacceptable impact on No.15's amenities, there is no evidence to suggest such a use and a condition is recommended to prevent this use.

- *“The use of this enclosed roof area, overlooking and elevated above the adjoining gardens provides a platform from which increased noise and disturbance will be broadcast across neighbouring properties.”*

The speculative use of the railings is not material to the determination of this application. The submitted plans show no access from the host dwelling to the area enclosed by the railings, as confirmed and photographed by the Enforcement Officer who attended site in April 2022. A condition is recommended preventing any future use of the area for amenity purposes.

- *“Additions to 13 Dukes Ave that have already been made (side & front dormers, front sky light (without planning permission), a mix of different styles and frame colours of windows) have already detracted from the appearance of this property. The addition of the railings has confounded this.”*

The railings are not visible from the highway and do not disrupt the street scene as a result. At less than 1m high and of a relatively simple design, they are not considered to cause an excessive loss of amenity and do not therefore warrant a refusal on these grounds.

- *“If approved, we believe this addition of railings would set an unwanted precedent within the village and to the wider community.”*

The railings are not visible from the highway, street scene or wider area. Whilst the inclusion of a balcony may be considered an unwanted precedent, this speculative use of the railings is not material to the determination of this application.

#### Theydon Bois Parish Council

- *“The addition of railings has effectively created a roof terrace to the rear of 13 Dukes Avenue, directly above the flat roofed part of the ground floor rear extension of that property. The railings would facilitate use of the roof in question as an outdoor living or recreation space. The Planning Committee did not feel that these would be simply ‘decorative’. Railings are not usually inserted around single-storey flat-roofed structures and these would appear to be there to facilitate use of the flat roof.”*

The speculative use of the railings is not material to the determination of this application. The submitted plans show no access from the host dwelling to the area enclosed by the railings, as confirmed and photographed by the Enforcement Officer who attended site in April 2022. A condition is recommended preventing any future use of the area for amenity purposes.

- *“The negative impact of this development on the amenity and privacy of residents at adjacent property 15 Dukes Avenue is severe, as outlined by the neighbours in their letter to EFDC dated 22 July, which they have shared with the Planning Committee. The flat roof around which the railings have been constructed directly overlooks primary ground and first floor habitable rooms of 15 Dukes Avenue, and the railings are visually conspicuous above the garden patio area of that property in an overly dominant manner. The level of consequent intrusion suffered by the residents of 15 Dukes Avenue can be deduced from the photographs provided with their letter to EFDC of 22 July. It is also possible that the amenity of the neighbouring property at 11 Dukes Avenue could be negatively affected by this development, albeit to a lesser extent.”*

Whilst the use of the area as a balcony or first-floor terrace would have an unacceptable impact on neighbouring amenities, there is no evidence to suggest such a use and a condition is recommended to prevent this use.

- *“It should be noted that when 13 Dukes Avenue was extensively extended from being a bungalow to a substantial dwellinghouse, no windows were permitted to be added to the flank walls of the dwelling under Condition 3 of the Grant of Planning Permission for planning application EPF/1675/98, with the stated given reason being “To safeguard the privacy of adjacent properties.” Therefore, this development has a detrimental effect on neighbour amenity. The Parish Council is of the view that it also represents an intensification of use that has resulted in a significant loss of amenity to at least one adjacent neighbouring property in terms of visual impact, overlooking, and potential light and noise nuisance.”*

Whilst the use of the area as a balcony or first-floor terrace would have an unacceptable impact on neighbouring amenities, there is no evidence to suggest such a use and a condition is recommended to

prevent this use. Further, the development is not considered to cause excessive harm in terms of visual impact or loss of daylight/sunlight as stated in the Neighbouring Amenity section of this report.

- *“The Committee noted that the proposal may also be of poor, and potentially unsafe, design and that it fails to safeguard and enhance the setting and character of the local environment. The roof around which the railings have been installed was unlikely to have been constructed to be a weight bearing terrace.”*

The application is for the retention of decorative railings. There is no evidence to suggest that the area enclosed by the railings will be used as a balcony or first-floor terrace and a condition is recommended to prevent such use.

### **Conclusion**

For the reasons set out above having regard to all matters raised, it is recommended that conditional planning permission be granted with planning conditions.

**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: Rhian Thorley**

**Direct Line Telephone Number: 01992 564115 or if no direct contact can be made please email:**

[contactplanning@eppingforestdc.gov.uk](mailto:contactplanning@eppingforestdc.gov.uk)

### **Conditions: (2)**

- 1 The development hereby permitted shall be retained strictly in accordance with the following approved plans:  
PL.1A; PL.2A; PL.3A; PL.4A; PL.5A; PL.6A; PL.8A; PL.9A; PL.10A; PL.11A.

Reason: For the avoidance of doubt and to ensure the proposal is built in accordance with the approved plans.

- 2 Access to the area enclosed by the decorative railings permitted shall be for maintenance or emergency purposes only. The area enclosed by the decorative railings permitted shall not be used for ancillary purposes including as a seating area, roof garden, terrace, patio or similar amenity area.

Reason: The development does not satisfy the standards considered acceptable by the Local Planning Authority for a balcony or first floor terrace, in accordance with policy DBE1 of the adopted Local Plan 1998 & 2006, Policies DM9 and DM10 of the Local Plan Submission Version 2017, and the NPPF.

### **Informatives: (1)**

- 3 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and



any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.