

**Extract from Area Planning Subcommittee East on 12 August 2009.  
Report Item No: 1**

<b>APPLICATION No:</b>	EPF/1020/09
<b>SITE ADDRESS:</b>	Caffe Nero 271 High Street Epping Essex CM16 4DA
<b>PARISH:</b>	Epping
<b>WARD:</b>	Epping Lindsey and Lindsey and Thornwood Common
<b>APPLICANT:</b>	Nero Holdings Ltd
<b>DESCRIPTION OF PROPOSAL:</b>	Retention of ground floor A1/A3 use.
<b>RECOMMENDED DECISION:</b>	No Recommendation

*This application is before this Committee because;*

- *it is an application that is considered by the Director of Planning and Economic Development as appropriate to be presented for a Committee decision (Pursuant to Section P4, Schedule A (k) of the Council's Delegated Functions) following discussions at the Area Sub-Committee East on 13<sup>th</sup> May 2009.*
- *it is an application contrary to the provisions of the approved Development Plan (Pursuant to Section P4, Schedule A (a) of the Council's Delegated Functions).*

**Description of Proposal:**

The applicant seeks consent for the retention of the ground floor mixed A1/A3 use. The proposals seek to retain the business trading as Caffe Nero.

A similar application was refused under EPF/1456/06, enforcement action has been initiated and the appeal against the enforcement notice has been dismissed.

The current application differs from that which was previously considered as follows:

- The business has now been successfully trading since April 2007 and additional generic information has been supplied detailing consumer habits of customers suggesting the Cafe increases footfall in the High Street.
- The current application includes a proposed window display of a floor-to-ceiling set of 4 shelves to display goods for retail across the front window, replacing existing table and chairs in this area.
- The current economic climate differs from when the application was previously considered.
- Recent planning applications and appeals which have taken place subsequent to the determination of the previous application.

### **Description of Site:**

271 High Street is a terraced unit situated between two A2 uses, the Halifax on the corner with Buttercross Lane and the Abbey National. The site is situated within the Conservation Area and within the Retail Core of Epping High Street. The property is not listed.

The site is currently trading as Caffe Nero with a mixed A1 and A3 use. The size of the unit and habits of consumers results in approximately 21% of customers taking food products away for consumption off the premises, with the remaining eating onsite. Some food products are heated or reheated onsite, however no cooking takes place. The store currently maintains 48 seats with an additional 4 seats in the window.

### **Relevant History:**

EPF/1456/06 – Retrospective application for Change of Use to mixed A1/A3  
This application was refused under delegated powers for the following reason:

*The development results in an unacceptable amount of non-retail units within the identified primary shopping frontage and will result in more than two non-retail units together. The development therefore undermines the retail function of the Town Centre contrary to policy TC4 of the adopted Local Plan.*

No appeal was lodged against the planning application and enforcement proceedings were commenced. The Enforcement proceedings were appealed and dismissed. The Enforcement proceedings require the primary function for consumption of food and drink on the premises to cease and remove all furniture facilitating the primary purpose (food and drink consumption onsite). Some limited seating could remain and sale for consumption off the premises can continue.

### **Policies Applied:**

#### Epping Forest District Local Plan and Alterations policies:

- CP1 – Achieving Sustainable Development Objectives
- CP6 – Achieving Sustainable Urban /Development Patterns
- TC1 – Town Centre Hierarchy
- TC2 – Sequential Approach
- TC3 – Town Centre Function
- TC4 – Non-retail Frontage
- TC5 – Window Displays
- DBE9 – Loss of amenity
- DBE12 – Shopfronts
- ST1 – Location of Development

The following National Guidance is also of relevance:

- PPS1 – Delivering Sustainable Development
- PPS6 – Planning for Town Centres
- Consultation Paper on a new Planning Policy Statement 4 – Planning for Sustainable Economic Development (published for consultation in December 2007, not yet adopted).

### **SUMMARY OF REPRESENTATIONS:**

The two immediate neighbouring properties were notified and a site notice was erected in the Cafe window. The following responses were received:

EPPING TOWN COUNCIL: Committee object to this application. Council noted the successful defence of the Local Plan provisions against non-retail frontage in regard to the applicant property. The Planning Committee are concerned that if this application is now approved, it will be impossible for the planning authority to defend Epping Town Centre against further erosion to the non-retail frontage in accord with Policy TC4. Committee therefore request the District Council to look very closely at this issue so as to ensure a consistent approach in conformity with published Local Plans.

- 2 Letters of objection:

23 CROWS ROAD – Object on the grounds of the previous refusal.

ST AGNES, 62A BOWER HILL – Object on the grounds of the previous refusal and expenditure of the Council to date.

- 9 Letters of support:

23 HIGHFIELD GREEN – Support a business attracting people to the High Street and a vacant unit would not benefit the High Street.

20 SILVER BIRCH AVENUE - Support a popular shop that is an attraction in the High Street and attentive to customers with disabilities.

34 BEAUFORT CLOSE – Support a busy business which encourages trips to surrounding shops and allows training assistant dogs on the premises.

20 SILVER BIRCH AVENUE – A popular meeting place for the local community

179 LINDSEY STREET – A well frequented business which operates as well as other coffee shops. A vacant unit would be difficult to fill in present economic climate.

67 ST JOHNS ROAD – A popular outlet attracting customers to the High Street. An enforced closure would be detrimental and unreasonable with other service providers such as hairdressers and nail bars allowed.

20 LADYFIELDS, LOUGHTON – A popular venue with good access for buggies, part of the Epping experience.

47 WEALD BRIDGE ROAD – A good refuge when waiting for buses and a good facility for elderly customers.

### **Issues and Considerations:**

The main issue for Members to consider is whether the information which is supplied in this fresh application is sufficient to justify a departure from policy and the previous decision issued.

In principle the application remains contrary to Local Plan policy resulting in a non-retail frontage of more than 30% (32.5%) and three adjoining non-retail units. As a mixed use with predominant sales relating to the A3 (Restaurant and Café) element, little emphasis can be placed on the A1 (Shop) use of the unit, as such Members would be justified to uphold the previous decision issued by Officers. The Council's shopping policies are intended to support the vitality and viability of Town Centres by retaining attractive, varied retail core centres in accordance with PPS6.

The applicant has now been trading since 2007 and has been able to demonstrate a regular custom of in excess of 2200 visits per week, more than 300 daily. Many customers visit the unit specifically to meet friends or because of the ease of accessibility in the spacious layout which is

particularly attractive to the elderly, those with disabilities and those with children: this is evident from the letters of support detailed above.

The applicant has now provided information relating to a survey for the reason for customers visiting Town Centres, the information submitted specifically relates to a study in Rugby, however whilst clearly not being in our district or local, this information can be considered indicative of consumer trends. This information established the main purpose of the visit to the Town Centre, 39% were shopping, 24% were not visiting solely to shop but would do so, 17% were visiting solely to visit Caffè Nero and the remainder were meeting friends, working or using non-retail facilities elsewhere. This information suggests not only that footfall is increased around the store, but also that the Café itself is an attraction.

Members may view this additional information cumulatively with the letters of support, as sufficient to demonstrate that although not a primarily retail use, the presence of a mixed A1/A3 café does not detract from the viability of the Town Centre in this location as other non-retail uses may.

Members may also wish to reflect on planning appeals and applications which have been considered subsequent to the previous application, many of which have been viewed in the current economic downturn. At the enforcement appeal for this site the Inspector made comment on the number of visiting clientele to the store and the apparent support from surrounding businesses and the public. Officers would suggest that Members may view this unit as a function supporting the vitality and viability of the Town Centre.

More recently, in an application in Theydon Bois, Members permitted an additional non-retail unit beyond usual policy with the addition of Belgique, although not in an area with a retail frontage policy, this application did permit a non-retail use where retail use should be encouraged. In this instance it was considered the unit did not result in dead daytime frontage and that it increased local footfall. The same principle may be considered for Epping Town Centre, although it is acknowledged that there are other café type uses in the locality, but with the addition of a shop window display, Members could consider the proposals more acceptable than the previously refused scheme.

Should Members consider that the applicant has now demonstrated that there is no loss of vitality to the Town Centre as a result of the occupation by Caffè Nero, then whilst there is a departure from retail frontage policies, the objective underpinning policy to retain vitality in Town Centres may not have been compromised. This view could be supported by emergent PPS4 which supports flexibility to changing economic climates and consumer trends in line with a view to delivering sustainable development (PPS1).

### **Summary**

Officers have presented this application to Members without recommendation. This is because on this occasion the application details are very finely balanced. There is clear policy reason to refuse planning permission and the application has been previously refused and enforcement has been upheld, therefore the Council is in a position to continue these proceedings. However, this is the first time this planning application has been directly in front of Members and the applicant has now come forward, offering the insertion of a window display and additional information to demonstrate that the operator use does not detract from the viability and vitality of the Town Centre. Members need to reach a view whether this demonstration is sufficient to override policy principles to achieve underlying policy objectives. This flexibility is promoted by emergent PPS4, however this policy remains to be formally adopted.

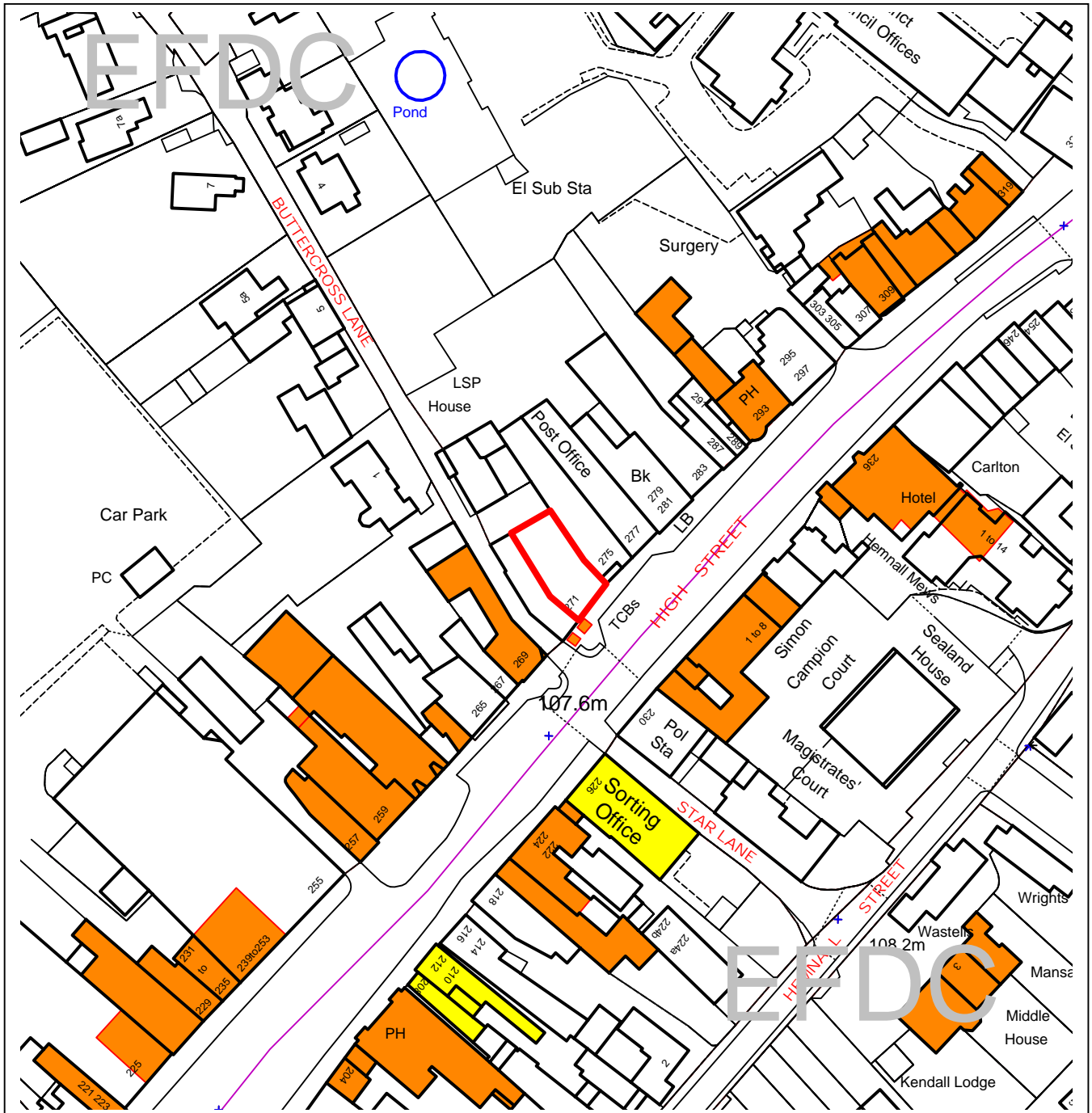
Should Members be minded to refuse the application, it would be reasonable to do so on the same basis as the previous application and Officers will seek to resume enforcement action.

Should Members be minded to approve the scheme in light of the additional information, Officers would recommend a condition requiring the window display to be retained and the use to be only mixed A1/A3 and not sole use as A3 at any time to ensure the premises is not later used solely as a restaurant or purely a seating hot food Café. As it would be contrary to adopted Local Plan policy, particularly TC4 because of the town centre's percentage of non-retail being more than 30%, the matter would then need to be referred on to District Development Control Committee for a decision.



# Epping Forest District Council

## Area Planning Sub-Committee East



The material contained in this plot has been reproduced from an Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery. (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

EFDC licence No.100018534

Agenda Item Number:	1
Application Number:	EPF/1020/09
Site Name:	Caffe Nero, 271 High Street Epping, CM16 4DA
Scale of Plot:	1/1250