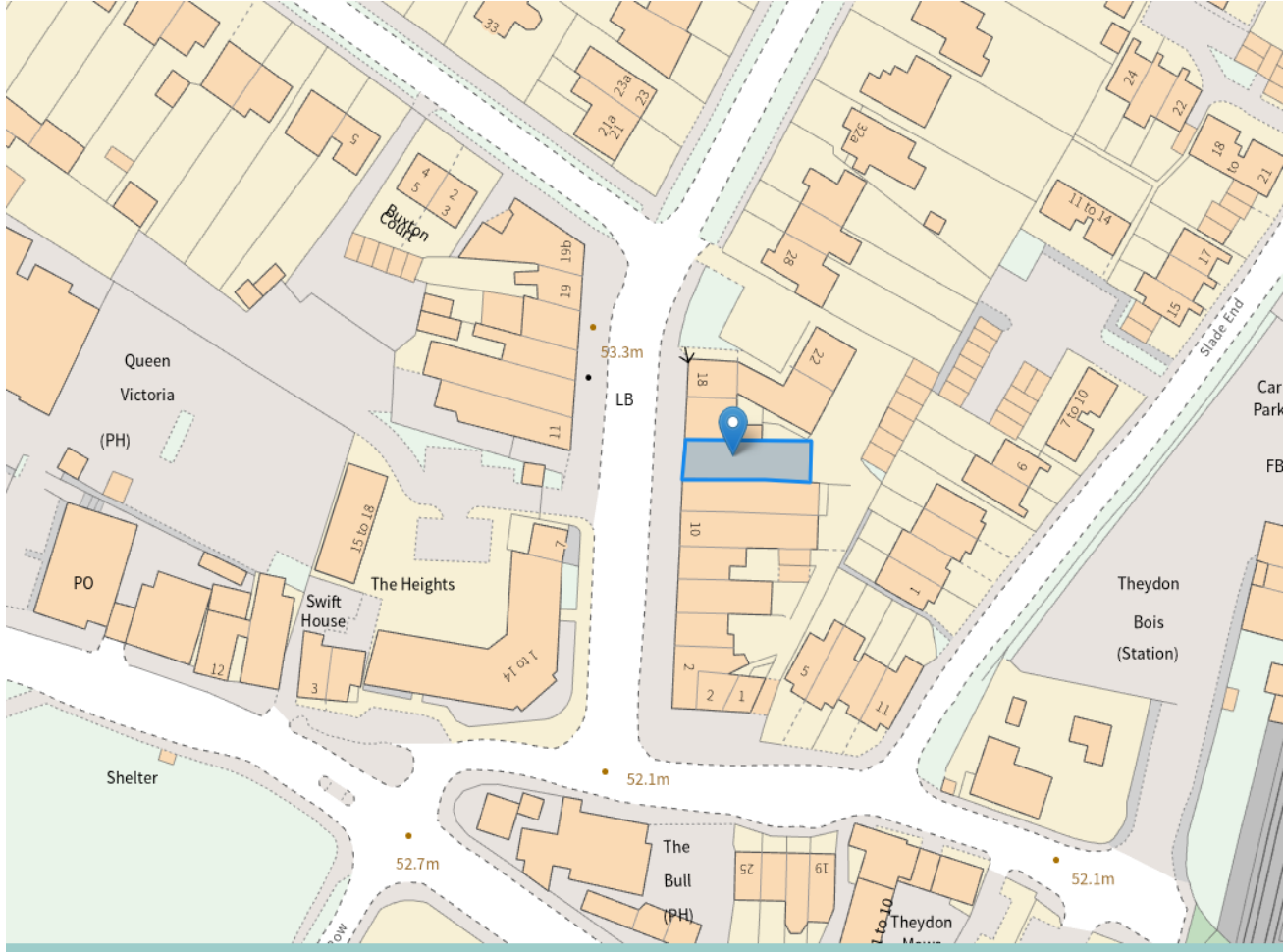




# EFDC



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Application Number:	EPF/2709/22
Site Name:	14, Forest Drive, Theydon Bois, Epping, CM16 7EY

# OFFICER REPORT

**Application Ref:** EPF/2709/22  
**Application Type:** Full planning permission  
**Applicant:** Mr Chris Keen  
**Case Officer:** Ian Ansell  
**Site Address:** 14, Forest Drive, Theydon Bois, Epping, CM16 7EY  
**Proposal:** Application for a proposed change of hours from 6pm to 10pm.  
**Ward:** Theydon Bois  
**Parish:** Theydon Bois  
**View Plans:** <https://eppingforestdcpr.force.com/pr/s/planning-application/a0h8d000001Ung3>  
**Recommendation:** Approve with Conditions

*This application is before this Committee since the recommendation is for approval contrary to an objection from a Local Council and at least one non-councillor resident, on planning grounds material to the application (Pursuant to The Constitution, Part 3: Scheme of Delegation to Officers from Full Council)).*

## **Description of Site:**

The application site lies on the east side of Forest Drive and comprises a ground floor single shop unit within the established commercial centre. The existing café use has facility for external seating on the frontage within the forecourt which is surrounded by a low wall.

The site forms part of a three storey block with residential accommodation on the upper floors independently accessed from the northern end of the block that comprises three shops, properties to the south are also three storey comprising shops and accommodation above.

The shopping area comprises a mix of local service shops, including some restaurant businesses.

## **Description of Proposal:**

The application seeks to extend operating hours of the premises until 10pm on all trading days. No other works are proposed with the application.

The application states that the additional hours seek to facilitate meeting additional costs. The nature of the business, as a café serving food and drink, is not intended to change.

## **Relevant History:**

EPF/0190/09 Continuance of use of premises as a mixed use for purposes within Use Class A1 (shops) and as a cafe within Use Class A3 (restaurants and cafes) and retention of an outside freezer unit approved subject to conditions including hours restriction.

EPF/2591/15 Use of area at front of shop as an enclosed seating area - approved

## **Policies Applied:**

*Adopted Local Plan:*

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
TC3	Town Centre Function
TC6	Local Centres and Corner and Village Shops
DBE9	Loss of Amenity
ST1	Location of development
ST2	Accessibility of development
ST4	Road Safety

*NPPF (July 2021):*

The revised 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 Framework.

In addition to paragraph 11, the following paragraphs of the NPPF are considered to be of relevance to this application:

- 2 Achieving sustainable development – paragraphs 7, 8, 10, 11, 12
- 8 Promoting healthy and safe communities – paragraphs 92, 97
- 9 Providing sustainable transport – paragraphs 104, 107, 108, 110, 111, 112
- 11 Making effective use of land – paragraphs 119, 122, 123, 124
- 12 Achieving well designed places – paragraphs 126, 130, 131, 132, 135
- 14 Meeting the challenge of climate change, flooding and coastal change – paragraphs 154, 159 – 169
- 15 Conserving and enhancing the natural environment – paragraphs 174, 175, 179 - 182, 183, 185, 186
- 16 Conserving and enhancing the historic environment – paragraphs 194, 195, 197, 199 – 205, 208

*Epping Forest District Local Plan (Submission Version) 2017:*

On 14 December 2017, the Council resolved to approve the Epping Forest District Local Plan (2011-2033) – Submission Version ("LPSV") for submission to the Secretary of State and the Council also resolved that the LPSV be endorsed as a material consideration to be used in the determination of planning applications.

The Council submitted the LPSV for independent examination on 21 September 2018. The Inspector appointed to examine the LPSV ("the Local Plan Inspector") held examination hearings between 12

February and 11 June 2019. As part of the examination process, the Council has asked the Local Plan inspector to recommend modifications of the LPSV to enable its adoption.

During the examination hearings, a number of proposed Main Modifications of the LPSV were 'agreed' with the Inspector on the basis that they would be subject to public consultation in due course. Following completion of the hearings, in a letter dated 2 August 2019, the Inspector provided the Council with advice on the soundness and legal compliance of the LPSV ("the Inspector's Advice"). In that letter, the Inspector concluded that, at this stage, further Main Modifications (MMs) of the emerging Local Plan are required to enable its adoption and that, in some cases, additional work will need to be done by the Council to establish the precise form of the MMs.

Although the LPSV does not yet form part of the statutory development plan, when determining planning applications, the Council must have regard to the LPSV as material to the application under consideration. In accordance with paragraph 48 of the Framework, the LPAs "may give weight to relevant policies in emerging plans according to:

- a) The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- b) 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
- c) 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)."

Footnote 22 to paragraph 48 of the NPPF explains that where an emerging Local Plan is being examined under the transitional arrangements (set out in paragraph 214), as is the case for the LPSV, consistency should be tested against the previous version of the Framework published in March 2012.

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 MMs, significant weight should be accorded to LPSV policies in accordance with paragraph 48 of Framework.

The following policies in the LPSV are considered to be of relevance to the determination of this application, with the advanced stage of the LPSV, all policies should be afforded significant weight:

No.	POLICY
SP1	Presumption in favour of sustainable development
E2	Centre Hierarchy / Retail Policy
T1	Sustainable transport choices
T2	Safeguarding of routes and facilities
DM9	High Quality Design

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

Date of site visit: 09 January 2023

Number of neighbours consulted: Eleven

Site notice posted: No, not required

Responses received: Two response received from residents at 14a FOREST DRIVE and 67 THEYDON PARK ROAD. Both raise concerns around potential noise disturbance, particularly from playing of music within the building until the later closing time.

Parish Council: Theydon Bois Parish Council have objected to the application commenting as under:

*Situated in the centre of a small parade of shops in Forest Drive, Theydon Bois, 'Bonhomie' is a café selling drinks, pastries and cakes, and brunch/deli-style hot and cold food. The business has the informal atmosphere of a café and is popular with families. The current Premises Licence for Bonhomie has opening times at 08:00 until 18:30 hours Monday to Sunday. This planning application is to extend opening times from 08:00 until 22:00 hours Monday to Sunday, and also to extend by the same hours*

*the Sale by Retail of Alcohol, the Provision of Late Night Refreshment, and the Provision of Recorded Music.*

*The two storey flats above Bonhomie are in residential occupancy and the locality enjoys a quiet ambience both during the daytime and in the evening. If this planning permission was to be granted, Bonhomie would be the only establishment on this side of Forest Drive to remain open after 6pm. We have noted that the current opening hours of this business appear to be Monday to Saturday 07:30 – 16:30, Sunday – Closed.*

*The café is currently licensed to serve alcohol from 08:00 to 18:00 hours. There are two dine-in restaurants on the opposite side of Forest Drive: one of these is licensed to open and serve alcohol from 11:00 to 22.30 (Il Bacio restaurant at 19B Forest Drive – to 23.00 Friday and Saturday); the other restaurant is licensed to open and serve alcohol from 12:00 to 23:00 (formerly Kuzine / Mazaca restaurant at 13 Forest Drive, just recently reopened as Filika).*

*The application is seeking to serve drinks and food both inside the premises, and outside the premises on the outdoor seating area. The disturbance to residents of the flats above, and also to residents of flats located above premises on the opposite side of the road, would be unacceptable. The whole feel of this predominantly quiet neighbourhood would change. Noise nuisance in the evening caused by music and customers inside Bonhomie would inevitably reverberate around several of the residential flats above. Customers eating and drinking outside during the evening, and arriving and leaving by car, would cause a serious disruption to all nearby residents – including those living further along Forest Drive and in Buxton Road.*

*There have been issues in the past whereby customers of the Il Bacio restaurant at 19B Forest Drive caused a public nuisance through drinking on the forecourt area immediately outside that restaurant. Following a hearing, EFDC Licensing imposed strict conditions on the Il Bacio premises licence whereby no food or drinks can be served outside the restaurant after 16:00 hours, and any doors to the restaurant must remain closed at all times. Smoking immediately outside the restaurant is restricted to 5 people at any time and must be supervised by a member of staff. The restaurant situated at 13 Forest Drive does not serve food or drinks outside at all.*

*For Bonhomie to trade into the evening and serve food and drink inside and outside would be an anomaly and set an extremely unwelcome precedent. It would negatively change the pleasant and predominantly tranquil atmosphere of the village's parade of shops – and the peaceful environment that is returned to its residents in the evening. Lighting of the premises into the evening is also a concern and conflicts with the Theydon Bois Dark Skies Policy.*

*If the business was to be open 7 days a week from 08:00 in the morning to 22:00 at night, serving alcohol and playing recorded music, it would be impossible to not cause disturbance to nearby residents, nor to avoid creating a negative impact on the amenity of residents. This quiet location is clearly not suitable for the proposed evening operation, which does not, in the Parish Council's view, have regard to the proximity of residential development, and conflicts with Policy DBE9 of the Epping Forest District Local Plan 1998 and Alterations 2006, and with Policy DM14B of the Epping Forest District Local Plan (Submission Version 2017). The Parish Council requests that Epping Forest District Council refuses this proposed change of hours planning application.*

### **Main Issues and Considerations:**

It is accepted that small businesses such as this are faced with increased costs and there is a need for greater flexibility in order for such businesses to continue to operate. The planning system should seek to help build in such flexibility where it can.

The site is located within the core commercial area of the settlement. In the context of the function of the business area, such uses are better suited to being located within the centre. In addition to the two

premises referred to in the Parish Council response that currently operate beyond the hours proposed in this application, the Bull Pub lies at the southern end of Forest Drive. Such a mix of uses and trading hours is not uncommon.

Concerns are raised about potential harm from the evening activity, but it is noted that the premises are not overly large in floorspace or seating capacity and a steady flow of customers would not be expected to result in a concentration of noise or activity that may be expected to be unduly intrusive.

Safeguards can be introduced through conditions. Noting the restrictions imposed of the restaurant at 19B Forest Drive, a restriction on the use of the forecourt would be appropriate. The Licensing Sub-Committee at its last meeting granted a new premises license which restricted use of the forecourt to no later than 9pm and officers would recommend a consistent approach in this location. A restriction on the use of amplified sound equipment is also appropriate, and could extend throughout operating hours in light of comments raised by local respondents. Such restrictions will address what appear to be the primary concerns raised by the limited increase in hours proposed

### **Conclusion:**

The proposed extension to the trading hours provides an opportunity for the business to respond to current market challenges. Sufficient controls can be put in place through conditions to safeguard residential amenities.

***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: Ian Ansell  
Direct Line Telephone Number: 01992 564481***

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

### **Conditions: (4)**

- 1 The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The use hereby permitted shall only be open to customers between the hours of 0800hrs to 2200hrs on any day of the week.

Reason: In order to minimise disturbance to local residents, in accordance with policies RP5A and DBE9 of the adopted Local Plan and Alterations 1998 & 2006, policy DM21 of the Local Plan Submission Version 2017, and the NPPF.

- 3 Notwithstanding condition 2 above, no food or drink shall be served or consumed on the forecourt area other than between the hours of 0800hrs to 2100hrs on any day of the week.

Reason: In order to minimise disturbance to local residents, in accordance with policies RP5A and DBE9 of the adopted Local Plan and Alterations 1998 & 2006, policy DM21 of the Local Plan Submission Version 2017, and the NPPF.

- 4 Any amplified sound equipment installed on the premises shall be operated so as to be inaudible above ambient noise levels from within any residential property.

Reason: Reason: In order to minimise disturbance to local residents, in accordance with policies RP5A and DBE9 of the adopted Local Plan and Alterations 1998 & 2006, policy DM21 of the Local Plan Submission Version 2017, and the NPPF.

**Informatives: (2)**

- 5 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.
- 6 This decision is made with reference to the following plan numbers: Location plan and block plan