

## Report of the Head of Planning, Sport and Green Spaces

**Address** 86 EAST AVENUE HAYES

**Development:** Change of use from retail (Use Class A1) to a nursery (Use Class D1)

**LBH Ref Nos:** 40159/APP/2015/4610

**Drawing Nos:** A102  
Location Plan (1:1250)  
Supporting Photographs  
A101

**Date Plans Received:** 17/12/2015                      **Date(s) of Amendment(s):**

**Date Application Valid:** 15/02/2016

### 1. **SUMMARY**

The application seeks planning permission for the change of use from retail (Use Class A1) to nursery (Use Class D1). The proposal would result in the separation of retail properties by more than 12m and as such would fail to retain the retail function and attractiveness of the secondary shopping area of the Hayes Town Centre. Furthermore in the absence of details in respect of operating hours and noise surveys the applicant has failed to provide a robust case to support the proposed use. It is considered necessary to provide a noise survey to quantify the existing noise levels and the noise levels associated with the nursery use and to demonstrate that the proposed opening hours would not detract from residential amenity. In addition, the applicant has failed to demonstrate that the proposal would not result in additional on-street parking which would be detrimental to highway and pedestrian safety.

### 2. **RECOMMENDATION**

**REFUSAL for the following reasons:**

#### 1            NON2            **Non Standard reason for refusal**

The proposal, by reason of the loss of a retail unit and the concentration of non-retail uses that would result, would erode the retail function of the secondary shopping area of the Hayes Town Centre thereby harming the vitality and viability of the centre. The proposal is therefore contrary to Policy S12 of the Hillingdon Local Plan: Part Two - Unitary Development Plan Saved Policies (November 2012) and Policy 2.15 of the London Plan (2015).

#### 2            NON2            **Non Standard reason for refusal**

In the absence of information relating to operating hours, details of numbers of children and staff and parking provision, the applicant has failed to demonstrate that the proposal would not result in additional on-street parking which would be detrimental to highway and pedestrian safety. The proposal is thus contrary to Policies AM7 and AM14 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

#### 3            NON2            **Non Standard reason for refusal**

The proposed development has failed to demonstrate that unacceptable levels of noise and disturbance to surrounding residential occupiers would not occur. In the absence of any noise surveys or noise mitigations measures, the proposed development is

considered to result in noise and disturbance to the detriment of the amenity of adjoining occupiers, contrary to Policies OE1 and OE3 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

## **INFORMATIVES**

### **1 I52 Compulsory Informative (1)**

The decision to REFUSE planning permission has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

### **2 I53 Compulsory Informative (2)**

The decision to REFUSE planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) as incorporated into the Hillingdon Local Plan (2012) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including the London Plan (2015) and national guidance.

AM2	Development proposals - assessment of traffic generation, impact on congestion and public transport availability and capacity
AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.
BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE20	Daylight and sunlight considerations.
BE21	Siting, bulk and proximity of new buildings/extensions.
BE24	Requires new development to ensure adequate levels of privacy to neighbours.
BE26	Town centres - design, layout and landscaping of new buildings
BE28	Shop fronts - design and materials
R10	Proposals for new meeting halls and buildings for education, social, community and health services
OE1	Protection of the character and amenities of surrounding properties and the local area
OE3	Buildings or uses likely to cause noise annoyance - mitigation measures
OE4	New or improved roads or railways - mitigation measures
OE5	Siting of noise-sensitive developments
OE6	Proposals likely to result in pollution
S1	New retail development within the shopping hierarchy
S5	Proposals for new or expanded markets or other retail use of open land
S6	Change of use of shops - safeguarding the amenities of shopping areas
S12	Service uses in Secondary Shopping Areas
LDF-AH	Accessible Hillingdon , Local Development Framework, Supplementary Planning Document, adopted January 2010

### **3 I59 Councils Local Plan : Part 1 - Strategic Policies**

On this decision notice policies from the Councils Local Plan: Part 1 - Strategic Policies

appear first, then relevant saved policies (referred to as policies from the Hillingdon Unitary Development Plan - Saved Policies September 2007), then London Plan Policies (2015). On the 8th November 2012 Hillingdon's Full Council agreed the adoption of the Council's Local Plan: Part 1 - Strategic Policies. Appendix 5 of this explains which saved policies from the old Unitary Development (which was subject to a direction from Secretary of State in September 2007 agreeing that the policies were 'saved') still apply for development control decisions.

#### **4**

In dealing with the application the Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. The Council's supports pre-application discussions.

We have however been unable to seek solutions to problems arising from the application as the principal of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.

### **3. CONSIDERATIONS**

#### **3.1 Site and Locality**

The application property comprises of a ground floor vacant former retail use located on the south eastern side of East Avenue which lies within Hayes Town Centre as identified within the Hillingdon Local Plan - Saved UDP Policies (November 2012). The Council's Town Centre Surveys confirm that the application property has been used as a tuition centre (D1) use for the period 2014-2015. However no planning permission was granted for this use. The authorised use of the application property is retail and hence the application is assessed as such.

#### **3.2 Proposed Scheme**

The application seeks planning permission for the change of use from retail (Use Class A1) to nursery (Use Class D1). The submitted plans show the provision of 3 classrooms and a reception area and 4 x toilets. The application site does not include any external space or on site parking. The application forms confirm that there will be 2 full time employees and 4 x part-time employees. No details have been provided about number of children or hours of operation.

The proposed development would lead to the loss of existing A1 retail space. Therefore the application has been referred to the Planning Committee for consideration in accordance with the requirements of the Council's Scheme of Delegation.

#### **3.3 Relevant Planning History**

##### **Comment on Relevant Planning History**

There is no planning history of relevance to this application.

### **4. Planning Policies and Standards**

#### **UDP / LDF Designation and London Plan**

The following UDP Policies are considered relevant to the application:-

Part 1 Policies:

PT1.BE1 (2012) Built Environment

Part 2 Policies:

AM2	Development proposals - assessment of traffic generation, impact on congestion and public transport availability and capacity
AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.
BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE20	Daylight and sunlight considerations.
BE21	Siting, bulk and proximity of new buildings/extensions.
BE24	Requires new development to ensure adequate levels of privacy to neighbours.
BE26	Town centres - design, layout and landscaping of new buildings
BE28	Shop fronts - design and materials
R10	Proposals for new meeting halls and buildings for education, social, community and health services
OE1	Protection of the character and amenities of surrounding properties and the local area
OE3	Buildings or uses likely to cause noise annoyance - mitigation measures
OE4	New or improved roads or railways - mitigation measures
OE5	Siting of noise-sensitive developments
OE6	Proposals likely to result in pollution
S1	New retail development within the shopping hierarchy
S5	Proposals for new or expanded markets or other retail use of open land
S6	Change of use of shops - safeguarding the amenities of shopping areas
S12	Service uses in Secondary Shopping Areas
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## **5. Advertisement and Site Notice**

**5.1** Advertisement Expiry Date:- Not applicable

**5.2** Site Notice Expiry Date:- Not applicable

## **6. Consultations**

### **External Consultees**

11 neighbouring properties were consulted by letter dated 16.2.16 and a site notice was displayed to the front of the site which expired on 17.3.16.

1 letter of comment has been received requesting that access to the nursery is achieved via East

Avenue and not the alleyway linking the site to Coldharbour Lane.

Officer comment: rights of access over this alleyway are not a material planning consideration.

### **Internal Consultees**

None received.

## **7. MAIN PLANNING ISSUES**

### **7.01 The principle of the development**

Policy R10 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) states that the Local Planning Authority will regard proposals for new meeting halls, buildings for education, social, community and health services, including libraries, nursery, primary and secondary school buildings, as acceptable in principle subject to the other policies of the Local Plan.

Paragraph 8.24 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) defines secondary shopping areas as peripheral to the primary areas and in which shopping and service uses are more mixed although Class A1 shops should still be the majority use. Paragraph 8.26 states that as a guideline, the Council will normally seek to prevent a separation or an increase in the separation of Class A1 units of more than about 12m, that is broadly the width of two typical shop fronts. Class A1 shops should remain the predominant use in secondary areas and the Local Planning Authority will expect at least 50% of the frontage to be in class A1 use.

Policy S12 establishes that the change of use from Class A1 to non Class A1 uses in secondary frontages where there remains adequate retail facilities to accord with the character and function of the shopping centre in order to maintain the vitality and viability of the town centre will be acceptable.

The Local Planning Authority's aim is to retain the retail function of all shopping areas to meet the needs of the area each serves. Shops grouped conveniently together assist the process of search for and comparison of goods and hence attract shoppers. As such the Local Planning Authority will exercise strict control over the loss of shops to other uses.

Within this secondary frontage for Hayes Town Centre, there are 59 individual retail (A1) units and 51 non-retail units. Hence, the existing percentage of units with retail (A1) uses is at 53.6%. If the application proposal for the change of use was permitted, there would be 58 individual retail (A1) units and 52 non-retail units. Hence, the percentage of units with retail (A1) uses would be 52.7% if the application were permitted.

When assessed against the Council's survey data for uses within the secondary shopping frontage of Hayes Town Centre, the proposed change of use would result in the loss of a further 4.7m of retail frontage which would bring the total A1 use down to 384.1m. This would result in the retention of 57% of the total secondary shopping frontage in retail use and as such, would remain above the 50% threshold as advised within paragraph 8.26 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012). However, the development would create a separation of more than 12m between class A1 units.

The proposal would therefore fail to retain the function and attractiveness of the secondary shopping area of the Hayes Town Centre, and would fail to maintain its vitality and viability. The proposal is therefore in conflict with Policy S12 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

### **7.02 Density of the proposed development**

Not applicable to this application.

**7.03 Impact on archaeology/CAs/LBs or Areas of Special Character**

Not applicable to this application.

**7.04 Airport safeguarding**

Not applicable to this application.

**7.05 Impact on the green belt**

Not applicable to this application.

**7.07 Impact on the character & appearance of the area**

Policy BE1 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012) requires all new development to maintain the quality of the built environment including providing high quality urban design. Furthermore policies BE13 and BE15 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) resist any development which would fail to harmonise with the existing street scene or would fail to safeguard the design of existing and adjoining sites.

No alterations are proposed to the external appearance of the building and as such the proposal would not have any impact upon the visual amenity of the site or surroundings.

**7.08 Impact on neighbours**

Policy OE1 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) states permission will not be granted for uses which are likely to become detrimental to the character or amenities of surrounding properties and policy OE3 states buildings or uses which have the potential to cause noise annoyance will only be permitted if the impact can be mitigated.

The site is located within a town centre location with residential properties located at first floor level. It is considered that the applicant has failed to provide a robust case to support the proposed use. It is considered necessary to provide a noise survey to quantify the existing noise levels and the noise levels associated with the nursery use and to demonstrate that the proposed opening hours would not detract from residential amenity. Noise mitigation measures may also need to be explored and if necessary conditioned. It is considered that it would not be appropriate to secure these details by condition.

**7.09 Living conditions for future occupiers**

Not applicable to this application.

**7.10 Traffic impact, Car/cycle parking, pedestrian safety**

Policy AM7 of the Hillingdon Local Plan: Part Two - Saved Unitary Development Plan Policies (November 2012) considers whether the traffic generated by proposed developments is acceptable in terms of the local highway and junction capacity, traffic flows and conditions of general highway or pedestrian safety.

Policy AM14 states that new development will only be permitted where it is in accordance with the Council's adopted Car Parking Standards. These require a maximum provision of 1 space per 4 members of staff plus 3 spaces per nursery.

The application site does not have any off street parking and East Avenue is a Controlled Parking Zone. This part of the Hayes Town Centre has good public transport links. The application site is within walking distance of Hayes & Harlington Station and there are good bus links on Coldharbour Lane. However, without details of the number of children and any indication of hours of operation, it is considered that the applicant has failed to demonstrate that the proposal would not result in additional on-street parking or congestion which would be detrimental to highway and pedestrian safety. The proposal is thus contrary to Policies

AM7 and AM14 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

**7.11 Urban design, access and security**

See Section 7.07.

**7.12 Disabled access**

No issues raised.

**7.13 Provision of affordable & special needs housing**

Not applicable to this application.

**7.14 Trees, landscaping and Ecology**

Not applicable to this application.

**7.15 Sustainable waste management**

Not applicable to this application.

**7.16 Renewable energy / Sustainability**

Not applicable to this application.

**7.17 Flooding or Drainage Issues**

Not applicable to this application.

**7.18 Noise or Air Quality Issues**

These issues are addressed in the section above.

**7.19 Comments on Public Consultations**

The issues raised have been covered in the main report.

**7.20 Planning obligations**

Not applicable to this application.

**7.21 Expediency of enforcement action**

Not applicable to this application.

**7.22 Other Issues**

No other issues raised.

**8. Observations of the Borough Solicitor**

General

Members must determine planning applications having due regard to the provisions of the development plan so far as material to the application, any local finance considerations so far as material to the application, and to any other material considerations (including regional and national policy and guidance). Members must also determine applications in accordance with all relevant primary and secondary legislation.

Material considerations are those which are relevant to regulating the development and use of land in the public interest. The considerations must fairly and reasonably relate to the application concerned.

Members should also ensure that their involvement in the determination of planning applications adheres to the Members Code of Conduct as adopted by Full Council and also the guidance contained in Probity in Planning, 2009.

Planning Conditions

Members may decide to grant planning consent subject to conditions. Planning consent should not be refused where planning conditions can overcome a reason for refusal. Planning conditions should only be imposed where Members are satisfied that imposing

the conditions are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Where conditions are imposed, the Council is required to provide full reasons for imposing those conditions.

#### Planning Obligations

Members must be satisfied that any planning obligations to be secured by way of an agreement or undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 are necessary to make the development acceptable in planning terms. The obligations must be directly related to the development and fairly and reasonably related to the scale and kind to the development (Regulation 122 of Community Infrastructure Levy 2010).

#### Equalities and Human Rights

Section 149 of the Equalities Act 2010, requires the Council, in considering planning applications to have due regard to the need to eliminate discrimination, advance equality of opportunities and foster good relations between people who have different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The requirement to have due regard to the above goals means that members should consider whether persons with particular protected characteristics would be affected by a proposal when compared to persons who do not share that protected characteristic. Where equalities issues arise, members should weigh up the equalities impact of the proposals against the other material considerations relating to the planning application. Equalities impacts are not necessarily decisive, but the objective of advancing equalities must be taken into account in weighing up the merits of an application. The weight to be given to any equalities issues is a matter for the decision maker to determine in all of the circumstances.

Members should also consider whether a planning decision would affect human rights, in particular the right to a fair hearing, the right to respect for private and family life, the protection of property and the prohibition of discrimination. Any decision must be proportionate and achieve a fair balance between private interests and the public interest.

#### **9. Observations of the Director of Finance**

Not applicable to this application.

#### **10. CONCLUSION**

The proposal would result in the separation of retail properties by more than 12m and as such would fail to retain the retail function and attractiveness of the secondary shopping area of the Hayes Town Centre. Furthermore in the absence of details in respect of operating hours and noise surveys the applicant has failed to provide a robust case to support the proposed use. It is considered necessary to provide a noise survey to quantify the existing noise levels and the noise levels associated with the nursery use and to demonstrate that the proposed opening hours would not detract from residential amenity. In addition, the applicant has failed to demonstrate that the proposal would not result in additional on-street parking which would be detrimental to highway and pedestrian safety.

#### **11. Reference Documents**

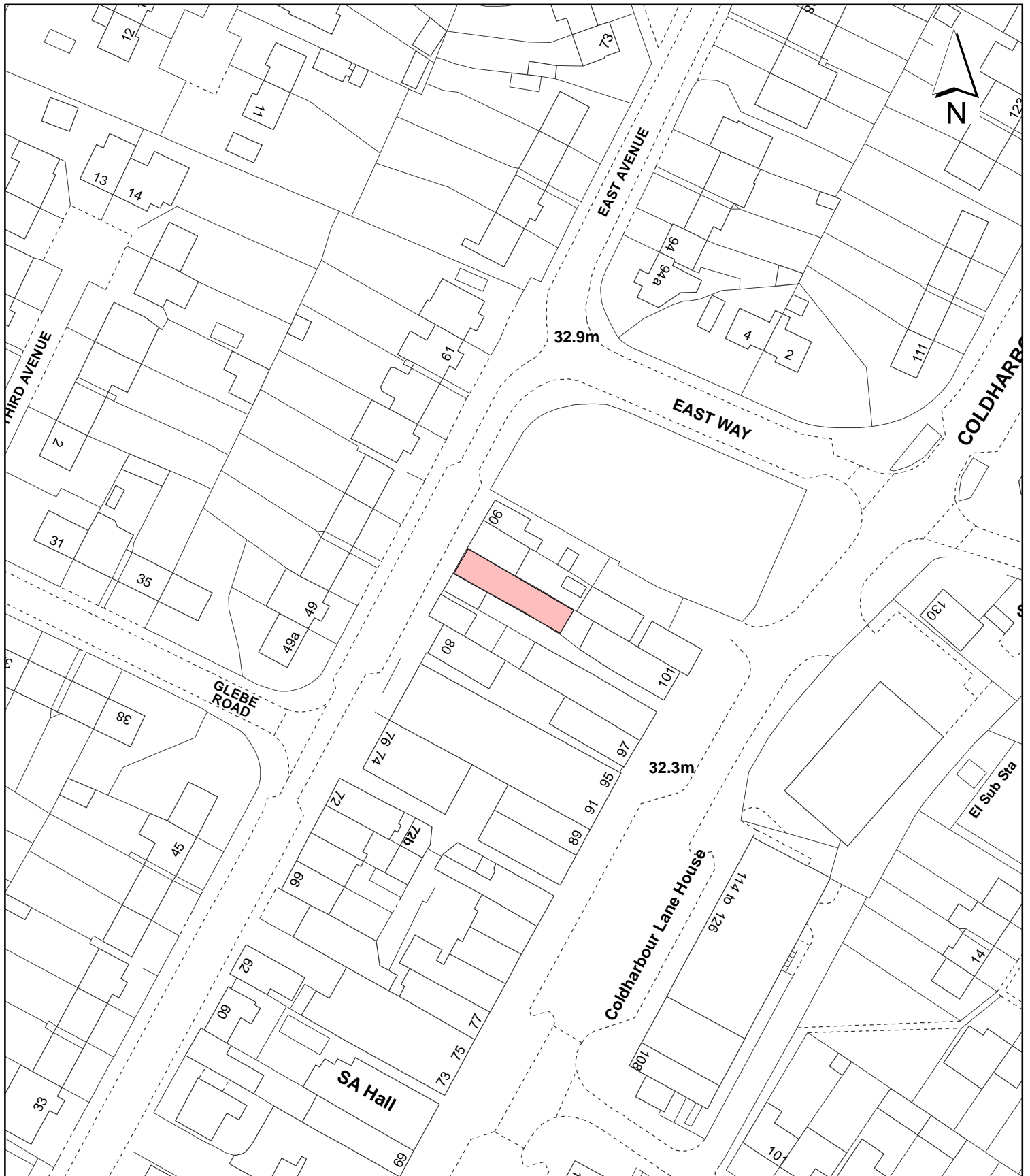
Hillingdon Local Plan: Part One - Strategic Policies (November 2012)  
Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012)  
The London Plan (2015)



Hillingdon Design and Accessibility Statement: Accessible Hillingdon  
National Planning Policy Framework

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**Notes:**

 Site boundary

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Site Address:

**86 East Avenue  
 Hayes**

**LONDON BOROUGH  
 OF HILLINGDON**  
 Residents Services  
 Planning Section

Civic Centre, Uxbridge, Middx. UB8 1UW  
 Telephone No.: Uxbridge 250111

Planning Application Ref:

**40159/APP/2015/4610**

Scale:

**1:1,000**

Planning Committee:

**Central & South**

Date:

**May 2016**



**HILLINGDON**  
 LONDON