

Report of the Head of Planning, Sport and Green Spaces

Address 839 UXBRIDGE ROAD HAYES

Development: Extension to rear canopy for use as a shisha lounge (Sui Generis) attached to existing restaurant (Use Class A3) (Retrospective)

LBH Ref Nos: 71927/APP/2016/2009

Drawing Nos: P-101
P-100

Date Plans Received: 26/05/2016 **Date(s) of Amendment(s):**

Date Application Valid: 06/06/2016

1. SUMMARY

The application is retrospective. The rear of the premises has been extensively developed by the erection of the canopy which covers most of the available open area. It has been furnished as a permanent area/room with tables, chairs and sofas. The overall design, use of materials and extensive scale fails to harmonise with or complement the original building. In addition, the level of activities has led to an overintensive use of the site resulting in harm to the amenity of the nearby residents through increased noise and disturbance.

Accordingly, the application is recommended for refusal.

2. RECOMMENDATION

REFUSAL for the following reasons:

1 NON2 Non Standard reason for refusal

The development by reason of its siting, design, layout, size, site coverage and materials, results in a cramped development of the site, which is visually incongruous and overdominant to the detriment of the character and appearance of the existing property and the visual amenity of the surrounding area. The development is therefore contrary to Policies BE13 and BE19 of the Hillingdon Local Plan: Part Two - Saved Unitary Development Plan Policies (November 2012).

2 NON2 Non Standard reason for refusal

The development results in an over-intensive use of the site resulting in an unacceptable level of noise and general disturbance to the detriment of the amenities of adjoining residential properties and the quality of their living environment. The proposal is therefore contrary to Policies OE1, OE3 and OE5 of the Hillingdon Local Plan: Part Two - Saved Unitary Development Plan 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.

AM14	New development and car parking standards.
BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE19	New development must improve or complement the character of the area.
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
LPP 4.7	(2015) Retail and town centre development
LPP 4.8	(2015) Supporting a Successful and Diverse Retail Sector and related facilities and services
LPP 4.9	(2015) Small Shops
NPPF	National Planning Policy Framework
NPPF1	NPPF - Delivering sustainable development
NPPF2	NPPF - Ensuring the vitality of town centres
NPPF7	NPPF - Requiring good design

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 Councils 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.

The Council has however been unable to seek solutions to problems arising from the application as the principal of the proposal is clearly contrary to local plan policies and negotiation could not overcome the reasons for refusal.

3. CONSIDERATIONS

3.1 Site and Locality

The application site forms part of a three storey retail and residential block located on the southern side of Uxbridge Road, Hayes near its junction with West Drayton Road. It comprises of a ground floor Class A3 commercial unit with residential on the first and second floors. The site forms part of a designated parade as identified in the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

To the rear there is an area of land which is covered by the canopy, of approximately 38 square metres, subject to this application. The canopy covers most of the area to the rear, although there is a side passage which leads to a gate and a small retained open area to the rear. Beyond the rear of the site is a private access which leads from Uxbridge Road and runs parallel with the rear of the whole parade and to the front of the parade there are several parking bays.

3.2 Proposed Scheme

The application seeks retrospective planning consent for use as a Shisha lounge (Sui Generis) involving formation of an outdoor seating area and a canopy. The canopy and its sides are felt covered over a frame, forming a flat roofed structure. Beneath the canopy are extensive seating areas and tables.

3.3 Relevant Planning History

Comment on Relevant Planning History

There is no relevant planning history relating to the site.

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:

AM14 New development and car parking standards.

BE13 New development must harmonise with the existing street scene.

BE15 Alterations and extensions to existing buildings

BE19 New development must improve or complement the character of the area.

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

LPP 4.7 (2015) Retail and town centre development

LPP 4.8 (2015) Supporting a Successful and Diverse Retail Sector and related facilities and services

LPP 4.9 (2015) Small Shops

NPPF National Planning Policy Framework

NPPF1	NPPF - Delivering sustainable development
NPPF2	NPPF - Ensuring the vitality of town centres
NPPF7	NPPF - Requiring good design

5. Advertisement and Site Notice

5.1 Advertisement Expiry Date:- Not applicable

5.2 Site Notice Expiry Date:- Not applicable

6. Consultations

External Consultees

Neighbours were notified on 08/06/2016 and a site notice was displayed on 13/06/2016.

Two replies objecting to the proposal were received raising the following issues:

1. The application is retrospective.
2. The use is already in operation and results in late night noise, smoke, smells and general disturbance.
3. Parking problems occur due to the use.
4. Anti-social behaviour.

24 copies of a circular letter, individually signed, in support of the application have also been received. This states that there have been no traffic or noise issues, the customers are pleasant and this is a local asset which brings business to the area.

Internal Consultees

EPU:

With reference to this planning application, I carried out a joint visit to this site on 4th July 2016, with my colleague from the Food, Health & Safety Team. We inspected the shisha lounge and my colleague confirmed that it was not compliant with The Smokefree (Premises & Enforcement) regulations 2007. Therefore, EPU objects to this application.

If the applicant were to alter the structure so that the Shisha lounge complies with The Smokefree (Premises & Enforcement) regulations 2007, EPU would still object to the retention of the shisha lounge as it is not considered an appropriate amenity for the area due to the close proximity of residents/occupiers in the adjoining properties.

Highways Officer:

The retrospective application is for an extension to the rear of the property in Uxbridge Road, Hayes for use as a smoking lounge. Uxbridge Road is a classified road with on-street car parking outside the property. There is rear lane pedestrian access to the property but no car or cycle parking is provided on the site. The property has a PTAL value of 2 (poor). There are existing parking restrictions in the surrounding area. Servicing would be appear to be from Uxbridge Road frontage. The retrospective application relates to a 38sq.m extension which is likely to create a small increase in trips to the site. There are no changes to parking, access or servicing to the site as a result of the application. On the basis of the above I have no significant objection to the application.

7. MAIN PLANNING ISSUES

7.01 The principle of the development

Local shopping parades serve an important role in providing convenience shopping that caters for the needs of local residents. Paragraph 8.22 and policy S7 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) seeks to ensure that all residential areas are within half a mile of at least five essential shop uses, although not necessarily within the same parade.

The application site is an existing cafe use (Class A3) within the parade of 7 units. The change of use relates to the rear part of the site and there is no change proposed to the cafe itself.

As there is no loss of retail use, no issues are raised in terms of Policy S7 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 BE13 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) states that development will not be permitted if the layout and appearance fail to harmonise with the existing street scene or other features in the area which the Local Planning Authority considers it desirable to retain or enhance.

The rear of the premises has been extensively developed by the erection of the rear canopy which has been furnished as a permanent area/room with tables, chairs and sofas. The development extends over almost the entire rear area of the premises and the overall scale, size, design, use of materials and fails to harmonise with or compliment the original building. The canopy is thus considered to result in a visually intrusive development, which is detrimental to amenity and character of the area and contrary to policies BE13, BE15 and BE19 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

7.08 Impact on neighbours

In terms of assessing the effects of the proposal on residential amenity, the relevant factors are those of noise, odour and general disturbance.

The nearest residential properties are above and adjacent to the application site. It is not proposed to install a ventilation duct to the rear of the property. The main unit is used for the preparation and consumption of only cold food and drinks.

It is estimated that thirty or more people can be accommodated in the canopy structure. With open ends no provision has been made to reduce the noise generated by patrons or the television/sound systems within the canopy area of the premises. It is considered that as a matter of fact and degree the overall size of the developments and the use for smoking shisha pipes represents a change of use from the authorised as a cafe to a mixed use comprising cafe and shisha lounge. In addition there are no controls in place to limit the opening hours of the premises and consequently, noise and disturbance results in the late evening/night which transmits together with the smoke and smell from the shisha

pipes up and across to surrounding residential properties. The applicant states that the use is between midday and midnight. Late night opening in a residential area is likely to result in an unacceptable level of noise and disturbance. No details of any mitigation measures have been provided with the application to demonstrate that any potential noise, disturbance and odour generated from the site could be overcome.

As a result it is considered that the use of the site has a negative impact upon the amenity of nearby residents and occupants through increased noise and disturbance and odour. This is contrary to Local Plan policies OE1, OE3 and OE5 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) which strongly resist development which would have an adverse impact upon the amenity of residents through increased noise and disturbance and odour.

7.09 Living conditions for future occupiers

Not applicable to this application.

7.10 Traffic impact, Car/cycle parking, pedestrian safety

The application is for an extension to the rear of a property in Uxbridge Road, Hayes for use as a smoking lounge. Uxbridge Road is a classified road with on-street car parking outside the property. There is rear lane pedestrian access to the property but no car or cycle parking is provided on the site. The property has a PTAL value of 2 (poor). There are existing parking restrictions in the surrounding area. Servicing would be appear to be from Uxbridge Road frontage. The retrospective application relates to a 38sq.m extension which is likely to create a small increase in trips to the site. There are no changes to parking, access or servicing to the site as a result of the application. On the basis of the minimal increase in traffic/parking requirements no objection is raised to the application on these grounds.

7.11 Urban design, access and security

See elsewhere in this report

7.12 Disabled access

The site has level access. No adverse issues are 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 discussed in Section 7.

7.19 Comments on Public Consultations

The letters in favour are noted. Whilst there is no conflict with these views, these issues do not raise material considerations which would overcome the identified harms associated with the development.

The issues relating to noise, smells and general disturbance are covered in the main body of the report.

7.20 Planning obligations

Not applicable to this application.

7.21 Expediency of enforcement action

The application is retrospective. In the event of refusal, the development will remain unauthorised and it will be necessary to consider whether enforcement action is expedient and a report to a later committee will be submitted.

7.22 Other Issues

None

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

It is considered that the canopy to the rear of the site and use as a Shisha Lounge has led to an over-intensive of the site resulting in harm to the amenity of the nearby residents through increased noise and disturbance and increased odour. It is also considered that the canopy is harmful to the visual amenity of the site and the surrounding area. The development is therefore contrary to policies BE13, BE15, BE19, OE1, OE3 and OE5 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).

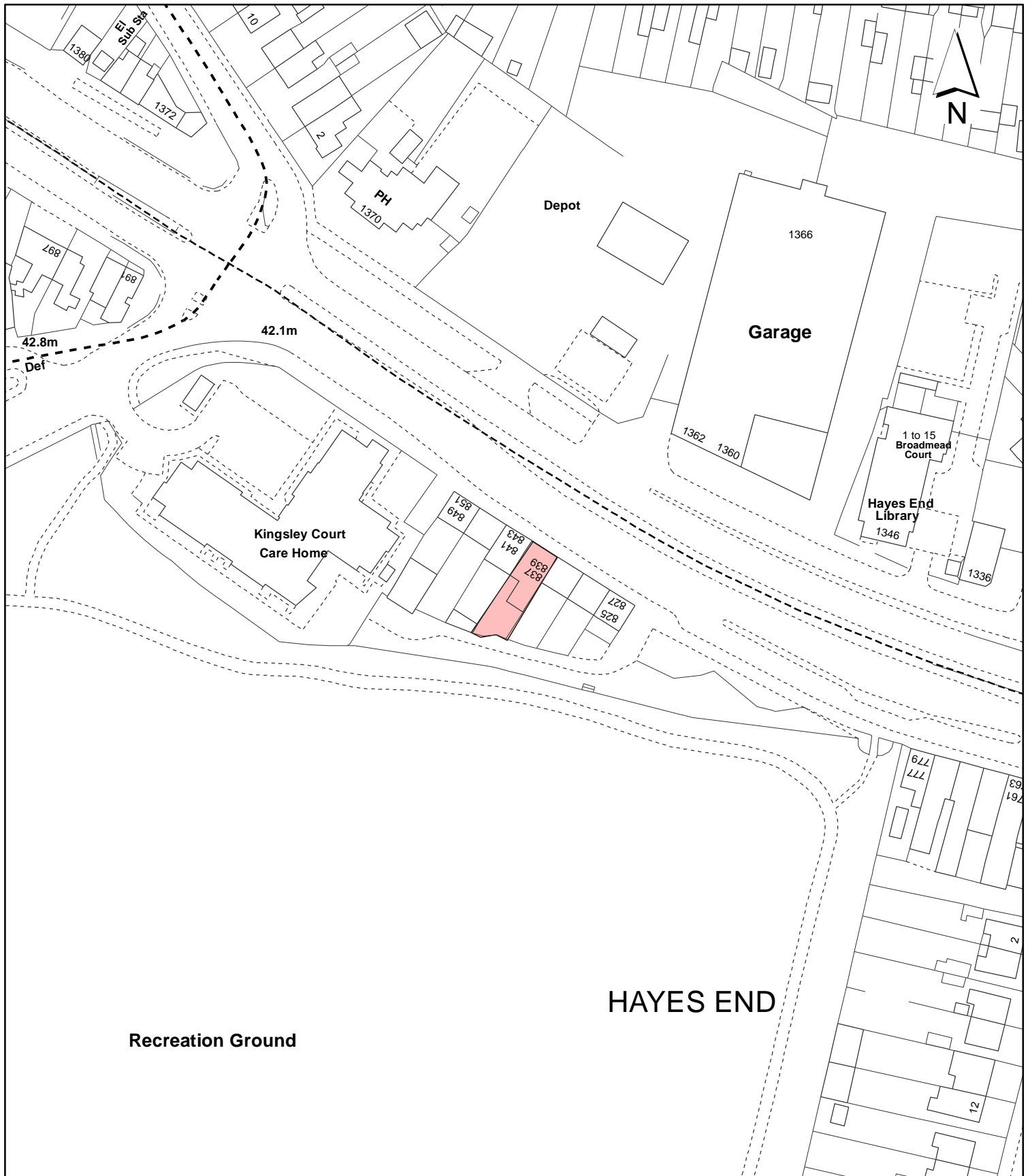
Accordingly, the application is recommended for refusal.



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

Contact Officer: Cris Lancaster

Telephone No: 01895 250230



<p>Notes:</p> <p> Site boundary</p> <p>For identification purposes only.</p> <p>This copy has been made by or with the authority of the Head of Committee Services pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act).</p> <p>Unless the Act provides a relevant exception to copyright.</p> <p>© Crown copyright and database rights 2016 Ordnance Survey 100019283</p>	<p>Site Address:</p> <p>839 Uxbridge Road Hayes</p>		<p>LONDON BOROUGH OF HILLINGDON Residents Services Planning Section Civic Centre, Uxbridge, Middx. UB8 1UW Telephone No.: Uxbridge 250111</p> 
	<p>Planning Application Ref:</p> <p>71927/APP/2016/2009</p>	<p>Scale:</p> <p>1:1,250</p>	
	<p>Planning Committee:</p> <p>Central & South</p>	<p>Date:</p> <p>August 2016</p>	