

Report of the Head of Planning, Transportation and Regeneration

Address 843 UXBRIDGE ROAD HAYES

Development: Change of use from retail (Use Class A1) to cafe and shisha bar (sui generis) to include a single-storey rear extension

LBH Ref Nos: 630/APP/2018/797

Drawing Nos: SA6/9/10
SA6/9/20
SA6/9/30 Rev. C
Noise Impact Assessment (Ref: 16971.NIA.01)
Design and Access Statement
Loss of Retail Statement
Transport Statement

Date Plans Received: 26/02/2018 **Date(s) of Amendment(s):**

Date Application Valid: 26/02/2018

1. SUMMARY

The proposal seeks to change the use of the existing unit to a sui generis (shisha bar) use and to construct a rear extension which is to be used as a shisha smoking area.

2. RECOMMENDATION

REFUSAL for the following reasons:

1 NON2 Non Standard reason for refusal

The change of use of the site by reason of the loss of a retail unit within this parade would erode the retail function and attractiveness of the area, harming the vitality and viability of the parade to the detriment of the Local Community. The proposal is therefore contrary to Policy S7 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, odour 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 S6 of the Hillingdon Local Plan: Part Two - Saved Unitary Development Plan Policies (November 2012).

3 NON2 Non Standard reason for refusal

The rear extension, by reason of its siting, design, layout, size and materials, 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. Furthermore, the site coverage of the extension would result in the majority of the amenity space to the rear of the site being lost, to the detriment of the amenities of occupants of the building. The development is therefore contrary to Policies BE13, BE15, BE19 and BE23 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 - The Spatial Development Strategy for London consolidated with alterations since 2011 (2016) and national guidance.

BE13	New development must harmonise with the existing street scene.
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.
S6	Change of use of shops - safeguarding the amenities of shopping areas
S7	Change of use of shops in Parades
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
AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.
LPP 6.13	(2016) Parking
NPPF7	NPPF - Requiring good design

3. **CONSIDERATIONS**

3.1 **Site and Locality**

The site is located on the A4020 (Uxbridge Road) which, at this point, is dual carriage. Lay-by parking is provided to the front of the site although its use is not specifically allocated to it. The site is positioned between the Hillingdon Heath Local Shopping Centre, which is approximately 500 metres to the west, and the Uxbridge Road, Hayes Town Centre which is approximately 1 km to the east. The road in the immediate vicinity is lined by terraces of small retail and restaurants units, which have either residential or office uses above ground floor level. There are also pockets of other commercial development including a plant storage yard. Neighbouring side streets are generally residential in nature. A shisha bar is currently operating unlawfully at the neighbouring property, 839 Uxbridge Road and is the subject of enforcement action.

The site itself is occupied by a three-storey property which forms part of a terrace of seven

similar properties. The ground floor of the building does not appear to be occupied at present. The upper two-storeys of the building are each occupied by a residential flat. To the rear of the building is a hard surfaced yard area which benefits from rear access by way of a narrow service track.

3.2 Proposed Scheme

The proposal relates to the change of use of the ground floor of the existing building from A1 retail to a shisha bar and cafe which is a sui generis use. A sizeable single-storey rear extension measuring approximately 11.6 metres in length by 5.7 metres in width would be erected and the shisha smoking area would be confined to the extension. The extension would utilise shutters as a means to mitigate against noise generated by the use. An extractor and flue would be installed with the stack projecting above the roof of the extension.

The application is identical to the previously refused submission, with the exception of the additional noise mitigation measures and traffic details provided.

3.3 Relevant Planning History

630/APP/2012/60 843 Uxbridge Road Hayes

Change of use from Use Class A1 (Shops) to Use Class A3 (Restaurants and Cafes) and two signs including installation of sheltered outdoor seating, canopy and shed to rear (Retrospective application).

Decision: 17-04-2012 Refused

630/APP/2013/1190 843 Uxbridge Road Hayes

Change of use from use class A1 (Shops) to use class A3 (Restaurants and Cafes) to include folding canopy to rear and folding outdoor shelter for use as 'shisha lounge (Sui generis) (Retrospective application).

Decision: 08-09-2013 Refused

630/APP/2015/459 843 Uxbridge Road Hayes

Change of use from retail (Use Class A1) to restaurant/cafe (Use Class A3) and single storey rear extension

Decision: 28-04-2015 Refused

630/APP/2017/2334 843 Uxbridge Road Hayes

Change of use from shop (Use Class A1) to a mixed use of restaurant/shisha lounge (Use Class A3/sui generis) and single storey extension

Decision: 01-11-2017 Refused

71927/APP/2016/2009 839 Uxbridge Road Hayes

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

Decision: 09-08-2016 Refused

Appeal: 29-08-2017 Dismissed

Comment on Relevant Planning History

The Change of Use of this unit to a Shisha Bar has been consistently refused over the course of the last 6 years. A similar use at the adjoining unit (No. 839) has also been refused and subsequently dismissed at appeal.

The most recent lawful use of the unit was as a newsagents. An unlawful Change of Use to a shisha bar was carried out in 2012 and an application to regularise this was refused under 630/APP/2012/60. This also included an unlawful extension to the rear of the site which was required to be removed.

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:

BE13 New development must harmonise with the existing street scene.

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.

S6 Change of use of shops - safeguarding the amenities of shopping areas

S7 Change of use of shops in Parades

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

AM7 Consideration of traffic generated by proposed developments.

AM14 New development and car parking standards.

LPP 6.13 (2016) Parking

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

The application was advertised by way of a site notice displayed to the front of the building. Letters were also sent to the occupants of neighbouring properties to notify them of the proposed development and invite comments. Two letters received objecting on the following grounds:

1. There are already issues with parking and noise generated by use of No. 839 as a Shisha Bar, We have no confidence in the noise assessment and the transport assessment makes no sense.
2. Opening hours are not specified.
3. The smoke from the use will affect our health. We can constantly smell the product and are unable to open our windows on warm days.
4. The owners are 'shop hopping' along the parade and have had enforcement notices served on them in the past. This has killed trade on the parade.
5. Waste and litter have encouraged rats into the area.

Internal Consultees

FOOD HEALTH & SAFETY OFFICER:

Shisha smoking venues generally emit noise and smoke nuisance that has a detrimental effect on residents locally, additionally they tend to operate late into the evening resulting in further noise nuisance when people leave the premises when it closes.

The Health Act 2006 Smoke Free Legislation requires that all substantially enclosed workplaces and public places are smoke free.

A premises can, subject to any appropriate planning permission construct a compliant smoking shelter. Compliant smoking shelters must be 50% or greater permanently open, this means that measures that could be implemented to mitigate any noise nuisance cannot be used as they would make the smoking shelter less than 50% permanently open and therefore not compliant with smoke free.

ENVIRONMENTAL HEALTH UNIT (EPU):

Noise should be a point for refusal as if the building is to be 50% open the submitted noise report is incorrect and therefore there is insufficient technical information to support the application.

HIGHWAYS (Summary):

The application has been reviewed by the Highway Engineer who is satisfied that the proposal (subject to the recommended cycle provision and above condition) would not exacerbate congestion or parking stress, and would not raise any highway safety concerns, in accordance with policies AM2, AM7 and AM14 of the Development Plan (2012) and policies 6.3,6.9, and 6.13 of the London Plan (2016).

7. MAIN PLANNING ISSUES

7.01 The principle of the development

The proposal involves the Change of Use of an existing A1 unit, which is currently unoccupied, to a sui generis use. Policy S7 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012) relates specifically to parades of shops, such as the one in which the unit subject of this application is located. This policy seeks to prevent the loss of A1 units within shop parades where it would result in an over-concentration of non A1 uses, particularly if this would deprive nearby residents of essential services.

The application does not include any evidence of the marketing of the unit for A1 use so it

cannot be ascertained whether the opportunity for the unit to continue in retail use has been explored. A statement has been provided that contends that the proposed use would enhance the vitality of the parade of shops. However, the parade already includes a high proportion of A3 uses in the form of restaurants and does not currently include any A1 units providing an essential use.

It is not accepted that the provision of a further non A1 use, which caters for a niche market, would provide any benefit to the local residents who would frequent the parade and would, instead, result in further loss of premises for essential shop uses serving local residents.

Furthermore, change to a sui generis use means that the unit would not benefit from Permitted Development rights to revert to A1 use in the future.

As such, the loss of this retail unit would harm local convenience shopping provision, contrary with Policy S7 of the adopted Hillingdon Local Plan: Part Two - Saved Unitary Development Plan 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

The proposed change of use would not alter the appearance of the building, as visible within the street scene. However, it is considered that the size of the proposed extension is excessive, particular when comparing its footprint with that of the existing building and that, consequently, the extension would appear overly dominant towards the existing building and within the site as a whole. Furthermore, the extension would occupy a large proportion of the amenity space to the rear of the building which, at present, could be used by the occupants of the upper floor flats.

The design issues, coupled with the change and intensification of use that the extension would facilitate, would negatively impact upon the character of the surrounding area through the introduction of increased levels of activity.

It is therefore considered that the proposal would conflict with Local Plan (Part Two) Policy BE 19.

7.08 Impact on neighbours

The proposed extension would be modest in height, when considered against the height of site boundary treatment and, as such, would not bring about undue levels of overshadowing towards neighbouring properties. Although there are side and rear facing openings, it is considered that any views offered towards neighbouring property would be interrupted by existing site boundary treatment. The proposal would therefore accord with Policies BE 20, BE 21 and BE 24 of the Local Plan (Part Two).

However, the extension significantly increases the floor space of the unit from approximately 36 m² to approximately 97 m², representing an increase in size in excess of

180%. It is considered that this would significantly intensify the use of the site to the degree that it would generate additional activity that would be disruptive to nearby residents.

This intensification of use would be exacerbated by the proposed use as a Shisha bar. Whilst hours of use can be controlled by planning condition, it is considered that the use would generate a level of noise and odour that would be detrimental to the amenities of neighbouring residents. The proximity of the unit to neighbouring residential property, including flats above the unit, is of particular concern due to the need for 50% of the smoking shelter to be permanently open in order to accord with The Health Act 2006 Smoke Free Legislation. The use of an open area such as this would result in difficulties in noise control that could not be overcome through changes in building design.

A noise assessment has been provided which identifies measures to control noise generated by the use. However, paragraph 7.0 of the assessment clearly states that the noise assessment is based on the extension without the inclusion of ventilation measures. As at least 50% of the extension has to be permanently open in order to comply with The Health Act 2006 Smoke Free Legislation, it is considered that the proposed use of Class 1 absorptive panels and adoption of a noise management plan would not adequately control noise given that a large portion of the extension would be open.

There are also no details provided on how odour emissions will be controlled. An extractor is shown but, as stated before, the extension needs to be 50% open and, in any case, the stack discharges at a similar height to nearby windows.

It is therefore considered that the large extension proposed would lead to an intensive use that would unacceptably degrade the amenities of neighbouring residents by way of noise and odour emissions.

As a result it is considered that the proposed use of the site is not compatible with surrounding residential uses and would result in a negative impact upon the amenities of nearby residents and occupants due to noise and odour emissions, contrary to Local Plan (Part Two) Policies OE 1, OE 3 and S 6.

7.09 Living conditions for future occupiers

Not applicable to this application.

7.10 Traffic impact, Car/cycle parking, pedestrian safety

The Transport Statement was submitted with the application and reviewed by the Council's Highway Engineer who was satisfied that the use could be carried out without any unacceptable impact upon the road network and pedestrian safety. It is noted that objectors have raised concerns over illegal parking but this is a highway enforcement issue.

7.11 Urban design, access and security

No further comments.

7.12 Disabled access

There is step free access available directly from the pavement on Uxbridge Road.

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 matters are fully addressed in section 7.08 of this report.

7.19 Comments on Public Consultations

The comments provided show that nearby residents are concerned about amenity impact. This is a material planning matter and, following assessment of the application, it is considered that the concerns of residents are valid due to the level of noise and odour emissions that the proposed use would generate.

7.20 Planning obligations

Not applicable to this application.

7.21 Expediency of enforcement action

The site was used as a cafe/shisha bar from 2011 for a considerable period of time and an enforcement notice relating to it was served. The use ceased at the beginning of 2017, however, the enforcement notice still remains on the property.

7.22 Other Issues

The site has now been the subject of a series of planning applications for a similar use over the course of almost 6 years. It is considered that all avenues have been explored and it is likely that, should any further application be submitted, the Council would be minded to decline to determine the application as per Section 70A of the Town and Country Planning Act 1990 (as amended) which allows a Local Planning Authority to decline to determine an application if the local planning authority have refused more than one similar application and the authority think there has been no significant change in the relevant considerations.

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 Probitry 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

No satisfactory justification for the loss of the A1 retail unit has been provided. It is important that A1 uses are retained in parades of shops such as this in order to serve the essential needs of the nearby community.

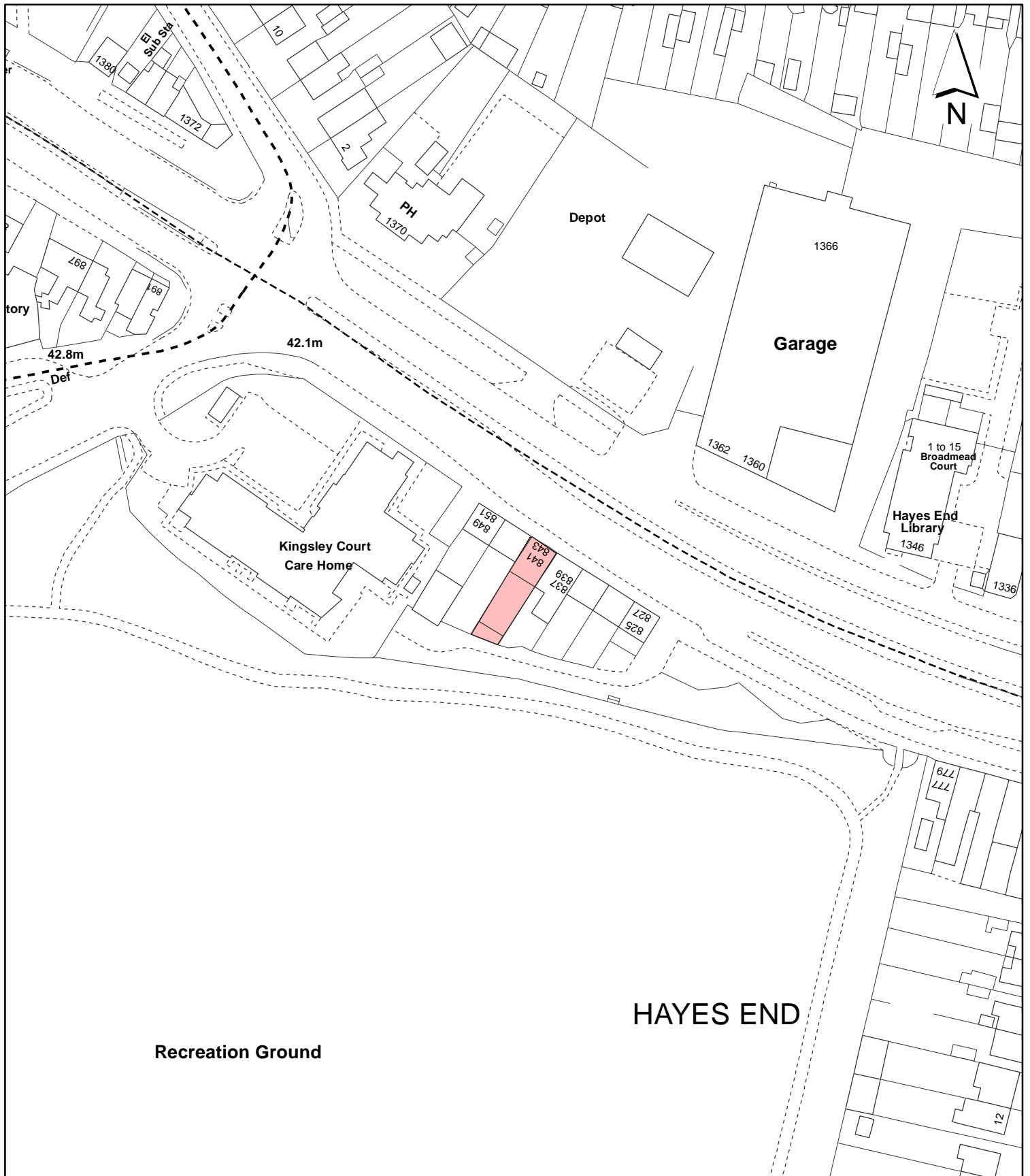
The proposed use as a shisha bar would be detrimental to the amenities of neighbouring residents due to the levels of noise and odour emitted, which could not be adequately mitigated against. The size of the extension which would support the shisha use would also allow for excessive levels of use that would be out of keeping with the character of the surrounding area.



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 (2016)
National Planning Policy Framework (NPPF)
London Borough of Hillingdon SPD : Noise (2006)

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<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 2018 Ordnance Survey 100019283</p>	<p>Site Address:</p> <p>843 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>HILLINGDON LONDON</p>
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