

Report of the Head of Planning & Enforcement

Address 25 JOEL STREET NORTHWOOD

Development: Change of use to Class A3 Restaurant and Class A5 hot food takeaway and elevational alterations.

LBH Ref Nos: 56137/APP/2010/48

Drawing Nos: Design & Access Statement
5046.01 (1:1250 Location Plan)
Specification - sound insulation; air extraction & ventilation details
5046:03E
5046:06

Date Plans Received: 11/01/2010 **Date(s) of Amendment(s):**

Date Application Valid: 22/01/2010

1. SUMMARY

This application is for the renewal of the planning permission granted on appeal in March 2007 for the change of use from class A1 to classes A3 and A5.

Whilst the loss of the retail unit would not comply with the Council's policies seeking to protect the retail function and attractiveness of the shopping centre, this matter was previously considered at appeal and given the comments of the Inspector in allowing the appeal, it is considered that a further refusal of planning permission on similar grounds would not be sustained at appeal.

2. RECOMMENDATION

APPROVAL subject to the following:

1 T8 Time Limit - full planning application 3 years

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON

To comply with Section 91 of the Town and Country Planning Act 1990.

2 OM1 Development in accordance with Approved Plans

The development shall not be carried out otherwise than in strict accordance with the plans hereby approved unless consent to any variation is first obtained in writing from the Local Planning Authority.

REASON

To ensure that the external appearance of the development is satisfactory and complies with Policy BE13 of the Hillingdon Unitary Development Plan Saved Policies (September 2007).

3 N15 Hours restriction for audible amplified music/sound

No music and/ or other amplified sound arising from the site shall be audible from the

inside of surrounding or adjacent premises between 2300 and 0700 hours.

REASON

To safeguard the amenity of the occupants of surrounding properties in accordance with Policy OE1 of the Hillingdon Unitary Development Plan Saved Policies (September 2007) and Policy 4A.20 of the London Plan (February 2008).

4 HLC1 Restaurants/Cafes/Snack Bars

The premises shall only be used for the preparation, sale of food and drink and clearing up between the hours of 08:00 and 23:30. There shall be no staff allowed on the premises outside these hours.

REASON

To safeguard the residential amenity of the occupiers and nearby properties, in accordance with Policies OE1 and OE3 of the Hillingdon Unitary Development Plan (Saved Policies September 2007).

5 NONSC Non Standard Condition

No front window shutters shall be used unless design details are first submitted to and approved in writing by the local planning authority. Any installation shall be made in accord with the approved details.

REASON: To safeguard the character and appearance of the street scene in accordance with policies BE13 and BE28 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

6 NONSC Non Standard Condition

The premises shall not be used for deliveries and collections, including waste collections other than between the hours of 08:00 and 18:00, Mondays to Fridays, 08:00 to 13:00 Saturdays and not at all on Sundays and Bank and Public Holidays.

REASON

To safeguard the amenity of surrounding areas, in accordance with Policy OE1 of the Hillingdon Unitary Development Plan Saved Policies (September 2007) and Policy 4A.20 of the London Plan (February 2008).

7 NONSC Non Standard Condition

The use hereby permitted shall not commence until the owner has made arrangements, to be submitted to and approved in writing by the Local Planning Authority, for the provision of a litter bins within and in the vicinity of the site.

REASON: To ensure that adequate provision is made for the disposal of litter likely to be generated by the proposed development, in the interests of maintaining a satisfactory standard of amenity in the locality, in accordance with policy S1 of the Hillingdon Unitary Development Plan.

8 NONSC Non Standard Condition

The uses hereby approved shall not commence until the submitted plans and details for refuse storage, air extraction and ventilation and sound insulation have been implemented. These details shall also be maintained for as long as the development remains in existence.

REASON: To safeguard the amenity of surrounding area, in accordance with policies

OE1 and OE3 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

INFORMATIVES

1 I52 Compulsory Informative (1)

The decision to GRANT 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 GRANT planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including the London Plan (February 2008) and national guidance.

BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE28	Shop fronts - design and materials
S12	Service uses in Secondary Shopping Areas
OE1	Protection of the character and amenities of surrounding properties and the local area
AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.

3 I1 Building to Approved Drawing

You are advised this permission is based on the dimensions provided on the approved drawings as numbered above. The development hereby approved must be constructed precisely in accordance with the approved drawings. Any deviation from these drawings requires the written consent of the Local Planning Authority.

4 I3 Building Regulations - Demolition and Building Works

Your attention is drawn to the need to comply with the relevant provisions of the Building Regulations, the Building Acts and other related legislation. These cover such works as - the demolition of existing buildings, the erection of a new building or structure, the extension or alteration to a building, change of use of buildings, installation of services, underpinning works, and fire safety/means of escape works. Notice of intention to demolish existing buildings must be given to the Council's Building Control Service at least 6 weeks before work starts. A completed application form together with detailed plans must be submitted for approval before any building work is commenced. For further information and advice, contact - Planning & Community Services, Building Control, 3N/01 Civic Centre, Uxbridge (Telephone 01895 250804 / 805 / 808).

5 I6 Property Rights/Rights of Light

Your attention is drawn to the fact that the planning permission does not override property rights and any ancient rights of light that may exist. This permission does not empower you to enter onto land not in your ownership without the specific consent of the owner. If you require further information or advice, you should consult a solicitor.

6 I15 Control of Environmental Nuisance from Construction Work

Nuisance from demolition and construction works is subject to control under The Control of Pollution Act 1974, the Clean Air Acts and other related legislation. In particular, you should ensure that the following are complied with: -

A) Demolition and construction works should only be carried out between the hours of 08.00 hours and 18.00 hours Monday to Friday and between the hours of 08.00 hours and 13.00 hours on Saturday. No works shall be carried out on Sundays, Bank and Public Holidays.

B) All noise generated during such works should be controlled in compliance with British Standard Code of Practice BS 5228: 1984.

C) The elimination of the release of dust or odours that could create a public health nuisance.

D) No bonfires that create dark smoke or nuisance to local residents.

You are advised to consult the Council's Environmental Protection Unit, 3S/02, Civic Centre, High Street, Uxbridge, UB8 1UW (Tel.01895 277401) or to seek prior approval under Section 61 of the Control of Pollution Act if you anticipate any difficulty in carrying out construction other than within the normal working hours set out in (A) above, and by means that would minimise disturbance to adjoining premises.

7 118 Storage and Collection of Refuse

The Council's Waste Service should be consulted about refuse storage and collection arrangements. Details of proposals should be included on submitted plans. For further information and advice, contact - the Waste Service Manager, Central Depot - Block A, Harlington Road Depot, 128 Harlington Road, Hillingdon, Middlesex, UB8 3EU (Tel. 01895 277505 / 506).

8 125 Consent for the Display of Adverts and Illuminated Signs

This permission does not authorise the display of advertisements or signs, separate consent for which may be required under the Town and Country Planning (Control of Advertisements) Regulations 1992. [To display an advertisement without the necessary consent is an offence that can lead to prosecution]. For further information and advice, contact - Planning & Community Services, 3N/04, Civic Centre, High Street, Uxbridge, UB8 1UW (Tel. 01895 250574).

9

You are advised that Thames Water recommends the installation of a properly maintained fat trap on all catering establishment. They further recommend, in line with best practice for the disposal of Fats, Oil and Grease, the collection of waste oil by a contractor, particularly to recycle for the production of bio diesel. Failure to implement these recommendations may result in this and other properties suffering blocked drains, sewage flooding and pollution to local watercourses. You are advised to consult Thames Water on 0208 507 4321.

10

You should ensure that your premises do not generate litter in the streets and nearby areas. Sections 93 and 94 of the Environmental Protection Act 1990 give local authorities the power to serve 'Street Litter Control Notices' requiring businesses to clear up the litter and implement measures to prevent the land from becoming littered again. By imposing

a 'Street Litter Control Notice', the local authority has the power to force businesses to clean up the area in the vicinity of their premises, provide and empty bins and do anything else which may be necessary to remove litter. Amendments made to the 1990 Act by the Clean Neighbourhoods and Environment Act 2005 have made it immediately an offence to fail to comply with the requirements of a Street Litter Control Notice, and fixed penalties may be issued as an alternative to prosecution.

Given the requirements of the Clean Neighbourhoods and Environment Act 2005, you are advised to take part in Defra's Voluntary Code of Practice for 'Reducing litter caused by Food on the Go', published in November 2004.

Should you have any queries on the above, please contact the Environmental Enforcement Team within the Environment and Consumer Protection Group on 01895 277402 at the London Borough of Hillingdon.

3. CONSIDERATIONS

3.1 Site and Locality

The application site is located on the east side of Joel Street, north of the Northwood Hills Underground Station and comprises a three-storey unit with residential above. The application site was in use as a hardware/flooring shop but is now vacant and lies within the secondary shopping area of the Northwood Hills Minor Town Centre, as designated in the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

3.2 Proposed Scheme

This application seeks an extension of the time limit for implementing an existing planning permission. Planning permission (ref 56137/APP/2005/2824) for the change of use from Class A1 (Shops) to Class A3 (Restaurants, Snack Bars, Cafes) and Class A5 (Hot Food Takeaway) was originally refused by the North Planning Committee on 17th January 2006, but subsequently, allowed on appeal in March 2007. A new solid panel within the shop front is the only external alteration proposed.

The applicant has also submitted details relating to conditions 4 (refuse Storage), 5 (air extraction and ventilation) and 6 (sound insulation) of the above permission. These are pre-commencement conditions which were discharged in November 2008 (56137/APP/2008/2867). With regards to conditions that have been discharged relating to applications seeking an extension of the time limit, the Communities & Local Government Guidance: Greater Flexibility for Planning Permissions advises at paragraph 30 that:

'..if appropriate different conditions could be imposed or some conditions could be removed - for example in order to make the scheme acceptable in the light of new policies, or if some pre-commencement conditions have been already discharged.'

Given this, these conditions remain discharged and it is not recommended that committee seek further details on these matters. A condition is recommended to ensure the already approved details are implemented in full and maintained for the lifetime of the development.

3.3 Relevant Planning History

56137/APP/2001/698 25 Joel Street Northwood

CHANGE OF USE OF PART STORAGE AREA TO A TWO-BEDROOM SELF-CONTAINED FLAT

Decision: 28-06-2004 Refused

56137/APP/2005/2824 25 Joel Street Northwood

CHANGE OF USE FROM CLASS A1 (SHOPS) TO CLASS A3 (RESTAURANTS, SNACK BARS, CAFES) AND CLASS A5 (TAKEAWAYS)

Decision: 20-01-2006 Refused **Appeal:** 29-03-2007 Allowed

56137/APP/2008/2867 25 Joel Street Northwood

Details in compliance with condition 4 (refuse storage), 5 (air extract and ventilation), and 6 (sound insulation) of planning permission (Ref 56137/APP/2005/2824) granted for the change of use to a restaurant and take away (Class 3 and A5)

Decision: 20-11-2008 Approved

Comment on Relevant Planning History

The above application ref: 56137/APP/2005/2824 for the change of use from Class A1 (shops) to Class A3 (restaurants, snack bars, cafes) and Class A5 (takeaways) and elevational alterations was refused by the North Planning Committee in January 2006 for the following reason:

"The proposed loss of this retail unit would erode the retail character and function of the Secondary Shopping Area and result in an over concentration of non-shop uses harming the vitality and viability of the Northwood Hills Secondary Shopping Area. The proposal is therefore contrary to Policy S12 of the Borough's adopted Unitary Development Plan."

An appeal was lodged and subsequently allowed in March 2007.

4. Planning Policies and Standards

Since the grant of planning permission on appeal in March 2007, there has been a material change in policy. The 2004 Planning and Compulsory Purchase Act introduced a new development plan regime including Local Development Frameworks. A three year phase-in period was allowed during which time old style local plan policies would remain in force unless they were replaced by new measures.

However in 2006, following the Lichfield and Staffordshire planning inquiries and changing requirements, it became evident to Government that the target for the replacement of existing plans was not going to be met nationally. As a result in August 2006 the Secretary of State issued a direction to save policies. Each of Hillingdon's Unitary Development Plan policies was subjected to six tests identified in Planning Policy Statement 12: Local Development Frameworks (2004). Following Member approval in March 2007 a request to save the remaining policies was submitted to the Government Office for London for further scrutiny.

A direction was issued on 24 September 2007 by the Government Office for London

confirming Hillingdon's request to 'Save' key local policies and to delete obsolete or rarely used policies. This was effective from the 27 September 2007.

UDP / LDF Designation and London Plan

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

Part 1 Policies:

Part 2 Policies:

BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE28	Shop fronts - design and materials
S12	Service uses in Secondary Shopping Areas
OE1	Protection of the character and amenities of surrounding properties and the local area
AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.

5. Advertisement and Site Notice

5.1 Advertisement Expiry Date:- Not applicable

5.2 Site Notice Expiry Date:- Not applicable

6. Consultations

External Consultees

32 adjoining owner/occupiers consulted. 5 letters of objection have been received making the following comments:

- (i) There are too many restaurants and take-away uses in Northwood Hills;
- (ii) The proposal would lead to an increase in litter;
- (iii) The service road to the rear is too narrow for delivery vehicles;
- (iv) The proposal would lead to smells and odour;
- (v) The proposal would lead to on street parking;
- (vi) The flats above would suffer in value;
- (vii) Fire risk to flats above;
- (viii) Increase in noise and disturbance;
- (ix) The occupiers of the above flats would object to the rear duct.

Northwood Hills Residents' Association: No comments received.

Thames Water:

Thames Water recommends the installation of a properly maintained fat trap on all catering establishments. We further recommend, in line with best practice for the disposal of Fats, Oils and Grease, the collection of waste oil by a contractor, particularly to recycle for the production of bio diesel. Failure to implement these recommendations may result in this and other properties suffering blocked drains, sewage flooding and pollution to local watercourses. Further information on the above is available in a leaflet, 'Best Management Practices for Catering Establishments' which can be requested by telephoning 020 8507 4321.

Internal Consultees

Waste Management: No objections subject to the provision of refuse and recycling containments.

Environmental Protection Unit:

No objections subject to conditions relating to operating hours, plant and machinery, delivery and collection hours and sound insulation.

Ward Councillor:

'As a local Councillor, I prefer to remain impartial regarding the decision to allow this change of use to A3 and A5. I would ask that the final decision is made by the North Planning Committee of elected members.

The local residents make it very clear to me as their elected representative, that they do not want any fast food takeaways in Northwood Hills, there are too many already. The differences between Primary and Secondary shopping parades does need to be addressed as does the criteria for percentages of classified uses. Local residents consider all the shops in Joel Street fall within one category, which is shops.

Hopefully the Committee of elected Councillors will take this into consideration'

7. MAIN PLANNING ISSUES

7.01 The principle of the development

The application site forms part of the Northwood Hills Secondary Shopping Area, which has a mix of shopping and services uses. The aim of secondary shopping areas is to maintain a sufficient number of class A1 shop uses to provide for the shopping needs of local residents. Policy S12 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007) states that the Local Planning Authority will grant permission for service uses, including Class A3 food and drink uses, where adequate retail facilities remain and the proposal will not result in a separation of Class A1 uses or a concentration of non-retail uses. It also states that the Local Planning Authority (LPA) will expect at least 50% of the frontage to be in Class A1 use.

In allowing the appeal against the Council's decision to refuse planning permission for the change of use from Class A1 (shops) to Class A3 (restaurants, snack bars, cafes) and Class A5 (takeaways) at the above site in January 2006, the Inspector states at paragraphs 5 and 6 that:

'Here it is common ground that loss of the appeal shop frontage would leave less than 50% of the secondary frontage in retail use. It is also common ground, based on the Council's 2006 retail survey, that there were a total of 48 units in the frontage of which 18 were non retail and 30 retail. From this it is evident that the number of retail units is and would remain well above 50%, while in terms of the measure adopted by the Council, the proportion of retail frontages would fall below 50%.

However, the Council accepts that the determination of this appeal should not be a numerical exercise, and that the test to be adopted is one related to those criteria that are given at policy S12(a1).'

The Inspector goes on to state at paragraphs 9 and 10:

'In coming to a judgement on this particular aspect of the case I am mindful that, in

general, Class A3 & A5 uses are considered acceptable in both primary and secondary shopping areas and are compatible with and complementary to shopping activity. On this basis the proposed use would be of a type that would have the potential to make a positive contribution to the attractiveness of the shopping frontage. In considering the matter of concentration and grouping, I do not consider that it has been shown that either the number or distribution of A3 & A5 uses, with the proposed change of use in place, would be inappropriate or necessarily harmful in terms of attractiveness to shoppers. Accordingly, I find no conflict with S12(b2).

This brings me back to the core issue, which relates to the retail function of the area as expressed at policy S12(a1). As previously noted, in numerical terms retail units would continue to predominate, but the proportion of retail frontage would fall below 50%, which is expressed as the Council's expectation in the Unitary Development Plan. This latter factor indicates to me that care needs to be taken in making decisions now that this threshold has been reached. However, there still needs to be a sound justification in terms of harm to the retail function of the area to prevent this proposed change of use from taking place.'

The 2009 shopping survey shows that within this secondary frontage, class A1 uses now make up 44.5% of the total width of frontages. This is still below the 50% level. However, given the comments of the Inspector, particularly at paragraphs 9 and 10 of the appeal notice, it is considered that a refusal on similar grounds to the previous application would not be sustained at appeal.

The nearest non-retail uses to the application property are no. 19 Joel Street (Restaurant) to the north and 29-31 Joel Street (bank) located at the corner of Briarwood Drive. The proposed change of use to a non retail use would not result in more than a 12m long break in the retail frontage.

Therefore, it is considered that the loss of this shop use , whilst not consistent with Council policy would be difficult to resist given the above comments of the Inspector and it is considered that a refusal on similar grounds to the previous application would not be sustained at appeal.

7.02 Density of the proposed development

This is not applicable to this application.

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

This is not applicable to this application.

7.04 Airport safeguarding

This is not applicable to this application.

7.05 Impact on the green belt

This is not applicable to this application.

7.06 Environmental Impact

This is not applicable to this application.

7.07 Impact on the character & appearance of the area

The proposed elevational alterations to the shopfront are minor and would not detract from the appearance of the original shopfront and the street scene generally, in accordance with policies BE13, BE15 and BE28 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

7.08 Impact on neighbours

The proposed change of use is unlikely to generate a significant increase in noise

nuisance over and above the existing use and surrounding uses. There are perceived problems relating specifically to take-away use (loitering, noise, rubbish) however the principle of allowing A5 uses within a town centre location is considered acceptable. It should not be assumed that a take-away use would result in the loss of residential amenity of neighbouring residential uses by reason of noise and disturbance. Conditions relating to the hours of delivery/services, limitation of music and amplified sound and the provision of litter bins outside the premises are recommended to ensure that the amenities of adjoining residential occupiers are protected from noise nuisance, should planning permission be granted. It is also important to note that details relating to the storage of refuse, air extraction and ventilation and sound insulation have been submitted and approved in November 2008.

Therefore, the proposal would accord with policies S6(iii) and OE1 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007),

7.09 Living conditions for future occupiers

This is not applicable to this application.

7.10 Traffic impact, car/cycle parking, pedestrian safety

The parking requirements for Class A3 and Class A5 uses are the same as for Class A1 uses. Therefore, the proposed change of use is unlikely to result in a greater impact on highway safety than the existing use. As such, the proposal would comply with Policy AM14 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

7.11 Urban design, access and security

This is addressed at section 07.07.

7.12 Disabled access

This is not applicable to this application.

7.13 Provision of affordable & special needs housing

This is not applicable to this application.

7.14 Trees, Landscaping and Ecology

This is not applicable to this application.

7.15 Sustainable waste management

This is not applicable to this application.

7.16 Renewable energy / Sustainability

This is not applicable to this application.

7.17 Flooding or Drainage Issues

This is not applicable to this application.

7.18 Noise or Air Quality Issues

This is addressed at section 07.08.

7.19 Comments on Public Consultations

With regards to the third party comments, points (i), (ii), (iv), (v), (viii) and (ix) have been addressed in the report. On point (iii), the rear service road is sufficient for deliveries. Point (vi) is not a material planning consideration and point (vii) would be addressed through Building Regulations.

7.20 Planning Obligations

This is not applicable to this application.

7.21 Expediency of enforcement action

This is not applicable to this application.

7.22 Other Issues

There are no other relevant issues.

8. Observations of the Borough Solicitor

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.

In addition Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are 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).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

9. Observations of the Director of Finance

This is not applicable to this application.

10. CONCLUSION

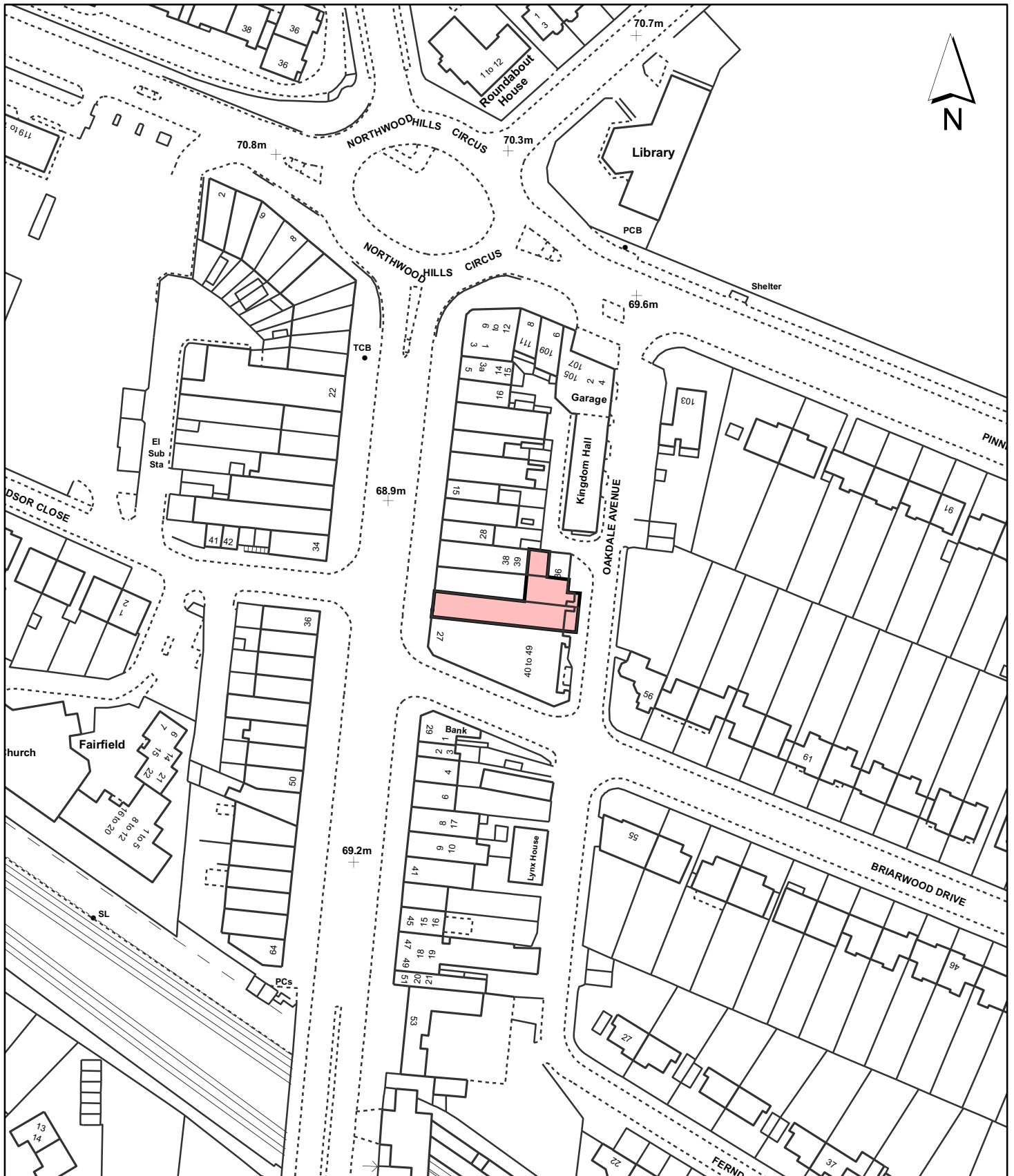
Whilst the loss of the retail unit would not comply with the Council's policies seeking to protect the retail function and attractiveness of the shopping centre, this matter was previously considered at appeal and given the comments of the Inspector in allowing the appeal, it is considered that a further refusal of planning permission on similar grounds would not be sustained at appeal. Accordingly, this planning application is recommended for approval.

11. Reference Documents


Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007)

Contact Officer: Sonia Bowen

Telephone No: 01895 250230



Notes

 Site boundary

For identification purposes only.

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Site Address	
25 Joel Street Northwood	
Planning Application Ref:	Scale
56137/APP/2010/48	1:1,250
Planning Committee	Date
North	April 2010

**LONDON BOROUGH
OF HILLINGDON**

**Planning &
Community Services**

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



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