

## Report of the Head of Planning, Transportation and Regeneration

**Address** FORMER NESTLE FACTORY NESTLES AVENUE HAYES

**Development:** Deed of Variation (DoV) to the S106 Legal Agreement for planning permission ref: 1331/APP/2017/1883 dated 28th June 2018 (Part demolition of existing factory buildings and associated structures, and redevelopment to provide 1,386 dwellings (Use Class C3). office, retail, community and leisure uses (Use Class A1/A3/A4/B1/B8/D1/D2), 22,663sq.m (GEA) of commercial floorspace (Use Classes B1c/B2/B8 and Data Centre (sui generis)), amenity and playspace, landscaping, allotments, access, service yards, associated car parking and other engineering works); To Modify: the definitions of 'Affordable Housing', 'Intermediate Units' and 'Grant Funding'; Paragraph 3.1 in Part 1 of Schedule 5 - Shared Ownership Units; The Affordable Housing Accommodation Schedule; The Affordable Housing Location Plans; and The Residential Phasing Plan

**LBH Ref Nos:** 1331/APP/2019/1708

**Drawing Nos:** DOV Application Form  
MP600 02a Rev 03 - Ground Floor  
MP601 02b Rev 03 - 1st Floor  
MP602 02c Rev 03 - 2nd Floor  
MP603 02d Rev 03 - 3rd Floor  
MP604 02e Rev 03 - 4th Floor  
MP605 02f Rev 03 - 5th Floor  
MP606 02g Rev 03 - 6th Floor  
MP607 02h Rev 03 - 7th Floor  
MP608 02i Rev 03 - 8th Floor  
MP609 02j Rev 03 - 9th Floor  
MP610 02k Rev 03 - 10th Floor  
Residential Phasing Plan - MP760 Plan 13 Rev06  
Deed of Variation, April 2019, Ref:4159-4094-9788 v.1  
Agents Letter, Ref: 24552/A3/JB/DO

**Date Plans Received:** 10/05/2019 **Date(s) of Amendment(s):**

**Date Application Valid:** 11/06/2019

### 1. SUMMARY

Planning permission reference 1331/APP/2017/1883 was granted on 28th June 2018 for the:

"Part demolition of existing factory buildings and associated structures, and redevelopment to provide 1,386 dwellings (Use Class C3). office, retail, community and leisure uses (Use Class A1/A3/A4/B1/B8/D1/D2), 22,663sq.m (GEA) of commercial floorspace (Use Classes B1c/B2/B8 and Data Centre (sui generis)), amenity and playspace, landscaping, allotments, access, service yards, associated car parking and other engineering works)."

This extant planning permission, referenced above, was granted subject to a s106 Legal Agreement. This application seeks a Deed of Variation (DoV) to that Legal Agreement in

order to amend the affordable housing drawings and Schedule to reflect: an increase to the affordable housing provision on site to 40%; changes to the definition of Intermediate Units; changes to the table at Paragraph 3.1; removal of Part 3 of Schedule 5 and the 'Grant Funding' definition, as the increase to 40% affordable housing complies with that obligation. There is no plan or approved document in the planning permission that refers to the level of affordable housing or its location, therefore this element is governed by the s106 Legal Agreement only. There is no material change and the increase in the affordable units is permitted by Part 3 of Schedule 5 of the existing s106 Legal Agreement.

In addition, it also seeks to vary the Residential Phasing Plan to allow for an additional phase of development on the residential land. The reason for this is to include a new phase, phase 4a, to separate Sandow Square as its own phase from phase 5. This relates to the Non-Material Amendment application which has been submitted and recommended for approval under delegated authority, ref: 1331/APP/2019/1553.

There is no material change and no objections have been raised to the requested variations by the Council's S106/CIL Officer. The development would continue to appropriately comply with relevant Local Plan, London Plan and national planning policies and, accordingly, approval is recommended.

## **2. RECOMMENDATION**

**APPROVAL** subject to the following:

## **3. CONSIDERATIONS**

### **3.1 Site and Locality**

The site is located at the former Nestle factory, Nestles Avenue, Hayes. It is located approximately 500 metres to the south-east of Hayes Town Centre, bounded to the north by the Great Western Rail Line and Grand Union Canal and to the south by Nestles Avenue. To the west is the existing Squirrels Industrial Estate, accessed from Viveash Close which

comprises a number of small commercial premises and to the east is North Hyde Gardens, which is a public road which has historically served as the single vehicular entrance point to the former Nestle factory building. To the north east of the site is Hayes and Harlington Railway Station. A residential area lies immediately south of the site, on the opposite side of Nestles Avenue.

The site is 12.28 ha in area and contains a number of existing buildings and structures amounting to approximately 91,000 sq m (GEA) that form part of its previous factory use. The buildings were used for a range processes in relation to the production of coffee and chocolate production and vary in size and scale and associated staff facilities, with the tallest elements rising up to 75 metres AOD.

Railings enclose the site, with mature trees along the southern frontage on Nestles Avenue and green spaces that were once part of the site 's "factory in a garden" setting. Other parts of the site are characterised as storage areas, service yards and car parking areas. The topography of the site is generally flat, ranging between 25-35m Above Ordnance Datum (AOD).

The site is accessed from North Hyde Gardens to the east with other historic accesses from Nestles Avenue to the south and is well served by public transport. The current Public Transport Accessibility Level (PTAL) varies across the site, ranging from 2 in the east and

3 in the west, however, this will rise to a maximum of 4 (on the cusp of 5) at the western part of the site when the new Crossrail service opens at Hayes and Harlington Station.

The site is located within the Botwell: Nestles, Hayes Conservation Area which was first designated by LBH on 19 June 1988. The boundary of the application site coordinates with that of the conservation area and comprises the whole of the former Nestle factory site. There are four locally listed buildings and structures on-site which form part of the former Nestle Factory. These are :

- i) Nestle Works (Nestle UK Ltd) which is described as the 1930s factory by Wallis Gilbert;
- ii) Nestle Works: former canteen (Nestle UK Ltd);
- iii) Nestle Works gates/railings (Nestle UK Ltd); and
- iv) Nestle Works: lodge (Nestle UK Ltd).

Hayes is a key area of strategic growth and forms part of the London Plan Heathrow Opportunity Area, which covers an area of approximately 700 ha. Hayes Town Centre is one of 31 new Housing Zones in London. Housing Zones are initiatives undertaken in partnership with London boroughs and their development partners as part of the GLA's Housing Strategy.

### **3.2 Proposed Scheme**

Planning permission reference 1331/APP/2017/1883 was granted on 28th June 2018 for the:

"Part demolition of existing factory buildings and associated structures, and redevelopment to provide 1,386 dwellings (Use Class C3). office, retail, community and leisure uses (Use Class A1/A3/A4/B1/B8/D1/D2), 22,663sq.m (GEA) of commercial floorspace (Use Classes B1c/B2/B8 and Data Centre (sui generis)), amenity and playspace, landscaping, allotments, access, service yards, associated car parking and other engineering works)."

This extant planning permission, referenced above, was granted subject to a S106 Legal Agreement. This application seeks a Deed of Variation (DoV) to that Legal Agreement to include:

- Changes to the definition of Affordable Housing to refer to 40% by habitable room and Affordable Housing Location Plans. The increase has been secured through grant funding being obtained and the delivery of the affordable units being led by L&Q;
- Changes to the definition of Intermediate Units. The changes to the definition of 'Intermediate Housing' is only in regards to the increase in the number from 339 to 413, by replacing private sale units in Blocks B and E.
- Part 3 of Schedule 5, which states that Residential Owner shall use reasonable endeavours to procure that the Residential Provider secures grant funding to deliver additional Intermediate Housing on the residential Land has been removed as the increase to 40% Affordable Housing complies with that obligation. The associated definition of Grant Funding has also been removed;
- Changes to the table at Paragraph 3.1 to include the updated affordable units;
- The rest of the changes relate to replacing the relevant plans and the Affordable Housing Accommodation Schedule; and
- Replacement of Residential Phasing Plan included within the s.106 at Plan 13 of Appendix 2 of the s.106 Agreement with a new Residential Phasing Plan (ref: MP 760 Rev.06). This would include a new phase, phase 4a, to separate Sandow Square as its own phase from phase 5. The reason for this is so that Sandow Square can be

constructed ahead of Phase 5 being delivered, to allow for pedestrian and fire appliance access during the construction period of the other surrounding phases.

There is no plan or approved document in the planning permission that refers to the level of affordable housing or its location, therefore this element is governed by the s106 Legal Agreement only. The increase in the proposed affordable housing reflects the fact that grant funding has been obtained and L&Q are delivering the affordable units. There is no material change and the increase in the affordable units is permitted by Part 3 of Schedule 5 of the existing s106 Legal Agreement.

### **3.3 Relevant Planning History**

1331/APP/2017/1883      Former Nestle Factory Nestles Avenue Hayes

Part demolition of existing factory buildings and associated structures, and redevelopment to provide 1,386 dwellings (Use Class C3). office, retail, community and leisure uses (Use Class A1/A3/A4/B1/B8/D1/D2), 22,663sq.m (GEA) of commercial floorspace (Use Classes B1c/B2/B8 and Data Centre (sui generis)), amenity and playspace, landscaping, allotments, access, service yards, associated car parking and other engineering works.

**Decision:** 13-12-2017    Approved

1331/APP/2019/1553      Former Nestle Factory Nestles Avenue Hayes

Section 96a (Non Material Amendment) to planning ref: 1331/APP/2017/1883 dated 28th June 2018 (Part demolition of existing factory buildings and associated structures, and redevelopment to provide 1,386 dwellings (Use Class C3). office, retail, community and leisure uses (Use Class A1/A3/A4/B1/B8/D1/D2), 22,663sq.m (GEA) of commercial floorspace (Use Classes B1c/B2/B8 and Data Centre (sui generis)), amenity and playspace, landscaping, allotments, access, service yards, associated car parking and other engineering works). This application seeks to amend the Residential Phasing Plan to include a new Phase, Phase 4a in order to separate Sandow Square from Phase 5.

**Decision:**

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

The site is the former Nestle factory and surroundings at Nestles Avenue in Hayes. Planning permission ref. 1331/APP/2017/1883 was granted on 28 June 2018 for:

Part demolition of existing factory buildings and associated structures, and redevelopment to provide 1,386 dwellings (Use Class C3). office, retail, community and leisure uses (Use Class A1/A3/A4/B1/B8/D1/D2), 22,663sq.m (GEA) of commercial floorspace (Use Classes B1c/B2/B8 and Data Centre (sui generis)), amenity and playspace, landscaping, allotments, access, service yards, associated car parking and other engineering works.

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

Hillingdon Local Plan: Part 1 - Strategic Policies (November 2012)

Hillingdon Local Plan: Part 2 - Saved UDP Policies (November 2012)

Draft Hillingdon Local Plan: Part 2 - Development Management Policies with Modifications (March 2019)

London Plan (2016)

National Planning Policy Framework (2019)

Hillingdon Supplementary Planning Document - Planning Obligations

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

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

Part 1 Policies:

PT1.H2 (2012) Affordable Housing

Part 2 Policies:

DMH 7

LPP 3.10 (2016) Definition of affordable housing

LPP 3.11 (2016) Affordable housing targets

LPP 3.12 (2016) Negotiating affordable housing on individual private residential and mixed-use schemes

LPP 3.13 (2016) Affordable housing thresholds

### **5. Advertisement and Site Notice**

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

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

### **6. Consultations**

#### **External Consultees**

Not applicable.

#### **Internal Consultees**

S106/CIL OFFICER (Infrastructure and Development Viability Manager):

No objections to the DOV and proposed amendments, the detailed comments are set out below:

(1) This DOV application for the modification of the S106 agreement including: the definitions of Affordable Housing; Intermediate Units and Grant Funding; and the Shared Ownership Units; the Affordable Housing Accommodation Schedule; The Affordable Housing Location Plans; and The Residential Phasing Plan.

(2) The application is to update the affordable housing provision as it has changed since the original permission was issued. This can be effected by varying the s106 agreement. The provision of 40% affordable housing does not affect the overall scheme. The uplift reflects the grant funding that has been obtained and L&Q is delivering the affordable units. There is no material change, the proposed scheme increases the amount of affordable units. The proposal is not an amendment to the planning permission as it seeks variation of the s106 agreement.

(3) With respect to the original S106 agreement, it confirms the percentage of affordable housing and the location of the affordable housing units. Therefore a deed of variation will be required to reflect the amendments.

(4) It is considered the required uplift in the affordable housing provision of the original planning permission would not have a material adverse impact on the overall scheme.

(5) Conclusions: the DOV application is recommended for approval, subject to a DOV for appropriate amendments to details of the residential phasing plans of the overall scheme and changes to details of the affordable housing provision.

## **7. MAIN PLANNING ISSUES**

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

Not applicable. The principle of development has been accepted through the granting of planning permission for the scheme.

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

Not applicable. No changes are proposed which would impact on the density of the approved development.

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

Not applicable. No changes are proposed which would impact on heritage assets.

### **7.04 Airport safeguarding**

Not applicable. No alterations are proposed which would impact on safeguarding criteria.

### **7.05 Impact on the green belt**

Not applicable.

### **7.06 Environmental Impact**

Not applicable. There are no direct significant environmental impacts as a result of the changes proposed.

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

Not applicable. No changes are proposed which would impact on the character or appearance of the area.

### **7.08 Impact on neighbours**

Not applicable. No changes are proposed which would impact on residential amenity.

### **7.09 Living conditions for future occupiers**

Not applicable. No changes are proposed which would impact on residential amenity.

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

Not applicable. No changes are proposed which would impact on traffic, parking or pedestrian safety.

### **7.11 Urban design, access and security**

Not applicable. No changes are proposed which would impact on urban design, access and security.

### **7.12 Disabled access**

Not applicable. No changes are proposed which would impact on accessibility.

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

Planning Policy H2 of the Hillingdon Local Plan: Part 1 - Strategic Policies (November 2012) states 'Housing provision is expected to include a range of housing to meet the needs of all types of households and the Council will seek to maximise the delivery of affordable housing from all sites over the period of the Hillingdon Local Plan: Part 1- Strategic Policies. For sites with a capacity of 10 or more units the Council will seek to ensure that the affordable housing mix reflects housing needs in the borough, particularly the need for larger family units.'

The supporting text to Policy H2 states that 'subject to viability and if appropriate in all the circumstances, the Economic Viability Assessment indicates that 35% of all new units in the borough should be delivered as affordable housing, with an indicative tenure mix of 70% housing for social rent and 30% intermediate housing. Housing market conditions in Hillingdon are complex and a one size fits all approach to tenure provision will not be suitable for all areas in the borough. Subject to the provision of robust evidence, the Council will adopt a degree of flexibility in its application of Policy H2 to take account of tenure needs in different parts of the borough.'

This is reiterated in Draft Hillingdon Local Plan: Part 2 - Development Management Policies with Modifications (March 2019) Policy DMH 7 (Provision of Affordable Housing).

London Plan (March 2016) policies 3.10, 3.11, 3.12 and 3.13 relate to affordable housing provision. In particular Policy 3.12 states that the maximum reasonable amount of affordable housing should be sought, having regard to (amongst others) current and future requirements for affordable housing at local and regional levels, the size and type of affordable housing needed in particular locations and the specific circumstances of individual sites.

There is no plan or approved document in the planning permission that refers to the level of affordable housing or its location, therefore this element is governed by the s106 Legal Agreement only. The increase in the proposed affordable housing reflects the fact that grant funding has been obtained and L&Q are delivering the affordable units. There is no material change and the increase in the affordable units is permitted by Part 3 of Schedule 5 of the existing s106 Legal Agreement.

#### **7.14 Trees, landscaping and Ecology**

Not applicable. No changes are proposed which would impact on trees, landscaping and ecology.

#### **7.15 Sustainable waste management**

Not applicable. No changes are proposed which would impact on refuse provision.

#### **7.16 Renewable energy / Sustainability**

Not applicable. No changes are proposed which would impact on renewable energy / sustainability.

#### **7.17 Flooding or Drainage Issues**

Not applicable. No changes are proposed which would impact on flooding or drainage issues.

#### **7.18 Noise or Air Quality Issues**

Not applicable. No changes are proposed which would impact on noise or air quality.

#### **7.19 Comments on Public Consultations**

Not applicable

#### **7.20 Planning obligations**

The alterations proposed to the agreed planning obligations have been discussed throughout this report and are considered to be acceptable for the reasons set out above. Furthermore the Infrastructure and Development Viability Manager has confirmed there are no objections to this proposal.

#### **7.21 Expediency of enforcement action**

Not applicable

#### **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**

None.

#### **10. CONCLUSION**

It is considered that the requested Deed of Variation to the S106 agreement would not have



any significant detrimental impact on the approved scheme. Notably, no objections have been raised by the Council's S106/CIL Officer - Infrastructure and Development Viability Manager.

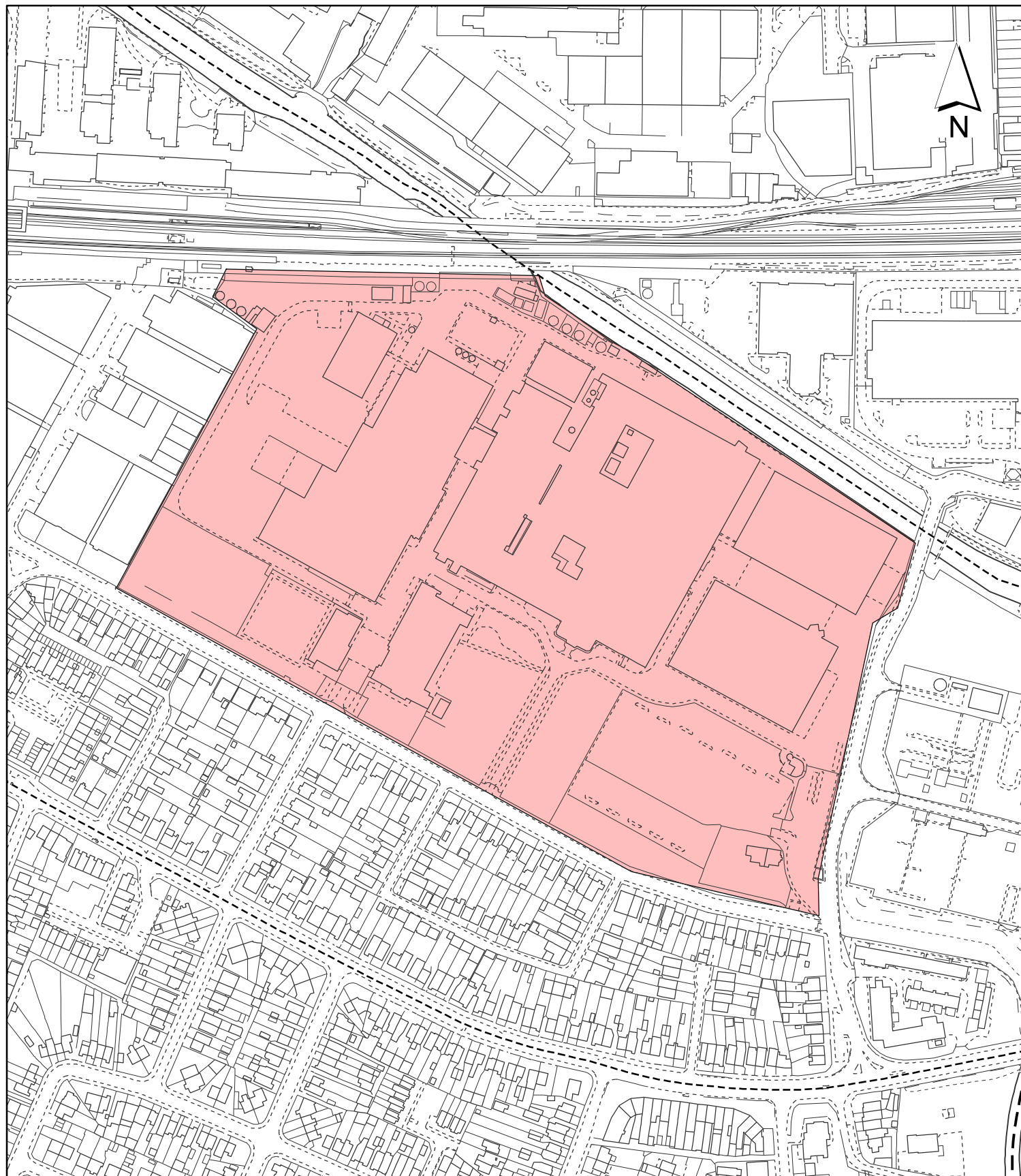
The development would continue to appropriately comply with relevant Local Plan, London Plan and national planning policies and, accordingly, approval is recommended.

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

Hillingdon Local Plan: Part 1 - Strategic Policies (November 2012)  
Hillingdon Local Plan: Part 2 - Saved UDP Policies (November 2012)  
London Plan (2016)  
National Planning Policy Framework  
Hillingdon Supplementary Planning Document - Planning Obligations  
Draft Hillingdon Local Plan: Part 2 - Development Management Policies with Modifications (March 2019)

**Contact Officer:** Hardeep Ryatt

**Telephone No:** 01895 250230



# Notes:

 Site boundary

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Site Address:

**Former Nestle Factory  
Nestles Avenue  
Hayes**

Planning Application Ref:

**1331/APP/2019/1708**

Planning Committee:

**Major**

Scale:

**1:3,250**

Date:

**August 2019**

**LONDON BOROUGH  
OF HILLINGDON**

**Residents Services  
Planning Section**

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



**HILLINGDON**  
LONDON