

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

**Address** 766B UXBRIDGE ROAD HAYES

**Development:** Change of use from retail (Use Class A1) to a mixed use comprising cafe/restaurant/hot food takeaway (Use Class A3/A5) (Retrospective)

**LBH Ref Nos:** 62118/APP/2020/743

**Drawing Nos:** Design and Access Statement  
766bUR (Sheet 3 of 3) Issue A  
766bUR (Sheet 1 of 2) Issue A  
766bUR (Sheet 2 of 3) Issue A

**Date Plans Received:** 02/03/2020

**Date(s) of Amendment(s):**

**Date Application Valid:** 24/04/2020

### **1. SUMMARY**

The application is seeking retrospective planning permission for the change of use from A1 (Retail) to A3/A5 (Cafe/Takeaway).

It is considered that the change of use would not harm the vitality and attractiveness of Uxbridge Road Town Centre. No external changes form part of the application, although it is noted that the advertisement does not have permission and so the applicant is advised this is at risk of enforcement action.

### **2. RECOMMENDATION**

**APPROVAL subject to the following:**

#### **1 COM4 Accordance with Approved Plans**

The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plan number 766bUR (Sheet 1 of 2) issue A and shall thereafter be retained/maintained for as long as the development remains in existence.

#### **REASON**

To ensure the development complies with the provisions Hillingdon Local Plan Parts 1 (November 2012) and 2 (January 2020) and the London Plan (2016).

#### **2 COM23 Hours of Use (Restaurant etc.)**

The premises shall not be open for customers outside the following hours:  
1030 to 0000, Mondays - Sundays and Bank/Public Holidays

#### **REASON**

To safeguard the residential amenity of the occupiers of adjoining and nearby properties in accordance with policy DMHB 11 of the Hillingdon Local Plan Part 2 (2020).

### **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 Local Plan Part 1 (2012) and Part 2 (2020) 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.

DMHB 11	Design of New Development
DMT 1	Managing Transport Impacts
DMT 2	Highways Impacts
DMT 6	Vehicle Parking
DMTC 2	Primary and Secondary Shopping Areas
DMTC 4	Amenity and Town Centre Uses
LPP 2.15	(2016) Town Centres
LPP 4.9	(2016) Small Shops

**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 Local Plan Part 2 (2020), then London Plan Policies (2016). Hillingdon's Full Council adopted the Hillingdon Local Plan: Part 1 - Strategic Policies on 8 November 2012 and the Hillingdon Local Plan Part 2 on 16 January 2020.

**4 I25 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 2007. To display an advertisement without the necessary consent is an offence that can lead to prosecution.

**5**

The Equality Act 2010 seeks to protect people accessing goods, facilities and services from discrimination on the basis of a 'protected characteristic', which includes those with a disability. As part of the Act, service providers are obliged to improve access to and within the structure of their building, particularly in situations where reasonable adjustment can be incorporated with relative ease. The Act states that service providers should think ahead to take steps to address barriers that impede disabled people

**3. CONSIDERATIONS**

**3.1 Site and Locality**

The application relates to a ground floor commercial unit which forms part of a 3 storey building located to the North East of Uxbridge Road at the junction with Warley Road. A solicitors is located on the floors above and a beauty bar is located to the rear. The property is attached to No.766A Uxbridge Road.

The application property is located within the Primary Shopping Area of Uxbridge Road

Town Centre as identified within the Hillingdon Local Plan: Part Two - Development Management Policies (2020).

### **3.2 Proposed Scheme**

The application is seeking retrospective planning permission for the change of use from A1 (Retail) to A3/A5 (Cafe/Takeaway). No external changes are proposed, however, the plans demonstrate a change in signage which does not form part of this planning application.

### **3.3 Relevant Planning History**

62118/APP/2006/2246 766b Uxbridge Road Hayes

CHANGE OF USE FROM RETAIL SHOP (CLASS A1) TO ESTATE AGENTS (CLASS A2)

**Decision:** 31-05-2007 Refused

62118/APP/2008/3537 766b & 766c Uxbridge Road Hayes

Change of use of Units B and C from Class A1 (Shops) to Class A3 (Restaurants and Cafes).

**Decision:** 17-02-2009 Refused

62118/APP/2020/654 766b Uxbridge Road Hayes

Change use from Class A1 (Retail) to Class A3/A5 (Cafe/takeaway) - Retrospective application

**Decision:** 02-03-2020 Withdrawn

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

Previous applications to change the use from A1 were refused under applications 62118/APP/2008/3537 dated 17/02/2009 and 62118/APP/2006/2246 dated 31/05/2007. In both cases it was considered that the loss of A1 would be harmful to the retail function, vitality and viability of Uxbridge Road Town Centre.

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

London Borough of Hillingdon Development Plan

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The Development Plan for the London Borough of Hillingdon currently consists of the following documents:

The Local Plan: Part 1 - Strategic Policies (2012)

The Local Plan: Part 2 - Development Management Policies (2020)

The Local Plan: Part 2 - Site Allocations and Designations (2020)

West London Waste Plan (2015)

The London Plan - Consolidated With Alterations (2016)

The National Planning Policy Framework (NPPF) (2019) is also a material consideration in planning decisions, as well as relevant supplementary planning documents and guidance.

## Emerging Planning Policies

Paragraph 48 of the National Planning Policy Framework (NPPF) 2019 states that 'Local Planning Authorities may give weight to relevant policies in emerging plans according to:

- (a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- (b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- (c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

Draft London Plan (Intend to Publish Version, December 2019)

The GLA consulted upon a draft new London Plan between December 2017 and March 2018 with the intention of replacing the previous versions of the existing London Plan. The Plan was subject to examination hearings from February to May 2019, and a Consolidated Draft Plan with amendments was published in July 2019. The Panel of Inspectors appointed by the Secretary of State issued their report and recommendations to the Mayor on 8th October 2019.

The Mayor has considered the Inspectors' recommendations and, on 9th December 2019, issued to the Secretary of State his intention to publish the London Plan along with a statement of reasons for the Inspectors' recommendations that the Mayor did not wish to accept. The Secretary of State responded on the 13th March 2020 and stated that he was exercising his powers under section 337 of the Greater London Authority Act 1999 to direct that modifications are required. These are set out at Annex 1 of the response, however the letter does also state that if the Mayor can suggest alternative changes to policies that would address the concerns raised, these would also be considered.

More limited weight should be attached to draft London Plan policies where the Secretary of State has directed modifications or where they relate to concerns raised within the letter. Greater weight may be attached to policies that are not subject to modifications from the Secretary of State or that do not relate to issues raised in the letter.

## UDP / LDF Designation and London Plan

The following Local Plan Policies are considered relevant to the application:-

Part 1 Policies:

PT1.BE1 (2012) Built Environment

Part 2 Policies:

DMHB 11	Design of New Development
DMT 1	Managing Transport Impacts
DMT 2	Highways Impacts
DMT 6	Vehicle Parking
DMTC 2	Primary and Secondary Shopping Areas
DMTC 4	Amenity and Town Centre Uses
LPP 2.15	(2016) Town Centres

## 5. Advertisement and Site Notice

5.1 Advertisement Expiry Date:- Not applicable

5.2 Site Notice Expiry Date:- Not applicable

## 6. Consultations

### External Consultees

Fifteen neighbouring properties were notified of the proposal on 28/04/2020.

No responses were received.

### Internal Consultees

#### Access Officer:

There are no accessibility issues relevant. However, the following informative should be attached to any grant of planning permission: The Equality Act 2010 seeks to protect people accessing goods, facilities and services from discrimination on the basis of a 'protected characteristic', which includes those with a disability. As part of the Act, service providers are obliged to improve access to and within the structure of their building, particularly in situations where reasonable adjustment can be incorporated with relative ease. The Act states that service providers should think ahead to take steps to address barriers that impede disabled people.

#### Highways:

This is part of an established parade of shops along the A4020 Uxbridge Road. There is good pedestrian access in the area; cycle parking stands and the parade of shops has formal pay and display parking bays. There is also a bus stop close to the site. The staff levels are expected to be minimal. There is no vehicle access to the rear of the site but it is being proposed that the deliveries will be undertaken kerbside on Warley Road. Warley Road next to the shopping parade has double yellow lines but there is no presence of 'No Loading' blips, therefore short deliveries could be undertaken from there to the cafÃ©. The developer should be advised to try and make deliveries outside peak times as well as keeping them as short as possible. There are no highway objections.

#### Contaminated Land:

No objection

#### Planning Policy Team:

This retrospective application is for the change of use from A1 to A3/A5. This would make the existing business operating on site lawful in planning terms. The site lies within the Uxbridge Road Minor Town Centre and is within a Primary Shopping Area. Minor Centres typically serve a localised catchment often most accessible by walking and cycling and include local parades and small clusters of shops, mostly for convenience goods and other services.

The site was previously in use as a beauty salon, a Sui Generis Use class and it was therefore not operating in its lawful Use Class, which based on a review of the sites planning history it Class A1.

Policy DMTC2 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) stated that within primary shopping areas, the Council will support the ground floor use of premises for retail, financial and professional activities and restaurants, cafes, pubs and bars provided that:

- A minimum of 70% of the frontage is retained in Use Class A1;
- Use Class A5 hot food takeaways are limited to a maximum of 15% of the frontage;

- The proposed use will not result in a separation of more than 12 metres between A1 and retail uses; and
- The proposed use does not result in a concentration of non retail uses which could be considered to cause harm to the vitality and viability of the town centre.

The most recently recorded percentage of frontages in A1 use in the primary shopping area is 57.4% (2019 survey). This is significantly below the 70% required by policy and any further loss of A1 uses would be considered to be contrary to policy.

Given the current circumstances however, and the effect the coronavirus has had on the national economy, the local economy and high streets specifically too, there are other material considerations which affect this proposal. Paragraph 3.7 of the Local Plan states that the Council will consider proposals which constitute a departure from policies in this chapter (Town Centres), where they provide clear and long lasting benefits to the vitality and viability of town centres in the borough. At a time when many businesses have closed and on high streets specifically the lack of footfall over a significantly long period of time has resulted in the closure of businesses across Hillingdon and the rest of the country, local businesses need to be supported to help restart the economy.

This is a retrospective application and refusal of the application would result in the business "Snacks Corner" which has been operating for over a year with no known complaints ceasing to operate from this premises, which would add to the cumulative impact the closure of several businesses has had on town centres across the borough over the last few months. The long-term impact of coronavirus on town centres and the shopping patterns of individuals is not yet known and it is unclear whether high streets will continue to operate in the same way. As such it is considered that refusal on the grounds of a minimum of 70% of the frontage not being in A1 Use would be detrimental to long-term vitality and viability of Uxbridge Road minor town centre. The current use may also currently be helping generate footfall which is of benefit to the wider high street and necessary at this time to help restart the local economy.

Whilst the applicant has applied for A3/A5 use, as there is no seating area in the unit the proposal is considered to be an A5 unit as consumption of the food is primarily going to take place off premises. The most recent survey for the area (2019) shows that 8.1% of the minor town centre frontage is in A5 use, below the 15% threshold set by policy DMTC 2. There is also an A1 use two units away and this proposal would not result in a separation of more than 12 metres between A1 retail uses.

## **7. MAIN PLANNING ISSUES**

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

In order to establish the acceptability of the principle of the change of use it is necessary to take into account the recently adopted planning policy.

DMTC 2A of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) states that in primary shopping areas, the council will support the ground floor use of premises provided that a minimum of 70% of the frontage is retained as Use Class A1; Use Class A5 units are limited to 15% of the frontage; the proposed use would not result in a separation of more than 12 metres between A1 uses; and the use does not result in a concentration of non-retail uses. Policy DMTC 4 states that proposals for restaurants should not result in adverse cumulative impacts, would not result in unacceptable disturbance or loss of amenity to nearby properties and would not detrimentally affect the character of the area.

Paragraph 3.7 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (2020) states that the Council will consider proposals which constitute a departure from policies where

they provide clear and long lasting benefits for the vitality and viability of town centres in the borough.

The most recently recorded percentage of frontages in A1 use within the primary shopping area of the Uxbridge Road Town Centre is 57.4% (2019 survey) which is considerably below the 70% as required by Policy DMTC 2A. However, it is noted that the long term impact of coronavirus on town centres and shopping patterns is yet unknown and it is unclear how high streets will operate. As such, it is important that local businesses need to be supported to help restart the economy. The application site has been operating for over a year with no known complaints, the shopping survey shows that 8.1% of the frontage is in A5 use which is below the 15% threshold set by Policy DMTC 2A and the proposal would not result in a separation of more than 12 metres between A1 retail uses. It is also considered that the current use may be helping generate footfall which is of benefit to the wider high street and necessary at this time to help restart the local economy.

Subsequently, it is considered that on balance that the proposal would be considered acceptable in principal.

#### **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**

No external changes form part of this application, and so it is considered there would be no impact on the character and appearance of the area.

It is noted that the existing signage does not currently have permission and so a separate Advertisement application is required and the applicant is advised to submit one to avoid being at risk of Enforcement action.

#### **7.08 Impact on neighbours**

Policy DMHB 11 B of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) seeks to safeguard the amenities of neighbouring residents in terms of loss of light, loss of outlook, sense of dominance and loss of privacy.

Policy DMTC 4 ii states that proposals for restaurants should not caused unacceptable disturbance or loss of amenity to nearby properties by reason of noise, odour, emissions, safety and security, refuse, parking or traffic congestion.

There have been no changes to the footprint or any additional windows and so there have been no impact on the amenities of neighbouring residents.

There is an extractor fan installed in the wall along Warley Avenue which serves the kitchen. This is shown on both the existing and proposed plan, however, the change of use would impact what is being extracted. No details of this system have been submitted, however, the floors above the property are not in residential use.

Subsequently, it is considered that the proposal would not result in a detrimental impact on

any neighbouring properties and therefore would be compliant with Policy DMHB 1 (B) and DMTC 4 (ii) of the Hillingdon Local Plan: Part Two - Development Management Policies (2020).

**7.09 Living conditions for future occupiers**

Not applicable to this application.

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

Policies DMT 1 and DMT 2 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) state that all proposals for development will be assessed against their contribution to traffic generation and their impact on congestion and the present and potential availability of public transport and its capacity to meet increased demand. Policy DMT 6 seeks to ensure developments comply with the Council's Parking Standards.

The site forms part of an established parade of shops along the A4020 Uxbridge Road and benefits from good pedestrian access with numerous cycle stands and pay and display parking bays in close proximity. There is also a bus stop close to the site. Staff levels are expected to be minimal. As such, it is considered that the parking facilities in the area are suitable for the proposal and there are no highway concerns.

**7.11 Urban design, access and security**

Not applicable to this application.

**7.12 Disabled access**

The access officer has raised no concerns, however advises that an informative be added to advise the applicant regarding the Equality Act 2010.

**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**

Not applicable to this application.

**7.19 Comments on Public Consultations**

No comments were received.

**7.20 Planning obligations**

Not applicable to this application.

**7.21 Expediency of enforcement action**

This is a retrospective application, which if refused, would require the submission of a further report to committee, to consider the possibility of enforcement action.

**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**

The application is seeking retrospective planning permission for the change of use from A1 (Retail) to A3/A5 (Cafe/Takeaway).

It is considered that the change of use would not harm the vitality and attractiveness of Uxbridge Road Town Centre. No external changes form part of the application, although it is noted that the advertisement does not have permission and so the applicant is advised this is at risk of enforcement action.

**11. Reference Documents**

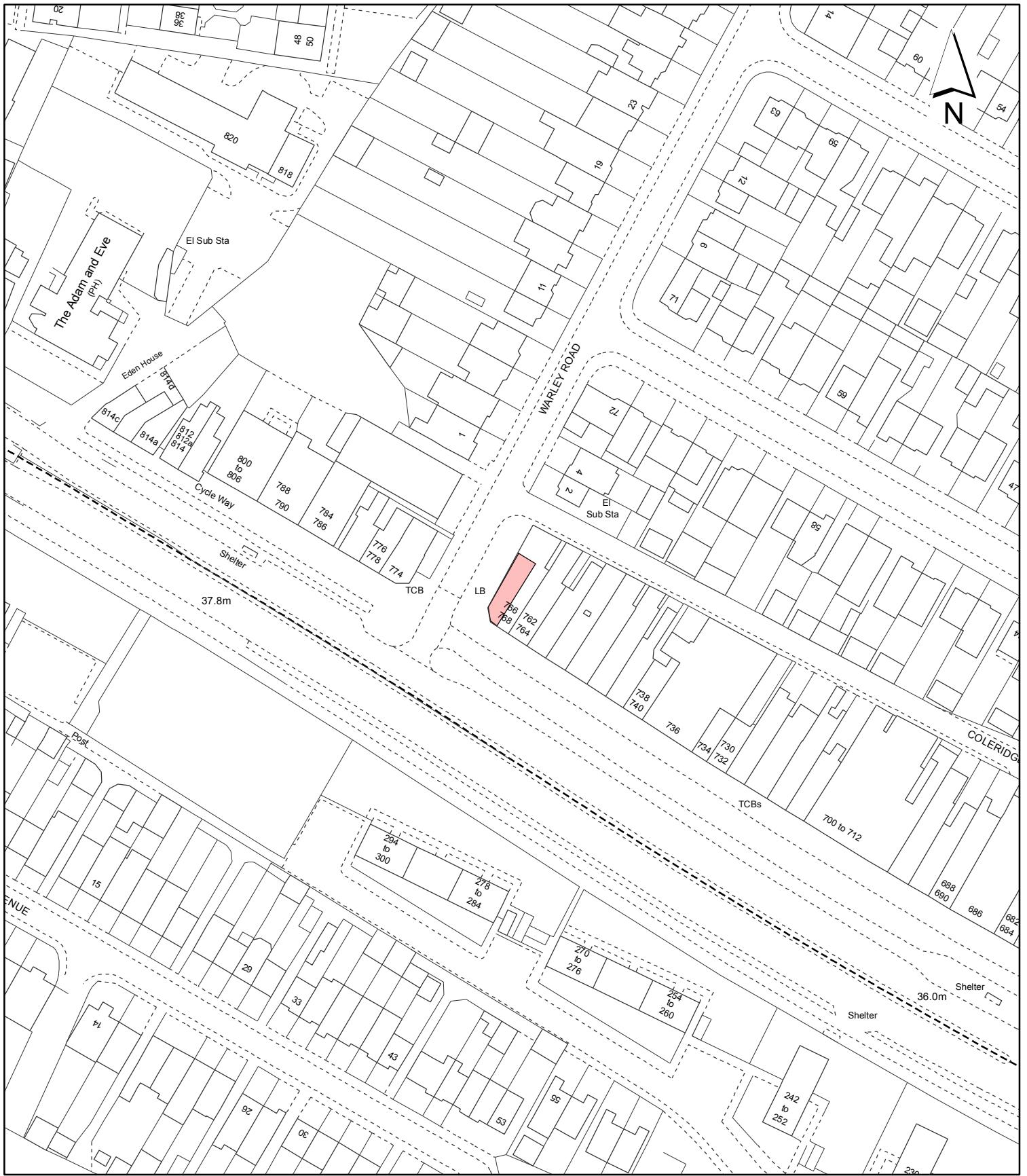
Hillingdon Local Plan: Part One - Strategic Policies (November 2012)

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

The London Plan (2016)

**Contact Officer:** Charlotte Spencer

**Telephone No:** 01895 250230



**Notes:**

Site boundary

For identification purposes only.

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Site Address:

**766B Uxbridge Road  
Hayes**

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

Civic Centre, Uxbridge, Middx. UB8 1UW  
Telephone No.: Uxbridge 01895 250111

Planning Application Ref:

**62118/APP/2020/743**

Scale:

**1:1,250**

Planning Committee:

**Central & South**

Date:

**July 2020**



**HILLINGDON**  
LONDON