

Report of the Head of Planning, Transportation and Regeneration

Address TAYLOR WOODROW DEPOT BROADMEAD ROAD YEADING

Development: Deed of Variation to Section 106 associated with planning permission ref: 327/APP/2000/2106 dated 17/5/02:-

'Phased redevelopment and part refurbishment of site/buildings (currently used for general industrial/ storage, offices and sports complex purposes) which straddles Hillingdon and Ealing boroughs, to provide mixed use, 1 to 8 storeys, development, comprising 705 residential units including 18 live/work units, (446 one, two and three-bedroom flats and 259 three, four and five-bedroom houses - 3,088 habitable rooms overall), and non-residential/commercial as follows - 7,900 sq metres new offices; 7,520 sq metres refurbished offices, 680 sq metres light industrial/workshops retained for use as managed workspace, 100 sq metres wardens office/meeting rooms, 100 sq metres tele-working centre, 560 sq metres retail, 550 sq metres community facilities, 240 sq metres restaurant, 480 sq metres creche, 200 sq metres ancillary commercial floorspace to canal basin area, 1,500 sq metres separate health facility, 4,945 sq metres (gross floor area) sports complex, together with childrens' play/ adventure play areas, youth shelter, sports pitches, parkland landscaping and wildlife area, new canal basin, new bridge over canal and rebuilding of existing bridge, amenity open space, road infrastructure - with vehicular access from Ruislip Road and Broadmead Road, and associated servicing and car parking (outline application with environmental impact statement)

(This permission relates to that part of the development which falls within Hillingdon and comprises mixed residential development at a density which shall not exceed 40 dwellings per hectare, a sports complex, sports pavilion and youth shelter with associated landscaping and parking)'

The S106 modification sought is to modify the current mortgagee exclusion clause contained in Schedule 2 (Affordable Housing), Part 1, Paragraph 9 for Nos. 31 - 37 (odd) Broadmead Road, 1 - 12 (inclusive) Avon House, 1 Ballinger Way and 1 - 6 (inclusive) Bridgewater House, 3 Ballinger Way.

LBH Ref Nos: 327/APP/2020/2840

Drawing Nos: Location Plan
Land Registry Title Map
Original S106 Agreement
Agent's email dated 23/2/21

Date Plans Received: 07/09/2020

Date(s) of Amendment(s):

Date Application Valid: 10/03/2021

1. SUMMARY

This proposal is for a Deed of Variation to the mortgagee exclusion clause contained in Schedule 2 (Affordable Housing), Part 1, Paragraph 9 of the Section 106 associated with planning permission ref: 327/APP/2000/2106 dated 17/5/02, for the completed mixed use

redevelopment of the former Taylor Woodrow Depot which straddled Hillingdon and Ealing boroughs for Nos. 31 - 37 (odd) Broadmead Road, 1 - 12 (inclusive) Avon House, 1 Ballinger Way and 1 - 6 (inclusive) Bridgewater House, 3 Ballinger Way.

Officers have considered the proposal and consider the variation of the mortgagee exclusion clause in relation to the above properties acceptable and the application is recommended for approval.

2. RECOMMENDATION

That delegated powers be given to the Head of Planning, Transportation and Regeneration to grant permission, subject to the following:

1. That the Council enter a Deed of Variation with the applicants and the London Borough of Ealing under Section 106 of the Town and Country Planning Act 1990 (as amended) or other appropriate legislation to secure:

(i) Amendment to Schedule 2 (Affordable Housing), Part 1, Paragraph 9 to vary the mortgage in possession clause to allow for a registered provider to purchase the properties at Nos. 31 - 37 (odd) Broadmead Road, 1 - 12 (inclusive) Avon House, 1 Ballinger Way and 1 - 6 (inclusive) Bridgewater House, 3 Ballinger Way.

2. That the applicant meets the council's reasonable costs in the preparation of the deed of variation and any abortive work as a result of the deed not being completed.

3. That Officers be authorised to negotiate and agree the amended terms for the Affordable Housing Schedule in the Deed of Variation.

1 NONSC Grant

1. That the Council enter a Deed of Variation with the applicants under Section 106 of the Town and Country Planning Act 1990 (as amended) or other appropriate legislation to secure:

(i) Amendment to Schedule 2 (Affordable Housing), Part 1, Paragraph 9 to vary the Mortgage in Possession clause, for Nos. 31 - 37 (odd) Broadmead Road, 1 - 12 (inclusive) Avon House, 1 Ballinger Way and 1 - 6 (inclusive) Bridgewater House, 3 Ballinger Way, in accordance with the recommended approach set out by the GLA in the 'Mortgagee in Possession - Section 106 Standard Clauses - Practice Note (January 2019)'.

No other changes are proposed to the original legal agreement.

2. That the applicant meets the council's reasonable costs in the preparation of the deed of variation and any abortive work as a result of the deed not being completed.

3. That Officers be authorised to negotiate and agree the amended terms of Schedule 2, Part 1, Paragraph 9 in the Deed of Variation.

3. CONSIDERATIONS

3.1 Site and Locality

The application site is located at the junction of Broadmead Road and Ballinger Way and comprises two pairs of semi-detached two storey residential properties which front Broadmead Road and two three storey flatted blocks which front Ballinger Way. These properties were built as part of the wider redevelopment of the former Taylor Woodrow Depot, known as Grand Union Village.

3.2 Proposed Scheme

The proposal seeks an amendment to Schedule 2 (Affordable Housing), Part 1, Paragraph 9 of the Section 106 associated with planning permission ref: 327/APP/2000/2106 dated 17/5/02. The Applicant is seeking a variation by s106A of the Town and Country Planning Act 1990, which states that a planning obligation may not be modified or discharged except either by agreement between the appropriate authority. The Applicant is seeking to delete clauses (c) and (d) and replace with following:-

'a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Unit or any persons or bodies deriving title through such mortgagee or chargee or Receiver'.

'if such disposal has not completed within the three month period and the mortgagee, chargee or Receiver has used reasonable endeavours as agreed in writing by the Council (such agreement not to be unreasonably delayed or withheld and to be deemed to be granted if the Council does not issue its decision on the matter within 14 days of a receipt of a written request), the mortgagee, chargee or Receiver shall be entitled to dispose of the [affordable dwellings] free from the [affordable housing provisions] in this Agreement which provisions shall determine absolutely'.

The applicant advises that the variation is necessary following advice received from the GLA and the need to use their standard wording.

3.3 Relevant Planning History

Comment on Relevant Planning History

This variation relates to planning permission 327/APP/2000/2106 dated 17/5/02.

4. Planning Policies and Standards

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)
- The West London Waste Plan (2015)
- The London Plan (2021)

Material Considerations

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

UDP / LDF Designation and London Plan

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

Part 1 Policies:

PT1.H2 (2012) Affordable Housing

Part 2 Policies:

DMH 7 Provision of Affordable Housing

LPP H5 (2021) Threshold approach to applications

LPP H6 (2021) Affordable housing tenure

5. Advertisement and Site Notice

5.1 Advertisement Expiry Date:- **24th April 2021**

5.2 Site Notice Expiry Date:- Not applicable

6. Consultations

External Consultees

80 neighbouring properties have been consulted, a site notice was displayed on 6/4/21 and the application has been advertised in the local press on 14/4/21. 2 responses have been received, making the following comments:-

- (i) This is a relatively peaceful area and proposal would destroy it,
- (ii) The traffic is very bad on Broadmead Road as it is and this will just cause much more traffic leading to more pollution,
- (iii) Parking will be a big issue as people from the existing estate use our road and neighbouring roads,
- (iv) The green space is needed for the wildlife and community,
- (v) Do not want any structures overlooking our properties,
- (vi) Proposal would increase crime.

Officer Note:

The comments received do not relate to the proposal to vary the affordable housing clause in the existing S106 Agreement.

GLA:

I do not consider that this application is referable to the Mayor under the terms of the Mayor of London Order 2008, as it is not an application for planning permission or a S.73 application. I also note that we have not been provided with any other documents or details other than the application form which is on your website. From the description it appears that the applicant is seeking to amend the mortgagee in possession clause in the S106. If you would like any advice from the GLA on the proposed changes then do provide me with further details of the proposal and I can get back to you when we have reviewed this.

Officer Note:

The GLA have confirmed that the proposal is not referable to the Mayor and the changes are required to reflect GLA guidance.

Natural England:

There are no comments to make on the Deed of Variation to Section 106 associated with plan permission ref. 327/APP/2000/2106 dated 17.5.02.

London Borough of Ealing:

No comments received.

Internal Consultees

Planning Policy Officer:

We would be willing to amend to reflect the wording in the GLA guidance note.

Tree Officer:

This application seeks to modify the current mortgagee exclusion clause associated with Schedule 2 (affordable housing). There will be no impact on the external layout or landscape. No objection.

7. MAIN PLANNING ISSUES

7.01 The principle of the development

The principle of development has been accepted through the granting of planning permission ref: 327/APP/2000/2106 dated 17/5/02.

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.

7.06 Environmental Impact

Not applicable to this application.

7.07 Impact on the character & appearance of the area

No changes are proposed which would impact on the character or appearance of the area.

7.08 Impact on neighbours

No changes are proposed which would impact on the residential amenity of surrounding properties.

7.09 Living conditions for future occupiers

No changes are proposed which would impact on the residential amenity provided for occupiers of the development.

7.10 Traffic impact, Car/cycle parking, pedestrian safety

No changes are proposed which would impact on traffic, parking or pedestrian safety.

7.11 Urban design, access and security

No changes are proposed which would impact on urban design, access and security.

7.12 Disabled access

No changes are proposed which would impact on accessibility.

7.13 Provision of affordable & special needs housing

No changes are proposed that would impact the provision of affordable housing.

7.14 Trees, landscaping and Ecology

No changes are proposed which would impact on trees, landscaping and ecology.

7.15 Sustainable waste management

No changes are proposed which would impact on refuse provision.

7.16 Renewable energy / Sustainability

No changes are proposed which would impact on renewable energy and sustainability.

7.17 Flooding or Drainage Issues

No changes are proposed which would impact on flooding or drainage issues.

7.18 Noise or Air Quality Issues

No changes are proposed which would impact on noise or air quality.

7.19 Comments on Public Consultations

No responses have been received.

7.20 Planning obligations

Alteration is proposed to Schedule 2 (Affordable Housing), Part 1, Paragraph 9 of the Section 106 associated with planning permission ref: 327/APP/2000/2106 dated 17/5/02, for the completed mixed use redevelopment of the former Taylor Woodrow Depot which straddled Hillingdon and Ealing boroughs for Nos. 31 - 37 (odd) Broadmead Road, 1 - 12 (inclusive) Avon House, 1 Ballinger Way and 1 - 6 (inclusive) Bridgewater House, 3 Ballinger Way.

The Applicant is seeking to vary Schedule 2, Part 1, Paragraph 9 of the Agreement to vary the Mortgagee in Possession (MiP) clause which are usually included in Section 106 legal agreements, however the clause needs revision to accord with current GLA guidance.

The MiP clauses within Section 106 agreements (S106 agreement) enable Registered Providers (RP) to provide for circumstances where a Registered Provider defaults on loan payments or other loan/mortgage terms and a mortgagee (or other relevant funding party) takes control of the RP's interest in affordable housing units as assets against which their loan is secured.

The amendment to the clause allows for another RP to purchase the affordable housing units within a specified timeframe known as the 'moratorium period' under a prescribed procedure. This is set out in the S106 agreement and is a contractual arrangement.

Given that the proposed clause is commonly used in Section 106 legal agreements, there is no objection to the amendment of Schedule 2, Part 1, Paragraph 9 provided the amendment to the agreement is drafted in accordance with the GLA guidance note.

7.21 Expediency of enforcement action

Not applicable to this application.

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

This proposal is for a Deed of Variation to Schedule 2 (Affordable Housing), Part 1,

Paragraph 9 of the Section 106 associated with planning permission ref: 327/APP/2000/2106 dated 17/5/02, for the completed mixed use redevelopment of the former Taylor Woodrow Depot which straddled Hillingdon and Ealing boroughs for Nos. 31 - 37 (odd) Broadmead Road, 1 - 12 (inclusive) Avon House, 1 Ballinger Way and 1 - 6 (inclusive) Bridgewater House, 3 Ballinger Way.

The inclusion of a MiP clauses within Section 106 agreements (S106 agreement) is common practice and it enables Registered Providers (RP) to provide for circumstances where a Registered Provider defaults on loan payments or other loan/mortgage terms and a mortgagee (or other relevant funding party) takes control of the RP's interest in affordable housing units as assets against which their loan is secured. The clause allows for another RP to purchase the affordable housing unit(s) within a specified timeframe known as the 'moratorium period' under a prescribed procedure.

Officers have considered the proposal and consider the variation of the Mortgagee in Possession clause acceptable and the application is recommended for approval.

11. Reference Documents

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

Hillingdon Local Plan: Part Two - Development Management Policies (January 2020)

London Plan (2021)

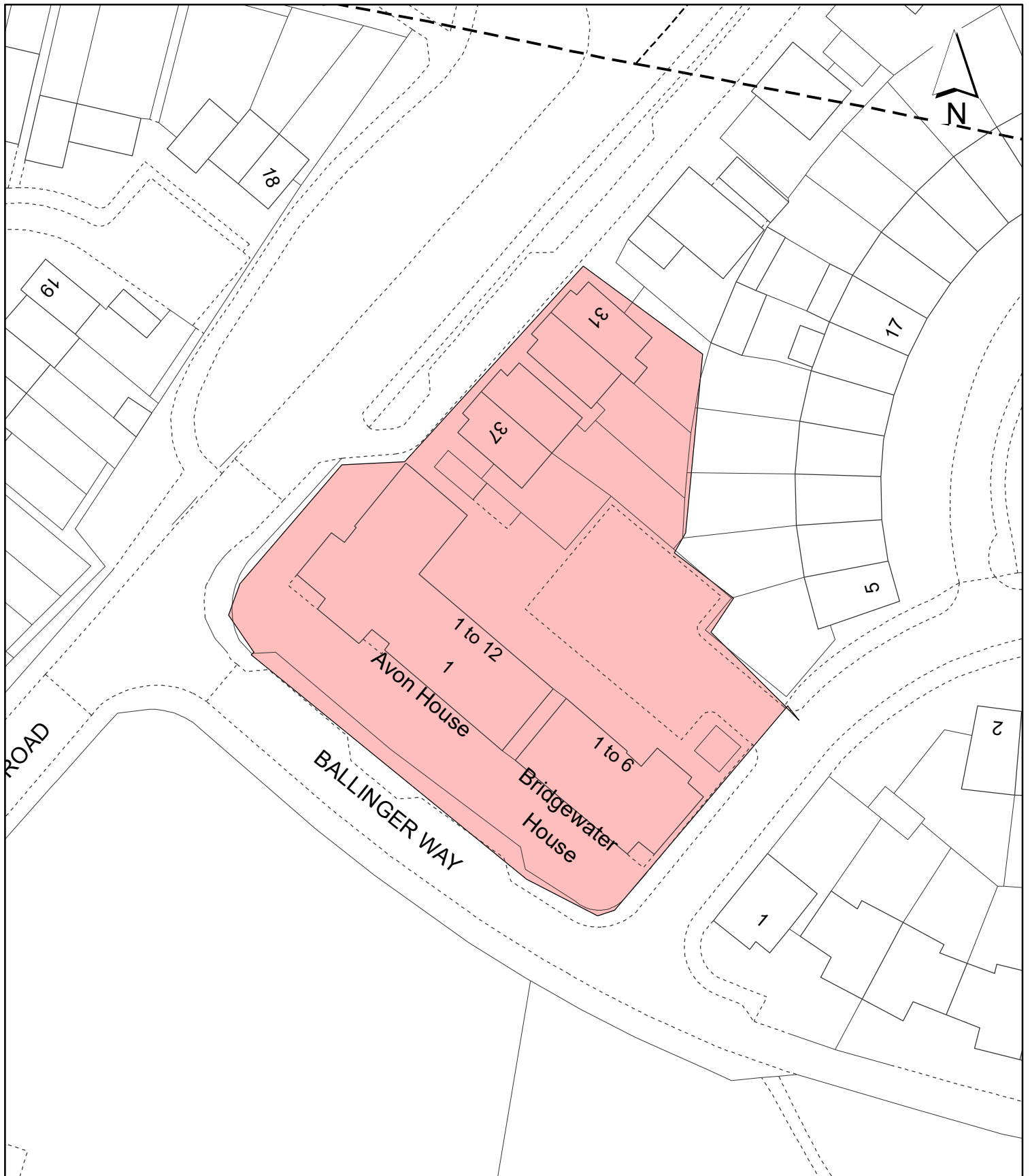
National Planning Policy Framework (February 2019)

SPD 'Planning Obligations' July 2014

Mortgagee in Possession - Section 106 Standard Clauses - Practice Note (January 2019)

Contact Officer: Richard Phillips

Telephone No: 01895 250230



Notes:

 Site boundary

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Site Address:

**Taylor Woodrow Depot,
 Broadmead Road**

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

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

Planning Application Ref:

327/APP/2020/2840

Scale:

1:600

Planning Committee:

Major

Date:

May 2021



HILLINGDON
 LONDON