

Report of the Head of Development Management and Building Control

Address: INTU SHOPPING CENTRE HIGH STREET UXBRIDGE

Development: Application to modify the Section 106 agreement associated with planning permission ref. 42966AH/96/1862 granted 11-11-1997 relating to the Chimes Shopping Centre, High Street, Uxbridge (for the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use).

LBH Ref Nos: 42966/APP/2023/70

Drawing Nos: PLAN 1
The Chimes - Tenants and unit sizes
Covering Letter dated December 2022

Date Plans received: 15-12-2022 **Date(s) of Amendments(s):**

Date Application valid 21-12-2022

1. SUMMARY

This application seeks to modify the Section 106 agreement associated with planning permission ref. 42966AH/96/1862 granted 11 November 1997 relating to The Chimes Shopping Centre, High Street, Uxbridge.

The modification seeks to amend the wording to the restrictions on retail use (Class A1), in light of the changes to the Town and Country Planning (Use Classes) Order 1987; namely the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use.

Specifically the modifications sought are in relation to Clause 12.1 (Restrictions on Use) and the associated definition of 'Retail Floorspace' set out in Clause 4.1 of the original agreement.

Considering the national shift to Use Class E, the applicant is seeking alignment with the national position and the general shift towards making town centres places for more than just retail development. It is considered that the introduction of Class E will bring significant benefits to The Chimes Shopping Centre, which will now be able to react far more quickly to changing market demands. The proposed variation would accord with current government thinking on the need for town centres to be able to respond and meet changing demands in the retail sector.

It is considered that there are no objections with the uses in Use Class E, as this is essentially what all the retail uses on Uxbridge High Street could now become and there is no reason why The Chimes Shopping Centre should be a departure from this national trend or should not have the flexibility to respond in the same way in challenging conditions.

It is therefore recommended that the proposed amendments to the S106 Agreement be agreed.

2. RECOMMENDATION

APPROVAL, subject to the following:

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

(i) Amendment to modify the Section 106 agreement associated with The Chimes Shopping Centre, Uxbridge in light of the introduction of the amendments to the Use Classes Order which came into effect on 1st September 2020; namely the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use.

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 introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use in the Deed of Variation.

INFORMATIVES

1.

APPROVAL of:

The variation of Section 106 legal agreement attached to planning permission ref. 42966AH/96/1862 granted 11 November 1997 relating to The Chimes Shopping Centre, in order to secure:

1) the amendment to the wording to the restrictions on retail use (Class A1), in light of the changes to the Town and Country Planning (Use Classes) Order 1987; namely the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use.

3. CONSIDERATIONS

3.1 Site and Locality

The application site comprises The Chimes Shopping Centre in Uxbridge. The centre benefits from various pedestrian access points from the High Street and George Street. The associated multi-storey car park to the rear is accessed from Chippendale Way, and also benefits from a frontage onto Cumbrian Way. The application site is located within the Old Uxbridge/Windsor Street Conservation Area, as identified in the Hillingdon Local Plan: Part One - Strategic Policies (November 2012).

The application site is located within the Primary Shopping Area of Uxbridge Town Centre. It is also within the Air Quality Management Area and Archaeological Priority Area.

The area in general is characterised by predominantly commercial and retail uses.

3.2 Proposed Scheme

This application seeks to modify the Section 106 agreement associated with The Chimes Shopping Centre, Uxbridge in light of the introduction of the amendments to the Use Classes Order which came into effect on 1st September 2020; namely the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use.

Specifically the modifications sought are in relation to Clause 12.1 (Restrictions on Use) and the associated definition of 'Retail Floorspace' set out in Clause 4.1 of the original agreement.

Clause 12.1 states that:

'12. RESTRICTIONS ON USE

12.1 Not less than eighty per centum (80%) of the Retail Floor Space shall be used as retail space within Use Class A1 of the Town and Country Planning (Use Classes) Order 1987 PROVIDED THAT for the purposes of this clause space used for purposes ancillary to retail use within such Use Class A1 shall itself be treated as being used for purposes within such Use Class A1 PROVIDED ALSO THAT for the avoidance of doubt this obligation shall not be construed as a positive obligation to trade.

12.2 No more than twenty-five per centum (25%) of the floor space of any unit forming part of the Retail Floor Space and having a floor area exceeding fifteen hundred (1500) square metres shall be used for any of the following purposes: -

12.2.1 Financial services

12.2.2 Professional services (other than health or medical services)

12.2.3 Any other services (including use as a betting office) which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public;

12.2.4 For the sale of food or drink for consumption on the premises or of hot food for consumption off the premises.

Provided that each such use shall be ancillary to the principal retail function of that unit.'

Following extensive negotiations the following modifications to the S106 Agreement are sought:

To amend the wording to the restrictions on retail use (Class A1) in light of the changes to the Town and Country Planning (Use Classes) Order 1987; namely the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use. The Town and Country Planning (Use Classes) (Amendments) (England) Regulations 2020.

The current definition of "Retail Floor Space" shall be deleted. There shall be a new definition inserted as follows:

"Retail Commercial Floorspace" means the aggregate of the area of the floor space within the Development within Use Class E designed for retail commercial, business and service purposes (and specifically excluding the multi-screen cinema 219/221 and 222 High Street the Timber Framed Building and the Creche)".

There shall also be a new definition inserted to define Use Class E:

'Use Class E means the use prescribed in Schedule 2, Part A, Commercial, Business and Service Town and Country Planning (Use Classes) Order 1987 (as amended) as follows:

Class E Commercial, Business and Service Use, or part use, for all or any of the following purposes:

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
- (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
- (c) for the provision of the following kinds of services principally to visiting members of the public
 - (i) financial services,
 - (ii) professional services (other than health or medical services), or
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,
- (f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
- (g) for
 - (i) an office to carry out any operational or administrative functions,
 - (ii) the research and development of products or processes, or
 - (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.'

There shall be a new Paragraph 12 inserted as follows:

'12. RESTRICTIONS ON USE

12.1 Not less than eighty per centum (80%) of the Retail Commercial Floor Space shall be used as commercial, business and service space within Use Class E of PROVIDED THAT for the purposes of this clause space used for purposes ancillary to retail commercial, business and service use within such Use Class E shall itself be treated as being used for purposes within such Use Class E PROVIDED ALSO THAT for the avoidance of doubt this obligation shall not be construed as a positive obligation to trade.

12.2 The uses falling within Use Class E of the said order carried on in the commercial, business and service units situated at the date hereof on part of the High Street frontage of the Site shall not be changed to a use falling outside that use class other than in accordance with a grant of planning permission unless such units have the benefit of a certificate of lawful use within the meaning of Section 191 of the 1990 Act.

12.3 The remaining 20% of the Retail Commercial Floor Space, not subject to clause 12.1, can fall within any Use Class (or sui generis use), subject to the necessary grant of planning permission, so long as the 80% Class E minimum threshold is maintained.

12.4 The Owner shall submit to the Council every two years the following information in respect of each unit of occupancy:

- (i) Tenant Name

- (ii) Assumed Use Class
- (iii) Percentage of each Use Class
- (iii) Percentage Use Class by floor area
- (iv) Unit Number or location of use with reference to a floor plan.'

3.3 Relevant Planning History

Comment on Relevant Planning History

There has been extensive planning history for this site over the years. Of particular relevance is the evolution of the original legal agreement which was dated 12th November 1997 under Section 106 of the Act between the London Borough of Hillingdon and Sun Alliance and London Assurance Company Limited under planning permission reference 42966AH/96/1862.

This was amended by a supplemental agreement dated 6th December 2001 entered into between the London Borough of Hillingdon and CSC Uxbridge Limited relating to Contributions towards CCTV.

The agreement was further amended by a supplemental agreement dated 12th March 2002 between the London Borough of Hillingdon and CSC Uxbridge Limited relating to agreement to regulate the management of the car park and variations to the highway works on Vine Street and High Street Uxbridge.

4. Planning Policies and Standards

Legislative Background

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) were introduced by the Government on 20 July 2020. The Regulations made substantial changes to the Town and Country Planning (Use Classes) Order 1987 and came into effect on 1 September 2020.

The Regulations introduced three new use classes:

- (a) Class E (Commercial, Business and Service) - including retail, restaurant, financial/professional services, indoor sports, medical and nursery uses, office, research/development and light industrial uses which can be carried out in a residential area without detriment to amenity, along with "any other services which it is appropriate to provide in a commercial, business or service locality";
- (b) Class F.1 (Learning and Non-residential Institutions) - including non-residential educational uses, and use as an art gallery, museum, library, public hall, religious institution or law court; and
- (c) Class F.2 (Local community) - including use as a shop of no more than 280 sqm mostly selling essential goods, including food, to visiting members of the public and that is at least 1km from another similar shop, and use as a community hall, area for outdoor sport or recreation, swimming pool or skating rink.

In short and relevant to this application, Use Classes A1, A2, A3, B1, and parts of D1 and D2 are subsumed into new Use Class E.

The Regulations also state that changes within this new Use Class E do not constitute development and will therefore not require planning permission.

Local Plan Designation and London Plan

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

Part 1 Policies:

PT1.E4 (2012) Uxbridge

PT1.E5 (2012) Town and Local Centres

PT1.HE1 (2012) Heritage

Part 2 Policies:

DMHB 13 Shopfronts

DMTC 1 Town Centre Development

DMTC 2 Primary and Secondary Shopping Areas

DMTC 4 Amenity and Town Centre Uses

LPP DF1 (2021) Delivery of the Plan and Planning Obligations

LPP E9 (2021) Retail, markets and hot food takeaways

LPP GG5 (2021) Growing a good economy

LPP SD6 (2021) Town centres and high streets

LPP SD7 (2021) Town centres: development principles and Development Plan Documents

LPP SD8 (2021) Town centre network

LPP SD9 (2021) Town centres: Local partnerships and implementation

NPPF7 NPPF 2021 - Ensuring the vitality of town centres

5. Advertisement and Site Notice

5.1 Advertisement Expiry Date: 2nd August 2023

5.2 Site Notice Expiry Date: 2nd August 2023

Major Applications Planning Committee - 14th September 2023

PART 1 - MEMBERS, PUBLIC & PRESS

6. Consultations

External Consultees

As per the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, when a local planning authority receives an application for the modification or discharge of a planning obligation they shall publicise the application by:

- (a) posting notice of the application on or near the land to which the planning obligation relates for not less than 21 days; or
- (b) serving notice of the application on the owners and occupiers of land adjoining that land; or
- (c) publishing notice of the application in a local newspaper circulating in the locality in which that land is situated.

A site notice was displayed and the application was advertised in the local press. Letters were sent to neighbouring properties and the consultation period expired on 21-07-23

2 comments in support of the proposals and 1 objection were received. These can be summarised as:

In favour:

- More available in the shopping centre
- A lot of young people and families use it
- Opens the door to more community spaces in Uxbridge

Objection:

- Area is already overcrowded, busy, dirty, hostile, full of drunks, young people being aggressive. This is unnecessary and waste of good space.

Internal Consultees

POLICY

The applicant is seeking to amend the existing obligation to reflect amendments to the Use Class Order and to provide greater flexibility in who can occupy the shopping centre.

There is no in principle rationale for restricting the occupiers of The Chimes Shopping Centre more than other former Use Class A1 (Now Class E) units within the town centre. Indeed, to argue an alternative position would be contrary to recent national policy and the move away from restricting units to just retail shops.

Whilst the current restriction allows for up to 25% of the floorspace of the retail units (former Use Class A1) to be used for a series of specified uses, in the majority of cases these are now covered under Use Class E. As such this 25% requirement has been removed from the legal agreement as it is predominantly obsolete.

Officers have queried the need to retain an explicit reference for 20% of the floorspace that could be used for all uses outside of Use Class E. However this restriction ensures that at least 80% of the floor space would remain as Use Class E unless the currently proposed wording was further varied. Nevertheless, the wording remains clear that the remaining 20% of floorspace can only fall into uses outside of Use Class E 'subject to the necessary grant of planning permission'.

Major Applications Planning Committee - 14th September 2023

PART 1 - MEMBERS, PUBLIC & PRESS

It has been concluded that the proportion of floorspace area in Use Class E is currently in excess of 80%. The Council would retain the authority to review any proposed change from Use Class E to an alternative use where a planning application was required. If there were reasonable grounds to do so, the Council could refuse such an application in the future.

7. MAIN PLANNING ISSUES

7.01 The principle of the development

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) were introduced by the Government on 20 July 2020. The Regulations made substantial changes to the Town and Country Planning (Use Classes) Order 1987 and came into effect on 1 September 2020.

Relevant to this application for a Deed of Variation, Use Classes A.1, A2, A3, B1, and parts of D1 and D2 are subsumed into new Use Class E. The Regulations also state that changes within this new Use Class E do not constitute development and will therefore not require planning permission.

Matters relating to the principle of the Shopping Centre development have already been established by grant of the original permission. However, as currently drafted, it is acknowledged that the extant S106 is neither up to date (the use classes contained in the S106 Agreement have been revoked by the Regulations and no longer exist in planning law), nor does it reflect current government thinking on the need for town centres to be able to respond and meet changing demands in the retail sector.

The UK retail market has been going through a period of significant structural change for the last 5 to 6 years, which was accelerated by the Covid pandemic. The percentage of retail sales made online has grown from 10.7% in October 2012 to 26% as of October 2022 (source: Office of National Statistics). This has resulted in a number of significant business failures in the retail sector, notably BHS, Arcadia (Top Shop, Top Man, Dorothy Perkins and Burtons) and Debenhams.

Retailers are now actively reducing their physical store footprint across the UK when leases come to an end. There are therefore fewer retailers looking for stores in towns such as Uxbridge when they have flagship stores in close proximity such as Westfield London and Brent Cross, as well as strong online channels. There is therefore a smaller pool of retailers to fill an ever-growing number of vacant shops. Non-traditional retail uses are therefore required to fill this space in order to maintain vitality and vibrancy of town centres.

In addition, it is noted that within The Chimes Shopping Centre, there are now numerous vacant units comprising some 32% of the lettable floorspace. The former Debenhams store comprises some 18% of this void and has been vacant since May 2021.

It is recognised that the introduction of Class E has brought significant benefits to town centres, which are now able to react far more quickly to changing market demands. Recent high profile retail failures, such as Debenhams, has highlighted the need for town centres to respond with agility in the face of increasing voids and a narrowing pool of potential retail occupiers.

As stated above, Class E brings together the former A1 (shops), A2 (financial and professional services), A3 (restaurant and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use

without planning permission.

Officers agree that the need to be agile and able to accommodate new 'town centre' concepts is important for the future prospects of town centres. The need to update the S106 to reflect contemporary planning law is important to the trading success of the shopping centre, as well as the town centre as a whole.

Whilst no objections are raised to the introduction of Class E, officers initially raised concerns regarding the 20% other uses subject to planning permission. It was considered that there was a need for clarity regarding the existing situation, particularly with regards to the consideration of any future applications for non Class E uses. The applicant was therefore asked to submit a schedule of existing units in the shopping centre. The schedule was submitted, which showed the percentage of existing Class E floorspace is over 80%.

In order for the Local Planning Authority to be able to monitor the unit information in the shopping centre, it is recommended that the Owner submit to the Council every two years from the completion of the proposed Deed of Variation the following information in respect of each unit of occupancy:

- (i) Tenant Name
- (ii) Assumed Use Class
- (iii) Percentage of each Use Class
- (iii) Percentage Use Class by floor area
- (iv) Unit Number or location of use with reference to a floor plan

Considering the national shift to Use Class E, the applicant is seeking alignment with the national position and the general shift towards making town centres places for more than just retail development.

Subject to the above monitoring requirements and noting the restrictions proposed to ensure that 80% of the floorspace remains within Use Class E, and that planning consent is required for alternative uses (which would be capped at 20% of the total floorspace), there are no objections to the amendments proposed.

7.02 Density of the proposed development

Not applicable. No changes are proposed which would impact on the density of an 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. No changes are proposed which would impact on the green belt.

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

The changes proposed would enable a greater mix of uses to operate within The Chimes Shopping Centre. Whilst there are residential properties within the locality, the proposed introduction of uses deemed to be acceptable and appropriate within town centres nationally is not considered to have an unacceptable 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

Not applicable to the determination of the application.

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

3 representations were received (2 in favour and 1 against). The impact of the proposed changes has been considered within the body of this report.

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.

All other Heads of Terms from the original planning permission will remain unchanged.

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

Not applicable.

10. CONCLUSION

This application seeks to modify the Section 106 legal agreement associated with planning permission ref. 42966AH/96/1862 granted 11 November 1997 relating to The Chimes Shopping Centre, High Street, Uxbridge.

The modification seeks to amend the wording to the restrictions on retail use (Class A1), in light of the changes to the Town and Country Planning (Use Classes) Order 1987; namely the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use.

It is considered that there are no objections with the uses in Use Class E, as this is essentially what all the retail uses on Uxbridge High Street could now become and there is no reason why The Chimes Shopping Centre should be a departure from this national trend or should not have the flexibility to respond in the same way in challenging conditions.

The development would continue to appropriately comply with relevant Local Plan, London Plan and national planning policies and, accordingly, subject to a Deed of Variation to the s106 legal agreement, approval is recommended.

11. Reference Documents

National Planning Policy Framework (July 2021)

The London Plan (March 2021)

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

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

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

Accessible Hillingdon Supplementary Planning Document (September 2017)

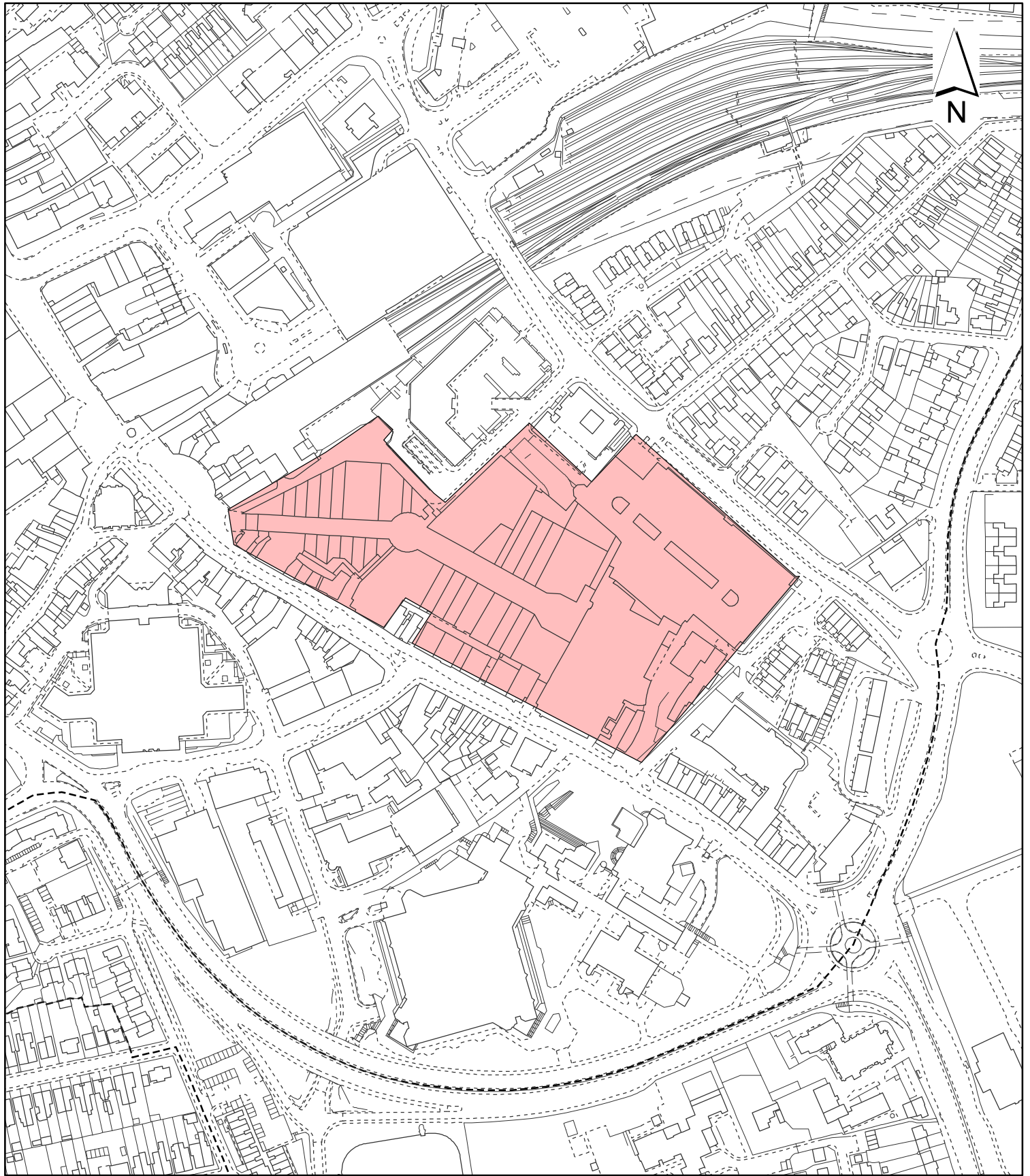
Planning Obligations Supplementary Planning Document (July 2014)

Contact Officer:

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Notes:

 Site boundary

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Site Address:

**The Chimes
 High Street
 Uxbridge**

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

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 Telephone No.: Uxbridge 01895 250111

Planning Application Ref:

42966/APP/2023/70

Scale:

1:3,000

Planning Committee:

Major

Date:

September 2023

