



Appellant's Statement of Case

Land At Corner of Fore Street and High Road, Eastcote HA5 2ET

Appeal against the Borough of Hillingdon Council's refusal to grant planning permission for 'Erection of a building for the use as a day nursery/pre-school, providing childcare and education for children age 0-4 years'

Council's Ref: 73450/APP/2023/431

Hilton & Wallace Ltd
22 St Mary's Road
Faversham
Kent
ME13 8EH

Tel. 0785 525 6660

E-mail. nkw@hiltonandwallace.co.uk

June 2024

CONTENTS

PAGE

Introduction & Documents	1
Description	4
Site Surroundings	5
Related Planning Applications	6
Planning Policy	7
Appellants Grounds of Appeal:	
Reason for Refusal (RR1) Development in an area at risk of flooding	8
RR2- Open Space	22
RR3- Parking and Highways	26
RR4 – Conservation and Heritage	29
RR5 – Trees	32
RR6 – Air Quality	34
RR7 – S106 Obligations	36
Conclusion	37
Appendix 1- Decision Notice Ref: 73450/APP/2023/431	
Appendix 2 – Pre-application Advice Note Ref: 73450/PRC/2021/271	
Appendix 3 – Officers report 73450/APP/2023/431	
Appendix 4 – Paul Mews Associates Appeal Note April 2024.	
Appendix 5 -Aboricultural Appeal statement by Paul Allen dated 28th March 2024.	
Appendix 6 – Sequential Test Appeal Rebuttal 15 th May 2024	
Appendix 7 – Air Quality Report V2.1 June 2024	
Appendix 8 – Heads of Terms.	

1. INTRODUCTION & DOCUMENTS

1.1 On 15th February 2024, the London Borough of Hillingdon ('LPA'), under officer delegated authority, refused planning permission for a development comprising 'The erection of a building for the use as a day nursery/pre-school, providing childcare and education for children age 0-4 years '(Appendix 1).

1.2 The application was refused on the grounds that:

“RR1. The site is located within Flood Zone 2 and 3 and the proposed nursery use represents a more vulnerable development in terms of the flood risk associated with the site. The application fails to demonstrate that the development could not be provided on a reasonably available site at a lower risk of flooding. The development constitutes inappropriate development in an area at risk of flooding without sufficient justification and is contrary to paragraphs 165 and 168 of the National Planning Policy Framework (2023), Policy SI 12 of the London Plan (2021), Policy EM6 of the Hillingdon Local Plan: Part 1 (2012) and Policy DMEI 9 of the Hillingdon Local Plan: Part 2 (2020).

RR2. The proposed development would result in significant loss of protected open space in Eastcote which is identified as a ward with insufficient open space provision. The loss is not justified, and the development is contrary to paragraph 103 of the National Planning Policy Framework (2023), Policy G4 of the London Plan (2021), Policy EM4 of the Hillingdon Local Plan: Part 1 (2012), and Policy DMCI 3 of the Hillingdon Local Plan: Part 2 (2020).

RR3. The proposed development does not provide adequate on-site car parking, pick-up and drop-off facilities. The application submission fails to fully demonstrate that the proposal would not give rise to adverse impacts upon the highway network to the detriment of traffic congestion, parking stress and highway safety. Based on the information submitted, the proposed development is considered to have an unacceptable impact on highway safety. As such, the proposal is contrary to Policies

DMT 1 and DMT 2 of the Hillingdon Local Plan: Part 2 (2020), and Policies T2, T4 and T5 of the London Plan (2021), and is refused in accordance with paragraph 115 of the National Planning Policy Framework (2023).

RR4. The proposed development, by reason of its scale and prominence, would result in an uncharacteristic form of development that would fail to harmonise with the local character within the Conservation Area and setting of Grade II Listed Buildings. The harm identified is not outweighed by public benefits and the proposed development would not preserve or enhance, but have a detrimental impact on the character, appearance and visual amenities of the area. The proposed development is contrary to paragraphs 139 and 205-214 of the National Planning Policy Framework (2023), Policy HC1 of the London Plan (2021), Policies HE1 and BE 1 of the Hillingdon Local Plan: Part 1 (2012), Policies DMHB 1, DMHB 4 and DMHB 11 of the Hillingdon Local Plan: Part 2 (2020).

RR5. The application has failed to justify the need for the layout of development which is likely to result in harm to protected trees, including but not limited to trees T13 and T9 which are category A and B value trees. The application fails to demonstrate that these trees would be protected and retained in the long term. Accordingly, the development could result in adverse and irreversible impacts to landscaping, trees, biodiversity or other natural features of merit, detrimental to the visual amenities of the area and Eastcote Village Conservation Area, contrary to paragraph 136 of the National Planning Policy Framework (2023), Policy G7 of the London Plan (2021), and Policies DMHB 4, DMHB 11, DMHB 12 and DMHB 14 of the Hillingdon Local Plan: Part 2 (2020).

RR6. The proposed development would likely contribute to the production of unacceptable pollutant emissions in the Eastcote Village Air Quality Focus Area. The proposed development would not be air quality neutral or air quality positive and the

measures proposed are not sufficient to mitigate the total emissions. As such, the development is contrary to Policy EM8 of the Hillingdon Local Plan: Part 1 (2012), Policy DMEI 14 of the Hillingdon Local Plan: Part 2 (2020), Policy SI 1 of the London Plan (2021) and paragraphs 180(e) and 192 of the National Planning Policy Framework (2023).

RR7. The Applicant has failed to secure Section 106 planning obligations required to mitigate the harm and demands created by the proposed development (in respect of travel planning, air quality, and project management and monitoring). The scheme therefore conflicts with Policy DMCI 7 of the Hillingdon Local Plan: Part 2 (2020); the adopted Planning Obligations Supplementary Planning Document (2014); Policy DF1 of the London Plan (2021); and paragraphs 55-58 of the National Planning Policy Framework (2023)“.

2.0 DESCRIPTION OF THE DEVELOPMENT

- 2.1 Full planning permission is sought for a development comprising ‘The erection of a building for the use as a day nursery/pre-school, providing childcare and education for children age 0-4 years.’
- 2.2 The proposal is for a single storey sustainable building designed to the highest standard, with the wider scheme providing net biodiversity, ecology and arboricultural gain. The proposal includes an intensive green roof, biodiversity enhancements, new tree planting and landscaping to the whole of the site. It is designed to the highest standard of sustainability. The proposal is supported by detailed ecology, arboricultural, landscaping and heritage reports.
- 2.3 The nursery will provide childcare and education for up to 80 children, with a daily maximum of 64 children at any given time, between 8am and 6pm, Monday to Friday.

There will be half and full days available, and therefore it is very unlikely all children will attend on the same day at the same time. The nursery will operate staggered attendance times.

- 2.4 The nursery is to be a single storey structure with a green roof and timber cladding. The structure is 28 metres by 16 metres (GIA 422 sqm), surrounded by fenced play areas. The trees to the rear are to be retained as a woodland education area with ecological enhancement measures proposed.
- 2.5 The positioning of the nursery building would be a minimum 9.84 m from the bank of the River Pinn to the north.

3.0 SITE AND SURROUNDINGS

- 3.1 The site is vacant, situated on the corner of Fore Street and High Road, Eastcote. It lies behind a small area of public open space and is bound by the River Pinn to the northwest and the petrol station at Eastcote to the northeast. The site contains multiple TPO trees and vegetation which screen the site from public view. The site is private land and has never been in public use. The surrounding area is predominantly residential in character, with the exception of a small local shopping parade located approximately 150m northeast along the High Road, a petrol station and the Black Horse Public House (Grade II Listed).
- 3.2 The site is designated part of the Eastcote Village Conservation Area and the Eastcote Village Archaeological Priority Area. The site is bounded to the north by the River Pinn and lies within Flood Zone 1, predominantly in Zone 2 with a very small area in the northwest corner within Zone 3 along the river bank. The site is covered by 17 Tree

Preservation Orders (TPO) and the Eastcote Village Air Quality Focus Area. The land on the opposite side of the river to the north is designated within a Green Chain.

- 3.3 The Environment Agency's Risk of Flooding from Rivers and Sea Map identifies the site as having a 'Very Low - Medium risk of flooding from Rivers and the Sea'.

4.0 RELATED PLANNING APPLICATIONS

- 4.1 There are no planning permissions relating to the site. An application for a residential scheme comprising the creation of 2 new detached dwellings, new access, landscaping and tree planting (Ref:73450/APP/2019/1272) was withdrawn due to inadequate flood risk information.

5.0 PRE-APPLICATION ADVICE

- 5.1 NPPF paragraph 39 encourages pre-application engagement and the LPA's advice was obtained prior to the submission of this application. The advice raised 2 main issues concerning flood risk and impact on the Conservation Area that were addressed in full through the submission of relevant specialist reports. The pre-application and planning application submission took over 24 months and the scheme was revised at every opportunity to address concerns as they were raised. Additional information and professional reports have been submitted wherever relevant.

6.0 PLANNING POLICY

6.1 The following policy documents and legislation are considered most relevant to the proposal:

- NPPF (December 2023)
- PPG - Flood risk and coastal change (updated 25 August 2022)
- London Plan (2021)
- Hillingdon Local Plan
- The Local Plan: Part 1 - Strategic Policies (2012)
- The Local Plan: Part 2 - Development Management Policies & Site Allocations and Designations (2020)
- Planning and Compulsory Purchase Act 2004

Section 38(6) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. This requires the decision maker to undertake an overall planning balance reading the development plan and other material considerations as a whole, making a judgment on the overall planning balance.

- Planning (Listed Buildings and Conservation Areas) Act 1990

Section 66(1) requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting - or any features of special architectural or historic interest which it possesses.

Section 72(1) applies to applications affecting a Conservation Area. It requires that "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area".

Preservation can be achieved by development that makes a positive contribution to character or appearance, or by development that leaves character and appearance unharmed. Harm is defined in paragraph 84 of Historic England's Conservation Principles as change that erodes the significance of a heritage asset.

- The Biodiversity Gain (Town and Country Planning) (Modification and Amendments (England) Regulations 2024

"BNG is an approach to development. It makes sure that habitats for wildlife are left in a measurably better state than they were before the development. Developers must deliver a BNG of 10%. This means a development will result in more or better quality natural habitat than there was before development".

Whilst this legislation was not published until after this application was determined and therefore not a requirement at the time, this proposal does make positive biodiversity gain and this is explained in section 7.29-7.39 of this report.

Relevant development plan policies are listed in the Appellant's Design and Access Statement.

7.0 APPELLANT'S GROUNDS OF APPEAL

7.1 To avoid repetition of the decision notice, the main issues are summarised as:

- RR1- Development in an area at risk of flooding
- RR2 - Open Space
- RR3- Parking/Highways
- RR4 - Conservation and Heritage
- RR5 - Trees
- RR6- Air Quality
- RR7- S106 Obligations

RR1- Development in an area at risk of flooding

7.2 Pre-application consultation with the Environment Agency (EA) and the LPA was undertaken. A Site-Specific Flood Risk Assessment, Sequential Test and SUDS report were submitted. Further consultation with the EA took place during the application with information and supplementary reports submitted to address queries.

7.3 The latest Flood Risk Assessment (Version 6) was found satisfactory by the Environment Agency and their original objection was removed. The Agency informed the LPA (Letter: 13 November 2023):

- We are satisfied that the Applicant has demonstrated that there will be a minimum of an 8-metre buffer zone between the top of the riverbank and the edge of the building.
- The LPA should include an informative on any permission granted regarding the need for a Flood Risk Activity Permit

- The LPA should apply the sequential test and to consider whether it has been satisfied.
- The proposed development is appropriate provided that the site meets the requirements of the exception test. The Agency advised their comments relate to the part of the exception test that demonstrates the development is safe. The LPA must decide whether or not the proposal provides wider sustainability benefits to the community that outweigh flood risk.
- The use of flood resistance and resilience measures was recommended.

Sequential Test

7.4 NPPF Paragraph 167 states “All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid where possible, flood risk to people and property. They should do this, and manage any residual risk, by applying the sequential test and then, if necessary, the exception test”.

7.5 The West London boroughs of Barnet, Brent, Ealing, Harrow, Hillingdon and Hounslow commissioned a joint Level 1 Strategic Flood Risk Assessment (SFRA) from (Metis Consultants published in 2018). The aim of the SFRA is to provide the evidence base for ensuring development is steered away from areas identified most at risk from various flood sources, reducing the risk of flooding to residents and buildings. The review was required to update the existing borough specific SFRAs, which were predominantly completed in 2008.

7.6 The appeal site is not precluded from development by the SFRA, although potential development must still align to the PPG's Flood Risk Vulnerability and Flood Zone Compatibility Table, not increasing the development's vulnerability. Applicants must submit evidence to demonstrate the application of the Sequential Test and the Exception Test as appropriate in those parts of the site classified as Flood Zone 3a.

7.7 Planning Policy Guidance (PPG) 'Flood risk and coastal change' provides guidance on when a sequential test is required. If the site is located within Flood Zones 2 or 3 and a sequential test has not previously been carried out in relation to the same form of development, then a sequential test is required. The application site covers flood zones 1, 2 and 3, with only a corner of the red line boundary within zone 3a. The building is not within flood zone 3a. Educational and nursery uses fall under 'more vulnerable' classification set out at Table 2.

Table 2: Flood risk vulnerability and flood zone 'incompatibility'

Flood Zones	Flood Risk Vulnerability Classification				
	Essential infrastructure	Highly vulnerable	More vulnerable	Less vulnerable	Water compatible
Zone 1	✓	✓	✓	✓	✓
Zone 2	✓	Exception Test required	✓	✓	✓
Zone 3a †	Exception Test required †	X	Exception Test required	✓	✓
Zone 3b *	Exception Test required *	X	X	X	✓ *

Key:

✓ Exception test is not required

X Development should not be permitted

7.8 PPG advises that for individual planning applications subject to the Sequential Test, the area to apply the test should be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school (Paragraph: 027 Reference ID: 7-027-20220825).

7.9 Involving a child nursery, the Appellant does not accept that the catchment area should necessarily involve the entire borough of Hillingdon as the LPA suggests. Neither is it accepted that all vacant buildings within Use Class E in the Borough of Hillingdon should be considered potentially suitable for nursery accommodation for pre-school children.

7.10 The Appellant provided the LPA with a Sequential Test as part of the application as recommended in the pre-application advice. The LPA provided no feedback prior to the refusal of planning permission, alleging the Sequential Test fails to provide sufficient information or justification for the development.

7.11 A further appeal response regarding the sequential test is provided by the Appellants flood risk and sequential test professionals as part of this appeal, which can be found in appendix 6. The report concludes;

7.12 “A sequential Test undertaken for the search area, covering the entire Council-wide area of London Borough of Hillingdon, indicates there are no alternative suitable sites which could accommodate the development at the proposed site which are at a lower risk of flooding and are considered to be available, deliverable, and developable as per the requirements of policy”.

7.13 “There are a number of potential development locations, which are at a lower flood risk *than the subject site, however, these are not deemed suitable for a variety of reasons, which are discussed in more detail at section 5*”.

7.14 The submitted appeal sequential test responds to each of the specific points raised in the Officers report.

7.15 Given the requirement of the NPPF is to apply a “pragmatic approach” on the availability of alternatives, the Sequential Test concludes that none of the potential sites identified were considered suitably similar, available, developable, or deliverable to support the development proposed.

Exception Test

7.16 NPPF paragraph 170 requires the application of the exception test to be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:

(a) the development would provide wider sustainability benefits to the community that outweigh the flood risk informed by a Strategic Flood Risk Assessment where one has been prepared; and

(b) A site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

7.17 Both elements of the exception test should be satisfied for development to be permitted (NPPF paragraph 171).

7.18 NPPF Paragraph 173 requires local planning authorities to ensure flood risk is not increased elsewhere and it can be demonstrated that:

- “within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
- it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- any residual risk can be safely managed; and
- safe access and escape routes are included where appropriate, as part of an agreed emergency plan”.

Assessment

7.19 The development provides wider sustainability benefits to the community that outweigh the flood risk as explained under the following headings:

- Provision of new day nursery/pre-school education for children aged 0-4 years
- Extensive biodiversity enhancement
- Benefits to the local economy and job provision
- Making the site accessible to the community
- Maintenance and protection of protected trees and planting of new trees, plants and hedging

Provision of new day nursery/pre-school education for children aged 0-4 years

7.20 It is established that lifelong well-being is positively associated with early childhood services, including pre-school as well as early years education.

7.21 The Design and Access Statement explains criteria meeting the 'exception test', including community and educational benefits. The proposal will provide an idyllic early years nursery in a biodiverse environment, specifically designed in response to its setting amongst the protected trees and to provide a unique forest school. The concept is to provide educational benefits and learning through the outdoor space. Teaching children about nature is invaluable to the educational experience and would clearly be a great asset to the local community. Sustainability and environmental benefits are considered an important element of the proposal that justifies the location predominantly within Flood Zone 2.

7.22 The submitted Travel Plan will encourage families and staff to walk to the local nursery/pre-school. The setting in nature, by the Pinn riverside, is key to the educational concept that is not replicable at other sites in Hillingdon.

7.23 The forest school setting is considered to fulfil the exception criteria. The location is verdant, adjacent to the small river. Trees are retained wherever possible, creating a woodland walk accessed via the children's play area with a meandering woodchip path that leads to a 'storytelling circle' with mushroom stools. The flora is enhanced with shade tolerant perennials, wildflower seed and drifts of springtime bulbs. The proposal includes 350 sqm of outdoor play equipment and Biodiversity Net Gain will be achieved via the introduction of various nectar rich trees, shrubs and perennials. Mixed native hedging borders the frontage of the High Road, whilst hornbeam frames the building. It is contended that great weight should be given to the benefits to the community of the landscape improvements resulting from this development.

7.24 London Plan policy S3 requires boroughs to ensure *"there is a sufficient supply of good quality education and childcare facilities to meet demand and offer*

educational choice” This is reflected in Hillingdon’s Local Plan. Local authorities have a duty to secure early years provision for the least advantaged two-year-olds”.

7.25 There is an increasing demand for nursery/educational spaces, evidenced in the Applicant’s feasibility study, and the borough has a duty to make appropriate provision. Planning permission was recently received to increase the capacity at a nearby nursery at Blossom Tree Montessori, Joel Street Ref: 8856/APP/2013/3802 dated 29/01/2016 from 45 children to 68. This demonstrates the local demand for childcare, particularly in a ‘green’ setting. Planning should not stifle competition or prevent choice between educational/childcare providers.

7.26 On 1st April 2024 the Government issued a press release stating the “First phase of the biggest ever expansion of childcare starts giving working parents of 2-year-olds access to 15 hours a week. By September 2025 the full rollout will be completed, with working parents able to access 30 hours from the end of maternity leave to when their child starts school”.

7.27 “The government has supported the sector to deliver this expansion by increasing the number of staff and places, introducing measures to boost the recruitment and retention of childminders, launching a major national recruitment campaign and providing over £400 million of additional investment to uplift funding rates in 2024 to 2025. The government is confident that the childcare sector is ready to deliver the offer and make sure parents have the childcare they need”. This is demonstrative of the need and increasing importance of the new childcare provision.

7.28 The proposal is located in the community and catchment it is intended to serve. The building is inclusive, accessible, flexible and single storey. It is submitted the proposal will provide specialist pre-school accommodation in a unique setting

that justifies the location predominantly within Flood Zone 2 outweighing the flood risk.

a) Biodiversity enhancement

7.29 The proposal preserves and enhances the green character of the area protecting the dense hedges and trees surrounding the site with a new tree planting scheme and a biodiversity enhancement project undertaken. The intensive green roofed single storey nursery preserves and protects the trees on the site and utilises the secluded location as part of the amenity for the nursery.

7.30 An Arboricultural Report, Protection Plan and an Ecology Report are submitted as part of this appeal case. The Ecology Report details:

7.31 *"The building would be constructed primarily in areas of low ecological value, including bare ground, scattered scrub and tall ruderal. The higher ecological value habitats, including hedgerow, mature trees and dry ditches are being retained and/or enhanced with the exception of a small section of hedgerow in the south and ten yew trees, all of which have health and safety concerns.*

7.32 *A Biodiversity Net Gain Assessment demonstrates that the majority of habitats with higher ecological value within the site will be retained, including the tree line in the north and hedgerow in the south, which will be enhanced.*

7.33 *Habitats to be created include a large, vegetated garden, introduced shrub habitat, amenity grassland, urban trees, an intensive green roof and hard standing / permeable paving. 0.125km of native species-rich hedgerow will also be created within the site.*

7.34 *The Biodiversity Net Gain Assessment Chapter 5 demonstrates:*

- *A net gain of 0.24 habitat units an increase of 13.96% over the baseline.*

- *A net gain of 1.37 hedgerow units an increase of 135.33% from the baseline.*

7.35 *Overall, there will be a significant net gain given the small area of the development. The proposals include appropriate habitats within the site, which are similar to those within the wider area, and provide ecological connectivity through the site.*

7.36 *Additional significant ecology gains that are not captured within the DEFRA 3.1 metric are species specific enhancements, including four invertebrate habitats (log piles), one hedgehog hibernaculum, six bird boxes and six bat boxes that will enhance the site and the wider environment for protected and notable species.*

7.37 *This significant gain in biodiversity of the site, along with the extensive tree planting and landscaping will greatly benefit the local area”.*

7.38 The Biodiversity Gain (Town and Country Planning) (Modification and Amendments (England) Regulations 2024 prioritises the importance of achieving biodiversity gain. The proposal provides significant net gain that should be given significant weight in the appeal.

7.39 It is submitted that the low risk of flooding, is outweighed by the multiple community and sustainability benefits to biodiversity, education, trees and ecology in this exceptional proposal. The Environment Agency raises no objection.

c) Benefits to the local economy and job provision

7.40 The nursery will provide significant benefit to the local economy, with 25 jobs in the area. Being a childcare facility, it allow parents to go to work. The site is vacant private land and other than the trees provide no other value to the community. The development will also provide wider benefit to the local economy creating a new local business. The construction of the development would provide

work for local contractors. The benefit to the economy should be given significant weight in the exception test.

d) Making the site accessible to the community

7.41 The proposal brings back into beneficial use a vacant plot of private land once attached to the petrol station. The proposal will provide public benefit making the site accessible to the community. Great effort has been made to enhance the ecological and aboricultural value of the land. The proposal is designed to be highly sustainable and zero carbon.

e) Protection and maintenance of TPO trees

7.42 The proposal involves extensive landscaping, new tree planting and protection of the existing TPO trees. The proposal brings the site into educational use, the ownership and use ensure the land and environment will be nurtured, and the TPO trees will be protected against vandalism and damage. The site is a secluded plot surrounded by a dense border of trees and hedging, and whilst it is private land, it has in the past attracted anti-social behaviour. Therefore, allowing it to be used for childcare in such a beautiful setting would ensure the preservation of the trees and site. The enhancement of ecology and the maintenance of trees and landscaping can be secured by condition.

Flood resistance and resilience

7.43 The Flood Risk Assessment by Geosmart details the mitigation measures which would reduce flood risk of the site and local area. The building would be constructed on the part of the site within Flood Zone 2 set back from higher risk areas alongside the riverbank to the satisfaction of the Environment Agency.

7.44 Flood resilient design measures and mitigation would be incorporated including the raising of the building. In line with the EA's Flood Risk Standing Advice

the recommended minimum Finished Floor Level (FFL) should be set at least 0.3 m above the 1 in 100 year plus 21% allowance for climate change flood level of 43.22 m AOD. The design allows for a raised development platform and FFL's for the nursery building of 44.0 m AOD that will offer suitable flood protection under the 1 in 100 year + 21% climate change allowance scenario.

7.45 There will be no accommodation at basement level. Flood resilient building materials will be used. All service ducts / gaps to accommodate utilities such as gas, electricity and telephone cables will be sealed with silicone.

7.46 The recommended Sustainable Drainage Scheme accompanying the FRA (Ref: 77698.01R1) will be implemented. Ground levels will channel any overland flows from off-site (to the north) away from the development and associated site drainage systems. A Flood Warning and Evacuation Plan is recommended (and it is understood already in place in the area) to ensure persons using the site can evacuate safely on receipt of a flood warning. The Flood Risk Assessment fully details how flood risk of the site can be reduced with safe evacuation to higher ground.

Summary

7.47 The development satisfies the exception test providing significant sustainability benefits to the community, proposing a new education and childcare facility, extensive biodiversity enhancement and wider economic benefits. The sustainability benefits, explained above, are considered to outweigh the low to medium level of flood risk, with a comprehensive package of mitigation measures in place. The Environment Agency has no objection.

7.48 It is submitted RR1 is without merit. Adequate justification and evidence has been provided to address specific concerns. Extensive flood risk reports and analysis have been submitted which provide sufficient assurance that there would

be no harmful flood risk and that when the proposed mitigation measures are implemented can reduce flood risk overall to the benefit of the wider and local area.

7.49 The proposal meets London Plan SI 12 'Flood Risk Management' and the corresponding Hillingdon Local Plan Part 1 Policy EM6. The Flood Risk Assessment by Geosmart demonstrates that current and expected flood risk would be managed in a sustainable and cost-effective way as confirmed by the Environment Agency making space for water with the development set back from the bank of the River Pinn.

7.50 The development satisfied the Sequential & Exceptions Tests. Sustainable urban drainage is additionally proposed.

7.51 The scheme meets Hillingdon Local Plan Part 2 Policy DMEI 8: Waterside Development (not cited in RR1). As required the new building would not extend within 8 metres of the top of the bank of a main river or 5 metres either side of an ordinary watercourse and would enhance the waterside environment and biodiversity.

7.52 A dispute about methodology for the Sequential Test, and whether all land and buildings used for Use Class E should be included, is not an adequate reason to refuse planning permission for a child nursery to which the Environment Agency raises no objection. The mitigation measures proposed including flood resistant and resilient construction and the implementation of sustainable drainage could be conditioned as part of any approval.

RR2 - Open Space

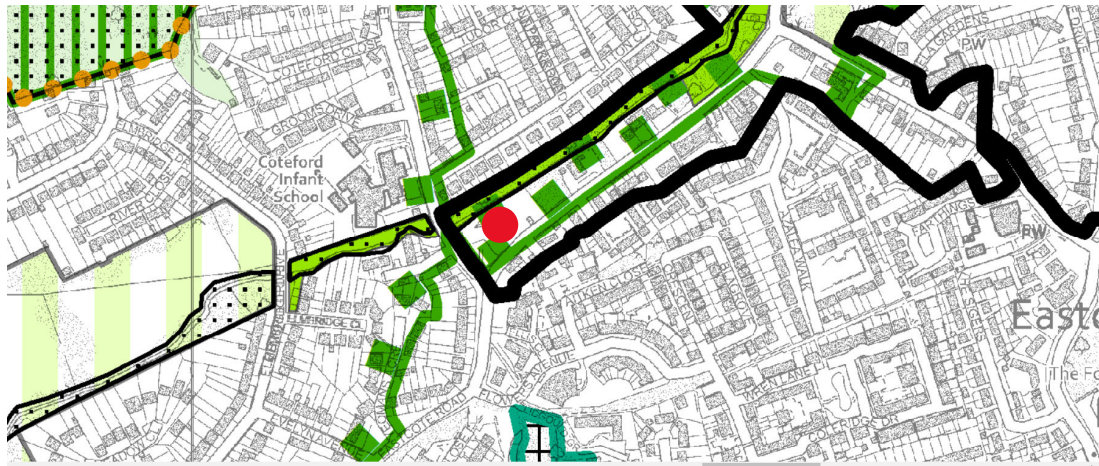
7.53 The application site is a piece of land formerly attached the petrol station, under private ownership. There is no public access. The site is screened from the streetscene by the protected trees and its visual amenity lies in its green setting with the protected trees and hedges. The proposal is for a green building with a green roof, set within an extensive biodiversity and landscaping scheme. The protected trees are being preserved and enhanced and through the occupation of the site, its continual maintenance will be secured. The proposal will enhance the sense of greenery of the site and make it accessible to the children of the local community.

7.54 The NPPF paragraph 102 states “Access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate”.

7.55 The Local Plan was recently updated in 2020 and this includes allocations of important ‘green’ and ‘open’ land to the borough. This provides a robust and up to date assessment which fulfils NPPF Paragraph 102. This site was not included as valuable green space or Metropolitan Open Land, Green Belt or similar. The opposite side of the river is allocated as green space as are any other nearby valued green spaces within close proximity. The London Borough of Hillingdon Local Plan Part 2 Site Allocations and Designations includes a 2020 review of all the “Green Belt; Metropolitan Open Land; Areas forming links in green chains; nature

conservation sites and this site was not designated for these purposes on the published plan map.

Local Plan Map Hillingdon 2020



Key-

Green chain land is green with black dots

Archaeological priority is green squares

Black line is Conservation Area

Red dot – application site marker (added by Appellant)

7.56 The Council refers to an Open Space Deficiency in Hillingdon's Open Space Strategy 2011-2026, published in 2011. This document states "All open spaces recorded through the Open Space Audit and development of the Open Space Strategy have been categorised based on their significance". All residents within the borough should have access to: A Small or Local (or higher level) open space within 400m of where they live; and A District (or higher level) open space within 1200m of where they live". The approximate site location is indicated in red on Figure 1

below. The application site is not situated within the yellow areas of Deficiency indicated in Eastcote, nor in any identified open space area.

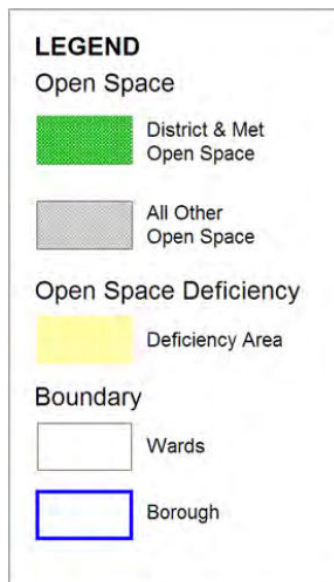


Figure 4 from the Open Space Strategy - Open Space Deficiency: District and Metropolitan Spaces at 1200m



Figure 3 of Hillingdon's Space Strategy - Open Space Deficiency All Open Space at 400

7.57 The proposal is for a single storey building with an intensive green roof surrounded by a high-quality landscaping scheme. The building proportionally takes up only 11% of the site. The sense of vegetation and greenery is maintained with the protection of the trees, planting of new ones, and a high-quality landscaping scheme. The proposal will blend into its surroundings and maintain the public amenity value of the site. Any perceived openness is retained.

7.58 Paragraph 5.4.3 of The London Plan states "Integrating natural environments into play provision is encouraged, acknowledging the benefits to learning, and to help to support a green infrastructure network across the city". The proposal will provide space for local children to learn, and play (education and recreation) within a sustainable green environment. The proposal will benefit the local area greatly

and turn this unused, unallocated plot of land into a cared for green space, with a rich landscaping scheme and an educational facility which Hillingdon can be proud to provide for its children.

7.59 In summary:

The benefits socially, environmentally and economically of this proposal clearly outweigh the preservation of this concealed plot of land which is not publicly accessible, nor defined or designated as Metropolitan Open Land, or green belt/chain land on the recently adopted 2020 Local Plan for Hillingdon. It does not appear to fall within the Open Space Deficiency Areas, nor be identified/designated as an open space (protected or otherwise), illustrated for Eastcote in the Open Space Strategy 2011.

7.60 The appeal scheme provides access to the site for young children, their parents and staff, including an area for playspace, a woodland education area, plus the retention and improvement of the vegetation and trees.

7.61 The building only occupies 11% of the site. It is a timber clad, green roof single storey building surrounded by extensive trees and hedging, therefore would have limited visibility from the wider streetscene, and any perceived openness of the space will be preserved and enhanced.

RR3- Parking/Highways

7.62 The Applicant submitted a Transport Assessment prepared by transport consultants Paul Mews Associates, which includes a Green Travel Plan and Servicing Plan, and an initial response to the highway's comments during the course of the planning application. The specialist report confirms "The parking surveys contained herein demonstrate that in the AM and PM peak periods there is a reserve surplus in kerb side parking capacity at present, and therefore the proposed nursery will not have an adverse impact on road safety, emergency

access, amenity or street scene, and have will not lead to unacceptable levels of additional overspill parking on the adjoining highway”.

7.63 To further this, in response to this decision, Paul Mews Associates have submitted a full and detailed technical Appeal Note which outlines the Appellant’s case for this ground (see Appendix 4).

7.64 The Appeal Note report by Paul Mews concludes:

7.65 *“Nine car parking spaces are proposed, inclusive of five disabled bays. An area dedicated to drop off has also been proposed, which allows for vehicles to drop off within the site (paragraph 4.2).*

7.66 *“The proposed application was submitted (supported by the Transport Statement as outlined within Appendix C) and subsequently refused under planning reference 73450/APP/2023/431. The reason for refusal was provided as per the following:*

7.67 *“3. The proposed development does not provide adequate on-site car parking, pick-up and drop-off facilities. The application submission fails to fully demonstrate that the proposal would not give rise to adverse impacts upon the highway network to the detriment of traffic congestion, parking stress and highway safety. Based on the information submitted, the proposed development is considered to have an unacceptable impact on highway safety. As such, the proposal is contrary to Policies DMT 1 and DMT 2 of the Hillingdon Local Plan: Part 2 (2020), and Policies T2, T4 and T5 of the London Plan (2021), and is refused in accordance with paragraph 115 of the National Planning Policy Framework (2023).”*

7.68 *In light of this, the decision has been appealed. This document provides an Appeal Note for submission as part of the appeal.*

7.69 *As part of the submitted Transport Statement, parking surveys were carried out at the expected peak operational times for the nursery which have demonstrated that there is a reserve surplus in unrestricted kerb side parking capacity on the roads adjoining the site.*

7.70 *In any given measured 15-minute period in the AM and PM peaks the parking stress has not been greater than 64% on the adjoining roads.*

7.71 *The parking provision provides enough parking in order mitigate any overspilling parking occurring.*

7.72 *The parking surveys contained herein demonstrate that in the AM and PM peak periods there is a reserve surplus in kerb side parking capacity at present and therefore the proposed nursery will not have an adverse impact on road safety, emergency access, amenity or street scene, and have not led to unacceptable levels of additional overspill parking on the adjoining highway. The baseline parking survey also took into consideration any neighbouring educational land uses as this demand would be counted within the 15 minute beat surveys.*

7.73 *The site currently has off-street access via a dropped kerb which will be altered to provide a slightly larger access point. This will result in a small impact on the adjoining on-street parking, which will reduce the number of available spaces by one.*

7.74 *The Client is encouraging sustainable travel to and from the proposed site via the Travel Plan measures outlined within the submitted Transport Statement.*

7.75 *In summary, the proposed nursery will not have an adverse impact on road safety, emergency access, amenity or street scene, and have not led to unacceptable levels of additional overspill parking on the adjoining highway”.*

7.2 In summary, it is maintained that the highway concerns are without merit and lack substance against the submitted evidence by the Appellant. The Paul Mews reports contain more than sufficient evidence to fully demonstrate that the proposal would not give rise to adverse impacts upon the highway network to the detriment of traffic congestion, parking stress and highway safety.

RR4 – Conservation and Heritage

7.3 The application is supported by a statement prepared by Dr David Hickie who is a national expert in the field of Heritage Management and Planning. His wealth of experience is summarised in the title page of his report.

7.4 The submitted Heritage Report by the Appellant 'Summarises the Contribution the site makes to Local Heritage Assets':

"The list of key heritage assets is provided below:

Nearby Listing Buildings: *The site does not directly contribute to the settings of the nearby Grade II listed New Cottages and Flag Cottage.*

Nearby Non-designated Heritage Assets: *There are no locally listed buildings in the immediate vicinity, however, the adjacent public open space known as 'Pretty Corner' is a heritage asset of local low value, however, the site makes no direct contribution to the heritage significance of this heritage asset.*

Eastcote Village Conservation Area: *The current green space does contribute to the semi-rural character of the western part of the conservation area, however, it is the hedges and mature trees that are the key features that directly contribute not the semi-rural character and not the open space within the site – which is hardly visible from the public street-scene. The overall, the character of the area is that of a high quality suburb dominated by open spaces, extensive natural landscaping and trees.*

***Eastcote Village Archaeological Priority Area (APA):** The APA is a Tier 2 APA as defined by the 'Greater London Archaeological Priority Area Guidelines' (2016). The site makes no known contribution to this designation.*

This assessment finds that, despite construction of the new single story building on this site, the proposals will not adversely affect the heritage assets in the locality.

The key heritage issues in question form are:

Will the proposed works adversely affect nearby Grade II listed buildings or their settings?

This assessment shows that the proposals will not adversely affect the listed buildings or their settings. The site does not contribute to these settings.

Will the proposed works adversely affect nearby non-designated heritage assets.

This assessment shows that the proposals will not adversely affect any such non-designated heritage assets or their settings. The site does not contribute to these settings.

Will the proposed works adversely affect the character and appearance of the Eastcote Village Conservation Area?

There will be no significant change to the overall character of the area which is that of a high-quality suburb dominated by open spaces, extensive natural landscaping and trees. No changes will be visible from the street-scene (with the exception of the new entrance replacing the existing harmful hoardings currently in the access location). The appearance of the conservation area will not be adversely affected. The access gateway will be tidied up and improved and the surrounding hedgerow will be improved. The public and passers-by will have little or no perception that the Nursery is on this site. The majority of the site will retain its open character and

there will be no significant change in character of the area: still retaining the character of a high-quality suburb dominated by open spaces, extensive natural landscaping and trees. The new landscaping proposals will be beneficial to the character and appearance of the conservation area. Overall, this will be a slight beneficial change to the character and appearance of the conservation area.

Therefore, the proposals do not directly conflict with any local or national heritage policies”.

7.5 Section 66(1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, provided in the policy section of this report, are relevant in this Ground of Appeal.

7.6 The Appellant maintains the Heritage Report submitted with the application concludes that in the professional opinion of a National Expert the proposal would cause no significant change or harm to the character of the area, nor heritage assets. This assessment also shows that the proposals will not adversely affect the listed buildings or their settings. The site does not contribute to these settings. The new landscaping proposals will be beneficial to the enhancement of the character and appearance of the Conservation Area and achieve preservation as defined by section 72 (1).

7.7 The Officer’s report contends *“The proposal would establish the principle of developing sites along the river within the Eastcote Village Conservation Area”*. This is not the case, as each site is assessed on its own merits and this is a case for a specific site which is not designated as green or open space.

7.8 The LPA Officer’s report section 7.2 states *“Given its siting, layout and design, the architectural detailing and materiality of the proposal development does not reflect the surrounding buildings within the locality”*. The proposal has been designed to be single storey with intensive green roof to blend in with its verdant surroundings. The

building is concealed behind the extensive tree buffer and would not create undue attention. The proposed materiality, design and siting, surrounded by extensive landscaping, tree protection and planting, ensures it would reflect the green character of the area.

7.9 The LPA Officer's report states *"The harm identified in this case is considered to be 'less than substantial harm' but at the upper end of the scale"*. This statement is not supported by any justification or balancing exercise as to why the LPA considers the site to be at the upper end of the scale. The Appellant disagrees with this statement and the Appellant's Heritage Report demonstrates a positive improvement to the character of the Conservation Area.

7.10 Given both the Appellant and LPA are in agreement that there will be less than substantial harm, paragraph 208 of the NPPF states that "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use". The many public benefits outlined in RR1 exception test and RR2 including significant sustainability benefits to the community, provision of a new education and childcare facility, extensive biodiversity enhancement and wider economic benefits clearly outweigh any harm.

7.11 The Appellant maintains there is less than significant harm to the Conservation Area and the setting of the listed building remains unaffected. There are considerable public benefits of the proposal including, securing its optimum viable use to the community.

RR5 – Trees

7.12 An Arboricultural Impact Assessment dated 17th January 2023 was submitted as part of the application. A second arboricultural letter was submitted when the

Council sought clarification as to whether the revision to the FRA would affect the trees. The letter confirmed “that the recommendations made are feasible and achievable from an Arboricultural perspective”.

7.13 RR5 raises new comments which were not raised during the 12-month application determination period. The Arboricultural Officer has prepared an appeal statement in response to RR5, submitted as Appendix 5, which addresses each of the Tree Officers’ feedback.

7.14 The report concludes “*The now refused development proposal retains all the good condition and veteran trees, with only 10 individual trees proposed to be removed all of which are described as ‘U’ category trees due to their poor or dead / dying condition. No trees are required to be removed to facilitate the proposed development*”.

“The proposed layout allows for the planting of many new trees and shrubs and the management of tree groups to allow improved screening into and from the site. The importance of the landscape setting is fully recognised and will be maintained, with a detailed scheme of landscaping and enrichment of the site boundary features, both internally and along the main road boundaries, proposed to enhance the landscape setting and preserve the current treescape. It is expected that this requirement would be conditioned”.

Much has been made of the protection of and potential harm to retained and or potential veteran ‘A’ & ‘B’ category trees on site, specifically T9 and T13, both proximal to the proposed development. However, such status must be cognoscente of the existing High-Risk Zones and occupancy of the site, adjacent to busy highways, where any disease or defect of a given tree within such a zone is a factor for mitigation on health & safety grounds. This contradiction when managing veteran trees is why experienced arboriculturalists are required when advising and managing any construction works on development sites, such as is described within

the APMS and tree reports and plans contained within the supporting documents of the submitted Arboricultural Impact Assessment Report, dated January 2023.

The report states in paragraph 2.4.13 that “We feel that this summary at the end of the Officer report is just factually incorrect when considering the detailed tree protections described within the submitted AIA tree report and those detailed construction Arboricultural Protection Methods that would be submitted in support of a detailed Site-Specific Arboricultural Method Statement, usually requested by condition, as and when construction site detail becomes available”.

- 7.15 In summary, the appeal rebuttal statement prepared by the qualified Arboricultural Specialist provides conclusive evidence to confirm that RR5 is not valid and should be given little weight in the determination process.

RR6- Air Quality

- 7.16 Following the pre-application advice, the Appellant submitted an Air Quality Report, which was accepted by the LPA. The report concludes *“All predicted NO₂ and PM₁₀ concentrations at the modelled receptor locations and existing receptor locations fall below the Air Quality Objective and the changes predicted due to the increase in AADT due to the development once operational are negligible”*. The report is not disputed by the LPA.

- 7.17 However, the justification of the LPA reason for refusal stems on *“The implementation of additional mitigation measures and payment of this financial contribution has not been agreed in order to support the implementation of air quality mitigation measures within the Air Quality Focus Area”*.

7.18 During the course of the application and the pre-application, the requirement for a Section 106 Agreement to secure the financial sum of £190,436 for air quality was not discussed, justified nor requested.

7.19 The Applicant disputes the LPAs contention that the site is situated within an Air Quality Focus Area. The maps or documents illustrating this Focus area are not referenced in the decision notice. The Appellants Air Quality Appeal report provide some maps found dated 2016 and 2019 and the site does not fall within these Focus Areas. The site is not a Major development and is not within an AQMA.

7.20 An Air Quality Report V2 is submitted as part of this appeal which provides further appeal response in respect of air quality. The report concludes; “The development has been calculated to exceed the Air Quality Neutral Benchmark and as such damage costs have been calculated. These come to a total of £27,164.21 without taking into consideration any already proposed mitigation such as travel plans. The total has been calculated on the basis that the site is in a low sensitivity area there is no AQMA or nearby focus area. It is therefore reasonable to use £27,164.27 as a starting point for damage cost negotiations”. The Applicant is willing to agree discuss further mitigation and agree an offset payment. But without the Council’s engagement, we cannot finalise a S106 agreement. Accordingly, A Heads of Terms Agreement is submitted to demonstrate the Appellant’s Commitment to a S106 agreement to secure an appropriate agreed payment.

7.21 Furthermore, The Officer’s report states “Should the proposed development be considered for approval, the following Air Quality conditions are required to manage operation emissions and construction emissions as required by the Mayor of London”. Therefore, it is clear that there is a way forward whereby the Appellant agrees to the suggested conditions, and it is not clear whether the suggested S106 agreement is even necessary. These comments are again undated, and the Air Quality Officer has not taken into account the already submitted Travel Plan and the

cycle spaces proposed as part of the application. £190,436 clearly does not fulfil the tests of fair and reasonable for a development of this scale in any event.

7.22 Given the Appellant is fully agreeable to securing mitigation and off set payment through either condition or section 106 agreement, this reason for refusal is no longer required.

RR7- S106 Obligations

7.23 The Officer's report details:

"On the basis of the NPPF and the Community Infrastructure Levy Regulation 2010, it is only considered reasonable to request contributions towards the following:

i) Air Quality Contribution: A financial contribution amounting to £190,436 shall be paid to address the air quality impacts of the proposed development.

ii) Travel Plan: A full Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan will include such matters as: targets for sustainable travel arrangements; effective measures for the ongoing monitoring of the Travel Plan; and a commitment to delivering the Travel Plan objectives.

iii) Project Management & Monitoring Fee: A financial contribution equal to 5% of the total cash contributions secured from the scheme to enable the management and monitoring of the resulting agreement, is sought".

7.24 Further to RR6, the Appellant was only made aware of these contributions following the decision. The Appellant is agreeable to conditions regarding the Travel Plan and those suggested by the Air Quality Officer for any approval. The Appellant is agreeable to a Section 106 Agreement for air quality mitigation measures or off set payment and a Heads of Terms document is submitted as part of this Appeal. A

Section 106 agreement can be provided during the course of the appeal once the specific amount of payment has been agreed with the Council. Therefore, this Reason for refusal is no longer necessary.

8. CONCLUSION

8.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 involves an overarching test that requires decision makers to undertake a balancing exercise.

8.2. The development provides significant sustainability benefits to the community, proposing a new education and childcare facility, extensive biodiversity enhancement and wider economic benefits. The sustainability benefits are considered to outweigh the low to medium level of flood risk, with a comprehensive package of mitigation measures in place. The Environment Agency has no objection.

8.3. The site is not situated within any designated green or open space by the Borough of Hillingdon. The building only occupies 11% of the site. It is a green roof single storey building surrounded by extensive trees and hedging, with limited visibility from the streetscene and any perceived openness of the space will be preserved and enhanced.

8.4. The Heritage Report confirms there is less than significant harm to the Conservation Area and the setting of the listed building remains unaffected. There are considerable public benefits of the proposal including, securing its optimum viable use to the community.

8.5. It is maintained that the highway concerns are without merit and lack substance against the submitted evidence by the Appellant. The Paul Mews reports contain

more than sufficient evidence to fully demonstrate that the proposal would not give rise to adverse impacts upon the highway network to the detriment of traffic congestion, parking stress and highway safety.

8.6. The appeal rebuttal statement prepared by the qualified Arboricultural Specialist provides conclusive evidence to confirm that RR5 is not valid and should be given little weight in the determination process.

8.7. RR6 and RR7 can resolved by air quality mitigation measures or off set payment. Therefore, RR6 and RR7 no longer need to remain as reasons for refusal.

8.8. In striking the planning balance, the benefits of the development are considered to comfortably outweigh harm or perceived harm.

8.9. It is therefore requested that this appeal is allowed, and planning permission granted.