

**Committee Report
Planning Committee on 30 June, 2010**

**Item No. 11
Case No. 10/0700**

RECEIVED: 26 April, 2010

WARD: Wembley Central

PLANNING AREA: Wembley Consultative Forum

LOCATION: 326 High Road, Wembley, HA9 6AZ

PROPOSAL: Change of use of premises to a cafe (Use Class A3) and installation of an extraction flue to rear

APPLICANT: La Cigale

CONTACT: Mr Fares Nasereldine

PLAN NO'S:
(See Condition 2 for the approved plans and/or documents)

RECOMMENDATION

Approve

EXISTING

The application relates to a commercial unit located in shopping parade located on the northern side of the High Road adjacent to Wembley Triangle. The unit has recently been vacated but was last used as a sandwich bar which falls with the A1 (retail) Use Class. The property lies within a Major Opportunity site in the Wembley Regeneration Area and is designated as Secondary Shopping Frontage. The upper floor contains a self contained flat.

PROPOSAL

The proposal is for a change of use of the sandwich bar (A1) to cafe (A3) along with the installation of an extraction flue to rear.

HISTORY

Planning applications of relevance to this application include the following;

09/2244 - Retention of change of use from shop (Use Class A1) to cafe (Use Class A3). ***Application withdrawn.***

07/1301 - New shopfront and barrier for external seating area to front of existing cafe premises . ***Granted 12/07/2007.***

04/3487 - Change of use from A1 (retail shop) to A3 (coffee shop). ***Refused and subsequently dismissed on Appeal.***

00/0687 - Change of use from retail (Use Class A1) to food and drink (Use Class A3). ***Refused and subsequently dismissed on Appeal.***

POLICY CONSIDERATIONS

STR11 – The quality and character of the Borough’s built and natural environment will be protected and enhanced; and proposals which would have a significant harmful impact on the environment or amenities of the borough will be refused.

BE4 – Development open to the general public shall include suitable access and facilities for disabled people which should also be provided for in schemes for changes of use.

BE9 – Architectural Quality

SH2 – Planning proposals should support the maintenance and improvement of shopping and other facilities in Wembley Town Centre in accordance with its status as a major town centre.

SH9 – Within Secondary Shopping Frontages of town centres non-retail uses that provide a service to visiting members of the public will be permitted subject to residential amenity, highway and traffic considerations.

SH10 – A3 uses are acceptable in the Borough’s centres providing they comply with the requirements of either SH7 or SH9, and the requirements below. Where the proposal is of a scale to attract large numbers of people it will be considered against policies SH3-SH5. A3 uses should not result in the creation of traffic congestion, car parking problems, or a reduction in highway safety in surrounding areas and not adversely affect the amenity of residential occupiers.

In considering proposals account will be taken of:

- (a) The proximity of residential accommodation
- (b) The specific nature and size of the use proposed
- (c) The character of the area and the concentration and existing level of disturbance from A3 and similar uses
- (d) Whether the proposed hours of operation would result in residential disturbance; and
- (e) The practicality of providing extra ducting, ventilation, grease traps and/or noise insulation.

Consideration will be given to granting permission for a specific use within the A3 use class, restricted by conditions, where it can be demonstrated this would not result in unacceptable environmental impact.

SH11 – Where permission is granted for A3 appropriate conditions may be imposed relating to hours of opening, noise, disposal of refuse, or restricting the sale of hot food to be consumed off the premises.

SH12 – Where customer toilet facilities are provided on change of use to class A3, applicants will be encouraged to include reasonable provision for disabled people.

SH19 – The council will use its powers to provide, retain, and where necessary, improve facilities for rear servicing by vehicles of retail and service outlets.

WEM7 – Development in the National Stadium Policy Area should be designed principally for access by public transport, walking and cycling rather than by private car.

WEM21 – Proposals for the diversification and regeneration of Wembley Town Centre consistent with policies in the Town Centre and Shopping Chapter are supported. Development should not lead to increased congestion on the High Road.

CONSULTATION

Neighbouring and surrounding properties were consulted on 11th May 2010 along with Brent’s Transportation Unit, Environmental Health Team and local Ward Councillors. 2 letters objecting to the change of use of have been received. The concerns raised in the objection letters are summarised as:-

- It's location on a busy road with no parking would cause traffic safety problems and pedestrian safety problems as a result of vehicles parking on the footpath.
- Increased noise and smell from the premises as a result of the A3 use.
- Will lead to increased crime in the area as a result of people hanging around late at night.
- The proposal will have a negative effect on the character of the area as there are already too many eating places

Transportation raise no objection to the change of use as parking standards will be un-affected, so too will servicing requirements as the rear service yard can easily accommodate a 'Transit' sized vehicle to meet the standard.

Environmental Health does not object to the proposed change of use. The information provided has been assessed and this suggests that the cafe use could be operated without detriment from odour nuisance if the extraction system described is installed. The system will also achieve suitable noise attenuation. To ensure this it is recommended that a condition be attached to require the submission and approval of further details of fume extraction and odour control equipment, prior to the commencement of development.

REMARKS

Background to Previous Applications & Appeal History

This property has previously been refused planning permission for a change of use to Use Class A3 on two separate occasions, on both occasions the A3 use would have introduced a hot food take-away. The first application refused permission in 2000 (ref; 00/0687) which was for an Indian take-away was later dismissed on Appeal (APP/T5150/A/00/1054286). The Inspector concluded that a take-away use in this location on Wembley Triangle, which is a busy traffic light controlled junction at the confluence of Harrow Road and High Road would present traffic safety issues because of pressure from customers to park in the immediate vicinity of the premises which would be to the detriment of highway safety. The Inspector also concluded that the proposal would be harmful to residential amenities as the proximity to residential accommodation and the installation of extract ventilation would be likely to cause noise disturbance and a worsening of outlook for the residents above. This extraction system was to have been sited against the recessed rear wall, rising vertically immediately outside a window, Members should note this is not the same location which the extraction system is now proposed in.

A second application for an A3 use, this time a coffee shop was refused in 2004 (ref; 04/3487). This was then later dismissed on Appeal (APP/T5150/A/05/1175902), the Inspector considered the proposed use on the basis it was to be an eat-in and take-away use (as this was the use described by the appellant). Based on the proposal and the information put forward the Inspector did not find his conclusions different to the previous Inspector with regard to the two main issues, with those being tests relating to highway safety and amenity impact. The appeal was dismissed on these grounds. The extraction system proposed did not terminate at a sufficiently high level, this gave rise to concerns about smells and fumes from cooking. Furthermore in relation to the residential accommodation the Inspector did not consider the information submitted demonstrated the installation of the extract system would not result in noise disturbance for the occupiers.

When the above applications were submitted the Use Classes Order included restaurants, take-aways and cafes all as part of the A3 class. The Use Classes Order has since been amended to differentiate these uses so that there is now A3 (restaurants & cafes), A4 (pubs and bars) and A5 (take-aways) so there is now a clear distinction between restaurant and takeaway uses, this distinction is particularly relevant to the application hereby considered which is for an A3 restaurant use only.

In assessing the merits of the current proposal weight shall be given to previous Inspectors decisions, as well as matters of residential amenity and highway and traffic considerations.

Policy Context

The borough's main network of town centres, consisting of Major Town, Main District and Other District Centres, is generally formed through the designation of Primary and Secondary Shopping Frontages. Within these designated frontages the Council's planning policies, set out in the adopted Unitary Development Plan 2004 (UDP), seek to promote a diverse and appropriate mix of both retail and non-retail uses which can add vitality to the town centre.

Within Secondary Shopping Frontages non-retail uses that provide a service to visiting members of the public will be permitted, subject to residential amenity, highway and traffic considerations.

Principle of Change of Use

The proposal would involve the change of use of the existing sandwich bar (Use Class A1), which has recently become vacant, into a cafe (Use Class A3). The subject site is located within a designated Secondary Shopping Frontage.

Policy SH9 of Brent's Unitary Development Plan, 2004 sets out the criteria upon which a proposed non-retail use will be considered within a secondary frontage. The policy does not consider the concentration of non-retail uses within the frontage, nor does it consider the proportion of non-retail uses within the entire frontage. Policy SH9 says that a non-retail use should provide a service to visiting members of the public and that the use will be permitted subject to residential amenity, highway and traffic considerations.

Policy SH10 is specific to A3 uses and in considering proposals for A3 uses these should not result in the creation of traffic congestions, car parking problems or a reduction in highway safety in surrounding areas and not adversely affect the amenity of residential occupiers.

Overall, it is considered that, in principle, the proposed change of use would comply with the policy SH9 contained in the UDP. However, before the proposed change of use can be considered acceptable, in all respects, the other, more direct, impacts of the proposed development must first be considered to satisfy policy SH10.

Impacts of the Proposed Use

The subject site has been operating under use class A1 for over 20 years with the most recent Sandwich Bar having operating for approximately 5 years. The sandwich bar previously operated predominately with a high proportion of take away service with approximately 10 small tables provided inside and 3 outside for customers choosing to dine in. A recent site visit observed the fact the premises are now vacant.

Given that the principle of the proposed change of use has been established (see above), policy SH10 of the UDP sets out the specific issues associated with food and drink (Use Class A3) uses which must be considered if the proposal is to be considered acceptable in all respects. These issues generally include the impact of the proposal on residential amenity and local highway conditions. Policy SH11 suggests that conditions may be imposed on any new A3 use to ensure satisfactory standard of development. There is a residential unit located on the upper floors of the building above the subject site. There are also residential properties towards the rear of the site, along Ecclestone Place (16m away) but these are considered to be less directly affected by the proposals. In any event the presence of residential premises above has lead to a recommended condition to control the hours of use.

Residential Amenity/Extract Duct

Environmental Health normally requires the extract system to terminate 1m above ridge level, as a

minimum to ensure suitable discharge of smells, fumes and odours away from sensitive uses. The proposed kitchen/flue duct (500mm x 400mm) is proposed fixed to the rear elevation and will rise vertically up, sited against the projecting flank wall of the adjoining 3-storey office building, it will then be routed on top of the flat roof and then rises again vertically, terminating 1.2m above the existing roof ridge. The extraction system proposed is to be fitted with silencers to keep noise levels at acceptable levels so as not to result in harm to surrounding residential amenities, and Environmental Health officers have confirmed that the proposed system should achieve suitable attenuation. It is also important to note that other extraction systems exist to the rear of this parade of commercial properties although these are longstanding.

There is an existing kitchen window at first floor which is part of 326A High Road, however the size of the flue and its location should not worsen outlook. The Council's Environmental Health Unit have inspected the proposals and consider the extract system proposed to be generally conducive to protecting residential amenity in terms of odour nuisance and noise. However, for the avoidance of doubt, it is recommended that a condition requiring further technical details of the extract system should be attached to any permission to ensure that the proposed duct would not cause unreasonable noise, vibration or odours. Such details will need to be approved prior to the commencement of use.

The high level termination and the extract system proposed, which is considered to be suitable and likely to deal with smells and fumes adequately overcome previous concerns raised by Officer's and Inspectors relating to protection of residential amenity.

The subject site is located on the edge of a busy Town Centre, and fronts a busy London Distributor Road and therefore some level of disturbance arising from the general activities of commercial operations is to be expected. Given the concerns raised by objectors about late night activity and the need to preserve the residential amenities of surrounding properties it is important to ensure that any disturbance is kept to a reasonable minimum. It is therefore recommended a condition restricting the hours of use from 0800-2300 on Monday to Saturday and 0800-2230 on Sundays and Bank Holidays. be attached to the permission.

Traffic and Parking

The application site is located on the northern side of High Road, Wembley (a London distributor road). and is in a Controlled Parking Zone which operates 08:00-18:30 Mon to Sat. Access to public transport is good (PTAL 4), Wembley Stadium Station is very close to the site.

The site cannot provide off-street car parking but does have a rear servicing access from Ecclestone Place. The premises has a floor space under 100m², as such the proposed change of use will not alter the car parking standard. The last authorised A1 use can be permitted up to 1 space, while under PS9 the currently sought A3 use can be permitted the same amount of parking.

The servicing requirement for an A3 use is less onerous than for an A1 use, and only a 'transit' sized bay will be required. There is space to provide this off street to the rear of the premises. The rear yard can also accommodate refuse and recycling storage.

In summary the Council's parking standards for an A3 use are no different to the authorised A1 use, and servicing standards for an A3 use are met to the rear. Therefore the proposal is not met with an objection from Transportation.

Access

There is a level difference between the entrance to the premises and the footpath. Developments open to the general public shall include suitable access and facilities for disabled people in order to comply with Policy BE4. Details have not been provided of any measures to meet this policy, therefore a condition is recommended for approval of a ramp to the front. The provision of a ramp to the front is practicably feasible as the Council has already approved a ramp in conjunction with

other works to the frontage under planning permission 07/1301.

Consideration of objections

Concerns relating to the impact on traffic and parking, and the impacts of the proposed extract duct in terms of smells and odour have been addressed in the above report.

Concerns have been raised that the use proposed would lead to an increase in crime. Whilst acknowledging the concerns of the objector, as Members will be aware a perception that the use may increase crime is not normally a material planning consideration that can be used to determine planning applications.

An objector has also stated the proposed use would have a negative effect on the character of the area, as there are already too many eating places in the locality. This has been discussed in the above report, but to clarify the primary policy, which is SH9, does not consider the concentration or proportion of non-retail uses in assessing a proposed change of use. The primary matters for consideration are highways and traffic and residential amenity, and the use has been found to be acceptable on these grounds, as discussed in the above report. It would therefore be unreasonable to refuse the application on the grounds of harm to the character of the area or an over concentration because of the number of A3 type uses that exist, there is no policy to support this.

Conclusion

There are no policy grounds to object to an "over-concentration" of A3 uses in this secondary parade, cafes/restaurants are appropriate uses subject to residential amenity, highway and traffic considerations. Having paid regard to previous Inspectors decisions in relation to matters of highway safety and residential amenity, and assessed the proposal against current policy the proposed change to A3 use is considered to be an acceptable change of use, and on balance complies with the policies contained in Brent's Adopted Unitary Development Plan, 2004. The application is accordingly recommended for approval, with recommended conditions.

REASONS FOR CONDITIONS

RECOMMENDATION: Grant Consent

REASON FOR GRANTING

(1) The proposed development is in general accordance with policies contained in the:-

Brent Unitary Development Plan 2004

Relevant policies in the Adopted Unitary Development Plan are those in the following chapters:-

Built Environment: in terms of the protection and enhancement of the environment
Environmental Protection: in terms of protecting specific features of the environment and protecting the public
Housing: in terms of protecting residential amenities and guiding new development
Town Centres and Shopping: in terms of the range and accessibility of services and their attractiveness
Transport: in terms of sustainability, safety and servicing needs
Wembley Regeneration Area: to promote the opportunities and benefits within Wembley.

CONDITIONS/REASONS:

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning on the date of this permission.

Reason: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990.

- (2) The development hereby permitted shall be carried out in accordance with the following approved drawing(s) and/or document(s):

OS Sitemap (1:1250)
JR-09-02, revB (1:50)
WEMBLEY/300/1, revP1 (1:100)
FA.09.09/217-A (1:50)
FA.09.09/218-A (1:50)
FA.09.09/219-A, revC-01-2010 (1:50)
Purified air specification (dated 19th March 2010)
Helios kitchen extraction fan specification

Reason: For the avoidance of doubt and in the interests of proper planning.

- (3) The premises shall only be open and used for the preparation or sale of hot food on the premises, and accept deliveries to the premises between the hours of:

0800 to 2300 Monday to Saturday (Excluding Bank Holidays)
0800 to 2230 Sundays & Bank Holidays

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

- (4) The ground floor of the premises shall only be used as a sit-down restaurant/cafe, in accordance with the provision of Class A3 of the Schedule attached to the Town and Country Planning Use Classes (Amendment) Order 2005, or in accordance with any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification. The premises shall not be used as a hot-food take-away, except with the prior written permission of the Local Planning Authority obtained through the submission of a planning application.

Reason: In the interest of general highway safety and the free flow of traffic in the locality of this site fronting a well-trafficked route and a London Distributor Road and in close proximity to the junction of Harrow Road with Wembley High Road and Wembley Hill Road.

- (5) The front entrance door for the ground-floor use shall be made self-closing to minimise emission of odours and/or noise to the neighbouring area. No use of the ground-floor premises shall take place until such time as the front entrance door has been fitted with self-closing devices.

Reason: To safeguard the amenities of adjoining occupiers.

- (6) No music, public-address system or any other amplified sound shall be audible at the boundary or beyond the boundaries of the premises.

Reason: To safeguard the amenities of the neighbouring occupiers.

- (7) The rear service yard of the premises shall not be used as an area for storage or as a customer seating area in connection with the use, hereby approved, unless prior written approval is first obtained from the Local Planning Authority.

Reason: In the interests of residential amenity

- (8) Further details of fume extraction and odour control equipment, including the manufacturer's specification and including any external ducting and flues shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the commencement of the use hereby approved and thereafter maintained in accordance with the manufacturer's instructions and operated at all times when cooking is being carried out unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure that the proposed extract equipment would not harm the amenity of residential occupiers.

- (9) Details of facilities necessary to enable disabled people (including wheelchair users) to use and escape from the building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the use hereby approved. Such facilities shall include:-

(a) ramped access to the main entrance

The facilities must be provided prior to commencement of the use hereby approved and shall be retained thereafter.

Reason: To ensure satisfactory provision for disabled people.

INFORMATIVES:

- (1) The applicant is informed that any alterations to the existing shopfront or signage may require a separate grant of planning permission and/or advertisement consent.
- (2) Detailed design of the building should take appropriate account of the British Standard Code of Practice on Access for the Disabled to Buildings (B.S.5810:1979) and schedule 2 of the Building Regulations 1985. Consideration should also be given to the needs of ambulant people having other disabilities and to those with sight or hearing problems, as well as those of wheelchair users.

REFERENCE DOCUMENTS:

London Borough of Brent, UDP 2004

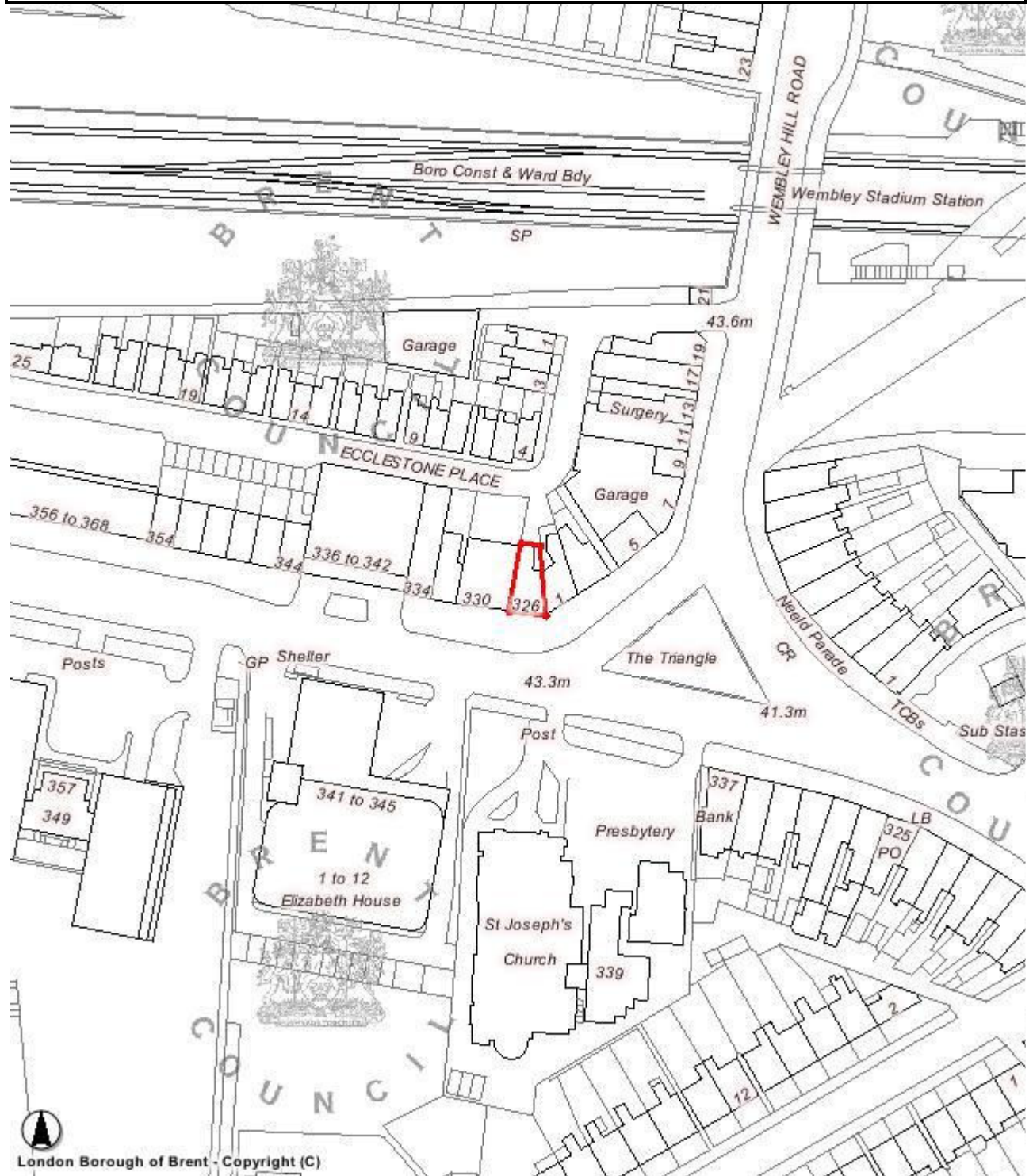
Any person wishing to inspect the above papers should contact Gary Murphy, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5227



Planning Committee Map

Site address: 326 High Road, Wembley, HA9 6AZ

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