

**Committee Report
Planning Committee on 12 May, 2011**

**Item No. 14
Case No. 11/0349**

RECEIVED: 11 February, 2011

WARD: Kilburn

PLANNING AREA: Kilburn & Kensal Consultative Forum

LOCATION: 271-273 Kilburn High Road, London, NW6 7JR

PROPOSAL: Change of use from shop (Use Class A1) to restaurant (Use Class A3), with erection of extract duct to rear and new shopfront with additional door

APPLICANT: Mr Harry Rahamin

CONTACT: Bale House CAD Ltd

PLAN NO'S:
See condition 2

RECOMMENDATION

Approval

EXISTING

The subject site is the ground floor of a 3-storey mid terrace building on the western side of Kilburn High Road, NW6. The unit was last lawfully in use as A1 but has been converted to A3, the site is within the secondary shopping frontage of Kilburn Town Centre.

PROPOSAL

Change of use from shop (Use Class A1) to restaurant (Use Class A3), with erection of extract duct to rear and new shopfront with additional door

HISTORY

E/10/0293 Enforcement Notice issued
Change of use of the premises from a shop (Use Class A1) to a restaurant/bakery (Use Class A3) and the erection of a rear decking to the premises.

Direct action has been taken by the Council's enforcement officers removing the external decking from the rear of the premises.

E/09/0171 Enforcement Notice issued
The erection of a first floor rear extension/canopy structure and extractor duct to the premises.

**POLICY CONSIDERATIONS
UDP 2004**

SH7 Change of use from retail to non-retail
SH9 Secondary shopping frontages

SH10	Food and Drink (A3) Uses
SH11	Conditions for A3 uses
PS20	Food and drink (use class A3) servicing

Supplementary Planning Guidance 7: Shop fronts & Shop Signs

CONSULTATION

Neighbouring occupiers were consulted on 3rd March 2011 objections have been received making the following comments:

- The unit was converted to a restaurant/cafe with disregard for the process of planning permission.
- Guests of the cafe park their cars blocking the gate to 275 Kilburn High Road creating nuisance for pushchairs and pedestrians and also have to be asked to move them so residents can use the driveway.
- An outdoor part of the restaurant was built without permission demonstrating the owners disregard for planning or other rules.
- Food smells could reach neighbouring balconies and flats - there are 2 other restaurants close by (Tricycle and Cassecarria) and on certain days the smell is bad.
- During building works rubbish and furniture was dumped on the pavement or burned in the back garden.
- The tables to the front are on the public footpath without permission and block the pavement for wheelchair users.
- Parties are held at night with loud music and shouting outside.
- Ducting was erected and blew down in high winds onto neighbouring roofs, it was returned to the manager but has not been reinstalled.
- The restaurant is often open past midnight and some functions have been held till 3/4am - complaints have been made to environmental health.
- Uncertain of the relationship between the unit and the flats above.
- The manager and some customers can be aggressive and unwilling to discuss problems.

Internal

Environmental Health: Complaints have been received about noise since January 2010 including loud music from the restaurant and shouting from the decked area.

There should be a restriction on opening hours.

Sound insulation should be demonstrated as music and entertainment is proposed.

Complaints included barbeque smoke and noise from the rear.

No indication of the provision of an area for smokers.

A cowl should not be used on the duct as it can impede airflow.

The applicant will need to demonstrate that the noise from the extraction system and any associated ducting shall be 10 dB(A) or greater below the measured background noise level at the nearest noise sensitive premises.

Highways: The use would be able to be serviced by a transit sized vehicle like an A1 unit and the parking standards are the same (1 space for up to 400sqm). There is no off-street parking or servicing available.

REMARKS

Principle

As described above the site was previously in use as a shop (A1) and was converted over a year ago to A3 without seeking planning permission so the current application is retrospective. The site is within the secondary shopping frontage of Kilburn Town Centre.

Policy SH9 of Brent's UDP 2004 states that non-retail uses which provide a service to visiting members of the general public will be permitted in secondary frontages and A3 is considered to fit

into this category. The site is within a mixed stretch of the shopping frontage including various A1 uses as well as another A3 unit and the Tricycle cinema/theatre so the location is not dominated by A3 uses.

It is therefore considered, subject to appropriate conditions, that the change of use is acceptable in principle.

Other issues

Officers appreciate that the use of the unit has caused disturbance for neighbouring occupiers. This is not due to the A3 use itself but the way in which the unit has been used, including the use of the rear garden, hours of use, parking etc. These issues need to be controlled by condition.

Use of rear garden

The enforcement history relates to the use of the external space to the rear where decking was installed and the reports to environmental health also relate to noise produced from the use of this space. A design and access statement has been submitted stating that the rear garden will not be publicly accessed, the layout of the unit with the kitchen across the rear should not lend itself to access by customers. The rear of the unit will only be used by staff for breaks, music will not be played outside. A condition is recommended in relation to this.

Comments were also made about the use of the roof of the rear extension and noise from this. The unit above the restaurant is registered as a residential maisonette and does not form part of this application but in any event it does not benefit from permission for any structures on the flat roof to support the use of it as a roof terrace.

Hours of opening

The proposed hours are 0700-2400 Monday to Saturday and 0700-2300 Sunday and Bank Holidays. The complaints received have been in relation to functions continuing into the night, a condition stating the allowed hours of opening must be adhered to and should prevent any disturbance to neighbours. But as stated above, the potential for any disturbance should already be minimal as the use of the rear garden will be controlled, but guests may leave in noisy groups from the front and therefore opening hours later than 2400 would not be appropriate.

Music

It is stated that there will be no music in the rear garden. The agent was asked to consider internal noise insulation of the unit but instead has stated that the only music played would be 'quiet background music'. Having discussed this with environmental health officers a condition is recommended requiring that no music or amplified sound be audible at the nearest noise sensitive premises and an acoustic consultant should produce a report to show the development will comply with this.

Functions

The activities which are thought to have caused most nuisance are when the unit has been used for parties/functions. All conditions discussed above which are recommended to prevent the use impacting adversely on neighbouring occupiers would also be applicable to any private functions at the unit.

Parking

Parking and servicing standards for A3 are generally the same as A1 which was the previous use of the unit meaning no highways objection arises from the change of use.

However, objections from neighbours include comments about the parking practices of guests of the restaurant blocking the footway and the vehicular entrance to the adjacent flats. On-street parking controls and enforcement are the relevant form of control over this and should prevent unsafe parking on Kilburn High Road but in addition the design and access statement has been

amended to include confirmation that the management of the restaurant will actively discourage this nuisance parking including a sign in the unit.

Extractor duct

The extractor duct is modest in size and its position in relation to residential windows is considered to be acceptable. Conditions are recommended requiring the further submission of noise information to ensure that any noise produced by the duct is 10 dB(A) or more below the existing noise level at the closest noise sensitive premises. Details also need to include anti-vibration mountings for the duct in the interest of neighbouring amenity.

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

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

CONDITIONS/REASONS:

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

P-179-01

P-179-02

P-179-03

Design and Access Statement

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

(2) There shall be no public use of the space to the rear of the building and the A3 use shall be contained internally within the ground floor unit, no cooking activities shall take place in the rear garden and there shall be no staff use of the garden beyond the stated opening hours of condition number 3 and the rear doors shall be made self-closing to prevent a breakout of noise.

Reason: In the interest of neighbouring amenity.

(3) The premises shall not be used except between the hours of:-

0700 hours and 2400 hours Mondays to Saturdays

0800 hours and 2300 hours on Sundays and Bank Holidays and at no other time without the written consent of the Local Planning Authority.

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

- (4) No music or any other amplified sound shall be played on the site which is audible at any boundary outside the curtilage of the premises, a report shall be produced by an acoustic consultant to demonstrate this and shall be submitted to and approved in writing by the LPA.

Reason: To safeguard the amenities of the adjoining occupiers.

- (5) Details shall be submitted to demonstrate that the noise level from the plant and ducting shall be 10 dB (A) or greater below the measured background-noise level at the nearest noise-sensitive premises, these details shall be submitted to and approved in writing by the LPA before installation. The extract ventilation fan, together with any associated ducting, shall be installed accordingly and with anti vibration mounts etc. so as to prevent the transmission of noise and vibration into any neighbouring premises.

Reason: To safeguard the amenities of the adjoining occupiers.

INFORMATIVES:

- (1) The applicant is advised that, as per the design and access statement, a sign should be put up within the unit advising customers arriving by car that they must park in accordance with parking controls on the road and not block vehicular or pedestrian access.
- (2) The applicant is advised that the development hereby approved should be fully implemented within 4 months of the date of permission including the submission and approval of information required by condition and the implementation of these details.

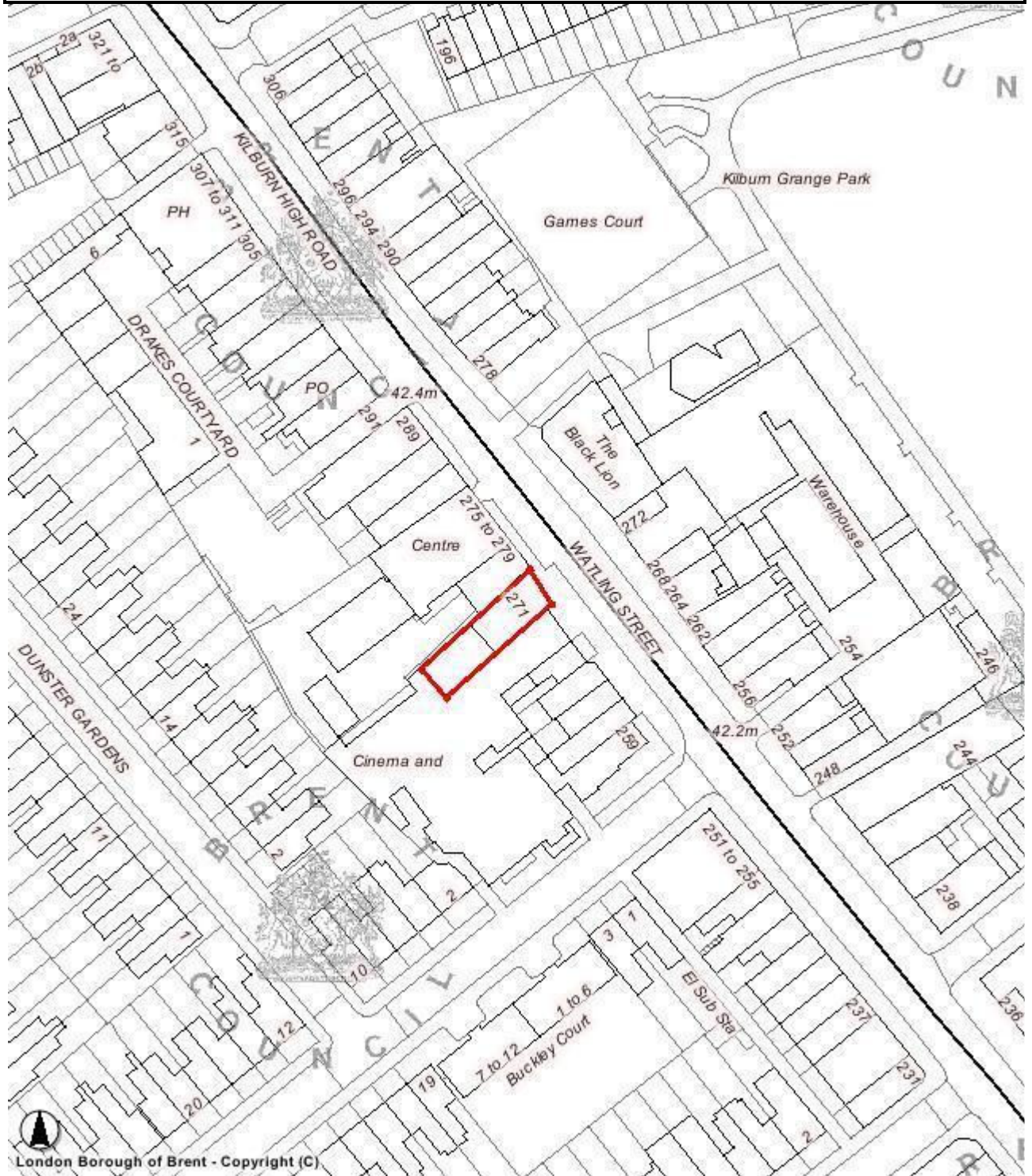
Any person wishing to inspect the above papers should contact Liz Sullivan, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5377



Planning Committee Map

Site address: 271-273 Kilburn High Road, London, NW6 7JR

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