

**Committee Report**  
**Planning Committee on 4 November, 2009**

Case No. 09/2176

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**RECEIVED:** 2 September, 2009

**WARD:** Queen's Park

**PLANNING AREA:** Kilburn & Kensal Consultative Forum

**LOCATION:** Brilliant Kids, 8 Station Terrace, London, NW10 5RT

**PROPOSAL:** Variation of condition 3 of full planning permission 06/0712, granted 29/06/2006, for change of use from Use Class A1 (retail) to mixed-use A1 and A3 (retail & cafe), to allow operating hours on Monday to Saturday 0800 to 2300 and Sunday 1000 to 2230

**APPLICANT:** Hell Yes Limited

**CONTACT:**

**PLAN NO'S:** Proposed ground floor plan

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**RECOMMENDATION**

Approval

**EXISTING**

The subject site, located on the southern side of Station Terrace, is occupied by a two-storey terraced property consisting of a vacant cafe unit on the ground floor with a self-contained flat above. This application relates to the vacant cafe unit.

To the east the site is adjoined by 9 Station Terrace which consists of a shop unit and separate self-contained flat on the ground floor and a second self-contained flat on the first floor. To the west the site is adjoined by 7 Station Terrace which consists of a ground floor shop unit and a first floor flat.

**PROPOSAL**

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**HISTORY**

Planning permission (06/0712) was granted in June 2006 for the change of use of the existing shop unit (Use Class A1) to a mixed use cafe/shop unit (Use Classes A3 and A1). Planning permission was granted subject to a number of conditions designed to restrict noise levels, the use of the rear garden of the premises and the hours of operation.

A breach of condition notice (E/06/0670) was served on the previous occupier of the cafe following the formation of a customer seating area in the rear garden of the premises. A subsequent application (07/1716) to remove condition 4, which prevented the use of the garden for such a purpose, was also refused. A recent site visit confirmed that the previous occupier has vacated the premises.

## **POLICY CONSIDERATIONS**

### **The London Borough of Brent Unitary Development Plan 2004**

SH10 Food and Drink (A3) Uses  
SH11 Conditions for A3 Uses

## **Relevant National Guidance**

Circular 11/95: Use of Conditions in Planning Permission

## **SUSTAINABILITY ASSESSMENT**

N/A

## **CONSULTATION**

### **External**

Consultation letters, dated 16th September 2009, were sent to Ward Councillors and 12 neighbouring owner/occupiers. In response three letters of objection have been received. The concerns of objectors include:-

- The extended hours of operation will cause unreasonable disturbance to neighbouring occupiers. The internal transmission of noise to adjoining residential units has been raised as a particular concern.
- The applicant has recently applied for a licence to permit the sale of alcohol and to play recorded music on the premises which could give rise to unreasonable disturbance and anti-social behaviour.

The applicant has submitted a petition in support of the application containing 15 signatures.

### **Internal**

#### Transportation Engineer

No objections

#### Environmental Health

No objections

## **REMARKS**

### Background

The use of the subject premises for the purposes of a cafe/restaurant was established under planning permission (06/0712). This planning permission was subject to a number of conditions which were agreed with the applicant at the time of the decision. Condition 3 of planning permission 06/0712 stated that:-

*"The premises shall not be used or open to customers except between the hours of:*

*0800 to 2000 Monday to Sunday and Bank Holidays.*

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

The operators of the original cafe have since vacated the premises and the current applicant now seeks to amend the terms of condition 3 before the premises are reoccupied as a cafe/brasserie. The current applicant seeks to amend condition 3 to allow operating hours of 0800 to 2300 Monday to Saturday and 1000 to 2230 on Sunday.

## Impact on Residential Amenity

At present, condition 3 of planning permission 06/0712 prevents the premises from being operated after 2000 on any day of the week. The applicant proposes to extend the closing time to 2300 Monday to Saturday and 2230 on Sunday. It is also noted that the proposed variation to the condition would prevent the premises opening before 1000 on a Sunday which is currently possible under the existing condition.

The subject site is located within Station Terrace, close to the district centre of Kensal Rise. As such, there are a number of similar food and drink uses within close proximity to the site with adjoining residential properties that operate late into the night. In such a location, where a mixture of uses co-exist, it is important to ensure that local planning decisions seek to secure an appropriate balance between the viability of businesses and the protection of residential amenity. As such, where planning permission has been permitted for food and drink uses in close proximity to residential properties it is common practice for planning conditions, limiting the hours of operation, to be imposed. However, it is unusual to restrict the opening hours of such uses to the same degree of that applied to the subject premises by the current provisions of condition 3. Notwithstanding the agreement of the previous occupier to accept more restrictive operating hours, the hours of operation now being proposed would normally be accepted if full planning permission were now being applied for by the current applicant.

It is also noted that the approval of recent planning applications at 16 & 20 Station Terrace (08/3314 and 09/1107, respectively) for the formation of external customer seating to the front of the properties were both subject to conditions preventing the use of the approved seating beyond 23.00 on any night of the week. The conditions attached to these previous applications are consistent with the hours proposed as part of the current application in terms of maintaining a reasonable balance between the viability of local businesses and the protection of residential amenity within the locality of Station Terrace.

As part of the proposals the applicant has agreed to fit additional sound proofing along the full length of the wall at ground floor level between the subject premises and 9 Station Terrace. The applicant has agreed to provide technical details of the proposed sound-proofing scheme prior to determination of the application and this matter will be reported to Members in a supplementary report. It is considered that this additional sound proofing will serve to protect, still further, residential amenity.

## Consideration of Objections

The impact of the proposal on residential amenity has been addressed, in part, in the above report. However, it is acknowledged that the behaviour of the previous occupants of the site, who breached the condition that stated that the rear garden would not be used for seating or customer service, has heightened the concerns of neighbours that the current occupant will also seek to use the rear garden for a similar purpose. However, the proposed layout of the premises is different to that of the previous occupants in that the kitchen is to the rear with the customer area contained to the front of the unit. This layout would prevent public access to the rear garden. Furthermore, for the avoidance of doubt the applicant has stated in a letter, dated 7th September, that they are not applying for the use of the rear exterior space and are aware that use of the outside space is unacceptable to the Council.

With regards to the concern that the applicant intends to play music within the premises, it is noted that a condition was attached to the previous approval stating that no sound of this sort shall be audible at the boundary of any noise-sensitive premises attached to or in the immediate vicinity of the site. The applicant has not applied to remove, or vary, this condition in any way. The Council's Licensing Officer has confirmed that the current application for a licence to supply alcohol on the site, which is under consideration, does not seek to permit the playing of recorded or live music.

**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:-

Town Centres and Shopping: in terms of the range and accessibility of services and their attractiveness

**CONDITIONS/REASONS:**

**INFORMATIVES:**

- (1) This approval supersedes condition no. 3 of the planning permission granted under ref. no. 06/0712
- (2) When operating the premises the applicant must have regard to all other conditions attached to planning consent 06/0712.

**REFERENCE DOCUMENTS:**

Brent Unitary Development Plan 2004

3 letters of objection

1 petition of support

Any person wishing to inspect the above papers should contact Ben Martin, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5231





# Planning Committee Map

Site address: Brilliant Kids, 8 Station Terrace, London, NW10 5RT

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