

## Report of the Head of Planning & Enforcement Services

**Address** 350-352 BATH ROAD HARMONDSWORTH

**Development:** Application for variation of condition 10 of planning permission ref: 1767/APP/2009/2494 dated 11/03/2010 to allow staff on the premises outside opening hours (Change of use to Class A3 (Restaurants and Cafes) with ancillary takeaway use (Class A5) with associated parking and the erection of a extraction flue (involving demolition of part existing single storey rear extension.))

**LBH Ref Nos:** 1767/APP/2010/1875

**Drawing Nos:** Planning Statement  
1:1250 Location Plan

**Date Plans Received:** 11/08/2010

**Date(s) of Amendment(s):**

**Date Application Valid:** 31/08/2010

### 1. SUMMARY

Planning permission is sought to vary condition 10 to allow staff on the premises outside of opening hours. When considering details relating to sound insulation and noise transmission from the premises it became clear there was a need to allow staff on the premises to prepare food and carry out duties relating to the business outside the hours of opening. The key issue is that this is not considered to result in a significant increase in noise and disturbance to adjoining and nearby residential properties.

### 2. RECOMMENDATION

**APPROVAL subject to the following:**

#### 1 T8 Time Limit - full planning application 3 years

The development hereby permitted shall be begun before the 11th March 2013.

REASON

To comply with Section 91 of the Town and Country Planning Act 1990.

#### 2 OM1 Development in accordance with Approved Plans

The development shall not be carried out otherwise than in strict accordance with the plans hereby approved unless consent to any variation is first obtained in writing from the Local Planning Authority.

REASON

To ensure that the external appearance of the development is satisfactory and complies with Policy BE13 of the Hillingdon Unitary Development Plan Saved Policies (September 2007).

#### 3 M2 External surfaces to match existing building

The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

REASON

To safeguard the visual amenities of the area and to ensure that the proposed development does not have an adverse effect upon the appearance of the existing building in accordance with Policy BE15 of the Hillingdon Unitary Development Plan Saved Policies (September 2007).

**4 H10 Parking/Turning/Loading Arrangements - Commercial Devs.**

The use hereby approved shall not commence until the parking areas (including the marking out of parking spaces) shown on the approved plans are provided and thereafter permanently retained and used for no other purpose.

**REASON**

To ensure that the loading, roads, turning facilities and parking areas are satisfactorily laid out on site in accordance with Policies AM3 and AM14 of the adopted Hillingdon Unitary Development Plan Saved Policies (September 2007) and Chapter 3C of the London Plan. (February 2008).

**5 H16 Cycle Storage - details to be submitted**

The use hereby approved shall not commence until 6 covered and secure cycle parking spaces are provided in accordance with the approved plans and thereafter permanently retained for as long as the development remains in existence.

**REASON**

To ensure the provision and retention of facilities for cyclists to the development and hence the availability of sustainable forms of transport to the site in accordance with Policy AM9 of the Hillingdon Unitary Development Plan Saved Policies (September 2007) and Chapter 3C of the London Plan (February 2008).

**6 MCD10 Refuse Facilities**

No development shall take place until details of facilities to be provided for the storage of refuse at the premises have been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until the facilities have been provided in accordance with the approved details and thereafter the facilities shall be permanently retained.

**REASON**

In order to safeguard the amenities of the area, in accordance with Policy OE1 of the Hillingdon Unitary Development Plan Saved Policies (September 2007) and London Plan (February 2008) Policy 4B.1.

**7 N5 Control of noise emission from the site**

The development shall not begin until a scheme which specifies the provisions to be made for the control of noise emanating from the site has been submitted to and approved by the Local Planning Authority. The approved scheme shall then be implemented before the development is occupied and thereafter shall be retained and maintained in good working order for so long as the site remains in use.

**REASON**

To safeguard the amenity of the surrounding area in accordance with Policy OE1 of the Hillingdon Unitary Development Plan Saved Policies (September 2007) and Policy 4A.20 of the London Plan (February 2008).

**8 N12 Air extraction system - noise and odour**

No air extraction system shall be used on the premises until a scheme for the control of

noise and odour emanating from the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall then be fully implemented before the development is occupied/the use commences and thereafter shall be retained and maintained in good working order for so long as the building remains in use.

**REASON**

To safeguard the amenity of the occupants of surrounding properties in accordance with policy OE1 of the Hillingdon Unitary Development Plan Saved Policies (September 2007) and Policy 4A.20 of the London Plan (February 2008).

**9 N13 Sound insulation of commercial/entertainment premises**

The development shall not begin until a sound insulation scheme for the control of noise transmission to the adjoining dwellings/premises has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented before the development is occupied/use commences and thereafter shall be retained and maintained in good working order for so long as the building remains in use.

**REASON**

To safeguard the amenity of the occupants of surrounding properties in accordance with Policy OE1 of the Hillingdon Unitary Development Plan Saved Policies (September 2007) and Policy 4A.20 of the London Plan (February 2008).

**10 HLC3 Hours of Use**

No persons other than staff shall be permitted to be on the premises and no food or drink shall be sold from the premises, or prepared for sale off the premises, between the hours of 23.00 hours and 08.00 hours.

**REASON**

To ensure that the amenity of the occupiers of adjoining or nearby properties is not adversely affected in accordance with Policy OE3 of the Hillingdon Unitary Development Plan Saved Policies (September 2007).

**11 NONSC Delivery Hours**

No waste collection and deliveries servicing the development shall take place outside the hours of 0800 and 1800 Monday to Friday and 0800 and 1300 hours on Saturdays. No deliveries servicing the development shall take place on Sundays, Bank Holidays or Public Holidays.

**REASON**

To ensure that the amenity of the occupiers of adjoining or nearby properties is not adversely affected in accordance with Policy OE3 of the Hillingdon Unitary Development Plan Saved Policies (September 2007).

**12 OM15 General Litter/Waste**

No development shall take place until a scheme detailing the method of disposal, storage and collection of litter and waste materials, generated by the business and/or discarded by patrons, has been submitted to and approved in writing by the Local Planning Authority. The details shall include a description of the facilities to be provided and the methods for collection of litter within and in the vicinity of the premises. The approved scheme shall be implemented in full thereafter.

**REASON**

To ensure that adequate provision is made for the disposal of litter and waste, in the interests of maintaining a satisfactory standard of amenity in the locality, in accordance with Policy OE1 of the Hillingdon Unitary Development Plan Saved Plans (September 2007).

**13 OM16 Notice advertising customer responsibilities**

A notice shall be displayed permanently and prominently within the premises requesting that customers dispose of their litter responsibly.

**REASON**

To ensure the satisfactory disposal of litter in the interests of maintaining a satisfactory standard of amenity in the locality, in accordance with Policy OE1 of the Hillingdon Unitary Development Plan Saved Policies (September 2007).

**14 MCD1 Ancillary Uses**

The takeaway use shall remain as an ancillary use to the restaurant (Use Class A3) permitted on site, and shall not be operated independently from the restaurant.

**REASON**

To safeguard the amenities of nearby residents and to prevent on-street parking to the detriment of highway and pedestrian safety, in accordance with Policies OE1 and AM7 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

**15 SUS5 Sustainable Urban Drainage**

No development shall take place on site until details of the incorporation of sustainable urban drainage have been submitted to, and approved in writing by the Local Planning Authority. The approved details shall thereafter be installed on site and thereafter permanently retained and maintained.

**REASON**

To ensure that surface water run off is handled as close to its source as possible in compliance with policy 4A.14 of the London Plan (February 2008) /if appropriate/ and to ensure the development does not increase the risk of flooding contrary to Policy OE8 of the Hillingdon Unitary Development Plan Saved Policies (September 2007), polices 4A.12 and 4A.13 of the London Plan (February 2008) and PPS25.

**INFORMATIVES**

**1 I52 Compulsory Informative (1)**

The decision to GRANT planning permission has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

**2 I53 Compulsory Informative (2)**

The decision to GRANT planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including the London Plan (February 2008) and national guidance.

OE3 Buildings or uses likely to cause noise annoyance - mitigation measures

**3 I1 Building to Approved Drawing**

You are advised this permission is based on the dimensions provided on the approved drawings as numbered above. The development hereby approved must be constructed precisely in accordance with the approved drawings. Any deviation from these drawings requires the written consent of the Local Planning Authority.

**4 I12 Notification to Building Contractors**

The applicant/developer should ensure that the site constructor receives copies of all drawings approved and conditions/informatives attached to this planning permission. During building construction the name, address and telephone number of the contractor (including an emergency telephone number) should be clearly displayed on a hoarding visible from outside the site.

**5 I15 Control of Environmental Nuisance from Construction Work**

Nuisance from demolition and construction works is subject to control under The Control of Pollution Act 1974, the Clean Air Acts and other related legislation. In particular, you should ensure that the following are complied with: -

A) Demolition and construction works should only be carried out between the hours of 08.00 hours and 18.00 hours Monday to Friday and between the hours of 08.00 hours and 13.00 hours on Saturday. No works shall be carried out on Sundays, Bank and Public Holidays.

B) All noise generated during such works should be controlled in compliance with British Standard Code of Practice BS 5228: 1984.

C) The elimination of the release of dust or odours that could create a public health nuisance.

D) No bonfires that create dark smoke or nuisance to local residents.

You are advised to consult the Council's Environmental Protection Unit, 3S/02, Civic Centre, High Street, Uxbridge, UB8 1UW (Tel.01895 277401) or to seek prior approval under Section 61 of the Control of Pollution Act if you anticipate any difficulty in carrying out construction other than within the normal working hours set out in (A) above, and by means that would minimise disturbance to adjoining premises.

**6 I3 Building Regulations - Demolition and Building Works**

Your attention is drawn to the need to comply with the relevant provisions of the Building Regulations, the Building Acts and other related legislation. These cover such works as - the demolition of existing buildings, the erection of a new building or structure, the extension or alteration to a building, change of use of buildings, installation of services, underpinning works, and fire safety/means of escape works. Notice of intention to demolish existing buildings must be given to the Council's Building Control Service at least 6 weeks before work starts. A completed application form together with detailed plans must be submitted for approval before any building work is commenced. For further information and advice, contact - Planning & Community Services, Building Control, 3N/01 Civic Centre, Uxbridge (Telephone 01895 250804 / 805 / 808).

**7 I34 Building Regulations 'Access to and use of buildings'**

Compliance with Building Regulations 'Access to and use of buildings' and Disability Discrimination Act 1995 for commercial and residential development.

You are advised that the scheme is required to comply with either:-

- The Building Regulations 2000 Approved Document Part M 'Access to and use of buildings', or with
- BS 8300:2001 Design of buildings and their approaches to meet the needs of disabled people - Code of practice. AMD 15617 2005, AMD 15982 2005.

These documents (which are for guidance) set minimum standards to allow residents, workers and visitors, regardless of disability, age or gender, to gain access to and within buildings, and to use their facilities and sanitary conveniences.

You may also be required make provisions to comply with the Disability Discrimination Act 1995. The Act gives disabled people various rights. Under the Act it is unlawful for employers and persons who provide services to members of the public to discriminate against disabled people by treating them less favourably for any reason related to their disability, or by failing to comply with a duty to provide reasonable adjustments. This duty can require the removal or modification of physical features of buildings provided it is reasonable.

The duty to make reasonable adjustments can be effected by the Building Regulation compliance. For compliance with the DDA please refer to the following guidance: -

- The Disability Discrimination Act 1995. Available to download from [www.opsi.gov.uk](http://www.opsi.gov.uk)
- Disability Rights Commission (DRC) Access statements. Achieving an inclusive environment by ensuring continuity throughout the planning, design and management of building and spaces, 2004. Available to download from [www.drc-gb.org](http://www.drc-gb.org).
- Code of practice. Rights of access. Goods, facilities, services and premises. Disability discrimination act 1995, 2002. ISBN 0 11702 860 6. Available to download from [www.drc-gb.org](http://www.drc-gb.org).
- Creating an inclusive environment, 2003 & 2004 - What it means to you. A guide for service providers, 2003. Available to download from [www.drc-gb.org](http://www.drc-gb.org).

This is not a comprehensive list of Building Regulations legislation. For further information you should contact Building Control on 01895 250804/5/6.

## **8            I43                    Keeping Highways and Pavements free from mud etc**

You are advised that care should be taken during the building works hereby approved to avoid spillage of mud, soil or related building materials onto the pavement or public highway. You are further advised that failure to take appropriate steps to avoid spillage or adequately clear it away could result in action being taken under the Highways Act.

## **9            I46                    Renewable Resources**

To promote the development of sustainable building design and construction methods, you are encouraged to investigate the use of renewable energy resources which do not produce any extra carbon dioxide (CO2) emissions, including solar, geothermal and fuel

cell systems, and use of high quality insulation.

#### **10 I25A The Party Wall etc. Act 1996**

On 1 July 1997, a new act, The Party Wall etc. Act 1996, came into force.

This Act requires a building owner to notify, and obtain formal agreement from, any adjoining owner, where the building owner proposes to:-

- 1) carry out work to an existing party wall;
- 2) build on the boundary with a neighbouring property;
- 3) in some circumstances, carry out groundworks within 6 metres of an adjoining building.

Notification and agreements under this Act are the responsibility of the building owner and are quite separate from Building Regulations or planning controls. Building Control will assume that an applicant has obtained any necessary agreements with the adjoining owner, and nothing said or implied by Building Control should be taken as removing the necessity for the building owner to comply fully with the Act.

#### **11 I28 Food Hygiene**

The Council's Commercial Premises Section should be consulted prior to the use of the premises so as to ensure compliance with the Food Safety Registration Regulations 1990, Hygiene (General) Regulations 1970, The Food Act 1984, The Health and Safety at Work Act 1974 and any other relevant legislation. Contact: - Commercial Premises Section, 4W/04, Civic Centre, High Street, Uxbridge, UB8 1UW (Telephone 01895 250190).

#### **12 I25 Consent for the Display of Adverts and Illuminated Signs**

This permission does not authorise the display of advertisements or signs, separate consent for which may be required under the Town and Country Planning (Control of Advertisements) Regulations 1992. [To display an advertisement without the necessary consent is an offence that can lead to prosecution]. For further information and advice, contact - Planning & Community Services, 3N/04, Civic Centre, High Street, Uxbridge, UB8 1UW (Tel. 01895 250574).

#### **13 I47 Damage to Verge**

You are advised that care should be taken during the building works hereby approved to ensure no damage occurs to the verge or footpaths during construction. Vehicles delivering materials to this development shall not override or cause damage to the public footway. Any damage will require to be made good to the satisfaction of the Council and at the applicant's expense. For further information and advice contact - Highways Maintenance Operations, Central Depot - Block K, Harlington Road Depot, 128 Harlington Road, Hillingdon, Middlesex, UB3 3EU (Tel: 01895 277524).

#### **14**

You are advised that it is your responsibility to manage waste from the site appropriately and that the movement of bins is at your own risk. Should the bins fall over during waste collection, or at any other time, it is your responsibility to pick them up and clear any rubbish/litter which may have spilt from them as soon as possible.

#### **15**

You are advised that the proposed facility will be subject to the Disability Discrimination

Act 1995 because it will provide a service to the public. Reasonable adjustments to practices, policies and procedures, auxiliary aids, and physical features will need introducing to ensure that disabled people receive an equitable service.

The Council's Access Officer has provided the following observations:

1. Level access and adequate front door width are assumed. If this is not the case, level access and a minimum door width of 1000mm should be provided.
2. Toilets should be designed in accordance with the guidance given in Approved Document M to the Buildings Regulations 2004. As such, the proposed accessible toilet facility should provide an outward opening door.
3. The accessible toilet should be signed either 'Accessible WC' or 'Unisex'. Alternatively, the use of the 'ladies' and 'gentlemen' with a 'wheelchair' symbol and the word 'Unisex' would be acceptable.

You are reminded of the duties set out in the Disability Discrimination Act 1995, with regard to employment and service provision. Whilst an employer's duty to make reasonable adjustment is owed to an individual employee or job applicant, the responsibility of service providers is to disabled people at large, and the duty is anticipatory. The failure to take reasonable steps at this stage to facilitate access will therefore count against the service provider, if/when challenged by a disabled person. It is therefore recommended that the applicant takes full advantage of the opportunity that this development offers, to improve the accessibility of the premises to people with mobility and sensory impairments.

## **16**

You are advised that should a scheme for Closed Circuit Television (CCTV) be proposed for this site, you should liaise with the Metropolitan Police Crime Prevention Officer to ensure that this is compatible with the Council's CCTV system.

### **3. CONSIDERATIONS**

#### **3.1 Site and Locality**

The application site is located on the north side of Bath Road near its junction with Pinglestone Close and forms part of a local parade comprising commercial units on the ground floor with residential accommodation above accessed from the rear of the terrace. A service road lies to the rear of the terrace accessed from Pinglestone Road.

The application property has a single storey rear extension and is currently vacant. The lawful use of the ground floor is as an office with storage at rear within Class B1(a). Access to the upper floor residential units is via an entrance door along the flank wall of the application property. The attached property, 354 Bath Road, lies to the west and to the east lies a footpath with 348 Bath Road beyond. The application site lies within a local shopping parade, as identified in the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

#### **3.2 Proposed Scheme**

Planning permission was granted by the Central & South Planning Committee on 18 February 2010 for the change the use of an existing commercial premises to a restaurant use (class A3) with ancillary takeaway uses (Class A5) and the erection of an extraction



flue. The scheme involved internal alterations to provide a kitchen area and toilets and demolition of a substantial part of the existing single storey rear extension to enable the provision of three parking spaces, cycle parking spaces and refuse and recycling storage facilities.

With the exception of condition 12, all other pre-commencement conditions have been discharged under delegated powers. Condition 12, relating to waste storage and collection, was approved by the Central & South Planning Committee on 15 October 2010.

At the planning committee on 18th February 2010, Members were concerned that due to the close proximity of residential properties, the proposed use would result in additional noise and disturbance even when the premises was closed to the public, from staff. As such, condition 10 was amended to prevent staff on the premises outside the hours of operation. Condition 10 states:

"No persons shall be permitted on the premises". The words 'other than staff' was deleted from the original condition recommended by officers.

This application now seeks to amend condition 10 to allow staff on the premises to prepare food and carry out other business related duties such cleaning/hygiene outside the hours of operation.

### 3.3 Relevant Planning History

1767/APP/2007/3212      350-352 Bath Road Harmondsworth

CHANGE OF USE OF EXISTING COMMERCIAL PREMISES TO A RESTAURANT WITH ANCILLARY TAKEAWAY (CLASS A3)

**Decision:** 18-03-2008    Refused                      **Appeal:** 12-01-2009    Dismissed

1767/APP/2009/700      350-352 Bath Road Harmondsworth

Following demolition of part single storey rear extension to incorporate parking, change of use of the premises to restaurant use with ancillary takeaway use (Class A3) and an extraction flue

**Decision:** 23-09-2009    Refused

1767/PRE/2000/146      350-352 Bath Road Harmondsworth

PRE-CORRES ENQUIRY FOR CHANGE OF USE.

**Decision:**

#### Comment on Relevant Planning History

APP/R5510/A/10/1234348/NWF - Appeal against the granting of planning permission subject to condition 10. (The appeal is seeking the grant of planning permission subject to an alternative wording of condition 10 which states 'No food shall be served on the premises between the hours of 23:00 hours and 08:00 hours'). In progress.

1767/APP/2009/2494 - For the change of use to Class A3 (Restaurants and Cafes) with ancillary takeaway use (Class A5). Granted 11/03/2010

1767/APP/20010/934 - Details in compliance with conditions 6 (storage of refuse), 7

(control of noise), 8 (control of noise and odour), 9 (noise transmission) and 15 (sustainable urban drainage of the approved change of use scheme (Original Ref 1767/APP/2009/2494). Granted 30 June 2010.

1767/APP/2010/935 - Details in compliance with Condition 12 (Method of disposal, storage and collection of refuse) of planning permission ref.1767/APP/2009/2494 dated 11/03/2010: Change of use to Class A3 (Restaurants and Cafes) with ancillary takeaway use (Class A5) with associated parking and the erection of an extraction flue (involving demolition of part existing single storey rear extension.) (Original Ref 1767/APP/2009/2494). Granted 15 October 2010.

#### **4. Planning Policies and Standards**

##### **UDP / LDF Designation and London Plan**

The following UDP Policies are considered relevant to the application:-

Part 1 Policies:

Part 2 Policies:

OE3 Buildings or uses likely to cause noise annoyance - mitigation measures

#### **5. Advertisement and Site Notice**

5.1 Advertisement Expiry Date:- Not applicable

5.2 Site Notice Expiry Date:- Not applicable

#### **6. Consultations**

##### **External Consultees**

14 adjoining owner/occupiers and the Harmondsworth & Sipson Residents' Association have been consulted. 1 letter of objection have been received making the following comments:

- (i) There are residential properties close by. To allow staff on the premises would result in additional noise and disturbance - more comings and goings; filling bins; driving cars up and down the lane.
- (ii) The variation would allow food to be prepared and sold off the premises; and
- (iii) The proposal is contrary to policy OE3.

##### **Internal Consultees**

Environmental Protection Unit:

The applicant has not requested to the change the hours specified under the condition. However, there seems to be an error with the wording of the previous condition 10, which states that:

Condition 10:

No persons shall be permitted to be on the premises between the hours of 23:00 and 08:00

Reason: To ensure that the amenity of the adjoining or nearby properties is not adversely affected in accordance with policy OE3 of the Hillingdon Unitary Development Plan saved Policies (September 2007).

EPU has reason to believe that the previous condition was imposed to target any potential noise impact arising from the premises and affecting amenity of adjoining or nearby residential properties, which is considered relevant to planning. The condition suggested by the applicant refers to preparation of 'food' only. EPU recommend that condition 10 be corrected/varied as follows:

Condition 10:

No persons other than staff shall be permitted to be on the premises between the hours of 23:00 and 08:00

Reason: To ensure that the amenity of the adjoining or nearby properties is not adversely affected in accordance with policy OE3 of the Hillingdon Unitary Development Plan saved Policies (September 2007)

## **7. MAIN PLANNING ISSUES**

### **7.01 The principle of the development**

The principle of the development agreed with approval of the original application for change of use from Class A2 Use to A3 Use with ancillary A5 Use.

### **7.02 Density of the proposed development**

This is not applicable to this application.

### **7.03 Impact on archaeology/CAs/LBs or Areas of Special Character**

This is not applicable to this application.

### **7.04 Airport safeguarding**

This is not applicable to this application.

### **7.05 Impact on the green belt**

This is not applicable to this application.

### **7.07 Impact on the character & appearance of the area**

This is not applicable to this application.

### **7.08 Impact on neighbours**

The main issue for consideration relates to the effect of the proposal on the residential amenities of nearby properties through noise and disturbance.

The applicant advises that at present, the current wording of the condition does not allow sufficient time for staff to carry out 'back of house' duties, such as food preparation, cleaning, and getting the premises ready for the next day. The applicant further advises that it would be impossible to operate a business from the premises with a condition that does not allow staff on the premises outside of the hours of operation, and as such condition 10 is unreasonable.

Circular 11/95: Use of condition in planning permissions conditions states at paragraph 14 that:

"On a number of occasions the courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the court's criteria for validity, the Secretaries of State take the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the 6 tests:- conditions should be

- (i) necessary;
- (ii) relevant to planning;
- (iii) relevant to the development to be permitted;
- (iv) enforceable;

- (v) precise; and
- (vi) reasonable in all other respects."

It is considered that the current wording of condition 10 is unreasonable, as it does not allow any time for staff to carry out pre-opening/post closing preparation. As such it breaches the above test.

The issue of noise and disturbance issue was considered when the original application for the change of use to a restaurant was before the planning committee on 18th February 2010. In response, conditions to control noise transmission from the site were imposed. In particular, details of sound insulation and the control of noise emanating from the site were submitted and subsequently discharged. The measures put forward by the applicant to control noise emanating from the premises are considered to be acceptable and will control any potential noise from staff outside the hours of operation.

As such, it is considered that it would be reasonable to allow the variation of this condition. Finally, any noise and disturbance from the site can be controlled under the Environmental Protection Acts.

The proposal complies with policy OE3 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

**7.09 Living conditions for future occupiers**

This is not applicable to this application.

**7.10 Traffic impact, Car/cycle parking, pedestrian safety**

This is not applicable to this application.

**7.11 Urban design, access and security**

Urban Design and Access considerations are not applicable to this application.

It is not considered that the amendments, which would allow only the staff to be on the site between 2300 and 0800 hours would result in any increase in crime or reduction in security.

**7.12 Disabled access**

This is not applicable to this application.

**7.13 Provision of affordable & special needs housing**

This is not applicable to this application.

**7.14 Trees, landscaping and Ecology**

This is not applicable to this application.

**7.15 Sustainable waste management**

This is not applicable to this application.

**7.16 Renewable energy / Sustainability**

This is not applicable to this application.

**7.17 Flooding or Drainage Issues**

This is not applicable to this application.

**7.18 Noise or Air Quality Issues**

The Environmental Protection Officer considers that as staff will be preparing food and carrying out other related matters in association with the proposed use outside the hours of operation, the variation of condition 10 to allow staff on the premises is acceptable.

**7.19 Comments on Public Consultations**

With regards to the third party comments, there is no doubt that the proposal would

generate the activities mentioned by the objector, however, these activities are not considered to generate a significant increase in noise and disturbance as to justify withholding the variation of this condition.

#### **7.20 Planning obligations**

This is not applicable to this application.

#### **7.21 Expediency of enforcement action**

This is not applicable to this application.

#### **7.22 Other Issues**

The objector raises a concern regarding preparation of food out of hours for sale off the premises. The conditions have been updated to prevent this.

### **8. Observations of the Borough Solicitor**

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.

In addition Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

### **9. Observations of the Director of Finance**

This is not applicable to this application.

### **10. CONCLUSION**

The proposed variation of condition 10 to allow staff on the premises is not considered to result in a significant increase in noise and disturbance. Approval is recommended.



### **11. Reference Documents**

Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007)

**Contact Officer:** Sonia Bowen

**Telephone No:** 01895 250230



<p><b>Notes</b></p> <p> Site boundary</p> <p>For identification purposes only.</p> <p>This copy has been made by or with the authority of the Head of Committee Services pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act). Unless the Act provides a relevant exception to copyright.</p> <p>© Crown Copyright. All rights reserved. London Borough of Hillingdon 100019283 2010</p>	<p>Site Address</p> <p><b>350 - 352 Bath Road Harmondsworth</b></p>		<p><b>LONDON BOROUGH OF HILLINGDON</b></p> <p><b>Planning, Environment &amp; Community Services</b></p> <p>Civic Centre, Uxbridge, Middx. UB8 1UW Telephone No.: Uxbridge 250111</p>
	<p>Planning Application Ref:</p> <p><b>1767/APP/2010/1875</b></p>	<p>Scale</p> <p><b>1:1,250</b></p>	
	<p>Planning Committee</p> <p><b>Central and South</b></p>	<p>Date</p> <p><b>November 2010</b></p>	
		 <p><b>HILLINGDON</b> LONDON</p>	