

**Application No:** W 11 / 0967

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Jo Hogarth

**Registration Date:** 03/08/11

**Expiry Date:** 28/09/11

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**9-11 St Marks Road, Leamington Spa**

Change of use of 9 St Marks Road from Nursery to residential dwelling (retrospective) and the erection of two outbuildings in the rear gardens of 9 & 11 St Marks Road, fronting Cliffe Road for ancillary residential use FOR Mr B Dhesi

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This application has been requested to be presented to Committee by Councillor Gifford and due to the number of objections and an objection from the Town Council having been received.

**SUMMARY OF REPRESENTATIONS**

**Leamington Spa Town Council:** RESOLVED that an objection is raised:

"The size, height and mass of the two ancillary outbuildings would be against HE7.5 of PPS5 and disproportional to similar outbuildings in the Conservation Area. There is no objection to the change of use from a nursery back to a residential dwelling."

**CAAF:** Part II Item, no comment.

**Public response(s):** 15 letters objecting to the application on the following grounds: there would be a failure to meet highway requirements; detrimental to the character and appearance of the Conservation Area; these are not modest building; undesirable precedent; these buildings could be easily converted into dwellings; danger to pedestrians/school children and will create more traffic and the scheme does not represent modest outbuildings as they are too large.

**RELEVANT POLICIES**

- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DAP8 - Protection of Conservation Areas (Warwick District Local Plan 1996 - 2011)
- DP8 - Parking (Warwick District Local Plan 1996 - 2011)
- DP6 - Access (Warwick District Local Plan 1996 - 2011)
- DP13 - Renewable Energy Developments (Warwick District Local Plan 1996 - 2011)
- SC8 - Protecting Community Facilities (Warwick District Local Plan 1996 - 2011)
- SC13 - Open Space and Recreation Improvements (Warwick District Local Plan 1996 - 2011)
- Residential Design Guide (Supplementary Planning Guidance - April 2008)
- Sustainable Buildings (Supplementary Planning Document - December 2008)
- Vehicle Parking Standards (Supplementary Planning Document)
- Open Space (Supplementary Planning Document - June 2009)

## **PLANNING HISTORY**

Planning permission for the erection of 2 dwellings with car parking was refused in 1997; reference W97/0605/0606CA and W97/0653/0654CA. Subsequent appeals against these decisions were dismissed solely on the issue of loss of car parking. The Inspector concluded:-

"To my mind the loss of the views across part of the open gardens, (of the houses in St. Marks Road) would not be of significant harm to the character of the surroundings. In addition, the proposed houses could with benefit introduce a degree of openness adjacent to the pavement in contrast to the present long blank walls and fences. Some trees would be lost but they are not specifically protected and in my opinion their size and condition does not create a strong reason to retain them.

The proposals have been designed as a pair and to my mind their scale and bulk would not look out of place adjacent to Eaton Court. There are larger trees in the rear gardens to the north, some of which I understand are protected. A bungalow to the rear of No. 17 St. Marks Road was dismissed on appeal in 1980 on the ground of harm to residential amenities and loss of protected trees. I consider the proposed dwellings need not create a precedent for further development. Hence, in the context of the definition of preservation set out in paragraph 4.20 of PPG15. I believe the dwellings would preserve the character of the surroundings."

Consequently, the proposals were resubmitted in 2000, W20001552/53CA when permission for the 2 houses was granted subject to a Section 106 Agreement which stated the permission would not be implemented unless either the use of the nursery had ceased or a planning permission had been granted to continue the use of the nursery without the use of the land at the rear of No. 9 St. Marks Road for staff car parking. This permission has now expired.

Planning permission for the use of the ground and first floor of No. 9 St. Marks Road as a children's nursery for 32 children was granted in 1993 reference W930832, subject to conditions, including the retention of a staff car park as land to the rear accessed off Cliffe Road. An application to delete this condition was refused in 1994 (reference W941220) and a subsequent appeal against this refusal was dismissed. An application to increase the number of children in the nursery to 48 was granted in February 2000, reference W20000059; no additional car parking was required in connection with this permission having regard to the existence of a rear staff car park, the continued existence of which was acknowledged by the applicant in his letter of support for that application.

A planning application for a similar description of development to that the subject of the current application but to a different design was refused by the Planning Committee on 9th December 2009, W09/0634 for the following reasons:-

*"1. Policy DAP8 of the Warwick District Local Plan 1996-2011 requires development to preserve or enhance the special architectural and historic character of the District's Conservation Areas. The explanation to this Policy states explicitly that 'Gardens and open spaces that add to the historic appearance and interest of Conservation Areas should be protected from*

development'. In the opinion of the District Planning Authority this proposal would result in the unacceptable loss of existing open areas which make a significant contribution to the character and appearance of this part of the Conservation Area and the setting of properties fronting St. Marks Road. The proposal would therefore conflict with the provisions of the aforementioned policy.

2. Policy DAP8 of the Warwick District Local Plan 1996-2011 requires development to preserve or enhance the special architectural and historic character of the District's Conservation Areas. Policy DP1 requires development to positively contribute to the character and quality of its environment through good layout and design whilst Policy DP2 states development will not be permitted, which has an unacceptable adverse impact on the amenity of nearby residents.

*In the opinion of the District Planning Authority, the character of this part of the Conservation Area is one of open established gardens set behind a boundary detail onto Cliffe Road. It is considered that the proposed development, which incorporates no setback from Cliffe Road, would create a solid street frontage which on this narrow street would be detrimental to the character and appearance of the Conservation Area and the amenity of neighbours. The proposed design and siting of this proposed development would therefore conflict with the provisions of the aforementioned policies."*

The 2009 application was appealed; however subsequently dismissed on grounds that the buildings would be unduly prominent which would fail to preserve significant elements of the Conservation Area or make a positive contribution to its distinctive character and appearance. The Inspector did conclude that *"If appropriate in scale and of sensitive design, I also consider that such buildings could be erected while still preserving the character of this side of Cliffe Road. Although objections have been raised to siting the building on the back of the pavement, I agree with the appellant that outbuildings have traditionally been integrated into boundary walls and indeed this pattern of development can be seen further down Cliffe Road."*

In 2010 (ref: W/10/0277) planning permission was refused by the Planning Committee for the erection of two outbuildings fronting St Mark's Road for ancillary use to the nursery (number 9) and dwelling (number 11) as a resubmission of W/09/0634. It was refused on the following grounds:

*"1. Policy DAP8 of the Warwick District Local Plan 1996-2011 requires development to preserve or enhance the special architectural and historic character of the District's Conservation Areas. The explanation to this Policy states explicitly that 'Gardens and open spaces that add to the historic appearance and interest of Conservation Areas should be protected from development'. In the opinion of the District Planning Authority this proposal would result in the unacceptable loss of existing open areas which make a significant contribution to the character and appearance of this part of the Conservation Area and the setting of properties fronting St. Marks Road. The proposal would therefore conflict with the provisions of the aforementioned policy.*

*2. Policy DAP8 of the Warwick District Local Plan 1996-2011 requires development to preserve or enhance the special architectural and historic character of the District's Conservation Areas. Policy DP1 requires development*

*to positively contribute to the character and quality of its environment through good layout and design whilst Policy DP2 states development will not be permitted, which has an unacceptable adverse impact on the amenity of nearby residents.*

*In the opinion of the District Planning Authority, the character of this part of the Conservation Area is one of open established gardens set behind a boundary detail onto Cliffe Road. It is considered that the proposed development, which incorporates 2 substantial gable features onto the Cliffe Road frontage, would be detrimental to the character and appearance of the Conservation Area and the amenity of neighbours. The proposed design and siting of this proposed development would therefore conflict with the provisions of the aforementioned policies."*

## **KEY ISSUES**

### **The site and its Location**

The site is located in the Conservation Area and fronts onto Cliffe Road with the main properties fronting on to St. Mark's Road. Number 9 St Mark's Road used to be used, in part as a children's nursery with some residential use whilst number 11 St Mark's Road is a single dwelling. Along this side of Cliffe Road there are some outbuildings such as garages and a coach house whereas on the opposite side are the road are dwellings of varying styles and designs. The application site at number 11 St Mark's Road is laid out as residential garden with a 1.8 metre high fence onto Cliffe Road while the site at number 9 St. Mark's Road was laid out as a play area and an overflow car parking area for the nursery and has a brick wall and gates onto Cliffe Road.

### **Details of the Development**

This application has been submitted to seek to address the reasons for refusal of planning application W/10/0277 and to regularise the use of number 9 St Mark's Road as a single dwelling.

### **Assessment**

I consider the key issues relating to this application to be:

- Principle of development
- Impact on the Conservation Area
- Impact on Neighbours
- Parking and access
- Renewables
- Public Open Space Contributions

#### Principle of development

There are two elements to this proposal and the first is the use of number 9 St. Mark's Road as a single dwelling as the nursery use has ceased. As part of the building was last used within a Class D1 use (nursery), the applicant is required

by Local Plan Policy SC8 'Protecting Community Facilities' to demonstrate that there are similar facilities accessible to the local community, and no other user is willing to take on the Class D1 use. The nursery use ceased due to changes required by Ofsted and following two refusals to allow for extra nursery accommodation.

Whilst the use of part of the building has not been marketed as it was considered less desirable to a new occupier to use only part of the building, the applicant has demonstrated that there are several other nurseries nearby which serve the local community. There are 3 within a quarter of a mile, 6 within half a mile radius and a further 5 within 1 mile of 9 St. Marks Road. As such, the applicant argues therefore that there are nursery facilities to serve the local community within the nearby area and no user would be willing to acquire this use given it only forms part of a building in residential use.

As the area is predominantly residential in nature and character, I do not consider that a change of use back to a single dwellinghouse would be detrimental to the area, or that there is a need to retain this use to protect community facilities in this part of Leamington Spa.

The second element is with regard to the construction of outbuildings for ancillary use to the main dwellings. In principle I do not consider this to be unreasonable as many properties within the District have outbuildings within their curtilage. The uses of the outbuildings as garaging, workshop and garden store I do not consider to be unacceptable or disproportionate given the scale of the dwellings, having some 7 bedrooms.

#### Impact on the Conservation Area

The application has been the subject of extensive pre-application discussions with the Council's Conservation Architect and the design has taken on board the advice given. The Conservation Architect is of the view that the scheme as submitted does represent two modest buildings and I am satisfied that subject to detailing the proposed outbuilding would not result in unacceptable harm to the character and visual appearance of the Conservation Area and wider streetscene. It is recognised that the boundary treatment along this side of Cliffe Road will be broken; however this has been repeated elsewhere through garages, outbuildings and pedestrian gates/entrances. The Appeal Inspector held that the design and scale of the buildings in 2009 (ref: W/09/0634) were unduly prominent within the Conservation Area, measuring 6.8 metres, being two storey with a greater bulk and mass. The application in 2010 (ref: W/10/0277) proposed two storey buildings, also measuring 6.8 metres (at the highest point). The proposed outbuildings as currently submitted have been reduced in height to 5.4 metres with no use of the roofspace and no windows on the Cliffe Road elevation. The design has been altered so as to allow views through the two outbuildings as the previous designs were 'linked' at first floor. I am of the opinion that the proposed scheme has significantly been reduced in terms of bulk and mass and therefore does address the Appeal Inspector's concerns to W/09/0634 with regard to prominence within the streetscene and would thereby meet the requirements of Policy DAP8 of the Local Plan. With regard to the loss of some trees and hedging along the Cliffe Road elevation, the Council's Tree Officer is satisfied that there would be no significant loss such as to protect them through a Tree Preservation Order and it is noted that replacement trees within the site will be planted.

#### Impact on neighbours

Whilst the proposal would introduce changes to the appearance of the site and will result in changes to residents' outlook, I do not consider this to be so unacceptable as to justify refusal of the scheme. The buildings will be used as ancillary elements to the main house and are not dwellings. As single storey structures I am of the view that the scheme would not result in any adverse overlooking or loss of amenity. With regard to the Council's adopted Distance Separations in relation to the properties in Cliffe Road, these would be approximately 24 metres, and as there are no windows proposed in the elevations onto Cliffe Road, I am of the opinion that there would be no unacceptable overlooking or loss of privacy and I am satisfied that the Distance Separations standards are met, being mindful that the proposed buildings are not dwellings. With regard to the distance separations between the houses in St Mark's Road, these would be 30 metres which again would meet the Council's adopted standards for residential dwellings. In addition a tree buffer zone is proposed which would further reduce the visual appearance of the buildings.

Whilst I note that some residents have concerns that the buildings have the potential future use as dwellings, any such use would require planning permission and the implications of such a proposed use would have to be considered in the context of any submitted application. However, as submitted I consider the proposal would not have an unacceptable impact on neighbour's amenity and would thereby meet the requirements of Policy DP2 of the Local Plan.

#### Parking and access

Warwickshire County Council (Highways) raises no objection subject to conditions; there is already one vehicular access onto this site which served as a possible overflow car park when the nursery was in operation. The County Council have considered the proposal with a 2 metre x 43 metre splay and have since confirmed that they raise no objection. Therefore on highway grounds there is no justification to refuse the proposal as submitted. The outbuildings would provide for two garages for each of the properties together with a parking area. I am satisfied that there would be no conflict with Policies DP6 and DP8 of the Local Plan or the Council's adopted Vehicle Parking Standards.

#### Renewables

Whilst the scheme is for outbuildings and not residential use, the applicant is providing three solar panels to the buildings which would more than adequately meet the requirements of Policy DP13 in providing 10% renewable energy. The applicant's agent has confirmed that the building will not be heated and that lighting will only be required. I am satisfied that this is acceptable.

#### Public Open Space contributions

In light of the size and nature of the change of use from nursery use to residential within only part of the building, a contribution towards off site open space is not considered appropriate or reasonable.

### **RECOMMENDATION**

GRANT, subject to the conditions listed below.

### **CONDITIONS**

- 1 The development hereby permitted must be begun not later than the expiration of three years from the date of this permission. **REASON** : To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out strictly in accordance with the details shown on the application form, site location plan and approved drawing numbers 660-08A; 660-12 and 660-11 Rev C, and specification contained therein, submitted on 3 August 2011 unless first agreed otherwise in writing by the District Planning Authority. **REASON** : For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 3 Samples of all external facing materials to be used for the construction of the development hereby permitted, shall be submitted to and approved by the District Planning Authority before any construction works are commenced. Development shall be carried out in accordance with the approved details. **REASON** : To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policy DP1 of the Warwick District Local Plan 1996-2011.
- 4 No development shall be carried out on the site which is the subject of this permission, until large scale details of doors, windows (including a section showing the window reveal, heads and cill details), eaves, verges and rainwater goods at a scale of 1:5 (including details of materials) have been submitted to and approved by the District Planning Authority. The development shall not be carried out otherwise than in full accordance with such approved details. **REASON** : For the avoidance of doubt, and to ensure an appropriate standard of design and appearance within the Conservation Area, and to satisfy Policy DAP8 of the Warwick District Local Plan 1996-2011.
- 5 A landscaping scheme, incorporating existing trees and shrubs to be retained and new tree and shrub planting for the whole of those parts of the site not to be covered by buildings shall be submitted to and approved by the District Planning Authority before the development hereby permitted is commenced. Such approved scheme shall be completed, in all respects, not later than the first planting season following the completion of the development hereby permitted, and any trees removed, dying, being severely damaged or becoming seriously diseased within five years of planting, shall be replaced by trees of similar size and species to those originally required to be planted. Existing trees which are shown as being retained shall be dealt with in accordance with BS 5837:2005. In particular, before any materials are brought on the site or any demolition or development commenced, stout protective fencing should be erected to enclose the perimeter of the branch spread of each tree or shrub to be retained, together with the branch spread of any tree growing on adjoining land which overhangs the site. Such fencing shall be satisfactorily maintained until all development has been completed. **REASON** : To protect and enhance the amenities of the area, and to satisfy the requirements of Policies DP1 and DP3 of the Warwick District Local Plan 1996-2011.

- 6 The development hereby permitted shall not be first occupied unless and until the renewable energy scheme submitted as part of the application has been wholly implemented in strict accordance with the approved details. The works within this scheme shall be retained at all times thereafter and shall be maintained strictly in accordance with manufacturers specifications. **REASON** : To ensure that adequate provision is made for the generation of energy from renewable energy resources in accordance with the provisions of Policy DP13 in the Warwick District Local Plan 1996-2011.
- 7 The new access for vehicles to the site from the public highway shall not be made other than at the position identified on the approved drawing number 660-11 C at a position whereby the visibility splay requirements stated in condition 11 will be satisfied. **REASON**: In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 8 The development shall not be commenced until an access for vehicles has been provided to the site not less than 3 metres or greater than 5 metres in width for a distance of at least 7.5 metres, as measured from the near edge of the public highway carriageway. **REASON**: In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 9 The new access to the site for vehicles shall not be used unless a public highway footway crossing has been laid out and constructed in accordance with the standard specification of the Highway Authority. **REASON**: In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 10 The access to the site for vehicles shall not be used in connection with the development until it has been surfaced with a suitable bound material for a distance of at least 5 metres as measured from the near edge of the public highway carriageway in accordance with details to be approved in writing by the Local Planning Authority in consultation with the Highway Authority. **REASON**: In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 11 The development shall not be commenced until visibility splays have been provided to the new vehicular access to the site with an 'x' distance of at least 2 metres and 'y' distances of 43 metres to the near edge of the public highway carriageway. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway. **REASON**: In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 12 The access to the site shall not be constructed in such a manner as to

reduce the effective capacity of any drain or ditch within the limits of the public highway. **REASON:** In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.

- 13 The development shall not be commenced until visibility splays have been provided to the accesses to the site with an 'x' distance of 2.4 metres and 'y' distances of 2.4 metres as measured from the rear edge of the public highway footway. **REASON:** In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 14 Gates/barriers/doors erected at the entrance to the site for vehicles shall not be hung so as to open to within 5 metres of the near edge of the public highway carriageway. **REASON:** In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 15 The development shall not be commenced until turning areas have been provided within the site so as to enable vehicles to leave and re-enter the public highway in a forward gear. **REASON:** In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.

**INFORMATIVES**

For the purposes of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the following reason(s) for the Council's decision are summarised below:

In the opinion of the District Planning Authority, the development would not cause unacceptable harm to the architectural and historic character of the Conservation Area within which the site is located. Furthermore, the proposal would not adversely affect the amenity of nearby residents. The proposal is therefore considered to comply with the policies listed.

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