

Application No: W 11 / 1208

Town/Parish Council: Kenilworth
Case Officer: Penny Butler

Registration Date: 23/09/11
Expiry Date: 18/11/11

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37 Leyes Lane, Kenilworth, CV8 2DD

Replacement shop front and retrospective approval for new external compressors (air conditioning and cold room) and a replacement extract ventilation system. (re-sub of W11/0593) FOR Domino's Pizza Group Ltd

This application is being presented to Committee due to an objection from the Town Council having been received, and this application has been requested to be presented to Committee by Councillor Shilton.

SUMMARY OF REPRESENTATIONS

Kenilworth Town Council: Members raised no objection to the replacement shop front. They did however, OBJECT strongly to the new external compressors (air conditioning and cold room) and replacement extract ventilation system on the following grounds:

- Unneighbourly.
- Unacceptable levels of noise pollution. The noise radiated by the extraction fan was notably severe.

Public response: Three responses received objecting on the following grounds:

- Unacceptable noise from extract equipment at all times due to operation outside permitted hours. Noise can be heard through double glazed windows and preventing windows being left open at night causing increased condensation.
- Extractors are left switched on for a significant period after the premises close which staff claim is to cool the ovens.
- Constant activity and noise from delivery drivers and up to 4 vehicles in the service yard, doors banging and security light operation. Restrictions are required on this area, especially since the Tiltyard pub have offered 4 parking spaces to Domino's.
- Deliveries from articulated lorries late at night when it is understood there are restrictions.
- Refuse bins overflow with pizza boxes and are not emptied by staff. These are present from Saturday night till Monday morning when refuse collectors arrive.
- Query closing time on Sundays.

Councillor Bunker: Concerned as the previous application was withdrawn because of objections and now there is a proposal for retrospective consent. It appears the installation was completed with the knowledge there was no planning approval and therefore it is now more difficult to enforce removal. Query whether neighbours have had their opportunity to object removed.

Environmental Health: Remove their objection as the information supplied by the applicant indicates the external plant noise levels should now comply with our noise control requirements. Conditions are recommended to control noise emission from plant, fume extraction, delivery times and artificial lighting.

RELEVANT POLICIES

- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)

PLANNING HISTORY

The premises were granted permission in 1985 as part of a development for six shops with parking. Change of use to a hot food takeaway was approved in 1986 with an extract duct subsequently approved in 1990. In 1985 the hours of use were varied to between the hours of 9.00am and 11.00pm Mondays to Fridays, 9.00am to 11.30pm on Saturdays, and 10.00am and 10.00pm on Sundays. Last year application W11/0593 was withdrawn from Planning Committee as a new bent flue was installed for which consent had not been applied, and compressors of a different design to those applied for had also been installed. This bent flue has since been removed and replaced with a straight flue. Advertisement consent for replacement signage was granted last year.

KEY ISSUES

The Site and its Location

The application property is an end of terrace single storey commercial premises in use as a hot food takeaway. The side of the building fronts Leyes Lane whilst the front adjoins a shared public parking area. At the rear is a service yard shared with the other five premises in the block, and to the north and west of this are residential properties. The surrounding area is residential and this site forms part of a designated Local Shopping Centre.

Details of the Development

The current application is for the retrospective approval of a replacement shop front, fresh air intake grille above a rear door, and cold room and air conditioning compressors mounted on the rear wall at ground floor level. These two units and the grille will be positioned on the rear elevation of premises, fronting the service area. The application also includes a replacement extract duct on the roof at the side.

Assessment

Impact on visual amenity

Policy DP1 of the Local Plan requires developments to adopt appropriate materials and details. The powder coated aluminium shop front has been installed and is virtually identical in design to the previous shop front aside from the colour, which has changed from red to grey. This would not have any harmful impact on the visual amenity of this terrace of modern retail units. The proposed units will be positioned on the rear wall of the shop and will be partially screened by a wall with fence above, that runs alongside the rear of the shop at

a depth of approximately 2 metres. Although this screen will lie to the side of the cold room compressor and air conditioning units, the units will be partially visible within the street scene, however, it is considered that they will not have a serious detrimental visual impact on public views since they are located within the existing service yard where similar equipment exists. The proposed extract duct replaces one which previously existed in the same location on the side roof slope of the building which is visible from Leyes Lane. The proposed duct will not significantly impact on the appearance of the building as it will be of a more uncluttered design as it does not have a top cover and will not be increased in height. The proposal would thereby accord with Policy DP1 of the Local Plan.

Impact upon neighbouring amenity

Policy DP2 of the Local Plan does not permit development which has an unacceptable adverse impact on the amenity of nearby uses or residents, whilst Policy DP9 does not permit development which gives rise to air or noise pollution where this could cause harm to sensitive receptors. The equipment which is the subject of this amended application was installed on 1 May and now includes enclosures to the condensing units, a lined section of supply fan duct run and silencers. The cooling and ventilation equipment is operational and the Environmental Health Officer has visited the site to take noise measurements outside the nearest residential property (no.39) since previous equipment had been the cause for noise complaints. This nearest neighbour has its side gable which contains two windows adjoining the service yard, some 14m away from the equipment. Given that the Environmental Health Officer has raised no objection to the installed equipment, there is considered to be no justification for refusing the application on the grounds of noise nuisance to adjoining occupiers. The Environmental Health Officer would not be precluded from taking action under their statutory powers to prevent noise nuisance should it occur in the future. The proposal would therefore accord with Policies DP2 and DP9 of the Local Plan.

Other matters

The application building has existing permission for use as a hot food take-away, and lies within a row of shop units which have a shared car park situated at the front and a shared service yard situated at the rear. As this application is not for a change of use and the permission they seek is for plant and a shop front only, it is considered that parking or traffic issues will not significantly alter if this application is granted. Similarly, it is not considered reasonable to impose the conditions restricting delivery hours or illumination recommended by the EHO since the proposal is only for plant and a shop front. No changes are proposed to the approved opening hours.

CONCLUSION/SUMMARY OF DECISION

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 achieves acceptable standards of layout and design and does not give rise to any harmful effects in terms of noise or odour which would justify a refusal of permission. The proposal is therefore considered to comply with the policies listed.

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 (C4694-P02E), and specification contained therein, submitted on 22 May 2012 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 The rating level of the noise emitted from plant located at the site shall not exceed the existing background noise level at any time, when measured one metre from the façade, by more than 3dB(A) (measured as LA_{eq} (5 minutes)) at any noise sensitive residential property when measured and corrected in accordance with BS 4142: 1997. If the noise in question involves sounds containing a distinguishable, discrete, continuous tone (whine, screech, hiss, hum etc) or if there are discrete impulses (bangs, clicks, clatters, thumps etc) or if the noise is irregular enough to attract attention, 5dB(A) shall be added to the measured level. **REASON :** To protect the amenity of the occupiers of nearby properties, and to satisfy the requirements of Policy DP9 of the Warwick District Local Plan 1996-2011.
 - 4 Fumes from the hot food preparation areas shall be mechanically extracted and the extraction system shall be provided with de-greasing and de-odorising filters in its entirety and in full accordance with the approved details prior to the commencement of use for the cooking of food. The equipment shall thereafter be permanently maintained in accordance with the manufacturers instructions and the approved details. **REASON :** To protect the amenity of the occupiers of nearby properties, and to satisfy the requirements of Policy DP9 of the Warwick District Local Plan 1996-2011.
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