

Planning Committee: 02 November 2005

Item Number: 17

Application No: W 05 / 1564

Registration Date: 22/09/05

Town/Parish Council: Leamington Spa

Expiry Date: 17/11/05

Case Officer: John Beaumont

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**1-2 The Shopping Centre, St. Margaret's Road, Leamington Spa, CV31
2NT**

Removal of Condition 3 on Planning Permission W20010203 (use personal to
applicant) FOR Mr J K Passi

This application is being presented to Committee due to an objection from the
Town Council having been received.

SUMMARY OF REPRESENTATIONS

Town Council: Object.

Ward Member Councillor Gill - It really does not matter who runs the food
side of the unit, whether it is Mr Passi or someone else, so long as they
adhere to food and safety conditions. This shop has a long history. It was
closed for many years. It was subject to vandalism, a source of noise and
nuisance. Since it opened the whole shopping centre is doing well and is
busy again. I would like to see the shopping centre doing well and not
another unit closed again. It would have an adverse effect on all other shops.

RELEVANT POLICIES

District-wide Policy S7 in the Warwick District Local Plan 1995 stated
proposals which involve changes of use from retail (Class A1) to other uses
will not normally be permitted in "local centres", including St Margaret's Road,
Whitnash.

In the Warwick District Local Plan 1995-2011 Revised Deposit Version, Policy
UAP4, "Protecting Local Shopping Centres", including that at St Margaret's
Road, states that change of use from retail shops Class A1 to A3 (hot food
takeaways) will not be permitted unless:-

"a) the unit has been vacant for a period of at least 1 year or evidence can be
provided that the unit has been actively marketed for an A1 use for a period of
at least 9 months; or

b) the proposed use can demonstrate that it will significantly increase
pedestrian foot fall in the centre and will introduce a new use into the centre
which meets a local need; and

c) Allowing the proposed change of use will maintain the predominance of A1 use in the centre."

The explanation to this policy states:-

"The Council, therefore, accept that where there is no interest in the unit for a general shop i.e. long term vacancy, it is in the best interests of the local centre to allow the introduction of other uses to create footfall and maintain the appearance of the centre."

PLANNING HISTORY

Planning application W970099, for a change of use of Unit 1 to a pizza takeaway, was submitted by a previous prospective purchaser in January 1997, and reported to members in April 1997, at which time a resolution was made to grant planning permission for the change of use subject to the satisfactory conclusion of a "keep open clause" by the Head of Property to ensure the takeaway unit only operates whilst the adjoining Unit No.2 was operated as a grocery store. The agreement, however, was never formally signed, following which the matter was again reported to Members in February 1998 where the application was REFUSED due to conflict with Policy S7 of the Local Plan.

Subsequently, planning application W20010203 was submitted by Mr Passi for a change of use of the ground floor of Unit 1 from retail to a takeaway (A3) and retention of Unit 2 in Class A1 (retail). The assessment on that application stated:-

"With regard to retail policy, the site lies within a designated "Local Centre" wherein Policy (DW) S7 presumes against changes of use to non A1 use in order to ensure that they maintain provision of a range of shopping provision to meet the day-to-day needs of the immediate area.

It has previously been acknowledged in 1997 that the St Margaret's Road shopping centre has been particularly fragile in terms of its vitality, with improvements subsequently being made to enhance its appearance through shopfront works and environmental enhancement. The application premises comprise 25% of the retail units within this local centre, however, and therefore their continued vacancy from 1992 until September 2000 has been a consistent problem with respect to the continued vitality and viability of the centre.

Since the applicant has operated the units as a general store, I consider the sense of vitality of the centre has been "lifted" by the 100% occupancy of the centre, particularly since these units occupy a prominent location on the entrance to the units from St Margaret's Road, an opinion which is shared by the Head of Property Services who oversees these units. The applicant has

stated, however, that in the event of planning permission being withheld for a change of use to Class A3, that it would be financially unviable to continue to operate the unit(s) as a store/supermarket, particularly given that the nearby Butchers premises have been allowed to sell many of the products which he would also wish to sell.

On the basis of the information submitted, the current application would bring both shop units into use, with the hot food takeaway essentially "cross-subsidising" the use of the remainder of the unit as a general store, which would also be operated by the applicant. Although it is acknowledged that the development now proposed would strictly conflict with the aims of Policy S7, I am of the opinion that the positive benefits that would accrue from the applicants occupation of both of these units, are such that they would not unacceptably undermine the retail function or vitality of this local centre. It will be necessary, however, to secure the applicants operation of both units through a Section 106 Agreement, which I consider would most appropriately allow the Planning Department to control the continued operation of both units."

Subsequently a Section 106 Agreement was concluded which required the leasehold owner of the site to only continue the use of Unit 1 as an A3 (takeaway) unit as long as Unit 2 remains as an A1 (retail) unit. Planning Permission W20010203 was then issued for the change of use Unit 1 to an A3 unit subject to conditions including Condition 3 which stated:- "The permission hereby granted shall ensure for the benefit of Mr S K Passi only and on the discontinuance of his occupancy of the premises, the use hereby permitted shall cease." The reason for this condition was: "Since the use of Unit 1 as a takeaway would not normally be granted other than in the special circumstances put forward by the applicant relating to the continued operation of Unit 2 as a Class A1 retail premises having regard to the provision of Policy (DW) S7 of the Warwick District Local Plan 1995."

KEY ISSUES

The Site and its Location

The application premises comprise part of two retail units, presently merged to form one larger unit, and sited within a terrace of 8 shop units with two floors of residential accommodation above. To the rear of the block is a parking court with access to the shop units, while there is a car parking area to the front of the premises with space for approximately 25 vehicles, and with access onto both St Margaret's Road and Southway. The Whitnash Tavern, and adjacent residential properties, are located opposite the shopping precinct to the south-east.

The two units are in the ownership of Warwick District Council, and have been occupied by the applicant as a general grocery store since September 2000.

The use of Unit 1 as an A3 takeaway has not been commenced.

Details of the Development

The proposal is to delete Condition 3 off planning permission W20010203 such that Unit 1 can operate as an A3, takeaway, without the restriction of a personal planning permission.

Assessment

The principle of the acceptability of the use of these premises as an A3, takeaway unit in terms of the impact of this use on local amenity, traffic generation etc was established by the granting of planning permission W20010203. At that time, however, in the policy framework which then existed, it was considered necessary to restrict the use to the then applicant Mr Passi who had agreed to solely operate Unit 1 as an A3 takeaway whilst he kept Unit 2 open as an A1 retail shop. Clearly, however, the policy framework has now changed with the emerging Warwick District Local Plan 1995 - 2011 (Revised Deposit Version) and its Policy UAP4, set out in full above.

This policy was considered in an appeal against the refusal of planning permission W041740 for an A3, takeaway unit at 75, Home Farm Crescent, dated 13th September 2005, when the Inspector concluded that "the proposed development would not harm the vitality and viability of Home Farm Crescent local centre and that it would not conflict with the objection of Policy S7 or the Local Plan Policy UAP4 of the emerging Local Plan; this appeal was dismissed on other grounds.

In the context of Policy UAP4 and the grounds of support considered at the time of granting planning permission W20010203 for the use of these premises as an A3 takeaway unit, set out in the Planning History Section of the report, which I consider remain valid, I consider it is no longer reasonable to restrict the use of Unit 1 as an A3 takeaway solely to the applicant Mr Passi. The Section 106 Agreement would still remain in force at this time as set out in the Planning History section of this report.

REASON FOR RECOMMENDATION

The proposal is considered to comply with the policies listed above.

RECOMMENDATION

GRANT subject to the following conditions :

- 1 The development hereby permitted must be begun not later than the expiration of five years from the date of this permission. **REASON** : To comply with Section 91 of the Town and Country Planning Act 1990.
- 2 The permission hereby granted shall relate to the Unit 1 in accordance with the details of the sub-division of Units 1 & 2 as shown on the amended plan 1739/1(A) deposited with the District Planning Authority on 30th April 2001.

The Units 1 & 2 shall thereafter be operated in full accordance with such approved sub-division unless otherwise approved by the District Planning Authority. **REASON:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policy ENV3 of the Warwick District Local Plan 1995.

- 3 No development shall be carried out on the site which is the subject of this permission, until full details of the proposed fume extraction equipment have been submitted to and approved by the District Planning Authority. Such fume extraction equipment shall be installed in full accordance with such approved details prior to the use, hereby approved, of Unit 1 as a Class A3 unit commencing. **REASON:** To protect the amenity of the occupiers of nearby properties and to satisfy the requirements of Policy ENV3 of the Warwick District Local Plan 1995.
- 4 No development shall be carried out on the site which is the subject of this permission, until satisfactory details of a noise insulation scheme to minimise transmission of airborne and impact noise between the ground and first floor of these premises have been submitted to and approved by the District Planning Authority. Such installation shall be installed in full accordance with such approved details prior to the use of Unit 1 as a Class A3 unit commencing as hereby approved. **REASON:** To protect the amenity of the occupiers of nearby properties and to satisfy the requirements of Policy ENV3 of the Warwick District Local Plan 1995.
- 5 The use of the premises for the purposes hereby permitted shall be restricted to between the hours of 08.00 a.m. and 11.00 p.m., Sundays to Thursdays, and 08.00 a.m. and 12.00 a.m. on Fridays and Saturdays. **REASON:** To protect the amenity of the occupiers of nearby properties and to satisfy the requirements of Policy ENV3 of the Warwick District Local Plan 1995.
