

**Application No:** W 12 / 0241

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Rob Young

**Registration Date:** 12/03/12  
**Expiry Date:** 07/05/12

01926 456535 rob.young@warwickdc.gov.uk

**131-137 Regent Street, Leamington Spa, CV32 4NX**

Demolition of rear portion of existing retail unit; division of existing retail unit into 4 no. retail units and change of use of Unit 2 to a restaurant / cafe (Use Class A3) and change of use of Unit 3 to a hot food takeaway (Use Class A5); erection of single storey rear extension; installation of new shopfronts; and installation of extraction flue encased in brickwork to rear FOR Midland Assured Ltd

-----

This application was considered by Planning Committee on 2 May 2012 when it was resolved that planning permission should be granted subject to the completion of a Section 106 agreement. The application is being reported back to Committee because the Section 106 agreement has not been completed.

**RECOMMENDATION**

GRANT, subject to the completion of a Section 106 agreement to revoke planning permission no. W10/1032 and subject to the conditions listed in the previous report (attached as an appendix).

However, in the event that a Section 106 agreement has not been completed in accordance with the above recommendation by 12 November 2012, Officers are delegated powers to REFUSE planning permission due to the harmful impact on the vitality and viability of the town centre and the harm that would be caused in terms of crime and disorder.

**DETAILS OF THE DEVELOPMENT**

See previous report, attached as an appendix.

**THE SITE AND ITS LOCATION**

See previous report, attached as an appendix. However, it should be noted that the development that is the subject of this planning application has now been completed, although the shop units are currently vacant.

**PLANNING HISTORY**

See previous report, attached as an appendix.

**RELEVANT POLICIES**

See previous report, attached as an appendix.

## **SUMMARY OF REPRESENTATIONS**

See previous report, attached as an appendix.

## **ASSESSMENT**

A full assessment of all of the issues relevant to the application is contained within the previous report to Committee which is attached as an appendix. The development remains acceptable in principle, subject to the revocation of existing planning permission no. W10/1032. This was accepted by Planning Committee at the meeting on 2 May 2012 when it was resolved that planning permission should be granted, subject to the completion of a Section 106 agreement to revoke the previous planning permission. Officer's have sought to progress the Section 106 agreement but this has yet to be completed. Given the length of time that has elapsed since the resolution to grant permission, it is considered that the application should be brought back to Committee.

The applicant has cited land ownership complications as the reason for the delay and has advised that these issues will be resolved in time for the Section 106 agreement to be completed by 9 November 2012. Therefore it is considered appropriate for a deadline of 12 November 2012 to be imposed. If this deadline is not met it is recommended that planning permission be refused because the current proposals, in combination with extant planning permission no. W10/1032, could result in a continuous run of four non-A1 retail uses that would contravene the thresholds set out in Local Plan Policy TCP5. This would cause unacceptable harm to the vitality and viability of the town centre. The provision of 3 hot food takeaways would also raise crime and disorder concerns for the reasons stated in the Police's comments. Therefore this would be a further reason for refusal if the previous permission is not revoked.

-----

**Planning Committee:** 01 May 2012

**Item Number:**

**Application No:** W 12 / 0241

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Rob Young

**Registration Date:** 12/03/12

**Expiry Date:** 07/05/12

01926 456535 planning\_east@warwickdc.gov.uk

**131-137 Regent Street, Leamington Spa, CV32 4NX**

Demolition of rear portion of existing retail unit; division of existing retail unit into 4 no. retail units and change of use of Unit 2 to a restaurant / cafe (Use Class A3) and change of use of Unit 3 to a hot food takeaway (Use Class A5); erection of single storey rear extension; installation of new shopfronts; and installation of extraction flue encased in brickwork to rear FOR Midland Assured Ltd

-----  
 This application is being presented to Committee due to an objection from the Town Council having been received and because it is recommended that planning permission be granted subject to the completion of a legal agreement.

**SUMMARY OF REPRESENTATIONS**

**Town Council:** Object. The change of use of the proposed Units 2 and 3 to a restaurant/café and hot food takeaway respectively will be detrimental to the overall retail balance in this location.

**Conservation Area Advisory Forum:** Important to follow the line of the fascia across the site. Need to maintain traditional fascia height.

**Warwickshire Police:** After consultation with my colleagues who police Leamington Spa town centre and identifying that the application is inside the CIZ (Cumulative Impact Zone), Warwickshire Police object to this application. There are sufficient restaurants and fast food takeaways inside the CIZ, if there are any more it will go past the tipping point and impact on police resources.

*The Police have subsequently clarified that they would not object to the restaurant, but they maintain their objection to the takeaway.*

**WDC Environmental Health:** Recommend a condition to limit noise levels.

**WDC Conservation:** This application is for the alteration to existing shops in Regent Street and has been the subject of earlier applications. The proposals are acceptable and I note there is a small extension to the rear with a flat roof, however this is dealt with as a parapet detail which, in this instance, is acceptable, subject to samples of the materials which will be needed. Large scale details are provided of all the shop fronts which are a simple traditional form of shop front set in a rendered surround. These are all acceptable. As these are new shop fronts, a provision could have been made at cornice level to allow for a

pelmet to accept street lighting. However, this will need to be left up to each individual shop front owner under the present arrangements.

### **RELEVANT POLICIES**

- Sustainable Buildings (Supplementary Planning Document - December 2008)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)
- DP13 - Renewable Energy Developments (Warwick District Local Plan 1996 - 2011)
- DP14 - Crime Prevention (Warwick District Local Plan 1996 - 2011)
- TCP5 - Secondary Retail Areas (Warwick District Local Plan 1996 - 2011)
- DAP8 - Protection of Conservation Areas (Warwick District Local Plan 1996 - 2011)
- DAP9 - Unlisted Buildings in Conservation Areas (Warwick District Local Plan 1996 - 2011)
- TCP2 - Directing Retail Development (Warwick District Local Plan 1996 - 2011)

### **PLANNING HISTORY**

In October 2006, planning permission was granted for "Refurbishment and part demolition of existing buildings together with extensions and a new building to provide a retail unit (Class A1), a restaurant (Class A3), a bar/grill and outdoor area (Class A4) and 9 no. studio, 1 and 2 bedroom apartments" (Ref. W06/0638). This permission was not implemented and has now lapsed.

In April 2008 planning permission was granted for "Installation of new shopfronts and erection of single storey rear extension" (Ref. W08/0205). This permission was not implemented and has now lapsed.

In April 2010 planning permission was granted for "Change of use of first and second floor offices to student residential accommodation and alterations to elevations including the installation of new and replacement windows" (Ref. W10/0109). This permission has been implemented.

In November 2010 planning permission was granted for "Change of use of 2 units from retail (Use Class A1) to hot food takeaways (Use Class A5); and installation of extraction flue encased in brickwork to rear" (W10/1032). This permission has not yet been implemented but is still extant.

In January 2011 planning permission was granted for "Demolition of rear portion of existing retail unit; division of existing retail unit into 4 no. retail units; construction of 2.5 storey residential block to rear of shops for student accommodation; construction of 3 storey residential block off Kenilworth Street for student accommodation; and alteration to existing vehicular access" (Ref. W10/0942). This related to land to the rear of the current application site. This permission has not yet been implemented but is still extant.

In February 2012 Planning Committee resolved to granted planning permission, subject to the completion of a Section 106 agreement, for "Demolition of rear portion of existing retail unit; division of existing retail unit into 4 no. retail units and erection of single storey rear extension; installation of new shopfronts; and erection of 2 no. two storey houses and a three storey block of 4 flats" (Ref.

W11/1624). This is currently awaiting the completion of the Section 106 agreement before the decision can be issued.

## **KEY ISSUES**

### **The Site and its Location**

The application site comprises two and three-storey unlisted buildings situated on the northern side of Regent Street. The site is within Leamington Town Centre and the Leamington Spa Conservation Area. The surrounding area is predominantly commercial and the site is within an area designated as a secondary retail area in the Local Plan.

The buildings that occupy the site are currently vacant, but were formerly occupied by the 'Mutual' home furnishing store. The upper floors have been converted into student accommodation and planning permission has been granted for new build residential development to the rear of the site. There are also further flats above some of the surrounding commercial premises.

### **Details of the Development**

The application proposes the following development:

- demolition of rear portion of existing retail unit;
- division of existing retail unit into 4 no. retail units;
- change of use of Unit 2 to a restaurant / cafe (Use Class A3);
- change of use of Unit 3 to a hot food takeaway (Use Class A5);
- erection of a single storey rear extension; and
- installation of new shopfronts.

The application has been amended to include air source heat pumps on Units 2 and 3 to meet the requirements of Local Plan Policy DP13.

With the exception of the extraction flue, the proposed physical alterations are largely the same as the alterations that were agreed by Planning Committee when they resolved to grant permission for residential development to the rear of the site in February 2012 (Ref. W11/1624).

### **Assessment**

The main issues relevant to the consideration of this application are as follows:

- the impact on the living conditions of neighbouring dwellings;
- the impact on the vitality and retail viability of this part of Regent Street;
- the impact on the character and appearance of the Conservation Area; and
- crime and disorder.

#### **Impact on the living conditions of neighbouring dwellings**

The upper floors of the application property are in residential use and there are other flats on the upper floors of some of the surrounding commercial premises. However, there has been no objection from Environmental Health and the site is

situated in a busy location in the commercial core of the town centre, with a number of existing takeaways and drinking establishments nearby. In this context, subject to the provision of suitable sound insulation for the extraction equipment and between the proposed ground floor restaurant / hot food takeaway and the upper floor student accommodation, the proposals would not harm the living conditions of nearby dwellings, including the student accommodation on the upper floors of the application property or the residential development proposed to the rear of the site. Conditions are recommended to limit noise levels and to require details of a sound insulation scheme to be submitted for approval.

#### Impact on the vitality and retail viability of this part of Regent Street

This part of Regent Street is designated as a secondary retail area. The objection of the Town Council regarding the impact on the retail balance in this location is noted, however the proposal retains sufficient retail frontage to comply with Local Plan Policy TCP5. Therefore the proposals would not harm the vitality and retail viability of this part of Regent Street.

If the previous planning permission for a change of use of Units 1 and 4 to hot food takeaways were to be implemented then the proposals would contravene the thresholds set out in Policy TCP5. However, the applicant has confirmed that they do not wish to implement that existing permission and the revocation of that permission can be secured by a Section 106 agreement.

The proposals would involve the demolition of the rear part of the retail unit at No. 137 Regent Street. Local Plan Policy TCP2 seeks to resist the loss of retail floorspace within the designated retail areas in the town centre. In response to this policy, the applicant has advised that the premises have been vacant since 2005 and they have provided details of the marketing of the premises since that time. The applicant's surveyor has advised that it is unlikely that a retail occupier will be found for the whole or a significant part of the retail floorspace in the near future and has recommended that, given the strong interest that they have from smaller occupiers, the applicant should proceed with a scheme to provide 4 smaller lock-up units. The application provides for extensions to the units to provide toilets, together with the provision of new shopfronts and bin stores. If these enhancements are provided, and the units are fitted out to a shell specification in accordance with the recommendations of the applicant's surveyor, it is considered that the proposals would not harm the vitality and retail viability of this part of the town centre. In reaching this conclusion, it is important to note that the application premises have been vacant for over 6 years and are located in a peripheral location at the edge of the retail area. It is also important to bear in mind that No. 137 is currently significantly larger than most of the other retail units in this part of Regent Street.

The loss of this retail floorspace was previously approved when planning permission was granted for a student development on this site in 2011 (W10/0942). Planning Committee also agreed to the loss of this retail floorspace when they resolved to grant permission for residential development on this site in February 2012 (Ref. W11/1624).

#### Impact on the character and appearance of the Conservation Area

It is considered that the proposals would preserve the character and appearance of the Conservation Area. The design and form of the rear extension and

shopfronts would be in keeping with the application property and surrounding traditional development. The extraction flue is proposed to be encased in brickwork, which would give the appearance of a traditional chimney.

### Crime and disorder

Warwickshire Police have raised concerns about the proposed hot food takeaway on crime and disorder grounds. The site is situated within the Cumulative Impact Zone that is designated in the Council's Statement of Licensing Policy and the police do not wish to see additional hot food takeaway uses in this area due to the problems of crime and disorder in and around such premises and the impact on police resources. However, in this case there is an extant planning permission for 2 of the units on the application site to be converted into hot food takeaways (Ref. W10/1032). That planning permission still has 18 months to run and could be implemented at any time within that period. The current proposals only include a single hot food takeaway and consequently would have a reduced impact on crime and disorder. Therefore it is not considered that a refusal of planning permission would be justified on crime and disorder grounds based on the particular circumstances of this case.

### Other matters

The application proposes the installation of air source heat pumps to meet 10% of the predicted energy requirements of the restaurant and takeaway units. This would meet the requirements of Local Plan Policy DP13.

## **RECOMMENDATION**

GRANT, subject to the completion of a Section 106 agreement to revoke planning permission no. W10/1032 and subject to the conditions reasons 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 approved drawing(s) 2661-226C, 2661-227B, 2661-500, 2661-501, 2661-502, 2661-503, 2661-504 & 2661-505, and specification contained therein, submitted on 8 March 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 restaurant/cafe and hot food takeaway hereby permitted shall not be first occupied unless and until a scheme showing how 10% of the predicted energy requirement of this development will be produced on or near to the site, from renewable energy resources, has been submitted to and approved in writing by the District Planning Authority.

The development shall not be first occupied until all the works within this scheme have been completed and thereafter the works shall be retained at all times 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.

- 4 The restaurant/cafe and hot food takeaway hereby permitted shall not be first occupied unless and until:
  - (a) satisfactory details of a noise insulation scheme to minimise transmission of noise and vibrations from the extraction equipment / flue and between the ground floor restaurant/cafe and hot food takeaway unit and the upper floor residential accommodation have been submitted to and approved by the District Planning Authority; and
  - (b) the approved noise insulation scheme has been implemented in strict accordance with the approved details. **REASON** : In the interests of the amenities of nearby residents, in accordance with the objectives of Policy DP2 of the Warwick District Local Plan 1996-2011.
- 5 The rating level of the noise emitted from activities or equipment on the premises shall not exceed the existing background noise level at any time, when measured one metre from the facade of any noise sensitive property, by more than 3dB(A) (measured as LAeq (5 minutes)), 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 amenities of surrounding properties, in accordance with Policy DP9 of the Warwick District Local Plan 1996-2011.
- 6 All external facing materials for the development hereby permitted shall be of the same type, texture and colour as those of the existing building. **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.
- 7 All window and door frames and the new shopfronts shall be constructed in timber and shall be painted and not stained. **REASON** : 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.
- 8 All rainwater goods for the development hereby permitted shall be metal. **REASON** : 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.
- 9 The restaurant/cafe, hot food takeaway and the extensions hereby permitted shall not be first occupied unless and until the bin storage area has been provided in full accordance with the approved plans. The bin storage area shall be retained and kept available for the storage of



refuse for the retail units at Nos. 131-137 Regent Street at all times thereafter, unless agreed otherwise in writing by the District Planning Authority. **REASON** : To protect the amenities of occupiers of the site and the character and appearance of the locality, in accordance with Policies DP1 and DP2 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 and would preserve the vitality and retail viability of this part of the town centre. The proposal is therefore considered to comply with the policies listed.

-----