

**Planning Committee:** 12 July 2005

**Item Number:** 01

**Application No:** W 05 / 0262

**Registration Date:** 15/02/2005

**Town/Parish Council:** Kenilworth

**Expiry Date:** 12/04/2005

**Case Officer:** Martin Haslett

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**Dalehouse Lane/Common Lane/Cotton Drive, Kenilworth, CV8 2ED**

Outline application: Residential Development including improvements to Dalehouse Lane/Common Lane junction. FOR JG Land & Estates

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This item was reported to the meeting on 23rd June when Members resolved to refuse planning permission in accordance with the report recommendation. On the day after the meeting, the agent expressed concern that the officer's written report was deficient and misleading in that it made no reference to the amendment to PPG3 published on 24th January 2005 and stated that a legal challenge would be made to the decision. In the circumstances, the formal notice of decision has not been issued.

The agents have now forwarded a written Counsel's opinion, which argues that there are grounds for legal challenge, principally through the omission of reference to the new paragraph 42(a) to PPG3 "Housing" which states:-

*"42 (a) Local planning authorities should consider favourably planning applications for housing or mixed use developments which concern land allocated for industrial or commercial use in saved policies and development plan documents or redundant land or buildings in industrial or commercial use, but which is no longer needed for such use, unless any of the following apply:*

- the proposal fails to reflect the policies in this PPG (including paragraph 31), particularly those relating to a site's suitability for development and the presumption that previous-developed sites (or buildings for re-use or conversion) should be developed before greenfield sites;*
- the housing development would undermine the planning for housing strategy set out in the regional spatial strategy or the development plan document where this is up-to-date, in particular if it would lead to over-provision of new housing and this would exacerbate the problems of, or lead to, low demand;*
- it can be demonstrated, preferably through an up-to-date review of employment land (refer to Annex D for practice guidance), that there is a realistic prospect of the allocation being taken up for its stated use in the plan period or that its development for housing would undermine regional and local strategies for economic development and regeneration."*

The Counsel's opinion (which is attached in full as an appendix) has been considered but your officers remain of the view that a recommendation of refusal is appropriate.

The main reason for this is that to release this land for housing development would conflict with the second bullet point in paragraph 42a. Members will be aware that there is an overprovision of housing in Warwick District when measured against both the Warwickshire Structure Plan and West Midlands Regional Planning Guidance (the Regional Spatial Strategy). The figures for this have been set out in the Annual Monitoring Report presented to Scrutiny Committee in December 2004, the Revised Deposit Draft Warwick District Local Plan approved by the Council in May 2005 and the draft Supplementary Planning Document: Managing Housing Supply approved by the Council for public consultation in June 2005.

When the revised draft of the Warwick District Local Plan was recommended to the Council for approval in May this year, a change was made to policy SC2 (protecting employment land). This recognised that there may be circumstances where other uses on existing employment land may be permitted, however it specifically excluded housing uses. Paragraph 5.10 in the supporting text of this policy makes it clear that the reason for this is that *"this would undermine the housing strategy within the Regional Spatial Strategy"*.

There is no doubt therefore in my mind that to allow a site such as this to be released for housing would *"undermine the planning for housing strategy set out in the Regional Spatial Strategy...where this is up to date."* (PPG3 para. 42a).

## **SUMMARY OF REPRESENTATIONS**

**Kenilworth Town Council:** "Members recommended that the outline application should be approved. Members commented that they endorsed the outline application with the following caveats:-

1. Whilst generally supporting the safeguarding of employment sites and concerned at the continuing loss of such land, they considered that this particular site amply demonstrated and validated the required grounds for a change of use application.
2. The fullest above and sub-surface remediation work must be undertaken to ensure that the site is completely safe and fully certificated by the specialist bodies.
3. They would expect to see the formal development application containing full provisions to ensure both the creation and maintenance of affordable long term housing.
4. That there should be adequate car parking within the site."

**Neighbours:** 19 letters of support, on grounds of improved appearance for the area, provision of affordable housing, improved traffic arrangements, improved security for local shops, reduction in noise, land separated from remaining employment land by brook, land too expensive for industry.

**Kenilworth Chamber of Trade:** strongly object on grounds of :

- protection of the limited opportunities for employment development in the town;
- approval would encourage further proposals on adjoining employment land, which would substantially diminish the town in terms of employment and its ability to be a thriving community.

**Housing Officer:** the site is sufficiently large to require affordable housing, if the principle of residential development is accepted.

**EHO:** as the site is bounded by industrial units there is potential for future occupiers to be affected by noise and odour nuisance. With regard to land contamination, the work done is preliminary and more detailed investigation will be required. The remediation required for residential use will be greater, and more expensive, than that required for commercial use. Commercial uses might be able to deal with some pollutants by covering with hardstanding.

**EHO(Refuse disposal):** no objection, subject to condition on bin stores.

**WCC(Highways):** no objection, subject to conditions on design and layout of the roads and highways notes.

**WCC(Fire and Rescue):** no objection, subject to provision of hydrants.

**WCC(Ecology):** no objection, subject to ecological conditions, and notes.

**Environment Agency:** no objection, subject to conditions (and notes) on ground contamination, foul and surface water drainage, and floor levels.

**Cllr. Shilton** has asked for this application to be reported to Committee.

### **RELEVANT POLICIES**

(DW) ENV3 - Development Principles (Warwick District Local Plan 1995)  
 The 45 Degree Guideline (Supplementary Planning Guidance)  
 Distance Separation (Supplementary Planning Guidance)  
 (DW) EMP5 - Employment Development in Urban Areas (Warwick District Local Plan 1995)  
 SC9 - Affordable Housing (Warwick District Local Plan 1996 - 2011 First Deposit Version)  
 DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011 First Deposit Version)  
 SC1 - Securing a Greater Choice of Housing (Warwick District Local Plan 1996 - 2011 First Deposit Version)  
 SC2 - Protecting Employment Land and Buildings (Warwick District Local Plan 1996 - 2011 First Deposit Version)  
 DP2 - Amenity (Warwick District Local Plan 1996 - 2011 First Deposit Version)  
 UAP1 - Directing New Housing (Warwick District Local Plan 1996 - 2011 First Deposit Version)  
 GD1- Overriding Purpose (Warwickshire Structure Plan 1996-2011)

## **PLANNING HISTORY**

The site has a long planning history of applications associated with Arden Products and in 2003 permission was granted for a change of use from class B2 (general industry) to classes B1 (business), B2 and B8 (storage or distribution), (planning application W03/156). However, the premises are currently empty.

## **KEY ISSUES**

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

The development site is the entire premises of the former Arden Products factory, on the corner of Dalehouse Lane and Common Lane. The site has an area of 0.82 ha. At present the building occupies virtually the entire plot, with limited parking areas on the margins of the site. There is little landscaping, although there are some trees and shrubs along the Finham Brook, which forms one boundary of the site. Adjoining premises are entirely used for employment purposes - indeed this site lies at the centre of the principal employment area in Kenilworth.

On the other side of Common Lane there is a group of shops and some residential accommodation and on the other side of Dalehouse Lane there are houses built in the 1990s.

### **Details of the Development**

The application is in outline, with only the means of access included in the application. Nevertheless, there is a sketch layout showing how the development might take place, together with axonometric views of the site.

The access details for the site show the widening of Common Lane to provide a left turn lane into Dalehouse Lane, and a new access into the development being taken from Dalehouse Lane, at the centre of the site, where 4.5 by 90m visibility would be provided.

Separate supporting information is submitted in respect of traffic, flood risk, soil contamination and an assessment of the viability of the site for a range of uses. The two most significant of these are the contamination report and the market viability report. The contamination report indicates that the likely remediation costs of the site, including demolition costs, are in the order of £500,000. Having concluded that the site is unsuited to retail, leisure or warehouse uses. the market viability report examines each of the possible future uses of the land, including industrial and office uses and concludes that each of these is not capable of realising an economic return on the

investment. This is mainly due to the high cost of remediation of the contamination. The report concludes that the only use capable of making sufficient return to off-set the remediation costs is residential.

## **Assessment**

The major issue to be considered is that of policy and the reservation of this land for employment purposes in the Warwick District Local Plan 1995. The site and the surrounding employment buildings have for long been the major employment area of Kenilworth, the only other employment areas on the local plan being at Princes Drive and Farmer Ward Road.

Protection of employment land from other uses is a crucially important part of the local planning process. The retention of employment areas offers local people a choice of work, without the need to commute to adjoining towns. This helps to reduce the need to travel and to meet sustainability targets and is therefore central to national, county and local planning policy. Kenilworth is not well-supplied with such areas and is already primarily a dormitory town for adjoining urban areas. The protection of existing employment areas is therefore especially important, particularly since there are no likely replacement areas, due to the tight boundary of the Green Belt around the town.

The application site lies at the centre of the Common Lane employment area and if permission were to be granted in this case, it would be extremely difficult to resist further proposals for the remaining parts of the industrial estate. This would leave Kenilworth even more bereft of employment opportunities than it is at present, to the detriment of the overall character and economy of the town.

The existing somewhat untidy state of the site is to be regretted, but should not be used as an argument for re-development for housing. If this proposition were allowed to prevail, there is no limit to the number of planning policies which could be similarly overturned and this would serve to totally undermine the planning system. Similarly, the argument (put forward by some supporters of the application) that the land values are so high in the area that nothing but residential use is viable is also ill-founded. The primary purpose of the planning system is to control land uses in compliance with the development plan and this will inevitably mean that not all sites have the value that they would otherwise have in an open market system, totally without planning control.

The market viability report, submitted by the applicants does, nevertheless, require closer examination. Its conclusion, that only residential uses are capable of generating sufficient profit to pay for the remediation works must be treated with caution. The report assumes a steady remediation cost of £500,000 which does not take account of the different levels of remediation that would be required for different uses, as referred to by the Environmental Health Officer. The costs of demolition are also included in the remediation costs, even though some form of demolition is always likely to be necessary

where brownfield site are under consideration. The purchase price of the site is altered to some extent to take account of the different uses, but it may be that this initial assumption is over-optimistic, given the state of the site. In conclusion, I do not consider that a major departure from the development plan should be based upon such figures, which are open to varying interpretations.

I therefore strongly urge refusal of the application on planning policy grounds. It should also be noted that the details of the scheme, although indicative, fail to satisfy normal standards of layout and are in themselves unsatisfactory.

### **REASON FOR RECOMMENDATION**

The proposal is contrary to the development plan in that it is contrary to policy GD1 of the Warwickshire Structure Plan, 1996-2011, in that the proposals fail to encourage the use of sustainable transport and would fail to allow for new industry in the town. Furthermore, the proposals are contrary to policy EMP5 of the Warwick District Local Plan 1995, which protect employment sites against alternative uses.

### **RECOMMENDATION**

Refuse for the following reasons:

- 1 The proposals show a major development for residential purposes on a site shown for employment purposes in the Warwick District Local Plan 1995. As this site forms the centre of the major employment area of Kenilworth, to grant permission in this case would encourage further applications which would progressively erode the employment land resources of the town. It is therefore considered that the proposals are contrary to policy GD1 of the Warwickshire Structure Plan 1996-2011, which requires development which encourages sustainable transport patterns and to bring new industry into towns where old ones are in decline. Furthermore, the proposals are contrary to policy ENV5 of the Warwick District Local Plan 1995, which requires employment sites to be retained for such uses.

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