

Application No: W 10 / 1177

Town/Parish Council: Leamington Spa
Case Officer: Sandip Sahota

Registration Date: 08/09/10
Expiry Date: 03/11/10

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Change of Use of premises from mixed use as shop (Use Class A1) and
restaurant & cafe (Use Class A3) to restaurant & cafe (Use Class A3)
(Retrospective Application) FOR Rhubarb

This application is being presented to Committee in order to request that enforcement action be taken.

SUMMARY OF REPRESENTATIONS

Royal Leamington Spa Town Council: No objection.

Policy, Projects & Conservation: "These premises have been used essentially as A3 premises for some time as the Rhubarb Cafe. I have no concerns about the current use continuing, subject to it remaining as a restaurant use rather than a wine bar or other type of bar or balcony".

CAAF: "This was felt to be acceptable as a sitting down restaurant as the property has been used as a restaurant rather than retail and restaurant for some time (TCP4 applies)".

RELEVANT POLICIES

- TCP5 - Secondary Retail Areas (Warwick District Local Plan 1996 - 2011)

PLANNING HISTORY

A complaint was made to the enforcement department in July 2010 relating to unauthorised swan neck illuminated signage at the property. An enforcement case (ref: ENF/269/30/10) was subsequently opened and the planning history search revealed the unauthorized change of use of the whole of the ground floor to a restaurant.

Planning permission (ref: W02/0885) for 'change of use of part of premises fronting Bedford Street from Use Class A1 (shop) with ancillary cafe/restaurant to Use Class A3 (food and drink)' was granted in 2002.

Planning permission (ref: W02/0734) for 'conversion of first and second floor from offices into 2 flats with a rear garden and railings' was granted in 2002.

KEY ISSUES

The Site and its Location

The application relates to a three-storey building situated on the corner of Warwick Street and Bedford Street within the Royal Leamington Spa Town Centre. The ground floor of the building is currently wholly in use as a cafe/restaurant. Both the Bedford Street elevation and the Warwick Street elevation of the premises are designated as part of a secondary retail frontage on the Local Plan Proposals Map.

Details of the Development

Change of use of ground floor of the premises from mixed use as shop (Use Class A1) and restaurant & cafe (Use Class A3) to restaurant & cafe (Use Class A3) (Retrospective Application).

Assessment

The main issue in this application is the effect of the proposal on the viability and vitality of Leamington Town Centre.

Local Plan Policy TCP5 seeks to ensure the continuing success of the District's town centres as shopping destinations. The policy states that within secondary retail frontages changes of use to uses including restaurants and cafes (Use Class A3) will be allowed unless more than 50% of the total length of the street frontage is in non A1 use; or the proposal consists of, or would contribute to creating, a continuous non A1 frontage of more than 16m.

It is acknowledged that the change of use has already occurred. However, Section 73a (planning permission for development already carried out) of the Planning Act, subsection 2B states that *"In considering a retrospective application the local planning authority shall (a) consider the application as if work on it had not begun; (b) have no regard to any financial loss involved to the developers or others should the application not be approved"*.

This particular Warwick Street frontage extends from the junction with Bedford Street to the junction with Windsor Street. The proposed change of use would take the non A1 use on this particular Warwick Street frontage from approximately 50% to approximately 59%.

The Bedford Street frontage extends from the junction with Warwick Street to the junction with Windsor Place. The proposed change of use would take the non A1 use on this frontage from approximately 73% to approximately 84%.

The conflict with the numerical criterion of no more than 50% non A1 use would therefore be significant on both frontages and the proposed change of use would therefore be contrary to Policy TCP5 of the Warwick District Local Plan 1996-2011. In my opinion, the proposed change of use would result in a harmful concentration of non-A1 uses in this Secondary Retail Frontage, which would detract from the vitality and viability of this part of the town centre. To grant permission in this case would set a difficult precedent whereby the District Planning Authority would find it difficult to resist similar proposals which would be detrimental to the vitality and viability of the Town Centre.

RECOMMENDATION

REFUSE for the following reasons and authorise enforcement action for change of use back to a mixed use as shop (Use Class A1) and restaurant & cafe (Use Class A3) as per planning permission W02/0885. Period for compliance 6 months.

REFUSAL REASONS

- 1 Policy TCP5 of the Warwick District Local Plan 1996-2011 states that changes of use from shops (Class A1) to restaurants and cafes (Use Class A3) within the secondary retail areas will be permitted unless: (a) more than 50% of the total length of the street frontage is in non A1 use; or (b) the proposal consists of, or would contribute to creating, a continuous non A1 frontage of more than 16 metres.

The application relates to ground floor retail premises situated on the southern side of Warwick Street, one of the principal shopping streets in Leamington Town Centre. The application premises comprise a prominent unit on the corner of Warwick Street that forms part of a Secondary Retail Frontage on Warwick Street (Nos. 38-50) and Bedford Street (Nos. 2-6). The proposed change of use of the application property would be contrary to Policy TCP5 of the Warwick District Local Plan 1996-2011 because it would create/contribute to a non-A1 frontage of greater than 50% on both of the aforementioned frontages.

In the opinion of the District Planning Authority, the proposed change of use would result in a harmful concentration of non-A1 uses in this Secondary Retail Frontage, which would detract from the vitality and viability of this part of the Town Centre. If permission were granted for this development, the District Planning Authority would find it difficult to resist other similar changes of use which both individually and cumulatively would be detrimental to the vitality and viability of the Town Centre.

The proposal would therefore be contrary to the objectives of the aforementioned policy.
