

**Planning Committee:** 28 March 2017

**Item Number:** 9

**Application No:** [W/17/0264](#)

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Dan Charles

**Registration Date:** 15/02/17

**Expiry Date:** 12/04/17

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**46 Warwick Street, Leamington Spa, CV32 5JS**

Change of use from Retail (Class A1) to Gym (Class D2) FOR Mr M Lasebikan  
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This application has been requested to be presented to Committee by Councillor Knight

**RECOMMENDATION**

Planning Committee is recommended to refuse planning permission for the reasons listed at the end of this report.

**DETAILS OF THE DEVELOPMENT**

The proposal seeks the change of use of the premises from an existing retail shop (Use Class A1) to a gym (Use Class D2).

There are no external alterations required and only minor internal changes to the building area proposed.

**THE SITE AND ITS LOCATION**

The site lies in a location identified as a secondary retail area within Leamington Spa Town Centre.

The site is an existing retail premises within a row of mixed uses within the A1 to A4 Use Classes.

The site lies within the Royal Leamington Spa Conservation Area.

**PLANNING HISTORY**

W/16/2022 - Change of use from Retail (Class A1) to Gym (Class D2) – Refused 14.02.2017

W/16/2023 – Installation of replacement signage – Refused 14.02.2017

W/16/1508 – Conversion of first floor to 8 bedrooms with communal kitchens/lounges – Withdrawn – 11.11.2016

W/16/0694 - Change of use of first and second floors to a 10 bedroom house in multiple occupation; installation of new and enlarged windows in the front and

rear elevations; installation of front dormer windows; installation of guard rails and GRP hoods to first floor windows; and installation of new side entrance door – Refused 08.07.2016

W/15/1060 - Proposed change of use of ground and first floors from Class A1 (retail) to Class A3 (restaurant) together with external ductwork extraction – Refused – 20.08.2015.

W/15/0126 - Proposed change of use of ground and first floors from Class A1 (retail) to Class A3 (restaurant) – Refused 18.03.2015

### **RELEVANT POLICIES**

- National Planning Policy Framework
- The Current Local Plan
- 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)
- DAP8 - Protection of Conservation Areas (Warwick District Local Plan 1996 - 2011)
- DAP9 - Unlisted Buildings in Conservation Areas (Warwick District Local Plan 1996 - 2011)
- TCP5 - Secondary Retail Areas (Warwick District Local Plan 1996 - 2011)
- DP8 - Parking (Warwick District Local Plan 1996 - 2011)
- The Emerging Local Plan
- BE1 - Layout and Design (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- BE3 - Amenity (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- HE2 - Protection of Conservation Areas (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- TC7 - Secondary Retail Areas (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- TR4 - Parking (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- Guidance Documents
- Vehicle Parking Standards (Supplementary Planning Document)

### **SUMMARY OF REPRESENTATIONS**

**Royal Leamington Spa Town Council:** No objection

**Councillor Jane Knight:** Acknowledge concerns around Policy TCP5 but I am convinced circumstances have changed because of the retail focus in the town.

### **KEY ISSUES**

#### Principle of Development

The application site is within a designated secondary retail area whereby Policy TCP5 in the Local Plan states:

"Changes of use from shops (Used Class A1) to financial and professional services (Use Class A2); restaurants and cafes (Use Class A3); drinking establishments (Use Class A4) or hot food take-aways (Use Class A5) 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 (retail) use; or
- b) the proposal consists of, or would contribute to creating a continuous non A1 (retail) frontage of more than 16 m.

In terms of part (a) of the policy, the percentage of this street frontage in non-A1 use is currently 60%. The change of use of the application property to a further non-A1 use would increase this figure to approximately 73%.

When assessed against part (b) of the policy, the change of use of this unit to a non-A1 use would be in breach of this requirement. When taken in conjunction with the flanking properties currently known as Habana (Use Class A3) and The Duke (Use Class A4) together with the Solicitors office (Use Class A2) adjacent to The Duke, the continuous non-A1 frontage would be approximately 35 metres. This is significantly in excess of the 16 metres stipulated within the policy.

For that reason, there is an objection in principle to the proposed change of use because the proposal does not meet the criteria set out in Policy TCP5 in the Local Plan.

The shop unit is currently a furniture shop and has been so for approximately 17 years. The shop is currently occupied and in operation. Evidence provided by the current occupier (who owns the premises) states that the premises is only operating as they are the owner of the premises and are liable for business rates. The occupier has stated that the premises currently only make enough income to cover the business rates and no salary is drawn from the business. As the site owner, the current business is not required to pay rent and the current turnover would not sustain rent payments together with the cost of business rates and other ongoing costs that are required for a viable business.

The agent has provided a Planning Statement that seeks to demonstrate that the Class A1 retail use is not viable and that there is support for an alternative use of this site within the town centre. In considering Policy TCP5, the agent states that it does not preclude D2 uses in the secondary retail area.

The Retail and Leisure Study Update 2014 states that retail uses in town centres face significant competition from other sources such as internet based shopping and secondary retail areas struggle to attract market interest and investment.

The Study also advocates the provision of additional Health and Fitness Uses within the District to meet rising demand for such facilities.

The NPPF also advocates the provision of sport and recreation facilities for the increase in health and wellbeing within towns and cities. The NPPF also acknowledges that Sport and Recreation facilities are appropriate in town centre locations.

In considering the evidence put forward by both the applicant and current occupier of the premises, Policy TCP5 does not preclude the provision of alternative uses but this is only where they would meet the two tests as stipulated by the Policy. In this location, the proposed change of use would be contrary to both points a) and b) of the policy insofar as the proposal would exceed the 50% non-A1 threshold and also the a continuous non-A1 frontage in excess of 16 metres.

In terms of alternatives uses, the Local Plan does not seek to resist these forms of development where locational policies are not compromised. In this location, within a secondary retail area of the town centre, the propose change of use would result in the loss of an A1 unit which would be harmful to the viability of the Town Centre and contrary to the provisions of Policy TCP5 in the Local Plan.

It is not considered that the considerations raised by the Applicant set out above are sufficient to outweigh Policy TCP5 in the Local Plan.

There have been no material changes in circumstances since the previous refusal of planning permission for the same proposal in February 2017.

#### Impact on the character of the area and Leamington Conservation Area

As no external changes are proposed, it is considered that the proposed change of use in itself would not result in unacceptable harm to the character or visual setting of the local area or Conservation Area. It is therefore considered that there would be no conflict with Policies DAP8 or DAP9 in the Local Plan.

#### Impact on the amenity of neighbouring properties

The application site is situated between two, three storey buildings one of which comprises of residential use on the upper floors (above number 48 Warwick Street). In terms of impact on these residents, the Environmental Health Officer has considered the proposed use and no objection has been raised to the proposed use, subject to the imposition of conditions placing a limit on the noise associated with air conditioning units.

#### Impact on highway safety/parking

There are no off-street parking facilities associated with this unit. Under the Council's adopted Vehicle Parking Standards SPD, the requirements for a Class A1 retail use within a high accessibility zone is one space per 50 square metres giving a total requirement for this property of 6 spaces. A D2 use in a high accessibility zone requires 1 space per 20 square metres which would equate to approximately 14 spaces.

The proposed use would have a higher demand for parking than the existing use, however, this site is within a highly sustainable town centre location which provides adequate parking facilities within local car parks together with available on-street parking in the evenings. The type of use proposed as a small scale gym would be attended by pedestrian traffic in this location.

The County Highways Officer has considered the scheme and raised no objection to the proposed development on highway safety grounds.

Therefore it is considered that there would be no conflict with the vehicle parking standards or to the objectives of Policy DP8 in the Local Plan.

### Renewables

The proposed use would not result in a material increase in the energy demand of the building such as to justify a requirement for renewables/ fabric first approach in accordance with Policy DP13 and the associated SPD.

### **Summary/Conclusion**

The principle of development does not comply with Policy TCP5 insofar as it proposes the loss of an A1 use within a Secondary Retail Area of Leamington Spa town centre and insufficient justification has been provided to override the in-principle objection to the development. The proposal would thereby result in material harm to the vitality and viability of the town centre.

### **REFUSAL REASON**

- 1 The proposed change of use would result in the introduction of a further non-A1 retail use within a secondary retail frontage within the Royal Leamington Spa town centre, resulting in an inappropriate mix and balance of uses within that frontage to the detriment of the vitality and viability of that town centre, contrary to the following national and local plan policies:

- The National Planning Policy Framework

#### The Warwick District Local Plan 1996-2011

- Policy TCP5 - Secondary Retail Areas

#### The emerging Warwick District Local Plan 2011-2029 (Publication Draft April 2014)

- Policy TC7 - Secondary Retail Areas