

**Planning Committee:** 20 September 2006

**Item Number:** 6

**Application No:** W 06 / 0638

**Registration Date:** 19/05/06

**Town/Parish Council:** Leamington Spa

**Expiry Date:** 14/07/06

**Case Officer:** Rob Young

01926 456535 planning\_east@warwickdc.gov.uk

**131-137 Regent Street, 40 Kenilworth Street, Leamington Spa, CV32 4QS**

Refurbishment and part demolition of existing buildings and erection of new building to provide a retail unit (Class A1), a food and drink establishment (Class A3), a bar/grill and outdoor area (Class A4), offices (Class B1) and 9 no. studio, 1 and 2 bedroom apartments FOR Leamington Property Partnership

-----

This application is being presented to Committee due to the number of objections received.

**SUMMARY OF REPRESENTATIONS**

**Town Council:** No objection.

**Neighbours:** Two letters of objection and three letters of support have been received. Objections have been raised on the following grounds:

- (a) The proposal represents a gross overdevelopment of this small site.
- (b) Lack of parking - Regent Street and Park Street are both one way streets and have only short-stay parking. Where would the occupants and visitors park?
- (c) Loss of light, privacy etc. - all the premises in the area of the proposed development (Park Street, Regent Street and Kenilworth Street) would have considerable loss of light and privacy from in some cases over-large windows. The proposed office block would certainly take all the light from the garden of No. 39 Park Street.
- (d) Noise and disturbance - impact on structural stability of adjoining walls and buildings. Foul and surface water sewers would also have to be strengthened.
- (e) Lack of windows and external ventilation to the bedrooms and bathrooms of units 3 and 5.

**Leamington Society and Central Leamington Residents Association (re: licensed activities):** I note that the A3 application has been quoted as a food and drink establishment but as from 21 April 2005 this classification more properly relates to "restaurants, snack bars and cafe's" this not being a classification which causes us much concern. Principally, our objection relates to the A4 bar and more especially the outdoor area. We would ask that the Planning Committee take note of the local authority's statement of licensing policy in respect to the objectives to be found in the Licensing Act 2003, which recognises that residents within and visitors to the district need a safe and healthy

environment to live, work and visit. In this respect, the council's special policy areas (zones A and B) have been set up. It is our contention that this area (zone A) has more than sufficient drinking establishments and we would ask that this part of the application not be accepted.

The proposed building abuts onto and wraps around the public house known as the Sausage and it is understood that the new development and the pub are in the same hands. We would suggest therefore that the two properties together with the outdoor area might eventually be merged into one larger late night establishment. We do not feel therefore that it would be right for planners to set the scene for this eventuality.

**Central Leamington Residents Association:** Object. (1) The nine flats and the office space facility have no on-site parking and there is very limited on-street parking in the vicinity, i.e. double yellow lines. (2) A4 pub is within the WDC Leamington Spa saturation area. (3) Noise nuisance from the A4 pub and A3 restaurant which will be exacerbated when smoking is banned in pubs and restaurants from July 2007.

**Conservation Area Advisory Forum:** It was felt that the design, particularly the new build, to the rear and off Kenilworth Street was contrived and did not enhance the Conservation Area. It was felt that the arrangement of kitchens and how the property was serviced, in particular mechanical extracts required, were all unclear from the drawings. Concerns were also expressed at the increased number of licensed premises. Concerns were also expressed that this was overdevelopment as there was no parking and the access to the flats requires the removal of an existing retail unit. Generally the scheme was not felt to be an appropriate way of developing this site. Concerns were expressed that one building had already been demolished prior to the determination of the application. The raising of a single storey building on Kenilworth Street was also felt to be appropriate subject to traditional detailing.

**Severn Trent Water:** No objection, subject to drainage condition.

**WCC (Highways):** No objection.

**WCC (Ecology):** As demolition of part of an existing building is proposed we recommend a bat survey is carried out prior to determination, as a bat roost may be permanently destroyed.

**Environmental Health (Environmental Protection):** The restaurant and bar / grill may have an adverse impact on the living conditions of flats in adjacent premises and in the proposed development. the site is within the area of restraint for licensing. Should the application be approved, I would recommend conditions relating to extract ventilation, any air conditioning plant, and restriction of the outside dining area. The use of the external dining area should be restricted to

the period of 0800 to 2230, seven days per week (the use of this area outside these times may give rise to noise nuisance to the adjoining residential properties).

**Environmental Health (Private Sector Housing):** No objection to amended plans.

### **RELEVANT POLICIES**

- (DW) ENV3 - Development Principles (Warwick District Local Plan 1995)
- (DW) ENV6 - Protection and Enhancement of Conservation Areas (Warwick District Local Plan 1995)
- (DW) ENV8 - New Development within Conservation Areas (Warwick District Local Plan 1995)
- (DW) H5 - Infilling within the Towns (Warwick District Local Plan 1995)
- (DW) S5 - Changes of Use Within Retail Areas (Warwick District Local Plan 1995)
- TCP2 - Directing Retail Development (Warwick District 1996 - 2011 Revised Deposit Version)
- TCP5 - Secondary Retail Areas (Warwick District 1996 - 2011 Revised Deposit Version)
- TCP13 - Design of Shopfronts (Warwick District 1996 - 2011 Revised Deposit Version)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011 Revised Deposit Version)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011 Revised Deposit Version).
- DP8 - Parking (Warwick District Local Plan 1996 - 2011 Revised Deposit Version)
- Managing Housing Supply (Supplementary Planning Document).
- DAP10 - Protection of Conservation Areas (Warwick District 1996 - 2011 Revised Deposit Version)
- Design Advice on Shopfronts & Advertisements in Royal Leamington Spa (Supplementary Planning Guidance).
- SC8a - Managing Housing Supply (Warwick District Local Plan 1996 - 2011 Revised Deposit Version)

### **PLANNING HISTORY**

A planning application for “Erection of a single storey rear extension; change of use of ground floor of 131-137 Regent Street to class A3 (Cafe/restaurant) and class A4 (drinking establishment) use, conversion of first floor to self-contained flat and change of use of ground floor of 40 Kenilworth Street to class A1 (retail), class A4 (drinking establishment) and class A5 (hot food take-away)” was withdrawn in September 2005 (Ref. W05/1184).

A planning application for “Change of use of 131-137 Regent Street from class A1 (retail) to class A3 (cafe/restaurant) and/or class A4 (drinking establishment) use, erection of single-storey rear extension and conversion of first floor to self-contained flat, and change of use of 40 Kenilworth Street to class A1 (retail)/class A4 (drinking establishment) and/or class A5 (hot food take-away) use” was withdrawn in October 2005 (Ref. W05/1570).

In May 2006 conservation area consent was granted for the demolition of the building that stood at No. 40 Kenilworth Street (Ref. W06/0420CA).

In May 2006, planning permission was granted for “Demolition of existing building. Erection of new boundary wall, railings and entrance gates to Kenilworth Street. Use of cleared site as an outdoor garden ancillary to the Sozzled Sausage Public House until 31st October 2006” (Ref. W06/0383). A further application has now been submitted to continue this use on a permanent basis (Ref. W06/1384). No decision has yet been made on that application.

## **KEY ISSUES**

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

The application site comprises a two and three-storey unlisted building on the northern side of Regent Street, and the site of a detached warehouse building that fronted onto Kenilworth Street. The site is L-shaped and wraps around the side and rear of the adjoining premises at Nos. 139 & 141 Regent Street. The site is within Leamington Town Centre and the Leamington Spa Conservation Area. The surrounding area is predominantly commercial in character.

The buildings that occupy the Regent Street frontage of the site are currently vacant, but were formerly occupied by the 'Mutual' home furnishing store. There is a car parking area at the rear which is accessed from Kenilworth Street. The warehouse building on the Kenilworth Street frontage was demolished earlier this year and the cleared site has since been used as a beer garden associated with the adjacent 'Sozzled Sausage' public house.

The rear car parking area is contained by the rear boundary walls of neighbouring properties at 39-45 Park Street to the north and west. Those buildings are predominantly in commercial use, but some of the upper floors and the rear of these properties are occupied as self-contained flats which overlook the site. The side elevation of 'The Bed Factory' at 139 Regent Street forms the eastern boundary of the site. The adjoining building at No. 129 Regent Street to the west of the site is thought to include a flat on the upper floors. The Angel

Hotel is situated on the opposite side of Kenilworth Street, and there are residential properties further to the north on Kenilworth Street. The 'Dixons' home decorating store adjoins the site to the north.

### **Details of the Development**

The application proposes the following:

- Change of use of two of the existing ground floor retail units on Regent Street frontage to a restaurant including a single storey rear extension.
- Installation of new shopfronts to the units on Regent Street.
- Conversion of first and second floors of building on Regent Street frontage to 9 flats, including side and rear extensions at first and second floor, and alterations to fenestration in the existing building. This would include a ground floor lobby area with a door though onto Regent Street. The residential part of the proposals would comprise 3 studio flats, 3 one-bedroom flats and 3 two-bedroom flats.
- Erection of a single storey building plus basement on the Kenilworth Street frontage to provide a bar / grill. This would include an outdoor drinking area alongside, behind a wall / gates onto Kenilworth Street.

A number of amendments have been submitted over the lifetime of the application, the most notable being a reduction in the height of the building on the Kenilworth Street frontage from 3 storeys to single storey.

### **Assessment**

I consider that the main issues relevant to the consideration of this application are as follows:

- the impact of the proposals on the character and appearance of the Conservation Area; and
- the impact of the proposals on the living conditions of nearby dwellings.

#### **Impact on Character and Appearance of Conservation Area**

As amended, I am of the opinion that the proposed development would have an acceptable impact on the character and appearance of the Conservation Area. The design and form of the extensions to the buildings on the Regent Street frontage would be of traditional appearance and would be in keeping with the existing buildings on the site and adjacent premises. Furthermore, the proposed new shopfronts on Regent Street would be of traditional design. The new building proposed for the Kenilworth Street frontage includes modern design elements, including modern materials, but I consider that this would be appropriate for this particular location. The building would be partially concealed behind a proposed 3m high wall along the Kenilworth Street frontage.

### Impact on living conditions of nearby dwellings

There would be a close relationship between the adjacent dwellings in Park Street and some of the proposed flats. However, the first and second floor windows facing the rear of the dwellings in Park Street serve bedrooms, and the lower half of those windows will be obscure glazed. Furthermore, mesh screens are proposed at the end of the proposed roof terrace. These measures will ensure that the proposals do not cause unacceptable loss of privacy for nearby dwellings.

I do not consider that the proposed extensions and new building would result in significant loss of light or loss of outlook for neighbouring dwellings. The new building on the Kenilworth Street frontage would abut the boundary with the garden at the rear of 39 Park Street, but as the proposed building is single storey, I consider that it would have an acceptable impact. The other element of the proposals that would be close to the boundary with the properties in Park Street would be single storey with a flat roof and would be mostly hidden behind the existing boundary wall. Furthermore, the three storey element of the proposals would be set far enough away from the properties in Park Street to ensure that it would not cause undue loss of light or outlook for those dwellings. I consider that the relationship between neighbouring dwellings and the proposed new building and extensions would be appropriate for this high density location within the Conservation Area.

A number of objectors to the proposal have raised concerns about the proposed bar / grill. Whilst the site is within a commercial part of the Town Centre, it is in close proximity to a number of dwellings, including flats above adjacent shops as well as purpose built flats further up Kenilworth Street. From a Licensing point of view, the site lies within an area of the Town Centre that is identified as a 'hot spot' where there are problems associated with the concentration of licensed premises. Licensing is a separate regulatory regime to Planning and it may be that, even if planning permission is granted, a License application may be refused. Nevertheless, there is some overlap between Licensing and Planning controls and the Licensing policy does identify that the concentration of Licensed premises in this area is an issue that requires careful consideration.

Having considered this matter carefully, in view of the busy commercial nature of the locality, I do not consider that it would be possible to sustain a refusal on planning grounds to the proposed bar / grill. Environmental Health have not objected to the proposals, and the bar / grill would not adjoin any of the nearby dwellings. The proposed outdoor drinking area would cover a similar area to the existing temporary beer garden associated with the Sozzled Sausage, which has not given rise to complaint since it opened earlier this year. Furthermore, this would be screened from nearby dwellings in Park Street by the proposed restaurant extension. Therefore, on balance, I do not consider that the proposals

would cause an unacceptable increase in noise and disturbance for neighbouring residents.

A condition is recommended to restrict the hours of use of the outdoor drinking area. Environmental Health have recommended a limit of 2230 hours, but the current permission for temporary use as a beer garden associated with the Sozzled Sausage allows it to be used until 2300. This is in accordance with other beer gardens in the town centre and I consider that this would be appropriate.

### Other matters

The proposal accords with the 'Managing Housing Supply' Supplementary Planning Document in that it is a mixed development scheme within the town centre where the housing element of the scheme represents no more than 50% of the total floorspace.

The bin storage arrangements would not be ideal due to the distance from the bin stores to the street, and the fact that the shortest route from the domestic bin store to the street is through the entrance lobby to the flats. However, the applicant has agreed to include a clause in the management agreement for the flats to deal with this issue. In my view, it would not now be possible to sustain an objection on this issue, and a condition is recommended to require the inclusion of such a clause within the management agreement.

Units 3, 5 and 8 have been changed from one bedroom units to studio apartments to address Environmental Health's concerns about having bedrooms with no windows.

This part of Regent Street is designated as a secondary retail area. The proposal retains sufficient retail frontage to comply with Policy TCP5. The entrance lobby to the flats has been amended to ensure that it is as narrow as possible so that it only takes up a small part of the retail frontage.

The reduction in height of the building on the Kenilworth Street frontage ensures that this does not obstruct the outlook from the proposed flats.

### **RECOMMENDATION**

GRANT, subject to the conditions 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), and specification contained therein, submitted on 1st September 2006 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 Local Plan Policy ENV3.
- 3 No development shall be carried out on the site which is the subject of this permission, until details of a fume extraction system have been submitted to and approved by the District Planning Authority and the development shall not be carried out otherwise than in full accordance with such approved details. **REASON** : To protect the amenities of surrounding properties, in accordance with Policy ENV3 of the Warwick District Local Plan.
- 4 Details of any air conditioning and ventilation systems including particulars of noise levels shall be submitted to and approved by the Local Planning Authority before any works commence on site. The development shall not be carried out otherwise than in full accordance with such approved details.  
**REASON** : To protect the amenities of surrounding properties, in accordance with Policy ENV3 of the Warwick District Local Plan.
- 5 No development shall be carried out on the site which is the subject of this permission, until large scale details of doors, windows (including a section showing the window reveal, heads and cill details), shopfront joinery items, eaves, verges and rainwater goods at a scale of 1:5 have been submitted to and approved by the District Planning Authority. The development shall not be carried out otherwise than in full accordance with such approved details.  
**REASON** : To ensure an appropriate standard of design and appearance within the Conservation Area, and to satisfy Policy ENV8 of the Warwick District Local Plan.
- 6 Details of the means of disposal of storm water and foul sewage from the development shall be submitted to and approved by the District Planning Authority before the development hereby permitted is commenced and the development shall not be carried out other than in strict accordance with such approved details. **REASON** : To ensure satisfactory provision is made for the disposal of storm water and foul sewage.
- 7 Samples of all external facing materials to be used for the construction of the development hereby permitted, shall be submitted to and approved by the District Planning Authority before any constructional works are commenced. Development shall be carried out in accordance with the approved details. **REASON** : To ensure that the visual amenities of the



area are protected, and to satisfy the requirements of Policy ENV3 of the Warwick District Local Plan.

- 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 ENV8 of the Warwick District Local Plan.
- 9 None of the flats hereby permitted shall be occupied until details of a management agreement clause to deal with the storage and collection of refuse has been submitted to and approved in writing by the District Planning Authority. The approved clause shall be included within the management agreement for the development hereby permitted before any of the flats are first occupied and shall be retained and implemented in accordance with the approved details at all times thereafter unless agreed otherwise in writing by the District Planning Authority. **REASON** : To protect the amenities of the occupiers of the site and the character and appearance of the locality, in accordance with Policy ENV3 of the Warwick District Local Plan 1995.
- 10 The new shopfronts to Nos. 131-137 Regent Street, and all other window frames, shall be constructed in timber, and shall be painted and not stained, unless agreed otherwise in writing by the District Planning Authority. **REASON** : To ensure an appropriate standard of design and appearance within the Conservation Area, and to satisfy Policy ENV8 of the Warwick District Local Plan.
- 11 The use of the outdoor drinking area hereby permitted shall be limited to solely between the hours of 8.00am to 11.00pm on any day. **REASON**: To protect the amenity of this locality in accordance with the requirements of Policy ENV3 of the Warwick District Local Plan 1995.
- 12 The bottom panes of the first and second floor windows in the west facing elevation of the extension to 131-137 Regent Street hereby permitted shall be non-opening and obscure glazed and retained as such at all times thereafter. **REASON** : To protect the amenity of the occupiers of nearby properties.

### **INFORMATIVES**

For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reason(s) for the Council's decision are summarised below:

In the opinion of the District Planning Authority, the development is of an acceptable standard of design which is in keeping with the architectural and

historic character of the Conservation Area within which the site is located. Furthermore, it is considered that the proposal would have an acceptable impact on the living conditions of neighbouring dwellings. The proposal is therefore considered to comply with the policies listed.

---