

Planning Committee: 16 August 2011

Item Number:

Application No: W 11 / 0435

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

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Registration Date: 08/06/11

Expiry Date: 03/08/11

Londis Supermarket, Newland Road, Lillington, Leamington Spa, CV32 7PY

Erection of single storey extensions to front and rear of existing shop; and erection of single storey side extension to create separate hot food takeaway unit (Use Class A5). FOR Londis Supermarket

This application is being presented to Committee because it is recommended for refusal and a petition with more than 5 signatures in support of the application has been received.

SUMMARY OF REPRESENTATIONS

Town Council: No objection.

Public response: A petition with 661 signatures in support of the application has been submitted. This includes local residents and local businesses.

The occupier of the adjacent dwelling at No. 143 Mason Avenue has written a letter of support for the application and has made the following comments:

- the development (including the additional A5 unit) will not impact on their amenity or affect any daylight into any habitable room;
- reducing the length / width of the rear extension would only create an area for unsavoury characters to congregate; and
- the community would benefit as at the moment the facilities on the estate are very limited.

Cllr Boad: There appears to be support for the proposal from the local community. I would suggest that to limit the potential for creating a magnet for nuisance and anti-social behaviour in the vicinity of the proposed take away food outlet, which is located in a residential area, that a restriction is placed on the evening opening hours. Suitable bins for the disposal of litter, which are to be emptied regularly, should also be located near to the premises.

WCC (Highways): No objection. Following a review of the site, the Highway Authority accept that the proposed extension will not encroach into the required 2.4m x 43m visibility splays for the junction adjacent to the site. The Highway Authority would not require any additional parking to be provided in association with the site given the abundance of on-street parking available in the close vicinity.

Environmental Health: I have now fully assessed the plans for the aforementioned proposed planning application and would state the following:

1) Delivery Times - There shall be no arrival, departure, loading or unloading of commercial vehicles associated with the businesses between the hours of 20:30 and 07:00 on any day.

2) Plant Noise (3dB(A) above Background) - The rating level of the noise emitted from plant located at the site(s) shall not exceed the existing background noise level at any time by more than 3dB(A) at any noise sensitive residential property when measured and corrected in accordance with BS 4142: 1997.

3) Plant Noise (Submission) - Prior to first beneficial use, details of the sound power output [in dB(A)] and octave band levels of the plant and the exact location of the plant shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

4) Fume Extraction - Fumes from the hot food preparation areas shall be mechanically extracted and the extraction system shall be provided with de-greasing and de-odourising filters. Details of the extraction equipment (including scaled schematics, exact location plans, odour attenuation measures and future maintenance) shall be submitted to and approved in writing by the Local Planning Authority prior to its installation, and the equipment shall be installed in accordance with the approved details prior to the commencement of use for the cooking of food. The equipment shall thereafter be maintained in accordance with the approved details.

5) Artificial Lighting - Any current or proposed additional artificial lighting serving the premises shall be installed and maintained in such a manner / condition as not to cause nuisance into nearby premises.

Green Infrastructure Manager: No objection, subject to a condition to require a construction method statement to be submitted for approval.

RELEVANT POLICIES

- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP8 - Parking (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)
- UAP3 - Directing New Retail Development (Warwick District Local Plan 1996 - 2011)
- UAP5 - Protecting Local Shops (Warwick District Local Plan 1996 - 2011)
- DP3 - Natural and Historic Environment and Landscape (Warwick District Local Plan 1996 - 2011)
- Vehicle Parking Standards (Supplementary Planning Document)
- Sustainable Buildings (Supplementary Planning Document - December 2008)

PLANNING HISTORY

In 1987 and 1989 two applications for planning permission were refused for "Change of use of part of premises from retail to a fish and chip shop" (Refs. W87/1031 & W88/1489). The reason for refusal was as follows:

"The site of the proposed development closely adjoins a number of existing residential properties and residential units under construction, and it is considered that the proposal would be detrimental to their residential amenity by

reason of the noise and disturbance which would be likely to arise from the traffic and customers it would attract, particularly in the evening and late at night".

A subsequent appeal against the second of those refusals was dismissed in 1990. The Inspector commented as follows:

"It is anticipated that customers would be local people who would generally not arrive by car. Nevertheless the appeal premises are very close to dwellings, so that in my opinion even limited numbers of customers entering and leaving the proposed fish and chip shop, would substantially raise levels of noise and disturbance for adjacent occupiers. The appellant is prepared to stop serving at 9.00pm, but that does not change my view that the proposal would result in an unacceptable increase in noise and disturbance for neighbours, at a time during the evening when they might reasonably expect to be quiet. Therefore whilst I have taken into account the intention to install a fume extraction system and to organise litter collection, I am drawn to the conclusion that a fish and chip shop in this location would bring about a serious reduction in amenity for those residents who live in close proximity to the site.

There is strong local support for the scheme as the nearest existing hot food takeaways are in Crown Way, which you estimated to be about 800 metres distant. I have taken this into account, together with the government's firm commitment to promote and encourage business activity, but in my opinion these factors are outweighed by the compelling planning objections in this case."

In 1995 planning permission was granted for "Erection of a single storey extension to sales area" (Ref. W95/1081).

KEY ISSUES

The Site and its Location

The application relates to a single storey shop situated on the eastern side of Newland Road. The application site is situated within a predominantly residential area. The eastern boundary of the application site adjoins the rear garden of the dwelling at No. 143 Mason Avenue. The southern boundary of the application site adjoins an electricity substation that fronts onto Mason Avenue. Newland Road runs along the western boundary of the site and an access road to a parking area for adjacent flats runs along the northern boundary of the site. There are dwellings facing the site from the opposite side of Mason Avenue and Newland Road.

The existing shop building is set back a short way from the western and northern frontages of the site behind paved areas. The existing building is also set off the eastern boundary of the site. There is a tree on land to the south of the site and the canopy spread of that tree extends up to the site boundary.

Details of the Development

The application proposes the following development:

- erection of single storey extensions to front and rear of existing shop; and
- erection of single storey side extension to create separate hot food takeaway unit (Use Class A5).

The application has been amended to include an air source heat pump.

Assessment

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

- compliance with the retail policies of the local plan;
- the impact on the living conditions of nearby dwellings;
- the impact on the character and appearance of the area;
- the impact on adjacent trees; and
- highway safety.

Compliance with the retail policies of the local plan

Local Plan Policy UAP3 directs new retail development to the town centre and states that retail development will not be permitted unless it can be demonstrated that the proposal would not have a significant adverse impact on the vitality and viability of town centres, district centres and local centres. The nearest local shopping centre in this case is at Crown Way, 615m from the application site. The proposed extensions to enlarge the existing shop would be unlikely to have a significant impact on the vitality and viability of the Crown Way centre due to the small size of those extensions and the fact that they would not create a new retail unit. However, the proposed extension to create a hot food takeaway would have an impact because it would create a new unit that would directly compete with the units in Crown Way. There are currently no vacant units within the Crown Way Local Shopping Centre, but there are 4 hot food takeaways that could be vulnerable to competition from the proposed hot food takeaway on the application site. The petition that has been submitted in support of the application would suggest that there is local demand for a hot food takeaway in this location, but I do not consider that this demonstrates a compelling need for a new takeaway unit to be constructed in an out of centre location. I am not convinced that any need (if such a need exists), cannot be accommodated within existing centres. I therefore consider that the proposals would adversely affect the vitality and viability of the Crown Way Local Shopping Centre and therefore that the proposals would be contrary to Local Plan Policy UAP3.

In out of centre locations such as the application site, Local Plan Policy UAP5 prohibits changes of use of general shops to hot food takeaways. Whilst the current proposals are not strictly a change of use, the principles of Policy UAP5 are still relevant. The supporting text to Policy UAP5 states that it will provide areas with certainty that their character and amenity will be protected from food and drink uses. I consider that the proposals would be contrary to Policy UAP5. The impact on the amenity of the area will be considered under the next heading.

Impact on the living conditions of nearby dwellings

I note that there have been no objections and that a petition in support of the application has been submitted. I also note that Environmental Health do not raise objection in their comments and recommend various conditions. Nevertheless, I am also conscious that there is an established principle, set out in Local Plan Policy UAP5, that hot food takeaways will not be permitted outside of the town centre or local shopping centres. Furthermore, there have been 2

previous refusals of planning permission for hot food takeaways on the application site, and a subsequent appeal was dismissed. I would agree with the conclusions of the Inspector in relation to that appeal (quoted above). There has been no change in circumstances since that appeal that would indicate that a different conclusion should be reached now. Therefore I consider that the proposals would cause unacceptable noise and disturbance for nearby dwellings.

The proposed rear extension would abut the boundary with the adjacent dwelling at No. 143 Mason Avenue and would be in close proximity to a habitable window in the rear elevation of that property. The proposed extension would project some distance along the boundary of No. 143 and therefore would represent a significant contravention of the 45-degree guideline from the affected window. Therefore I consider that the proposals would cause unacceptable loss of light and loss of outlook for No. 143. This would cause unacceptable harm to the living conditions of that property.

I note that the current occupier of No. 143 has written a letter of support for the proposals. However, the 45-degree guideline specifically states that the failure of a neighbouring occupier to raise objection to a particular proposal in breach of the guidelines will not prejudice the implementation of the guideline. The intention of the guideline, in part, is to protect the amenities of neighbouring occupiers, but also to secure proper amenities for existing housing stock.

Impact on the character and appearance of the area

I am satisfied that the proposals would have an acceptable impact on the character and appearance of the area. The design and form of the proposed extensions would be in keeping with the design of the existing shop.

Impact on adjacent trees

The proposed extension would be close to trees on the grass verge adjacent to the application site. However, the Council's Green Infrastructure Manager considers that the use of a suitable method of construction will ensure that the development will not cause undue harm to the health of those trees. If the recommendation had been that planning permission be granted, this matter could have been dealt with by condition.

Highway safety

The Highway Authority have not objected to the proposals and therefore I am satisfied that the development would be acceptable from a highway safety point of view. With regard to parking, whilst the proposals do not provide any off-street parking and therefore would be contrary to the Council's Parking Standards, the Highway Authority have commented on the amount of on-street parking available in the vicinity and have not objected on parking grounds. Therefore I am satisfied that the proposal would be acceptable in terms of parking.

Other matters

The application has been amended to include an air source heat pump to meet 10% of the predicted energy requirements of the development, in accordance with Local Plan Policy DP13.

RECOMMENDATION

REFUSE, for the reasons stated below.

REFUSAL REASONS

- 1 Policy DP2 of the Warwick District Local Plan 1996-2011 states (inter alia) that development will not be permitted which has an unacceptable adverse impact on the amenity of nearby uses and residents, while Policy DP9 states that development will only be permitted which does not give rise to noise pollution that could cause harm to sensitive receptors. Meanwhile, Policy UAP5 states that changes of use of general shops, outside of town centres and local shopping centres, to hot food takeaways will not be permitted.

The appeal site is situated within a predominantly residential area and is in close proximity to dwellings. In the opinion of the District Planning Authority, the proposed hot food takeaway would cause unacceptable harm to the living conditions of nearby dwellings by reason of the noise and disturbance which would be likely to arise from the traffic and customers that it would attract, particularly in the evening and late at night.

The proposal is thereby considered to be unneighbourly and contrary to the aforementioned policies.

- 2 Policy UAP3 of the Warwick District Local Plan 1996-2011 states (inter alia) that retail development will not be permitted unless it can be demonstrated that the proposal would not have a significant adverse impact on the vitality and viability of town centres, district centres and local centres. This is consistent with advice in Planning Policy Statement 4: Planning for Sustainable Economic Growth.

The application proposes the construction of a new hot food takeaway unit in an out of centre location. As this is a wholly new unit, it is likely to draw trade away from the nearby Crown Way Local Shopping Centre. In the opinion of the District Planning Authority this would cause unacceptable harm to the vitality and viability of that local shopping centre.

The proposals are therefore considered to be contrary to the aforementioned policies.

- 3 Policy DP2 of the Warwick District Local Plan 1996-2011 states (inter alia) that development will not be permitted which has an unacceptable adverse impact on the amenity of nearby uses and residents. Furthermore, the District Council has also adopted Supplementary Planning Guidance on the 45 Degree Guideline which aims to prevent any unreasonable effect on the neighbouring property by reason of loss of daylight or sunlight or by creating an unneighbourly and overbearing effect.

The proposed rear extension would abut the boundary with the adjacent dwelling at No. 143 Mason Avenue and would be in close proximity to a habitable window in the rear elevation of that property. The proposed extension would project some distance along the boundary of No. 143 and therefore would represent a significant contravention of the 45-

degree guideline from the affected window. Therefore, in the opinion of the District Planning Authority, the proposals would cause unacceptable loss of light and would have an unneighbourly and overbearing effect on the outlook from the rear of No. 143. This would cause unacceptable harm to the living conditions of that property.

The proposal is thereby considered to be unneighbourly and contrary to the aforementioned policy.
