

Planning Committee: 20 February 2007

Item Number: 10

Application No: W 06 / 1880

Registration Date: 24/11/06

Town/Parish Council: Leamington Spa

Expiry Date: 19/01/07

Case Officer: Rob Young

01926 456535 planning_east@warwickdc.gov.uk

67 Crown Way, Lillington, Leamington Spa, CV32 7SH

Change of use to restaurant/take away (A3/A5) and installation of new flue FOR
Masoud Farmani

This application has been requested to be presented to Committee by Councillor Boad.

This application was deferred at Planning Committee on the 1 February 2007, to explore with the applicant whether an earlier closing time is feasible, to obtain further advice from Environmental Health, and to check if there are closing time restrictions on other takeaways in the Local Centre. The report that follows is the same as the report that was submitted to the previous Committee, but including additional comments from Environmental Health, further information on restrictions on opening hours in the Local Centre, and comments from the Police that were included in the addendum report to the previous Committee.

SUMMARY OF REPRESENTATIONS

Town Council: No objection.

Councillor Boad: Objects. Requests that the application be determined by Committee.

Warwickshire Police: Crown Way shops have for a number of years been a meeting point for youths. At times this has caused problems during the evening with anti-social behaviour for residents, businesses and customers. Due to the number of incidents of ASB over the preceding 18 months, in July 2004 we invoked part 4 of the ASB Act Powers to establish a designated area to disperse groups. This power was extended twice to address behaviour and expired on 31st Dec 2005. The powers were of great use and we did reduce the number of incidents of ASB during the period. Since then the problems have not been as bad with the odd pocket of persistent youths being spoken too. During the evenings the Spar, Crown Way fish Bar, the Balti Chef and Winson Chinese takeaway have all reported nuisance of some sort over the last 18 months on a lesser scale.

Since September 2006, **126** incidents of an ASB nature were reported for the **whole** of Crown Way from the Cubbington Road to Valley Rd.

96 of a Rowdy nature.

Of these:

16 relate to Rowdy Nuisance.

34 relate to gathering.

12 relate to neighbour.

34 to behaviour.

14 relate to noise.

Total =37 from the shops. The majority amounted to nuisance by youths. Between them the shops also reported a further 10 incidents of damage.

I cannot determine the number specifically relating to the shops called by residents without going through all 126 incidents. As the local Police Officer for Lillington over the last 4 1/2 years my observations are:

A further takeaway on the precinct will draw attention with the youths so the premises are likely to experience some anti-social behaviour as a result of being established. Balti-Chef and Winson are main meal takeaways with nearly all customers taking food home to consume so customers are less likely to hang around. They have problems with youths just hanging about being a nuisance.

The Chip shop currently remove a lot of litter after trading each night themselves that is dropped outside their premises. A pizza Parlour will have customers eating nearby and a possible increase in litter going on the behaviour of local youths. Will food be consumed on the premises during the evenings as well as the day time?

Although I do not object to a Cafe, the social demographics of Lillington, with a high social housing area, it is known locals have little disposable income. I think it very unlikely that locals who live close buy will spend much at a Cafe when they live very near. The only incentive would have to be very cheap pricing otherwise locals will not bother. Other businesses have failed due to the goods being too high priced for the area.(Designer Discount store was only open for a number of months.)

I understand a gambling machine is proposed. As far as I know none of the other shops have them and it is behaviour that local youths could do without getting into.

Environmental Health: These premises are surrounded by residential accommodation, including a flat above. I would recommend refusal except for the fact that there is another takeaway in the same block and two on the opposite

side of the precinct. Should you be inclined to recommend approval, I would recommend the following conditions:

- trading to be limited to 08.00 to 23.00 Monday to Saturday and 12.00 to 22.00 Sunday; and
- details of kitchen extract system to be provided.

Following the submission of extraction details, the following further comments have been received from Environmental Health:

Cooking in the evening will be pizzas, with snacks / tea and coffee during the day. The suggested extract would be satisfactory if taken to ridge level. If approval is given I would modify my initial comment re conditions to:

- trading to be limited to 08.00 to 23.00 Monday to Saturday and 09.00 to 22.00 Sunday; and
- extract to the kitchen to discharge at ridge level, the ducting and extract motor to be so mounted as to avoid noise transmission to the residential development above the takeaway.

Following the last Planning Committee, the following further comments have been received:

Our records indicate no noise or odour complaints regarding the other takeaways in the area for the past 5 years. I have no additional comments from those already given - i.e. provided the hours are restricted and suitable kitchen extract is installed.

RELEVANT POLICIES

- (DW) ENV3 - Development Principles (Warwick District Local Plan 1995)
- (DW) S7 - Local Shopping Centres (Warwick District Local Plan 1995)
- UAP4 - Protecting Local Shopping Centres (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).
- DP9 - Pollution Control (Warwick District 1996 - 2011 Revised Deposit Version)

PLANNING HISTORY

There is no relevant planning history relating to the application property.

Conditions on previous planning permissions impose the following restrictions on the opening hours of the existing takeaways in the Crown Way Shopping Centre:

31 Crown Way (Balti Takeaway) - 17.00 to 23.30 Mon-Sat, 18.00-22.30 Sun
39 Crown Way (Fish & Chip Shop) - No planning restrictions
71 Crown Way (Chinese Takeaway) - No planning restrictions

Under the Licensing legislation, the following restrictions apply:

31 Crown Way (Balti Takeaway) - 23.00 to 23.30 Tue-Thu, 23.00 to 00.00 Fri & Sat, 23.00 to 23.30 Sun, 23.00 to 23.30 Bank Holiday Mon
71 Crown Way (Chinese Takeaway) - 23.00 to 00.00 every day.

(NB. it should be noted that a license is only required for the sale of late night refreshment between the hours of 23.00 and 05.00)

KEY ISSUES

The Site and its Location

The application relates to a ground floor retail unit situated within the Crown Way Local Shopping Centre. In common with other retail units within the shopping centre, the application premises occupy the ground floor of a 3 storey building, the upper 2 floors of which are in residential use. The 2 flats above the application premises have front balconies overlooking the pedestrianised forecourt of the shops. There is also a first floor balcony in front of the adjacent flats / shops at Nos. 51-65 Crown Way.

This shopping centre contains existing A5 takeaway premises at Nos. 31, 39 and 71 Crown Way. The nearest of the existing takeaway premises to the application premises is the Chinese takeaway two units away at No. 71 Crown Way. There are 4 other non-A1 units in this local centre, with the remaining 10 units being in A1 retail use.

The application premises are currently vacant, and were last used as a television repair shop, and prior to that they are understood to have been in use as a butcher's.

The shopping centre is within a predominantly residential area, with dwellings to all sides.

The shopping centre has a small car park, and there is on-street parking available in front of the centre in Crown Way.

Details of the Development

The application proposes a change of use from a shop (Use Class A1) to a restaurant and takeaway (Use Classes A3 and A5), together with the installation of a new extraction flue on the rear elevation. The flue would discharge 1m

above the eaves level of the building. The applicant has stated that the premises will be run as a cafe during the day, and as a pizza shop for takeaway or delivery at night, closing at 11pm.

Assessment

In my view, the main issues relevant to the consideration of this application are:

- the impact on the retail function of the local shopping centre; and
- the impact on the living conditions of nearby residents.

Impact on the retail function of the local shopping centre

Policy UAP4 of the Warwick District Local Plan (Revised Deposit Version) states that changes of use from general shops (Use Class A1) to restaurants, cafes and takeaways (Use Classes A3 and A5) will not be permitted in local shopping centres unless:

- (a) the unit has been vacant for a period of at least 1 year or evidence can be provided that the unit has been actively marketed for an A1 use for a period of at least 9 months; or
- (b) the proposed use can demonstrate that it will significantly increase pedestrian footfall in the centre and will introduce a new use into the centre which meets a local need; and
- (c) allowing the proposed change of use will maintain the predominance of A1 uses in the centre.

The applicants have submitted a letter from their Surveyors to confirm that the unit has been vacant for over 18 months. This would therefore satisfy the requirements of Criterion (a) of Policy UAP4.

With regard to Criterion (b), the applicant has suggested that the proposed use will significantly increase pedestrian footfall in the centre of Lillington and will introduce a new use that will meet a local need. It is notable that the intended use will offer the opportunity for people to use the cafe part of the proposed operation in the daytime, to complement the other daytime facilities, rather than being solely an A5 takeaway, which would be predominantly an evening operation.

With regard to Criterion (c), there are currently 18 units that make up the Crown Way local shopping centre as defined in the Local Plan, 10 of which are currently operating as shops with Use Class A1. Therefore if this application is approved, the predominance of A1 uses would be maintained, with a ratio of 10 A1 to 8 non-A1 uses within the centre.

I am therefore of the opinion that the proposals would not undermine the retail function of this local shopping centre and would be in accordance with Policy UAP4.

Impact on the living conditions of nearby residents

There are a number of residential properties in close proximity to the site, including flats on the upper floors above the retail units in the local centre. There are also flats on the upper floors above the application premises. However, there are also 3 existing takeaways in this local centre, including one that is two units away from the application premises, and consequently there has been no objection from Environmental Health. In the context of a busy local centre with a number of existing late night uses, I do not consider that the proposed change of use would result in an unacceptable increase in noise and disturbance for nearby dwellings. The applicant has stated that the premises will close at 11pm. A condition is recommended to restrict opening hours in accordance with the comments from Environmental Health.

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 24 November 2006, 2 January 2007 and 22 January 2007, 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 Notwithstanding the details shown on the approved plans, 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 The premises shall only be open to the public between the hours of 08.00 and 23.00 on Mondays to Saturdays and between the hours of 09.00 and 22.00 on Sundays. **REASON**: To protect the amenities of surrounding

properties, in accordance with Policy ENV3 of the Warwick District Local Plan.

- 5 Within 2 months of its installation, the external extraction flue hereby permitted shall be painted a colour that has first been agreed in writing by the District Planning Authority. **REASON** : In the interests of the visual amenities of the area, in accordance with Policy (DW) ENV of the Warwick District Local Plan 1995.

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 proposed use would not cause unacceptable noise and disturbance for nearby dwellings. Furthermore, the proposal would not undermine the retail function of this local shopping centre. The proposal is therefore considered to comply with the policies listed.