

Planning Committee: 02 February 2011
Application No: ENF 312/34/10

Item Number:

Case Officer: Dave Fry
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8 High Street, Warwick, CV34 4AP

Change of use from Use Class A1 [retail] to a mixed A1, A3 [restaurant/café] and A4 [drinking establishment] on basement, ground, and first floors and part of second floor.

Property Owner(s) Mr D Gomez & Mr I Wetherby-Blythe

This matter is being presented to Committee in order to request that enforcement action be authorised.

BACKGROUND

In August 2010 it was brought to the attention of the Enforcement Section that Art and Wine at 8 High Street, Warwick in addition to retailing art works and wine was being used as a restaurant/café with the sale of hot food and alcohol for consumption on the premises.

Contact was made with the proprietor who was advised that planning permission was required for a mixed use of A1, A3 and A4. A planning application was submitted [W10/1135] which was refused under delegated powers 21st December 2010 as the development had an unacceptable impact of noise and fumes on neighbouring properties, contrary to local policies.

RELEVANT POLICIES

DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
TCP2 - Directing Retail Development (Warwick District Local Plan 1996 - 2011)
TCP5 - Secondary Retail Areas (Warwick District Local Plan 1996 - 2011)
TCP11 - Protecting Residential Uses on Upper Floors (Warwick District Local Plan 1996 - 2011)

PLANNING HISTORY

The relevant planning applications are:

W07/0971: Change of use of first floor from residential to class A1 [retail] granted 23rd July 2007.

W10/1085: Erection of timber framed shelter in rear courtyard with internal lighting. Installation of CCTV system [invalid as of 19th January 2011]

W10/1135: Change of use from Use Class A1 (retail) to mixed A1, A3 (restaurant/cafe) and A4 (drinking establishment) on basement, ground, and first floors and part of second floor. Refused under delegated powers, 21st December 2010.

KEY ISSUES

The Site and its Location

The property is a Grade II Listed Building located in High Street between Church Street and Swan Street. The property consists of a retail unit, café/restaurant and drinking establishment at basement, ground, first floor and part of the second floor with one dwelling occupying part of the second floor and the entire third floor.

It is in the Warwick Conservation Area and in an area designated for retail use in the Local Plan.

Assessment

The frontage between Church Street and Swan Street is covered by the retail policy TCP2 of the Local Plan, with the western end (by Swan Street) being covered by Policy TCP4 as a Primary Retail Frontage, the total length of the frontage being 76 metres. The use of this property is controlled by Policy TCP5: Secondary Retail Areas where a change from an A1 use is generally acceptable unless more than 50% of the frontage is in non-A1 uses, or the proposal would create, or contribute to, a non-A1 frontage of more than 16 metres.

In this case, the adjoining units are a funeral directors at No.6, with residential accommodation above, dwelling houses at No.5 Church Street, (overlooking the rear of the property) and No.10 High Street, with an estate agents at No.12 and 14 and restaurant at No's 16-18. This results in a continuous non A1 frontage of 45 metres [more than 16 metres and more than 50%] and is contrary to the Development Plan.

The A3/A4 use is not restricted to the buildings as the rear courtyard area is set out with tables and seating.

There are other considerations with the use of the premises due to noise from the rear courtyard and the Environmental Health Department have served an Abatement Notice, which has been breached on two occasions and is subject of legal proceedings for those breaches. A cooking odour issue has also been identified.

In addition, the operation of the premises for the sale of alcohol for consumption on the premises resulted in the Licensing Officer serving a Closure Notice in September, 2010 with regard to the design of the interior of the premises and requiring a cessation of alcohol sales. This gives notice that any further

breaches may result in Court action and is currently in abeyance, due to a fresh licensing application for the property.

The use of the property as a café/restaurant, in addition to the planning policy objection, is considered to be inappropriate as it has an unacceptable impact on the neighboring residential properties.

The Environment Health Department consider it to be fundamentally unsuited for such a use in relation to noise from the courtyard, cooking odours, kitchen ventilation and noise, kitchen space and location and means of escape in the event of a fire.

Justification for Enforcement Action

Negotiations with the property owner has not resulted in the cessation of the A3/A4 use and it is therefore considered that formal action is now appropriate to resolve this breach of planning control.

RECOMMENDATION

That appropriate enforcement action be authorised directed at the cessation of the A3 and A4 use with a compliance period of ONE month.
