

**Planning Committee:** 26 April 2022

**Item Number: 7**

**Application No:** [W 21 / 2282](#)

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Emma Booker

**Registration Date:** 11/01/22  
**Expiry Date:** 08/03/22

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**28 Clemens Street, Leamington Spa, CV31 2DL**

Change of use from printing shop (Use Class E) to a drinking establishment (Sui Generis) FOR Mr Mudan

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This application is being presented to Planning Committee due to the number of support comments and the recommendation being for refusal.

**RECOMMENDATION**

Planning Committee is recommended to refuse this application for the reason set out at the end of this report.

**DETAILS OF THE DEVELOPMENT**

Planning permission is sought for a change of use of this commercial unit from a printing shop (Use Class E) to a drinking establishment (Sui Generis).

In a document submitted by the applicant in response to an objection raised by the Health and Community Protection Officer, it is stated that the bar will not be managed like a club environment but more akin to a sit-down area where customers can enjoy a beverage. It is also stated that there will be no cooking on the premises and no live entertainment on offer.

**THE SITE AND ITS LOCATION**

The application site comprises a ground floor commercial unit which currently falls within Use Class E. Above the unit is a residential flat which the applicant has advised is currently vacant although is likely to be renovated and occupied in the future.

The application site is located in the Royal Leamington Spa Conservation Area and along one of the main arterial routes into the town centre. Clemens Street is located within the town centre boundary as identified on the policies map of the Local Plan and is also identified as a 'retail area'.

The street accommodates a range of commercial activities including convenience stores, cafes, hairdressers, and Public Houses. The streetscene comprises buildings of varied ages and architectural designs. The application property is one of the smaller buildings limited to two storeys. The properties immediately adjacent are taller two storey and three storey buildings. At the rear of the property there is an external courtyard which appears to provide parking for the neighbouring commercial and residential uses.

## **PLANNING HISTORY**

There is no relevant planning history.

## **RELEVANT POLICIES**

- National Planning Policy Framework
- Warwick District Local Plan 2011-2029
- BE1 - Layout and Design
- BE3 - Amenity
- TR3 - Parking
- Guidance Documents
- Parking Standards (Supplementary Planning Document- June 2018)
- Royal Leamington Spa Neighbourhood Plan 2019-2029
- RLS3 - Conservation Area
- RLS16 - Royal Leamington Spa Town Centre

## **SUMMARY OF REPRESENTATIONS**

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

**Warwickshire Police:** No objection, subject to imposition of recommended safety measures.

**WDC CCTV:** No objection.

**WDC Health and Community Protection:** Objection, not satisfied that the development would provide adequate levels of amenity for nearby residential uses.

### **Public Response:**

13 support comments received on the following grounds:

- Adds variety to the Old Town by occupying a currently vacant unit
- Regenerates the street
- Little demand for uses alternative to the hospitality industry wanting to rent or lease retail outlets
- Location is suitable for a drinking establishment as it is close to the station
- South Leamington lacks bars for the community
- Small and family run businesses should be supported
- Would provide a valuable community asset

1 objection received from the occupier of the neighbouring unit on grounds that the late-night opening hours and anti-social behaviour/ litter associated with a drinking establishment would negatively affect their business.

## **ASSESSMENT**

### Principle of change of use

Significant support has received from members of the public in response to the proposed change of use to a drinking establishment. The location, close to the station and within the retail area, is considered appropriate for the proposed use. It is also noted that the unit is currently vacant, and its occupation would benefit the street.

Local Plan Policy TC3 (Safeguarding Existing and Potential Retail Floor Space) states that within town centre retail areas, change of use from uses within Use Class A (now superseded by Use Class E) will not be permitted except for within the defined Secondary Retail Areas, where hotels and assembly and leisure uses will be permitted subject to the restrictions within Policy TC7. The site is not located in a Secondary Retail Area.

The aim of Policy TC3 is to protect the shopping function of town centres by safeguarding existing and potential retail floorspace to ensure the availability of opportunities for future / continued investment. In the supporting text it is acknowledged that some uses defined as 'Sui-Generis' in the Use Classes Order may be appropriate in the retail areas of the town centres (such as nail bars and beauty salons). The introduction of such uses will be considered on a case-by-case basis. In each instance, it will be important for the use in question to maintain the characteristics of a retail outlet by having an active shop frontage (and normally incorporating an element of sales activity).

Since the adoption of Local Plan and Policy TC3, a new Use Classes Order has been published. The former Use Classes cited in Policy TC3, such as A1, A2 and A3, have now been combined into Use Class E. Drinking establishments have been moved out of the former Use Class A into Sui Generis. Approval of the application will lead to the loss of retail floor space and although the proposed change of use would not comply with Policy TC3 of the Local Plan, Officers are mindful that this policy was adopted prior to the amendment to the Use Class Order. The 2020 changes to the Use Class Order which effectively allows the loss of retail uses must be taken as a material consideration and have been afforded significant weight in favour of the proposal in as far as it relates to the loss of the retail use.

Officers are aware that Covid-19 has accelerated existing retail trends, as a result of changing consumer behaviour, and the role of town centres are changing. The changes to the Use Class Order in 2020 are in response to a government approach which seeks to provide greater flexibility to town centre business premises. The current lawful use of the shop is Use Class E meaning that its use could be changed to any other use falling within this class such as an office, clinic, bank or research and development. The retail floor space could therefore in theory be lost at any time. Policy TC3 of the Local Plan is therefore at odds with this legislation and it is considered unreasonable to resist a change of use for a typically found in the town centre based on the conflict with Policy TC3 alone.

The Local Plan recognises that town centres play an important part in supporting economic growth and encouraging investment, and that diversity in the town

centre attracts people to use its shops and services, supporting new investment and jobs. Officers consider that the change of use to a drinking establishment would ensure that the vitality of the town centre is maintained. The proposal is therefore deemed acceptable on the basis that it would meet the objectives of the Local Plan by supporting the functioning role of the town centre by providing a range of amenities and services to local residents.

Neighbourhood Plan Policy RLS16 relates to development in the Royal Leamington Spa Town Centre but its criteria is not considered relevant to the proposed change of use.

#### Amenity Considerations

Policy BE3 of the Warwick District Local Plan states that new development which has an unacceptable adverse impact on the amenity of nearby uses and residents will not be permitted

The adjoining neighbour at 26A Clemens Street has objected on grounds that the proposed change of use would negatively impact on their business. This is due to the late-night opening hours and the noise and litter associated with a drinking establishment.

The application site is located within an area of the town where there is a mix of uses including retail, offices and residential. The submitted application form indicates that the proposed drinking establishment seeks to operate from 18:00 to 01:00 on any day of the week. The applicant has set out in a supporting statement how the bar will be managed in order to protect the amenity of the neighbours; there will be no live entertainment on offer and music will be kept at a low level. They have offered to negotiate on opening and closing times, but would be looking to operate primarily in the evening hours. No cooking on site is proposed, limiting the amount of plant required.

The Council's Health and Community Protection department have been consulted and the Environmental Health Officer (EHO) has expressed strong concerns with the proposal. They have identified that Clemens Street is a relatively narrow road that forms a street canyon as it reaches the High Street and Bath Street junction. Their records show that there are several upper floor residential dwellings immediately adjacent to and opposite the application site. Their concerns stem from the fact that drinking establishments can present a number of noise issues including raised voices from customers arriving and leaving the premises at unsociable hours, general conversation, and amplified music from inside of the premises, customers congregating in external yard areas and pavements to smoke, as well as noise from refrigeration and air-cooling plant. The serving of alcohol also increases the potential for confrontations, arguments, and other anti-social behaviour in the vicinity of the premises.

The Noise Impact Report submitted by the applicant has been reviewed and the EHO has confirmed that the mitigation measures proposed are not sufficient to fully alleviate their concerns in relation to noise and disturbance. The sound insulation proposed to the separating wall and ceiling structures is not adequate for a commercial use located directly below a residential dwelling. Given that the

applicant has not precluded the possibility that the residential dwelling may be refurbished into a habitable residence at some point in the future, the reliance on ADE of the Building Regulations alone for this is unlikely to provide an acceptable living environment for the dwelling due to noise.

The applicant also proposes that the sound reduction performance of the separating walls can also be upgraded to reduce the noise impacts on adjoining residential and commercial properties. Again, this relies on the criteria of ADE which would not be sufficient for the proposed drinking establishment use.

Moreover, the submitted document does not demonstrate how external noise issues from the proposed drinking establishment will be mitigated to prevent a loss of amenity to adjacent residential properties. The applicant states that there will be no live bands or loud music at the premises and that it will not be managed like a club environment. For the purpose of the planning application, however, Officers must consider the proposed land use rather than how the initial applicant intends to operate the premises. Officers would not reasonably be able to enforce a Management Plan which seeks to control the behaviour of customers.

On the basis of the information provided, Officers do not consider that the applicant has provided sufficient evidence to demonstrate that the proposed land use can be effectively integrated without causing an unacceptable loss of amenity for existing residential dwellings. For this reason, the Environmental Health Officer maintains their objection to the proposal and the application would conflict with Policy BE3 of the Local Plan.

#### Heritage Considerations

Policy RLS3 of the Neighbourhood Plan relates to development affecting the conservation area and listed buildings and seeks to ensure that proposals respect their significance.

Section 72 of the Planning (Listed Buildings and Conservation Areas) 1990 imposes a duty when exercising planning functions to pay special attention to the desirability of preserving or enhancing the character of a conservation area.

Paragraph 199 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

Policy HE1 of the Warwick District Local Plan states that development will not be permitted if it would lead to substantial harm to or total loss of the significance of a designated heritage asset. Warwick District Local Plan Policy HE2 (Protection of Conservation Areas) states that development will be expected to respect the setting of Conservation Areas and important views both in and out of them.

The proposal does not propose any physical external changes to the premises, and it is therefore considered that there would be no material impact on the character and appearance of the conservation area. The application therefore complies with the aforementioned policies.

#### Parking

The application site is within the town centre and in accordance with the adopted Parking Standards SPD off street parking is not necessary.

### Other matters

The Designing Out Crime Officer for Warwickshire Police has recommended a series of security measures to be incorporated into the design of the drinking establishment to reduce the likelihood of staff, customers and nearby residents becoming victims of crime or anti-social behaviour:

- Roller shutters/grilles over the pedestrian access doors and windows
- All other external doors and windows to be certified to the required security rating
- Installation of CCTV

The Council's guidance leaflet for Increased Security for Retail Premises states that roller shutters, particularly those of a solid nature, have the most detrimental effect on the appearance of the shop of all forms of security on most types of retail premises whether in a High Street location, suburban centre or isolated retail unit. The guidance recommends an integrated approach to the design of shopfronts and security measures; stall rises of at least 600mm in height and glazing comprising small panes of glass rather than a single sheet are recommended in the first instance. Open grilles behind the shop front will also be supported where it can be demonstrated that integrated measures would not be sufficient.

Officers would not be supportive of external roller shutters over the external windows and doors unless it can be demonstrated that internal grille shutters and external grilles, in conjunction with the other security measures, would be inadequate to deter crime and antisocial behaviour. The applicant would need to demonstrate that criminal acts have been repeatedly committed for external shutters to be considered.

The guidance does not stipulate that drinking establishments are particularly vulnerable to crime but draws particular attention to jewellers. Officers are mindful that the premise could operate as an off-licence selling alcohol without planning permission where there would be large volumes of alcohol kept inside overnight. It is therefore considered reasonable to resist such measures such as this in the first instance whilst alternative options are explored in accordance with the Increased Security for Retail Premises guidance.

### **SUMMARY/CONCLUSION**

The application is recommended for refusal on the basis that it would conflict with Policy BE3 of the Local Plan.

### **REFUSAL REASON**

- 1 Warwick District Local Plan Policy BE3 requires all development to have an acceptable impact on the amenity of nearby users or residents.

In the opinion of the Local Planning Authority, it is considered that the proposed change of use from a shop to a drinking establishment would result in material harm to the living conditions of neighbouring residents by reason of unacceptable levels of noise disturbance and anti-social behaviour. The applicant has been unable to suitably demonstrate how these adverse impacts could be effectively mitigated. The proposal is thereby considered to be unneighbourly and contrary to the aforementioned policy.

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