

Planning Committee: 26 July 2011

Item Number:

Application No: W 11 / 0405

Town/Parish Council: Leamington Spa
Case Officer: David Cooper

Registration Date: 13/04/11

Expiry Date: 08/06/11

01926 456531 planning_east@warwickdc.gov.uk

Denby Buildings, Regent Grove, Leamington Spa, CV32 4NY

Demolition of rear wings, chimney breast and internal walls; demolition and rebuilding of dormer parapet and stone arch; alterations to elevations; refurbishment to provide 24 flats and 12 shops including new slate roofs and windows; erection of new shop fronts; provision of metal gates and car parking for 23 vehicles. Subsequently amended by W/96/0175: Variation of condition 13 of pp. W/95/1309 & 1310/LB (ground floor use solely for A1 retail use) to include A2 use (financial and professional services). FOR Mr R Moore

This application is reported to the Committee as it is a departure from policy TCP5 (Secondary Retail Frontages).

SUMMARY OF REPRESENTATIONS

Royal Leamington Spa Town Council: Raises no objection.

Conservation Area Advisory Forum: Concern was expressed that A2 use could include Betting Offices.

Public Response:

J Taplin - Support - We write in respect of the planning application above. We rent the unit at 3 Denby Buildings, Regent Grove & run from that unit a small coffee shop & sandwich bar. Since we took ownership in early 2009 the number of vacant commercial units adjacent to our premises has dramatically reduced. Denby Buildings alone has lost three businesses in the last eighteen months. This has had a significant effect on our takings to the point we are now operating at a loss.

We are hoping the change of use to the Denby Buildings units will bring some much needed trade to Regent Grove & enable our business to survive.

RELEVANT POLICIES

- TCP5 - Secondary Retail Areas (Warwick District Local Plan 1996 - 2011)
- DAP5 - Changes of Use of Listed Buildings (Warwick District Local Plan 1996 - 2011)
- DAP4 - Protection of Listed Buildings (Warwick District Local Plan 1996 - 2011)
- DAP8 - Protection of Conservation Areas (Warwick District Local Plan 1996 - 2011)

PLANNING HISTORY

W/95/1039/10LB - Demolition of rear wings, chimney breast and internal walls; demolition and rebuilding of dormer parapet and stone arch; alterations to elevations;

refurbishment to provide 24 flats and 12 shops including new slate roofs and windows; erection of new shop fronts; provision of metal gates and car parking for 23 vehicles.

Subsequently amended by W/96/0175: Variation of condition 13 of pp. W/95/1309 & 1310/LB (ground floor use solely for A1 retail use) to include A2 use (financial and professional services).

W/95/1039/10LB & W/96/0175 Subsequently amended by Town and Country Planning (general Permitted Development) Order 1995

KEY ISSUES

The Site and its Location

The site forms a terrace of Grade II Listed Buildings within the Royal Leamington Spa Conservation Area and sets the scene for the extended Regent Grove development as an integral part of the historic townscape with the Town Hall to the East. To the north Denby Buildings back onto Regent Court a predominantly retail pedestrianised area within Livery Street. The ground floor units of Denby Buildings are made up of a mix of retail type units used for A2 property services and A1 retail.

Details of the Development

The proposal seeks, through an application for the variation of a condition, to restore the flexibility of use granted in the alternate A1 plus A2 use that was superseded by the use classes order amendments to the Town and Country Planning (General Permitted Development) Order 1995 that brought that flexibility to an end after a period of 10 years.

Assessment

I consider the main issue relevant to the considerations of this application to be the conflict with policy; while within that issue there are material considerations:

- The precedent set in allowing the use of Denby buildings in the alternative A1 (Retail) and A2 (Financial and Professional Services).
- The ongoing vacancies within Denby Buildings and the impact of the vacancies on the historic asset.
- The need for flexibility and the in accordance with the ministerial statement "Planning for Growth".

The current situation and the precedent set

The ground floor units are comprised of 12 individually let units designed to accommodate both retail and professional services. The existing mix relates to 7 properties in Class A2 (Financial and Professional Services) or mixed use and 5 properties in A1 (Retail) use. Only 1 of 5 retail uses is occupied, compared to 4 out of 7 of the other uses being in fruitful occupation.

Planning Permission was granted in 1995 reference W/95/1309 for the units as A1 (Retail). A subsequent Variation of Condition allowed the alternate use of A2 (Financial and Professional Services). The units were able to move freely within the alternative A1 & A2 uses by virtue of the Town and Country Planning

(General Permitted) Development Order 1995 (GPDO) Schedule 2 Part 3 Class E until a period determined Class E1(b) had passed in this case 10 years. As the 10 year period has now passed, permission is needed for the change of use that would previously have been allowed.

The impact of vacancies on the Historic Assets

It is the case that the market forces within the Town Centre have historically dictated the viability of certain units within either class at the Denby Buildings, and that the recent down turn in the retail sector has hit this set of unique Historic Assets particularly harshly leaving 7 of the units vacant for a considerable period of time. As a consequence the façade of the Listed Buildings at ground floor level has suffered and is showing signs dilapidation with missing stone mouldings and unkempt shop fronts.

The impact to the levels of footfall along Regent Grove has caused concern for other incumbent retailers and the rigidity of the GPDO restriction in this case has done little to support the vibrancy of Regent Grove. The appearance of empty units represents the real loss of occupation and fails to maintain vibrancy of these historic assets. While I note the comments made during the life of this application in relation to betting offices, I consider that it would be inappropriate to restrict the A2 uses by condition in this instance.

Planning for growth

The ministerial statement "Planning for Growth" states *inter alia* that,

"local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development... consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies (which may, where relevant, include matters such as job creation and business productivity)".

Much of the statement relates to strategic policy however, there is a direct assertion that planning authorities should be more flexible in applying restrictive policies to development that would create jobs and support business productivity.

Policy

Warwick District Policy TCP5 allows for movement between uses within the A Class defined in the Use Classes Order 1972 (as amended) subject to qualifications. It is the case that it is the previous permission that led to the existing position where a natural balance had been established in relation to uses, even though that precedent would under the current policy be, without restriction, contrary to the aforementioned policy.

Material Considerations

It is generally accepted that an uncontrolled mix of A Class uses in secondary retail areas would have a harmful effect on the vitality and vibrancy of a town centre, and it is for this reason that the restrictions within TCP5 apply to application of this type.

The Planning and Compulsory Purchase Act 2004 (as amended) provides that decisions should be made in accordance with the development plan save where material considerations indicate otherwise. This is reinforced in The Planning System: General Principles at paragraph 7, which states that,

"The statutory Development Plan will continue to be the starting point in the consideration of planning applications for the development or use of land, unless material considerations indicate otherwise..."

These terrace buildings are tall and have a presence within this part of the Town Centre within the Royal Leamington Spa Conservation Area. Whilst they are Grade II Listed I consider that they are at risk of being disproportionately affected by the lack of economic stimulus in the current niche retail market that the Denby Buildings units were designed to cater for in the 1990's.

In assessing the current mix of uses it is clear that there had been a natural balance although clearly both existing A1 and A2 units have been affected by long term vacancies with 58.3% of the frontage vacant.

Address	Current or Last Use	Occupied	Outside A1 Retail
1 Denby Buildings	A1/A3	Yes	
4 Denby Buildings	A2	No	
9 Denby Buildings	A1	No	
10 Denby Buildings	A2	Yes	
16 Denby Buildings	A1	No	
19 Denby Buildings	A1	No	
22 Denby Buildings	A2	Yes	
23 Denby Buildings	A1	Yes	
28 Denby Buildings	A2	No	
29 Denby Buildings	A2	Yes	
34 Denby Buildings	A1	No	
37 Denby Buildings	A2	No	

I consider that there is a persuasive mitigation of the harmful effects of this type of alternative use in this individual case; however, I am minded that such a broad acceptance of flexibility could be damaging to the Town Centre economy. Given the history of the refurbished Listed Heritage Assets granted consent historically for use in the A1/A2 alternative, the unexpected restriction of the GPDO (clearly not in the mind of the local authority at the time of granting that consent) and the prolonged period of disuse and impact of empty vacant units in Denby Buildings within Regent Grove and the wider conservation area, coupled with the ministerial direction, I am minded to recommend that (in this uniquely individual case) the material considerations indicate that a more flexible approach should be applied to this application.

RECOMMENDATION

GRANT – Variation of condition 13 of pp. W/95/1309 & 1310/LB (ground floor use solely for A1 retail use) to include A2 use (financial and professional services).

INFORMATIVES

For the purposes of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the following reason(s) for the Council's decision are summarised below:

In the opinion of the District Planning Authority, the proposed development does not adversely affect the historic integrity, character or setting of the listed building, is of an acceptable standard of design and detailing and preserves the character and appearance of the Conservation Area within which the property is situated and does not give rise to any harmful effects in terms of impact on the vibrancy and vitality of the town centre, which would justify a refusal of permission. The proposal is therefore considered to comply with the policies listed.
