

Planning Committee: 14 January 2014

Item Number: 9

Application No: W 13 / 1603

Town/Parish Council: Leamington Spa

Registration Date: 14/11/13

Case Officer:

Rob Young

Expiry Date: 09/01/14

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135 Regent Street, Leamington Spa, CV32 4NX

Removal of condition 3 of planning permission no. W12/0241 (condition 3 requires 10% on-site renewable energy production). FOR Midland Assured Developments LLP

This application is being presented to Committee due to an objection from the Town Council having been received.

RECOMMENDATION

Planning Committee are recommended to GRANT planning permission for the removal of this condition.

DETAILS OF THE DEVELOPMENT

This application proposes the removal of condition 3 of planning permission no. W12/0241. This planning permission authorised the change of use of the ground floor of the application property to a restaurant / cafe (Use Class A3). Condition 3 requires 10% of the predicted energy requirements of the proposed restaurant / cafe to be produced on or near to the site, from renewable energy resources.

THE SITE AND ITS LOCATION

The application site comprises a three-storey unlisted building situated on the northern side of Regent Street. The site is within Leamington Town Centre and the Leamington Spa Conservation Area. The surrounding area is predominantly commercial and the site is within an area designated as a secondary retail area in the Local Plan. The application relates to the ground floor of the premises, which is currently vacant but has planning permission for use as a hot food takeaway. The upper floors of the building are in separate residential use.

PLANNING HISTORY

There have been a number of previous planning applications relating to the application site. The most recent of these was granted planning permission in 2012 for "Demolition of rear portion of existing retail unit; division of existing retail unit into 4 no. retail units and change of use of Unit 2 to a restaurant / cafe (Use Class A3) and change of use of Unit 3 to a hot food takeaway (Use Class A5); erection of single storey rear extension; installation of new shopfronts; and installation of extraction flue encased in brickwork to rear" (Ref. W12/0241). This

planning permission authorised the change of use of No. 135 Regent Street from a shop (Use Class A1) to a restaurant / cafe (Use Class A3). Prior to that a number of planning permissions were granted for changes of use and alterations to the application property and the erection of a new build residential development to the rear.

RELEVANT POLICIES

- Sustainable Buildings (Supplementary Planning Document - December 2008)
- DP13 - Renewable Energy Developments (Warwick District Local Plan 1996 - 2011)

SUMMARY OF REPRESENTATIONS

Town Council: Object. In the absence of an appropriate viability assessment, the Council can find no good reason for the removal of Condition 3.

Public response: The occupier of The Bed Factory has objected on the grounds that the renewable energy requirements were agreed by the applicant when the original application was submitted and should be retained.

ASSESSMENT

The main issue relevant to the consideration of this application is whether or not it would be appropriate to require 10% renewable energy production as a condition of permitting the proposed change of use.

The applicant has advised that the cost of meeting the renewable energy requirements would be £10,000. They consider that this would be unviable for the size of the unit, given that the rent is only £16,000 per annum. The applicant advises that the property has been vacant for some considerable time and that they now have a couple who wish to occupy the property but they fear that this disproportionate cost will kill the deal.

Local Plan Policy DP13 states that, in appropriate residential and non-residential developments, including conversions, the Council will require 10% of the predicted energy requirements to be produced on site, or in the locality, from renewable energy resources. Section 4 of the Council's Sustainable Buildings Supplementary Planning Document outlines the circumstances where it may be accepted by the Council that it is not appropriate to require 10% renewable energy production. This includes: (iii) where it can be demonstrated that implementing renewables would not be financially viable and would undermine the delivery of the development.

In assessing the viability of the renewable energy requirements in this case, it is important to have regard to the fact that the premises have been vacant for a very long time (since 2005). The applicant has invested a significant amount of money to upgrade the premises and these works were completed in October 2012. However, the premises have remained vacant for more than a year since these works were completed. There is now a prospective occupier for the

property, but the renewable energy requirement is jeopardising this deal. This is a small unit, and the cost of meeting the renewable energy requirement would be over 60% of the annual rent that the unit will generate. Given the length of time that the unit has been vacant, even after the significant upgrade that was undertaken by the applicant, it is considered that this represents clear evidence that the renewable energy requirements would render the proposed change of use unviable. Furthermore, securing the occupation of this long term vacant unit would benefit the vitality and viability of the Town Centre.

SUMMARY / CONCLUSION

It is considered that implementing the renewable energy requirement would not be financially viable in this case and would undermine the delivery of the development. Therefore it is recommended that planning permission is granted for the removal of this condition.

CONDITIONS

- 1 The permission hereby granted shall relate strictly to the details shown on the approved drawing(s) 2661-226C, 2661-227B, 2661-500, 2661-501A, 2661-502, 2661-503A, 2661-504 & 2661-505, and specification contained therein, submitted on 8 March 2012, 18 April 2012 & 20 April 2012 (in relation to planning application no. W12/0241). **REASON:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 2 The restaurant/cafe and hot food takeaway hereby permitted shall not be first occupied unless and until:
(a) satisfactory details of a noise insulation scheme to minimise transmission of noise and vibrations from the extraction equipment / flue and between the ground floor restaurant/cafe and hot food takeaway unit and the upper floor residential accommodation have been submitted to and approved by the District Planning Authority; and
(b) the approved noise insulation scheme has been implemented in strict accordance with the approved details. **REASON:** In the interests of the amenities of nearby residents, in accordance with the objectives of Policy DP2 of the Warwick District Local Plan 1996-2011.
- 3 The rating level of the noise emitted from activities or equipment on the premises shall not exceed the existing background noise level at any time, when measured one metre from the facade of any noise sensitive property, by more than 3dB(A) (measured as LAeq (5 minutes)), when measured and corrected in accordance with BS 4142: 1997. If the noise in question involves sounds containing a distinguishable, discrete, continuous tone (whine, screech, hiss, hum etc) or if there are discrete impulses (bangs, clicks, clatters, thumps etc) or if the noise is irregular enough to attract attention, 5dB(A) shall be added to the measured level. **REASON:** To protect the amenities of surrounding properties, in accordance with Policy DP9 of the Warwick District Local Plan 1996-

2011.

- 4 All external facing materials for the development hereby permitted shall be of the same type, texture and colour as those of the existing building. **REASON:** To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policy DP1 of the Warwick District Local Plan 1996-2011.
 - 5 All window and door frames and the new shopfronts shall be constructed in timber and shall be painted and not stained. **REASON:** To ensure an appropriate standard of design and appearance within the Conservation Area, and to satisfy Policy DAP8 of the Warwick District Local Plan 1996-2011.
 - 6 All rainwater goods for the development hereby permitted shall be metal. **REASON:** To ensure an appropriate standard of design and appearance within the Conservation Area, and to satisfy Policy DAP8 of the Warwick District Local Plan 1996-2011.
 - 7 The restaurant/cafe, hot food takeaway and the extensions hereby permitted shall not be first occupied unless and until the bin storage area has been provided in full accordance with the approved plans. The bin storage area shall be retained and kept available for the storage of refuse for the retail units at Nos. 131-137 Regent Street at all times thereafter, unless agreed otherwise in writing by the District Planning Authority. **REASON:** To protect the amenities of occupiers of the site and the character and appearance of the locality, in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
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