

**Planning Committee:** 01 November 2006

**Item Number:**

**Application No:** W 06 / 1349

**Registration Date:** 21/08/06

**Town/Parish Council:** Leamington Spa

**Expiry Date:** 16/10/06

**Case Officer:** John Beaumont

01926 456533 [planning\\_east@warwickdc.gov.uk](mailto:planning_east@warwickdc.gov.uk)

**45 Warwick Street, Leamington Spa, CV32 5JX**

Proposed alterations to shopfront and formation of roof terrace enclose by new pitched roof (re-submission W06/1077) FOR Mr P Akhter

-----

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

**SUMMARY OF REPRESENTATIONS**

**Town Council:** Object. The proposed roof terrace is of a design considered inappropriate to the Conservation Area.

**Neighbours:** None received.

**Head of Environmental Health:** No comment.

**CAAF:** It was felt that subject to the roof hiding the activity on the roof and there being sufficient noise baffling to contain any noise from the roof, this would be acceptable in this instance and a visual improvement.

**Warwickshire Police:** An initial objection was received from the Town Centre Sergeant on the following grounds:-

"With regards to the application for the roof gardens. Following our meeting, I would agree with Pete Cutts' comments. As Town Centre Sgt I would object to the application for following reasons:-

1. Also from seeing the plans it would be safe to assume that the capacity of the premises would increase by an excess of 100 persons, subject to fire regulations. Warwick St is subject to the Special Policy with regards to saturation zone, where in particular Warwick St is extremely saturated with license premises already.
2. The latest Crime and Disorder analysis that was conducted in Apr 06, showed that hotspots for such incidents had moved, creating Warwick St in the location of the licensed premises as a new hotspot.
3. The design of the Roof Garden, does go some way to prevent anyone seeing inside, and prevent disorder from the garden into the street, but on the other side it prevents any control by police for licensing conditions due to it being totally obscured from view. (catch 22)
4. The design of the roof garden allows access to it from all three floors of existing premises, i.e. Bar, Restaurant and Function Room, making this totally uncontrollable for staff."

A further communication from Warwickshire Police now raises no objection and states:-

"Should the Planning Authority grant this application, we would ask that the following conditions be placed on the development, taking account of Section 17(1) Crime and Disorder Act, PPS1 Complement Safer Places, and Policy DP13 of the Warwick District Local Plan.

- No usage after 2300 hrs
- Maximum limit of 50 persons to be present in this area when open
- No bar to be installed in this area at any time."

**W.D.C. Community Safety/Sustainability Manager:** I am concerned that nuisance could ensue from the roof garden although I accept the design should limit this. I believe enforcing the 11 pm closure will be problematic and, therefore, is likely to be abused. (N.B. There will be a presumption under licensing against an increase in capacity of a licensed premises within Saturation Zone A).

### **RELEVANT POLICIES**

- (DW) ENV3 - Development Principles (Warwick District Local Plan 1995)
- (DW) ENV6 - Protection and Enhancement of Conservation Areas (Warwick District Local Plan 1995)
- (DW) ENV8 - New Development within Conservation Areas (Warwick District Local Plan 1995)
- 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)
- DAP10 - Protection of Conservation Areas (Warwick District 1996 - 2011 Revised Deposit Version)
- General Government guidance on town centres is contained in PPS6 Town Centres and Retail Developments" and in "Safer Places, The Planning System and Crime Prevention" (ODPM 2003).

### **PLANNING HISTORY**

The following applications are considered of particular relevance:-

Planning permission for the conversion of this building (formerly an estate agents/health club to 2 restaurants on the ground/first floor, a function room on the second floor with a new pitched roof, 2 bedroomed flat on the third floor was granted on 28th May 2003, reference W20030351. Subsequently, planning permission W061079 granted a variation of Condition 10 of that permission to allow the premises to open until 3 a.m. on Thursday, Friday, Saturdays and Bank Holidays.

An application to construct a fenced enclosure on the roof of the building was withdrawn, application W061077.

## **KEY ISSUES**

### **The Site and its Location**

This building is located at the junction of Tavistock Street and Warwick Street. It is a non-listed building in the Conservation Area which has recently been renovated following the grant of permission W20030351 referred to in the Planning History above; the third floor flat has not been constructed and presently the building is flat roofed with a parapet and a brick finished lift housing. There are other restaurants/pubs and bars and flats within this locality.

### **Details of the Development**

This is an amended proposal to erect a mono pitch roof on the existing flat roof to the frontages to Warwick Street and Tavistock Street to match the angle of the pitched roof on the adjacent building on Warwick Street. These mono pitches would have a ridge height of 2.7 m above the height of the existing roof terrace and would enclose an open area in the centre of the existing roof area; this would be enclosed by screen walls to the same height on its northern and western sides. This enclosed roof terrace area would be accessed via stairs from the existing stairwell within the building; it would also include an enclosed 'plant' area for air conditioning equipment on this flat roof area. The submitted plan shows the roof terrace to be laid out with tables and chairs with no other structures or buildings proposed.

In support of the application, the applicants agent has commented:-

"My Client along with other owners of licensed premises within the town has concluded that in order to protect the viability of his business, measures are urgently required to adapt the premises ready for the introduction of the 'smoking ban' in 2007 and provide an outside seating area popular with customers at local rival establishments.

Having no outside area at ground floor level, my Client decided the only practical alternative would be the provision of such a space at roof level.

The submitted proposals show the formation of a pitched roof to the Warwick Street and Tavistock Street elevations and the party wall abutment with no. 54 Tavistock Street. A parapet wall enclosure would be provided along the boundary with no. 43 Warwick Street forming an enclosed roof terrace space.

The introduction of a pitched roof to this prominently positioned building would greatly enhance the Conservation Area and complete the improved elevational detailing recently undertaken.

The roof terrace would not be visible from any frontage and by the nature of its enclosure at such a level any potential nuisance would be minimal compared with similar proposals at ground level.

The property is currently serviced by a lift to each of its present three levels in full compliance with Building Regulation Part 'M'. An existing staircase with half

landings and handrails fitted to each side would provide access to the proposed roof terrace."

A further letter has also been submitted by Solicitors acting on behalf of the applicant to seek to address the initial concerns expressed by Warwickshire Police and the Community Safety Officer. This states:-

"1. It appears that your primary concern is that there will be an increase of numbers in the premises. That will certainly not be the case and it has been agreed with the Police, subject to planning and licensing, that there will be no more than 50 persons in the proposed roof garden area. It is a pity that the new plans are not yet to hand as they clearly demonstrate how the proposed licensed areas are reduced by such things as fixed seating and the new fire escape which we pointed out has been installed in the left hand corner as one looks at the premises from Warwick Street.

2. It has again been agreed between our client and Warwickshire Police that 42 cameras will be installed at the premises in positions already discussed. By way of clarification these will be both inside and outside the premises and in particular in the area of the roof garden and their specification is to the local police's requirements.

3. So far as this application is concerned I believe it is unique in the context of Leamington Spa and the nearest one I know is the Hole in the Wall in Union Street in Stratford upon Avon, although that is much smaller. I do not see there is any problem with allowing this one through as it would not create any sort of precedent and as all applications have to be dealt with on their individual merits.

4. You were concerned about "policing from the street". That would have been precisely the same situation with the function room on the second floor and the proposed restaurant area on the first floor so we do not see that as a problem.

5. If this application is successful, so far as planning is concerned it would not undermine the licensing objectives.

6. Notwithstanding Section 17 of the Crime & Disorder Act 1998 planning decisions do not generally take into consideration matters of crime and disorder.

7. It will be seen that the Environmental Health Officers, Building Control Offices and the Fire Service are quite happy with this application and therefore it would appear to meet the fears about noise and disorder and public safety."

### **Assessment**

Clearly this is an unusual proposal to create an enclosed roof terrace within the Conservation Area, to be used in association with the operation of the commercial activities in the balance of the building (i.e. the function room on the second floor and the restaurant and bar on the ground/first floor).

With regard to the physical impact of this proposal on the design of this building and the character and appearance of the Conservation Area, I consider that it would be wholly acceptable and indeed by giving the building the appearance of having a pitched roof when viewed from Warwick Street and Tavistock Street, it

would be an enhancement. Subject, therefore, to the imposition of a condition to ensure that any equipment or planting on the roof terrace did not exceed the ridge height of the proposed mono pitch roof, I consider there would be no grounds for raising objection on the grounds of physical impact.

At the present time, this flat roof is accessible from within the building and in the absence of any restrictive conditions on the original permission for the change of use of this building (W20030351) there are no restrictions under planning law which would prevent its use ancillary to other activities permitted within the building. Clearly, however, the proposed works, the subject of this application, will facilitate the more intensive use of the roof area by the public.

Government guidance in PPS6 states local planning authorities should manage the evening and night time economy in town centres, encouraging a range of complementary evening and night time economy uses which appeal to a wide range of age and social groups, whilst taking account of the cumulative impact on the character and function of the centre, anti-social behaviour, crime and the amenities of nearby residents. It is also stated that there should be an integrated approach to the night-time economy so that planning policies and proposals take account of and complement their Statement of Licensing policy and the promotion of the licensing objectives under the Licensing Act 2003.

The District Council's 'Statement of Licensing Policy' has identified a zone within the town centre (Zone A) where the Licensing Authority will have particular regard to the cumulative impact of licences; this site lies within 'Zone A'. In this instance, however, licences have already been granted for these premises and an application for the extension of the licence to permit the premises to open to 12.30 a.m. on Sunday, Monday, Tuesday and Wednesday and 3.30 a.m. on Thursday, Friday and Saturday and from New Years Eve morning until New Years Day night was granted on 9th August 2006. No objections to the extension of this licence were raised by either Warwickshire Police or the Head of Environmental Health subject to conditions on the licence.

Subsequently, as set out in the Planning History section of this report, the planning condition restricting the hours of opening of the premises within this building was relaxed to allow the premises to open until 3.00 a.m. on Thursday, Friday, Saturday and Bank Holidays.

In this context, where the balance of this building has both a planning permission and licence for use as part of the town centre evening and night-time economy, and taking account of the fact that no objection has been received from the Head of Environmental Health and the further comments from Warwickshire Police, then whilst being mindful of the concerns expressed by the Community Safety Manager and the need to ensure new development does not unacceptably increase the risk of crime, I do not consider an objection on planning grounds could be sustained to the use of the roof terrace as an outdoor area, used solely ancillary to the permitted use within this building and subject to a condition restricting its use to between the hours of 8.00 a.m. and 11.00 p.m. Other issues relating to the possible siting of a bar on the roof terrace would in my view be more appropriately dealt with under licensing legislation.

## **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 Numbers 621-03B and 04C, and specification contained therein, deposited with the District Planning Authority on 27th September 2006 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 Samples of all external facing materials to be used for the construction of the development hereby permitted, shall be submitted to and approved by the District Planning Authority before any constructional works are commenced. Development shall be carried out in accordance with the approved details. **REASON** : To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policy ENV3 of the Warwick District Local Plan.
- 4 No sound amplification, tannoy or speaker system shall be installed on any part of the roof terrace the subject of this permission. **REASON** : To protect the amenities of residents in this locality and the character of the Conservation Area in accordance with Policies ENV3 and ENV6 of the Warwick District Local Plan 1995.
- 5 No structure or equipment of any description shall be installed on the roof terrace which exceeds the height of the ridge of the roof on the terrace hereby permitted. **REASON** : To protect the character and appearance of the Conservation Area in accordance with Policy ENV6 of the Warwick District Local Plan 1995.
- 6 No planting placed on the roof terrace shall at any time be higher than or allowed to grow to a height which would exceed the height of the ridge of the roof on the terrace hereby permitted. **REASON** : To protect the character and appearance of the Conservation Area in accordance with Policy ENV6 of the Warwick District Local Plan 1995.
- 7 No lighting shall be installed on any part of the roof terrace hereby permitted other than in accordance with details first submitted to and approved in writing by the District Planning Authority. **REASON** : To protect the character and appearance of the Conservation Area in accordance with Policy ENV6 of the Warwick District Local Plan 1995.

- 8 The roof terrace shall be open to the public solely between the hours of 8.00 a.m. to 11.00 p.m. **REASON** : To protect the amenities of residents in this locality, the character of the Conservation Area and to ensure that the operation of the roof terrace does not give rise to the potential for noise and disturbance within this part of the Town Centre, in accordance with Policies ENV3 and ENV6 of the Warwick District Local Plan.
  
- 9 The roof terrace hereby permitted shall be used solely ancillary to the uses permitted within No. 45 Warwick Street and for no other purposes whatsoever. **REASON** : For the avoidance of doubt and to protect the amenities of nearby residents and the character of the Conservation Area in accordance with Policies ENV3 and ENV6 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 development achieves acceptable standards of layout and design and does not give rise to any harmful effects in terms of impact on the amenities of nearby residents, the character and appearance of the Conservation Area or the vitality/viability of the Town Centre which would justify a refusal of permission. The proposal is therefore considered to comply with the policies listed.

-----