

**Application No:**W11 / 0320

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Sandip Sahota

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**Registration Date:**30/03/11  
**Expiry Date:**15/06/11

**73 Warwick Street, Leamington Spa, CV32 4RR**

Application for extension of time limit for implementation of planning permission W/04/1111 for part demolition of existing building and construction of alterations to provide retail storage and fire escape in basement, retail on ground floor and 18no. flats above. FOR Alveston Developments Ltd

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This application was previously presented to Committee on 27 November 2012 and was granted, subject to conditions and the completion of a s.106 legal agreement to secure contributions for libraries, open space and welcome travel packs. In addition, the legal agreement was to ensure that the future occupiers of the proposed flats would not be able to apply for residents parking permits, thereby effectively creating a car free development.

However, during the preparation of the legal agreement it has become apparent that the future occupiers of the proposed flats would still be entitled to parking permits and would be issued with them if they applied. In light of this, the wording of the legal agreement, which merely states that 'best endeavours' shall be made to prevent future occupiers applying for permits, is considered inadequate and potentially not fit for the purpose it was intended.

It is considered that a more appropriate and effective measure would be to impose a Grampian condition prohibiting first occupation of the development until such time that a TRO (Traffic Regulation Order) has been made by the County Council to remove the development from the Residents' Parking Zone (RPZ) which would mean the future occupiers would not be entitled to apply for parking permits. The fee for the TRO would need to be borne by the applicants and this would be secured by an additional obligation in the S.106 agreement.

**RECOMMENDATION**

Planning committee are recommended to amend their previous resolution and to grant planning permission, subject to conditions including a Grampian condition relating to the TRO and the completion of a Section.106 Legal Agreement including an additional obligation relating to the TRO fee. Failure to complete the agreement by 31 March 2013 may result in planning permission being refused.

**DETAILS OF THE DEVELOPMENT**

The proposed development contains the following elements:-

- The demolition of the older elements of the building onto Oxford Row and to the rear of the principal 'modern' building.

- The construction of new extensions to provide ground floor retail accommodation with a communal 'deck' above for the flats together with means of fire escape to Oxford Row.
- The retention of storage in the basement, retail on the ground floor and retail on the first floor (in part);
- The formation of 2 flats at the first floor, 6 on the second floor, 6 on the third floor and 4 on the fourth floor (i.e. a total of 18 flats).
- The construction of these flats will entail an extension to the building fronting Oxford Row, the insertion of new windows to all facades, the rendering of the building and the creation of a new mansard roof with dormer windows; the design of the roof has been amended to further reduce its height and amend the design of the dormers.

## **THE SITE AND ITS LOCATION**

The site occupies a prominent corner location in the Royal Leamington Spa Conservation Area at the junction of Warwick Street, Oxford Street and Oxford Row. It has a frontage to each of these streets and 'wraps around' listed buildings fronting onto Warwick Street. The building comprises an 'L' shaped modern building on the street frontages with an older lower building behind. This modern building has arches on the ground floor with shop windows and a largely blank, tiled elevation above to Warwick Street and Guy Street, with windows to Oxford Row; it presently has a flat roof. The building currently has a basement storage area with retail on ground and first floor; the second floor and this floor are now used for storage and staff facilities. To the north of the site is the Chandos Street public car park.

## **PLANNING HISTORY**

Planning permission for "part demolition of existing building, construction of alterations and extensions to provide retail storage and fire escape in basement, retail on ground floor with 18 flats above" was granted, subject to conditions and a legal agreement, in April 2006. The current application has been made to extend the life of this permission by a further 5 years.

A previous application for the part demolition of this building, alterations and extensions to provide retail storage and fire escape in basement, retail on ground floor with 22 flats above was withdrawn in March 2004.

## **RELEVANT POLICIES**

- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP3 - Natural and Historic Environment and Landscape (Warwick District Local Plan 1996 - 2011)
- DP8 - Parking (Warwick District Local Plan 1996 - 2011)
- DP11 - Drainage (Warwick District Local Plan 1996 - 2011)
- DP12 - Energy Efficiency (Warwick District Local Plan 1996 - 2011)
- DP13 - Renewable Energy Developments (Warwick District Local Plan 1996 - 2011)
- SC13 - Open Space and Recreation Improvements (Warwick District Local Plan 1996 - 2011)
- Open Space (Supplementary Planning Document - June 2009)
- Sustainable Buildings (Supplementary Planning Document - December 2008)

- Vehicle Parking Standards (Supplementary Planning Document)
- UAP1 - Directing New Housing (Warwick District Local Plan 1996 - 2011)
- National Planning Policy Framework
- TCP2 - Directing Retail Development (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)
- DAP9 - Unlisted Buildings in Conservation Areas (Warwick District Local Plan 1996 - 2011)
- DAP6 - Upper Floors within Listed Buildings and Conservation Areas (Warwick District Local Plan 1996 - 2011)
- SC11 - Affordable Housing (Warwick District Local Plan 1996 - 2011)
- Affordable Housing (Supplementary Planning Document - January 2008)

## **SUMMARY OF REPRESENTATIONS**

**Royal Leamington Spa Town Council:** "An objection is raised for the following reason: the lack of on-site parking does not comply with the current SPD on car parking provision for a development of this size".

**Warwickshire Police:** No objection.

**WCC Highways:** No objection.

**WCC Ecology:** Recommend bat note is applied to any approval granted.

**Cultural Services:** "Recommend to apply the Open Space SPD to this planning application for an offsite capital contribution. The address for the planning application site has several green spaces within a 500m accessibility threshold that could be considered local green spaces. These include Clarendon Square, The Dell, Stamford Gardens and Kennedy Square. In the most recent quality assessment of these sites, they scored average or below the Warwick District Average for quality. Some of these green spaces have development plans for enhancements and require further funding. There are also several strategic greenspaces within 1km of the development site, that are also of average quality and require further improvements. An offsite contribution will support the improvements to any one of these sites. It is intended that these improvements would be complete within the next 5 years, and therefore when the contribution will be spent.".

**Private Sector Housing:** "The proposals for residential accommodation have now been assessed, and whilst the proposals do not constitute a HMO (being only 1 and 2 bedroom flats), have applied standards as outlined by the C.I.E.H. for habitable accommodation. In these circumstances the standard indicates, that a bedroom of less than 10m<sup>2</sup> is only suitable for single occupancy. Each flat is self-contained and therefore has sufficient kitchen and bathroom facilities. Ideally, windows to habitable rooms should measure 10% of the floor area of the room concerned for natural light purposes with an opening section measuring not less than 1/20<sup>th</sup> for adequate ventilation. All habitable rooms should have fixed space heating, additionally this extends to bathrooms".

**Housing Strategy:** "In terms of affordable housing the local plan policy SC11 applies. SC11 requires developments in urban areas of 10 or more dwellings to provide a minimum of 40% affordable housing. The Council's priority is for on-site provision however, where this cannot be delivered consideration will be given to off-site provision or the payment of a commuted sum. Having considered the proposals, to comply with policy SC11 7 of the 18 proposed dwellings would need to be affordable. However, the applicant has advised that the provision of affordable housing would make the scheme financially unviable. In line with the Council's policies the applicant has disclosed the full financial appraisal to Housing Strategy which has been independently assessed and verified. Housing Strategy are satisfied that it would render the scheme unviable if affordable housing was to be required from the scheme. Housing Strategy therefore do not object to the proposals".

## **Assessment**

The main considerations in the determination of this application are:

1. The principle of residential use and affordable housing.
2. Contributions required for education, libraries and travel packs.
3. The effect of the proposed development on the Conservation Area and the setting of nearby Listed Buildings.
4. The effect of the proposed development on the amenity of occupiers of nearby properties and whether it would provide adequate amenity for future occupiers of the development.
5. Loss of retail floorspace.
6. Parking
7. Renewables
8. Refuse
9. Ecology
10. Open space

### Principle of residential use and provision of affordable housing:

In terms of the principle of residential use within this previously developed site within the Town Centre, the proposal is in accordance with Policy UAP1 of the Local Plan. There have been no material changes in both on site circumstances or Local and National Planning Policy since the previous approval in 2006 and it is therefore considered that the proposal is acceptable in principle.

No affordable housing provision was secured in the previous approval because whilst the 18 units proposed was above the threshold of 15 contained in the draft local plan policy at the time, as a result of the limited weight which could be attached to the policy, it was concluded that provision of affordable housing could not be required.

The current situation is that Policy SC11 of the adopted Local Plan requires developments in urban areas of 10 or more dwellings to provide a minimum of 40% affordable housing. However, the applicant has submitted a financial viability appraisal to the Council which has been independently assessed and verified. Housing Strategy are satisfied that the requirement for affordable housing would render the scheme unviable. Whilst the development doesn't comply with Policy SC11, it is considered that a departure from the Local Plan in this regard can be justified in the interests of the viability of sustainable

development in accordance with paragraph 173 of the NPPF. It is therefore considered that the proposal can be supported without the requirement for any affordable housing.

#### Contributions:

The previous application was granted subject to a legal agreement requiring the following contributions, as requested for by the County Council:

£10,200 – education

£1,612 – Libraries

£990 – Welcome Travel Packs

The County Council have been consulted on the current application. In terms of education, they have advised that the development would generate a requirement for three primary aged children and two secondary aged children which could be accommodated at this time in local schools. Accordingly, no education contributions have been requested. However, it is considered appropriate to carry forward the request for the other two contributions.

#### The effect of the proposed development on the Conservation Area and the setting of nearby Listed Buildings:

This issue was assessed in the previous application and found to be acceptable and CAF have responded to the current application accordingly. There have been no material changes in on site circumstances or planning policy to reach a different conclusion. The proposal is therefore considered to comply with policies DAP4 and DAP8 of the Local Plan.

#### The effect of the proposed development on the amenity of occupiers of nearby properties and whether it would provide adequate amenity for future occupiers of the development:

There have been no material changes in either on-site circumstances or planning policy in this respect. Environmental Health raised no objection to the previous application, subject to adequate soundproofing relating to road noise and adequate noise separation between residential and retail activities. Whilst Environmental Health have not commented on the current application, it is considered reasonable to conclude that the proposal would be acceptable in terms of living conditions subject to the same conditions imposed on the previous approval.

#### Loss of retail floorspace:

At the time the previous application was determined there was a general policy presumption against the loss of town centre retail floor space. Whilst the proposal clearly involves the loss of retail floorspace at the first floor, planning permission was granted on the basis of the benefits the scheme would bring to the ground floor retail area and operation of storage in the basement. It was also considered that the loss of retail floorspace should be balanced against the bringing of the upper floors of the building into active use and the wider benefits to the character and appearance of this building and the wider Conservation Area and that the net loss of 166 sq. m. of retail floorspace contained within the scheme would justify the refusal of this application.

The general policy presumption against the loss of town centre retail floor space remains in the adopted Local Plan and the NPPF. However, it is considered that there has been no material change in circumstances since the previous approval which would lead to a different approach in this case.

#### Parking:

The scheme cannot and does not include any provision for off-street car parking or cycle parking to serve either the retail floorspace or the proposed flats. The Council did not have any adopted parking standards at the time of the previous approval and this is one area of planning policy which has materially changed since the previous approval. The Council now has adopted parking standards. However, as the site is located within the commercial core of the Town Centre where there are adequate on-street controls, it is considered that it would be appropriate to grant planning permission, subject to a condition which prevents parking permits being allocated to occupiers of the proposed flats, thereby effectively creating a car free development which will not result in harm to highway safety or the amenity of the occupiers of nearby properties. This can be secured by a legal agreement.

In terms of servicing, this would remain, as present, off Oxford Row. The Highways Authority have not raised any objections to either the previous application or indeed the current one.

#### Renewables:

Policies DP12, DP13 and the Sustainable Buildings SPD did not form part of the Development Plan at the time of the previous approval, but must be considered as part of the current application. A Sustainable Buildings Statement has been submitted with this application which discounts various technologies and concludes that solar thermal / solar pv are considered to be viable options to provide 10% of the energy requirement of the development. However no drawings, technical details or calculations have been provided and therefore it is considered that a pre-commencement condition requiring these details will be necessary in this case. In terms of the potential impact of solar panels on the Conservation Area, this is a modern building and it is considered that it will not result in material harm to the character or appearance of the Conservation Area.

#### Refuse:

The previous application was granted subject to a pre-commencement condition requiring details of refuse storage facilities. There has been no material change in either on site circumstances or planning policy in this respect since the previous approval and it is therefore considered reasonable to apply the same condition this time.

#### Ecology:

The County Ecologist is satisfied that the provision of a bat note on any approval granted is sufficient in this case. On this basis, the proposal is therefore considered to comply with Policy DP3 of the Local Plan.

#### Open Space:

Policy SC8 and the Open Space SPD did not form part of the Development Plan at the time the previous application was approved, but must be considered as part of the current application. The Council's Green Space Manager has advised that it would be appropriate in this case to secure an offsite contribution to support the enhancement of existing public open spaces within the locality. While this requirement is usually secured by condition, given that a legal agreement will be required for contributions relating to libraries and travel packs, it is considered appropriate, in this case, that the open space contributions be dealt with in the same way.

#### Other matters:

The applicant has requested that permission be granted with a condition allowing a period of five years in which to begin the development, rather than the default period of three years. Sections 91 and 92 of the Town and Country Planning Act 1990 provides Local Authorities with discretion to grant longer or shorter permissions if this is justified on planning grounds. The case put forward by the applicant is on the basis that 73 Warwick Street forms part of the Clarendon Arcade proposals submitted by Wilson Bowden and there is continuing uncertainty over whether a further application will be submitted and whether planning permission will be granted for this large scale redevelopment and whether the development would proceed if granted. This uncertainty, particularly over timing, affects development decisions that will need to be made in relation to this site. It is considered reasonable to allow a five year permission based on the case put forward.

#### **CONCLUSION / SUMMARY:**

In the opinion of the Local Planning Authority, the proposed development is acceptable in principle, would not cause unacceptable harm to the architectural and historic character of the Conservation Area within which the site is located. Furthermore, the proposal would not adversely harm highway safety, the viability of the town centre, the amenity of nearby residents and would provide adequate living conditions for future occupiers. Whilst the development doesn't comply with Policy SC11, it is considered that a departure from the Local Plan in this regard can be justified in the interests of the viability of sustainable development in accordance with paragraph 173 of the NPPF.

#### **CONDITIONS**

- 1 The development hereby permitted shall begin not later than five years from the date of this permission. **REASON:** To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out strictly in accordance with the details shown on the approved drawing nos. 860/20F, 21F, 22J, 24H, 25J, 33C and 40A, and specification contained therein. **REASON:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policy DP1 of the Warwick District Local Plan 1996-2011.
- 3 No development shall be carried out on the site which is the subject of this permission, until large scale details of balconies, dormers, parapets,

external fire escape and covered fire escape route leading thereto, render detailing, doors, windows (including a section showing the window reveal, heads and cill details), eaves, verges and rainwater goods at a scale of 1:5 have been submitted to and approved by the Local Planning Authority. The development shall not be carried out otherwise than in full accordance with such approved details. **REASON:** To ensure an appropriate standard of design and appearance within the Conservation Area, and to satisfy Policy DP8 of the Warwick District Local Plan 1996-2011.

- 4 Samples of all external facing materials including details of render and colour thereof 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 Policies DP1 and DAP8 of the Warwick District Local Plan.
- 5 No development shall be carried out on the site which is the subject of this permission, until details of provision for storage of refuse have been submitted to and approved by the District Planning Authority and the development shall not be carried out otherwise than in full accordance with such approved details. **REASON:** To protect the amenities of occupiers of the site and the character and appearance of the locality, in accordance with Policy DP1 of the Warwick District Local Plan 1996-2011.
- 6 No development shall be carried out on the site which is the subject of this permission, until satisfactory details of a noise insulation scheme to minimise transmission, both noise transmission within the building (between flats and between the retained retail area and the flats) and of airborne noise have been submitted to and approved by the District Planning Authority and the development shall not be carried out otherwise than in full accordance with such approved details. **REASON:** In the interests of the amenities of future occupiers of the building and to satisfy Policy DP2 of the Warwick District Local Plan 1996-2011.
- 7 The development hereby permitted shall not be commenced unless and until a scheme showing how 10% of the predicted energy requirement of this development will be produced on or near to the site, from renewable energy resources, has been submitted to and approved in writing by the District Planning Authority. The development shall not be first occupied until all the works within this scheme have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturers specifications. Microgeneration equipment no longer needed for microgeneration shall be removed as soon as reasonably practicable. **REASON :** To ensure that adequate provision is made for the generation of energy from renewable energy resources in accordance with the provisions of Policy DP13 in the Warwick District Local Plan 1996-2011.
- 8 The development hereby permitted shall not be occupied unless or until



a Traffic Regulation Order has been made by the Highway Authority to remove the application property from the existing Traffic Regulation Order thereby securing the removal of the rights of the applicant/ future owner/ tenants of the application property to apply for residents parking permits. **REASON:** To ensure the proposed development does not result in an increase in on-street parking pressure in an area with already high demand to the detriment of highway safety and residential amenity in accordance with Policies DP8 and DP2 and the Vehicle Parking Standards SPD of the Warwick District Local Plan 1996-2011.

- 9 No external lighting shall be installed on any external wall or roof of any building or within the open land comprised in the application site other than in accordance with details first submitted to and approved in writing by the Local Planning Authority. **REASON:** To protect the amenity of the occupiers of nearby properties, and to satisfy the requirements of Policies DP1 and DAP8 of the Warwick District Local Plan 1996-2011.

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