

**Application No:** W 12 / 0831

**Town/Parish Council:** Warwick  
**Case Officer:** Penny Butler

**Registration Date:** 04/07/12  
**Expiry Date:** 29/08/12

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**Land Adjacent Woodloes Tavern, Woodloes Avenue South, Woodloes Park, Warwick**

Variation of Condition 17 of planning permission W/11/1468 to change opening hours to 7.00am to 10.00pm Monday to Saturday and 8.00am to 10.00pm on Sundays FOR Punch Partnerships (PLT) Ltd & Midland Assured Limited

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This application has been requested to be presented to Committee by Councillor Glenn Williams.

**RECOMMENDATION**

Planning Committee are recommended to grant planning permission subject to conditions.

**DETAILS OF THE DEVELOPMENT**

It is proposed to vary condition 17 of planning permission W11/1468 so that the approved store can open between the hours of 7.00am to 10.00pm Monday to Saturday, and 8.00am to 10.00pm on Sundays.

**THE SITE AND ITS LOCATION**

The application site currently comprises the public house known as the Woodloes Tavern, its associated hard surfaced car park with access off Deansway, and an area of open landscaped land on the Western side. It is on this open land that a recently approved retail unit will be erected. This open land is grassed, contains a number of trees, and is elevated at the south-western corner where the land banks up some 1-1.2m higher than the adjacent footpath. Deansway sits approximately 1m higher than the level of the car park. Public footpaths surround all sides of the site, and further to the west is an area of amenity grassland. Directly to the south lies Reardon Court which consists of a two storey block of retail, cafe and hot food take-away uses with residential flats above, a public parking area to the front and shared service yard at the rear. To the south-west is the primary school and community centre. To the north on the opposite side of Deansway are a number of detached bungalows and houses.

**PLANNING HISTORY**

Permission was granted in 2011 (W11/1468) for the erection of a retail unit on land adjacent to the public house car park. Condition 17 restricted its opening hours to 8.00am to 10.00pm Monday to Saturday and 10.00am to 6.00pm on Sundays.

A subsequent application (W12/0582) was made earlier this year to vary the hours to 07.00am to 10.00pm Monday to Sunday, which was withdrawn by the applicant.

### **RELEVANT POLICIES**

- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)

### **SUMMARY OF REPRESENTATIONS**

**Warwick Town Council:** No comments received to date.

**Public response:** Two letters of objection received from 84 Woodloes Avenue South and 12 Deansway.

- Staff working at the store will arrive/leave work before opening /closing times, presumably in cars causing further noise.
- Residents living near a public house and shops should not have to suffer more early morning or late evening noise
- No justification for such early and late opening hours, especially on Saturdays and Sundays.
- No need for a further shop which will create increased traffic and less parking.

**Environmental Health:** The application will lead to an incremental loss of amenity for local residents.

### **ASSESSMENT**

This application is solely concerned with the impact of the proposed additional hours of use on the amenity of nearby residents. The application site is part of the Reardon Court local centre which contains a number of other commercial premises including shops and takeaways, which operate various opening hours that are not restricted by planning condition. The hours of use of the approved shop were restricted upon the request of the Environmental Health Officer in order to prevent noise nuisance to local residents. Deliveries and noisy external activities likely to cause noise nuisance were also restricted to set hours, as was the noise generated by any plant or equipment, and it is not proposed to amend these restrictions. The proposal is for the store to open one hour earlier at 07.00am Monday to Saturday, to open two hours earlier on Sundays at 08.00am, and to close four hours later on Sundays at 10.00pm.

The applicant has submitted a supporting statement with their application. They point out that none of the other shops at Reardon Court have restricted opening hours, including a new retail unit approved in the rear service yard in 2010. They list the opening times of the newsagent as 06.00am and the Post Office as 07.30am. The closing times of the pub are midnight Monday to Thursday, 01.00am Fridays and Saturdays, and 11.00pm Sundays, whilst the takeaways close at 11.30pm. The applicant's argument is essentially that the noise profile and character of the area is so influenced by the existing opening hours of the pub and nearby shops, that the extra disturbance generated by customers going to and from the approved shop, during the existing operational hours of the local centre, will not make a noticeable difference to residents amenity. They state that the nearest houses and bungalows are more than 30m on the opposite side

of Deansway, and that the level of the site 1.2m below road level, with a blank side wall facing these neighbours, vegetation screening and a delivery yard to the opposite side, will further reduce the noise impact on these properties. However, there are also residential flats above the shops on Reardon Court which are much closer to the shops, and adjacent to the approved service yard.

It is noted that the applicant undertakes to comply with the existing conditions regarding times of outside activities, deliveries etc. The EHO has confirmed that any noise nuisance from those activities is readily associated with these particular premises and therefore can be easily enforced through the planning conditions and/or nuisance law.

However, noise on the street or in common areas, such as the shared car park between the pub and the new shop, or the car park to the front of the existing shops, cannot be controlled by the reactive provisions of nuisance law since it is not possible to say which of the many shops is responsible for traffic/customer noise. Hence there is an incremental increase in street noise with each phase of development of Reardon Court. Successive incremental increases in street noise and noise in common areas leads to a situation where the amenity of existing residents adjacent to the existing development is diminished.

The only effective way to control this noise on the street/common areas of shopping centres is through a consistent approach to opening hours applied through the planning process. The current inconsistency in the hours of operation are cited by the applicant in support of their application, and whilst the proposal may lead to an incremental loss of amenity for local residents, it is not considered that there are sufficiently clear and unambiguous grounds to support a refusal. The existing operational hours of the local centre are considered to carry substantial weight in this consideration, as they contribute to the existing background noise level at the proposed hours in question. Furthermore, the level of use at the additional opening hours will be low given the time of day, and it will be difficult to substantiate an incremental loss of amenity at the level anticipated. On this basis it is not considered that the application would clearly conflict with Policies DP2 or DP9.

### **CONCLUSION/SUMMARY OF DECISION**

In the opinion of the Head of Development Services, the development does not give rise to any harmful effects in terms of the impact on the living conditions of nearby dwellings which would justify a refusal of permission. The proposal is therefore considered to comply with the policies listed.

### **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 application form, site location plan and approved drawing(s) (2690-104E and 2690-105A submitted

on 16 December 2011. 2690-102G and 2690-103G submitted on 18 April 2012), and specification contained therein. **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.

- 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 construction 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 DP1 of the Warwick District Local Plan 1996-2011.
- 4 Prior to any work commencing on site, full details of measures to be taken to protect retained trees on site during development must be submitted to and approved in writing by the District Planning Authority. All development shall be in accordance with these approved details. The details must include, but not be limited to, the type and position of fencing, timing of operations including erection and removal of fencing, location of site compounds, access routes for construction traffic, arrangements for briefing contractors on tree protection, location of all underground service runs, details of arboricultural supervision during development, details of the design and method of construction of all hard surfaces within the identified root protection areas of retained trees and details of the means of construction of the cut into the bank and how excavation or levels changes within the root protection area of retained trees will be avoided. **REASON** : To protect and enhance the amenities of the area, and to satisfy the requirements of Policies DP1 and DP3 of the Warwick District Local Plan 1996-2011.
- 5 A landscaping scheme for the whole of those parts of the site not to be covered by buildings shall be submitted to and approved by the District Planning Authority before the development hereby permitted is commenced. Such approved scheme shall be completed, in all respects, not later than the first planting season following the completion of the development hereby permitted, and any trees removed, dying, being severely damaged or becoming seriously diseased within five years of planting, shall be replaced by trees of similar size and species to those originally required to be planted. **REASON** : To protect and enhance the amenities of the area, and to satisfy the requirements of Policies DP1 and DP3 of the Warwick District Local Plan 1996-2011.
- 6 Details of the means of disposal of storm water from the development shall be submitted to and approved by the District Planning Authority before the development hereby permitted is commenced and the development shall not be carried out other than in strict accordance with such approved details. **REASON** : To ensure satisfactory provision is made for the disposal of storm water and to satisfy Policies DP9 and DP11 of the Warwick District Local Plan 1996-2011.

- 7 The development shall not be commenced until space has been provided within the site for the parking/ loading/unloading of vehicles in accordance with details to be approved in writing by the Local Planning Authority. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
  
- 8 The Applicant/Developer shall install suitable measures to ensure that mud and debris will not be deposited on the highway as result of construction traffic leaving the site. Prior to the commencement of the development, the details of these measures (including type, method of operation and control of use) shall be submitted in writing to the Local Planning Authority for their approval in consultation with the Highway Authority. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
  
- 9 No part of the development hereby permitted shall be commenced until a scheme for the provision of suitable nest boxes for house sparrow and starling, to be erected on trees/buildings within the site, has been submitted to and approved in writing by the District Planning Authority. The scheme to include details of box type and location. Thereafter, the nest boxes shall be installed and maintained in perpetuity. **REASON**: To ensure the protection of birds and compliance with Policy DP3 of the Warwick District Local Plan 1996-2011.
  
- 10 The development hereby permitted shall not be occupied unless and until a scheme detailing the preferred traffic movements of goods vehicles delivering to the site have been submitted and approved by the District Planning Authority, which shall include the display and distribution of an advisory route map, and signage at the site exit directing delivery vehicles to turn right the development shall not be occupied other than in strict accordance with the approved scheme. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan.
  
- 11 The development hereby permitted shall not be occupied unless and until a scheme for securing a local employment and training strategy for the operation of the foodstore has been submitted to the District Planning Authority and agreed in writing. The approved local employment and training strategy shall be implemented and maintained in accordance with the approval unless agreed otherwise in writing by the District Planning Authority. **REASON**: To secure options for local employment by reducing the need for private vehicle use and to accord with Policy DP7 of the Warwick District Local Plan 1996 - 2011 and the NPPF.

- 12 The development shall not be commenced until the existing vehicular access to the site has been widened so as to provide an access of not less than 5 metres in width for a distance of 10 metres, as measured from the near edge of the public highway carriageway. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 13 The gradient of the access for vehicles to the site shall not be steeper than 1 in 12 for a distance of at least 10 metres, as measured from the near edge of the public highway carriageway. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 14 The development shall not be commenced until visibility splays have been provided to the access to the site with an 'x' distance of 2.4 metres and 'y' distances of 43 metres to the near edge of the public highway carriageway. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway. **REASON** : In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.
- 15 No lighting shall be fixed to the external walls or roof(s) of the building(s) hereby permitted, or on any open land within the application site without the written consent of the District Planning Authority. **REASON** : To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 16 Noise arising from any plant or equipment at these premises), when measured one metre from the façade of any noise sensitive premises, shall not exceed the background noise level by more than 3dB(A) measured as LAeq(5 minutes) 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.
- 17 Store opening hours shall be limited to 7am to 10pm Monday to Saturday and 8am to 10pm on Sunday. **REASON**: To protect the amenities of surrounding properties, in accordance with Policy DP2 of the Warwick District Local Plan 1996-2011.

- 18 No deliveries or noisy external activities likely to cause nuisance to nearby residences, shall occur between 6pm and 7.00am Monday to Saturday, before 9am on Sunday or after 6pm on Sunday. **REASON:** To protect the amenities of surrounding properties, in accordance with Policy DP2 of the Warwick District Local Plan 1996-2011.
- 19 Notwithstanding the details included in the application or on the plans hereby approved no security shutters or grilles of any kind shall be installed on the building without the prior permission of the District Planning Authority. **REASON:** To protect the amenity of the surrounding area, in accordance with Policy DP1 of the Warwick District Local Plan 1996-2011.
- 20 The foodstore hereby permitted shall be used as a foodstore and for no other purpose including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 2005, (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). The net retail sales area of the foodstore shall not exceed 280 sq.m. No more than 250 sq.m of this net retail sales area shall be used for the display and sale of food and convenience goods. **REASON :** To satisfy the requirements of Policy UAP3 in the Warwick District Local Plan 1996-2011.
- 21 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting the order with or without modification) no internal alterations shall be carried out which would result in a) an increase in the total gross floorspace of the development; or b) the subdivision of the units. **REASON :** To satisfy the requirements of Policy UAP3 in the Warwick District Local Plan 1996-2011.
- 22 Hours of illumination inside the store will be limited to 06.30am to 10.30pm Monday to Saturday and 08.30am to 6.30pm on Sunday. **REASON:** To prevent light pollution, in accordance with Policy DP9 of the Warwick District Local Plan 1996-2011.
- 23 The development shall not be commenced until a turning area has been provided within the site so as to enable the largest vehicle anticipated on site to leave and re enter the public highway in a forward gear with a parking management plan maintained on occupation to ensure turning area is available for delivery vehicles on site when necessary. **REASON :** In the interests of highway safety, in accordance with the requirements of Policy DP6 of the Warwick District Local Plan 1996-2011.

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