Planning Committee: 14 October 2015 **Item Number:** 11

Application No: W 15 / 1240

Registration Date: 06/08/15
Town/Parish Council: Leamington Spa **Expiry Date:** 01/10/15
Case Officer: Jo Hogarth
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39 Bath Street, Leamington Spa, CV31 3AG
Proposed change of use of ground floor from shop (A1) to restaurant (A3) FOR Mr Nagra

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This application has been requested to be presented to Committee by Councillor Davison and Councillor Barrott.

RECOMMENDATION

Planning Committee are recommended to refuse to grant planning permission for the reasons identified.

DETAILS OF THE DEVELOPMENT

The proposal seeks to change the of use of the ground floor from retail (Class A1) to a restaurant (Class A3). No extraction flue is required for the type of oven proposed which would allow for a 'ventless' operation.

THE SITE AND ITS LOCATION

The site relates to a Grade II Listed Building situated on the east side of the road within the designated Royal Leamington Spa Conservation Area. The site is identified in the Local Plan as being within a secondary retail area within the Town Centre and forms a terrace of 8 buildings which comprise of a mix of Class A uses.

PLANNING HISTORY

In 2012 (ref: W/12/0643 & w/12/0986/LB) planning and listed building consent was granted for the conversion of the upper floors to an 8 bed HMO together with a first floor rear extension.

In 2014 (ref: W/14/0898) a planning application was withdrawn for a change of use of the ground floor from retail (Class A1) to a restaurant (Class A3).

RELEVANT POLICIES

- National Planning Policy Framework

The Current Local Plan

- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (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)
- TCP5 - Secondary Retail Areas (Warwick District Local Plan 1996 - 2011)
- DP8 - Parking (Warwick District Local Plan 1996 - 2011)

The Emerging Local Plan

- BE1 - Layout and Design (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- BE3 - Amenity (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- TR4 - Parking (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- HE1 - Protection of Statutory Heritage Assets (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- HE2 - Protection of Conservation Areas (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- TC7 - Secondary Retail Areas (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)

Guidance Documents

- Vehicle Parking Standards (Supplementary Planning Document)

SUMMARY OF REPRESENTATIONS

Royal Leamington Spa Town Council: No objection.

Cllr Davison: As the property has been empty for decades, I support this change of use to reduce the number of empty shops in Old Town.

WDC Environmental Health: No objection subject to informatives and conditions on noise insulation, delivery and opening hours.

Public response:

Objection: 2 letters objecting on the grounds of too many restaurants, anti-social behaviour; attract more rubbish, noise pollution, increase in traffic and parking problems. The application is contrary to Policy TCP5.

Support: This part of Leamington with Bath Street itself is over 70% retail, this would not detract from retail policy. The Portas Review in 2011/2012 stress the need to improve daytime and evening economy and this would be a welcome addition.

ASSESSMENT

The main issues relevant to the consideration of this application are as follows:

- Principle of the change of use
- Impact on neighbours

- Impact on the Listed Building within the Conservation Area
- Parking
- Bin storage
- Health and Wellbeing

The Principle of the Development

The site is within a secondary retail area whereby Policy TCP5 in the Local Plan states:

"Changes of use from shops (Used Class A1) to financial and professional services (Use Class A2); restaurants and cafes (Use Class A3); drinking establishments (Use Class A4) or hot food take-aways (Use Class A5) within the secondary retail areas will be permitted unless:-

a) more than 50% of the total length of the street frontage is in non-A1 (retail) use; or
b)the proposal consists of, or would contribute to creating a continuous non A1 (retail) frontage of more than 16 m.

The percentage of this street frontage in non-A1 use is currently 50% and it is considered that by permitting this change of use, this would increase to 60%. For that reason, there is an objection in principle to the proposed change of use because the proposal does not meet all the criteria set out in Policy TCP5 in the Local Plan (part (a) only of the above Policy, part (b) is not contravened).

The applicant has sought to demonstrate that the Class A1 retail use is not viable and whilst it has been empty for over 20 years, it has only been marketed since mid-April 2014. A marketing board was not erected on the property due to their being scaffolding over the building. The applicant suggests that this area, south of the river within the 'Old' Town area is not sought after by A1 users and there is limited pedestrian movement along the street and introducing an A3 use would mean the ground floor of the Listed Building would ensure its occupation.

Whilst Policy TCP5 does not identify the period of time over which a property should be actively marketted, there is considered to be insufficient evidence submitted to demonstrate that the property has been fully and actively marketted in an appropriate manner and for an appropriate period of time, sufficient to justify a departure from the above policy.

It is therefore not considered that the considerations raised by the applicant set out above are sufficient to outweigh Policy TCP5 in the Local Plan.

Impact on neighbours

Environmental Health have not raised objection in terms of impact from noise, odours or disturbance on the occupiers of the upper floors or nearby residents. A condition to restrict the hours of use is suggested which would be from 0900 and 2200 on any day which would be consistent with the approach taken with nearby takeaways in this particular area of the Town Centre. Furthermore as no extraction flue is proposed it is considered that any harm to nearby neighbours could be mitigated through condition and as such there would be no conflict with Policy DP9 in the Local Plan.

Impact on the Listed Building and Conservation Area

It is considered that the proposed change of use in itself would not result in unacceptable harm to the character or special historic fabric of this Listed Building or indeed to the visual setting of the Conservation Area such that a refusal on these grounds could be sustained. It is therefore considered that there would be no conflict with Policies DAP4 or DAP8 in the Local Plan.

It is recognised that the continued vacancy of the ground floor of this Listed Building increases the risk of the deterioration of historic fabric, however the upper floors of the building are occupied and therefore it is not considered that this is sufficient a risk to justify departure from Local Plan policies.

Parking

There are no off street parking facilities for this unit. Under the Council's adopted Vehicle Parking Standards SPD, the requirements for a Class A1 retail use and a Class A3 restaurant use are the same, within this high accessibility zone. Therefore it is considered that there would be no conflict with the vehicle parking standards or to the objectives of Policy DP8 in the Local Plan.

Bin Storage

There is sufficient space in the rear yard for bin storage where there is access onto Regent Place. It is considered that this provision is acceptable.

Health and Wellbeing

There are no issues relating to health and wellbeing.

SUMMARY/CONCLUSION

It is considered that this proposed change of use would be contrary to the objectives of Policy TCP5 in the Local Plan and would undermine the retail viability of the Town Centre.

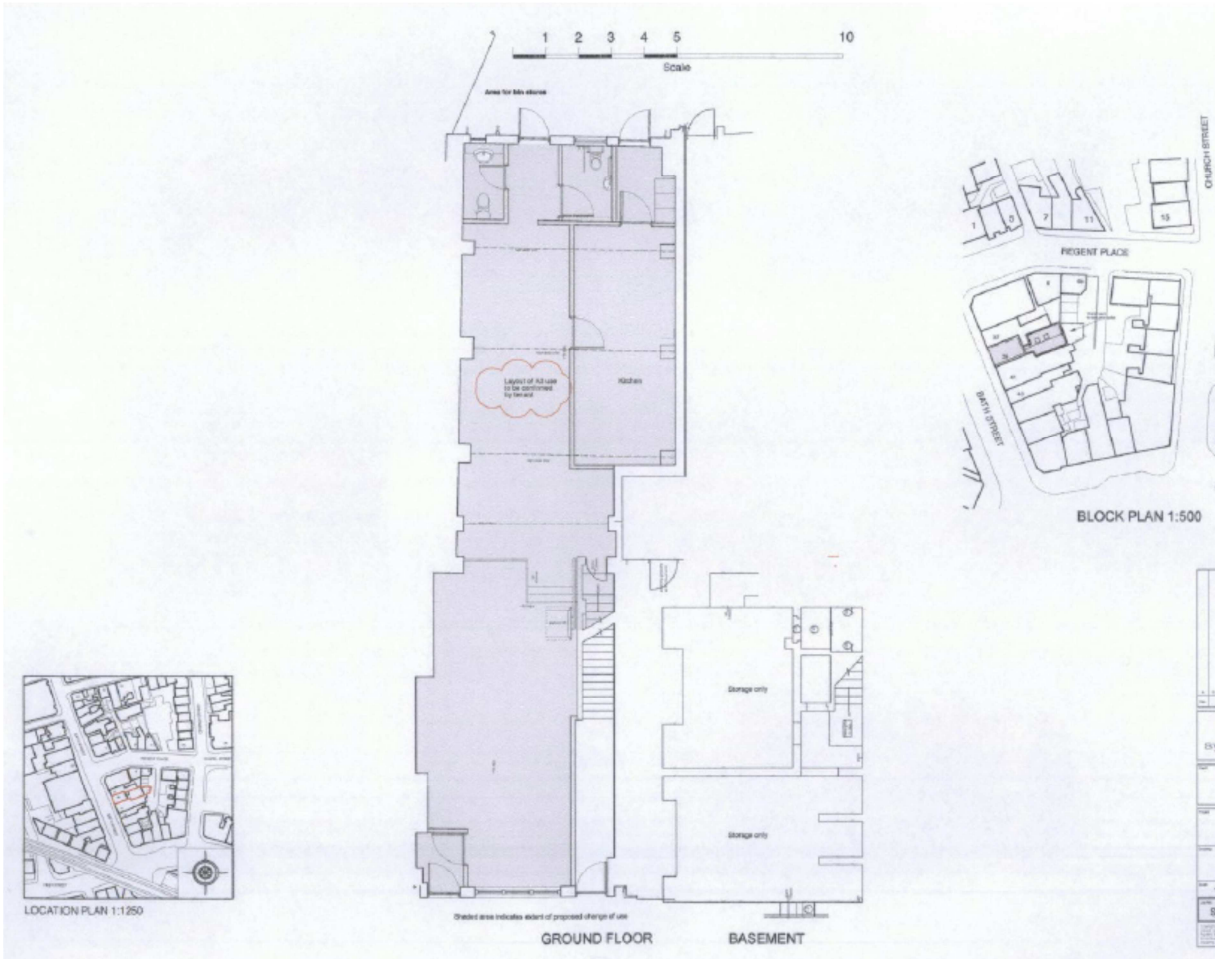
REFUSAL REASONS

1 The proposed change of use would result in the introduction of a further non-A1 retail use within a secondary retail frontage within the Royal Leamington Spa town centre, resulting in an inappropriate mix and balance of uses within that frontage to the detriment of the vitality and viability of that town centre, contrary to the following national and local plan policies:

- The National Planning Policy Framework

The Warwick District Local Plan 1996-2011

- Policy TCP5 - Secondary Retail Areas

The emerging Warwick District Local Plan 2011-2029 (Publication Draft April 2014)

Policy TC7 - Secondary Retail Areas