

**Application No:** W 14 / 0437

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Rob Young

**Registration Date:** 31/03/14

**Expiry Date:** 30/06/14

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**Unit 6, Regent Court, Livery Street, Leamington Spa**

Variation of condition 6 of planning permission no. W13/1578 to allow for the creation of an outdoor seating area in front of Unit 6, Regent Court; the restriction will remain in place for the remainder of the units covered by planning permission no. W13/1578 FOR New River Retail

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This application is reported to Committee because it has previously been agreed that further applications for outdoor seating at Regent Court will be presented to Committee.

**RECOMMENDATION**

Planning Committee are recommended to GRANT this variation of condition, subject to conditions and subject to the satisfactory resolution of the issues raised by Environmental Health.

This recommendation is subject to change if the Environmental Health issues are not satisfactorily resolved before Committee.

**DETAILS OF THE DEVELOPMENT**

The application proposes the variation of condition 6 of planning permission no. W13/1578 to allow for the creation of an outdoor seating area in front of Unit 6. This relates to an area of 26 sq m and would provide space for 24 covers. The restriction will remain in place for the remainder of the units covered by planning permission no. W13/1578

The application was accompanied by a Noise Report and an Operational Management Schedule.

To allow for an external seating area it is also necessary to obtain planning permission for a change of use of the land. This is dealt with by a different planning application that is the subject of another item on this agenda (W14/0438).

There are also further applications currently under consideration in relation to the creation of an external seating area outside Unit 2 (Refs. W14/0397 & W14/0430). These are the subject of other items on this agenda.

## **THE SITE AND ITS LOCATION**

The application relates to a shop unit on the southern side of Livery Street. The site is situated within the retail area of Leamington Town Centre and within the Leamington Spa Conservation Area. There are flats on the upper floors of the building and on the upper floors of the building opposite.

The unit has planning permission for a change of use to a restaurant (Use Class A3). Livery Street is pedestrianised and some of the other units along the street have external seating areas to the front, including Strada, Nandos, Bar Angeli and Starbucks.

## **PLANNING HISTORY**

In 2002 planning permission was granted for "Change of use and conversion of Regent Hotel at basement and ground level (in parts) for Class A1 or A3 purposes with continued use of upper floors for hotel purposes. Erection of a new mixed development of 132 flats with ground floor Class A1 or A3 units and a basement car park for 131 vehicles accessed off Regent Grove. The scheme included alterations and extensions to Listed Buildings within the site including the demolition of rear wings to the Regent Hotel, No. 90 Regent Street and 31 Regent Grove, the demolition of non-listed buildings within the site, and the creation of a new street linking Regent Street and Parade, all as shown on the submitted plans" (Ref. W01/0483).

In May 2013 planning permission was granted for the creation of an outdoor seating area outside Nandos (Ref. W13/0350). This was a one year temporary permission to enable the effects of the use to be assessed before considering a permanent permission.

In July 2013 planning permission was granted for "Removal of condition 17 of planning permission W01/0483 (condition 17 restricts the total amount of A3 (restaurant and cafe) floorspace within the units fronting Livery Street and Regent Street to no more than 1,115 sq m)" (Ref. W13/0528). This permission was granted on the understanding that planning permission would still be required for the change of use of individual units.

In December 2013 planning permission was granted for the change of use of Unit 11 from retail (Use Class A1) to a restaurant (Use Class A3) (Ref. W13/1339).

In February 2014, planning permission was granted for "Change of use of ground floor retail units (Use Class A1) to cafes / restaurants (Use Class A3) (known as units SU1C, SU2A, SU3A, SU3B, SU4, SU5, SU6, SU7A, SU7B, SU8, SU12); shopfront alterations; public realm works; and alterations to highway land at the Regent Street entrance" (Ref. W13/1578). This authorised the change of use of the unit that is the subject of the current application to a restaurant. This permission was subject to various conditions, including a prohibition on the creation of outdoor seating areas (condition 6). It was intended that future occupiers would submit applications for external seating areas on an individual basis if they wish to pursue this option (as in the current case).

## **RELEVANT POLICIES**

- DP14 - Crime Prevention (Warwick District Local Plan 1996 - 2011)
- DAP9 - Unlisted Buildings in Conservation Areas (Warwick District Local Plan 1996 - 2011)
- DP6 - Access (Warwick District Local Plan 1996 - 2011)
- TCP13 - Design of Shopfronts (Warwick District Local Plan 1996 - 2011)
- Design Advice on Shopfronts & Advertisements in Royal Leamington Spa (Supplementary Planning Guidance).
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP8 - Parking (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)
- DP13 - Renewable Energy Developments (Warwick District Local Plan 1996 - 2011)
- TCP5 - Secondary Retail Areas (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)
- Vehicle Parking Standards (Supplementary Planning Document)
- Sustainable Buildings (Supplementary Planning Document - December 2008)
- National Planning Policy Framework

## **SUMMARY OF REPRESENTATIONS**

**Town Council:** Comments awaited.

**Public response:** 1 neighbour has objected on the following grounds:

- increased noise and disturbance;
- the noise is especially bad at closing time;
- outdoor seating areas will exacerbate existing noise issues; and
- the acoustics of the street just amplify and reverberate any noise.

The consultation period is ongoing and any further comments will be included in the addendum report to Committee.

**WDC Environmental Health:** Object on grounds of noise. Raise concerns about the methodology of the noise report and consider that this provides little evidence to demonstrate that the proposed outdoor seating area will not have an adverse impact on residential properties overlooking the Regent Court development. Noise from patrons on the street associated with the existing A3 use has been witnessed by Environmental Health as being intrusive in adjacent flats. Given the potential number of patrons within the existing and proposed external seating areas along Livery Street, the cumulative noise impact would be significant. The proposed mitigation measures will not adequately mitigate customer noise.

## **ASSESSMENT**

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

- the impact on the living conditions of nearby dwellings; and
- the impact on the character and appearance of the Conservation Area.

### Impact on the living conditions of nearby dwellings

There are residential properties in close proximity to the proposed external seating area, on the upper floors of the application property and on the opposite side of Livery Street. Residents have raised concerns about potential noise from the outdoor seating area and have highlighted existing issues with noise from the seating area outside the Nandos premises. There has also been an objection from Environmental Health.

The applicant has proposed a number of measures to mitigate any noise impact, including the provision of an acoustically absorbent canopy and the implementation of an Operational Management Schedule which will include measures for dealing with any noise issues. The canopy and Operational Management Schedule are covered by conditions on the planning permission for the change of use of the unit to a restaurant (Ref. W13/1578).

Previous planning permissions for the Regent Court development have restricted the hours of use of any external seating areas to 2230 hours. Given the concerns of residents and the potential cumulative impact of additional outdoor seating areas, the applicant has agreed that a more restrictive condition would be appropriate if planning permission is granted for the current proposals. The applicant has proposed to limit the hours of use of the seating area to between 0930 hours and 2130 hours.

One particular noisy activity that has been highlighted by residents is the dragging of tables and chairs inside the premises at closing time. In order to address this issue the applicant has agreed that any external tables and chairs will not be moved except during the permitted hours of use for the outdoor seating area. Conditions are recommended to deal with all of the restrictions that have been agreed.

In considering the impact of the proposals, it is important to have regard to the fact that the provision of an external seating area would enhance the vitality and viability of the town centre. This is a benefit of the proposed change of use that must be weighed in the balance. Furthermore, whilst the provision of an external seating area would impact on nearby residents, it is important to bear in mind that the proposals relate to a busy commercial street at the heart of the town centre. Furthermore, Livery Street contains a number of established restaurants and cafes that are open in the evening and most of these premises have external seating areas, including Strada, Nandos, Bar Angeli and Starbucks.

Notwithstanding the above points, there does remain the objection from Environmental Health. It should be noted that, in making their comments, Environmental Health have a narrow remit which only requires them to consider the impact on the living conditions of the residents. In contrast, when determining a planning application, the Planning Committee must weigh all of the relevant issues in the balance, including the economic benefits of the proposals and the need to support a vibrant and thriving town centre. In this context, discussions are ongoing with the applicant and Environmental Health to seek to reach agreement on a package of restrictions and mitigation measures that will reduce the impact to an acceptable level, when balanced against the benefits of the scheme. Further information on this matter will be provided in the addendum report to Committee.

#### Impact on the character and appearance of the Conservation Area

It is considered that the proposals would have an acceptable impact on the character and appearance of the Conservation Area. In reaching this conclusion it is noted that this is a modern shopping street within the Conservation Area where outdoor seating areas are an established feature of the street scene. The physical features defining the external seating area (e.g. the canopy and planters) have already been approved under planning permission no. W13/1578.

#### **SUMMARY / CONCLUSION**

Subject to the resolution of the issues raised by Environmental Health, the proposals would have an acceptable impact on the living conditions of neighbouring dwellings and on the character and appearance of the Conservation Area. Therefore it is recommended that this variation of condition is granted. This recommendation is subject to change if the Environmental Health issues are not satisfactorily resolved before Committee.

#### **CONDITIONS**

- 1 The development hereby permitted shall begin not later than three 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 site location plan and approved drawing(s) 301B, 302A, 303A, 304B, 307A & 309A, and specification contained therein, submitted on 17 January 2014 in relation to planning application no. W13/1578 and drawing no. 0134, submitted on 27 March 2014 in relation to the current planning application. **REASON :** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1, DP2 and DAP8 of the Warwick District Local Plan 1996-2011.
- 3 The development hereby permitted shall be carried out only in full accordance with sample details of the facing and surfacing materials which shall have been submitted to and approved in writing by the local

planning authority. **REASON:** To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the locality in accordance with Policies DP1 and DAP8 of the Warwick District Local Plan 1996-2011.

- 4 No development shall be carried out on the site which is the subject of this permission until further details of the box planters, tree pots, litter bins, public art, canopies and seating 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 DAP8 of the Warwick District Local Plan 1996-2011.
- 5 No customers shall be permitted to be on the premises other than between 0730 and 2330 hours on any day. **REASON:** To ensure that the premises are not used at a time which would be likely to cause nuisance or disturbance to nearby residents in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011.
- 6 No external seating shall be provided in association with any of the restaurants hereby permitted, except for the areas in front of Units 2 and 6 shown on drawing nos. 0132 & 0134. No customers shall be permitted to use these external seating areas before 0930 hours or after 2130 hours on any day. No furniture within the external seating areas shall be moved before 0930 hours or after 2130 hours on any day. Any part of any furniture that is in contact with the ground shall be fitted with rubber stoppers to minimise noise. **REASON :** To protect the living conditions of nearby dwellings, in accordance with Policies DP2 and DP9 of the Warwick District Local Plan.
- 7 No deliveries, waste collections or other noisy activities likely to cause nuisance to nearby residents shall take place before 0700 hours or after 2130 hours on Monday to Saturday or before 0900 hours or after 1800 hours on Sundays. **REASON:** To ensure that noisy activities do not take place at a time which would be likely to cause nuisance or disturbance to nearby residents in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011.
- 8 Noise arising from any plant or equipment, 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 the occupiers of nearby properties in the locality in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011.

- 9 No restaurant / cafe hereby permitted shall be occupied unless:
- (a) a noise assessment has been undertaken to assess the impact of noise arising from any plant, fume extraction, air conditioning or refrigeration equipment that is required to serve that unit;
  - (b) a noise assessment has been undertaken to assess the suitability of the existing sound insulation in the ceiling of that unit to ensure that internal noise levels within adjoining or nearby residential premises comply with the criteria outlined in BS8233:1999 and World Health Organisation guidelines;
  - (c) the results of the noise assessments carried out to comply with criteria (a) and (b), together with details of any necessary mitigation measures, have been submitted to and approved in writing by the local planning authority; and
  - (d) any necessary mitigation measures approved under (c) have been implemented in full accordance with the approved details.

The mitigation measures shall be retained at all times thereafter and shall not be removed or altered in any way without the prior written approval of the local planning authority.

**REASON:** To ensure that the premises are not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011.

- 10 No restaurant / cafe hereby permitted shall be occupied unless:
- (a) an odour assessment has been undertaken to assess the impact of odour arising from cooking and any proposed fume extraction system that is required to serve that unit;
  - (b) the results of the odour assessments carried out to comply with criterion (a), together with details of any necessary mitigation measures, have been submitted to and approved in writing by the local planning authority; and
  - (c) any necessary mitigation measures approved under (b) have been implemented in full accordance with the approved details.

The mitigation measures shall be retained at all times thereafter and shall not be removed or altered in any way without the prior written approval of the local planning authority.

**REASON:** To ensure that the premises are not used in a manner prejudicial to or likely to cause nuisance to the occupiers of nearby properties in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011.

- 11 No restaurant / cafe hereby permitted shall be occupied unless:

- (a) details of an acoustically absorbent canopy, to include enclosed sides, have been submitted to and approved in writing by the local planning authority; and
- (b) the canopy approved under (a) has been installed in strict accordance with the approved details.

The canopy shall be retained and maintained in accordance with the approved details at all times that the premises are used as a restaurant / cafe.

**REASON :** To protect the living conditions of nearby dwellings, in accordance with Policies DP2 and DP9 of the Warwick District Local Plan.

- 12 None of the restaurants / cafes hereby permitted shall be occupied unless and until an Operational Management Plan addressing noise, manned security, CCTV, drainage and the management of external dining furniture has been submitted to and approved in writing by the local planning authority. All of the restaurants / cafes hereby permitted shall be operated in strict accordance with this Plan. **REASON :** To protect the living conditions of neighbouring dwellings and to prevent crime and anti-social behaviour, in accordance with Policies DP2, DP9 and DP14 of the Warwick District Local Plan.

- 13 No restaurant / cafe hereby permitted shall be occupied unless:

- (a) details of a refuse storage area for that unit have been submitted to and approved in writing by the local planning authority; and
- (b) the refuse storage area approved under (a) has been constructed and laid out in strict accordance with the approved details.

The refuse storage area shall thereafter be kept free of obstruction and be available at all times for the storage of refuse associated with the development.

**REASON:** To ensure the satisfactory provision of refuse storage facilities in the interests of amenity and the satisfactory development of the site in accordance with Policy DP1 of the Warwick District Local Plan 1996-2011.

- 14 No more than two of the restaurant / cafes hereby permitted shall be occupied unless:

- (a) a CCTV scheme for Livery Street has been submitted to and approved in writing by the local planning authority; and
- (b) the CCTV scheme approved under (a) has been implemented in strict accordance with the approved details.

**REASON:** In the interests of reducing crime and anti-social behaviour, in accordance with Policy DP14 of the Warwick District Local Plan 1996-2011.



15 No restaurant / cafe hereby permitted shall be occupied unless:

(a) a scheme showing how 10% of the predicted energy requirement of that unit 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; and

(b) all the works within the scheme approved under (a) have been completed.

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.

16 No lighting or illumination of any part of any buildings or the site shall be installed or operated unless and until details of such measures shall have been submitted to and approved in writing by the local planning authority and such works, and use of that lighting and/or illumination, shall be carried out and operated only in full accordance with those approved details. **REASON:** To ensure that any lighting is designed so as not to detrimentally affect the amenities of the occupiers of nearby properties in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011.

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