

Planning Committee: 02 July 2013

Item Number: 9

Application No: W 13 / 0528

Town/Parish Council: Leamington Spa

Registration Date: 22/04/13

Case Officer:

Rob Young

Expiry Date: 22/07/13

01926 456535 rob.young@warwickdc.gov.uk

Regent Court, Livery Street, Leamington Spa

Application for the 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). FOR NewRiver Retail

This application is being presented to Committee due to the number of objections received.

RECOMMENDATION

Planning Committee are recommended to GRANT removal of this condition, subject to the conditions listed.

DETAILS OF THE DEVELOPMENT

The application proposes the removal of condition 17 of planning permission no. 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.

THE SITE AND ITS LOCATION

The application relates to the Regent Court Shopping Centre which is situated within the retail area of Leamington Town Centre and within the Leamington Spa Conservation Area. The shopping centre comprises units along either side of Livery Street, units fronting Regent Street to either side of the junction with Livery Street, units fronting Regent Grove, the Regent Hotel and flats on the upper floors of the buildings. The condition in question relates to the units along Livery Street and the units fronting Regent Street. The Regent Hotel is a Grade II* Listed Building and there are other Listed Buildings nearby.

PLANNING HISTORY

In 2002 planning permission was granted for "Change of use and conversion of Regent Hotel of 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).

Condition 17 of the above permission reads as follows:

*Unless otherwise first agreed in writing by the District Planning Authority no more than 1,115 square metres (12000 square feet) of floorspace within the new build commercial units shown on Drawing No. 13108/BLE (08) 010/A03 as solely fronting the new street linking Regent Street and Parade together with those units fronting Regent Street shall be used for A3 use with the balance of floorspace being retained in A1 use as defined in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, with or without modification. **REASON :** To maintain the retail viability and vitality of the town centre in accordance with the proposals and policies S1 and S5 in the Warwick District Local Plan.*

Subsequent planning permissions were granted to amend the opening hours of two of the units (Ref. W04/0158 and W05/2002). There have been a number of other applications relating to the application site, but none of these are relevant to the consideration of the current proposals.

RELEVANT POLICIES

- 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
- TCP4 - Primary Retail Frontages (Warwick District Local Plan 1996 - 2011)

SUMMARY OF REPRESENTATIONS

Town Council: No objection, subject to the applicant adhering to the comments of the Environmental Health Officer.

Public response: 5 objections have been received, raising the following concerns:

- the drains and sewers would not cope with this number of restaurants;
- noise and disturbance from fume extraction and air conditioning equipment;
- noise and disturbance from outdoor seating areas;
- increased noise and disturbance from customers leaving the premises;
- increased anti-social behaviour;
- increased litter;
- the refuse storage areas would not cope with this number of restaurants;
- increased smells;
- the proportion of restaurants, cafes and retail units already here is about right;
- more should be done to encourage retail occupiers; and
- some additional A3 floorspace may be appropriate, but not a street completely full of restaurants.

One representation in support has been received, making the following points:

- anything that livens up the street would be good;
- the pedestrianised nature of the street lends itself to outside seating; and
- given the number of empty units, it would be shameful to miss this opportunity.

Environmental Health: Conditions should be imposed to require the following:

- a restriction on the times that external dining is permitted to no later than 2230 hours;
- odour and acoustic assessments to be carried out in relation to the fume extraction equipment;
- restrictions on noise arising from any plant or equipment; and
- an acoustic assessment of the suitability of the existing sound insulation in the ceiling of any proposed A3 premises where residential premises are directly above.

ASSESSMENT

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

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

Impact on the vitality and viability of the Town Centre

It is important to note that, even if planning permission were to be granted for the removal of the condition in question, any further proposals to change the use of units within Regent Court would still be require planning permission and the detailed impact of any such proposals would be assessed at that stage. The purpose

of the current application is to provide a more flexible approach than exists with the current restrictive condition in a manner that is consistent with the approach used in other similar parts of the Town Centre.

The restrictions set out in the current condition amount to a limit of approximately 25% of the proportion of the Livery Street / Regent Street part of the development that can be used for non-A1 purposes. This is comparable with the Local Plan restrictions for primary retail frontages. However, Livery Street functions as a secondary retail area and is annotated as such on the Local Plan Proposals Map. The applicant has advised that they are struggling to attract retail occupiers due to the limited footfall in this part of the Town Centre. There are a number of vacant units and in order to maintain the existing retailers it has been necessary to cut the rents substantially and fill vacant units with temporary occupiers. In contrast, the cafes and restaurants within Regent Court have traded well.

In this context, having a restriction similar to that for primary retail frontages is not considered to be appropriate. This is likely to result in continued vacancies within the development, a reduced footfall and harm to the vitality and viability of this part of the Town Centre. If the condition is removed, any planning applications for further changes of use within the relevant part of Regent Court would be assessed against the Local Plan restrictions applicable to secondary retail areas (Policy TCP5) for the units on Livery Street and primary retail frontages (TCP4) for the units on Regent Street. The applicant would also be able to pursue an even less restrictive approach through the new Local Plan if they wish.

Impact on the living conditions of nearby dwellings

Objectors have raised concerns about smells and noise from cooking and the associated fume extraction equipment. Objectors have also raised concerns about noise and disturbance from external seating areas and customers leaving the premises. However, Environmental Health have not objected to the application, subject to conditions. These conditions would provide suitable controls over noise and smells associated with activities within the premises, e.g. fume extraction and noise insulation within the buildings. There are concealed fume extraction ducts built into the units that rise above the upper floor flats.

With regard to any external seating areas, Environmental Health have recommended that the use of any further external seating areas be limited to no later than 10.30pm. In assessing the potential for noise and disturbance from customers using the external seating areas and leaving the premises, it is important to bear in mind that the site is situated within the commercial core of the Town Centre. Livery Street and the surrounding streets contain a number of established restaurants that are open late into the evening, including external seating areas. Furthermore, as planning permission would still be required for any further changes of use of the units in question, the Council would still have the opportunity to consider the impact of each proposal on a case-by-case basis. The Council would have the opportunity to refuse planning permission for such

proposals if the number of restaurants was deemed to have reached a point where noise and disturbance was unacceptable.

Impact on the character and appearance of the Conservation Area

The proposals are unlikely to have a significant impact on the character and appearance of the Conservation Area. The main conservation impact of restaurant uses arises where external fume extraction ducting is required. However, in this case there are concealed fume extraction ducts built into the units. It has also been concluded that the proposals would not have a significant impact on the Grade II* Listed Regent Hotel.

Other matters

Objectors have raised concerns about the adequacy of the drainage system to cope with an increase in restaurants and have cited drainage problems that have occurred in the past. The applicant has confirmed that there were some issues of car park flooding dating back to 2007. However, the applicant considers that these incidents were primarily due to excessive rain water. As a result, a pumping unit was installed and drain covers improved. The applicant advises that no historically blocked drain has been traced back to a commercial or residential tenant of Regent Court and that there has been no reoccurrence of the issue since this time. The applicant confirms that the Centre Management team monitor catering tenants closely to ensure that they record and comply with the correct waste removal procedures. On the basis of this information, it is not considered that an increase in the number of restaurants would be unacceptable on drainage grounds.

Objectors have raised concerns about the adequacy of the refuse stores to cope with an increase in restaurants and have cited problems with the new Wagamamas restaurant using the residents' bin store. However, the applicant has advised that this issue has now been resolved, with a new commercial bin store being provided. The applicant has advised that any new tenants will be allocated their own waste storage area within their demise and the existing residents' bin storage will be unaffected. On the basis of this information, it is considered that suitable provision can be made for refuse storage for any new restaurants.

Objectors have raised concerns about increased anti-social behaviour. This is not normally an issue associated with restaurant uses. The proposals do not relate to any of the units in question being used as a bar or hot food takeaway.

SUMMARY / CONCLUSION

The proposals would have an acceptable impact on the vitality and viability of the Town Centre and on the character and appearance of the Conservation Area. The proposals would also have an acceptable impact on the living conditions of nearby dwellings. Therefore it is recommended that this application is approved.

CONDITIONS

1 Noise arising from any plant or equipment at any further A3 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 the occupiers of nearby properties in the locality in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011.

2 No further units shall be used for A3 purposes 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.

3 No further units shall be used for A3 purposes 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.

- 4 No customers shall be permitted to use any external seating area associated with any further change of use to A3 use within Livery Street before 0930 hours or after 2230 hours. All furniture shall be removed from any such external seating areas by 2330 hours and no furniture shall be permitted within the external seating areas between 2330 hours and 0900 hours. **REASON:** To ensure that any external seating areas 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.
-



© Crown copyright and database rights [2013] Ordnance Survey 100018302.



Scale: 1:1250 @A4 Drawn By:

Date: 21 June 2013

Riverside House, Milverton Hill, Royal Leamington Spa, Warwickshire. CV32 5HZ

Tel: 01926 410410

