

Planning Committee: 26 November 2013

Item Number: 12

Application No: W 13 / 1339

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

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Registration Date: 20/09/13

Expiry Date: 15/11/13

Unit 11, Livery Street, Regent Court, Leamington Spa, CV32 4NP

Change of use from retail (Use Class A1) to a restaurant (Use Class A3) and associated external alterations including the installation of fume extraction ducting and air conditioning condensers FOR NewRiver Retail

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

RECOMMENDATION

Planning Committee are recommended to GRANT planning permission, subject to conditions.

DETAILS OF THE DEVELOPMENT

The application proposes a change of use from retail (Use Class A1) to a restaurant (Use Class A3). The application also proposes external alterations including the installation of fume extraction ducting and air conditioning condensers on the rear elevation.

The application has been amended to include brick-effect cladding to the extraction flue.

THE SITE AND ITS LOCATION

The application relates to a shop unit on the northern 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 is currently vacant and was last used for retail purposes (Use Class A1). There is existing external plant on a rear flat roof at first floor level and on the main roof of the building. These parts of the building are situated adjacent to the rear service yard serving Regent Court and the adjacent properties in Parade and Regent Street.

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).

Subsequent planning permissions have been granted for signage and new shopfronts for the unit that is subject to the current application.

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.

After the current application was submitted, a further application was submitted for an extension of the opening hours of Unit 11 to 0730 - 0000 hours on Mondays to Wednesdays, 0730 - 0030 hours on Thursdays and Fridays, 0730 - 0130 on Saturdays and 0730 - 2230 on Sundays and Bank Holidays (Ref. W13/1439). A decision has yet to be made on this application.

RELEVANT POLICIES

- TCP5 - Secondary Retail Areas (Warwick District Local Plan 1996 - 2011)
- 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)
- DP13 - Renewable Energy Developments (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)
- Sustainable Buildings (Supplementary Planning Document - December 2008)
- National Planning Policy Framework

SUMMARY OF REPRESENTATIONS

Town Council: No objection.

Public response: 9 neighbours have objected on the following grounds:

- noise and disturbance from customers outside the premises;
- noise and disturbance from staff moving outdoor furniture late at night;
- the layout of Livery Street means that sound reverberates around the buildings, amplifying the noise for the residents above;
- noise and disturbance from the extraction flue;
- the proposals will change the character of Livery Street from a busy shopping area by day and a tranquil residential area at night to an area that is continually noisy;
- the existing shops and cafes largely keep normal High Street trading hours;
- overloading of sewerage infrastructure;
- external seating would cause even more noise; and
- concerns about increased opening hours.

Cllr Weber: "There is a trend in Livery Street to see requests for change of use from A1 to A3. Further along Livery Street towards Regent Street, there is an A1 that is due to close shortly. Although this trend is not undesirable in principle, the effects of noise will have a contributing effect upon the residents in the apartments above street level. May I ask that the condition imposed on other new A3's is adhered to thus with an alteration to the removal of furniture from 2330 to 2300".

Environmental Health: Recommend a condition to require a noise assessment to be carried out to assess noise from fume extraction, air conditioning or refrigeration equipment and to assess the suitability of the sound insulation in the ceiling of the premises. Also recommend conditions to impose a noise limit on any plant or equipment and to require the submitted odour mitigation measures to be implemented.

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

Livery Street is designated as a Secondary Retail Area in the Local Plan. Local Plan Policy TCP5 states that changes of use from shops (Use Class A1) to restaurants and cafes (Use Class A3) within Secondary Retail Areas will be permitted unless: (a) more than 50% of the total length of the street frontage is in non-A1 use; or the proposal consists of, or would contribute to creating, a continuous non-A1 frontage of more than 16m. The proposals would contravene both of these limitations given the number of existing restaurants and cafes along the north-western side of Livery Street. However, Regent Court as a whole would comply with

criterion (a) given the number of retail units on the opposite side of Livery Street. As this is a discrete shopping centre laid out either side of a narrow pedestrianised street, the frontages on either side of the street are considered to operate as a single shopping frontage in terms of assessing the impact of the proposals against Policy TCP5. Therefore the proposals are considered to comply with Policy TCP5 and would not harm the vitality and viability of this part of the town centre.

In any case, the applicant has advised that they are struggling to attract retail occupiers to Regent Court 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. As the proposals are considered to comply with Policy TCP5, it is not necessary to explore these issues further, but these factors add weight to the case in favour of granting planning permission.

Impact on the living conditions of nearby dwellings

It is noted that objectors have raised concerns about noise from customers outside the premises and from external seating areas. Objectors have also raised concerns about noise from the proposed fume extraction equipment. However, Environmental Health have not objected to the application, subject to conditions. These conditions would provide suitable controls over noise and odours associated with the activities within the premises, e.g. fume extraction and noise insulation within the building. No external seating area is proposed as part of this application and would have to be the subject of a further planning application if the applicant wished to introduce such a feature. As a result, it is not necessary to impose a condition restricting the hours of use of any outdoor seating area as requested by Councillor Weber.

In terms of opening hours, the original planning permission for Regent Court restricts the opening hours of the commercial units in Regent Court to 0730 - 2330 hours. For the avoidance of doubt, the same condition is recommended for the current application. Objectors have raised concerns about proposals to extend these opening hours. However, this is the subject of a separate planning application (W13/1439).

In assessing potential noise and disturbance from the proposed restaurant 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, some including external seating areas. In this context it is not considered that the proposed change of use would cause an unacceptable increase in noise and disturbance for nearby residents and the proposal would comply with Policy DP2 of the Local Plan.

Impact on the character and appearance of the Conservation Area

The amendment to provide brick effect cladding to conceal the extraction flue is considered to be sufficient to address any concerns about the adverse impact on the character and appearance of the Conservation Area as the proposed cladding would give the appearance of a traditional chimney. The proposed change of use would not have a significant impact on the Conservation Area. Therefore it is considered that the proposals would preserve the character and appearance of the Conservation Area and comply with Policy DAP8 of the Local Plan.

Other matters

Objectors have raised concerns about the adequacy of the drainage system to cope with an additional restaurant 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 the proposed change of use would be unacceptable on drainage grounds.

The proposals include a suitable bin store at the rear of the premises.

Since the proposed change of use would result in a material increase in the energy demand of the unit and no renewable measures have been put forward as part of the application, a condition is recommended to require 10% of the predicted energy requirements of the development to be generated on site from renewable energy resources. This would meet the requirements of Local Plan Policy DP13 and the associated SPD.

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 planning permission is granted.

CONDITIONS

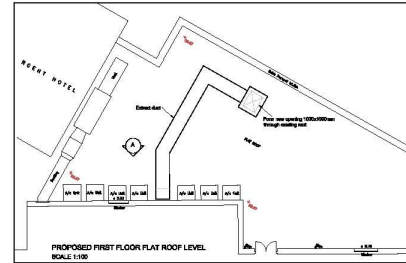
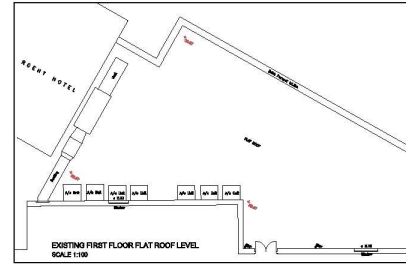
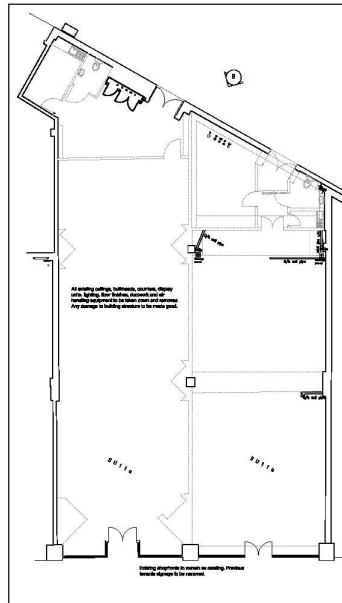
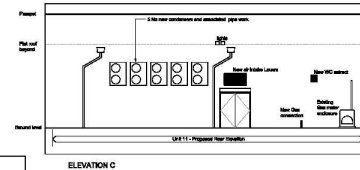
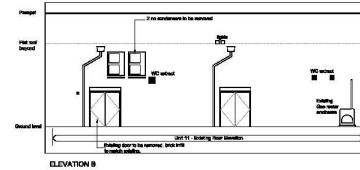
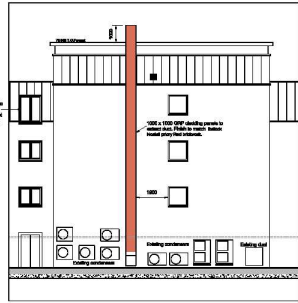
- 1 The development hereby permitted shall begin not later than three years from the date of this permission. **REASON:** To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and

approved drawing(s) 220B, and specification contained therein, submitted on 19 September 2013. **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 details of the facing materials for the external treatment of the extraction flue 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 large scale details of until large scale details of the external treatment for the extraction flue 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 DAP8 of the Warwick District Local Plan 1996-2011.
- 5 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.
- 6 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.
- 7 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.

- 8 The premises shall not 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 to be installed;
 - (b) a noise assessment has been undertaken to assess the suitability of the existing sound insulation in the ceiling of the 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.
- 9 The premises shall not be used for A3 purposes unless odour mitigation measures have been implemented in full accordance with the details specified in the odour assessment by LJ Air Ltd dated 30 August 2013 (Revision A) together with the filter specification submitted on 11 November 2013. 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.
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The majority of the existing building is made of brickwork and is in good condition. The proposed development is to be built on the site of the existing building. The proposed development is to be built on the site of the existing building. The proposed development is to be built on the site of the existing building.

Photo 1: Existing front elevation

Photo 2: New external brickwork

Photo 3: Existing front elevation

Photo 4: New external brickwork

FOR PLANNING

NEW RIVER RETAIL

REGENTS COURT CENTRE
ROYAL LEAMINGTON SPA

Existing 100:
EXISTING AND PROPOSED
PLANS AND ELEVATIONS

Drawn	Checked	Project No.	Date
12/08/13	12/08/13	12/08/13	12/08/13

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