

Planning Committee: 16 August 2016

Item Number: 5

Application No: [W 16 / 0598](#)

Town/Parish Council: Leamington Spa

Case Officer:

Jo Hogarth

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Registration Date: 02/06/16

Expiry Date: 28/07/16

8-10 Augusta Place, Leamington Spa, CV32 5EL

Variation of condition 4 (restriction of the use of the rear yard) to allow the rear yard are to be used in conjunction with the existing restaurant between the hours of 12.00 and 20.00 FOR Elma Leamington Ltd

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

RECOMMENDATION

Planning Committee are recommended to grant planning permission.

DETAILS OF THE DEVELOPMENT

The proposal seeks to vary a condition attached to a previous permission in 2006 (ref: W/06/0212) which restricted the use of the outside rear yard area for use in connection with the restaurant.

THE SITE AND ITS LOCATION

The premises benefit from an authorised use as a Class A3 restaurant and comprise part of a terraced building located on the west side of the road within the designated Royal Leamington Spa Conservation Area. Within this part of the Town Centre there are mixed uses including residential properties, a House in Multiple Occupation, St. Peter's RC Primary School, Class A2 (offices) and Class A3 (retail) uses.

PLANNING HISTORY

In 2006 (Ref: W/06/0212) planning permission was granted for a change of use from Class D2 (community use) to Class A3 (restaurant).

W/13/1067 - Change of use from restaurant (Use Class A3) to 2no. 2 bedroomed dwellings, granted 25th September 2013. This has not been implemented.

RELEVANT POLICIES

- National Planning Policy Framework

The Current Local Plan

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

The Emerging Local Plan

- BE3 - Amenity (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)

SUMMARY OF REPRESENTATIONS

Royal Leamington Spa Town Council: No objection.

WDC Health & Community Protection - Environmental Sustainability

Section: No objection subject to conditions on hours of opening, restricted covers and personal to the applicant.

Public response: 5 letters of objection have been received on the grounds that this could lead to noise and disturbance unless it was applied solely to the current occupiers

ASSESSMENT

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

The impact on the living conditions of nearby dwellings

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It is considered that the key issue in the consideration of this application is whether the use of the rear yard as an additional outdoor seating area would result in harm to the amenities of the adjacent residents through increased noise and disturbance. The proposal originally sought to use the rear yard area between the hours of 12:00 and 22:00. Environmental Health have visited the site and suggest an amended time of 20:00 which has been agreed with the applicant and could thereby be suitably conditioned as such. It is noted that the current restaurant use is considered to be compatible with the surrounding area. Whilst a personal permission has been suggested as a potential means of appropriately controlling the use of the site, it is considered that in practice such a permission would not restrict the way in which the current owners operate as it would be open to them to change to a different type of restaurant. It is therefore considered that a personal condition would not be enforceable or reasonable and therefore not necessary in this particular instance.

Paragraph 123 of the NPPF advises that the use of conditions can mitigate and reduce impacts on health and quality of life arising from noise. As stated, the site is within the built up area of the Town Centre where restaurants and bars are expected to be located. Equally, residential properties are located within Town Centres and where there is potential for noise nuisance and disturbance an appropriate balance needs to be found. In this particular instance, given the

town centre location of the premises and also the mixed nature of the use of the surrounding properties, it is considered that the proposed restriction of the external rear area of the site for use as a dining area until 8pm in the evening compromises an appropriately balanced solution. On that basis, it is thereby considered that the proposal would not be in conflict with the objectives of Policy DP9 in the Local Plan.

Other Matters

It should be noted that under the licence for the restaurant, which is controlled through separate legislation, no bottles and regulated entertainment are permitted within the external part of the premises.

SUMMARY/CONCLUSION

It is considered that, subject to a condition restricting the hours of use of the rear yard, the application is acceptable and would not result in significant adverse harm on nearby uses or residents.

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 drawings and specification contained therein, submitted on 2 June 2016. **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 The use of the rear outdoor area serving these premises shall only be restricted to the hours of 12:00 until 20:00 (Monday to Sunday). **REASON:** To protect the amenities of surrounding residential properties and to satisfy Policies DP2 and DP9 in the Warwick District Local Plan 1996-2011.

- 4 No more than 24 covers shall be permitted in the external seating area of the premises at any one time. **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 and DP9 of the Warwick District Local Plan 1996-2011.
