

Application No: [W 15 / 1922](#)

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

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Registration Date: 17/11/15

Expiry Date: 12/01/16

Units SU9B & SU10 (Nandos restaurant), Livery Street, Leamington Spa, CV32 4NG

Variation of condition 2 of planning permission no. W14/0695 to allow the external seating area to be used between 0930 hours and 2100 hours. FOR
Nando's Chickenland Ltd

This application is being presented to Committee due to the number of objections and an objection from the Town Council having been received.

RECOMMENDATION

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

DETAILS OF THE DEVELOPMENT

The application proposes a variation of condition 2 of planning permission no. W14/0695 to allow the external seating area to be used between 0930 hours and 2100 hours. Condition 2 currently restricts the hours of use to between 0930 hours and 1930 hours.

As originally submitted the application proposed an extension to 2130 hours. However, the applicant has amended the application to be in line with the hours of use that were approved in the recent appeal relating to Unit 3 (Ref. W15/0020).

THE SITE AND ITS LOCATION

The application relates to premises 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 premises are used as a restaurant (Use Class A3). Livery Street is pedestrianised and a number the other units along the street have external seating areas to the front, including Las Iguanas, Bar Angeli, Gourmet Burger Kitchen, Zou Bisou and Yo Sushi. External seating areas have also recently been approved outside Turtle Bay and Unit 3.

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" (Ref. W01/0483).

In May 2013 planning permission was granted for the creation of an outdoor seating area outside the application premises (ref: W/13/0350). 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 W/01/0483 (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: W/13/0528).

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. W/13/1339). This permission was subject to a condition to prohibit the creation of an outdoor seating area.

In February 2014 planning permission was granted for the change of use of the remaining retail units along Livery Street into restaurants (Ref. W13/1578). This permission was subject to a condition to prohibit the creation of outdoor seating areas.

In May 2014 and October 2014 planning permissions were granted for external seating areas outside Units 2, 6 and 7a (Refs: W/14/0430, W/14/0437 & W/14/1136). These permissions were subject to various conditions, including a restriction on the hours of use of the external seating areas to between 0930 hours and 1930 hours, a prohibition on the movement of furniture within the external seating areas outside of those hours, a requirement for all furniture to be fitted with rubber stoppers, a requirement for compliance with an Operational Management Plan, a requirement for canopies to be fitted and a limit on the number of covers to be provided within each external seating area.

In June 2014 a permanent planning permission was granted for the external seating area outside the application premises (Ref. W14/0695). This was subject to the same conditions as for Units 2, 6 and 7a.

In March 2015 planning permission was refused for an external seating area outside Unit 3 (Ref. W15/0020). In that case the applicant had proposed a later restriction on the hours of use (2100 hours) and Planning Committee felt that this would cause unacceptable noise and disturbance for nearby residents.

However, an appeal against that refusal was allowed in October 2015 and planning permission was granted for an external seating area to be used until 2100 hours.

In August 2015 planning permission was granted for an external seating area outside Turtle Bay (Ref. W15/1050). This pre-dated the appeal decision in relation to Unit 3 and was subject to the same conditions as for Units 2, 6 and 7a, including a time limit of 1930 hours.

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)
- DAP8 - Protection of Conservation Areas (Warwick District Local Plan 1996 - 2011)
- DAP9 - Unlisted Buildings in Conservation Areas (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)
- HE2 - Protection of Conservation Areas (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- NE5 - Protection of Natural Resources (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)

SUMMARY OF REPRESENTATIONS

Town Council: Any increase in the currently agreed hours will adversely impact on the living conditions of the residents of nearby dwellings.

Cllr Knight: Objects. This seems like a slippery road towards a night time eating and drinking street which conflicts with residents needs. The street is already causing discomfort for the residents, it seems a bad idea to encourage any outside activities beyond 7 or those already granted.

Environmental Health: The Regent Court area has relatively unique acoustic characteristics and the significant potential for outside activities to cause noise nuisance to the overlooking residential premises is now well established. The courtyard is acoustically hard and arranged with tall buildings on either side that provide a canyon effect for noise, enabling multiple reflections which leads to an associated reduced attenuation of noise. With this in mind it is important that

any consented activities are carefully managed to prevent significant noise disturbance to residential premises that overlook the area. Therefore recommend that the hours of use of the external seating area be restricted to no later than 2100 hours, in accordance with the recent Inspector's decision in relation to Unit 3.

Public response: 13 objections have been received, raising the following concerns:

- increased noise and disturbance;
- noise from tables being dragged inside late a night;
- residents already have to keep their windows closed because of the noise;
- the existing 7.30pm cut-off for external seating was agreed after many hours of long considered discussions and compromise from residents and there should not be any deviation from this;
- increased smoke and smells;
- this is not suitable for a residential area;
- other restaurants will follow suit if this is permitted;
- loss of privacy;
- the combination of tall buildings lining a narrow alley with hard surfaces causes a canyoning effect amplifying noise to residents above; and
- these restaurants are happy to operate in other towns without outside seating.

ASSESSMENT

The main issue relevant to the consideration of this application is the impact on the living conditions of nearby dwellings.

There are residential properties in close proximity to the external seating area, on the upper floors of the application property and on the opposite side of Livery Street. Therefore Planning Committee have previously restricted the hours of use of this and other external seating areas along Livery Street to no later than 1930 hours. However, the prospective occupier of Unit 3 (Cote) decided to test this restriction at appeal and in October 2015 their appeal was allowed (Ref. W15/0020). Consequently planning permission has been granted for an external seating area at Unit 3 to be used until 2100 hours.

It is important to remember that each case must be judged on its own merits and that the Council are not bound to follow the Unit 3 decision when considering proposals for other premises. However, that decision is an important material consideration that must be taken into account by the Council when considering further proposals relating to external seating areas along Livery Street.

The following comments of the Inspector are of particular note:

"[Livery Street is] a busy thoroughfare, in the heart of the town centre, that is effectively a destination for restaurant and food based uses. The use of outdoor dining is clearly an attractive proposition for potential food retailers in terms of the attractiveness of their offer and, setting aside matters of potential noise and

disturbance, I consider that the concept of outdoor dining enhances the vibrancy and vitality of the streetscape, particularly considering the pedestrianised nature of the thoroughfare. In those terms, the proposal would benefit the local economy, a matter that weighs in favour of the proposal, having regard to the aims of paragraph 23 of the National Planning Policy Framework.

The established situation is such that Livery Street is likely to attract footfall throughout the evening hours up to and beyond the permitted closing times of the restaurants at 2330 hours. In a relatively enclosed space, I do not doubt that the noise associated with such activity would be apparent to those living above restaurants, particularly with windows open. Comments from the Council's Environmental Health Officer notes that the change in the nature of Regent Court has led to an increase in noise levels during the evening period. It is also noted that a number of complaints have been received regarding noise levels but the Council's records do not reflect whether those complaints were made specifically in relation to outdoor seating or general noise from pedestrians."

The Inspector went on to comment as follows:

"It is clear that the existing levels of background noise are generated by a number of sources, including general activity within the area. That noise is likely to continue into the evening until restaurants close; sometime beyond the 2100 cut off period for the use of outdoor seating, as requested. No conclusive evidence has been presented to demonstrate that the use of outdoor seating until 2100 would lead to a substantial increase in background noise levels, over and above the existing situation."

Finally, the Inspector concluded as follows:

"Taking account of the established character of the area I am satisfied that the proposal would not lead to an increased level of noise and disturbance, over and above existing background noise levels, that would warrant permission being withheld. I am also satisfied that the likely effects of the proposal could be mitigated to an acceptable level through measures that could be achieved through the imposition of conditions, including noise reducing canopies and an operational management plan (both of which are requirements of the existing planning permission for the site) and through a modification of condition 6 that would limit the hours within which the seating area can be used and require that rubber stoppers are fitted to all street furniture.

Whilst I am mindful of the proximity of residential units to the appeal site, and the fact that those units are single aspect, subject to the mitigation described above, I consider that the use of outdoor dining up to a period of 2100 hours represents an appropriate balance between maintaining reasonable living conditions and meeting the needs of ground floor operators. To my mind, the likely effects are no greater than could reasonably be expected given the nature of the location within a busy town centre."

The environment around the Nandos unit and the considerations affecting the current proposals are very similar to those relating to Unit 3. Therefore the

Inspector's decision represents a strong material consideration in favour of granting permission. It is also of note that the Council's Environmental Health Officer has raised no objection to the proposals, provided the time limit is 2100 hours to tie in with the Unit 3 decision.

One notable difference between the Nandos premises and Unit 3 is that Nandos fronts on to the narrowest section of the street, rather than the section that opens out into a square. However, it is also important to have regard to the fact that the Nandos premises adjoin the one external seating area along Livery Street that has no restrictions on its hours of use, i.e. Las Iguanas. Consequently this is not a part of the street where there would be no external activity up to 2100 hours, or indeed later. Importantly, it is unlikely that existing noise levels will be any quieter in this part of the street than outside Unit 3. If anything, existing noise levels could be higher due to the proximity to the unrestricted Las Iguanas external seating area. Therefore it is not considered that there are reasonable grounds for imposing an earlier restriction on Nandos than the Inspector recently allowed for Unit 3.

SUMMARY / CONCLUSION

The proposals would have an acceptable impact on the living conditions of neighbouring dwellings. Therefore it is recommended that planning permission is granted for the variation of this condition.

CONDITIONS

- 1 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s) 2720/25/A, and specification contained therein, submitted on 9 May 2014. **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.
- 2 No customers shall be permitted to use the external seating area hereby permitted before 0930 hours or after 2100 hours on any day. At all times that the external seating area is in use, the canopies to be approved under Condition 3 shall be maintained in the open position between 1700 hours and 2100 hours. No furniture within the external seating area shall be moved before 0930 hours or after 2100 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.
- 3 The acoustically absorbent canopy that was approved under condition 3 of planning permission no. W14/0695 shall be retained and maintained in accordance with the approved details at all times that the external seating area is in use. **REASON :** To protect the living conditions of nearby dwellings, in accordance with Policies DP2 and DP9 of the Warwick District Local Plan.

- 4 The external seating area hereby permitted shall be operated in strict accordance with the Operational Management Plan submitted on 12 May 2014 (in relation to planning application nos. W14/0430 and W14/0437). **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.
- 5 No more than 20 covers shall be permitted in the external seating area hereby permitted 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 & DP9 of the Warwick District Local Plan 1996-2011.
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