

Application No: W 14 / 0430

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

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Unit 2, 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 2, 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

INTRODUCTION

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.

This application was deferred by Planning Committee on 29 April to enable further discussions with the applicant regarding the appearance and noise attenuation of the canopies. Further discussions have subsequently taken place with the applicant and the Council's Environmental Health Officers. The applicant has submitted a letter detailing the conclusions of these discussions, together with details of the proposed canopies, an Acoustic Statement from their acoustic experts and a revised Operational Management Plan.

The Acoustic Statement advises as follows:

- **Sound absorption:** The purpose of any installed awning would be to increase the amount of acoustic absorption within the space; due to the lightweight nature of acoustically absorbent awning materials, it is not considered that a canopy would attenuate 'direct' noise which would potentially transfer straight through the material.
- **Overall noise strategy:** In itself, an acoustically absorbent canopy will not significantly reduce any future patron noise associated with the A3 operation. Whilst the canopy would help in reducing the 'reverberant' noise in the courtyard area, the solution would form only a small part of the overall noise reduction strategy for the development. A more significant control would be through use of the proposed management plan which, amongst other policies, offers controls on signage, the movement of furniture, the type of furniture and allowable hours for outdoor dining.
- **Awning style:** For any 'awning' to offer significantly increased acoustic benefits, it is considered that a fully enclosed solid structure would be required. This would allow the 'direct' noise to be attenuated but would require a fully sealed structure constructed out of dense materials. The aesthetics of such a material would conflict with the architectural vision for

the courtyard space as they would be of industrial type, e.g. metal cladding with dense mineral wool, cement particle board, in-situ concrete. Such materials would therefore appear at odds with the open nature of the existing courtyard area at Regent Court and may therefore be unsuitable and impractical. The effectiveness of an awning constructed of solid dense materials would be significantly limited due to the gaps between adjacent awnings. To be significantly effective at reducing vertical noise transfer the awnings would need to be acoustically sealed, at which point becoming more akin to internal spaces. Where any acoustically absorbent awnings are installed, it is unlikely that the acoustic benefits offered by either a fixed or retractable system would vary significantly.

The letter from the applicant advises as follows:

- prospective occupiers of the units, particularly high quality occupiers, have a requirement for external seating in this location; external seating is a requirement to occupiers to maximise covers and also to provide ambience and the type of dining experience expected by customers;
- to achieve a significant acoustic benefit the outdoor seating area would need to be enclosed above and on all sides, this would not represent external seating as desired by the occupiers and would not represent a commercially attractive proposition;
- providing extensive roof cover awnings or canopies is not considered to be appropriate within the Conservation Area, would not present an attractive scheme, would not be attractive to retailers and would not allow adequate fire tender access;
- the provision of fixed canopies rather than retractable awnings will not provide any increase in acoustic absorption and would represent a less attractive scheme for retailers;
- an updated Operational Management Plan has been submitted and this includes a range of measures to protect residential amenity, including ceasing the use of external seating by 9.30pm, requiring rubber footings on furniture and requiring external furniture to be left in place overnight;
- Policy TC9 of the Draft Local Plan seeks to ensure that new restaurant and cafe uses are secured and delivered at Regent Court; and
- paragraph 3.81 of the Draft Local Plan notes the Council's aspiration to increase footfall and pedestrian circulation in this area of the town centre; the proposals for outdoor seating in this location fully complies with these objectives.

The report that follows is largely the same as the report that was submitted to the 29 April Planning Committee, updated to reflect the further consultation responses that have been received and to refer to the further discussions that have taken place about the canopies.

RECOMMENDATION

Planning Committee are recommended to GRANT this variation of condition, subject to conditions.

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 2. This relates to an area of 25.7 sq m and would provide space for 28 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. Further noise mitigation information has subsequently been submitted, as detailed above in the introduction to this report.

There is also another application currently under consideration in relation to the creation of an external seating area outside Unit 6 (Ref. W14/0437). This the subject of another item 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
- The emerging Warwick District Local Plan 2011 – 2029.

SUMMARY OF REPRESENTATIONS

Town Council: Object. The creation of an outdoor seating area in front of the Unit may increase the risk of an unreasonable degree of noise and disturbance both from the premises and customers which may adversely impact on residents living above and adjacent to these properties.

Public response: 6 neighbours have 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;
- the acoustics of the street just amplify and reverberate any noise; and
- increased smells from cooking.

WDC Environmental Health: Following a meeting with the applicant to discuss the measures to limit noise and disturbance, raise no objection, subject to conditions to restrict the hours of use of the external seating area, to require the overhead canopy be maintained in an open position between the hours of 17.00 and 23.30, and to require that external covers be restricted to one table depth across the unit frontage. Confirm that they are satisfied that all other outstanding issues can or have been addressed within the Operational Management Plan.

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. However, following extensive discussions about the potential noise issues, Environmental Health have raised no objection to the proposals.

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 Plan which will include measures for dealing with any noise issues. The canopy and Operational Management Plan 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.

Following the deferral of this application at the 29 April Planning Committee, further discussions have taken place regarding the potential for canopies to provide further mitigation against any noise impact. The applicant's response on these issues is summarised in the introduction to this report. Environmental Health have accepted the conclusions of the Acoustic Statement. The key conclusions are that a canopy will not provide significant noise mitigation unless it is a wholly enclosed structure, effectively a front extension to the building. This would not provide the external dining that the applicant and prospective occupiers desire. Furthermore, such a solution would be unacceptable on design grounds.

In view of the above conclusions, the applicant has proposed that retractable fabric canopies will be installed. These would not attenuate any 'direct' noise, but they would increase the amount of acoustic absorption within the space. This could aid in reducing the 'reverberant' noise in Livery Street. These canopies have to be considered as part of the overall noise reduction strategy for the development, including the measures proposed in the Operational Management Plan and the hours of use restrictions.

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. It is also of note that 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. Therefore, taking all of these factors into account, together with the various mitigation measures that have been proposed, it is considered that the proposals would not cause unacceptable noise and disturbance for nearby dwellings.

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

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.

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. 0132, submitted on 20 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. At all times that these external seating areas are in use, the canopies to be approved under Condition 11 shall be maintained in the open position between 1700 hours and 2130 hours. 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.
- 17 No more than 28 external covers shall be permitted in relation to Unit 2. No more than 24 external covers shall be permitted in relation to Unit 6. **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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