

Planning Committee: 17 December 2013

Item Number: 9

Application No: W 13 / 1339

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

Registration Date: 20/09/13
Expiry Date: 15/11/13

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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 New River Retail

This application was deferred at the Planning Committee on 26 November in order for Council Officers and the applicant to consider how the Committee's concerns about noise levels could be mitigated. In response, further statements have been submitted on behalf of the applicant (New River Retail, owners of Regent Court), the prospective occupier (Turtle Bay) and the applicant's surveyor (Wareing and Co). These statements detail the nature of the proposed operation and measures for controlling noise.

SUMMARY OF FURTHER INFORMATION SUBMITTED BY THE APPLICANT

The applicant has advised as follows:

- It would not be feasible to install any first floor canopy structure spanning the entire width of Livery Street because a 3.7m buffer zone is required along the centre of Livery Street to provide access for a fire engine / tiller;
- The applicant's noise consultant has advised that, whilst there are no recognised assessment standards which can be used to accurately determine the impact of patron noise, its effect can be minimised by effective management techniques. In addition, some acoustic benefit could be gained by introducing softer, more acoustically absorbent materials in the immediate vicinity of Unit 11's entrance. The addition of an acoustically absorbent canopy would reduce acoustic reflections. In turn, the reduction of reflections would reduce reverberant noise associated with Unit 11's patrons arriving and vacating the premises. The applicant has advised Turtle Bay that an awning will need to be included as part of any shop front application for the site, which they have agreed to; and
- The applicant has put in place measures to address potential externalised noise disturbances to residents from the restaurant use. This includes soundproofing within the unit, 24 hour CCTV and active on site centre management until closing time. The management team will also work with restaurant tenants to ensure that noise is kept to a minimum when clearing up after the restaurant has closed.

The prospective occupier has advised as follows:

- Turtle Bay already operates from established restaurants in Bristol, Birmingham, Milton Keynes, Southampton and Nottingham, all on the basis of Class A3 restaurant use;
- The primary use of the premises is as a restaurant, as opposed to a pub or bar use. The floor space is laid out as such that it is primarily occupied by tables and chairs, i.e. as a restaurant, surrounding a central island bar servery;
- The primary purpose of Turtle Bay is to function as a Caribbean restaurant with the customer base principally being diners wishing to eat and drink. Turtle Bay has no plans or need for live music or DJs on the premises;
- The layout of the restaurant is such that the bar will only cater for and function as a pre-drinks bar area, for standing customers or those waiting whilst a table becomes available;
- Reference is also made to an outdoor seating area, but this will be the subject of a separate planning application;
- An Operational Management Schedule has been submitted and this could be subject to a planning condition;
- There will be Meeters and Greeters at the door (not bouncers) during busy periods; their primary purpose is to greet and to manage table bookings and direct guests to available tables, or to indicate that they may have to encounter a short-term wait at the pre-drinks bar;
- Customers will be asked to leave the premises in a quiet and orderly manner;
- Turtle Bay plan to invest approximately £1 million in capital expenditure and pre-opening costs and employ 55 staff; and
- The application is in line with Wagamama, around the corner, who also operate with A3 permission with an ancillary bar.

The applicant's surveyor has visited the existing Turtle Bay restaurant in the High Cross Shopping Centre in Leicester and has advised as follows:

- The Leicester scheme is very much the type of environment that is proposed to be created in Regent Court, being a family dining area with other restaurant concepts such as Coast to Coast, Cafe Rouge, Carluccios, Yo Sushi! and Frankie and Bennie's;
- The Leicester Turtle Bay has been trading under an A3 permission for 10 weeks without any problems;
- The centre manager has confirmed that to their knowledge Turtle Bay have not created any issues other than some noise during their opening launch party; and
- The Leicester scheme includes three levels of apartments directly above the Turtle Bay restaurant and on the opposite mall and this has caused no nuisance.

RECOMMENDATION

On the basis of the above further information, the recommendation remains that Planning Committee GRANT planning permission, subject to conditions. The report that follows is the same as the report to the 26 November Planning Committee,

updated to include information that was contained within the addendum report and reported verbally to that Committee. In addition, a further condition is now recommended (Condition 9) which requires compliance with the Operational Schedule submitted by the prospective occupier.

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 1,115m²)" (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 by the prospective tenants (not the site owners) 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). That application was subsequently withdrawn.

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.

Councillor 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 use 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) which has been withdrawn.

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 air conditioning condensers would be viewed in association with the many existing condenser units around this service yard. 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.

The applicant considers that it is not feasible to provide 10% on-site renewable energy production in relation to these premises. They have advised that they have explored various options but none are considered to be workable on this site. For example, in terms of solar, the unit has no roofspace available as it is in separate ownership. The premises do have 10 square metres allocated at first floor for plant space but this is already full with condenser units and extract ductwork. In terms of air source heat pumps, the applicant advises that 6 units would be required and there is no space to install them. If space could be found there are likely to be issues with noise. In addition, the applicant considers air source heat pumps to be of little benefit to the operation of the restaurant. In view of these issues, it is considered that it would not be appropriate to require on-site renewable energy production as part of this proposed change of use.

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

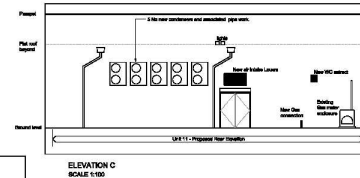
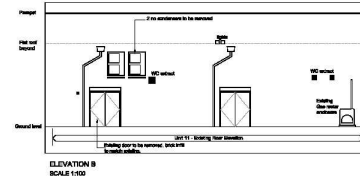
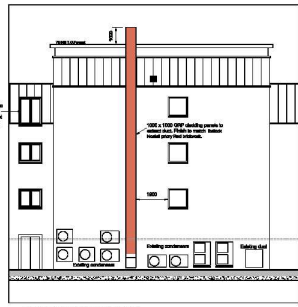
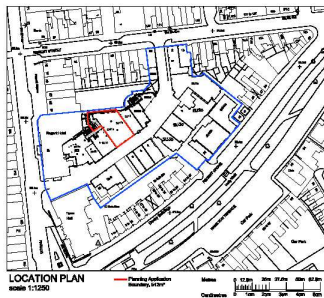
- 1 The development hereby permitted shall begin not later than three years from the date of this permission. **REASON:** To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out strictly in accordance with the details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

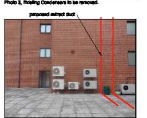
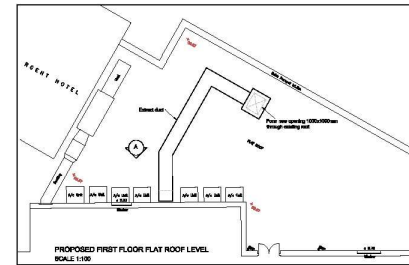
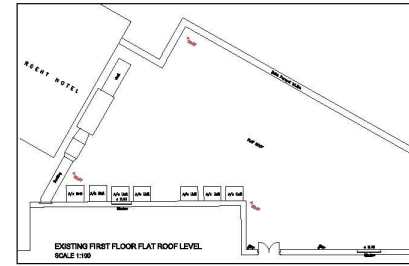
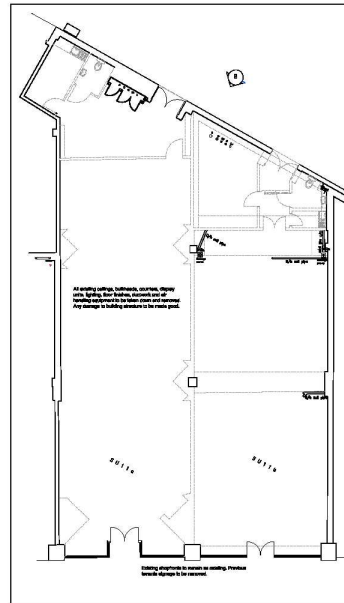
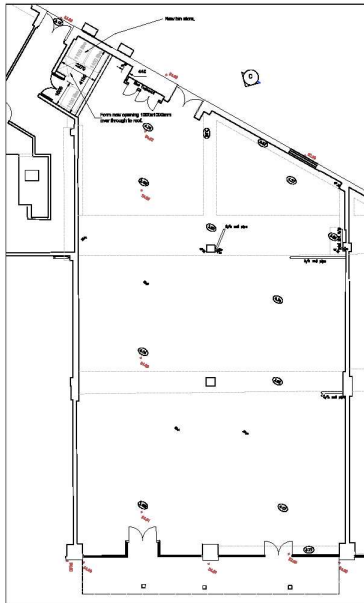
- 4 No development shall be carried out on the site which is the subject of this permission, until large scale details of the external treatment for the extraction flue at a scale of 1:5 have been submitted to and approved by the Local Planning Authority. The development shall not be carried out otherwise 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 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 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.
- 7 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.
- 8 The kitchen extract system hereby permitted shall not be used unless sound attenuation treatment has been implemented in strict accordance with the recommendations of the Noise Impact Assessment Report by RPS (Acoustics) dated 13 September 2013. The sound attenuation treatment shall be maintained in strict accordance with the approved details at all times thereafter. **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 restaurant hereby permitted shall operate in strict accordance with the Operational Schedule submitted on 5 December 2013. **REASON:** To protect the living conditions of nearby dwellings, in accordance with Policies DP2 and DP9 of the Warwick District Local Plan.



The impact of this work is limited to the area of the application and is not intended to be a statement of opinion or a statement of fact. The applicant is responsible for the accuracy of the information provided. The applicant is responsible for the accuracy of the information provided. The applicant is responsible for the accuracy of the information provided.



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FOR PLANNING

NEW RIVER RETAIL
 REGENTS COURT CENTRE
 ROYAL LEAMINGTON SPA

Drawing title: EXISTING AND PROPOSED PLANS AND ELEVATIONS
 Date: 13/03/13
 Drawn by: [Name]
 Check by: [Name]
 Scale: 1:100
 Sheet: 220 of 220

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