

Application No: [W 15 / 0020](#)

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

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Unit 3, Regent Court, Livery Street, Leamington Spa, CV32 4NG

Variation of condition 6 of planning permission ref. W/13/1578 to allow for the creation of an outdoor seating area in front of Unit SU3, Regent Court to be used between 0930 hours and 2100 hours (the restriction will remain in place for the remainder of the units covered by planning permission ref. W/13/1578, except Units 2, 6 and 7a where outdoor seating areas have previously been expressly authorised for use between 0930 hours and 1930 hours). FOR New River Retail

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 this variation of condition, subject to conditions.

DETAILS OF THE DEVELOPMENT

The application proposes the variation of condition 6 of planning permission ref: W/13/1578 to allow for the creation of an outdoor seating area in front of Unit 3. This relates to an area of 30.6 sq. m and would provide space for 32 covers. The restriction will remain in place for the remainder of the units covered by planning permission ref: W/13/1578, other than those where external seating areas have been expressly permitted (i.e. Units 2, 6 and 7a).

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 Las Iguanas, Nandos, Bar Angeli and Zou Bisou.

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 Nandos (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). This permission was granted on the understanding that planning permission would still be required for the change of use of individual units. NB. Nandos was in accordance with the original 2002 planning permission and therefore was not subject to this later removal of condition application.

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).

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 permission related to the other units along Livery Street that are not currently operating as cafes / restaurants.

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 areas.

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

RELEVANT POLICIES

- National Planning Policy Framework
- 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)
- 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)
- Design Advice on Shopfronts & Advertisements in Royal Leamington Spa (Supplementary Planning Guidance).

SUMMARY OF REPRESENTATIONS

Royal Leamington Spa Town Council: Object on the grounds of harm to the living conditions of nearby dwellings.

Cllr Jerry Weber: Objection. If outside seating is permitted, it should be in line with other premises on Livery Street i.e. 19.30.

Environmental Health: Comments awaited.

Public response: 16 objections have been received, raising the following concerns:

- increased noise and disturbance;
- noise from tables being dragged inside late at 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 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. However, following extensive discussions in relation to noise issues, a number of proposals for outdoor seating areas were approved at other units in Regent Court last year. These approvals were subject to a number of conditions, including a prohibition on the use of the outdoor seating areas after 1930 hours. Therefore the principle of outdoor seating areas in Regent Court has been established. The issue of concern for objectors in the current case is the extension of the hours of use of this particular external seating area to 2100 hours.

The applicant advises that a 1930 hours restriction is not acceptable to the prospective occupier of Unit 3. The applicant advises that the prospective occupier, Cote, would not consider leasing the unit unless they are permitted to have outdoor seating until 2100 hours.

The applicant has submitted a letter in support of the application which outlines the landlord's vision to transform Regent Court into a restaurant quarter to address issues with vacancies and a lack of footfall in this part of the town centre. This transformation has been successful to date, attracting new occupiers including Yo Sushi, Zou Bisou, Turtle Bay, Las Iguanas and Gourmet Burger Kitchen. This has generated significant benefits for the vitality and viability of the town centre as a whole.

The applicant advises that the addition of Cote in Unit 3 will build on this successful letting strategy and raise the bar in terms of the quality of the food offer at Regent Court. Cote is a contemporary French restaurant and brasserie, serving simple, high quality French food in stylish surroundings. The applicant considers that the quality of offer provided by Cote will assist in raising further the standard and reputation of Regent Court and in securing future high quality lettings.

The applicant has also agreed to implement the other measures to mitigate any noise impact that were agreed in relation to the other permissions. This includes 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. Restrictions on the movement of any external tables and chairs and the provision of rubber stoppers will also apply.

Environmental Health did not object to the original proposals for a 2130 hours cut off for external seating last year. Their comments on the current application are awaited and will be included in the addendum report to Committee.

The decision in the current case requires a careful balance to be struck between protecting the living conditions of neighbouring dwellings and preserving the vitality and viability of the town centre. In this case, it is apparent that a quality restaurant operator that the Council would wish to attract to the town centre will not take up a lease unless they are permitted to have external seating until 2100 hours. Attracting such an operator to the town is a benefit of the proposals that must be weighed in the balance. Furthermore, whilst the provision of an external seating area until 2100 hours would have some limited 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. Furthermore, the nature of the prospective occupier is such that the proposals are unlikely to create the type of noise issues that might be associated with other types of restaurant operator. 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 outdoor seating area 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 planning permission is granted for the variation of this condition.

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, drawing no. 0132, submitted on 20 March 2014 in relation to planning application no.

W14/0430, drawing no. 0134, submitted on 27 March 2014 in relation to the planning application no. W14/0437, drawing no. 0135, submitted on 25 July 2014 in relation to planning application no. W14/1136 and drawing no. 013, submitted with the current 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, 3, 6 and 7a shown on drawing nos. 013, 0132, 0134 & 0135. No customers shall be permitted to use these external seating areas before 0930 hours or after 1930 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 1930 hours. No furniture within the external seating areas shall be moved before 0930 hours or after 1930 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.

At all times that Units 2, 6 and 7a are used as a restaurant / cafe, the canopies to those units shall be maintained in a fully open position between 1700 hours and 2330 hours.

REASON : To protect the living conditions of nearby dwellings, in accordance with Policies DP2 and DP9 of the Warwick District Local Plan.

- 12 All of the restaurants / cafes 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.

- 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 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.

- 16 No more than 28 covers shall be permitted in the external seating area of Unit 2 at any one time. No more than 32 covers shall be permitted in the external seating area of Unit 3 at any one time. No more than 24 covers shall be permitted in the external seating area of Unit 6 at any one time. No more than 16 covers shall be permitted in the external seating area of Unit 7a 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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