

Planning Committee: 24 June 2014

Item Number: 15

Application No: W 14 / 0695

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

Registration Date: 09/05/14

Expiry Date: 04/07/14

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**Units SU9B & SU10, Livery Street, regents Court, Leamington Spa, CV32
4NG**

Removal of condition 5 of planning permission no. W13/0350 to allow the use of the external seating area to continue on a permanent basis; and variation of condition 4 of planning permission no. W/13/0350 to restrict the hours of use of the external seating area to between 0930 hours and 1930 hours (condition 4 currently permits the external seating area to be used until 2230 hours) FOR Nandos Chickenland Ltd

This application is being presented to Committee due to a request from Member of Planning Committee that all applications relating to such proposals on this street be decided by Planning Committee.

RECOMMENDATION

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

DETAILS OF THE DEVELOPMENT

The application proposes:

- (a) the removal of condition 5 of planning permission no. W13/0350 to allow the use of the external seating area to continue on a permanent basis; and
- (b) variation of condition 4 of planning permission no. W/13/0350 to restrict the hours of use of the external seating area to between 0930 hours and 1930 hours (condition 4 currently permits the external seating area to be used until 2230 hours).

The application has been amended to restrict the hours of use of the external seating area to 1930 hours. The application as originally submitted proposed that the external seating area would be used up until 2130 hours.

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

In May 2014 planning permission was granted for external seating areas outside Units 2 and 6. 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.

RELEVANT POLICIES

- Warwick District Local Plan 2011-2029 Publication Draft - published April 2014, in particular policies BE1, BE3 and HE2
- 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)
- National Planning Policy Framework

SUMMARY OF REPRESENTATIONS

Town Council: No objection.

Public response: Comments have been received from 5 neighbours. 2 of these raise objection on the following grounds:

- increased noise and disturbance;
- noise from staff dragging tables and chairs in after closing time; and
- the acoustics of the street just amplify and reverberate any noise.

3 further neighbours objected to the 2130 hours time limit that was initially proposed in the application and commented that the hours of use and other noise mitigation measures should be consistent with the recent planning permissions for Units 2 and 6.

WDC Environmental Health: The outdoor seating area should be brought into line with the recent planning permissions for Units 2 and 6. This should include a 1930 hours cessation of outdoor activities as well as requiring all furniture to be fitted with rubber feet and secured in situ after close. The premises should also be required to adopt the Regent Court 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 external seating area, on the upper floors of the application property and on the opposite side of Livery Street. Residents have raised concerns about noise and disturbance that they have experienced over the past year from the external seating area outside the Nandos premises. However, following extensive discussions about the potential noise issues in relation to the two recent applications at Units 2 and 6, Environmental Health have raised no objection to the principle of external seating areas in this location. This was accepted by Planning Committee in May when planning permission was granted for external seating areas at Units 2 and 6.

In terms of the issues that have been raised about the impact of the Nandos external seating area over the past year, it is important to bear in mind that the temporary permission allowed for this to be used up until 2230 hours. Furthermore, it did not include any of the other mitigation measures that have subsequently been agreed in relation to Units 2 and 6.

Nandos initially agreed to restrict the hours of use of their external seating area to 2130 hours, in line with the initial proposals for Units 2 and 6. However, Planning Committee have subsequently imposed a more restrictive hours of use condition on Units 2 and 6. Nandos have amended their proposals accordingly, so the hours of use of the external seating area are now proposed to be restricted to between 0930 hours and 1930 hours. Nandos have also agreed to implement the other measures to mitigate any noise impact that were agreed in relation to Units 2 and 6. 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.

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. Furthermore, all furniture will be fitted with rubber stoppers. Conditions are recommended to deal with all of the restrictions that have been agreed.

In considering the impact of the proposals, it is important to have regard to the fact that the external seating area enhances the vitality and viability of the town centre. This is a benefit of the proposals that must be weighed in the balance. Furthermore, whilst the provision of an external seating area does 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, Bar Angeli,

Starbucks and soon also Units 2 and 6. 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 has 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 in relation to most other units along Livery Street under planning permission no. W13/1578.

SUMMARY / CONCLUSION

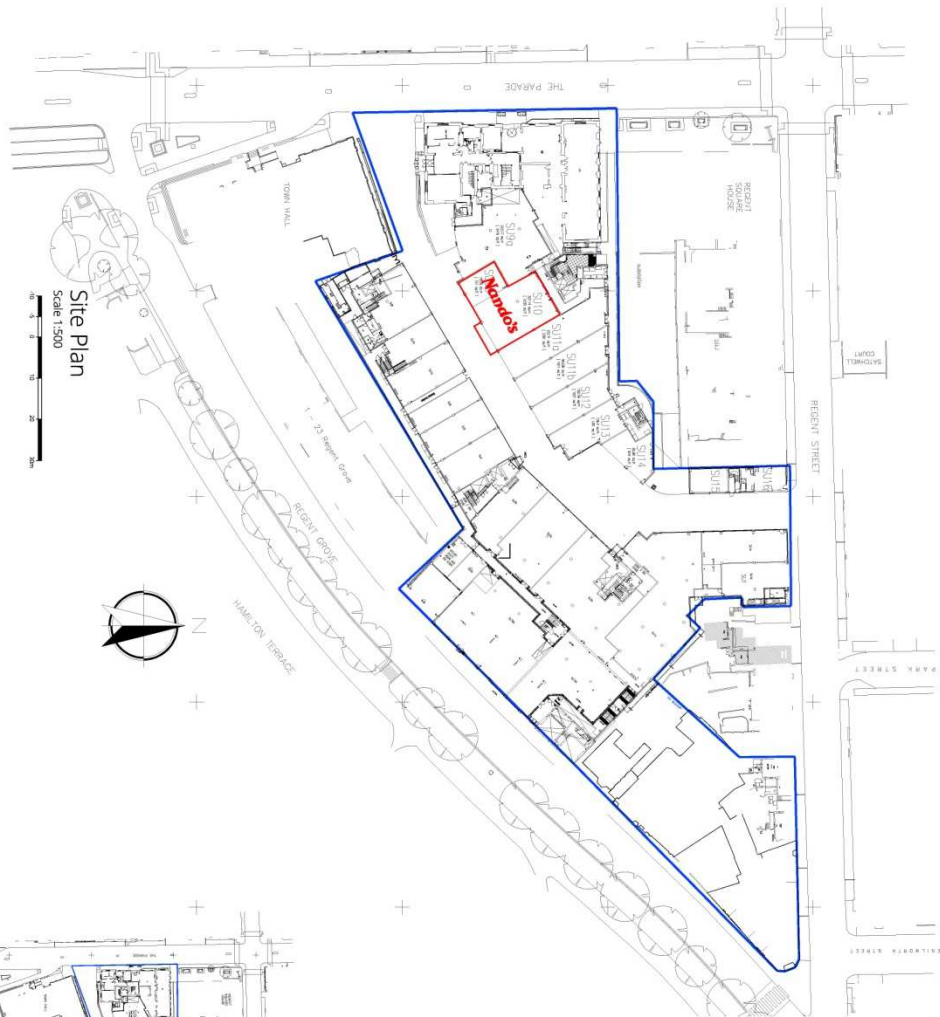
The proposals would have an acceptable impact on the living conditions of neighbouring dwellings and on the character and appearance of the Conservation Area. Therefore it is recommended that planning permission is granted for the removal and variation of these conditions.

CONDITIONS

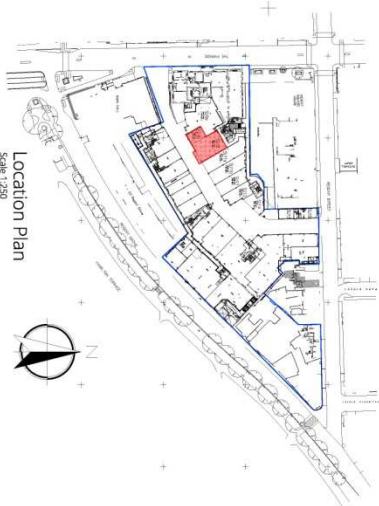
- 1 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s) 2720/25/A, and specification contained therein, submitted on 9 May 2014. **REASON:** For the avoidance of doubt and to secure a satisfactory form of 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 1930 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 1930 hours. No furniture within the external seating area 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.
- 3 Within 1 month of the date of this permission, details of an acoustically absorbent canopy, to include enclosed sides, shall have been submitted to the local planning authority for approval. Within 1 month of the approval of these details, the canopy shall be 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

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.



Site Plan
Scale 1:500



Location Plan
Scale 1:250

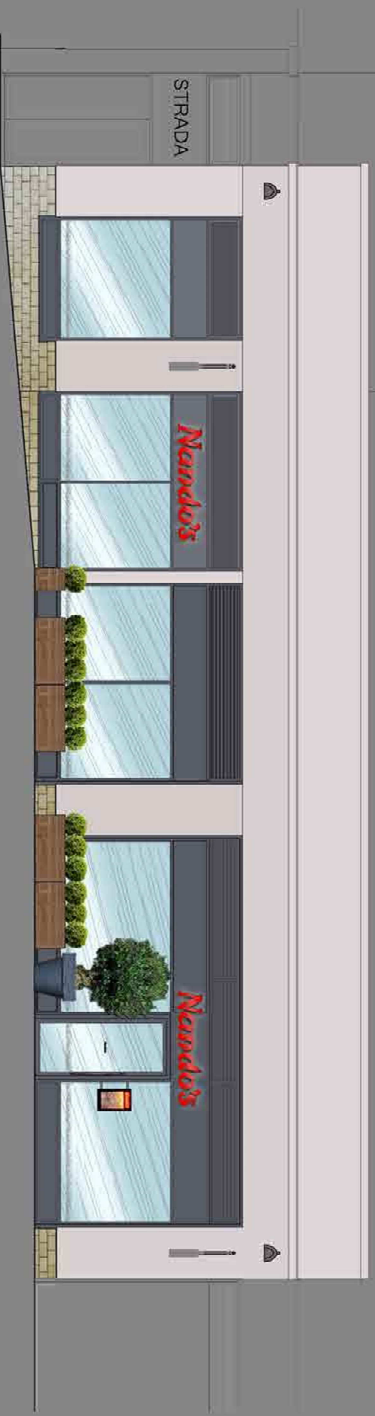
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| REV | BY | DATE | COMMENT |
|-----|-----|----------|------------------------|
| A | nja | 15/01/13 | Final and approved |
| B | nja | 12/01/13 | Revised final approved |

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client: nja
 project: Unit 519B/10
 site: Regents Court
 Learnington Spa
 site: Site Plan & Location Plan
 date: 05/10/12
 date: 05/10/12
 date: 13/01/13
 checked: checked
 checked: checked
 2720/221/B



Power chair in cedar, green and red.



Slatted timber planters.



One tree and dining within movable foliage.

Nando's

PROJECT — Learnington Spa TITLE — External Area

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