

Application No: W 14 / 1157

Town/Parish Council: Leamington Spa
Case Officer: Rob Young
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Regent Court, Livery Street, Leamington Spa, CV32 4NG

Removal of condition 15 of planning permission no. W/13/1578 for change of use of ground floor retail units to cafes / restaurants and other alterations (condition 15 requires on-site renewable energy production) FOR New River Retail

This application has been requested to be presented to Committee by Councillor Weber.

RECOMMENDATION

Planning Committee are recommended to GRANT planning permission for the removal of this condition.

DETAILS OF THE DEVELOPMENT

The application proposes the removal of condition 15 of planning permission no. W13/1578. Planning permission no. W13/1578 was for the change of use of ground floor retail units to cafes / restaurants and other alterations. Condition 15 requires on-site renewable energy production.

THE SITE AND ITS LOCATION

The application relates to the Regent Court Shopping Centre which is situated within the retail area of Leamington Town Centre and within the Leamington Spa Conservation Area. The shopping centre comprises units along either side of Livery Street, units fronting Regent Street to either side of the junction with Livery Street, units fronting Regent Grove, the Regent Hotel and flats on the upper floors of the buildings. The current application specifically refers to the units along Livery Street. The Regent Hotel is a Grade II* Listed Building and there are other Listed Buildings adjacent to the site, including Leamington Town Hall. The commercial units in Regent Court currently comprise a mix of shops and restaurants.

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 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).

RELEVANT POLICIES

Current Local Plan

- 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)

Guidance Documents

- Vehicle Parking Standards (Supplementary Planning Document)
- Sustainable Buildings (Supplementary Planning Document - December 2008)
- National Planning Policy Framework

SUMMARY OF REPRESENTATIONS

Town Council: No objection.

Public response: 1 resident has submitted comments in support of the application.

Cllr Weber: Requests that the application is referred to Planning Committee. The applicant offers a rationale for not complying with condition 15. Although this is in the Conservation Area, I believe that as a modern structure a range of options are available.

WDC Sustainability & Climate Change Officer: Having reviewed this application I consider that the applicant's request to remove the ten percent renewable requirement is acceptable.

ASSESSMENT

The main issue relevant to the consideration of this application is compliance with Local Plan Policy DP13.

Local Plan Policy DP13 states that In appropriate residential and non-residential developments, including conversions, the Council will require 10% of the predicted energy requirements to be produced on site, or in the locality, from renewable energy resources. The condition in question was imposed to meet this requirement.

The Sustainable Buildings Supplementary Planning Document gives guidance on the circumstances when the requirements of Policy DP13 may be waived. Paragraph 4.2 states as follows:

*"The 10% requirement will be applied to **all** developments unless the applicant can demonstrate it would not be appropriate."*

Paragraph 4.3 goes on to state as follows:

"In the case of smaller developments and in constrained sites (such as town centres) it may not be technically possible to implement certain types of renewables. For example, the change of use of a ground floor unit where the upper floors are not in the same ownership is likely to prohibit the use of solar panels or wind turbines which need to be mounted on an unobstructed wall or roof. Similarly for town centre sites there may not be the physical space to install certain technologies. In such cases the applicant must demonstrate that all possible renewable options have been fully explored."

The applicant has submitted a Sustainable Buildings Statement that assesses the feasibility of the various renewable energy technologies that are available. This concludes as follows:

"Solar PV and Solar Thermal - To achieve the necessary energy production over 100m² of south facing roof space would be required. The roof over is in separate ownership and there is no space available for such an array to any of the proposed A3 units. We therefore consider solar power to be not appropriate and unviable.

Wind Turbine - *The potential of installing a pole mounted wind turbine in this location is rejected on grounds of visual impact and lack of operational wind speed. There is no suitable space available to site a turbine. The visual impact of such a scheme in the Conservation Area would be highly controversial and likely to attract substantial opposition.*

Hydro-Electricity - *The site has no access to flowing water and this option has therefore not been considered.*

Air Source Heat Pump - *To achieve the necessary energy production 6 No air source heat pumps would be required. There is no space available to install the units. If space could be found the units are likely to attract opposition from the residents living nearby due to noise and visual impact. Potential operators have also expressed opposition to air source heat pumps as they would have little benefit to the operation of the restaurants as cooling is required for the majority of the year.*

Ground Source Heat Pump - *The ground has no ancillary land to accommodate a ground loop system and this option has therefore not been considered."*

It is considered that the information submitted with the current application (quoted above) demonstrates that all renewable options have been fully explored. In assessing this it is important to have regard to the fact that this is a change of use rather than a new build development, with the change being from one commercial use to another. Given the constraints of the site, as outlined by the applicant, it is not considered that retro-fitting renewable energy technologies to serve the new restaurant uses would be feasible. This has been confirmed by the Council's Sustainability and Climate Change Officer.

SUMMARY / CONCLUSION

The applicant has demonstrated that it would not be appropriate to require on-site renewable energy production as part of this development. Therefore it is recommended that planning permission is granted for the removal 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 and drawing no. 0132, submitted on 20 March 2014 in relation to planning application no. W14/0430 and drawing no. 0134, submitted on 27 March 2014 in relation to planning application no. W14/0437. **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 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 and 6 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 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 covers shall be permitted in the external seating area of Unit 2 at any one time. No more than 24 covers shall be permitted in the external seating area of Unit 6 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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