Planning Committee: 18 August 2015 **Item Number:** 12

Application No: W 15 / 1050

Registration Date: 13/07/15
Town/Parish Council: Leamington Spa **Expiry Date:** 07/09/15
Case Officer: Rob Young
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11 Livery Street, Leamington Spa, CV32 4NP
Variation of condition 11 of planning permission ref. W/13/1339 to allow for the creation of an outdoor seating area in front of Unit 11, Regent Court to be used between 0930 hours and 1930 hours. FOR Turtle Bay Restaurants Limited

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This application is being presented to Committee due to the number of objections received.

RECOMMENDATION

Planning Committee are recommended to GRANT permission for this variation of condition, subject to the conditions listed at the end of this report.

DETAILS OF THE DEVELOPMENT

The application proposes the variation of condition 11 of planning permission ref. W/13/1339 to allow for the creation of an outdoor seating area in front of the premises. This relates to an area of 31.6 sq m and would provide space for 32 covers. It is proposed that the hours of use of the external seating area would be restricted to between 0930 hours and 1930 hours.

The application has been amended to reduce the size of the external seating area to no larger than the others that have been approved along Livery Street (in terms of the projection out from the front of the building).

THE SITE AND ITS LOCATION

The application relates to the Turtle Bay restaurant situated 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.

Livery Street is pedestrianised and many of the other units along the street have external seating areas to the front, including Las Iguanas, Nandos, Bar Angeli, Zou Bisou, Yo Sushi and Gourmet Burger Kitchen.

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).

In December 2013 planning permission was granted for the change of use of the application premises from retail (Use Class A1) to a restaurant (Use Class A3) (Ref. W/13/1339). This permission was subject to a condition to prohibit the creation of an outdoor seating area.

In February 2014 planning permission was granted for the change of use of the remaining retail units along Livery Street into restaurants (Ref. W13/1578). This permission was subject to a condition to prohibit the creation of outdoor seating areas.

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 area.

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.

In March 2015 planning permission was refused for an external seating area outside Unit 3 (Ref. W15/0020). In that case the applicant had proposed a later restriction on the hours of use (2100 hours) and Planning Committee felt that this would cause unacceptable noise and disturbance for nearby residents. An appeal against that refusal has been submitted.

RELEVANT POLICIES

- National Planning Policy Framework

The Current Local Plan

- 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)

The Emerging Local Plan

- BE1 - Layout and Design (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- BE3 - Amenity (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- HE2 - Protection of Conservation Areas (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)
- NE5 - Protection of Natural Resources (Warwick District Local Plan 2011-2029 - Publication Draft April 2014)

SUMMARY OF REPRESENTATIONS

Town Council: No objection.

Public response: 7 objections and 2 other representations (neither objecting nor supporting) have been received, raising the following concerns:

- increased noise and disturbance;
- cumulative noise from this and the other outdoor seating areas that have already been approved;
- flats overlooking this site are single aspect, with their only windows facing the application premises, which exacerbates noise issues;
- there are already significant noise problems associated with these premises;
- adjacent flats are already unable to have their windows open due to existing noise problems;
- noise will be a particular problem with this proposed seating area because this is the narrowest part of the street;
- there will be more tables and chairs here than at the other premises where external seating areas have been approved;
- if the tables and chairs are to be taken inside, this should be done earlier in the evening to avoid causing undue noise and disturbance;
- these premises are used as a bar and not as a restaurant, in contravention of the planning permission;
- this will just become an outdoor drinking and smoking area, as with any other bar; and
- increased smells from outdoor smoking.

Environmental Health: No objection. Recommend that the size of the external seating area is reduced to match those of other restaurants along Livery Street.

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 increased noise and disturbance. However, following extensive discussions about the potential noise issues in relation to the 4 recent approvals for outdoor seating areas in Regent Court at Units 2, 6 (Gourmet Burger Kitchen), 7a (Zou Bisou) and the Nandos unit, Environmental Health have raised no objection to the principle of external seating areas in this location. This was accepted by Planning Committee when planning permission was granted for external seating areas at those other units.

The current application proposes that the hours of use of the external seating area will be limited to 1930 hours, to match the other permissions. 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 retention 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 would enhance 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 Las Iguanas, Bar Angeli, Yo Sushi, Nandos, Zou Bisou, Gourmet Burger Kitchen and soon also Unit 2. 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.

Residents have alleged that Turtle Bay operates as a bar in the evenings, in contravention of their planning permission which only authorises a restaurant use. However, the current planning application must be assessed against the lawful use of the premises, i.e. as a restaurant. The allegations of an unauthorised change of use are a matter to be dealt with by the Council's Planning Enforcement team.

Given the previous issues that have been raised by residents about noise from Turtle Bay, Officers have considered whether it would be appropriate to limit any planning permission for the external seating area to a 1 year temporary period to enable the impact to be assessed. However, the allegations relating to an

unauthorised change of use to a bar relate to later in the evening, well after the time that the external seating area would be required to close (1930 hours). Therefore a temporary restriction is not considered to be necessary.

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.

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 This permission shall relate strictly to the details shown on the site location plan and approved drawing(s) 0112A & 220B, and specification contained therein, submitted on 8 November 2013 in relation to planning application no. W13/1339 and on 13 July 2015 in relation to 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.

2 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.

3 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.

4 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, both of which were submitted in relation to planning application no. W13/1339. 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.

5 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 that was submitted in relation to planning application no. W13/1339. 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.

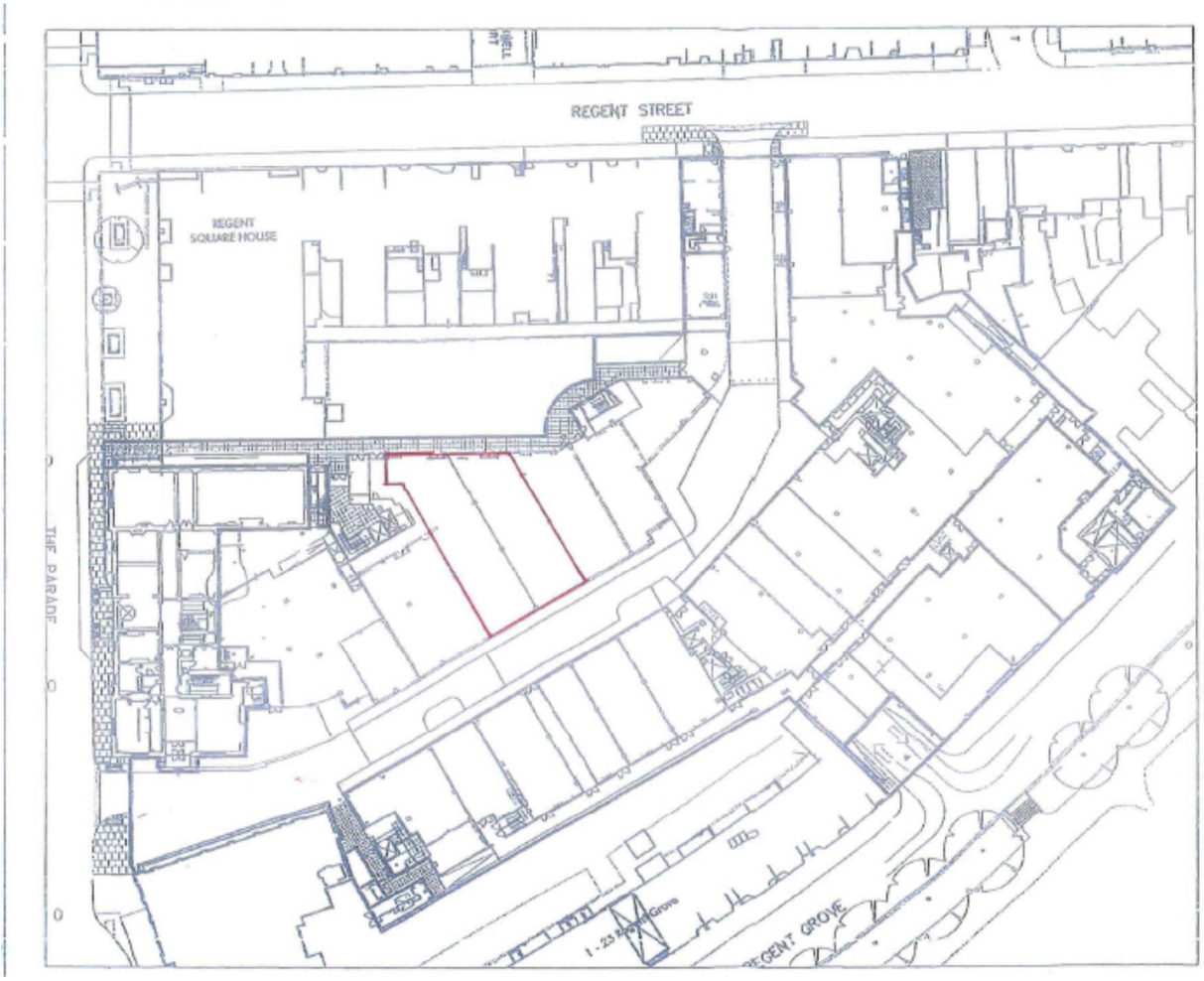
6 The restaurant shall be operated in strict accordance with the Management Plan (Rev C) that was approved under Condition 9 of planning permission no. W13/1339 on 24 September 2015. **REASON :** To protect the living conditions of nearby dwellings, in accordance with Policies DP2 and DP9 of the Warwick District Local Plan.

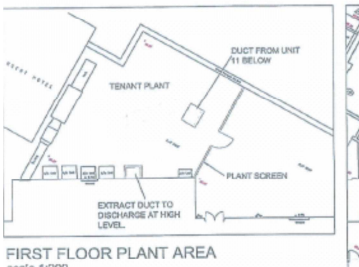
7 The acoustically absorbent canopy approved under Condition 10 of planning permission no. W13/1339 shall be retained and maintained in accordance with the approved details at all times that the premises are used as a restaurant. **REASON :** To protect the living conditions of nearby dwellings, in accordance with Policies DP2 and DP9 of the Warwick District Local Plan.

8 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 canopy referred to in Condition 7 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.

9 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.

10 No more than 32 covers shall be permitted in the external seating area 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.





FIRST FLOOR PLANT AREA
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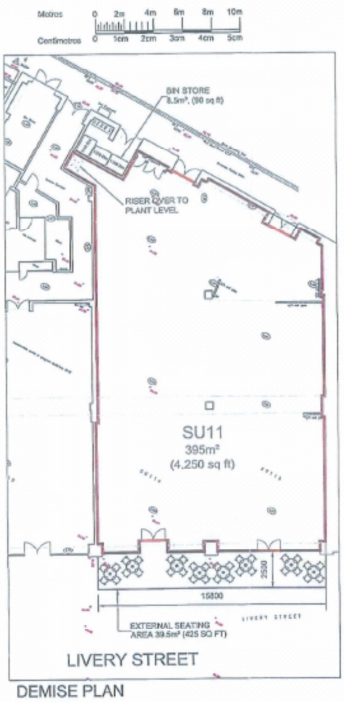
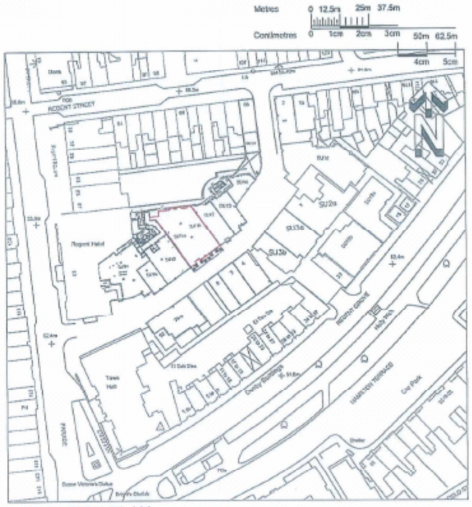


DEMISE PLAN



LOCATION PLAN
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FOR INFORMATION

CORSTORPHINE