



Appeal Decision

Site visit made on 22 March 2011

by **C J Checkley BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 April 2012

Appeal Ref: APP/N1350/A/11/2168399

97 Bondgate, Darlington, DL3 7JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Lion Head Properties Ltd against the decision of Darlington Borough Council.
 - The application Ref. 11/00268/CU, dated 20 April 2011, was approved on 11 July 2011 and planning permission was granted subject to conditions.
 - The development permitted is change of use from shop (A1) to restaurant/bar (A3) as extension to existing Tapas Bar/Restaurant and installation of new shop front (amended plan and letter received 8 June 2011).
 - The condition in dispute is No 5 which states: Prior to the extended premises coming into use, details of toilet facilities at ground floor level suitable for use by disabled persons shall be submitted to and approved by the LPA. The approved details shall be fully implemented prior to the extended premises being brought into use and shall thereafter be retained.
 - The reason given for the condition is: To ensure that adequate provision is made for disabled users of the premises.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition in dispute is necessary and reasonable having regard to planning objectives regarding the provision of facilities for those with disabilities or impaired mobility.

Reasons

Preliminary matters

3. The appellant company operates an existing tapas bar/restaurant with an external pavement café at 98 Bondgate. The planning application proposes the change of use of the adjoining ground floor premises at No 97 from a shop to use as a restaurant/bar with an internal connection enabling it to operate as an extension to the existing premises at No 98, with a new shopfront/screen being installed to match that at No 98. Although reference is made to an intention by the appellant to extend the pavement café in front of No 97, that element does not form part of the application before me.
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4. The red line showing the application area includes only No 97 and there is no blue line around No 98, although I understand it is under the control of the appellant company. I am determining the application on the basis that the ground floor of No 97 is intended to form part of a single planning unit that would include the ground and first floors of No 98.

Access by disabled people

5. The existing tapas bar/restaurant has its toilets at first floor level and there are no ground floor toilet facilities suitable for use by those with impaired mobility or using wheelchairs. The appellant proposes that these existing first floor toilets would also be used by customers using the extended facilities including any additional pavement café area.
6. The National Planning Policy Framework (NPPF) indicates that the planning system can play an important role in creating healthy, inclusive communities. The government has previously stated (*Planning and access for disabled people: a good practice guide*) that it wants a commitment to breaking down unnecessary physical barriers and exclusions imposed on disabled people by the poor design of buildings and places, and that the needs of disabled people should be properly considered as an integral part of the development process.
7. At the local level Policy CS2 of the Darlington Core Strategy Development Plan Document (CS) seeks high-quality, safe, sustainable and inclusive design that includes safe, convenient and attractive access for disabled people. Thus, the objective of securing development that is accessible to and can be used by disabled people is part of established national planning policy and the local development plan.
8. The existing ramped entry at No 98 would enable access by those with wheelchairs and restricted mobility into both the existing premises and the proposed extension to them at the appeal site. However, the absence of an accessible disabled toilet militates against inclusive use of the enlarged tapas bar/restaurant, which would appear able to accommodate in the order of 100 covers inside plus a significant additional number outside during fine weather.
9. The appellant company contends it would not be practicable, given the age of the building and the limited space for public use on the ground floor, to require the provision of a ground floor toilet. The options are said to be limited since the rear yard is not under the control of the appellant company and it wishes to use the rear-most internal space as an additional cellar for storing beer kegs and so on.
10. In this case both main parties appear to agree that the provision of a suitable ground floor toilet cannot be required under the Building Regulations. Having regard to the planning objectives of national policy and Core Strategy Policy CS2 and the potentially significant number of customers generated by the combined premises, I consider this a case in which it is reasonable and necessary to require the provision of disabled toilet facilities at ground floor level within the property under the control of the appellant company before the extension to the tapas bar/restaurant is first brought into use.
11. I am not satisfied from the limited evidence presented that a suitable toilet facility could not be constructed within the ground floor of the enlarged

premises by a considered revision of the internal layout. I consider this would strike the right balance in this case between meeting the business and commercial requirements of the operator on the one hand, and enabling inclusive use of the enlarged premises on the other.

Other considerations

12. I have taken account of other considerations. I am informed that planning permission was granted in 2007 for the change of use of the shop premises at the appeal site to an A3 use without a requirement for a disabled toilet but that this permission was not implemented and expired. I do not know the full details of that case, but the appeal proposal is different in that it concerns the expansion of an existing planning unit which would be likely to attract a considerable number of customers.

13. The appellant says the extension area would only be used on a Friday and Saturday, but I give this point little weight since intentions may well change and it would not be reasonable to restrict the days of use by a condition. The appellant also lists several existing class A3 premises in the town centre where it is said a disabled toilet was not required by planning condition. However, no details of their planning and building regulations histories are provided to enable me to tell if they are directly comparable in all respects. I am therefore determining this proposal on its own particular merits in the light of current policy and circumstances.

14. This part of Bondgate has already ceased to function as a true shopping frontage. Although the change of use would be contrary to the terms of the development plan's retail policies, it would not undermine the objectives underlying them and there would be no harm to the vitality and viability of the town centre.

15. The new shopfront proposed would match that of the existing tapas bar and restaurant and would therefore preserve the appearance and character of the Darlington Town Centre Conservation Area within which the site is located.

Conclusions

16. I find that condition no 5 is reasonable and necessary in order to meet the planning objective of ensuring that adequate provision is made for customers of the enlarged bar and restaurant who have disabilities or reduced mobility. I have taken account of all matters raised but none are sufficient to outweigh the considerations which have led to this conclusion. The appeal must therefore fail.

C J Checkley

INSPECTOR

