



Appeal Decision

Site visit made on 8 October 2019

by M Seaton DipTP MRTPI

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

Decision date: 29 November 2019

Appeal Ref: APP/V0728/W/19/3233800

18 The Wynd, Marske by the Sea, TS11 7LA

- 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 Mrs Andrea Summersgill (on behalf of Paws and Claws) against the decision of Redcar & Cleveland Borough Council.
 - The application Ref R/2018/0668/CA, dated 6 November 2018, was approved on 24 January 2019 and planning permission was granted subject to conditions.
 - The development permitted is internal and external alterations and single storey side extension with adjoining conservatory to create a café/drinking establishment and provision of new fence/gate.
 - The condition in dispute is No 4 which states that:
The set of doors on the rear (north facing) elevation of the conservatory hereby approved shall be used in an emergency only.
 - The reason given for the condition is:
To ensure that the doors are not left open or used on a regular basis in order to protect residential amenity in accordance with policy SD4 of the Redcar and Cleveland Local Plan.
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Procedural Matter

1. There is a certain degree of variation between the description of development as set out on the application forms and that highlighted by the Council in the Notice of Decision. Whilst the appellant's description of development is more concise, I have adopted the Council's version as a more accurate reflection of the entirety of the works for which planning permission was sought and granted.

Decision

2. The appeal is dismissed.

Background and Main Issue

3. The detailed planning permission granted in January 2019 for the development as described has subsequently been implemented, with the development at the time of my visit appearing to have been completed and fully in use. However, the appellant has highlighted in their submissions that the condition restricting the use of the north-facing doors of the conservatory, except in case of emergency, is overly onerous in terms of the impact on the operational requirements of the business, particularly with regards to the receipt of deliveries and general staff activities. The appellant therefore wishes to seek either the removal of the condition, or its re-wording to include reference to use by staff carrying out their day-to-day duties.

4. As a consequence and being mindful of the reason for the imposition of the condition, the main issue in this instance relates to whether the condition in dispute is reasonable or necessary in the interests of the living conditions of existing occupiers of neighbouring properties, having regard to the potential for noise and disturbance.

Reasons

5. The appeal site is occupied by a part two-storey and part single storey end of terrace property, which has been extended through a conservatory to the rear. The property is occupied by a combination of a ground floor retail unit and first floor dog grooming business, along with a café bar in the single-storey part of the building. To the rear of the conservatory is an area of private curtilage associated with the appeal premises, but not utilised in connection with the business, the boundaries of which are defined predominantly by timber fencing.
6. To the rear and north of the appeal site is a residential property and curtilage, as well as access to a rear service yard in connection with the commercial and retail units within the adjoining parade on The Wynd. Further residential dwellings and curtilages are located to the east.
7. I have carefully considered the effect of altering the terms of the disputed condition and the wording of the revised condition as proposed by the appellant. I have also had regard to the submissions during the course of the planning application including the conclusions of the Acoustic Assessment prepared by GT Acoustics for the appellant, albeit that I note the report does not include an assessment of the impact of the conservatory doors being open. I have also had regard to the proximity of the relationship between the appeal premises and neighbouring noise-sensitive properties. I have also considered this relationship in the context of the existing nature of uses and activity in the immediate vicinity of the site along the parade of commercial and retail units on this part of The Wynd.
8. It is evident that during the daytime period, the access and yard area to the north of the parade is subject to activity in the form of deliveries and other comings and goings related to the various businesses. Given the nature and intensity of use of the café bar during the daytime, I do not conclude that the use of the doors to the conservatory as access for deliveries to the appeal premises could reasonably be considered to result in levels of noise and disturbance that would in the context of this commercial parade be either unexpected or have an unacceptable impact on the living conditions of nearby dwellings. With regards this aspect of the potential use of the conservatory access, I therefore agree in part with the appellant that the condition for the daytime period is therefore unduly and unnecessarily onerous.
9. Nevertheless, I am mindful that the proposed condition does not seek to define how the access may be used beyond the phrase '*staff carrying out their day-to-day duties*', which I find in the context of this appeal proposal to be too generic and imprecise. Whilst it is entirely reasonable on the basis of the appellant's submissions to appreciate that deliveries to the premises which currently have to be taken through the neighbouring shop would use the access, as well as staff accessing the refuse bins, I do not regard the term to be sufficiently precise in seeking to define the scope that other general activities may include. As a consequence, and being mindful of the tests for conditions as set out in the National Planning Policy Framework (the Framework), I do not consider the

condition as proposed to be sufficiently precise and therefore does not accord with the tests for conditions as set out.

10. Turning to the effect of the use of the access during the evening periods, as observed, the hours of opening of the premises in the adjacent parade are largely restricted to daytime hours, albeit that I noted that The Wynd Pantry is open until early evening on several evenings a week. As a consequence, the permitted opening of the appeal premises until 2300 hours on a daily basis is something of a departure from the prevailing character of use of the parade and given the overall much lower background noise levels in the vicinity during the evenings, any noise and disturbance, even if momentary, could have a more significant impact on noise-sensitive receptors.
11. In this regard I am mindful that the café bar hosts live music on occasion which would inevitably have the potential to have a much greater impact on the living conditions of nearby residential properties. Whilst I note the appellant's stated intention that the doors to the conservatory would not be left open and therefore any access would only result in the need for brief opening, I do not consider that this alone would provide sufficient mitigation during the evening periods.
12. The proposed condition does not seek to restrict the timings for access through the conservatory doors and whilst I would agree with the appellant that the likelihood of deliveries being received during evening hours would be limited, in the absence of any such restrictions it is conceivable that they could occur at any point during the opening hours of the premises. The lack of such a control on the access could also see late night access to refuse and recycling bins along with the noise and disturbance that this may cause.
13. I recognise that the existing arrangements for these functions of the business are not restricted and that a proposed condition would not prevent for instance access to refuse and recycling bins during the evening period via the current alternative route. I also acknowledge the appellant's contention that the purpose of the appeal is not to seek the future use of the rear garden area for the benefit of customers. However, and despite my conclusions on the wording of the existing condition, I am not persuaded that the revised wording of the proposed condition would provide adequate safeguarding of the living conditions of nearby noise-sensitive properties, having regard to noise and disturbance.
14. I therefore find the proposal would conflict with Policy SD4 of the Redcar & Cleveland Local Plan (adopted May 2018) which seeks to ensure that development proposals minimise pollution including noise levels and will not have a significant adverse impact on the amenities of occupiers of existing nearby buildings.

Other Matters

15. I have had regard to the various other concerns raised by interested parties including the compliance of the appellant with other restrictions of the planning permission including hours of opening, the accuracy of the conclusions of the acoustic assessment particularly in light of the hosting of live music which was not anticipated by the technical report, and concerns over the continued maintenance of privacy and security. However, I am satisfied that these are principally issues concerned with the grant of planning permission for the

principle of the creation of the café bar, which is not a matter before me in the context of this appeal. In any event, and as I am dismissing the appeal for the reasons set out, these submissions have not had a significant bearing on my decision-making in this instance.

Conclusion

16. For the reasons set out, and having regard to all other matters, the appeal is dismissed.

Martin Seaton

INSPECTOR