

**Application Ref:** 16/01248/FUL

**Proposal:** Proposed Shisha Bar to rear

**Site:** 195 - 197 Lincoln Road, Peterborough, PE1 2PL,  
**Applicant:** Mr Hassan Alawy

**Agent:** Mr Paul Ingle  
 Portess & Richardson

**Referred by:** Councillor Ferris

**Reason:** The Proposal would not have any unacceptable impact on amenity

**Site visit:** 19.08.2016

**Case officer:** Mr D Jolley

**Telephone No.** 01733 453414

**E-Mail:** david.jolley@peterborough.gov.uk

**Recommendation:** REFUSE

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## 1 Description of the site and surroundings and Summary of the proposal

### Site and surroundings

The application site is the rear yard area of a restaurant located towards the southern end of Lincoln Road and located within the Taverners Road/Lincoln Road Local Centre. The site has a block of flats to the rear and has shops/offices adjacent.

### Proposal

Permission is sought for the construction of a covered smoking area to the rear of the restaurant, within the rear yard. The shelter measures approximately 3.8 metres wide by 9.6 metres deep, with monopitch roof 2.4 metres above ground level at its highest point. The shelter is to be partly enclosed by close board timber walls, with sound insulation incorporated within the wall structure.

## 2 Planning History

Reference	Proposal	Decision	Date
15/02188/FUL	Proposed shisha bar to rear	Refused	26/02/2016
16/00691/FUL	Proposed shisha bar to rear	Refused	27/05/2016

## 3 Planning Policy

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise.

### Peterborough Core Strategy DPD (2011)

#### **CS16 - Urban Design and the Public Realm**

Design should be of high quality, appropriate to the site and area, improve the public realm, address vulnerability to crime, be accessible to all users and not result in any unacceptable impact upon the amenities of neighbouring residents.

### Peterborough Planning Policies DPD (2012)

#### **PP02 - Design Quality**

Permission will only be granted for development which makes a positive contribution to the built and natural environment; does not have a detrimental effect on the character of the area; is sufficiently robust to withstand/adapt to climate change; and is designed for longevity.

#### **PP03 - Impacts of New Development**

Permission will not be granted for development which would result in an unacceptable loss of privacy, public and/or private green space or natural daylight; be overbearing or cause noise or other disturbance, odour or other pollution; fail to minimise opportunities for crime and disorder.

#### **4 Consultations/Representations**

##### **PCC Transport & Engineering Services (15.07.16)**

If permitted cycle parking should be provided.

The access does not appear to be in the applicant's control.

##### **Police Architectural Liaison Officer (PALO) (13.07.16)**

Whilst there are ongoing issues regarding criminal damage this has no bearing on the application. This office has no objection, comments or recommendations.

##### **Millfield & New England Residents Planning Sub Group**

No comments received

##### **Victoria Park Residents Association**

No comments received

##### **PCC Pollution Team (17.08.16)**

Due to the proximity of the Shisha bar to local residents, and potential for issues of smoke/odour nuisance and noise issues, along with the difficulty in conditioning appropriate measures to mitigate loss of amenity, this department would suggest, if the planning department is minded to accept the application, that a temporary permission to establish the effect of the bar, might be most appropriate. In this circumstance, conditions to limit hours of use would be recommended.

#### **Local Residents/Interested Parties**

Initial consultations: 11

Total number of responses: 1

Total number of objections: 0

Total number in support: 1

A single representation from Cllr Ferris has been received supporting the application, stating;

I consider that the applicant has made significant efforts to mitigate any possible causes of disturbance or negative impact on the visual amenity of this site. The amended plans, to include sound-proofing and visual screening, will ensure that the proposed shisha smoking area will not be visible to passers-by using Green Lane. In fact, by relocating the shisha area to the rear of the property, I would argue that the street scene is enhanced. The site is not overlooked from the new flats in Green Lane, and the proposed roofing will improve the appearance of the site from neighbouring properties on Lincoln Road.

#### **5 Assessment of the planning issues**

The main considerations are;

- The impact of the proposal on the character of the area
- The impact of the proposal on the amenity of the occupiers of neighbouring dwellings

N.B. This is a resubmission of refused application numbers 15/02188/FUL and 16/00691/FUL.

Application 15/02188/FUL proposed the smoking shelter, partly enclosed up to the 50% enclosure limit for smoking shelters.

Application 16/00691/FUL proposed the smoking shelter, partly enclosed up to the 50% enclosure limit for smoking shelters, with sound proofing incorporated within the walls partly enclosing the shelter.

This new application proposes the acoustic fencing to the enclosed sections of the smoking area as shown on application 16/00691/FUL and includes information regarding incidents of anti-social behaviour occurring to the front of the premises, which in the view of the applicant necessitate the relocation of the smoking area from the front to the rear of the building.

The previous applications were refused for the same reason; that the shelter would result in unacceptable harm to the amenity of the occupiers of the adjacent flats through noise and odour disturbance. It was considered that the sound proofing would be generally ineffective given that 50% of the structure must not be enclosed in order to comply with regulations in relation to covered smoking shelters.

#### **The impact of the proposal on the character of the area**

The top metre of the smoking shelter would be visible above the 1.5 metre boundary fence facing Green Lane, to the south of the site. At present the application site is not particularly attractive, with a large refrigerated container and unfinished concrete block wall visible from public realm. The shelter, providing it was constructed from good quality materials, would not harm the character of the area. The shelter would be located behind existing fencing and it is unlikely that those patrons using it would be immediately apparent to passers-by due to the south elevation being fully enclosed.

Note there is a discrepancy with the submitted plans; Drawing (01) 04 shows the south elevation as fully enclosed. Whilst the elevation drawing (01) 05 shows the north elevation as fully enclosed. It is assumed that the site layout plan is correct and it is the southern elevation that is fully enclosed.

#### **The impact of the proposal on the amenity of the occupiers of neighbouring dwellings**

The recently constructed block of flats lies directly adjacent to the location of the smoking shelter. The flats are the last dwellings of Green Lane, which is broadly residential in nature. The shelter itself is actually accessed via the path running along the side of the flats, which gives access to a side door and to the rear amenity space of the flats. The applicants have served notice upon the owners of the adjacent flats and stated that there is an agreement with the owners of the flats for access to the smoking area, however no evidence of this agreement has been submitted with the application.

The Local Planning Authority are of the view that the relationship of the flats to the shelter is unacceptably close and it is unlikely that the shelter could operate without unacceptable disturbance to the occupiers of the flats who would suffer noise and possibly smoke entering their windows for the majority of the day. Outdoor smoking areas such as this are designed to allow patrons to spend significant times outside. If heated this could be year round.

The applicants have proposed acoustic panelling to the enclosed area of the shelter by way of the use of Acoustic fence perimeter barrier membrane attached to the enclosing walls and the incorporation of Rockwool insulation into the enclosing walls structure. The Local Planning Authority consider this is unlikely to reduce the levels of ambient noise to acceptable levels for the simple reason that a smoking shelter must be at least 50% open sided in order to comply with smoking shelter legislation. Sound would escape via the open sections of the shelter and is likely to result in disturbance to the occupiers of the flats, as the windows are less than 10 metres from the smoking shelter.

The Local Highway Authority have raised no objection to the proposal but highlight that 3rd party land must be crossed to reach the smoking area. It is understood that the applicant has an agreement with the owner of the neighbouring flats that would allow patrons to access the smoking area. These patrons, passing close to the front of the adjacent flats, are likely to cause additional disturbance, over and above that emanating from the smoking shelter and therefore worsening the harm to the amenity of the occupiers of the flats.

The applicant has requested that consideration be given to granting a temporary planning permission so that the impact of the development can be assessed. Environmental Health has advised that they have concerns about the impact of the proposal on neighbouring occupiers and that these impacts could not be adequately mitigated through enforceable planning conditions. The Local Planning Authority are of the opinion that the risk of harm to the amenity of the occupiers of the adjacent flat is such that it would be unreasonable to subject the occupiers of the flats to disturbance in order to ascertain the impact of the proposal, even for a temporary period.

The LPA has reviewed the circumstances of other outdoor smoking areas approved in the Lincoln Road area over the previous five years and are of the opinion that residential dwellings are located at much greater distances than is the case here. For this reason the Local Planning Authority consider that this refusal is consistent with previous decisions.

In light of the above it is considered that the proposal is contrary to policy CS16 of the adopted Core Strategy and policy PP3 of the Peterborough Planning Policies (DPD) 2012.

The Local Planning Authority sympathise with the difficulties experienced by the owner in relation to antisocial behaviour impacting on the smoking area to the front of the property. However these issues are not justification for harming the amenity of neighbours and as such do not alter the Local Planning Authority's decision making in relation to this proposal.

### **Other matters**

A letter of support has been received from Cllr Ferris in relation to the proposal. He states that the application would improve the visual amenity of the area. The Local Planning Authority do not disagree with this assessment and have no concern regarding the smoking shelters appearance. However the benefit to the character of the area does not outweigh the likely impact upon neighbours, as set out above.

## **6 Conclusions**

The proposal is unacceptable having been assessed in light of all material considerations, including weighing against relevant policies of the development plan and for the specific reasons given below.

## **7 Recommendation**

The Director of Growth and Regeneration recommends that Planning Permission is **REFUSED**

R 1 The proximity of the covered smoking area to the adjacent block of flats located on Green Lane is likely to result in unacceptable noise and odour disturbance to the occupiers of these flats, to the detriment of their amenity.

This is contrary to policy CS16 of the Peterborough Core Strategy (DPD) 2011 and policy PP3 of the Peterborough Planning Policy (DPD) 2012.

Copies to Cllrs Cllr Richard Ferris, Cllr John Peach and Cllr John Shearman