

Item No. 4

Planning and EP Committee 29th January 2019

Application Ref: 18/01852/FUL

Proposal: Proposed continued use of shisha lounge at rear of existing restaurant (retrospective) - Revised

Site: 195 - 197 Lincoln Road, Peterborough, PE1 2PL,
Applicant: Mr H Hamad

Agent: Mr N P Branston
Branston Assoc.

Referred by:
Reason:
Site visit: 30.11.2018

Case officer: Mr D Jolley
Telephone No. 01733 453414
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Recommendation: **REFUSE**

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

Part retrospective permission is sought for the construction of a covered smoking area to the rear of the restaurant, within the rear yard.

N.B. This application is a resubmission of refused application 18/01277/FUL. This application has removed some of the roof coverings of the smoking area.

2 **Planning History**

Reference	Proposal	Decision	Date
18/01277/FUL	Shisha lounge at rear of existing restaurant (Retrospective)	Refused	14/09/2018

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.

Peterborough Local Plan 2016 to 2036 (Submission)

This document sets out the planning policies against which development will be assessed. It will bring together all the current Development Plan Documents into a single document. Consultation on this Proposed Submission version of the Local Plan took place in January and February 2018. The Local Plan was submitted to the Secretary of State on 26 March 2018. A Planning Inspector has been appointed and the Local Plan is going through the Examination stage to establish whether it is 'sound', taking all the representations into consideration.

Paragraph 48 of the National Planning Policy Framework states that decision makers may give weight to relevant policies in an emerging plan according to:-

- the stage of the Plan (the more advanced the plan, the more weight which can be given)
- the extent to which there are unresolved objections to the policies
- the degree of consistency between emerging policies and the framework.

The policies can be used alongside adopted policies in the decision making progress, especially where the plan contains new policies. The amount of weight to be given to the emerging plan policies is a matter for the decision maker. At this final stage the weight to be given to the emerging plan is more substantial than at the earlier stages although the 'starting point' for decision making remains the adopted Local Plan.

LP17 - Amenity Provision

LP17a) Part A Amenity of Existing Occupiers- 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.

LP17b) Part B Amenity of Future Occupiers- Proposals for new residential development should be designed and located to ensure that they provide for the needs of the future residents.

4 Consultations/Representations

PCC Peterborough Highways Services (03.11.18)

No comments.

PCC Enforcement Team

No comments received

Millfield & New England Residents Planning Sub Group

No comments received

Victoria Park Residents Association

No comments received

PCC Pollution Team (09.11.18)

In September 2017 a complaint relating to noise from loud music was received by this department. The complaint was closed as no log sheets were returned.

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 grant permission, that permission is temporary. This would enable the impact of the proposal to be assessed. Conditions to limit hours of use would be recommended.

Local Residents/Interested Parties

Initial consultations: 16

Total number of responses: 0

Total number of objections: 0

Total number in support: 0

No representations have been received in relation to the proposal.

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 application is subsequent to application 16/01248/FUL which was permitted by planning committee and approved a temporary consent for a shisha area to the rear of 195-197 Lincoln Road. The consent contained a condition requiring the installation of acoustic equipment prior to the first use of the area, however this was not undertaken.

The applicant was required to discontinue the use by 10th September 2017 and remove the structures 10th December 2017. This has not been undertaken and the use has continued on the basis that a revised application was submitted. Application 18/01277/FUL was subsequently refused. Use continued in anticipation of submission of this latest application.

Therefore this application is considered to be retrospective in respect of the structure.

The impact of the proposal on the character of the area

The shisha area is located to the rear of the site and is clearly visible from the public realm across the car park of the unit to the south. The collection of varied building materials used to construct the shelter is incongruous and at odds with the character of the surrounding area. The structure has no cohesive form and is considered to be unacceptably prominent and unattractive. The Structure causes significant harm to the visual character and appearance of the area.

The area applied for is now significantly larger than previously approved under the 2016 application, expanding northwards to form a shisha store and covered storage area and store of approximately 35sqm. The shisha area now completely fills the rear curtilage of two separate units and as such is contrary to the established character.

It is therefore considered that the structure covering the shisha area is contrary to policy PP2 of the Peterborough Planning Policy (DPD) 2012 and policy CS16 of the Peterborough Core Strategy (DPD) 2011.

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

The acoustic mitigation specified on the approval for application 16/01248/FUL has not been implemented. A complaint regarding noise has been made to the Environmental Health Department in relation to the premises and as such the LPA are satisfied that the operation of the structure results in harm to the amenity of the occupiers of the adjacent flats. There are windows within 10 metres of the Shisha Area, it is considered that an open smoking area in such close proximity to residential premises will inevitably result in unacceptable noise and potential smoke nuisance to the occupiers of these dwelling, impact which cannot be adequately controlled or mitigated by planning condition.

The Environmental Health Department have stated that 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, and if the planning department is minded to accept the application, that a temporary permission be continued due to the complaint to continue to establish the effect of the bar. In this circumstance, conditions to limit hours of use would be recommended. Given that the site was previously given temporary consent it is not good practice to again grant temporary consent. Subsequent applications should be given permanent consent or refused. It is the opinion of the LPA that the applicant has failed to operate the smoking shelter in the manner stipulated by planning committee and as such the application should be refused.

Notwithstanding this it was and still is the opinion of the Local Planning Authority that the noise mitigation proposed by the applicant was not sufficient as the structure must be open to comply with smoking legislation and that the area causes unacceptable harm to the amenity of the occupiers of neighbouring dwellings and business premises, by way of noise and smoke nuisance, which cannot be reasonably controlled by condition

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 covered area, by way of its form, appearance, materials and location, constitutes an unattractive, incongruous addition that is an unwelcome focal point in wider views to the detriment of the character of the area. This is contrary to policy PP3 of the Peterborough Planning Policies (DPD) 2012 and policy CS16 of the Peterborough Core Strategy (DPD) 2012.
- R 2 The proposed covered area by way of its proximity to residential dwellings and other businesses and the open sided form results in unacceptable harm to the amenity of the occupiers of neighbouring dwellings through noise and smoke nuisance. This is contrary to policy CS16 of the Peterborough Core Strategy (DPD) 2011 and policy PP3 of the Peterborough Planning Policies (DPD) 2012.