

Item No. 3

Planning and EP Committee 30 July 2020

Application Ref: 20/00206/FUL

Proposal: Construction of timber-framed outbuilding to rear for use as Shisha lounge, single storey side extension, increase height of rear wall to 2.5m and relocation of external staircase - resubmission

Site: 24 Park Road, Peterborough, PE1 2TD,
Applicant: E Elmahi

Referred by: Councillor Bashir
Reason: Site is in an ideal location and more suitable than other locations permitted for shisha

Agent: Mr Iqbal

Site visit: 04.03.2020

Case officer: Mr D Jolley
Telephone No. 01733 4501733 453414
E-Mail: david.jolley@peterborough.gov.uk

Recommendation: **REFUSE**

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

Site and surroundings

The application site is currently a small cafe/restaurant unit within terrace of shops. The application site has a yard area to the rear accessed via the kitchen to the rear of the unit. The site is located within the City Centre Conservation Area. The car park of the Bull Hotel a Grade II Listed Building) lies to the rear of the site. There appears to be flats and storage areas at first floor in the surrounding units. The site lies within the designated City Centre boundary.

Proposal

Permission is sought for: the construction of timber-framed outbuilding to the rear for use as Shisha lounge (this also extends across the rear of Nos20-26); construction of a single storey side extension located to the rear; an increase in height of the site's rear boundary wall to 2.5 metres; and relocation of an existing external staircase, also to the rear.

This application is a re-submission of a previous application, 19/00786/FUL, which was withdrawn.

2 Planning History

Reference	Proposal	Decision	Date
19/00786/FUL	Construction of timber framed outbuilding to rear for use as shisha lounge, and single storey side extension	Withdrawn by Applicant	08/07/2019

3 Planning Policy

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

Planning (Listed Building and Conservation Areas) Act 1990

Section 66 - General duty as respects listed buildings in exercise of planning functions

The Local Planning Authority has a statutory duty to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

Section 72 – Conservation Areas

Peterborough Local Plan 2016 to 2036 (2019)

LP16 - Urban Design and the Public Realm

Development proposals would contribute positively to the character and distinctiveness of the area. They should make effective and efficient use of land and buildings, be durable and flexible, use appropriate high quality materials, maximise pedestrian permeability and legibility, improve the public realm, address vulnerability to crime, and be accessible to all.

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.

LP19 - The Historic Environment

Development should protect, conserve and enhance where appropriate the local character and distinctiveness of the area particularly in areas of high heritage value.

Unless it is explicitly demonstrated that a proposal meets the tests of the NPPF permission will only be granted for development affecting a designated heritage asset where the impact would not lead to substantial loss or harm. Where a proposal would result in less than substantial harm this harm will be weighed against the public benefit.

Proposals which fail to preserve or enhance the setting of a designated heritage asset will not be supported.

4 Consultations/Representations

PCC Pollution Team (26.02.20)

Objection - In consideration of the close proximity to residents, and the inevitable loss of amenity to the current, and any future, occupiers of the nearby premises, it remains the opinion of this section that such a development is unsuitable.

PCC Wildlife Officer (12.02.20)

No objection to the proposal subject to the use of appropriate conditions.

PCC Conservation Officer (03.03.20)

Objection

Local Residents/Interested Parties

Initial consultations: 49
Total number of responses: 1
Total number of objections: 1
Total number in support: 0

A single objection has been received in relation to the proposal stating:

Opening Shisha lounge is most unsuitable and offers no benefit to the City.

5 **Assessment of the planning issues**

The main considerations are:

- Principle of development
- Impact of the proposal on the character of the area, including impact to heritage assets
- Impact of the proposal on the amenity of the occupiers of neighbouring dwellings

a) Principle of development

The application proposes, amongst other things, use of the rear yard of the establishment for the purpose of shisha smoking. Whilst the use is likely to be ancillary to the main use of the site, as a cafe, it is considered that the proposed use does require planning permission as the shisha area will result in a material increase in the intensity of the use of the site and a material change to the character of the use of the site. Internal works are required to facilitate the use of the yard area, further supporting the view that the site does require planning permission for shisha use.

Planning permission for the use of the site is required, and for the reasons stated below, it is considered that the proposal is not acceptable and as such in this instance the principle of development is not sound.

b) Impact of the proposal on the character of the area, including impact to designated heritage assets

As detailed in Section 1 above, the application site is located within the designated City Centre Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires that special regard be paid to ensuring that all new development either preserves or enhances the setting and special character of Conservation Areas. Further, the site is located adjacent to the car park serving the Grade II Bull Hotel. Section 66(1) of the same Act requires that special regard be paid to ensuring that development preserves or enhances the significance of Listed Buildings. This is further emphasised within both national and local planning policies, which require that significant weight be placed upon the need to preserve heritage assets.

The proposal involves some small alterations to the rear of the building to create a small extension and relocate an external staircase. These are considered minor alterations to the site and will not materially alter the character of the area. Of greater concern however, is the proposed alteration to the height of the wall to the rear of the site, in order to make good some areas that are in disrepair and to shield the view of the covered shisha area when viewed from the Bull Hotel car park to the rear.

The City Council's Conservation Officer Objects to the raising of the height of the wall in this location, considering the works unnecessary, as the structure attaches to the rear wall of the buildings of Park Road and not the rear wall of the site. The Conservation Officer has concerns that increasing the height of the wall in this location will result in an incongruous appearance such that one part of the wall would be taller than other sections. Concern has also been expressed in regards to the difficulty in matching the weathered bricks of what is a wall of some age.

With regards to the covered shisha lounge area, this would be sited between the rear boundary wall and rear elevations of Nos.20-26 Park Road. It would stand at a maximum height of 2.5

metres with a flat roof canopy design, supported by posts. As such, save for the roof form, it would be largely screened from the surrounding area. Officers consider that, subject to the use of appropriate materials (which would not include polycarbonate/plastic), the overall appearance of this canopy would not be harmful to the character or appearance of the surrounding area.

In light of the above, it is considered that the proposal would harm the character of the City Centre Conservation Area and fail to preserve the setting of the adjacent Listed Building. Accordingly, the proposal is contrary to Policy LP19 of the Peterborough Local Plan (2019).

c) Impact of the proposal on the amenity of the occupiers of neighbouring dwellings

Officers consider that the proposed use of the site as a shisha lounge/bar would likely result in significant additional noise and smoke that would cause a nuisance to the occupiers of neighbouring residential units. The Applicant states that there are residential flats above Nos.24 and 26 Park Road. Whilst Officers have not confirmed this, there would appear to be residential units in these locations judging by the appearance of the rear facing first floor windows which have signs of residential habitation.

The proposed shisha area would span the rear of Nos.20-26 Park Road, and whilst it would be covered in the form of a canopy, it would be largely open. By virtue of the nature of the use proposed, both smoke and noise would be emitted from the development throughout the day and night-time whilst the site was in use.

The Council's Environmental Health Team have stated that it is highly unlikely that it is possible to sufficiently attenuate noises from sources such as loud voices, laughing, music/singing, tables and chairs being moved, etc. and these would be the main noises resulting from the proposal. Whilst certain controls may have some effect on the duration of each individual's stay in the area, these are unlikely to remove the noise completely and are reliant upon compliance from customers and for the premises management to enforce. As such, the measures would likely be largely unenforceable in planning-terms.

Furthermore, the design/layout of the Shisha lounge are unlikely to prevent smoke drift given the open nature of the structure, which is required in order to comply with current smoking shelter legislation. Accordingly, there would be a strong likelihood of odour nuisance to the occupiers of nearby residential premises. The Environmental Health Team have advised that consequently, it is likely that the proposed development would result in complaints in terms of noise and odour.

When considering such complaints of nuisance under the Environmental Protection Act 1990, it is important to note that planning decisions that alter the character of the area, and therefore affect the acceptability of particular noise and use, impact on whether certain activities would be judged as nuisances. Consequently, should planning permission for the proposal be granted, the Environmental Health Team have advised that any complaints regarding noise or odour resulting from the development would be unlikely to be deemed a statutory nuisance. Accordingly, such matters must be fully considered at the time of determining the application and future compliance under other primary legislation cannot be considered as a mechanism to prevent harm to the amenities of neighbouring occupiers.

On this basis, it is considered that, owing to the close proximity of the proposal to residential occupants, the proposal would result in unacceptable harm to the amenity of those occupiers through noise and smoke nuisance. The proposal is therefore contrary to Policy LP17 of the Peterborough Local Plan (2019).

d) Other matters

Whilst not specifically a material planning consideration, as it is controlled through other legislation. The Council's Smoking Regulatory Officer has stated that outdoor smoking shelters or areas (which would include a shisha lounge as proposed) must not be enclosed or substantially enclosed. The walls must have openings, which are at least half of the total area of the walls including other structures, which serve the purpose of walls. No account can be taken of doors,

windows or other fittings that can be open or shut. It would appear that the structure is acceptable in this regard as it consists of a roof, suspended by posts with a gap between the canopy roof and the rear wall of the site.

They have also stated that it is also not acceptable to have access for customers through a working kitchen due to creating potential food safety and health and safety issues. However upon viewing the proposed plans it would appear that internal alterations will take place in order to create a separate access to the rear, via the toilets.

The above however is a material consideration in so far as other primary legislation prevents any further alterations being made to the design of the proposal that may address the issues of neighbour amenity impact.

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 Executive Director of Place and Economy recommends that Planning Permission is **REFUSED** for the following reasons:

- R 1 The proposal, by virtue of the increase in height of the rear wall of the site to 2.5 metres, would result in an incongruous, unnecessary addition to a structure located within the City Centre Conservation Area and abutting a Grade II Listed Building. The proposal would therefore have a detrimental impact to the character and setting of those designated heritage assets. This is contrary to Policy LP19 of the Peterborough Local Plan (2019).

- R 2 The proposed shisha smoking area, by way of its open-sided construction and proximity to windows serving residential properties, would result in unacceptable levels of noise and smoke nuisance to the occupiers of those neighbouring residential properties. The proposal would therefore result in unacceptable detriment to their amenity. This is contrary to Policy LP17 of the Peterborough Local Plan (2019).

Copies to Ward Councillor Joseph, Councillor Nawaz and Councillor Yasin

This page is intentionally left blank