

DELEGATED APPLICATION REPORT

Address: 80 Oxford Road

Application No: 182090/FUL

Applicant: Mr A Jabarkhil

Proposal: Proposed single storey rear extension, erection of pergola (retrospective) and the change of use of rear garden of A3 unit to a shisha bar (Sui Generis)

Application valid from: 27/11/18

Application target date: 05/03/19

Case Officer: Connie Davis

1.Site Description and Surrounding Area:

The site consists of a two storey terraced property on the northern side of Oxford Road near the junction with Alfred Street. It is within the RCAP13 tall buildings cluster and faces on to the TRN4 Cycle route. The property is currently occupied by 'Pizza House' which is a hot food take away (Use class A3 and A5). In the immediate vicinity, commercial units occupy the ground level of properties, and predominantly residential dwellings are located on the upper storeys. Mayer House, a block of residential flats, also sits to the rear of the site (part of the Chatham Place development).

The site is also located within an Air Quality Management Area. The site is not listed, nor within a conservation area, although the buildings on the south side of Oxford Road at this point are within the Russell St Castle Hill Conservation Area.

2. The Proposal

The proposal consists of several elements:

1) The construction of a single storey flat roof rear extension

The extension will measure approximately 1.9m in width, 1.5m in depth and 2.2m in height. The purpose of the extension is to facilitate a WC but it will not be accessible from the main property. The WC is to be created for the benefit of those using the rear garden/ courtyard space; the WC door will only be accessible from the rear of the site.

2) Retrospective planning permission has been sought for the construction of a pergola to the rear of the site

The pergola measures approximately 2.4m in height, 10.3m in depth (the entire depth of the courtyard) and 3.9m in width. The pergola has a timber frame and a corrugated plastic roof. It is enclosed on three sides (to the rear by the site boundary brick wall, and on two sides by timber fencing).

This part of the proposal is subject to an enforcement investigation which has been held in abeyance whilst this application is being determined. The structure does not qualify as permitted development.

3) Change of use of the rear of the property to a Shisha Bar (from use class A3/A5 to Sui Generis)

The proposed shisha bar is to be located underneath the pergola that has already been constructed. External lighting will be attached to the roof of the pergola along with tables and chairs to accommodate 20 people.

3. Consultation

Internal Consultation

The senior Environmental Health Officer reviewed the proposal and provided the following comments:

The proposed development is very likely to be harmful to the amenity of surrounding residents as a result of noise from customers using the proposed shisha bar. Noise from customers talking is likely to impact on surrounding residents especially as this is a rear garden area, therefore sheltered from the road noise.

It is therefore recommended that this application is refused.

Transport

Oxford road is a “Red Route”, therefore on street parking is not permitted unless in one of the time restricted parking bays along Oxford Road or in a parking meter bay; In addition to this the site is located in close proximity to CPZ areas and therefore unauthorized on street parking is regulated through the administration of the scheme. The proposed rear extension does not change the existing parking arrangements, therefore, in principle Transport do not have any objections to this application.

The proposed rear extension does not change the existing parking arrangements, therefore, in principle Transport do not have any objections to this application.

****Officer Comment:** The transport development control advisor has only referred to the single storey rear extension, however appears to have not taken in to account any increase in traffic the proposed rear shisha bar could create, ie. It may increase the amount of people travelling to the site. However due to the parking restrictions, as mentioned above, any increase in parking can be controlled and monitored.*

IF3 Highways

- i) The attention of the applicant is drawn to Section 59 of the Highways Act 1980, which enables the Highway Authority to recover expenses due to damage caused by extraordinary traffic.
- ii) Any works affecting the Highway shall be in accordance with Reading Borough’s Council’s document “Guidance Notes for Activities on the Public Highway within the Borough of Reading”. The applicant should note that compliance with this document is mandatory and licences to work on the Highway will only be issued if the requirements contained within it are met. A copy can be obtained from the Council’s website.

Licensing

The RBC licensing department reviewed the application and are generally not supportive due to the potential noise that the Shisha bar may create will be conflicting with one of the licensing objectives to prevent public nuisance. Having an outdoor area where people can sit and smoke shisha until such late hours would undermine the prevention of public nuisance licensing objective and likely lead to

complaints. Therefore we would not be supportive of such an application unless there was an hours restriction.

RBC licensing also noted that at present, the outside area is not licensed for any activity. Shisha smoking is not licensable but must comply with relevant Environmental Health considerations.

External Consultation

Site notices were also displayed at and around the site until 11th February 2019.

13 representations were received.

- 10 objections
- 2 observations (specified as observations, but on the basis of the responses constitute objections to the application)
- 1 support

All objections / observations (see above) were relating to the change of use element of the proposal, with the exception of one representation which considered that the single storey extension would invade privacy.

The issues raised in the representations relating to the change of use to a Shisha Bar related to:

- The potential noise impact of the development
- Increased night time crowd surrounding the area
- Concerns the change of use will result in an increased level of anti-social behaviour
- Loss of privacy
- Parking provision

1 representation in support of the application:

- Felt the proposal would benefit those that smoke Shisha as it would mean individuals would not have to commute to west or east Reading to find a Shisha Bar.

4. Plans and Documents Considered

The Council, in reaching its recommendation, has taken into consideration the following plans & documents:

Drawing No.:

- 01 - Existing floorplans
- 02 - Existing Elevations
- 03 - Existing side elevations
- 05 - Proposed elevations
- 06 - Proposed side elevations

Received 28th November 2018.

Site Location Plan 1:1250 (Existing)
Site Location Plan 1:1250 (Proposed)
04 - Proposed floor plans
Planning Statement
2 x photographs of the existing pergola

Received 2nd January 2019.

Email from the agent received 13/02/19

5. Relevant Planning History

101502 - Change of use from shop (A1) to sandwich bar and takeaway (A3 and A5) without complying with condition 5 of Planning Application Reference 07/01321/FUL to allow outdoor tables and chairs to be placed at the rear - Application Permitted

081423 - Discharge of conditions 2, 3 and 6 relating to permitted application 07/01321/FUL - Split Decision

070029 - Fascia sign and projecting sign for sandwich bar and takeaway - Application Permitted

071016 - Change of use from shop (A1) to sandwich bar and takeaway (A3&A5) - Application Permitted

061268 - Change of use from A1 (shop) to A2 (financial and professional services) - Application Permitted

6. Equality Act 2010:

In determining this application the Council is required to have regard to its obligations under the Equality Act 2010. However, there is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application. Therefore in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the development.

7. Relevant Planning Guidance

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for Reading relevant to the application site comprises the Reading Local Development Framework 'Core Strategy' 2008 (Altered 2015), Reading Central Area Action Plan (2009) and 'Sites and Detailed Policies Document' 2012 (Altered 2015).

The 'National Planning Policy framework' ('NPPF') 2012 states clearly that its content is to be a material consideration in the determination of applications. The 'NPPF' states that due weight should be given to the adopted policies of the Local

Development Framework (LDF) (Core Strategy and Sites and Detailed Policies Document) according to their degree of consistency with the 'NPPF' (the closer the policies in the plan to the policies in the 'NPPF', the greater the weight that may be given). Accordingly, the 'NPPF' and the following development plan policies and supplementary planning guidance are relevant:

8. Relevant Policies

The application has been assessed against the following policies:

National

National Planning Policy Framework;
National Planning Policy Guidance;

RBC Local Development Framework Core Strategy 2008 (Altered 2015)

CS7 Design and the Public Realm
CS34 Pollution and water resources

Sites and Detailed Policies Document 2012 (Altered 2015)

DM4 Safeguarding Amenity
DM12 Access, Traffic and Highway-Related Matters

Reading Central Area Action Plan (RCAAP) to 2026 (Adopted 2009)

RC5 Design in the Centre
RC6 Definition of the Centre

9. Appraisal

- 1) Land use issues
- 2) Impact on neighbouring properties
- 3) Impact on the host property

Land use issues

9.1 - it is proposed to separate the proposed sui generis shisha bar use from the Class A3/A5 unit at the site. In broad land use terms, mindful of policy RC6, it is considered that there are no in-principle land use concerns with such a sui generis use at the site, subject to the impacts of the use being appropriate in the locality - as is discussed below.

Impact on neighbouring amenity

9.2 Shisha Bar

The application site sits in a row of terrace properties; the ground floors of these adjoining units are used as commercial units of varying use classes whilst the upper floors are used as residential units. In addition, Mayer House, a 7 storey residential block sits in close proximity to the rear of the site.

a) Noise

There is concern that due to the proximity to residential dwellings from the proposed Shisha Bar, noise generated from the shisha bar will cause detrimental impact to the living environment to nearby neighbours. According to the submitted site plan, the rear of the site is approximately 5m from Mayer House. The

application site and Mayer House are separated by Chatham Place, a dead-end road. In the immediate vicinity, residential units are located above the adjoining commercial units on Oxford Road (nos. 78, 82, along with other properties in the terrace).

It is acknowledged that under application 101502 that permission was granted for the placement of tables and chairs (accommodating for 24 people) under a gazebo at the rear for the Class A3 / A5 use. However two conditions (conditions 2 and 3) were included on this permission which were required to be discharged before the permission was implemented. More specifically these related to providing the LPA with details (within two months of the date of the permission) of any chimney or extraction ventilation (to ensure that neighbouring properties were not unreasonably polluted by odours) and the proposed layout of secure covered cycle parking area in the rear courtyard.

The requirement for the conditions to be discharged was also reminded to the applicant under informative 4 of the permission.

The LPA has no record of either of these conditions having been discharged. As such, due to the failure of discharging the above conditions within the specified time frame, permission 101502 was never implemented lawfully. As such, any use of this rear courtyard by members of the public since the conditional permission was granted was not done so under a valid permission.

Nevertheless, in spite of this permission, it is noted and considered that the proposed sui generis shisha bar use contrasts to the Class A3/A5 use previously permitted in this area. Moreover, each application needs to be judged on its own merits. Therefore under this application, an assessment is required regarding the potential noise impact of using the rear area of the site for a sui generis shisha bar use.

No measures for mitigating noise disturbance were submitted as part of the application, other than an email received by the agent on 13/02/19 which stated as the application property is adjacent to a blank elevation and separated by a brick wall/ fences to adjacent properties and the rear courtyard will be screened with the pergola, this was considered to keep any impact to neighbours at a minimum. However with the rear courtyard being sheltered from the road noise of the Oxford Road at the front of the site, it is considered that neighbouring properties could be even more susceptible to potential noise from the shisha bar. It is not considered that the pergola structure alone will be able to mitigate the potential noise generated, particularly for those living on the first floor above the adjoining commercial units. The applicant has failed to demonstrate that the proposal would not cause significant noise disturbance and this therefore forms a basis for the refusal of the application.

Furthermore, as the pergola will be used as smoking shelter, it will have to comply with smoke-free legislation detailed in The Smoke-free (Premises and Enforcement) Regulations 2006 (as advised by Environmental Health colleagues). To comply with this legislation, the smoking shelter would have to be at least 50% permanently open which limits measures that could be implemented to mitigate any noise nuisance cannot be used as they would make the smoking shelter less than 50% permanently open and therefore not compliant with smoke free. Additionally, the applicant has not clearly demonstrated to the LPA that the shelter would comply with the smoke-free legislation as the shelter will be enclosed on three sides (the

rear wall of the shelter is brick, the other two sides are made of timber fences). Although this is not a standalone reason for refusal of the application, as it is covered by separate legislation, an informative is recommended in this regard.

b) Smell and fumes

In addition, no odour assessment has been submitted as part of the application. Again, due to the site's proximity to residential dwellings, the impact of the smell of the shisha on nearby residents will need to be assessed, as it could potentially have a significantly harmful impact on nearby occupiers. In addition, as windows from nearby residential units overlook the site, the fumes from the shisha may result in second hand smoke being encountered should neighbours have their windows open.

Therefore due to the lack of information submitted which to the contrary, the proposed use does not comply with Policy DM4 (Safeguarding Amenity) in terms of potential smell and fumes.

9.3 Proposed extension and (retrospective) pergola

The proposed single storey rear extension and pergola are not considered to individually, or cumulatively impact on neighbouring residential amenity due to their modest dimensions. Residential properties are not located on the ground floor of adjoining premises; these operate commercially and therefore there is not considered a risk of overlooking or loss of light.

It is noted that in one of the objections received that the proposed extension would result in a loss of privacy for some flats within Mayer House. However due to its relatively small size and proximity the fact that the extension will be screened by a fence, it is not considered that the proposed extension will cause significant harm to neighbours.

Impact on host property

9.3 Shisha Bar

This element of the proposal will result in a change to the nature of the A3/A5 premises and it is not clear as to how the Shisha bar will operate. It has not been stated if the proposed Shisha Bar will operate as a separate business to 'Pizza House'; however a separate use is proposed and therefore it must be assumed that a separate planning unit is sought to be created to the rear of the existing main building. Nevertheless the incorporation of a new element to this already mixed use-class premises is likely to result in a higher footfall to the premises with 20 seats being proposed for the use of shisha according to the proposed floor plans. Nevertheless the site is located on a red-route the parking provision around the site can be, and is, monitored.

The proposed plans indicate that the shisha bar will be able to be accessed via a side gate from Chatham Street and therefore would help reduce the amount of visitors entering through the main premises.

Although the property is mid terrace, and therefore has more restricted limits on its expansion, the proposed Shisha bar is not considered to result in an over use of the site, due to the rear entrance that the site has, and the rear courtyard being of sufficient depth.

Therefore the shisha bar element of the proposal is not considered to impact the host property itself, nor the functionality of the A3/A5 premises.

9.4 Proposed extension and pergola

The proposed single storey rear extension will measure approximately 2m in width, 2m in height and 1.5m in depth and therefore it is not considered to be an addition that will detract from the appearance of the main building and all materials are to match the existing.

The wooden pergola has already been constructed and measures approximately 10.3m in width, 2.3m in height and 3.8m in depth. It will extend the entire length of the courtyard. The pergola is constructed from timber posts and corrugated roofing. Although it is acknowledged that proposed materials are of somewhat low quality but on balance is not considered significantly harmful as the pergola will not be visible from the street scene and is encompassed by the site's boundary wall.

Therefore the proposed extension and (retrospective pergola) satisfies with Policies CS7 and DM5.

10. Conclusion / overall planning balance

Whilst the LPA does not have any objections to the proposed single storey rear extension and the retrospective pergola (the structure itself), the change of use of the rear courtyard to a Shisha bar is has the potential to harm neighbouring residential amenity (to the rear and both sides of the site) in respect of noise disturbance and smell/ fumes. When applying a critical planning balance it is considered that these harmful impacts, as identified in the appraisal above, outweigh any benefits of the proposal.

Therefore, having regard to the material considerations and all matters raised, the Local Planning Authority considers that the balance of considerations weigh against the granting of planning permission. Accordingly, planning permission is recommended to be refused on amenity grounds.

11. Recommendation

REFUSE planning permission for the following reasons:

- 1) The applicant has failed to demonstrate that the proposed Shisha bar (Sui Generis) use, owing to its proximity to residential dwellings, would not cause a significant detrimental impact to the living environment of neighbouring properties in terms of noise disturbance, smells and fumes generated from smoking Shisha, contrary to Policy CS34 of the Reading Borough Local Development Framework Core Strategy 2008 (Altered 2015) and Policy DM4 of the Reading Borough Local Development Framework Sites and Detailed Policies Document 2012 (Altered 2015).

Informatives

1. The Council, in reaching its recommendation, has taken into

consideration the following plans & documents:

Drawing No.:

- 01 - Existing floorplans
- 02 - Existing Elevations
- 03 - Existing side elevations
- 05 - Proposed elevations
- 06 - Proposed side elevations

Received 28th November 2018.

Site Location Plan 1:1250 (Existing)
Site Location Plan 1:1250 (Proposed)
04 - Proposed floor plans
Planning Statement
2 x photographs of the existing pergola

Received 2nd January 2019.

Email from the agent received 13th February 2019

2. The local planning authority has worked positively and proactively with the applicant to inform them of the issues this application presented at an early stage within the prescribed timeframe for a decision to be issued. The applicant was informed that the application would be refused if not withdrawn, however the applicant did not wish to withdraw the application.

3. This planning application was submitted without the benefit of first seeking pre-application advice from the Local Planning Authority, which can often result in the avoidance of refusal of planning permission. Please see the following link to the Council's pre-application service here:
http://www.reading.gov.uk/media/1190/Pre-Application-Enquiry-Form/pdf/Pre-app_Nov_2016.pdf

4. From an Environmental Health perspective, you are advised for your future information that no evidence has been provided to demonstrate that the proposed pergola which is proposed to cover the shisha bar meets the requirements of (separate from planning) smoke-free legislation. As such it is unclear as to whether the proposal complies with The Smoke-free (Premises and Enforcement) Regulations 2006.