

## SUMMARY REPORT

<b>Application Ref:</b>	20220813
<b>Site Address:</b>	Prince Albert, 26 Wrotham Road, Gravesend, Kent, DA11 0PW
<b>Application Description:</b>	Application for continued use as a Public House and Restaurant with the creation of an ancillary Shisha Area
<b>Applicant:</b>	Mr Edris Barbers
<b>Agent:</b>	Mrs Shanon Alexander, Barron Edwards Ltd
<b>Ward:</b>	Pelham
<b>Parish:</b>	Non-Parish Area
<b>Decision due date:</b>	19 <sup>th</sup> September 2022
<b>Publicity expiry date:</b>	26 <sup>th</sup> August 2022
<b>Decision Level:</b>	Planning Committee - Wednesday 28 <sup>th</sup> September 2022
<b>Reason for referral:</b>	Councillor call in
<b>Recommendation:</b>	Refusal

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### **Summary of Reasons for Recommendations**

The proposal is an application for continued use of the Prince Albert as a public house and restaurant with the creation of an ancillary shisha area. As part of the development permission is sought to retain the timber structures within the beer garden, with minor amendments, for use as outdoor restaurant seating and for smoking shisha.

The recommendation is for the application to be REFUSED Planning Permission, for the following reasons:

1. The proposed change of use of the beer garden into a shisha area will materially impact the amenity of adjoining neighbours by virtue of unacceptable levels of noise and disturbance as well as fugitive odours. The unsubstantial structure will shelter users in all weather conditions enabling year-round use, but cannot achieve adequate sound proofing or odour control to mitigate noise nuisance and fugitive odour emissions whilst meeting Smoke free regulations which require an open air structure. Therefore, the development fails to provide adequate mitigation to safeguard neighbour amenity, and is contrary to Policy CS19 of Gravesham's Local Plan Core Strategy (2014) and Section 12 National Planning Policy Framework (2021).
2. The structures are disproportionate in scale and poorly designed additions within the smoking area, which appear as a ramshackle quality and of incongruous design due to differing roof forms and poor quality external finishes in a prominent position visible from the street. As such, the development has a detrimental impact on the character and appearance of the street scene, fails to preserve or enhance the quality of the host building or the Conservation Area setting. Therefore, the development fails statutory test s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, is contrary to Policies CS19 and CS20 of Gravesham's Local Plan Core Strategy (2014), saved policies TC2 and TC3 of the Gravesham Local Plan First Review (1994), as well as Sections 12 and 16 of the National Planning Policy Framework (2021).

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## MAIN REPORT

### 1. Site Description and Surroundings

- 1.1. The application site is the Prince Albert public house, located on the corner of Wrotham Road and Zion Place. The site is adjacent to the Town Centre Opportunity Area as designated by Gravesham's Local Plan Core Strategy (LPCS) (2014) and is within the Upper Windmill Street Conservation Area.
- 1.2. It is a part three storey building with a two storey projection to the rear. It has blue block elevations to the ground floor and white painted rendered elevations to the upper floors with decorative mouldings all under a slate roof.
- 1.3. The ground floor of the building operates as a public house, with the upper floors used as individual letting rooms that are accessed via a metal staircase at the rear of the building from the car parking area.
- 1.4. A timber outbuilding was erected within beer garden to form a smoking area which was extended and converted in 2022 for the smoking of shisha.

### 2. Planning History

- 2.1. The premises were constructed as a Shepherd Neame Public House during the 19<sup>th</sup> Century and have remained in this use since. A small rear extension was added in 1976 to provide toilet accommodation. Permission was granted in 2007 for the remodelling of the front patio area to provide a permanent umbrella and erection of a planter to mark the boundary. An application was permitted in 2012 for retention of doors on the front and alterations to the rear to provide a fire exit.

Reference	Description	Decision	Decision Date
20120547	Retention of the double doors on Zion Place frontage; fire exit doorway at rear; railings and staircase to exit roof area and new rear window opening onto chimney.	PERMITTED	14.11.2012
20070504	Remodelling of the front patio area involving the erection of a permanent rectangular umbrella and a dwarf planter wall to demark the front boundary.	REFUSED	08.08.2007
19760671	Erection of a single storey extension at rear to form sanitary accommodation and internal alterations to public house	PERMITTED	03.11.1976

### 3. Proposal

#### Background

- 3.1. A timber structure was erected on site, and this was subsequently brought to the attention and investigated by GBC Planning Enforcement in June 2021. The structure was said to be temporary by the owner but required planning permission. No application was submitted. The structure was later extended and converted into a

shisha bar (February 2022), with advertisements erected within the Conservation Area.

- 3.2. GBC Environmental Health were notified of the development and in their own investigation found that the structure was substantially enclosed, and was non-compliant as either a smoking shelter or a Shisha bar, contrary to the Health Act 2006.
- 3.3. This application has since been submitted for the continued use as a public house and restaurant with the creation of an ancillary shisha area.

#### Proposed Development

- 3.4. The proposal is to regularise the building within the garden for use as an ancillary area for smoking shisha and outdoor restaurant space.



- 3.5. The use of the Prince Albert as a restaurant / 'gastro-pub' does not require planning permission. The change of use from a drinking establishment to a drinking establishment with expanded food provision is permitted under Schedule 2, Part 3, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 3.6. When visiting the site, it was observed that a deli-counter was being installed within the restaurant area defined on the floor plans. While this is not annotated onto the floor plans, the internal layout of the pub does not form part of this application.

#### **4. Planning Policy, Development Plan and other Material Considerations**

- 4.1. Gravesham Local Plan Core Strategy (September 2014):
  - CS01 - Sustainable Development
  - CS02 - Scale & Distribution of Development
  - CS05 - Gravesend Town Centre Opportunity Area
  - CS07 - Economy, Employment and Skills
  - CS08 - Retail, Leisure and the Hierarchy of Centres
  - CS12 - Green Infrastructure
  - CS18 - Climate Change
  - CS19 - Development & Design Principles
  - CS20 - Heritage and the Historic Environment
- 4.2. Gravesham Local Plan: First Review (1994)
  - P3 - Vehicle Parking Standards

- S7 - Restaurants & Hot Food Takeaways
- TC3 - Developments Affecting a Conservation Area

Paragraph 33 of the National Planning Policy Framework (NPPF) (2021) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2021), the Council will also seek to replace these.

4.3. National Planning Policy Framework (2021)

- Section 2 - Achieving Sustainable Development
- Section 6 - Building a Strong, Competitive Economy
- Section 7 - Ensuring the Vitality of Town Centres
- Section 12 - Achieving Well-Designed Places
- Section 16 - Conserving and Enhancing the Historic Environment

4.4. Supplementary Planning Guidance

- SPG 4 - KCC Parking Standards (2006)
- Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990
- Gravesend Town Centre Conservation Areas Management Plan (2009)
- Upper Windmill Street Conservation Area Character Appraisal (2009)

4.5 Section 72(1) of the Planning Listed Building and Conservation Areas Act 1990 (as amended) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

## 5. Consultations and Publicity Responses

### Consultations

5.1. GBC - Licensing

The Prince Albert Public House holds a premises licence with us. The garden is not covered by this licence, so sales of alcohol, amplified live music and recorded music are not permitted in the Shisha area.

5.2. GBC - Environmental Heath (Regulatory Services)

After reviewing the applicant's submissions, local objections and discussing the matter with the council's Commercial & Licensing Teams we have concerns that music and the use of Shisha at this location will likely lead to an unreasonable impact on the amenity of neighbouring residents in terms of noise and odour/smoke.

*Noise Control* - The Shisha Area has already been constructed at the rear of the main building and we are aware of local resident objections to the planning application due to excessive levels of noise from people and music affecting them in their homes. This

service has also directly received anonymous noise complaints and considers that continued use of loud music in the Shisha area, in such close proximity to residential dwellings, will lead to unreasonable disturbance of the neighbouring residents.

In addition the likelihood of noise nuisance affecting local residents will be increased further should the Shisha area become compliant with the Smoke Free regulations, which requires a significant part of the building to be open to the air.

*Odour Control* - Shisha smoke can cause a wide range of odours, which have the potential to be detectable at nearby dwellings and thus be an unreasonable nuisance. Requiring mitigation methods such as suitably filtered air extraction system in an enclosed building, may prevent the odour affecting other buildings, however the current structure of the building is very poor which would lead to fugitive odour emissions through the fabric of the building. Therefore the building would need to be made of a proper construction e.g. brick or block with the necessary extraction system. However it is understood that such an activity i.e. the smoking of Shisha, must be carried out in a location open to air, in order to comply with the Smoke Free regulations thus contradicting the requirements of this service.

*Summary* - The Environmental Protection Team has serious concerns that the continued use of the rear annex as a Shisha smoking area, with loud music, will result in unreasonable noise and smoke/odour nuisance for nearby residents. We consider that there is no suitable mitigation measures for this use and as such we request that the planning permission is refused.

If Members were minded to approve it, in order for the Shisha bar area to not cause a noise or odour issue in the locality it would need to be required to be constructed of a brick type material with an adequate extraction system with suitable odour filtration/suppression.

However should the application be approved we would require the applicant provides the following prior to determination by the Local Planning Authority;

*Noise* - A Noise Risk Impact Assessment Report that demonstrates the following;

The internal ambient noise levels in nearest habitable rooms of the proposed development shall not exceed the guideline LAeq values found in Table 4 of BS8233:2014.

The maximum internal noise levels in the nearest habitable rooms should not exceed 45dB LAmax more than 10 times per night in accordance with the Professional Practice Guidance on Planning & Noise and the WHO Guidelines for Community Noise.

The Noise Risk Impact Assessment must be carried out after the development has been made compliant, to the satisfaction of the Council's Commercial Health Team, with the relevant Smoke Free Regulations on its design.

*Odour* - An Odour/Smoke/Fume impact assessment must be submitted for the approval of the LPA that demonstrates that the activity will not cause an odour/smoke/fume nuisance. It is recommended that, in the absence of, specific guidance on Shisha bars that the following guidance is used,

'Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems - Annex B - Information Required To Support Planning Application For Commercial Kitchen.'

The report must include details of the Shisha area's ventilation system, including detailed plans and a cross section of the air extraction system.

*Lighting* - Artificial lighting can cause a statutory nuisance under the Environmental Protection Act 1990. It is important that the applicants are not permitted to install external lighting that illuminate anything other than the ground within the curtilage of the new properties in order to assist in preventing a nuisance from occurring.

### 5.3. GBC - Commercial Health (Regulatory Services)

No objection in principle to the change of use. However, the current Shisha area does not comply with the Smoke Free (Premises and Enforcement) Regulations 2006, as it is enclosed / substantially enclosed as defined by the legislation and the proposed plan of the kitchen does not provide sufficient detail for full consideration.

*Shisha Lounge* - The current smoking shelter / shisha lounge does not comply with the Smoke Free (Premises and Enforcement) Regulations 2006, as it is enclosed / substantially enclosed as defined by the legislation (see below):

- Enclosed - Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis.
- Substantially Enclosed - Premises will be considered to be substantially enclosed if they have a ceiling or roof, but there are openings in the walls which are less than half of the total area of the walls, including structures that serve the purpose of walls and constitute the perimeter of the premises. When determining the area of an opening, no account can be taken of openings in which doors, windows and other fittings can be opened or shut.

In order to comply the area needs to ensure that it is not enclosed or substantially enclosed. Current guidance also suggests that any shisha lounge / smoking shelter should be constructed at least 1.5 meters from any other premises doors or open able windows. The use of an existing wall attached to the building could create a substantially enclosed structure.

All relevant premises must display no smoking signage in a prescribed format. Proprietors will have a duty to take all reasonable steps to prevent staff and patrons from smoking.

*Food Safety Comments* - I am unable to fully comment on the structure of the kitchen as the plans do not provide me with a detailed layout. Further detailed plans are therefore required.

It is a requirement under Article 6(2) of Regulation 852/2004 that food business operators must register their establishments with the appropriate competent authority (in this case GBC Environmental Health) at least 28 days before food operations commence. Registration is via the Gravesham Borough Council website Register a Food Business

The applicant must ensure that the kitchen fully complies with current food safety legislation to the satisfaction of the Regulatory Services Manager. Structural and operational requirements are covered by the legislation notably EC Regulation 852/2004.

All internal structures to the kitchen must be impervious, non-absorbent and washable i.e. easy to clean and maintain in a clean condition.

The kitchen should be pest proofed as far as possible i.e. gaps and holes to external doors, windows, pipes and drains etc. must be filled or covered with a solid, durable material in order to minimise pest entry points in to food preparation and storage areas.

Lavatories must not lead directly into rooms in which food is handled, stored or prepared. There should be an intervening ventilated space between toilets and food rooms. Food should not be stored in that space.

The provision and location of sinks and wash hand basins is an important consideration in the design and planning of a kitchen. A minimum of one (1) wash hand basin and a double sink unit must be installed. A dishwasher is also recommended.

The layout and scale of the business operation is such that mechanical ventilation, with a balanced air intake and appropriate extract system, is likely to be required. This will need to achieve a minimum of 30 air changes per hour and a maximum ambient temperature of 25C within the working kitchen. I recommend that you contact a specialist contractor in this regard.

For further advice on starting a food business, please visit the FSA website [Starting a food business | Food Standards Agency](#)

*Health and Safety* - In these premises, Gravesham Borough Council (GBC) Environmental Health will be the enforcing authority. The applicant must ensure that these premises comply fully with the Health and Safety at Work (etc.) Act 1974 and all relevant regulations made there under. For information and advice on health and safety matters check out the HSE website [www.hse.gov.uk](http://www.hse.gov.uk) or contact the Environmental Health team on [commercialhealth.admin@gravesham.gov.uk](mailto:commercialhealth.admin@gravesham.gov.uk) or 01474 337 000.

This workplace will be immediately subject to the requirements of the Workplace (Health, Safety and Welfare) Regulations 1992. Particular attention should be made to the following requirements.

- Regulation 6 requires that effective and suitable provision shall be made to ensure that every enclosed workplace is ventilated by a sufficient quantity of fresh or purified air.
- Regulation 14 requires that every window or other transparent or translucent surface in a door or gate shall where necessary for reasons of safety be constructed of a safety material or be protected against breakage and also be appropriately marked.
- Regulation 20 requires that suitable and sufficient sanitary conveniences shall be provided at readily accessible places. Where between 6 and 25 persons are employed a minimum of 2 water closets must be provided.

#### 5.4. GBC - Community Safety

Potential community safety concerns regarding the use of the Beer Garden Area of the Prince Albert Pub as a Shisha Area:

- These premises are flanked by residential properties on Wrotham Road, at Victoria Avenue (between Wrotham Road and Windmill Street). I cannot find, either on signage at the premises or on the premises Facebook and Instagram pages, any details of the intended hours of opening and would want to know trading hours to be able to make an assessment of any potential nuisance/ASB that could be caused to residents in the local area, particularly if there is to be late night shisha smoking. Shisha Delight is also linked/adjacent to the Prince Albert, a public house, and it is not unlikely that there may be alcohol consumption alongside shisha product consumption which may lead to an increase in ASB without the careful management of sales of products.
- I have been unable to find any information that publicises whether there are any age restrictions on who can use these premises. It is illegal to sell shisha products to anyone under the age of 18 in the UK. Are under-18s going to be allowed to visit these premises? Shisha customers will frequently share pipes – what measures will be in place to check the age of everyone smoking or to ask proof of age of customers and will measures be in place to record refusals (of sales/entry)? What steps will be taken to train staff to ensure these steps are taken and management instructions are followed?
- From a community safety and health perspective, we would want to be assured that all products are safe and regulated.
- The premises are in very close proximity of Wrotham Road Primary School, busy with pedestrian traffic both in the mornings and particularly in the afternoons when parents are picking up children from school. If the premises are to be trading during the daytime as well as the evening, I anticipate that some members of the public and parents in particular, may feel uncomfortable/concerned about potential ASB (albeit perhaps unnecessarily if the premises are well-managed) about the presence of these premises in this environment.

#### 5.5. GBC - Conservation Officer

Further to our site inspection regarding the above retrospective application for the further enclosure of the rear garden with a seated area for and extended restaurant and "shisha" or smoking area, the following should be taken into account.

- 1) The block plan appears to indicate a smaller footprint and relationship of the extended covered area to that shown on the existing and proposed floor plan, which show a closer siting of the covered area to the main building.
- 2) The quality of materials and design of the elevations of the additional covered area, being flat roofed and adopting poor quality windows and doors appears incongruous and out of character with the appearance of the host building, which is a 19thC public house on a prominent corner in the Upper Windmill Street conservation area (a focal and positive building in the conservation area map, page 40).
- 3) The extension is highly visible from the public realm, being visible as a backdrop to an unsightly open car park (considered "neutral" in the conservation area appraisal map, Page 40) that has been created in the rear garden of the public house. Loss of boundary walls to create offroad parking are considered a negative feature in the



conservation area appraisal (page 30). The cumulative harm has further impacted on the appearance of the conservation area.

Due to the harm caused to the appearance of the conservation area, the poor quality of materials and design, creating an incongruous addition to the host positive and focal building in the conservation area, the proposals are contrary to local and national planning policy and cannot be supported.

5.6. GBC - Highways Officer

As this is an edge of centre public house within a reasonable walking distance of car parks I have no objections.

However, I do have concerns about the use of the car park, with blocking occurring looking at images on Google Street View.



April 2021

Looking at this image, whilst the kerb face is generally low there appears to be a distinct dropped kerb at the southern end of the car park. Which suggests to me parking should be perpendicular and backing on to the flank wall of the public house, with a parking aisle adjacent to the flank wall of the property to the south.

I would therefore suggest a parking plan should be provided and marked on site which prevents double parking and takes account of the need to provide a suitable bin store. I would also recommend there should be suitable boundary treatment to prevent the car park from being used incorrectly. I will leave it to you if you think a suitable condition is appropriate.

5.7. Publication and Neighbour Consultation

An advert was published in the Gravesend Messenger and a notice was displayed on site. In addition twenty-eight surrounding properties were consulted by letter and 9 representations were received.

The 9 representations received objected to the development and the comments have been summarised below:

- Noise nuisance and Disturbance
- No Soundproofing
- Not an Ancillary Use - 'a mainstay of the building'

- Antisocial Behaviour
- Out of Character / Poor Quality Development
- Harmful to the Conservation Area
- Supporting Information Lacking Detail - e.g. no opening hours
- Unlawful Use

Additional comments were also made that are non-material planning consideration.

## 6. Service Manager (Planning) Comments

### Principle of Development

- 6.1. The application site is shown as bordering the edge of the Gravesend Town Centre Opportunity Area (Policy CS05 - sub area 3.3) and within the Upper Windmill Street Conservation Area (Policy CS20). It also located outside of the Gravesend Town Centre Boundary (Policy CS08). The site fronts on to Wrotham Road and Zion Place, primary distributors on the highway network.
- 6.2. Policy CS05 of the Local Plan Core Strategy (LPCS) (2014) seeks to ensure that the competitiveness of the town centre is improved through economic and social activity, by supporting and enhancing; retail, leisure and entertainment, whilst maintaining a satisfactory living environment.
- 6.3. Policy CS07 (Economy, Employment and Skills) (LPCS) (2014) seeks to enhance opportunities for all local people to access new jobs arising from the Council's employment policies which also lends support to the provision of employment on this site. Policy CS08 of Gravesham Local Plan Core Strategy (LPCS) seeks to support development of a scale and type appropriate to the position of the centre in the hierarchy and their character and safeguard the retail character and function of existing centres. The National Planning Policy (2021) states at paragraph 81 that significant weight should be placed on the need of supporting economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 6.4. The application site is located within the Upper Windmill Street Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended which states that, with respect to buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. These duties are reflected in Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework (NPPF) (2021) and Policy CS20 (Heritage and the Historic Environment) of the Gravesham Local Plan Core Strategy 2014 (LPCS), saved policies TC2 (Policy for Listed Buildings) and TC3 (Development Affecting Conservation Areas) of the Gravesham Local Plan First Review 1994 (LPFR).
- 6.5. Therefore, the key considerations within this application are:
- Change of Use
  - Amenity
  - Character and Appearance
  - Impact on the Conservation Area
  - Parking and Highways

### Change of Use

- 6.6. As referenced above, the uses within the immediate area are predominantly residential, with the exception of the Prince Albert and the former masonic hall opposite, which now operates as function rooms. The image below has been adapted to highlight the concentration of residential properties surrounding the site and in particular the density of dwellings close to the shisha area.



**Key**

Application Site



Extent of Shisha Area/  
Outdoor Restaurant Area



Residential Properties



- 6.7. The applicant argues that the shisha area is an ancillary use to the pub, however no evidence has been provided to indicate the numbers of shisha smokers at any given time or how many customers ordered shisha only. Therefore, as a matter of fact and degree, and given the scale of the area, it is concluded that the nature and character of shisha usage would not be an ancillary use.
- 6.8. Although the application site is not located within the Town Centre Opportunity Area, the aims of Policy CS05 are relevant, seeking to improve to economic and social activity whilst maintaining a satisfactory living environment.
- 6.9. The smoking of shisha may be considered a social activity, however shisha includes tobacco and the smoking of tobacco would be contrary to the social objectives of paragraphs 8(c) and 92(c) of the NPPF, which amongst other things seek to enable and support healthy lifestyles and health of communities. Data published for Gravesham by the Office for National Statistics and NHS, has shown a higher prevalence of smoking in adults (18+) amongst Gravesham residents than compared to the national average. Therefore, the provision of a shisha business within an area with a high prevalence of smoking would not be in keeping with the health objectives set out by the NPPF.
- 6.10. The immediate residential context around the site and the intensification of use in the garden area, is close to residential occupiers and causes concern for the quality of the living environment. Therefore, while the development may deliver some economic benefits, these potential benefits must be properly balanced against the impact of the proposal upon the amenity of neighbouring residents and their living environment.

**Amenity**

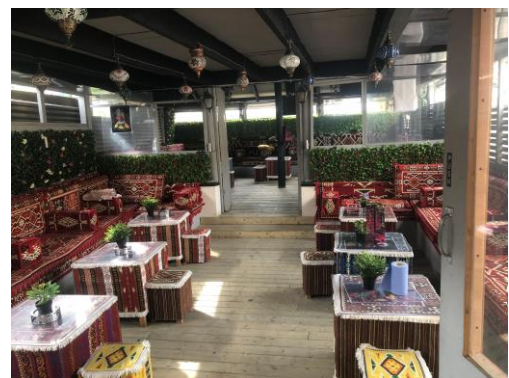
- 6.11. Policy CS19 (LPCS) seeks to protect amenity and ensure acceptable future living conditions. The NPPF (2021) also assists and seeks to ensure developments will function well, do not undermine quality of life and create attractive and comfortable places to live, work and visit and seeks to “secure high-quality design and a good standard of amenity for all existing and future occupants of land and buildings”.
- 6.12. Under this proposal, the key issues that would affect amenity relate to the hours of operation, noise and odours, and anti-social behaviour.

#### *Hours of Use*

- 6.13. The application form nor supporting documents state the intended opening hours of the shisha area. It is assumed that as the Shisha area would have an ancillary function to the main pub, that it would operate under the same hours as the Prince Albert.
- 6.14. The premises being the pub building, is licensed for alcohol sales 10:00-00:30 (Sunday-Thursday) and 10:00-02:00 (Friday-Saturday). Therefore, the use of the outdoor restaurant area and shisha area within the garden would be expected to be occupied at similar times.
- 6.15. GBC Licensing have confirmed that the premises license only covers the use of the beer garden until 23:00. However, the representations received from surrounding residents stated that the shisha area is actively used and occupied until the early hours of the morning, this adds weight to the concerns for the proposed Shisha area being used during unsociable hours and causing a disturbance to neighbouring residents.

#### *Noise and Odour*

- 6.16. The application has not been supported by a noise impact assessment. However, the supporting documents state that “the proposed mixed use is unlikely to increase any potential increase in noise nuisance to neighbouring properties from the existing public house”.
- 6.17. A number of representations received from neighbouring properties raised objections to the proposed development due to noise issues. GBC colleagues in Environmental Protection have confirmed that the use has generated complaints from neighbours regarding noise and disturbance.
- 6.18. Since the smoking of the shisha pipes is a communal activity, it is likely to lead to a greater number of people using the rear garden and for a longer period of time. It was evident on site, by virtue of the number of seats and tables available within the shisha area/outdoor restaurant space, that the capacity is significantly increased over and above that of the pre-existing beer garden and smoking shelter.



- 6.19. The planning statement disputes this, claiming that “it is not anticipated that the proposal would increase customer numbers significantly”. However, as demonstrated in the Google Earth (Feb 2020), shown below, the previous capacity within the garden was no.6 Picnic Table type benches. Each bench would have been able to accommodate 4-6 people in an open environment, this would have resulted in a maximum occupancy of 24-36 people. The proposed development can accommodate a similar if not larger number of people, however as the proposed seating area is protected from the elements, the seating area can be utilised to a greater extent i.e. throughout the day and during all times of the year.



- 6.20. As such the nature of the structures represents a material change to the use of the garden, creating a space that is no longer seasonal and can be occupied in all weather conditions. In order to comply with legislative requirements, as highlighted by GBC Commercial Health, large parts of the structure and walls must be open when it is in use as a Shisha area. This significantly limits the scope to implement noise/acoustic control measures to meet requirements set out by GBC Environmental Protection. On site it was noted that there were several televisions and speakers installed within the structure, which would also generate noise that cannot be contained within the open structure. As such there will be noise generated by patrons and entertainment equipment in all weather conditions and seasons throughout the year. Due to the close proximity of neighbouring properties, which are predominantly residential in nature, this will be harmful to the amenity of residents.
- 6.21. The requirement of the structure to be open in order to comply with legislative requirements would mean that odours and smoke from the shisha area i.e. emissions from openings would impact the amenity of adjoining properties and residents occupying the rooms on the upper floors of the pub. GBC Environmental Health have advised that they would require the building to be of a more substantial construction i.e. constructed from brick or block with an extraction system to mitigate releases of odours and emissions and to reduce fugitive releases. The submission has not been supported by any information to indicate the numbers of shisha smokers the applicant anticipates to frequent the proposed development, as such the Local Planning Authority is unable to determine if the burning of charcoal and air pollution would be harmful to surrounding residents. However, in its present form the proposal, the structure would result in emissions (intentional and fugitive) of smoke and odours that will harm the amenity of neighbouring residents.

### Anti-Social Behaviour

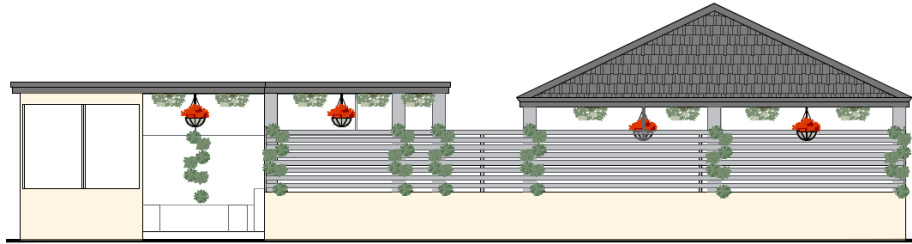
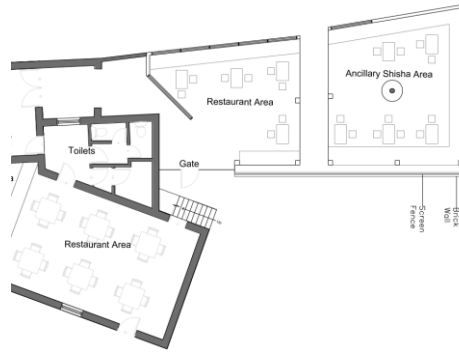
- 6.22. The potential for anti-social behaviour has also been raised by neighbouring residents and is a concern of GBC Community Safety. The comment from Community Safety colleagues highlights the potential for anti-social behaviour by virtue of the shisha area being adjoined to the public house, and that there is potential for alcohol consumption alongside smoking. The shisha area occupies the beer garden of the pub where alcohol consumption would have taken place. Whilst greater intensified use of this area has the potential to result in increased anti-social behaviour, it is not considered to be significant in itself to form an adequate reason for refusing this application.

### Summary of Amenity Impacts

- 6.23. The proposed change of use of the beer garden into a shisha area will materially impact the amenity of adjoining neighbours by virtue of noise and disturbance. The large structure creates an all-weather environment that caters for a communal Shisha smoking activity, for groups over prolonged periods of time. The structure includes speakers and televisions, and the noise impact from patrons and music would be harmful to the living environment of neighbouring properties and detrimental to their amenity. Moreover, the fumes and smells from the smoking of Shisha would spread through the surrounding area detrimentally impacting the amenity of residents. As the structure would need to be ventilated to comply with legislative requirements, the detrimental impacts upon neighbouring residents amenity would be amplified. These matters cannot be satisfactorily addressed by control measures as the requirements of Commercial Health and Environmental Health cannot both be achieved for this development.
- 6.24. Therefore the development fails to safeguard the amenity of surrounding residents contrary to Policy CS19 (LPCS) and Section 12 (NPPF), and the change of use of the beer garden to a Shisha Area is unacceptable.

### Character and Appearance

- 6.25. Policy CS19 (Development and Design Principles) (LPCS) states that new development will be visually attractive and locally distinctive. It should also conserve and enhance the character of the local built and natural environment and integrate well with the surrounding area. Section 12 (Achieving well-designed places) of the NPPF sets out that developments should function well and add to the overall quality of the area, be visually attractive and sympathetic to local character.
- 6.26. The proposal is for the retention of, and minor alterations to the timber structure within the beer garden for use as a Shisha area and external restaurant seating. The structure has a maximum depth of 6.84m and an overall width of 13.62m. It has varied roof forms with a pitched roof to the south at a maximum height of 3.6m and a flat roof to the north at a height of 2.4m. The alteration will remove a central section with a width of 1.15m to differentiate the Shisha area and Restaurant area.



- 6.27. Gravesham's Design Guidance SPD (2021) states that in determining outbuilding proposals that "the Council will consider factors such as the scale, height, proximity to boundaries, roof design, finishing materials and prominence in the street scene". As shown in the floor plan above, the structure will occupy the entire 'beer garden' of the pub and change the pre-existing character of the beer garden. The proposed alteration and separation of the two structures does little to reduce the extent or scale of the development.
- 6.28. The extent and scale of the structures dominates the garden space, are disproportionate and prominent features with a poor-quality finish and inappropriate use of materials, resulting in an unattractive and incongruous appearance.



- 6.29. As demonstrated in the photograph above, the structures cause harm to the character of the area, appearing as a poor quality assemblage, which is exacerbated by the different roof forms, poor quality finish and polycarbonate window panels. Although the structures are set-back from the highway, they are visible from public vantage points and have a detrimental impact on the character of the area.
- 6.30. Overall, the structures are disproportionate in scale and are disproportionate additions within the Public House's beer garden, they appear as a ramshackle assemblage with differing roof forms and poor quality external finishes in a prominent position visible from

the street. As such, the development has a detrimental impact on the character and appearance of the street scene, contrary to Gravesham's Design Guidance SPD (2021), Policy CS19 (LPCS) and Section 12 (NPPF).

#### Impact on the Conservation Area

- 6.31. The NPPF 2021 (Section 16 - Conserving and Enhancing the Historic Environment) places great significance on the desirability of sustaining and enhancing heritage assets, and on new development making a positive contribution to local character and distinctiveness (paragraph 190). Policy CS20 (Heritage and the Historic Environment) (LPCS) echoes this, stating that the significance of the Borough's heritage assets and their setting should always be preserved or enhanced. Saved Policy TC3 of the Local Plan (1994) also states development is expected to make a positive contribution to the Conservation Area. As the application site lies within the Upper Windmill Street Conservation Area, these policies are all relevant to the consideration of this application.
- 6.32. The Prince Albert Public House sits on a prominent corner site and is a focal and positive building in the Conservation Area. The scale and extent of the structures dominates the rear of the building, in a highly visible position from the public realm.
- 6.33. The Conservation Officer raised objection to the development, following an external site visit, stating that "the quality of materials and design of the elevations of the additional covered area, being flat roofed and adopting poor quality windows and doors appears incongruous and out of character with the appearance of the host building". The development is located against the backdrop of the unsightly car park, and both individually and cumulatively the carpark and poor quality structures have a detrimental impact on Conservation Area.
- 6.34. The development causes harm to the appearance of the Upper Windmill Street Conservation Area, the structures are finished in poor quality materials are incongruous design failing to preserve or enhance the quality of the host building nor the Conservation Area. Therefore, the proposed development is fails statutory test s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policy CS20 (LPCS), saved policies TC2 (Policy for Listed Buildings) and TC3 (Development Affecting Conservation Areas) of the Gravesham Local Plan First Review 1994 (LPFR).

#### Parking and Highways

- 6.35. Policy CS11 (LPCS) seeks to ensure that new developments mitigate their impact on the highway and provide sufficient parking in accordance with adopted parking standards.
- 6.36. The application site is located on the edge of the town centre, with good access to surrounding public carparks on Parrock Street and Lord Street. There are some spaces available to the front of the site. No information has been provided regarding the parking on site, or who will be permitted to use the carpark.
- 6.37. However, Gravesham's Highways Officer has raised no objection given the edge of town centre location and the availability of car parks nearby. The Highway's Officer raised other considerations regarding the existing parking and dropped kerb, requesting that if permission was granted that a condition requiring the submission of a parking and landscaping plan to be approved in writing, to ensure that the parking area is used correctly.



6.38. Therefore, the proposed development is considered to be acceptable and in accordance with highway policy.

## 7. Conclusion

7.1. It is recommended that the proposed retention of timber structures and the change of use of the beer garden into an outdoor restaurant and shisha area is **REFUSED** planning permission.

7.2. The poor quality and incongruous timber structures create an all-season environment for users, without adequate mitigation against noise disturbance or smoke and odour emission from the smoking of shisha which cannot be achieved to comply with smoke free regulations. Therefore, the development will materially impact, and thus fails to safeguard, the amenity of neighbouring residents contrary to local and national planning policy.

7.3. The poor quality structure is out of proportion and dominates the beer garden within a prominent and highly visible location within the street scene. It's incongruous and substantial appearance with differing roof styles and poor materials will impact on the street scene as well as cause harm to the character and appearance of the host building and Conservation Area. Therefore, the development fails to preserve or enhance the quality of the Conservation Area and is poor design contrary to local and national planning policy.

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## Recommendation

DELEGATED to the Service Manager (Planning for the application to be **REFUSED** Planning Permission, for the following reasons:

1. The proposed change of use of the beer garden into a shisha area will materially impact the amenity of adjoining neighbours by virtue of unacceptable levels of noise and disturbance as well as fugitive odours. The unsubstantial structure will shelter users in all weather conditions enabling year-round use, but cannot achieve adequate sound proofing or smoke and odour control to mitigate noise nuisance and fugitive smoke and odour emissions whilst meeting Smoke free regulations which require an open air structure. Therefore, the development fails to provide adequate mitigation to safeguard neighbour amenity, and is contrary to Policy CS19 of Gravesham's Local Plan Core Strategy (2014) and Section 12 National Planning Policy Framework (2021).
2. The structures are disproportionate in scale and poorly designed additions within the smoking area, which appear as a ramshackle quality and of incongruous design due to differing roof forms and poor quality external finishes in a prominent position visible from the street. As such, the development has a detrimental impact on the character and appearance of the street scene, fails to preserve or enhance the quality of the host building or the Conservation Area setting. Therefore, the development fails statutory test s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, is contrary to Policies CS19 and CS20 of Gravesham's Local Plan Core Strategy (2014), saved policies TC2 and TC3 of the Gravesham Local Plan First Review (1994), as well as Sections 12 and 16 of the National Planning Policy Framework (2021).

## **INFORMATIVES**

### **1. DRAWINGS AND DOCUMENTS**

For the avoidance of doubt, the decision to refuse this application was taken in relation to the following forms, plans and documents comprising the application:

- Application Form (dated 22/07/2022);
- Supplementary Information - Planning and Heritage Statement (dated 22/07/2022);
- Drawing no. 001 - Rev. A - Site Location and Existing and Proposed Block Plans;
- Drawing no. 002 - Rev. A - Existing Floor Plans;
- Drawing no. 003 - Rev. A - Existing Elevations;
- Drawing no. 004 - Rev. A - Proposed Floor Plans;
- Drawing no. 005 - Rev. A - Proposed Elevations.

### **2. STATEMENT OF POSITIVE AND PROACTIVE APPROACH TO DECISION-MAKING**

In accordance with Article 35 (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), and paragraph 38 of the National Planning Policy Framework (NPPF) 2021, the Local Planning Authority has approached the assessment and determination of this application in a positive and creative way and, where appropriate, has worked pro-actively with the applicant to secure a development that is sustainable and that improves the economic, social and environmental conditions of the area, and that is in accordance with the Development Plan for the area.