

Report of the Chief Executive

<b>APPLICATION NUMBER:</b>	<b>24/00700/FUL</b>
<b>LOCATION:</b>	<b>The Berliner, 6 High Road, Chilwell, Nottinghamshire, NG9 4AE</b>
<b>PROPOSAL:</b>	<b>Retain outdoor seating/smoking area to extend commercial area of property. Construction of sound absorbing fence and swing gate (revised scheme)</b>

This application was brought before the Committee at the request of Councillor G Marshall.

1. Purpose of the Report

1.1 The application seeks planning permission to retain an outdoor seating/smoking area to extend the commercial area of property, and the construction of a sound absorbing fence and swing gate. This is a revised scheme.

2. Recommendation

**The Committee is asked to RESOLVE that planning permission be refused.**

3. Detail

3.1 The application seeks planning permission to retain an outdoor seating/smoking area to extend the commercial area of property, and the construction of a sound absorbing fence and swing gate. This is a revised scheme.

3.2 The application site consists of part of a courtyard to the rear of a commercial unit occupied by a public house known as The Berliner.

3.3 The wider site consists of a two-storey commercial unit, currently occupied by two businesses on the ground floor which are The Berliner bar and Best Fabrics International Ltd fabric shop to the southwest. It is understood that the first floor is currently vacant for both businesses. The outdoor area is situated in a corner area between the rear exit of The Berliner, a high wall denoting the boundary with The Hop Pole, and an outbuilding owned by the neighbouring Best Fabrics International Ltd. Access to the outdoor area can be achieved either through the rear door from The Berliner or via Park Road and under the first floor of the building into the main courtyard. The rear courtyard is open with adjoining businesses.

3.4 The site is within the Chilwell Cottage Grove Conservation Area. Chilwell Road has predominately ground floor frontages open onto the highway, with several drinking establishments, cafes and restaurants. The tram runs along the highway to the front. There are various usages to first floors, with many occupied as residential flats. To the rear and northerly, there are residential

streets, with the nearest residential property no. 2 Park Road to the northwest, with no. 2's common boundary adjacent to the wider courtyard.

- 3.5 The main issues are its impact in terms of design, including within the Conservation Area, mass and scale, visual and neighbour amenity, including in terms of privacy, noise, disturbance and smells, and access including impact on the tram.

4. Financial Implications

- 4.1 The comments from the Head of Finance Services were as follows:

There are no additional financial implications for the Council with the costs/income being within the normal course of business and contained within existing budgets. Any separate financial issues associated with S106s (or similar legal documents) are covered elsewhere in the report.

5. Legal Implications

- 5.1 The comments from the Head of Legal Services were as follows:

The Legal implications are set out in the report where relevant, a Legal advisor will also be present at the meeting should legal considerations arise.

6 Data Protection Compliance Implications

- 6.1 Due consideration has been given to keeping the planning process as transparent as possible, whilst ensuring that data protection legislation is complied with.

7. Background Papers

Nil.

Appendix

1. Details of the application

- 1.1 The proposal is to retain an outdoor seating/smoking area to extend the commercial area of property, and the construction of a sound absorbing fence and swing gate. This is a revised scheme.



23/00763/FUL – Retention of seating area only.



24/00700/FUL – seating area still in situ, with the addition of a fence.

- 1.2 On the submitted application form the opening hours for the outdoor decking area are stated as 17.00hrs to 22.30hrs Monday to Friday, 12.00hrs to 22.30hrs on Saturdays, and 12.00hrs to 22.00hrs on Sundays and Bank Holidays. This would be for the outside area as the internal area of The Berliner is open Tuesday to Thursday 17.00hrs to 23.00hrs, Friday 12.00hrs to 24.00hrs, Saturday 12.00hrs to 24.00hrs and Sunday/ Bank holidays 12.00hrs to 22.00hrs, which are in accordance with the conditioned opening times on planning ref. 16/00707/FUL and 18/00576/FUL.

2. Site and surroundings

- 2.1 The application site consists of part of a courtyard to the rear of a commercial unit occupied by the applicant's business, known as The Berliner.
- 2.2 The wider site consists of a two-storey commercial unit, currently occupied by two businesses on the ground floor, The Berliner bar and Best Fabrics International Ltd fabric shop to the southwest, the first floor is understood to be vacant. The outdoor area is situated in a corner area between the rear exit of The Berliner, a high wall denoting the boundary with The Hop Pole, and an outbuilding owned by the neighbouring Best Fabrics International Ltd. Access to the outdoor area can be achieved either through the rear door from The Berliner or via Park Road then under the first floor of the building into the main courtyard. The rear courtyard is open with adjoining businesses.
- 2.3 The site is within the Chilwell Cottage Grove Conservation Area. Chilwell Road has predominately ground floor frontages open onto the highway, with

several drinking establishments, cafes and restaurants. The tram runs along the highway to the front. There are various usages to first floors, with many occupied as residential flats. To the rear and northerly, there are residential streets, with the nearest residential property no. 2 Park Road to the northwest, with no. 2's common boundary adjacent to the wider courtyard.

2.4 Similar developments nearby:

- No. 130 Chilwell Road - Change of use from shop (Class A1) to cafe (Class A3) and erect external flue - 17/00023/FUL.
- No. 90 - 94 Chilwell Road - Change of use from retail (Class A1) to restaurant / bistro (Class A3) - 11/00271/FUL.
- No. 116 Chilwell Road - Change of use of first floor from Office (Class B1) to Restaurant (Class A3), and construct first floor rear extension (revised scheme) - 11/00326/FUL.
- Nos. 6 - 8 High Road - Change of use from retail (Class A1) to drinking establishment (Class A4) - 16/00707/FUL.
- Nos. 72 - 74 Chilwell Road - Change of use of ground floor from retail (Class A1) to cafe (Class A3) - 17/00263/FUL.

Outside seating:

- The Hop Pole and The Chequers Inn, both pubs with outside seating areas.
- The Chequers Inn 06/01014/FUL - Erect canopy and retain decking to outside seating area – Environmental Health did recommend a condition that the area should not remain open for use by customers after 00.3hrs Monday – Sunday – this was not conditioned as it was considered pre-existing outside seating areas should not be time restricted.
- The Lounge bar and restaurant 08/00957/FUL Retention of single storey rear extension condition hours 8.30 to midnight any day, no outside seating proposed, and 01/00350/FUL Change use to A3 (restaurant) condition hours 8.30 to midnight any day – plan showed outside seating to frontage.
- Totally Tapped previously at 23 Chilwell Road 16/00618/FUL: The use hereby permitted shall not be open to customers except between 08:30-24:00 hours, as similar to neighbouring Latino, Totally Tapped in relation to a move to 104 Chilwell Road 22/00391/FUL Change of use to craft beer pub – Environmental Health recommended conditions in relation to internal noise, no comment in relation to opening hours. Proposal noted rear garden area.

3 Relevant Planning History

3.1 There have been previous planning applications at this property with the

associated works carried out, with the following granted conditional permission:

- 16/00707/FUL Change of use from retail (Class A1) to drinking establishment (Class A4)
- 18/00576/FUL Change use from retail (Class A1) to bar/restaurant/cafe (Class A3 / A4)

And refused:

23/00763/FUL Retain change of use of car park for outdoor seating/smoking area. Appeal received after the time limit; The Planning Inspectorate was unable to accept as a valid appeal.

#### **4 Relevant Policies and Guidance**

##### **4.1 Greater Nottingham Aligned Core Strategies Part 1 Local Plan 2014:**

4.1.1 The Council adopted the Core Strategy (CS) on 17 September 2014.

- Policy A: Presumption in Favour of Sustainable Development
- Policy 1: Climate Change
- Policy 2: The Spatial Strategy
- Policy 6: Role of Town and Local Centres
- Policy 10: Design and Enhancing Local Identity
- Policy 11: The Historic Environment

##### **4.2 Part 2 Local Plan 2019:**

4.2.1 The Council adopted the Part 2 Local Plan on 16 October 2019.

- Policy 13: Proposals for main town centre uses in edge-of-centre and out-of-centre locations.
- Policy 14: Centre of Neighbourhood Importance (Chilwell Road / High Road)
- Policy 17: Place-making, Design and Amenity
- Policy 19: Pollution, Hazardous Substances and Ground Conditions
- Policy 23: Proposals Affecting Designated and Non-Designated Heritage Assets.

##### **4.3 National Planning Policy Framework (NPPF) 2024:**

- Section 2 – Achieving Sustainable Development.
- Section 4 – Decision-making.
- Section 6 - Building a strong, competitive economy.
- Section 7 - Ensuring the vitality of town centres.
- Section 8 - Promoting healthy and safe communities.
- Section 12 – Achieving well-designed places.
- Section 13 – Protecting Green Belt Land
- Section 16: Conserving and enhancing the historic environment.

## 5 Consultations

5.1 Five neighbours were consulted on the application, and a site notice posted, with three responses received, two in support of the proposal (including one immediate neighbour), and one immediate neighbour with the following objections:

- Noise and disturbance
- Impact on privacy.

The objector has stated they appreciate and welcome the attempts that have been made to mitigate the noise and privacy issues that exist through construction of the fence and swing gate, but issues remain including patrons of The Berliner leaving the outdoor smoking area to enter the broader car park area to smoke and congregate, a sustained period of loud noise heard involving shouting, cheering and chanting and having to delay their child's bedtime due to the disturbance.

They are more minded to be supportive of an application where the closing time of the outdoor area was earlier.

### 5.2 **Councillors & Parish/Town Councils:**

- Cllr G Marshall - Beeston West Ward – Called into Planning Committee.
- Cllr E Winfield - Beeston West Ward – No comments received.

5.3 **Environmental Health** – Object to the proposal as there is a history of complaints relating to the use of the car park area as a beer garden dating back to 2018 in relation to noise nuisance, with the following:

- Emptying of glass bins.
- Loud music as a result of the fire door being left open.
- Loud voices and shouting from patrons until past 23.30, and on occasions past 00.00 on Fridays and Saturdays.

These claims can be substantiated from noise monitoring carried out by Environmental Health.

- The proposed fencing is not acoustic fencing as described in the Heritage statement. Acoustic fencing is designed to reflect or absorb unwanted noise and is constructed without gaps and of a density greater than 10kg per m. The proposed fence will not provide the noise attenuation of a certified acoustic fence.
- Should approval be granted despite objection, conditions should be attached in relation to smokers directed to front road after 22.00, beer garden to be cleared by 22.00, no amplified or live music or speech in the beer garden area, refuse deposit and clearance times.

5.4 NET and the Conservation officer have been consulted – with no responses received.

6. Assessment

**Revised Scheme**

6.1 The application was previously refused on ref. 23/00763/FUL, this was to retain the change of use of the car park for an outdoor seating/smoking area. This application specifically includes the addition of a fence and gate, image provided, and the fence has been constructed after the previous refusal:



**Principle of development**

6.2 As noted in the surrounding area there are several bars/ pubs/ restaurants and cafes within the Chilwell Road area, these provide a complimentary offering to the Beeston Town Centre Area, and are as per policy 14; Centre of Neighbourhood Importance (Chilwell Road / High Road). There are also examples of outside sitting areas along Chilwell Road, though many of these are historic uses. The bar is an existing operation that has received planning permission on ref. 16/00707/FUL and 18/00576/FUL. Therefore, the principle of an outdoor seating/smoking area is acceptable subject to its impact in terms of design, including within the Conservation Area, mass and scale, visual and neighbour amenity, including in terms of privacy, noise, disturbance and smells, and access including impact on the tram.

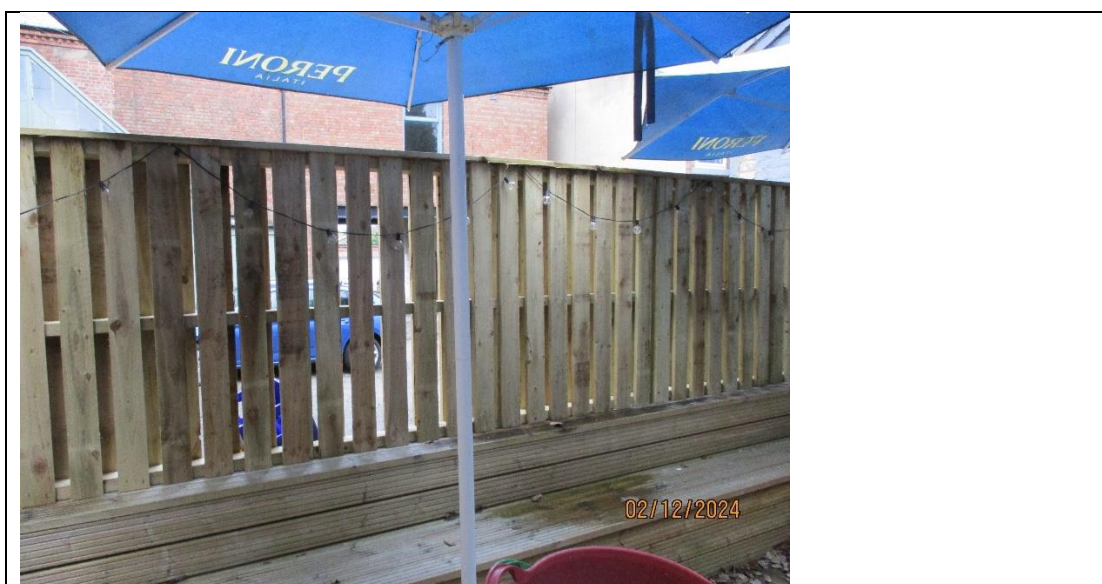
**Design**

6.3 There is only the addition of a gate proposed, given the position of the beer garden structures, to the rear in a relatively secluded corner, they are fit for purpose and relatively modest in appearance. The fence is an open boarded fence at 2m in height, it is viewed only from within the wider courtyard. Therefore, the design is considered acceptable as structures can easily be replaced or removed if necessary and are of a small scale.



### Amenity

- 6.4 This is a mixed commercial and residential area, with residential streets backing onto the site, the first floor has previous commercial uses but at this time is understood to be empty. It is considered that the development would have no significant impact on neighbouring The Hop Pole as the outdoor area is situated behind a high wall marking the boundary with The Hop Poles own outdoor area, and there is no visibility into the site from The Hop Pole beer garden/ car park. Best Fabrics International Ltd are the owner of the site and yard and as the use has existed for some time, they are unlikely to have been significantly impacted by the use of this corner area for outside use.
- 6.5 The installed fencing is open-boarded (image below), the other three sides are enclosed by the building, a high wall and an outbuilding, all solid brick construction. Parasols are provided within the enclosed space, providing cover.



Environmental Health have noted this is not classed as an Acoustic Fence.

- 6.6 Environmental Health have provided a comment in relation to ongoing noise and disturbance and have received complaints. A neighbour comment has also been received in relation to continuing noise, disturbance and loss of privacy. As the proposal is within an open rear courtyard, facing towards the rear of adjacent residential properties most notable no. 2 Park Road and due to the seating area providing for longer linger times and wider use within the open courtyard, it is considered that these issues are exacerbated creating an unacceptable level of noise and disturbance. A noise assessment has not been submitted by the applicant therefore no evidence has been provided that the open-boarded fence, suitable for a smoking enclosure would provide the necessary noise mitigation needed, with Environmental Health stating, *'the proposed fence will not provide the noise attenuation of a certified acoustic fence'*. In terms of privacy and wider use of the courtyard, the neighbouring dwelling has several windows facing the site and there are opportunities for overlooking into that dwelling. The neighbour comment states that customers



still access the wider courtyard, and information on how the proposed gate accessible as a fire exit would be not accessed by customers at other times or prevent wider use is not evidenced. The applicant has been given several opportunities to provide noise mitigation methods but has failed to do so. Therefore, it is considered that the proposal is unacceptable in terms of neighbour amenity (noise and disturbance) and is likely to have a continual negative impact in terms of privacy.

### **Economic / Social Benefits**

- 6.7 The Berliner is an existing bar that has a daytime food offering, over the years it has expanded into a neighbouring unit. Whilst the outside sitting area has been in situ since 2019 according to Google Maps, no evidence has been submitted to show that this is a core part of the business, indeed on previous applications Environmental Health have stipulated that the rear external area was not to be used, comment provided on ref. 18/00576/FUL. There is no evidence of previous discussions with the Council or plans provided to indicate a proposed outdoor seating/ smoking area, hence the need for an enforcement investigation. It is also not a given that a bar must have an outdoor seating area to operate successfully, or that because neighbouring units operating in a similar market have historic outside usable customer space, that all businesses should have a similar customer experience. Therefore, as the business is existing and the outdoor use is not a not essential for the operation of the business, it is considered there would be no significant impact or benefit to retaining the outdoor beer garden that would outweigh the negative impact on neighbouring amenity.

### **Access / NET**

- 6.8 Due to the proximity to the tramlines NET were consulted on the proposal. No comment was received but given the beer garden is to the rear of the commercial unit away from the tramlines it is considered that there would be no disruption to the tram operations and that access would not be changed.

### **Conservation Area**

- 6.9 The site is within the Chilwell Cottage Grove Conservation Area, no comment has been received from the Conservation Officer on this application or previously on ref. 23/00763/FUL, but given the proposal is existing, to the rear, of a small scale and within a commercial yard it is considered that it has no significant impact on the Conservation Area.

## **7. Conclusion**

- 7.1 It is concluded that, having regard to the relevant policies of the Local Plan, national planning guidance and to all other material considerations including the Public Sector Equality Duty and comments raised in the representation received, the development is unacceptable and that there are no circumstances which otherwise would justify the approval of permission.

8 Planning Balance

8.1 The use as a drinking establishment accords with Local Plan Policy as it serves a local need, is of a relatively small size and aids in Chilwell providing a complementary evening economy offer to Beeston Town Centre. That said, the addition of the beer garden whilst relatively small in comparison to that of nearby pubs and their historic uses, is situated within an historic commercial yard adjacent to and viewed from residential dwellings where noise and disturbances are easily magnified within the enclosed space, the beer garden is fenced off from the rest of the yard by open board wooden fencing, not acoustic fencing as described by the applicant, and no noise assessment/report has been submitted which would provide information on the current and continuing noise levels and recommendations for mitigation of these noise levels. Therefore, it is considered that the use would have an impact on the amenities of nearby residents and cannot be mitigated by the imposition of appropriate conditions. On balance it is considered that the proposal is unacceptable, and it is recommended that the application be refused.

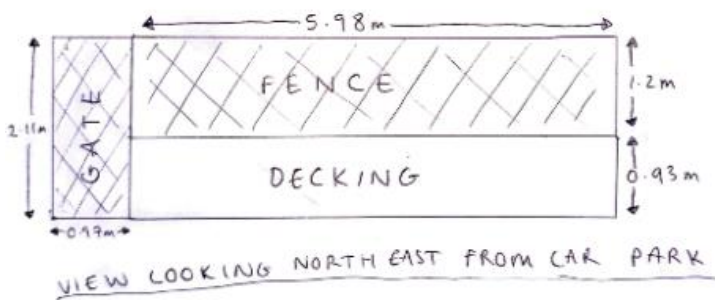
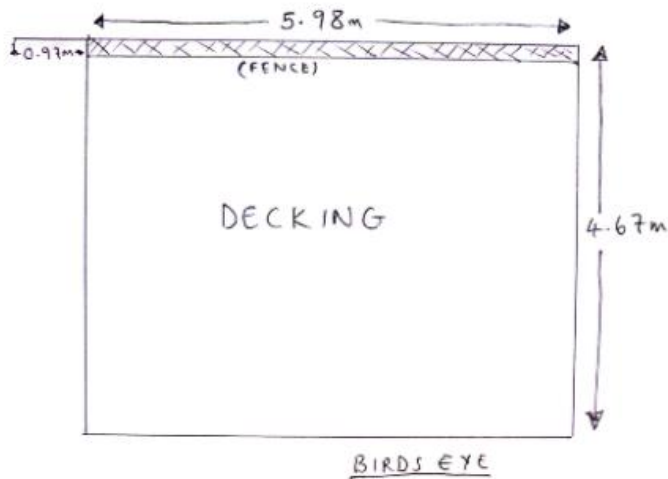
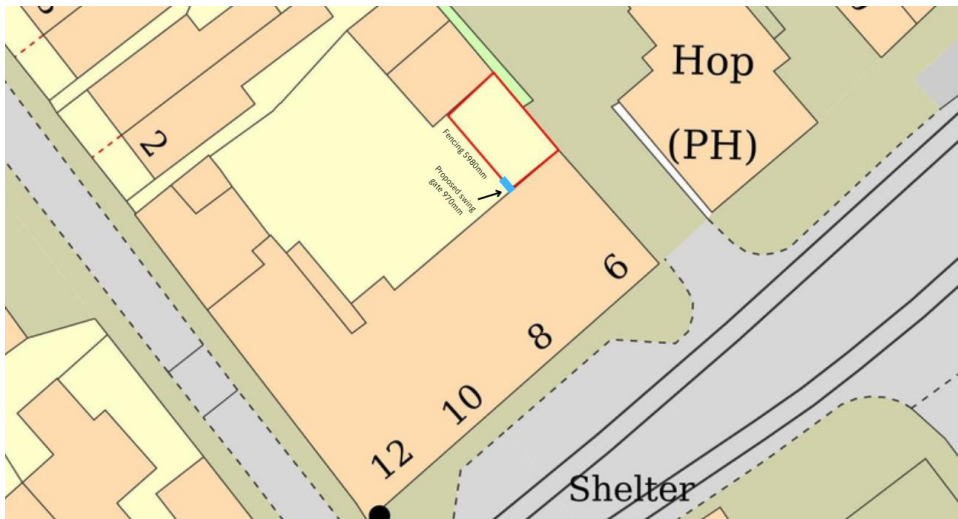
<b><u>Recommendation</u></b>	
<b>The Committee is asked to RESOLVE that planning permission be refused.</b>	
<b>1.</b>	<b>The retention of the use of the courtyard for an outdoor seating and smoking area will have a significant impact on the living conditions of nearby residents by virtue of additional noise and disturbance emanating from the premises, above what can reasonably be expected in a predominantly residential area. Therefore, the development would be contrary to Policy 10 of the Aligned Core Strategy (2014) and Policies 17 and 19 of the Part 2 Local Plan (2019).</b>
	<b>NOTES TO APPLICANT</b>
<b>1.</b>	<b>Whilst it has not been possible to achieve a positive outcome due to the fundamental concerns regarding noise impact on neighbouring properties, the Council has acted positively and proactively in the determination of this application by working to determine it within the agreed determination timescale</b>

Map



NOTES

Plans



RATIO 1:50

- DECKING - 4.67m x 5.98m x 0.93m  
(L) (W) (H)
- FENCE - 1.2m x 5.98m x 0.2m  
(depth)
- GATE - 0.97m x 2.11m

