



## Immigration Enforcement

### Immigration representation in support of an application for the review of a premises licence

On behalf of the Secretary of State, Home Office (Immigration Enforcement) makes representations in support of the following application for the review of a premises licence, relating to the prevention of crime and disorder objective, including the prevention of illegal working and immigration crime in licensed premises.

IE wishes to make representations on an application for a review of a premises licence.

<b>Details of Premises:</b>			
<b>Premises Licence Holder:</b>			
Emad Abdolkhani			
<b>Name and Address of Premises:</b>			
Persia, 126 Church Road			
<b>Post Town:</b>	Hove	<b>Post Code:</b>	BN3 2EA

Representations are being made for the following reasons:

The Licensing Act 2003 outlines 4 objectives that are to be upheld, the Home Office (Immigration Enforcement) is concerned regarding the prevention of crime and disorder.

Home Office (Immigration Enforcement) considers that Emad Abdolkhani (DPS of Persia) is not taking suitable measures to prevent crime and disorder. The business has employed an illegal worker which is prohibited under the Licensing Act 2003 and the Immigration Act 1971 (as amended).

Employing illegal workers in the UK has the following impact on the community and society as a whole: -

- It deprives HMRC and the Government of revenue by non-payment of tax and national insurance.

- It exploits the undocumented by paying them less than the minimum wage and provides no employment or income protection.
- It encourages those without permission to work to seek similar employment.
- It allows a business to unfairly undercut other businesses by employing cheap labour.
- Illegal workers are often housed in cramped and unsatisfactory conditions by the employer as part of their working arrangement.

Immigration Enforcement supports the review from Sussex Police regarding, Persia, 126 Church Road, Hove, BN3 2EA

Immigration has conducted 2 enforcement visits to Persia, one in October 2021 and another in February 2023. During both these visits Persia was found to be employing illegal workers. Below is a full breakdown of each of these visits and the findings by Immigration Enforcement during each visit.

#### **Enforcement Visit Dated 10/12/2021**

##### **REDACTED PHOTO**

##### **REDACTED**

REDACTED was encountered by officers in the Kitchen of Persia and was observed by officers to be standing in front of the stove, when officers entered the Kitchen REDACTED was observed to put down utensils, and placed his wooly hat on his head and also put on his jacket. Officers also observed that he had food debris on his trousers and shoes which was consistent with someone that had been working in a Kitchen. During interview he stated to officers that he was not working at the address and was only there to eat food and was in the Kitchen as he was washing his own dishes following finishing his food. Furthermore, he was observed by another officer on the visit to be washing pots and pans in the sink in the staff area, conversations had with other Kitchen staff and a waitress at the address confirmed that he attended the address a few times a week and helped with cleaning in the Kitchen and received food in return for his help. Home Office checks conducted on REDACTED during the enforcement visit showed that he had an outstanding Asylum claim in the UK and had no right to work. He presented the following Asylum Registration Card (ARC) to officers during the visit. As is clearly displayed on this card he is forbidden from working.

##### **REDACTED PHOTO**

##### **REDACTED**

REDACTED was encountered by officers in the Kitchen of Persia, he was observed by officers to be standing in front of the stove and when officers entered the Kitchen he was observed to put down utensils. As with REDACTED, REDACTED was observed to have food debris on both his clothing and food which was consistent with that as would be expected on someone that had been working within a Kitchen. REDACTED told officers the same story as REDACTED that he was just here cooking his own food and that the Kitchen in his accommodation above Persia was not suitable for cooking his own meal. Home Office checks conducted on REDACTED during the enforcement visit showed that he had an outstanding Asylum claim in the UK and had no right to work. He produced

to officers a ARC card to officers. As with REDACTED, REDACTED ARC clearly stated that he was not permitted to work in the UK.

## **REDACTED PHOTO**

### **REDACTED**

REDACTED was identified to officers as the Owner of Persia as such he was asked questions regarding the employment of both Mr REDACTED and Mr REDACTED, REDACTED however, stated to officers that he took no part in the employment process and instead left this up to his manager who he stated had more experience in this area he stated the manager was Emad Abdolkhani.

### **Emad Abdolkhani**

Emad Abdolkhani was interviewed with regards to the two illegal workers found as he had been identified by the owner as being responsible for the hiring process at the premises. Abdolkhani stated to officers that neither illegal workers found on the premises were there working he stated that they come here for food, despite the evidence to suggest that both of these were working. Abdolkhani was asked if he kept any records for staff and their right to work which he stated he did, he showed officers this folder and there were no documents in this folder for either of the 2 suspected illegal workers.

Officers noted that both the illegal workers and management were evasive in answering questions even when evidence was put to them they still denied any wrongdoing.

A civil penalty referral was issued in respect of the 2 illegal workers; however, a no further action notice has since been issued due to insufficient evidence.

## **Enforcement Visit dated 14/02/2023**

### **REDACTED**

REDACTED was encountered by officers in the Kitchen of Persia, when encountered by officers he was observed to be working in the Kitchen. During the interview with officers, he stated he was not there but was only there to get food, this story was almost an exact replica of the stories told to officers on the previous visit by both illegal workers encountered during that visit. Home Office checks conducted on REDACTED showed that he had an outstanding Asylum claim in the UK and had no right to work.

### **REDACTED**

REDACTED was encountered by officers in the Kitchen of Persia, when encountered by officers he was observed to be working in the Kitchen. During the interview he stated to officers he was not working there but had come there to pray and eat food. Officers noted that he was dressed as everyone else in the Kitchen and that before being walked off the premises he gathered his coat from the Kitchen area and also changed out of the Crocs he was wearing and into a pair of trainers. Below is a photo captured of REDACTED during the enforcement as is clearly seen in the photo REDACTED is covered in food stains that are consistent with someone that has been working in a

Kitchen, he is also wearing Crocs that are consistent with that of what cooks would wear in a Kitchen setting when working. Home Office checks on REDACTED revealed he had an outstanding Asylum claim in the UK and had no right to work.

## **PHOTO REDACTED**

### **Emad Abdolkhani**

Again on this occasion Emad Abdolkhani was interviewed with regards to the 2 illegal workers found in the Kitchen of the premises. Once again Abdolkhani insisted to officers that neither of these people worked here and that they were only here to eat and make their own food. Once again he stated he kept a folder with documents for all his workers and once again the only documents he didn't have copies of were the 2 persons encountered working illegally in the Kitchen.

## **RIGHT TO WORK CHECKS AND THE PREVENTION OF CRIME AND DISORDER**

The objective of the Licensing Act 2003 (the Act) is to provide a clear, transparent framework for making decisions about applications by individuals or businesses wishing to sell or supply alcohol or provide certain types of regulated entertainment and late-night refreshment.

There are four licensing objectives which underpin the Act, and which need to be taken into account and promoted throughout the licensing process.

The licensing objectives are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm

Persia has been found employing an illegal worker. This business has clearly failed to meet the prevention of crime and disorder objective. The license holder would have been aware of their responsibilities to uphold the licensing objectives as they are clearly defined as part of the premises license application.

It is an offence to work when a person is disqualified to do so, and such an offence can only be committed with the co-operation of a premises license holder or its agents. In this case, the employee had an outstanding claim.

The license holder/employer could have protected themselves and prevented crime and disorder by completing a straightforward Right to Work check. In this instance, the worker had produced an ARC card which clearly showed the restriction.

## **PHOTO REDACTED**

All employers are dutybound by law to conduct these checks if they wish to avoid being penalised if found to have employed someone who is prohibited from working, and guidance can be found on the Gov.UK website or by using a search engine. Additional information on how to conduct these checks is available online, this includes the Home Office's official YouTube page. The license holder/employer could have quickly and easily confirmed that the potential candidate did NOT have the Right to Work

Whether by negligence or willful blindness an illegal worker was engaged in activity on the premises.

Section 182 guidance of the Licensing Act 2003 at point 11.27 states that certain activity should be treated particularly seriously:

11.27

There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- **for employing a person who is disqualified from that work by reason of their immigration status in the UK;**
- for unlawful gambling; and
- **for the sale or storage of smuggled tobacco and alcohol.**

It is clear from the evidence above and the Police's case that two elements of 11.27 have been engaged. 11.28 of the guidance states that it is expected that revocation of the licence – **even in the first instance – should be seriously considered.**

**Signatures**

**Signature of Responsible Authority**

Harry Taylor REDACTED

**Date:**

**21/05/2024**

**Capacity:**

**Responsible Authority**

## Details of Responsible Authority

Name and Address:

Harry Taylor

Chief Immigration Officer

South East Immigration, Compliance and Enforcement Team

Immigration Enforcement

Room 150, 1<sup>st</sup> Floor

Ashdown House

Gatwick Airport

RH10 ONP

**Email address**  
(optional):

REDACTED

**(S2) - Licensing Team**

**EG CON ENDS 23.05.2024 VALID PPN, PS & PCH (S2)**



**Safer Communities**

**Licensing Team and Trading Standards**

Brighton & Hove City Council

2<sup>nd</sup> Floor Bartholomew House

Bartholomew Square

Mrs Grant  
Licensing Authority  
Brighton & Hove City Council  
Bartholomew House  
Bartholomew Square  
Brighton  
BN11JP

Date: 22 May 2024  
Our: 2024/00930/LICREP/EH  
Ref: 01273 292494  
Phone: REDACTED  
Email:

Dear Mrs Grant

**Licensing Act 2003**

**Representation in support of an application by Sussex Police seeking a review of the Premises Licence - 2024/01394/LAREV**

**Persia, 126 Church Road, Hove BN3 2EA**

I write to make a representation on behalf of the Council's Licensing and Trading Standards Team, in their capacity as a responsible authority, in relation to the above application made by Sussex Police seeking to review the Premises Licence for Persia, 126 Church Road, Hove BN3 2EA.

This representation is made as the Licensing and Trading Standards Team have concerns that the licensing objectives of the Prevention of Public Nuisance, Public Safety and Protection of Children from Harm are not being upheld.

The history of this matter is explained in more detail in the application of Sussex Police.

On 19 April 2024, accompanied by Sussex Police, we visited Persia Restaurant and carried out a full licensing inspection. At the time of this inspection, we spoke with Emad Abdolkhani, Premises Licence Holder (PLH). This visit was a result of referral from the Planning department regarding a complaint they had received that the first floor of the premises was being used for Shisha, which did not comply with Chapter 1 of Part 1 of the Health Act 2006 (smoke-free premises, places and vehicles).

During our visit, as part of our licensing inspection, we asked to see various documents, one of which was training records. Whilst waiting for Emad Abdolkhani to return, we noticed that the floor of the upstairs area had a window. This window gave a clear view of the serving counter area. We then witnessed a member of staff with some paperwork, pen and bottle of correction fluid, making an amendment to the paperwork. After speaking to Mr Abdolkhani, Sussex Police seized the training record and placed it in an evidence bag.

After this visit, on 24 April 2024, an email was sent to Mr Abdolkhani outlining the details of our visit. A copy of this email can be found at Appendix A. A copy of the shisha guidance sent with the email as Appendix B.

I have little confidence in Mr Abdolkhani as the Premises Licence Holder in running the premises. It is my opinion that the premises is poorly run, there are breaches of the premises licence and the licensing objectives are not being upheld. I believe if the premises licence remains in place, there will be further problems occurring at the venue.

In the circumstances, I fully support the application of Sussex Police seeking the revocation of the premises licence and consider that this is necessary to ensure that the licensing objectives of the Prevention of Public Nuisance, Public Safety and Protection of Children from Harm are met.

Yours sincerely

REDACTED

Donna Lynsdale  
Licensing and Fair Trading Officer  
Licensing Team and Trading Standards

## Appendix A – Email sent on 24 April 2024

**From:** Donna Lynsdale

**Sent:** Wednesday, April 24, 2024 4:55 PM

**To:** 'info@persiahove.co.uk' <info@persiahove.co.uk>; REDACTED> **Cc:** Planning Investigations <Planning.Investigations@brighton-hove.gov.uk>; Brighton.Licensing@sussex.police.uk **Subject:** Persia, 126 Church Road, Hove BN3 2EA - 2024/00811/LICSMO/EH

**Importance:** High

Dear Emad Abdolkhani

**Licensing Act 2003**

**Health Act 2006**

**Persia, 126 Church Road, Hove BN3 2EA**

**Premises Licence Number: 1445/3/2019/03974/LAPRMV**

I am writing to you in your capacity as the Premises Licence Holder (PLH) for the above premises.

On Friday, 19 April 2024 at 22:05, accompanied by my colleagues PC Bernascone, PS Lam and Mark Thorogood from Police Licensing, we visited your premises and carried out a full licensing inspection. My visit was also in relation to a referral received from the Planning department regarding a complaint they had received that the first floor of your premises was being used for Shisha, which did not comply. At the time of our visit, we spoke with yourself.

Below are our findings and details of breaches of your premises licence conditions:

### **Annex 2 – Conditions consistent with the Operating Schedule:**

#### **General:**

#### **For the Prevention of Crime and Disorder:**

4. An incident log will be maintained by the premises showing a detailed note of incidents that occur in the premises. The log will be inspected and signed off by the DPS (or a person with delegated authority) at intervals not to exceed 4 weeks. The logbook should be kept on the premises and be available for inspection at all times the premises are open by authorised officers and staff of the Licensing Authority or the police. An incident will be defined as being one which involves an allegation of a criminal offence. Any refusals made for alcohol service e.g. underage, will also be recorded (either in electronic or written form) and feedback given to staff as relevant. The log will be kept for a minimum of twenty-four (24) months. *You provided us with a lot of paperwork, which was not dated to include a year. We were unable to confirm whether the above condition was being complied with. I have posted to your premises an Incident Book to use. Please ensure when completing this book, you include the year and sign off every 4 weeks in accordance with the above condition.*

#### **For the Protection of Children from Harm:**

9. (a) The Premises Licence Holder shall ensure that all staff members engaged or to be engaged, in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such products:



- The lawful selling of age restricted products
- Refusing the sale of alcohol to a person who is drunk

- (b) Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 8 weeks, with the date and time of the verbal reinforcement/refresher training documented.
- (c) All such training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.

*You were unclear on how many staff you had working at your premises, so we were unable to confirm that all staff had received training. We also witnessed a staff member changing the dates on the training records prior to you providing them to us. When it was raised to you that we had witnessed them being changed, you denied they had been. Also, whilst you were showing PS Lam and Mark Thorogood the CCTV, PC Bernascone and myself spoke to the member of staff, who confirmed that you had told her to change the dates on the training records. I have posted to the premises a Training Book.*

I remind you that non-compliance with conditions constitutes a breach of the Premises Licence issued under the above legislation. Please ensure that all conditions on the licence are adhered to. It is an offence under the Licensing Act 2003, S136(1) and (4) to carry on unauthorised licensable activities. The legislation states that:-

(1) A Person commits an offence if –

(a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or

(b) he knowingly allows a licensable activity to be carried on.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to an unlimited fine, or to both.

Irrespective of the permissions and restrictions attached to any premises licence, all licensed premises are required to operate with regard to the 4 licensing objectives, which are:

- o The Prevention of Crime and Disorder
- o Public Safety
- o Prevention of Public Nuisance
- o Protection of Children from Harm

Please be aware that any enforcement action is taken in line with our Licensing Enforcement Policy. You are also reminded that at any stage, following the grant of a premises licence, a responsible authority, such as the Police, Environmental Health, or an interested party such as a resident living in the vicinity of the premises, may ask the Licensing Authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

Also, at the time of my visit we discussed the premises being used for shisha. You advised that you had not opened the upstairs shisha lounge. However, I note that the complaint I had received included photos of customers smoking shisha. The shisha lounge was also being advertised as being open. Receipts seen at the time of this visit also confirmed that shisha was being sold.

In line with Chapter 1 of Part 1 of the Health Act 2006 (smoke-free premises, places and vehicles) it is against the law to permit smoking in any area of a premises that is considered to be enclosed or substantially enclosed. The definition for enclosed and substantially enclosed are detailed in The Smoke-Free (Premises and Enforcement) Regulations 2006 (see below for extract). But, put simply, for a structure to be classified as 'outdoors' it can have:

- A roof with 50% of the walls. (If a shelter is nearer than 1.5 metres to any other walls this would classify as one of the shelter walls); or

- Have no roof and 3 -4 walls e.g. a walled courtyard with no roof. If a roof was put over it (even if the roof is temporary) it would not be compliant, the roof would have to be removed.

I have attached further guidance on the law regarding Smoking and Shisha pipes within commercial premises. To explain it simply, it is illegal to smoke in any enclosed space in England and Wales. If you want to allow smoking, this will need to be done outside or you provide a smoking shelter that is open on 3 sides, including the ceiling/roof above the smoking area.

If smoking within your premise is witnessed, enforcement action may be taken in accordance with the Council's Enforcement Policy.

We will continue to monitor your premises and if further allegations are received or smoking inside your venue, if witnessed formal action will be considered.

If you do not comply with the smoke free law, you will be committing a criminal offence. The fixed penalty notices and maximum fine for each offence are:

- **Smoking in smoke free premises or work vehicles:** a fixed penalty notice of £50 (reduced to £30 if paid in 15 days) imposed on the person smoking. Or a maximum fine of £200 if prosecuted and convicted by a court.
- **Failure to display no-smoking signs:** a fixed penalty notice of £200 (reduced to £150 if paid in 15 days) imposed on whoever manages or occupies the smoke free premises or vehicle. Or a maximum fine of £1000 if prosecuted and convicted by a court.
- **Failing to prevent smoking in a smoke free place:** a maximum fine of £2500 imposed on whoever manages or controls the smoke free premises or vehicle if prosecuted and convicted by a court. There is no fixed penalty notice for this offence.

A copy of this email has also been sent to Police Licensing and the Planning department.

Please reply to this email acknowledging receipt and confirming that you will no longer be allowing smoking within in premises.

Yours sincerely

REDACTED

**Donna Lynsdale** | Fair Trading Officer & Licensing Officer (Trading Standards & Licensing),  
Safer Communities  
Brighton & Hove City Council, 2<sup>nd</sup> Floor, Barts House, Barts Square, BN1 1JP  
T 01273 292494 | [donna.lynsdale@brighton-hove.gov.uk](mailto:donna.lynsdale@brighton-hove.gov.uk)

#### **Our customer promise to you**

We will make it clear how you can contact or access our services | We will understand

and get things done | We will be clear and treat you with respect

## **Appendix B – Copy of Shisha Guidance**

# **Smoking Areas & Shisha Lounges**

Officers from the Neighbourhood Community & Safety Team work closely together to ensure business owners are compliant with the Health Act 2006.

You may receive visits from Food Safety Officers, Licensing Officers, Health & Safety Officers and Fair Trading/Trading Standard Officers. All officers are trained to identify non-compliances of various legislation

We work closely with Trading Standard Officers, to ensure the tobacco used is legal and therefore safe. During these enforcement/compliance visits, we may take the shisha pipes and tobacco as evidence, which is then used, in the Magistrates court to secure a conviction.

Being in control, or allowing people to smoke in an enclosed space, such as an illegal shisha bar, is an offence. You could be fined and ordered to cover the court costs of the council if found guilty.

## **Shisha Lounges: Business Guidance**

If your business supplies shisha in water pipes to customers, you need to do so legally. Following this guide will enable you to do this but failing to comply may result in prosecution or having your pipes and shisha tobacco seized and your customers being fined.

The council and its partners will take action to ensure businesses keep to the law. It is important that users of shisha are made aware of the health issues. A misleading but commonly held belief is that smoking through a water pipe 'purifies' the smoke.

The law will affect your business in a number of ways. Below are common questions and matters that must be considered when thinking about establishing a Shisha business.

## **Where can customers smoke?**

Measures should be taken to prevent smoke getting into smoke free areas by the provision of two sets of doors that are off set. These doors should be fitted with closures.

A minimum distance of 1.5m between shisha premises and adjacent properties or other smoke-free areas must always be maintained to prevent second-hand smoke issues from arising.

Water pipes can be smoked in open air **when there is no roof or ceiling above the smoker**. They can also be smoked in some circumstances where there is a roof or ceiling, but only if at least 50 per cent of the walls of the structure are permanently open. Any opening that can be closed - for example by a door, window, or shutter - is counted as closed. We can provide more advice that is detailed.

As with smoking a cigarette the smoking of shisha/water pipe is not permitted within substantially and fully enclosed public spaces or workplaces because of the Smoke Free laws. These smoking laws apply to water pipes whether the shisha product being smoked contains tobacco or not. Therefore, unless your business has access to a legal smoking area you will not be able to supply shisha in water pipes.

## Shisha & Covid 19

Shisha smoking carries all the health risks of smoking, and sharing the mouthpiece greatly increases the risk of spreading COVID-19. PHE strongly advises against sharing any smoking devices.

## Local Considerations

This is probably the most sensitive issue. The positioning of the shisha premises will have an effect on adjoining properties (this includes commercial premises as well as residential properties).

Location of the proposed shisha premises is extremely important to get right at the planning stage, as putting right any mistakes will be costly.

You also need to bear in mind when the premises will be open, i.e. evenings, at night, or at weekends, as this could lead to complaints of noise nuisance, car parking, antisocial behaviour etc.

Where possible shisha premises should be sited away from private housing where smoke and noise may become an environmental issue.

It is the responsibility of business operator and their staff at the premises to ensure noise from all external areas is kept to a minimum. You should display posters asking customers to keep noise to a minimum.

To avoid problems with neighbours the following advice should be considered:

- Shisha premises should be sited away from domestic premises and if possible, with some form of insulation between customers and residents to help mitigate the noise.
- Speak to your neighbours and advise them what you plan to do and get their suggestions.
- Display posters advising your customers to keep noise to a minimum in external areas.

## **Anti-Social Behaviour**

Shisha premises will attract young people during evening periods. Try and ensure your premises are monitored and covered by CCTV. This will help ensure groups do not congregate in these areas. This will also avoid complaints to the police or the local authority by your neighbours.

If you construct a shelter for shisha users, it may require planning permission. Please contact the Council's Planning Department ([Link?](#)) for advice prior to construction.

## **Security & Lighting**

You must ensure you have adequate lighting both inside and outside your premises to allow your customers to enter and leave safely, especially if your premises will be used at night. Lighting can also be a statutory nuisance. You should also think about the direction of lighting and where possible direct it away from any domestic premises.

## **Noise Nuisance**

You must minimise (if not eliminate) noise as a result of loud music/TV's, customers entering or leaving, particularly late at night. This will prevent noise nuisance issues with adjoining premises.

Where there will be regular entertainment, e.g. music, TV's, etc, be aware that this will increase the amount of noise emanating from your premises. Provision of lobby doors predominantly used as an entrance/egress will minimise any such issues. These doors should be fitted with self-closing devices to help minimise the amount of noise that escapes when people enter or leave your premises. This also has the added effect of limiting smoke getting back into your premises.

## **Heating**

If you wish to provide heating in your smoking area, then you must fully consider all the health and safety implications. Where possible you must provide permanently fixed radiant heaters positioned so that they cannot be tampered with or pose a burning danger to those within the smoking area. It would be preferable that the heating levels can be altered (by trained employees only), so a suitable temperature can be reached.

Where possible it is advised that gas heaters should not be used. These can be easily tampered with and pose an additional fire hazard. However, where there is no alternative the duty holder must complete a risk assessment in accordance with current legal requirements. Regular servicing and maintenance by a Gas Safe registered engineer will also be required.

## **Fire Safety**

A fire risk assessment must be carried out by the business. You are advised to contact East Sussex Fire & Rescue here. <https://www.esfrs.org/contact-us/>

## Employees, Contractors & other persons

Shisha businesses need to ensure that employees and any other persons, i.e. contractors, maintenance persons, local authority officers etc that come onto the premises are not exposed to the harmful effects of second hand-smoke. This is a requirement under the Health and Safety at Work etc Act 1974.

To this end, businesses will need to provide suitable and sufficient risk assessments, identify controls, how safeguards are to be implemented etc.

## How is the Law Enforced?

Officers who identify an illegal smoking area in use may take the shisha pipes and tobacco as evidence, which is then used, in the Magistrates court to secure a conviction.

Being in control or allowing people to smoke in an enclosed space such as an illegal shisha bar is an offence, and you could be fined money and ordered to cover the costs of the council if found guilty.

## What are the Offences?

- **Failure to display a no smoking sign** - up to £1,000 if prosecuted and convicted by a court or

£200 fixed penalty notice on whoever manages or occupies the premises.

- **Smoking in a no smoking place** - up to £200 if prosecuted and convicted or a penalty notice of

£50 on the person smoking.

- **Failing to prevent smoking in a Smoke Free place** - up to £2,500 maximum fine on whoever manages or occupies the premises if prosecuted and convicted.

## What can I sell?

You can only sell tobacco products that have been legally imported into the UK - anything imported illegally will be seized by Trading Standards, HMRC or the Police. Most shisha products containing tobacco are not imported legally and will not have had the required duty paid on it.

## What warnings do I have to display?

Any premises selling tobacco products must display large notices stating: "It is illegal to supply tobacco products to anyone under the age of 18." This notice should be displayed in areas where customers can receive tobacco. We can supply copies of this notice upon request.

The water pipes themselves should be labelled with the same written and picture warnings that are on cigarette packs if they are supplied with a tobacco product in them.

## Who can I sell to?

No tobacco product can legally be supplied to anyone under 18 years old. Given that water pipes are normally shared, you must check the ages of the whole group and any friends who subsequently join them. It may be sensible to allow only over 18s into the premises.

## How can I ensure the safety of employees and customers?

Supplying shisha will involve additional risks, which you should assess and control. Risk assessments must be documented where you employ five or more staff. Risks include infectious diseases, burning charcoal and spillages. Staff should be trained to control the risks and respond to incidents.

You should also take the additional risks into account when completing the Fire Risk Assessment and Emergency Plan for the premises. You can get more guidance on these requirements from the East Sussex Fire & Rescue. Fire exits should be unlocked and clearly signposted.

To minimise the transference of infection, water pipe mouthpieces and hoses should be cleaned thoroughly and disinfected between users. Disposable mouthpieces are recommended. If your staff light the pipes, they should use their own personal mouthpiece and then put a clean one onto the pipe.

## Approval of a Shisha Bar/Lounge

A shelter must comply with the 50 per cent wall rule. The premises must also have planning permission, a valid fire safety certificate and keep noise, light pollution, and exposure to second-hand smoke or smoke infiltration into Smoke Free areas to a minimum. A shisha premises will be allowed to operate if the Smoke Free team is satisfied that it complies with all the requirements.

## Legal Considerations

If you are considering purchasing or converting premises where shisha is to be carried out then we advise you to contact the Council, **BEFORE** you start trading or carry out any refurbishment work, to ensure that the premises meets with building, health and safety, fire, environmental, licensing, smoke free, trading standards and planning legislation. This will avoid unnecessary costs from the outset and, we may be able to assist with the planning and design of your premises.



This document outlines the key factors to consider by businesses considering a Shisha premises in Brighton & Hove City Council.

Under the new Smoke free (Premises & Enforcement) Regulations 2006 nearly all public places and workplaces that are enclosed or substantially enclosed must be smoke-free.

The Health and Safety at Work etc Act 1974 also places a duty on businesses to protect employees, customers and others that come onto their premises to protect them from the harmful effects of second hand-smoke.

For shisha premises both sets of legislation are equally important and must be complied with at the proposal stage.

**Definition of “enclosed premises” is as follows:**

Premises will 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.

**Definition of “substantially enclosed” is as follows:**

- If 50% of the walls or more are missing then it is legal to smoke in the area.
- If more than 50% of the walls are present then it is illegal to smoke in the area.

When determining the area of an opening, no account can be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

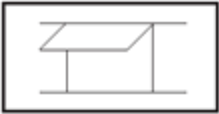
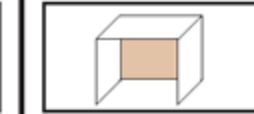

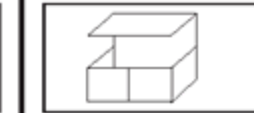
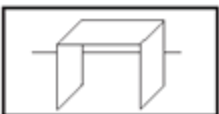


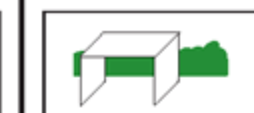
A roof includes any fixed or movable structures, such as canvas awnings.

Any area used for ventilation must not be obstructed by drapes, curtains, etc.

**Tents, marquees, or similar constructions** will also be classified as enclosed premises if they fall within the definition (note that tent/marquee side-panels will be classed as rolled down even when they are rolled up). In general, if an opening or cover can be closed, the 50% rule will be calculated on the basis that those openings are closed.

Therefore, anyone considering starting-up a shisha business is advised to get clear and detailed advice **before** carrying out any refurbishment work or entering legally binding contracts.

## Smoking Areas

Acceptable	Unacceptable
	
	
	
	

They must not be "enclosed or substantially enclosed". This means an area with a ceiling or roof - except for doors, windows, and passageways - that is either enclosed (permanently or temporarily); or has an opening less than half of the area of its walls. This is commonly referred to as the 50% rule. A roof includes any fixed or movable structure, such as canvas awnings. Tents and marquees etc are also classified as enclosed premises if they fall within the above definition.

"Substantially enclosed" premises have a ceiling or roof, but any openings in the walls have a total area which is less than half of the area of the walls, including other 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 or other fittings can be opened or shut. A roof includes any fixed or moveable structure or device that can cover all or part of the premises, and includes, for example, a retractable canvas awning.

In summary, a smoking area with a roof and walls where the permanent openings have a total area that is less than the total area of walls will be classified as "substantially enclosed" and will not fall within the provisions of the health legislation as a smoking shelter.

**Be aware: You need to make sure that your proposed smoking area is not "substantially enclosed" - if it is then it clearly would not comply with the smoke free regulations, and you will be wasting your time and money.**

You should also be aware that siting a smoking shelter too close to walls of adjacent buildings or fences could have the effect of enclosing the structure to the point where it would become "substantially enclosed."

## Planning & Building Control Implications

Most shisha premises will require planning permission. Premises that are compliant with the Smoke free legislation are not guaranteed to get planning permission. Premises that have planning permission are not exempt from complying with Smoke free law. Also,

approval under the Building Regulations may be required.

## Trading Standard Implications

It is illegal to sell tobacco containing products to persons under 18 years of age and businesses need to take steps to ensure this does not happen. Refusals must be noted and be made available for inspection. Suitable signage also needs to be in place. Tobacco containing products need to be correctly labelled.

## Licensing Implications

Shisha premises constructed on licensed premises for customers and staff should be aware of restrictions within their licence, particularly involving outside areas. It is strongly advised that the Premises Licence holder looks carefully through their licence **before** using the premises for shisha smoking as there may have conditions relating to its use. You are advised to look through your license carefully and check what you are licensed to do and if you require a variation?

## Access & Egress

The shisha premises must be suitable for everyone to use as stipulated in the Disability Discrimination Act 1995 requirements. The design must consider wheelchair users and therefore be safe for people to enter and leave the premises. It must also consider visual and hearing impairments, and consider the following:

- Any steps must have their edges highlighted with high visibility/contrasting Paint
- Safety and information signs should be in large print or braille (where possible)
- Signs must be positioned where everyone can read them.
- Careful consideration should also be given to how your customers and employees will enter and leave the shisha premises
- Consideration should also be given to vehicles – Have you made arrangements for car parking, deliveries etc.

## What will happen if I don't follow this advice?

Non-compliant businesses can expect regular visits from the council and their partners until we are satisfied the place is compliant with the Health Act 2006.

**(S3) - Planning Enforcement Team**

**EG CON ENDS 23.05.2024 VALID PPN (S3)**

**From:** Emma Lawrence REDACTED  
**Sent:** Wednesday, May 22, 2024 2:40 PM  
**To:** EHL Licensing <EHL.Licensing@brighton-hove.gov.uk>  
**Subject:** Persia restaurant, 126 Church Rd  
**Importance:** High

To whom it may concern,

Since February 2023 I have been investigating the above address as the planning enforcement team received complaints about unauthorised development being carried out to the rear of the restaurant. I carried out a site visit on 13<sup>th</sup> April 2023 and requested that works stop as there was no planning permission in place. However, the builders continued the works.

The following day a retrospective planning application was submitted to BHCC, reference BH2023/001101 - Change of use of first and second floors from self-contained residential maisonette (Use Class C3) to restaurant on first floor and residential accommodation ancillary to the restaurant on the second floor (Use Class E) and erection of a first-floor rear extension. (Part retrospective). This planning application was refused on 27<sup>th</sup> June 2023.

Mr Emad Abdulkhani then appealed the refusal decision. Before an Independent Planning Inspectorate could determine his appeal, I was informed that there was a shisha lounge being advertised on the first floor to the rear of the restaurant, where the unauthorised works had been carried out. There is no planning permission in place for a Shisha lounge and informed Donna Lynsdale of this matter.

On 26<sup>th</sup> April 2024 the Independent Planning Inspectorate dismissed Mr Emad Abdulkhani Appeal. The reasons were that it was the loss of residential accommodation, and that the unauthorised development affected the character and appearance of the local area that is within Cliftonville conservation area.

I am now currently preparing an Enforcement Notice for all the unauthorised works that were carried out at Persia restaurant. Once the Enforcement Notice is served on Mr Emad Abdulkhani and any other relevant parties, he will have to remove all the unauthorised development and return the

residential accommodation to the upper floors. There will be a set timescale for these works to be carried out.

If the Enforcement Notice is not complied with then this is a criminal offence, whereby BHCC may prosecute the relevant parties at Brighton Magistrates Court.

Regarding this planning enforcement case, I have received 3 complaints from neighbouring properties about the unauthorised works and also further complaints about the Shisha lounge all the complainants are annoyed that the owner has just continued building what he wants.

Within Planning we regulate and enforce various planning legislations, including the City Plan Part Two and the Town and Country Planning Act 1990.

Planning acknowledge that it is a separate regime to Licensing however it is felt that the dealings we have experienced with the premises regarding the first-floor area evidences his continuous desire to not follow correct procedures and policies. We have also received complaints from local residences that fall within the licensing objective of the Prevention of Public Nuisance. I support the review brought by the Police on the grounds of the Prevention of Crime & Disorder and the prevention of Public Nuisance.

Kind regards

**Emma J Lawrence BSc(Hons)** | Senior Planning Officer | Development Management – Enforcement Team

City Services, 1<sup>st</sup> Floor, Hove Town Hall, Norton Road, BN3 3BQ

REDACTED

**(S3) – Additional Information submitted 22/05/2024**

## The Planning Inspectorate

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# Appeal Decision

Site visit made on 9 April 2024

by **REDACTED**

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

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**AppealRef: APP/Q1445/W/23/3328649**

**126 Church Road, Brighton and Hove, Hove BN3 2EA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Emad Abdulkhani on behalf of Persia against the decision of Brighton & Hove City Council.
  - The application Ref is BH2023/01101.
  - The development proposed is the erection of a rear first floor extension at an existing restaurant (Class E).
-

## **Decision**

1. The appeal is dismissed.

## **Main Issues**

2. The main issues are:
  - the effect of the proposal on the character and appearance of the local area and the extent to which it would preserve or enhance the character or appearance of the Cliftonville Conservation Area; and
  - whether sufficient information has been presented to demonstrate that the loss of residential accommodation can be justified.

## **Reasons**

### *Character and appearance*

3. The appeal building is a two storey terraced property that fronts Church Road. The wider area is densely built up with Church Road containing terraced buildings in use as commercial on the ground floor with the wider area being residential.
4. The Cliftonville Conservation Area (CA) covers an area encompassing the Cliftonville suburb which is predominantly residential with pockets of small- scale workshop use and Victorian shop frontages. Its significance is derived from classical stucco facades and semi-detached villas with visually successful extensions that match the scale, proportion and detail of the original building but are subordinate in mass and siting. Roofs vary in pitch, detail and eaves treatment, but within any one street or architectural group the roof and elevation detail is generally consistent and harmonious. Given the above, I find that the significance of the CA, insofar as it relates to these appeals, to be primarily associated with the historic development pattern in the area, including scale, rhythm and proportion.
5. There is already an extension to the rear of the of the first floor of the appeal building. However, this is modest in size and matches the scale and proportion of the original building. The proposed development would occupy most of the width of the appeal site and extend at a significant depth. While the proposal is located to the rear, the result would be a prominent feature that would be visible from Medina Villas and Osborne Villas.
6. I acknowledge that views are limited, however, the overall site coverage, as a result of the width and depth would draw attention to the development from these adjacent roads, even from fleeting passes by.
7. The roof of the proposal would be flat, and while I note the Councils concerns, the small extensions that are generally characteristic of the area are generally flat roofed and therefore this particular aspect of the design is generally in line with the roofscape. However, this does not mitigate the harm as a result of the considerable width and depth which results in an over prominent development that would have a poor

relationship with adjoining neighbours and the streetscape.

8. Given the above, I find that the proposal would harm the character and appearance of the area and fail to preserve or enhance the character or appearance of the CA. Consequently, I give this harm considerable importance and weight in the planning balance of this appeal.

#### *Loss of residential accommodation*

9. The appellant states that the first and second floors of the appeal building were in previous use as an HMO albeit this use ceased in 2019. Since this time the residential accommodation has been used by the appellant or restaurant staff. It is proposed that the first floor would be used for seating for the restaurant and the second floor would be used as a one-bedroom flat to be used by restaurant staff.
10. The appellant considers that there would be no net loss of residential accommodation as a flat would be provided on the second floor. However, while there would be some form of residential accommodation retained, this would be tied to the restaurant use and there would be no open market residential accommodation provided. It would also differ from the previous situation on the site and reduce the amount of accommodation from the small HMO and thereby result in a net loss of residential accommodation.
11. Policy DM2 of the City Plan Part Two Brighton & Hove City Council's Development Plan October 2022 (DP2) concerns retaining housing and residential accommodation. The Policy seeks to resist any net loss of existing residential accommodation in the city unless one or more of a set number of exemptions apply.
12. The proposed development would not meet any of the exemptions other than f) where the previous use of the building would be a material consideration. In this regard, I note the appellant's consideration of the success of the restaurant and its popularity, the desire to extend the restaurant into the first floor also demonstrates this.
13. However, while these matters are noted, the proposed development would result in a loss of residential accommodation. While a flat would be created on the second floor it would be small to serve the needs of the large number of  
  
staff employed and also be tied to the restaurant use with no guarantee of this continuing.
14. I therefore conclude that sufficient information to demonstrate the loss of a residential unit of accommodation has not been demonstrated. It would be contrary to Policy DM2 of the DP2.

#### **Other Matters**

15. The appellant has referred to several examples of other developments nearby in an attempt to justify the proposed development. I do not have the full details in respect of such examples so I cannot be sure of the circumstances of these. In any case, I have determined the appeal on its

own merits, based on the evidence before me.

16. However, from site observations while these tend to have flat roofs, which I have found that the proposal would generally be in line with. Those at first floor level are generally not as prominent as the appeal proposal due to its significant width and depth.
17. The Council have found that the proposed flat would provide adequate living conditions for future occupiers, however, this is a neutral matter.

### **Planning Balance**

18. I have found that the proposed development would fail to preserve or enhance the character or appearance of the CA.
19. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
20. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. There would be some benefit through the investment into the restaurant which the appellant states is a popular venue in the area. However, this is not sufficient to outweigh the harm that I have identified.
21. Given the above and in the absence of any defined significant public benefit, I conclude that, on balance, the proposal would fail to preserve or enhance the character or appearance of the CA. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and conflict with Policies DM18, DM21 and DM26 of the DP2 as well as the Council's supplementary planning document design guide for extensions and alterations adopted 20 June 2013 which seek, among other things, to ensure that development makes a positive contribution to a sense of place and are well designed and scaled, sites and detailed in relation to the property to be extended. As a result, the proposal would not be in accordance with the development plan.

### **Conclusion**

22. For the reasons given above the appeal should be dismissed.

*REDACTED*

INSPECTOR