

## Appendix 3 - Food Health & Safety's Representation

### Representation Form from Interested Parties

*(Please read notes on reverse before completing)*

#### Your details (See notes 2 & 3);

Your Name	Pete Rudd
Business Address	Food Health & Safety Team, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, UB8 1UW
Your email address	prudd@hillingdon.gov.uk
Your phone number	01895 277455
The name of the body or organisation you represent	Food Health & Safety Team, London Borough of Hillingdon

#### About the premises;

Name of the premises you are making a representation about	The Prince of Wales, Harlington Road, Uxbridge,
Address of the premises you are making a representation about	1 Harlington Road, Uxbridge, UB8 3HX

#### The Licensing Objectives (See note 4);

Licensing Objective	Reasons for your representation and any supporting evidence
<p><i>Please tick;</i></p> <p><input checked="" type="checkbox"/> Prevention of Crime/Disorder</p> <p><input checked="" type="checkbox"/> Prevention of Public Nuisance</p> <p><input type="checkbox"/> Protection of Children From Harm</p> <p><input checked="" type="checkbox"/> Public Safety</p>	<p>One of the functions of the Food Health and Safety Team, is the enforcement of the Health Act 2006, Smoke Free Regulations. The Prince of Wales operates a Shisha Smoking venue from the outside areas around the pub that they call Sahara City. The Smoke Free regulations place a duty on business operators to prevent smoking in smoke free places. For reference I have attached the definition of a smoke free place from the Smoke Free Approved code of practice.</p> <p>For smoking and shisha smoking the operator has constructed smoking shelters positioned at the rear on the side and at the front of the premises.</p> <p>At the rear of the building the shelter consisting of a rigid structure, linked to a series of canvas parasol canopies, most of the area at the rear of the building is enclosed.</p> <p>On the side adjacent to the Uxbridge Road and at the front of the pub there are linked canvas parasol canopies, positioned between the boundary fence and the building.</p> <p>There are high boundary fences around the perimeter of the site consisting of wooden fence panels &amp; tightly spaced plantings. The high perimeter fences at the Prince of Wales serve the same purpose as walls by preventing the free movement of air through the smoking shelter.</p> <p>Fitted to the ridged structure are vinyl roller shutter doors, when assessing if a smoking shelter is compliant with the smoke free regulations any opening that can be closed or open is counted as closed when making a 50:50 rule calculation.</p> <p>There are retractable awnings affixed onto the end of the ridged structure that extends to the boundary fence.</p> <p>I have visited the premises to do smoke free enforcement visits in</p>

2017, 2018 and in 2019.

On each visit I determined that the covered areas used as smoking shelters around the outside of the pub are substantially enclosed and therefore smoke free.

In 2017, I visited the premises with my colleague Steve Dormer a member of the licensing team.

After surveying the smoking shelters at the Prince of Wales I explained to Mr Abouzeid the business operator that the smoking shelters around the outside of the pub were substantially enclosed as they were not constructed as compliant smoking shelters.

I informed him that configured in that way the shelters were smoke free and that he and his staff had a duty to prevent smoking in any smoke free place under his control.

I advised him on the requirements of smoke free and handed over information on smoke free including guidance on the design of compliant smoking shelters.

In 2018 I visited the premises with my colleague Oliver Darius, Team Manager | Food Health and Safety/Port Health. On arrival I though the smoking shelters were configured in the same way as they were when I visited in 2017.

Oliver and I witnessed an employee smoking in a smoke free place.

While on site measurements were taken of the smoking shelters, a plan and series of 50% rule calculation were done.

Having made 50% rule calculations, I concluded that each space on the site used as a smoking shelter was substantially enclosed by a large margin and were all smoke free.

Following the visit Mr Abouzeid was sent a smoke free warning letter and further advice on the design and construction of compliant smoking shelters.

I visited the premises on the 6<sup>th</sup> November 2019; and observed the configuration of the smoking shelters appeared to be very similar to my previous two visits to the premises.

When I arrived at site I saw a gentleman sitting at a table under the linked canvas parasol canopies close to the back door of the pub, the place he sat was a smoke free place.

The gentleman spoke to me, indicating he was a member of staff; I identified myself to him saying that I was from the council and could I speak to the owner. He replied that he would get him and walked into the pub.

While he was gone I had a look around the outside of the pub, at the spaces used as smoking shelters.

An ash tray was placed on every table indicating that they were to be used by patrons wanting to smoke.

The roof of the rigid structure now appeared to have been fixed in place, the vinyl roller shutter doors remained in place.

Furniture had been repositioned within the rigid structure, however high backed bench seating and the close proximity of the boundary fences still prevent the free movement of air through this smoking shelter. This space continues to be smoke free.

The linked canvas parasol canopies at the front and side of the pub are still positioned between the building and high perimeter fence, they also remains smoke free.

Mr Abouzeid the business operator came out, I said that I was visiting to survey the smoking shelter.

I told him that I had walked around the premises and that I considered that the spaces used as smoking shelters around the outside of the pub were substantially enclosed and were smoke

	<p>free.</p> <p>Mr Abouzeid, said that he had made alterations to the space that made it compliant.</p> <p>I asked if while he doing the alterations he had made any 50% rule calculation that he could show me. He did not have anything to show me.</p> <p>I pointed to the rigid structure, now with the fixed in place roof.</p> <p>I said that the vinyl roller shutter doors are counted as in place when making a 50% rule calculation, I pointed to the gaps between the edge of the structure and the high perimeter fence explaining that they were less than 1m, the minimum distance stated in the code of practice.</p> <p>Mr Abouzeid, insisted that the shelters now complied with the law, I observed that alterations may have been made, but that the work done had not made the shelters compliant with smoke free.</p> <p>Mr Abouzeid, was getting very frustrated as I spoke to him, believing that, Planning; Licensing and now Food; Health and Safety were trying to put him out of business.</p> <p>I explained that businesses can have smoking shelters, but they must comply with the 50% rule requirement and be 50% or greater permanently open, a compliant smoking shelters must permit the free movement of air through the space.</p> <p>I reiterated, that the vinyl roller shutter doors are counted as in place when making the any 50% rule calculation. Mr Abouzeid said the roller shutters were there to secure the space at night as there was valuable equipment in it.</p> <p>I pointed out again that smoking shelters must be 50% or greater permanently open and that any opening that can be closed or open is counted as closed.</p> <p>I asked if he had looked at the information I had sent after my last visit, as it clearly described what was needed.</p> <p>Mr Abouzeid said that he had consulted an architect and that they had advised him how to configure the space.</p> <p>I said that the architect must has misinterpreted the smoke free requirements as smoking shelters at the premises were non compliant.</p> <p>It was apparent that Mr Abouzeid was not going to take on board any of the points I made and he was becoming agitated so I left the premises.</p> <p>I reported to Oliver Darius my Team Manager that the smoking shelters at the premises remain smoke free and that I had again witnessed smoking in a smoke free place.</p> <p>As the Prince of Wales has not cooperated in any way to make the smoking shelters at the premises compliant with smoke free, Mr Darius is considering taking formal enforcement action against the business for failing to prevent smoking in a smoke free place.</p>
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**The outcome you are seeking from the Licensing Authority (See note 6);**

I understand that there have been a number of contraventions of planning and licensing issues at this premises since Mr Abouzeid took over.

As an officer in the Food Health and Safety team visiting the premises trying to secure compliance with the Health Act 2006 Smoke Free Regulations I am of the opinion that Mr

Abouzeid will not voluntarily comply with the requirement to prevent smoking in a smoke free place or make alterations to the smoking shelters he has constructed at the premises that will make them compliant with the law.

Additional information I believe is relevant when considering a premises operating as a shio sha smoking venue.

The words "shisha lounge" are not used in The Health Act 2006

Part 1 Smoking, Chapter 1 Smoke free Premises, Places and Vehicles, meaning the law enacted to control smoking in enclosed places does not view the practice of shisha smoking separately. An enclosed space intended to be used for smoking shisha is a smoking shelter and therefore must be a compliant smoking shelter that is 50% or greater a permanently open.

The UK climate is not generally compatible with the middle eastern practice of lounging around smoking shisha, so inevitably shisha premises operators enclose the space greater than the 50% allowed under the regulations, hoping that the warm and cosy environment encourages patrons linger in for some time.

To comply with the 50% rule premises must be substantially open and when they are substantially open there is nothing containing any noise produced by the activities at the premises so noise nuisance to neighbouring premises is an issue.

Residents have an absolute right to enjoy their property including the use of the garden.

There is no control over wind speed and direction so smoke produced by a shisha smoking venue sited close to residential properties will inevitable have occasions when smoke drifts to residences close to the premises causing a nuisance.

Even if opening hours and noise produced by the site can be controlled by planning and licensing constraints there is nothing that can control the nuisance caused by smoke drifting into residences close to the premises.

**Signed:** ..... **Date:** .....

**Notes:**

- 1) All representations must be submitted before the conclusion of the 28 day consultation period. This will be advertised on the public notices and also on the Councils website.
- 2) Persons who may make representation include; persons who reside near to the premises to which the application relates and who are likely to be affected by licensable activities; residents associations who are representing residents who reside near to the application premises; Ward Councillors representing their constituents; any person who lives or works in the area and has concerns about the application premises.
- 3) Please note that representations cannot be anonymous. Copies of all representations will be published in any Committee papers and will be sent to all persons involved with the hearing including the applicant. If you have concerns about the use of your information and would like to discuss this further, please contact one of our Licensing Officers for a discussion, on the contact details below.
- 4) In order to be considered 'relevant', the representation must relate to one or more of the 'Licensing Objectives'. These objectives are;
  - a) Prevention of Crime/Disorder - This relates to any criminal activity, disorder or anti-social behaviour related to the application premises.

- b) Prevention of Public Nuisance - This relates to noise nuisance and vibration, litter, noxious smells, light pollution.
  - c) Protection of Children from harm - This relates to the protection of children whilst on the application premises.
  - d) Public Safety - This relates to the physical condition of the premises and the safety features provided for members of the public such as; fire safety, health & safety.
- 5) Upon submitting a representation, it is expected that you will attend the Licensing Sub-Committee hearing to deliver your representation verbally and answer any queries that the Committee may have. If you are unable to attend, your written representation will be considered.
- 6) You may wish to suggest an outcome to the Licensing Sub-Committee ie. grant the application with extra conditions; grant the application with fewer hours/activities; reject the application. Please note that the Licensing Sub-Committee will only make reasonable and proportionate decisions based upon the evidence they are presented with, and in line with the laws and regulations governing Licensing Hearings.
- 7) You may continue on separate sheets of paper if necessary and you may also attach any evidence which supports your representation.
- 8) Please submit all completed forms to:

**The Licensing Officer  
Regulatory Services  
London Borough of Hillingdon  
Civic Centre  
High Street  
Uxbridge, UB8 1UW**

[licensing@hillingdon.gov.uk](mailto:licensing@hillingdon.gov.uk)

Tel - 01895 277433  
[www.hillingdon.gov.uk/licensing](http://www.hillingdon.gov.uk/licensing)

# Appendix 1 Definitions

**These definitions are set out in full in the smokefree regulations.**

## Authorised officer

This means any person (whether or not an officer of the council) who is authorised by it in writing, either generally or specifically, to act in matters under Chapter 1 of the Health Act 2006, Smoke-free Premises, Places and Vehicles.

## Compartment

This includes each part of the vehicle which:

- is constructed or adapted to accommodate persons; and
- is or may from time to time be wholly or partly covered by a roof.

## Council

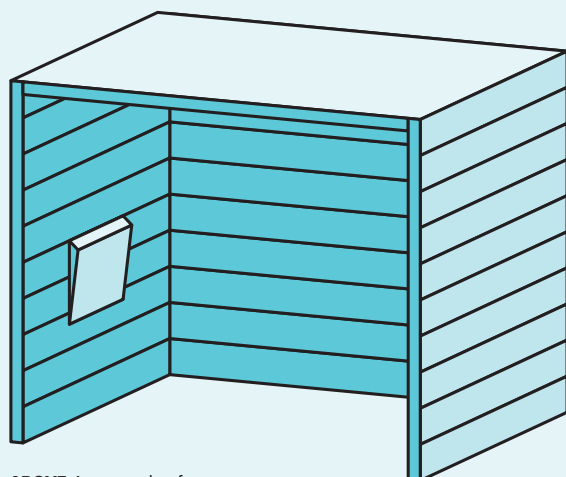
By using the term 'council' in this guidance we mean all authorities defined by the Smokefree (Premises and Enforcement) Regulations 2006 as enforcement authorities.

## 'Enclosed' and 'substantially enclosed' premises

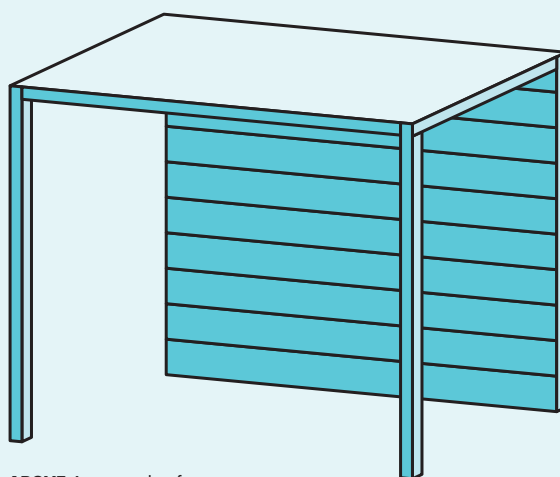
Premises will be considered to be **enclosed** if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a **permanent or temporary** basis.

Premises are **substantially enclosed** if they have a ceiling or roof, but there are permanent openings in the walls which are **less than half** of the total areas of walls, including other structures which serve the purpose of walls and constitute the perimeter of premises. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings that can be open or shut. This is known as the **50 per cent rule**.

A **roof** includes any **fixed or movable structures**, such as canvas awnings. **Tents, marquees or similar** will also be classified as enclosed premises if they fall within the definition.



**ABOVE** An example of substantially enclosed premises



**ABOVE** An example of non-substantially enclosed premises