

**North Northamptonshire Area Planning Committee
(Thrapston)
20 September 2021**

Application Reference	NE/21/00954/VAR
Case Officer	Patrick Reid
Location	20 High Street, Higham Ferrers, Rushden, Northamptonshire NN10 8BL
Development	Variation of conditions pursuant to application number: 17/01941/FUL: Change of use to B1, B2 and A3. Central distribution centre for Bewiched Coffee, food storage, basic food prep will take up 66% of the floor space. Small coffee shop to front taking up 34% of the floor space. Variation of Condition 4 – air conditioning units and external condensers and Condition 8 – Approved Plans
Applicant	Bewiched Ltd - Mr Matthew Fountain
Agent	N/A
Ward	Higham Ferrers
Overall Expiry Date	12 August 2021
Agreed Extension of Time	22 September 2021

Appendix 1 – Decision Notice of 17/01941/FUL

Scheme of Delegation

This application falls outside of the Council's Scheme of Delegation because the Officer recommendation for approval is contrary to objections from the Town Council and from more than two neighbours/other interested parties

1. Recommendation

1.1 That planning permission be GRANTED subject to conditions.

2. The Proposal

- 2.1 This application seeks to vary two conditions of planning permission reference 17/01941/FUL which related to the development to change the use of the property to B1, B2 and A3 uses. The planning permission was granted on 5th December 2017 subject to eight conditions. This application seeks variations to condition 4 (which prohibited air conditioning condensers and other plant/equipment), and condition 8 (approved plans).
- 2.2 Condition 4 of the planning permission is set out below and clarifies that the equipment listed shall not be installed at the property. This application seeks the variation or removal of this condition to allow the installation of condensers as part of an air conditioning system for the premises.
- 2.3 Condition 8 of the planning permission lists the plans with which the planning permission was required to be carried out in accordance. As a consequence of proposing to vary condition 4, the approved plans list changes to include details of the proposed air conditioning condensers. Two plans are listed and this application seeks to vary this condition by the addition of the plans associated with the application, principally the layout plan and the manufacturer's specification of the condenser units.

3. Site Description

- 3.1 The site comprises a coffee shop/commercial unit on the High Street in Higham Ferrers. The property was subject of a planning permission from 5 December 2017 for its change of use to B1, B2 and A3 uses for the internal space to be used for a combination of food storage, preparation and a coffee shop. At the time of the site visit it was apparent that the planning permission has been implemented and the coffee shop is operating from the site.
- 3.2 The property has a shop frontage and its front façade is primarily brick. It is located in the context of primarily other town centre uses on both sides of the High Street.

4. Relevant Planning History

- 4.1 17/01941/FUL - Change of use to B1, B2 and A3. Central distribution centre for Bewitched Coffee, food storage, basic food prep will take up 66% of the floor space. Small coffee shop to front taking up 34% of the floor space – PERMITTED (05.12.2017)
- 4.2 19/01156/VAR - Variation of Condition 4 to remove the restriction of installation of air-conditioning unit(s), condenser(s) and Condition 8 approved drawings to allow for air conditioning condenser units pursuant to 17/01941/FUL – REFUSED (23.09.2019) due to noise effects harming residential amenity.

5. Consultation Responses

A full copy of all comments received can be found on the Council's website [here](#)

5.1 Higham Ferrers Town Council

Objection for reasons summarised below:

- detrimental impact on the neighbours from increased noise levels;
- the plans submitted are not up to date and do not show the residential properties to the rear of Bewitched Coffee;
- It is noted that access arrangements to install and service the external condensers may be required through the neighbouring garden and this is not formalised.

5.2 Neighbours / Responses to Publicity

11 representations have been received of which 7 are in support and 4 are in objection. The issues raised are summarised below:

- Impact of noise on nearby residential properties;
- Location/Site Plan is inaccurate;
- Maintenance of units will require access from neighbouring land;
- Notice not served on neighbours;
- Units will be near neighbouring garden.

Comments raised in support are summarised below:

- Air conditioning is needed to make the working environment safe for staff;
- The business provides a good service and product and this will help;
- Air conditioning would have benefit for customers, including those with medical conditions;
- The air conditioning units won't be too noisy;
- Air conditioning is needed for the physical and mental wellbeing of staff;
- Other businesses nearby have air conditioning and it does not harm the surroundings;

5.3 Local Highway Authority (LHA)

The LHA confirms no observations to the proposed variation.

5.4 Environmental Protection

Have looked in particular at condition 4 which relates to air conditioning units and external condensers. It is proposed that the units will be mounted at low level on the rear toilet side wall. They have looked at the information supplied by the applicant and also made a site visit to look at the proposed location of the units and speak with the applicant. No objections and should planning permission be granted, then a condition is recommended.

5.5 Commercial Team (Health Protection)

Support Proposal: During the recent hot weather the temperatures in the production area of the premises have been excessive, with temperatures around 40 degree centigrade. Therefore, the company need to be able to regulate temperatures for the welfare of the staff working in this area.

A food premises is required to ensure adequate cleaning – the units will be at high level and therefore adaptation of existing cleaning schedule will be required.

6. Relevant Planning Policies and Considerations

6.1 Statutory Duty

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

6.2 National Policy

National Planning Policy Framework (NPPF) (2021)

National Planning Practice Guidance (NPPG)

National Design Guide (NDG) (2019)

Noise Policy Statement for England (NPSE) (2010)

6.3 North Northamptonshire Joint Core Strategy (JCS) (2016)

Policy 1 - Presumption in Favour of Sustainable Development

Policy 2 - Historic Environment

Policy 8 - North Northamptonshire Place Shaping Principles

Policy 9 - Sustainable Buildings and Allowable Solutions

Policy 12 - Town Centres and Town Centre Uses

Policy 22 - Delivering Economic Prosperity

6.4 Higham Ferrers Neighbourhood Plan (made 2016)

HF.DE1 – Achieving High Quality Design

HF.DE2- Heritage Assets and their Setting

6.5 Other Relevant Documents

None

7. Evaluation

The key issues for consideration are:

- Principle of Development
- Impact on Neighbouring Amenity
- Heritage

7.1 Principle of Development

7.1.1 The proposed variation of conditions is intended as a means to allow the addition of two condenser units onto the rear of the property, to serve an air conditioning system. The application seeks to do this by either removing or altering condition 4 which prevents the addition of such equipment, whilst also adding plans to condition 8, which show the equipment.

7.1.2 Condition 4 of the planning permission is as follows:

Notwithstanding any of the submitted details, no roaster(s), air-conditioning unit(s), condenser(s) or any other external ventilation or extraction equipment, shall be installed internally or externally at the premises.

Reason: To prevent odour or noise issues arising from the development, in the interest of residential amenity and local amenity.

7.1.3 Condition 8 of the planning permission is as follows:

7.1.4 *Except where expressly stated by other conditions on this planning permission, the development hereby permitted shall be carried out strictly in accordance with the following approved drawings, received by the Local Planning Authority: Drawing number: B41-2F 'As Proposed Plans & Elevations' received on 17.10.2017, Ordnance Survey Location Plan received on 13.09.2017*

Reason: In order to clarify the terms of this planning permission and to ensure that the development is carried out as permitted.

7.1.5 In terms of condition 4, it is a consideration as to whether it may be appropriate to either vary the condition, or remove the condition from the original planning permission and add a new condition that would require a new planning application for any new such units beyond those proposed. Either option is at the discretion of the decision maker however the decision maker must consider only the reason for imposing the condition. It must not use an application to vary a planning condition to reconsider aspects of the planning permission that do not relate to the condition proposed to be varied. For example, it would not be acceptable to reconsider opening hours.

7.1.6 In terms of the variation of condition 8, the application seeks to replace the approved floor plan with that provided under this application that includes the two condensers and two air conditioning units. The principle of varying the conditions is acceptable and the nature of the proposed change is sufficiently modest in scale to not alter the basis of the planning permission fundamentally.

7.2 Impact on Neighbouring Amenity

- 7.2.1 The application has been subject of consultation with the Council's Environmental Protection and Commercial Health Protection Teams. Both consultees have found the noise associated with the units to be acceptable. Environmental Protection has advised that a condition be applied, ensuring the units to be installed are those specified on drawing BEC_HF-21_205_1.1, and the manufacturer product details in the application.
- 7.2.2 The comments from Environmental Protection are informed by their knowledge and experience of matters including appropriate noise levels and character of noise in environments near residential properties. Concern has been raised in representations that the noise would be detrimental to residential properties nearby. However, as set out in the manufacturer's specifications, the decibel levels of the units are known and have been considered by Environmental Protection. As these are satisfactory to the specialist consultee, it is considered reasonable to conclude that the proposal is acceptable in terms of noise.
- 7.2.3 The Council's Commercial Health Protection team has submitted comments in support of the application, noting that in the warm summer temperatures, the premises can be very hot for customers and staff. The comments express the benefits to the internal space which would improve the environment for all.
- 7.2.4 A number of representations also noted the benefits to the environment which can get hot in the summer. It is considered that these are reasonable and fair points and the indoor space would clearly benefit from the availability of air conditioning.
- 7.2.5 It is noted that an earlier application, ref. 19/01156/VAR for a similar air conditioning system was refused in 2019. That application proposed condensers on the side of the building in a different location to those proposed now. The condensers were different than those now proposed, and the Environmental Protection Officer's comments advised that the information was insufficient to demonstrate that noise emitted by the units would not unacceptably harm residential amenity. This differs to this application which provides more details on the noise levels of the units in the form of manufacturer product details. The advice received from Environmental Protection also is in support in this case, unlike the previous application.
- 7.2.6 There are residential properties near to the premises, including to the rear. The proposed condensers would be close to the external amenity area of a residential property and concern has been raised about the noise affecting the use of this space. Whilst the units would evidently be close - just a matter of a couple of metres from the edge of the hardstanding amenity area - the advice from Environmental Protection is that the decibel level and character of the noise that the units would emit would not unacceptably harm the enjoyment of this space by occupiers

7.2.7 Concern has been raised that access across a nearby residential property would be required, such as for any maintenance. However, from the site visit it became apparent that access to the location can be achieved through the adjacent restaurant. It is apparent therefore that access is not required through the adjacent residential property.

7.2.8 Despite the access to the units being possible through the adjacent restaurant, matters of legal right of access for maintenance are not material planning considerations. Civil matters, such as this, do not represent a reason to resist a proposal for the air conditioning units and condensers.

7.3 **Heritage**

7.3.1 The council is required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

7.3.2 Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on a decision maker to pay special attention to the need to preserve or enhance the character or appearance of a conservation area.

7.3.3 The site is located within the Higham Ferrers Conservation Area and as such consideration is given to the impact on the heritage asset. The location of the external condensers units is what can reasonably be described as hidden away from public view. They would be attached to the rear wall of the toilets of the café, in a small alleyway beside a way at the back of the commercial units. It is considered the proposal would have no material impact on the Conservation Area.

8. **Other Matters**

8.1 Neighbour comments: Concern has been raised that the Location Plan is inaccurate as it does not include a residential block of flats, Westfield Mews, to the rear. In response to this point, as this application seeks a variation to an existing planning permission, the Location Plan is necessarily identical to that of the host planning permission. Officers are familiar with the location of the flat block relative to the application site and it is also necessary to note that all nearby properties have been taken into account as part of the consideration of this application.

8.2 Concern was also raised that notice was not served on neighbours and that it may be required as maintenance of the units would require access across third party land. In response to this, land ownership is a civil matter between the parties and is not a planning matter, as stated above.

- 8.3 Health Impact Assessment: Paragraph 92 of the NPPF states planning policies and decisions should aim to achieve healthy, inclusive and safe communities and, specifically, criterion c) of this seeks to enable and support healthy lifestyles, for example, through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts which encourage walking and cycling. It is considered that the proposal subject to this application will improve the conditions in the premises to the benefit of those who use it, particularly staff and customers. It is considered acceptable on health impact grounds.
- 8.4 The Council does not have records of Condition 6 of planning permission ref. 17/01941/FUL being satisfied. This relates to the colour scheme of the shop front and was required to be approved by the Council prior to first use by members of the public. Whilst it appears the colours may not have been agreed, this is not considered to go at the heart of the host planning permission. It is apparent the change of use has occurred, and the planning permission has been implemented. As such, the proposed variation of conditions 4 and 8 is acceptable from a procedural perspective, however because an approval results in a freestanding planning permission condition 6 is re-imposed (as recommended condition 5) in amended form to retain its enforceability.

9. Conclusion / Planning Balance

- 9.1 The proposed variation of conditions to allow the installation of air conditioning and condenser units is considered to be acceptable in terms of the impact on the amenity of neighbouring properties and the impact on the Higham Ferrers Conservation Area. It would improve the conditions inside the unit, particularly in hot weather, and is considered to comply with the relevant planning policies, including Policy 8 of the North Northamptonshire Joint Core Strategy (2016).

10. Recommendation

- 10.1 That planning permission be GRANTED subject to conditions.

11. Conditions

- 1 The rear kitchen/preparation area(s) hereby approved shall be used in association with the café area identified on drawing number B41-2F and notwithstanding the provisions of the Town and Country Planning Uses Classes Order 2014 (or any order revoking and re-enacting that Order), the kitchen/rear preparation area(s) shall be used for the purposes stated within the application description and application documents and for no other purpose (including any other activity falling within Class B2 of the Order).

Reason: To ensure that the use of the premises does not change in a manner which could detract from the character and appearance of the area, affect local amenity, and in the interest of highway safety.

- 2 This permission confers permission for the front area of the premises identified on drawing number B41-2F to be used as a café only and notwithstanding the provisions of the Town and Country Planning Uses Classes Order 2014 (or any order revoking and re-enacting that Order), the front area of the premises shall be used for no other purpose (including any other activity falling within Class A3 of the Order).

Reason: To ensure that the use of the premises does not change in a manner which could detract from the character and appearance of the area, affect local amenity, and in the interest of highway safety.

- 3 Notwithstanding any of the submitted details, and with the exception of the air conditioning and external condensing units detailed on approved drawing number BEC_HF-21_205_1.1 and manufacturer product details, no roaster(s), air-conditioning unit(s), condenser(s) or any other external ventilation or extraction equipment, shall be installed internally or externally at the premises..

Reason: To prevent odour or noise issues arising from the development, in the interest of residential amenity and local amenity.

- 4 The windows and doors alterations shown on drawing number B41-2F shall be carried out in timber, or an alternative wooden material, as may be agreed in writing with the Local Planning Authority.

Reason: In the interest of conserving the character and appearance of the Higham Ferrers conservation area.

- 5 Unless within 2 months of the date of this decision the colour scheme for the shop front of the building, including the fascia boards and windows and doors is submitted in writing to the local planning authority for approval, and unless the shop front of the building, including the fascia boards and windows and doors is painted within 4 months of the local planning authority's approval in accordance with the approved colour scheme, the use of the building hereby permitted shall cease until such time as the colour scheme has been approved and implemented.

Upon the shop front of the building, including the fascia boards and windows and doors being painted as specified in this condition the building shall thereafter be retained in the approved colour. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Reason: In the interest of conserving the character and appearance of the Higham Ferrers conservation area.

- 6 The premises shall not be open to customers or any other visiting member of the public except between the hours of 08:00am to 19:00pm Mondays to Saturdays and 09:00am to 17:00pm on Sundays and Bank Holidays.

Reason: In the interest of neighbouring amenity and local amenity.

7 Except where expressly stated by other conditions on this planning permission, the development hereby permitted shall be carried out strictly in accordance with the following approved drawings, received by the Local Planning Authority:

- Drawing number: B41-2F 'As Proposed Plans & Elevations' received on 17.10.2017 (Elevations only);
- Ordnance Survey Location Plan received on 13.09.2017;
- HVAC Layout for Approval ref. BEC_HF_21-205_1.1 received 14 June 2021;
- Manufacturer's Specification: Toshiba Air Conditioning – RAV-GM Data Sheet model RAV-GM1101ATP-E;
- Manufacturer's Specification: Toshiba Air Conditioning – RAV-GM Data Sheet model RAV-GM801ATP-E.

Reason: In order to clarify the terms of this planning permission and to ensure that the development is carried out as permitted.