

Name of Applicant	Proposal	Expiry Date	Plan Ref.
Mr E Stringfellow	<p>Timber hit and miss cedar fence, rear double gate and UPVC corrugated roof sheeting to provide shelter to existing external seating area. Partial conversion of car park to permanent use of external seating area with canopy awning and proposed clad shipping container to be used as dry store. Retaining 2No. existing parking spaces.</p> <p>Cup & Bean, 121 Worcester Road, Hagley, Worcestershire, DY9 0NG</p>	27.05.2021	21/00324/FUL

Councillor Colella has requested this application be considered by Planning Committee rather than being determined under delegated powers

RECOMMENDATION: That planning permission be **GRANTED**

Consultations

Highways - Bromsgrove

No objection

The site is located within a highly sustainable location, parking restrictions and parking bays (with time restrictions) are located in the vicinity, the increase for parking associated with the proposed development would be negligible.

Hagley Parish Council

Councillor Steve Colella (Bromsgrove District Councillor for Hagley West and Chairman of HPC) brought to council the issues raised by residents of Church Street directly with him. Whilst HPC has not formally drawn a conclusion in respect of this application the planning officer is cordially asked to consider the points below in deciding on this application:

- The application is submitted by the business address 121 Worcester Road, but the
- impact of the application will be most acute on Church Street.
- Church Street is at the rear of 121 Worcester Rd.
- Church Street is a residential area and as such the impacts of the business application should be considered in the context of a business proposal in a residential area. As such, planning policies should reflect the protection of residential properties and impacts on resident's health and wellbeing as well as affording due protection to a dwelling amenity from a business application.
- During Covid lockdown 2 and 3 the applicant has benefited from and operated within emergency legislation designed to support business continuity during and because of government guidance.
- Therefore, the residents of Church Street, neighbouring businesses and the local amenities have been experiencing, during this time, the impact that is likely from the trading that would be allowed if this application is approved.

- The issues below have already been experienced first-hand by the residents and as such there are reasons to suspect that these will reoccur if the application is approved.
- During this period Worcestershire Regulatory Services have been involved addressing the complaints and impacts on the neighbouring households.
- This application is being objected to by all residents of Church Street.
- Church street is already adversely affected by the lack of 'multi-directional' access/exit at the Summervale Road/A456/B4187 junction.
- Traffic accessing Summervale Road, Milestone Drive and Cavendish Rd et.al. (several hundred houses) use Church Street at least once every journey and so any additional pressure caused as a result of granting this application would result in this road experiencing excessive congestion and at certain times of day probably complete blockage.
- Church street has pavement only on one side of the road and is effectively a single carriage when legitimately parked cars are considered.
- Adhoc, drop and shop parking would compound these problems especially outside parking enforcement hours during evening trading hours.
- The applicant has tailored the application so that when the emergency Covid legislation is removed the business will continue in this continued fashion.
- Each property will be affected in different ways, but the overall feeling is that this is an unsafe precedent to approve and will result in the blighting of the road.

The matters that should be considered are as follows:

- Noise pollution caused by general activities undertaken in the rear premises, both in the seated area and kitchen space.
- Disturbance will be intrusive and uncontrollable during trading hours as well as non-trading hours when cleaning, restocking, and organising the rear space is carried out.
- Access in and out of this area of Hagley has already been discussed above. Vehicular access already causes major problems. There is record of at least 2 occasions where emergency vehicles were restricted and unable to get close enough to treat an emergency case that arose in Church St. If this application is approved there would be a high risk that emergency vehicles will not be able to get to or get through at all imposing a safety issue.
- There is also record of a fire engine that could not access the area and each property had to be contacted to move legitimately parked vehicles. Approval of this application will compound this problem.
- Light and smell nuisance were experienced during lockdown trading and will be repeated should this application be approved.
- Inappropriate parking – this will increase especially after normal trading hours during early evening and late-night trading and whilst there is no parking enforcement.
- There is no control where vehicles will just stop and wait whilst buying take-away food.
- The carpark amenity will be vastly reduced therefore forcing business personnel to park offsite.
- Parking is already inadequate in Hagley and so loss of parking spaces here will further hinder shopper parking.
- There will be an overspill of drinkers/smokers onto the adjoining private parking, roads and pavements.

- Littering has already been an unpleasant consequence of the additional trade and is likely to be a reoccurring and uncontrolled problem.

WRS - Noise

Updated comments: no objection to the revised application in terms of any noise / nuisance issues.

WRS- Licensing (Food and Drink)

A premises licence was granted in November 2019. No application has been received to vary that licence since it was granted.

Public Consultations

22 objections have been received raising the following concerns:

- Noise causing disturbance to residents, including impact on bedrooms and affecting ability to sleep.
- Noise from use of external seating area
- Noise from patrons as they arrive/leave/queue/walk down Church Street
- Anti-social behaviour - made worse by effects of alcohol
- Late night drinking hours
- bar inappropriate on a residential street
- Invasion of privacy
- Increase in traffic /speeds
- Inconsiderate parking on double yellow line/close to junction/pavement
- Deliveries cause problem
- blocks junction and access for emergency vehicles and pedestrians
- some residents do not have off-street parking and park on Church Street. Fewer spaces available for residents.
- Odour
- Litter
- Loud music
- Church Street is a residential street but suffers the effects of noise/smells/parking and traffic problems linked to proposal.

Councillor Colella

I write in respect of the above application and would urge the case officer to refuse the application based on the material reasons below.

I am the ward councillor for Hagley West and have been made aware of the impacts of this business during lockdown 2 and 3 when trading under emergency legislation designed to support businesses during lockdowns. I have been contacted by several residents of Church Street acting on behalf of the whole residential street. I have seen the petition raised objecting to the impacts of this business during the lockdown period which has the support of every household in the street.

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- Church Street is at the rear of 121 Worcester Rd
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and impacts on resident's health and wellbeing as well as affording due protection to a dwelling amenity from a business application.

- During Covid lockdown 2 and 3 the applicant has benefited from and operated in emergency legislation designed to support businesses continuity during and because of government covid guidance.
- Therefore, the residents of Church Street, neighbouring businesses and generally local amenities have experienced the likely impact of trading similarity to this application.
- The issues below have already been experienced first-hand by the residents and as such there are reason to suspect that these will reoccur if the application is approved.
- During this period Worcestershire Regulatory Services have been involved addressing the complaints and impacts on the neighbouring households.
- This application is being objected to by all residents of Church Street
- Church street is already adversely affected by the lack of 'multi-directional' access/exit at the Summervale Roan/A456/B4187 junction.
- Traffic accessing Summervale Road, Milestone Drive and Cavendish Rd (several hundred houses) use Church Street at least once every journey and so any additional pressure that would be because of this application would result in this road experiencing congestion and at certain times of day probably complete blockage.
- Church Street has pavement only on one side of the road and is effectively a single carriage when legitimately parked cars are considered.
- Adhoc, drop and shop parking would compound these problems especially outside parking enforcement hours/evening trading hours.
- The applicant has tailored the application so that when the emergency Covid legislation is removed the business will continue in this fashion.
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- Access in and out of this area of Hagley has already been discussed above. Vehicular access already causes major problems. There is record that on at least 2 occasions emergency vehicles were restricted and unable to get close enough to treat an emergency case that arose in Church St. If this application is approved there would be a safety and high risk that emergency vehicles will not be able to get to or get through at all.
- There is on record that a fire engine could not access the area and each property had to be contacted to move legitimately parked vehicles. Approval of this application will compound this problem
- Light and smell nuisance were experience during lockdown trading and will be repeated should this application be approved.
- Inappropriate parking – this will increase especially after parking and trading hours early evening and during late night trading.
- There is no control where vehicles will just stop and wait whilst buying take-away food.

- The carpark amenity will be vastly reduced therefore forcing business personnel to park offsite.
- Parking is already inadequate in Hagley and so loss of parking spaces here will further hinder shopper parking.
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- Littering as already been an unpleasant consequence of the additional trade and is likely to be a reoccurring and uncontrolled problem.

Relevant Policies

Bromsgrove District Plan

BDP1 Sustainable Development Principles

BDP2 Settlement Hierarchy

BDP16 Sustainable Transport

BDP18 Local Centres

BDP19 High Quality Design

Others

NPPF National Planning Policy Framework (2021)

NPPG National Planning Practice Guidance

Bromsgrove High Quality Design SPD

Relevant Planning History

17/00330/CUP RIO	Change of use of ground floor from hair salon (A1) to Boutique Coffee House (A3).	Prior approval granted	03.05.2017
B/2003/0658	Shower room / utility / kitchen area (as built) to rear of retail premises.	Granted	17.07.2003
B/2003/0198	Tanning Studio/Sunbeds - Change of Use. Augmented by floor plans received 27.03.03.	Granted	10.04.2003

Assessment of Proposal

Background

The business at this site was operating as a boutique coffee house prior to the start of the covid pandemic. In response to lockdown restrictions / social distancing requirements, takeaway facilities were introduced and a hit and miss timber structure plus an external seating area were constructed under temporary permitted development rights that applied to England. These temporary rights are coming to an end on 22nd March 2022.

Application Site

The application site comprises 121 Worcester Road and land to the rear with parking/manoeuvring space beyond. Pedestrian access is gained through the building

from the entrance door off Worcester Road and vehicular access off Church Street across the car parking area located to the rear of 123 Worcester Road. The site is located wholly within Hagley Local Centre as defined on the Bromsgrove District Plan Proposals Map.

The Proposal

The application seeks permission for:

- the retention of a covered hit and miss timber structure with corrugated roof, attached to the rear of the building which is used as a covered seated area/smoking area
- the retention of an external seating area to the rear of the building to include storage facilities.
- proposed canopy over the external seating area
- proposed partial timber clad shipping container to be used as a dry store

Principle of Development

It is important to recognise that the whole of the application site is located within Hagley Local Centre as defined on Bromsgrove District Plan Proposals Map and within the urban area.

Policy BDP18 focusses on the provision of retail development (referred to as Class A Uses) within Local Centres. Reference to Class A is out of date following changes made in 2020 to The Town & Country Planning (Uses Classes) Order 1987. The former Class A is now part of a wider Use Class E (commercial, business and service). The existing unit at 121 Worcester Road falls within Use Class E.

The areas occupied by the external seating/car parking and manoeuvring space do not form part of the planning unit of no. 121 that was previously granted prior approval for change of use to coffee shop. BDP18 states that "...Applications for alternative uses of land or buildings will be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable Local centres and their communities." Para 86 of the NPPF states that planning decisions should support the role of town centres at the heart of local communities by taking a positive approach to their growth, management and adaptation. The proposed use / retention of seating falls within the definition of main town centre uses set out in the NPPF and the Glossary makes clear that the definition of 'town centre' also applies to local centres. Therefore, the proposed development is considered acceptable in principle subject to consideration of other relevant policy and planning matters.

High Quality Design and Local Character

The site is visible from the eastern end of Church Street across the open car park area to the rear of 123 Worcester Road. It is set against the backdrop of the large expanse of brickwork that forms the side elevation and rear staircase of the Spar. This abuts the entrance to the rear service area of the Spar where palisade style gates and a wooden clad extension are visible. On the opposite side of Church Street are a block of breezeblock garages and the rear of commercial premises which front onto Worcester Road. Residential properties lie to the west of the local centre with the dwellings at nos 1 and 2 Church Street being located within the defined Local Centre.

There is a mix of materials in the immediate streetscene. Prior to the construction of the external seating area, the rear of no. 121 was marked by a wooden fence and gate.

The hit and miss timber structure, whilst visible from Church Street, is largely screened by the rear wing of 123 Worcester Road. Although the use of such material differs from the brick of the existing building and may not be judged to be high quality in comparison, it is not prominent and does blend into the backdrop of the rear of the adjoining buildings. There is a wooden structure to the rear of the Spar and the covering of the lower roofs on the adjacent no. 123 Worcester Road and breezeblock garages opposite are of a corrugated appearance. Therefore, in the context of the setting, the design and materials of the timber structure are considered to be acceptable.

The external seating is bounded by a horizontal fencing and planters (total height approximately 1.8m high), screening it from external views. It is noted that 2m high fencing could be erected as a means of enclosure without the need for planning permission, and that such boundary treatment was previously in situ along the rear of no. 121. This is a material consideration. In this context the outward appearance of the external seating area is not dissimilar to a similar arrangement that could be erected under permitted development rights. The existing enclosure has been softened by the inclusion of planters and overall, the external appearance of the seating area is considered acceptable.

A retractable awning supported by steel posts is proposed over the external seating area. There are a number of different roof heights and mix of materials in the streetscene; including the breezeblock garage block that is set back from Church Street opposite in a similar relative position to the proposal. In this context the installation of an awning is considered acceptable. A condition is recommended to secure details of the appearance of the awning.

Economic Matters

The NPPF (para 81) requires that significant weight is placed on the need to support economic growth with planning decisions expected to help create the conditions in which business can invest, expand and adapt. The application has been submitted as a result of the changes to the business arising from the covid pandemic. Supporting information submitted with the application, makes it clear that the external seating area has become essential to the business. The economic benefit of the proposal therefore carries significant weight in the determination of the application and supports the grant of planning permission.

Highway Matters

BDP16 (Sustainable Transport) requires developments to comply with Worcestershire County Council's Transport Policies, design guide and car parking standards, incorporate safe and convenient access and be well related to the wider transport network. The existing authorised Class E use of no. 121 is not subject to any requirement to provide off-street car parking. This is a material consideration.

Information submitted by the agent explains that the unit has had use of parking to the rear of the property since 2011 (previously associated with its use as a hairdressers). In this application, the applicant is proposing to provide 2 car parking spaces. The Highway Authority (HA) has raised no objection to the proposal, noting that the site is located in a sustainable location, that public transport and on-street parking bays are available within the local centre.

Concerns have been expressed by local residents regarding inconsiderate parking close to the junction, parking on double yellow lines and on the pavement. Hagley Parish Council and Councillor Colella refer to reports of access difficulties resulting in emergency vehicles being unable to get close enough to treat an emergency case and another incident where each property had to be contacted to move legitimately parked cars. It is not clear that this was a result of inappropriate parking by users of the structures that are proposed for permanent retention in this application or by anyone associated with the pre-existing and authorised use of the premises as a Class E unit at all. Several comments received point out that Church Street is relatively narrow and as a result of existing on-street parking along one side is sufficiently wide enough only for 1 lane of traffic to pass at a time. It is not considered that the refusal of the application would protect the public highway along Church Street from unauthorised, inconsiderate parking or ensure access by emergency vehicles would be safeguarded. This would be achieved by the enforcement of existing parking restrictions, (which can be reviewed as necessary by the Highway Authority) and the police are able to deal with illegal parking, if a vehicle is parked dangerously or in a way that would prevent emergency vehicles from accessing.

Other comments refer to the increased use of existing on-street parking along Church Street which has been attributed to customers of the application site and it has been pointed out that not all the houses here benefit from off-street parking, parking on-street instead. It is acknowledged that some customers of the application site or other businesses along Worcester Road may choose to park along Church Street. The available on-street parking along Church Street is not subject to any residents-only parking restrictions. Whilst its occupation by non-residents may cause inconvenience to those who would otherwise park their cars here, the lack of existing parking facilities associated with the existing houses is not a matter to be considered in the determination of this planning application. Whilst the concerns of residents are acknowledged, the planning assessment of these is that it is not considered reasonable to refuse the application due to matters of parking or highway concerns. Furthermore, these matters have not resulted in an objection from the Highway Authority.

The Highway Authority has raised no objection to the application and advised that the additional parking requirement attributable to this application would be negligible. No. 121 is not subject to any requirement to provide off-street parking at present. Therefore, parking aspects of the application do not raise planning concerns.

The HA has expressed concern that the car park is surfaced in an unbound material. However, this is an existing surfacing and no change is proposed to the surfacing of the car park as part of the application. Historic images of the site show an unbound surfacing in 2009. Although this may have been added to more recently the use of unbound material is not a new feature on this site. With regards to the tests for planning conditions, it is not considered necessary or reasonable to require the resurfacing of that part which is within the red line in order to facilitate the grant of planning permission.

Impact on Residential Amenity

The majority of comments express concern at the impact of the proposal on residential amenity, particularly with regard to matters of noise and odours. This is mainly a result of experiences during lockdown when the business changed its operational model by working with food vans to provide an amended food offer at the site. During this time

planning restrictions were relaxed in England to enable outdoor seating and takeaway facilities. A number of residents raised complaints and these were investigated by Worcestershire Regulatory Services (WRS). WRS has advised that it gave advice to the business owner and as a result the management of the operation was found to have improved. WRS advised that no further complaints had been received.

The planning application originally sought permission for a new kitchen to the rear of the site located within a timber clad shipping container. Following discussions regarding the management of odours/flues/extraction equipment, the application has been amended. Permission is no longer sought for a kitchen; instead a dry store is now proposed. The agent has explained that the applicant intends to provide kitchen facilities within the existing building (NB. that does not form part of the current application). In updated comments, WRS has raised no objection with regard to odours or noise.

In response to the amended planning application, some neighbours have acknowledged that the nuisance has reduced compared to the earlier experiences during lockdown but noise and smells are still a concern. The proposal no longer includes a kitchen therefore any odour would be limited to the smell from any food consumed. As information has been submitted advising that food counts for only 15% of the business and the external seating area would hold approx. 20 covers, it is not considered that the resultant odour would be significant. Therefore, the impact of odour associated with this planning application is considered to be acceptable.

Noise/anti-social behaviour has been linked in some comments from residents of Church Street, Hagley Parish Council and Councillor Colella in part to the sale of alcohol at the site. The agent has questioned this. Given that there are a number of businesses selling alcohol in the vicinity, it is unclear that any nuisance suffered is or is solely from patrons of this site. The use of no. 121 falls within planning Use Class E (commercial, business and service) and this use will not be amended as a result of the current application. A drinking establishment or drinking establishment with expanded food offer would be a sui generis use and would require a planning permission for a change of use. The application is not seeking a change of use. Supporting information submitted with the application explains that the sale of coffee is the primary business. Approximately 15% of sales are attributed to food and 5% to alcohol. This is not considered to fall outside of Class E and on the basis of this information would not require a change of use.

Other concerns have been expressed that the application will result in people spilling out of the site onto the spaces to the rear to no. 123 Worcester Road to drink/smoke. The hit and miss timber structure has been so designed to provide a smoking facility. The plans show that the layout of the site would not include any direct access between the external seating area and neighbouring land. This will be gated, locked and for staff only. Customers would access and exit the site via the building entrance along Worcester Road (as annotated on the submitted plans), reducing the likelihood of customers leaving the premise to walk round the corner to the neighbour's car park. Suitable planning conditions are recommended to secure the access/egress arrangements. It is acknowledged that the parking area to the rear of no.123 Worcester Road is not gated and therefore access is possible by anyone who seeks to do so, though it would not be directly accessible from the seating area such that patrons could spill out onto it.

Littering is another concern that has been raised. During lockdown, cafes were allowed to operate as takeaways. This right was not subject to any conditions regarding disposal of litter. Some of the comments received state that once they had bought takeaway food, customers perched on garden walls and discarded the containers in the street. The right for cafés to operate as takeaways expires after 23rd March 2022. Takeaways are now a sui generis use and planning permission would be required to change the use of no. 121. This application is not seeking to change the use of the premises. Bin storage is shown within the confines of the site and given the screening of the seating areas, it is not considered likely that any litter such as paper serviettes would be blown out of the site.

The site does benefit from a premises licence. It is understood that the consumption of alcohol is not a licensable activity so long as the point of sale was within the area shown on the licence plan. Thus, it is possible to consume alcohol within the external seating area. It can be expected that there will be some noise that would emit from the external area. It is considered that when living in close proximity to a local centre, including within the boundary of the centre itself some noise and disturbance has to be expected. The NPPF advises that planning decisions take account of the likely effects on living conditions (para 185) and should mitigate and reduce the potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life. Noise nuisance can be addressed by non-planning legislation that is within the remit of Worcestershire Regulatory Services.

Neighbours have raised concern regarding loud music. The agent has advised that there is no intention to play loud music. As noted above, matters of noise nuisance can be addressed by non-planning legislation enforced by WRS.

Concerns have also been expressed that site servicing and deliveries could cause rise to noise and disturbance for residents. This is an existing Class E unit and has no restrictions on its delivery arrangements. In amending the Use Classes Order, no restrictions were attached to deal with delivery arrangements. It is not considered reasonable to seek to attach such conditions as part of this application. In terms of opening hours, No. 121 itself is not currently subject to any hours condition and it is not considered reasonable to seek to control the hours of operation.

Conclusion on Planning Balance

This is an accessible site, within a designated Local Centre within the urban area. There is a bus route immediately adjacent to the site, and parking bays available within the Local Centre. Although some parking arrangements may result in some inconvenience at certain times, the proposal would not lead to unacceptable harm.

The design and appearance of the development is considered acceptable in the context of the position of the development, its setting and taking account of permitted development options.

It is considered that the impact on neighbouring residents can be satisfactorily mitigated by the planning conditions recommended.

The application represents a positive and effective use of the site and the economic benefits weigh significantly in favour of the development.

Overall, the proposal is considered to accord with the development plan, NPPF, High Quality Design SPD and subject to the conditions recommended is considered acceptable with regard to material planning matters.

RECOMMENDATION: That planning permission be **GRANTED**

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of the grant of this permission.

Reason: In accordance with the requirements of Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings:

Location plan - drawing no 02 Rev A

Block plan - drawing no. 03 Rev A

Proposed plans & elevations dry store drawing no. 05 Rev B

Proposed side elevation (facing Church Street). Proposed ground Floor Plan, Existing Ground floor plan, Car parking layout and access arrangements - drawing no. 04 Rev C

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

- 3) Prior to installation, full details of the design of the awning hereby approved, including materials, shall be submitted to and be approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved details.

Reason: To ensure the satisfactory appearance of the development and impact on the streetscene

- 4) The external seating area shall be used solely in connection with 121 Worcester Road.

Reason: To control access from Church Street and safeguard the residential amenities of neighbouring properties. To safeguard neighbouring residential properties from unacceptable noise and disturbance.

- 5) Access/egress to the external seating area by customers shall only be gained through the building at 121 Worcester Road as shown on the approved plans. For the avoidance of doubt the gate leading from the external seating area/dry store shall not be used by customers other than in an emergency.

Reason: To control access from Church Street and safeguard the residential amenities of neighbouring properties. To safeguard neighbouring residential properties from unacceptable noise and disturbance.

- 6) The clad container shall be used only as a dry store for storage as described in the design and access statement and shall not be used at any time by customers or for the purposes of providing direct serving of customers.

Reason: To safeguard the residential amenity of neighbouring properties. To safeguard neighbouring residential properties from unacceptable noise and disturbance.

- 7) The external surfaces of the container hereby permitted shall be treated in accordance with the materials specified on the application form (cedar batten cladding over black painted walls) and as shown on the approved plans prior to being brought onto site and the cladding shall be thereafter retained as shown.

Reason: To ensure the satisfactory appearance of the development and impact on the site and surroundings.

- 8) No storage shall take place on the parking or manoeuvring areas and the parking and manoeuvring space shall be kept available at all times for those purposes. No means of enclosure shall be erected within any part of the parking or manoeuvring area.

Reason: To ensure the retention and availability of the 2 parking spaces and manoeuvring space and to ensure the satisfactory functioning of the development. To ensure the satisfactory appearance of the site and streetscene.

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