

Name of Applicant Type of Certificate	Proposal	Map/Plan Policy	Plan Ref. Expiry Date
MR. C. HARVEY 'B'	Removal of condition 3 as per planning approval 10/0652 - Land at corner of Beverley Road, New Road, Rubery, B45 9JA	Shopping	11/0864-SC 19.01.2012

Councillor P. M. McDonald has requested that this application be considered by the Committee. Additionally, this application has been referred to the Committee as it involves a major development.

RECOMMENDATION: that permission be **GRANTED**.

Consultations

WH Consulted: 26.10.2011. Response received: 31.10.2011.
No objection.

BCO Consulted: 26.10.2011. No response received.

RA Consulted: 09.11.2011. No response received.

PROW Consulted: 09.11.2011. No response received.

Publicity Site Notice posted 07.11.2011; expired 28.11.2011
Press Notice published 03.11.2011; expired 24.11.2011

5 Neighbour notification letters posted 26.10.2011; expired 17.11.2011
1 additional neighbour notification letter posted 09.11.2011; expired 30.11.2011
No letters of objection received.

The site and its surroundings

The application relates to a rectangular site on the corner of New Road and Beverley Road, Rubery, extending to 0.285 Hectares. The site was previously occupied by Mr. B's Market Hall which was subdivided internally into a number of small retail outlets. That building was demolished in April 2007.

At the New Road / Beverley Road junction is a small cluster of more traditional two storey units with narrower frontages and retail uses to ground floor with residential uses above. The majority of this development is however in a very poor state of repair.

The site is adjoined by a public right of way and existing retail/residential units to its western boundary and the residential properties along Beverley Road and Graham Crescent to its southern boundary.

The site is located within Rubery's defined Shopping Area.

Proposal

This application proposes the removal of condition 3 of permission 10/0652. The condition relates to No.'s 212 - 216 New Road which are former retail units along the site frontage which were fire damaged during 2009. Although badly damaged, the buildings

remain standing and Condition 3 of application 10/0652 places a positive obligation on the applicant to demolish the buildings within 3 months of the date of the permission granted 16.08.2011.

Condition 3 states:

"A satisfactory scheme detailing the demolition of the fire damaged buildings on the site shall be submitted to the Council for approval in writing. The approved scheme shall be fully implemented within 3 months from the date of this permission."

Reason: To secure the satisfactory appearance of the site in accordance with policy CTC.1 of the Worcestershire County Structure Plan 2001 and policy DS13 of the Bromsgrove District Local Plan 2004."

Relevant Policies

WMSS	QE3
WCSP	SD.1, SD.2, SD.3, SD.4, SD.5, CTC.1, CTC.9, T.1, D.5, D.34
BDLP	DS13, DS4, S3, S7, S15, S21, S28, S29, RAT5, RAT6, TR11, RUB2, ES3, ES7
DCS2	CP3, CP10, CP18
Others	PPS1, PPS3, PPS4, PPG13, PPG17, PPG23, SPG1, SPG11

Relevant Planning History

B/2003/0987	Residential and retail development - Outline consent - Granted 11.09.2003
B/2007/0142	Demolish existing structures and construct three storey development of retail and residential with associated external works - Reserved Matters - Withdrawn.
B/2007/0433	Erection of three storey building comprising retail use on ground floor and 22 apartments above, and associated works - Granted 26.07.2010
10/0652	Extension of time limit for implementation of B/2007/0433 (Erection of three storey building comprising retail use on ground floor and 22 apartments above and associated works. As amended by plans, planning statement and Design and Access Statement received 31.05.2007) - Granted 16.08.2011

Notes

Application 10/0652 proposed the "Extension of time limit for implementation of B/2007/0433 (Erection of three storey building comprising retail use on ground floor and 22 apartments above and associated works. As amended by plans, planning statement and Design and Access Statement received 31.05.2007)."

Application 10/0652 was considered by members at a full planning committee meeting on the 11th October 2010. Permission was subsequently granted 16th August 2011 following the completion of a satisfactory agreement under Section 106 of the Town and Country

Planning Act 1990, as amended, in respect of financial contributions in relation to educational provisions and off-site play space.

Given the unsightly appearance of the site, condition 3 of planning permission 10/0652 was imposed to secure the satisfactory appearance of the site within a specific timeframe.

Advice on the imposition of planning conditions is set out in Government Circular 11/95: 'The Use of Conditions in Planning Permissions'. Paragraph 14 of Circular 11/95 states that:

"... conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 14 - 42. In brief, these explain that conditions should be

- i. necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other respects."

Paragraphs 15 - 17 of Circular 11/95 advise that in considering whether a condition is necessary, authorities should ask themselves whether planning permission would have to be refused if the requirements of that condition were not imposed. If it would not, then the condition needs special and precise justification. The same principles, of course, must be applied in dealing with applications for the removal of a condition: a condition should not be retained unless there are sound and clear-cut reasons for doing so.

In relation to the criteria set out in Circular 11/95, it is viewed that it would not be reasonable to refuse the planning permission for application 10/0652 on the grounds that the fire damaged buildings were not demolished within a three month period from the date of the permission. Additionally, members will note that, as demolition constitutes 'development' as defined by section 56 of the Town and Country Planning Act 1990, the condition imposes an absolute obligation on the applicant to start the development within 3 months of the date of the permission. As such, it is considered that the condition is unreasonable and places an unjustifiable burden on the applicant.

Conclusion

The condition imposed requiring the demolition of the fire damaged buildings on the site within 3 months of the date of the permission places an unreasonable and unjustifiable burden on the applicant and is contrary to the provisions of Government guidance contained within Circular 11/95.

RECOMMENDATION: that permission be **GRANTED**.