

Name of Applicant Type of Certificate	Proposal	Map/Plan Policy	Plan Ref. Expiry Date
Mr. T. Mayneord 'A'	Three two storey office units with associated car parking and landscaping (extension of time for permission B/2006/1249) - Regal Garage, 18 Buntsford Drive, Bromsgrove, B60 3AJ	Emp	10/0103-DK 10.05.2010

RECOMMENDATION: that permission be **REFUSED**.

Consultations

Stoke PC	Consulted 11.02.2010. Response received 09.03.2010. No objection.
WH	Consulted 11.02.2010. Response received 15.03.2010. No objection.
ENG	Consulted 11.02.2010. No response to date.
EHO	Consulted 11.02.2010. Response received 11.02.2010: No objection.
EDO	Consulted 11.02.2010. No response to date.
WCC Public Rights of Way	Consulted 11.02.2010. Response received: 24.02.2010 as follows: Object to the application in that it affects a public right of way.
Ramblers Association	Consulted 11.02.2010. No response to date.
LP	Consulted 11.02.2010. No response to date.
Tree Officer Publicity	Consulted 05.04.2010. No response to date. Press Notice published 18.02.2010; expired 11.03.2010. Site Notice posted 10.02.2010; expired 03.03.2010. 1 response received 03.03.2010, summarised as follows: <ul style="list-style-type: none"> ▪ I object to this development since it would increase the amount of traffic and hence pollution on Redditch Road in Stoke Heath. Below is an extract of a letter from Robin Goundry, Environmental Health Services, Bromsgrove District Council, to the residents of the affected properties: <p>"As a result of this work it has been concluded that there are predicted exceedences of the annual mean Nitrogen Dioxide Air Quality Strategy objective at sensitive receptors along Redditch Road, Stoke Heath. These findings were reported to the Government in July 2009.</p> <p>Because of this, the Council has been advised by Central Government that an Air Quality Management Area (AQMA) needs to be declared in Redditch Road, Stoke Heath. This will enable the Council to pursue improved traffic management measures with the Highways Authorities."</p> <p>It seems contradictory to admit to an Air Quality Problem on the Stoke Road and then put even more traffic on it. The application should be rejected.</p>

The site and its surroundings

The application site lies to the south of Buntsford Hill, to the north of the Buntsford Gate Business Park development. The site is flanked by the site of the Regal Peugeot motor dealership to the west (B/2006/0383) and the recently developed and occupied office buildings known as The Courtyard to the north facing the A38 and Buntsford Hill. The site currently contains an extension of the above site to incorporate car parking and a range of buildings. There is a public right of way to the north of the site which runs along the full length of its boundary.

Proposal

The proposal is for an extension of time for permission B/2006/1249 to erect three two storey office units with associated car parking and landscaping.

Relevant Planning History

- B/2009/0053 New car dealership with linking canopy to existing building. New canopy for car handover to existing dealership. New bodyshop and valeting building with offices over. Site external works including resurfacing for parking and perimeter fencing. Additional site lighting from new buildings. Granted 28.04.2010.
- B/2006/1249 Three two-storey office units with associated car-parking and landscaping. Granted 12.02.2007.
- B/2006/0383 New car showroom and vehicle service workshop. Granted 21.06.2006.

Relevant Policies

- WMSS QE1, QE2, QE3, QE4, QE6, PA1, PA14, T2
- WCSP SD.2, SD.3, SD.4, SD.6, SD.9, CTC.1, CTC.9, D.19, D.20, D.21, D.24, D.26, T.1
- BDLP DS3, DS13, C4, E1, E3, E9, TR11, ES4, ES7
- Others PPS1, PPS4, PPG14, PPS23, PPG24, SPG3

Notes

Members should note that the application under consideration is purely for an extension of time of an existing planning permission (B/2006/1249). The merit of the proposal, its acceptability in terms of the provisions of the development plans and material considerations has been considered in this application which was considered by the meeting of the Planning Committee held on 5th February 2007.

The Town and Country Planning (General Development Procedure) (Amendment No. 3) Order 2009 was introduced on 1st October 2009 in order to provide greater flexibility in terms of the implementation of planning permissions. One of the amendments was the provision to allow the time limit for unimplemented consents to be extended through an application. There does not appear to be an established approach towards the assessment of such application so I will refer to the DCLP publication: Greater Flexibility for Planning Permissions: Guidance. The outcome of a successful application will be consent with a new time limit attached. Conditions can be varied if there has been a

significant change in policy since the original application. I note that paragraph 13 makes it clear that additional information other than that on the application form is usually not required except for applications where an EIA was required and may need updating.

Assessment

The site is situated in land designated for Employment purposes within the BDLP. The main development plan policies considered with the application were policies E9, DS13 and TR11 of the BDLP as well as policy T.1 of the WCSP. I consider that these policies would still apply to the proposal and it would accord. National Planning Policy Guidance has been updated with the introduction of PPS4 which supports a coordinated approach to employment development. PPS9 supports biodiversity enhancement. Natural England and Worcestershire Wildlife Trust have been consulted and their views are awaited.

In terms of the consultation responses received, Members should note no objection from Worcestershire Highways and Stoke Parish Council. The issue of the footpath has been resolved and the footpath now runs to the north of the site through a dedicated passage. Whilst it originally passed diagonally over the site, it was successfully diverted in September 2002. In terms of comments received in respect of traffic generation, there has been no objection from Worcestershire Highways, or from Environmental Health in respect of the Air Quality Management Area. Members should note that limited weight can be attached to these considerations as the application under consideration is purely to extend the life of the consent and not the consideration of an entirely new scheme.

The main concern with the determination of the application is the apparent implementation of a subsequent planning permission on the site. The applicant sought permission (B/2009/0053) for a new car dealership. The development also included a new bodyshop and valeting building with offices over and resurfacing for parking. This application included the application site for the consent which the applicant is seeking to extend in the current application. The conditions related to the later permission (B/2009/0053) have also been discharged. Thereby, the development as implemented on the site is entirely lawful and the bodyshop / valeting building and car park are located on the land for which permission was obtained for the three office blocks. The advice of the *Development Control Casebook* was sought on this matter.

The advice referred to the case of *Pilkington -v- Secretary of State 1973* where it was held that implementing one permission which prejudiced another could kill off the second one.

The intention of the applicant in this instance appears to be to clear the site of the buildings consented under B/2009/0053 and start again with B/2006/1249 if the lifetime of the consent is extended.

The Pilkington case is regarded as the leading case on the point. The Pilkington rule is that where there are mutually inconsistent planning permissions and one of them is exercised, then the other(s) cannot stand in respect of the same land once the first development has been carried out if the effect of that development is to make the other permission(s) incapable of implementation.

Members should note that there remains a condition (Condition 12) attached to permission B/2006/1249. This condition required a remediation method statement detailing remediation objectives, how these will be undertaken and the validation procedure. This was a pre-commencement condition. The condition cannot now be complied with as a subsequent consent has been implemented on the site. The previous scheme cannot now be implemented. This conclusion was also reached in the case of R. -v- Arfon Borough Council ex parte Walton Commercial (1997).

The implementation of the original consent (B/2006/1249) would necessitate further works as a result of the implementation of a subsequent permission and whilst the applicant can make a planning application for these, the lifetime of the original consent cannot be extended. The application should be refused.

RECOMMENDATION: that permission be **REFUSED** for the following reason:

The land to which the application relates has been the subject of a later alternative permission which has been implemented. This would not allow for the implementation of the permission for which this application for an extension of time relates.