

Name of Applicant Type of Certificate	Proposal	Map/Plan Policy	Plan Ref. Expiry Date
Barpro Group and Chase Commercial 'A'	Retail Warehouse (bulky goods) with associated parking and infrastructure (renewal of application B/2005/0293) - 2 Sherwood Road, Bromsgrove, B60 3DU	EMP	10/0115-JT 18.03.2010

RECOMMENDATION: that **DELEGATED POWERS** are granted to the Head of Planning and Regeneration to determine the application

Consultations

Worcestershire Highways Consulted: 16.02.2010. Final response received: 15.03.2010.
No objections subject to the imposition of the conditions imposed on the previous approval.

Environment Agency Consulted: 16.02.2010; response received 11.03.2010.
The Environment Agency currently objects to the planning application as insufficient information has been submitted to demonstrate that the impacts of flood risk have been appropriately considered in line with PPS25. The application is currently considered contrary to PPS25 and may be refused on this basis.

The EA was consulted on the previous application, which was submitted with a Flood Risk Assessment (FRA). In May 2005, the EA recommended various conditions to deal with flood risk and contaminated land issues.

However, since this response PPG25 has been replaced by PPS25 (in December 2006).

The application site is located in Flood Zone 3, defined by PPS25 as having a high probability of river flooding (1 in 100 or greater (>1%) annual probability of flooding in any one year).

PPS25 classes the proposed development as a 'less vulnerable' use, which is not considered to be inappropriate in Flood Zone 3, subject to a consideration of the sequential test and provided that an FRA has demonstrated that the development is safe and does not increase flood risk elsewhere (preferably reducing flood risk overall, in line with the policy aims of PPS25).

The EA requires confirmation that Flood Risk has been appropriately considered in line with PPS25 and Practice Guide requirements (for example in terms of assessing the impacts of climate change on peak river flows and rainfall intensity and acceptable depths of flooding in car park areas) and that there have been no significant alterations to the Spadesbourne Brook or key structures (bridges, culverts etc.) since the previous FRA was undertaken.

It may be appropriate for the original FRA to be submitted with a short addendum.

Officers understand that the applicant has been in discussions with the EA over the additional work required, and is close to agreement. The final response of the EA is currently awaited.

Engineers/
Drainage Consulted: 16.02.2010. Comments awaited.

Economic
Development Consulted: 16.02.2010. No response.

Strategic
Planning Consulted: 16.02.2010. No response.

Woodland
Officer Consulted: 16.02.2010. No response.

Worcestershire
Wildlife Trust Consulted: 16.02.2010. No response.

Publicity Site Notice posted 23.02.2010; expired 16.03.2010.

Press Notice (Bromsgrove Standard): 25.02.2010; expired 18.03.2010.

1 objection received from a local resident whose property overlooks the application site, raising the following points:

- The initial application was supported by a very weak transport statement. Considering the change in baseline conditions since the application this matter should be revisited. The junction of Stoke/Sherwood Roads is over capacity and has an accident problem. Adding more traffic without mitigation would be detrimental.
- The initial application referred to a landscaping scheme. It is imperative that the development does not go ahead without an adequate landscaping scheme to mitigate the visual impact of the building on neighbouring residential properties. The objector is not currently convinced that such a scheme has been developed and further work is required.
- It is important that any external lighting at the site does not adversely impact on residential properties.
- A Design and Access Statement should be produced. [Officer's note: the draft Government guidance for the consideration of 'extension of time' applications states that a Design and Access Statement is not required.]

The site and its surroundings

The application site relates to a 1.72 ha site on the south eastern quadrant of the junction of Stoke Road and Sherwood Road, Aston Fields. The site is currently occupied by the vacant Barpro building, which is understood to have been unused since 2003.

The Spadesbourne Brook divides the site with land to the west being used as parking with a vehicular access over the stream. Industrial units of relatively small scale are sited opposite the site and set back from the road behind frontage parking areas.

Proposal

The application seeks to extend the time in which to implement permission B/2005/0293 which was granted on 15th March 2007, and hence expired on 14th March 2010.

The permission allowed for a 3,716 sq m retail warehouse unit with an external bulk sales area of 929 sq m, with parking for 200 vehicles. The building would be single storey with a flat roof, constructed of brick and steel panelling. Conditions attached to the permission restrict the range of goods that may be sold to DIY, garden foods, furniture, carpets and floor coverings, camping, boating and caravanning goods.

The building would have broadly the same footprint and orientation as the building currently occupying the site. A new access to Sherwood Road would be created near to the existing one, which would be closed and the footway reinstated. This would be the main customer entrance to the site. A further access from Sherwood Road in the south east corner of the site is proposed to be retained, to be used for deliveries and servicing the rear of the store.

The applicant has begun work on creating the main access from Sherwood Road, and wrote to the Council on 15th March to notify officers of this fact. In the applicant's view this would constitute the commencement of the development allowed under the existing planning permission, meaning that the current application is unnecessary. However, the question of whether these works are sufficient to constitute commencement of development is a complex legal matter, which would need to be tested by application for a certificate of lawfulness under section 192 of the Town and Country Planning Act 1990 (as amended).

For the avoidance of doubt, Members are advised to assess this application on the basis that works have not been commenced on the original planning permission.

Relevant Planning History

Several applications relate to the longstanding use of the site for manufacturing purposes. The most relevant record relating to the current application is:

B/2005/0293 Retail Warehouse (Bulky goods) with associated parking and infrastructure. Approved: 15.03.2007.

The application was subject to a complicated decision process. On 5th December 2005, planning committee resolved to approve the application, subject to referral to the

Secretary of State and the completion of a satisfactory planning obligation by way of legal agreement or unilateral undertaking.

The application was 'called in' by the Government Office for the West Midlands on behalf of the Secretary of State in March 2006. Following a public inquiry in November 2006, an Inspector recommended that the Secretary of State refuse planning permission for the development. However, the Secretary of State overruled the Inspector and granted planning permission in March 2007.

The permission was subject to conditions requiring the following:

- The development must commence within 3 years.
- Samples of all materials to be submitted.
- A restriction on the range of products sold to non-food bulky goods.
- The provision and retention of adequate visibility splays at the entrance.
- Turning and parking areas to be laid out.
- Contaminated land study to be undertaken.
- Remediation works to be carried out.
- The submission of a construction code of practice.
- The submission of a scheme for foundation design.
- Control of storage of hazardous substances.
- The submission of a drainage strategy.
- A restriction on finished floor levels.
- A restriction on any development within 5 metres of watercourses.
- The submission of a landscaping scheme and control of tree works/protection.
- The agreement of a Travel Plan.

The permission was also subject to a legal agreement securing payment for resurfacing on Sherwood Road, a contribution to a signals upgrade on the A38/Stoke Road/Charford Road junction and bus shelter improvements.

Relevant Policies

WMSS	PA1, PA6, PA6B (draft), PA13, QE3,UR3
WCSP	CTC8, CTC9, D.19, D.31, D.32, D.33, SD.2, SD.3, SD.4, SD.9, T.1, T.4
BDLP	C17, C18, DS3, DS11, DS13, E6, E10, ES1, ES2, ES6, ES7, ES11, ES12, ES14, S20, S21, TR1, TR8, TR10, TR11, TR13.
Others	PPS1, PPS4, PPS9, PPG13, PPS23, PPS25, Bromsgrove Town Centre Area Action Plan - Issues and Options Report 2008, Bromsgrove District Employment Land Review 2009, Annual Monitoring Report 2009, Bromsgrove Town Centre Study 2004, Bromsgrove Town Centre Retail Capacity Analysis Update 2007.

Notes

In 2004 section 73 of the Town and Country Planning Act 1990 Act was amended so that an application to vary conditions could no longer be used to extend the time limit for implementation of a permission. Section 91 was also amended, to reduce from five to three years the default time limit imposed on the implementation of planning permissions.

However, the Government has recently expressed a concern that there has recently been a marked reduction in the implementation of schemes that already have planning permission, and that if these schemes lapse, economic recovery could be delayed.

The Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 now enables existing planning permissions to be replaced before they expire, in order to allow a longer period for implementation. The Explanatory Memorandum issued with the Order explains that the previous planning permission will not be revoked, rather a new permission granted subject to a new time limit.

The Government is yet to issue formal guidance on how such applications for extension of time are to be determined. However, DCLG advice is that the guidance given in the June 2009 *Greater Flexibility for Planning Permissions* consultation is to be used in the interim.

This guidance states that:

"applicants cannot under this provision seek to make any changes to the terms of the planning permission as granted other than an extension of the time allowed for implementation. While the outcome of a successful application will be a new permission with a new time limit attached, the description of the development and all other conditions must remain the same." (Para. 15)

In relation to the approach that local planning authorities should take on such applications, it is advised that

"In current circumstances, local planning authorities should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly. The development proposed in an application for extension will by definition have been judged to be acceptable in principle at an earlier date ... Local planning authorities should, in making their decisions, focus their attention on national and development plan policies and other material considerations which may have changed significantly since the original grant of permission ... Local planning authorities may refuse applications to extend the time limit for permissions changes in the development plan or other relevant material considerations indicate the proposal should no longer be treated favourably or if they consider that this is not an appropriate procedure." (Paras. 17 and 19)

The advice is therefore clear in determining that, unless anything has changed significantly in national or development plan policy, an application to extend the time for the implementation of a permission should be looked upon favourably.

Changes to development plan policy and national guidance

It is noted that the current Worcestershire County Structure Plan (WCSP) was adopted in June 2001 and the Bromsgrove District Local Plan (BDLP) in January 2004, both pre-dating the decision on the 2007 permission granted by the Secretary of State. Although both plans have expired, the Secretary of State has allowed the majority of policies in each document to be saved and extended, and consequently development plan policy has changed substantively. In particular, the policies designating the site for employment use are still in force.

Although the West Midlands Spatial Strategy (WMSS) was revised in January 2008, no policy applied to the original proposals has changed, and nor has national guidance in the form of PPS1 and PPG13. However, PPS6 was replaced by *PPS4: Planning for sustainable economic growth* in December 2009, and PPG25 was replaced by *PPS25: Development and flood risk* in December 2006 (revised in March 2010).

It is therefore considered that the main changes in planning policy since the previous application was determined relate to: 1) retail policy and the 'town centre first' approach; and 2) the assessment of flood risk.

Retail policy and the 'town centre first' approach

The newly published PPS4 sets out a revised mechanism for assessing retail developments. The sequential approach is retained, but the former 'needs test' has been subsumed into a wider test of impact. Policy E10 sets out the approach to be taken towards all proposals for 'economic development'. Policies EC15-EC17 set out transitional arrangements for the assessment of applications in advance of the new approach being adopted in development plan policy.

In assessing applications for main town centre uses outside of existing centres, developers are expected to demonstrate that two tests have been satisfied: 1) that there is no available town centre or edge-of-centre site available for the proposed development (i.e. the 'sequential test', as set out in the regional, county and district policy set out above); and 2) that the proposal will not result in significant adverse impacts on existing centres (i.e. the 'impact test').

Accordingly, Policy EC17.1 states that planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan should be refused planning permission where:

- a) the applicant has not demonstrated compliance with the requirements the **sequential** approach (PPS Policy EC15.1);
- b) there is clear evidence that the proposal is likely to lead to significant adverse **impact**, taking account of the likely cumulative effect of recent permissions, developments under construction and completed development (PPS4 Policies EC10.2 and EC16.1).

Policy EC17.2 states that where no significant adverse impacts have been identified, planning applications should be determined by taking account of:

- a) the positive and negative impacts of the proposal and any other material considerations; and
- b) the likely cumulative effect of recent permissions, developments under construction and completed developments.

In considering the previous application, the Council concluded that there were no sequentially preferable town centre or edge-of-centre sites that were available, suitable or viable to accommodate the proposals. This was partly due to the size and servicing needs of the type of development proposed, which is ill suited to constrained locations.

10 sites were examined, which the Secretary of State found to be comprehensive. As the methodology for sequential testing has not changed significantly in the new PPS4, it is concluded that the Council's previous assessment holds.

The Secretary of State was satisfied that a quantitative and qualitative need for the proposals had been established.

Although 'impact' in the sense of PPS4 was not explicitly assessed during the consideration of the previous application, the impact of the proposals in terms of vitality and viability was discussed at length. It was concluded by the Council that the impact on the Town Centre as a result of the proposals:

would not be of concern in terms of the future vitality and viability of Bromsgrove. This is based upon the view that the health of Bromsgrove is not based on the types of goods that would be sold from the proposed store and that impact would be concentrated on the Focus unit [which forms part of the site currently subject to a planning application 09/0365 by Sainsbury Supermarket for a supermarket and retail units] and associated builders merchants as well as those facilities in competing centres. The proposal would therefore offer the opportunity to claw back some existing retail spending which is leaking to other centres.

Whilst any trade diversion from the town centre is not helpful in sustaining vitality or viability nor attracting potential developers to town centre sites ... the town centre can withstand the application proposal without substantial harm to vitality and viability.

It is also noted that the Secretary of State concluded that "the benefits of the proposal, especially in terms of need and the potential of the proposal to regain expenditure [in Bromsgrove District] that is currently leaking to other areas, outweigh any weaknesses in the frequency of public transport options in this instance" and that the long term viability of the Town Centre would not be affected.

PPS4 Policies EC10.2 and EC16.1 set out a broader range of criteria including the impact on:

- carbon dioxide emissions and climate change;
- accessibility;
- design;
- regeneration and social inclusion;
- local employment;
- public and private investment;
- vitality and viability, choice and range/quality of retail offer;
- allocated sites outside town centres;
- trade/turnover in centre and wider area;
- scale in relation to size of centre and retail hierarchy; and
- locally important impacts on centres.

As is noted above, the Secretary of State previously found that the proposals would have no significant impact on vitality and viability. It is therefore considered that there would be no significant impact on any other centres, investments or allocations, or on the trade and turnover of Bromsgrove Town Centre and the wider area.

With regard to accessibility, the Secretary of State accepted that although "the vast majority of customers travelling to the store would do so by car ... the proposal does offer a choice of transport modes; offers an improvement in non-car transport facilities and includes parking levels that are within the maximum advised by PPG13". It is therefore considered that the development would not have an undue impact on carbon emissions and climate change.

The proposal would involve the reuse of a currently redundant site which would create employment and help to regenerate the site and wider area. The design of the proposals was previously considered acceptable.

On balance, officers are of the opinion that, given the above information, there is no reason to depart from the Secretary of State's previous decision with regard to retail impact.

Assessment of flood risk

Members will note that the Environment Agency currently objects to the proposals on the basis that the Flood Risk Assessment (FRA) submitted with the original application needs to be updated. Officers understand that the applicant is close to reaching agreement over the contents of a revised FRA, which would result in the withdrawal of the objection.

In the event that the requirements of the FRA result in the need for significant changes to the scheme, or the imposition of additional planning conditions, officers advise that the correct course of action would be to refuse planning permission.

Traffic and highways

The objector raises traffic and highways issues in relation to the proposals. Whilst the objector's views are noted, in the absence of an objection from the County Highways Officer or any significant change in local or national planning policy in relation to highways, it is not considered that this issue would warrant refusal of the application.

Conclusion

In conclusion, the changes to policy since the assessment and determination of the previous application should not fundamentally change the Council's approach to the scheme. It is therefore recommended that the application is approved subject to the imposition of similar conditions to those previously attached.

Planning obligation

It is recommended that any permission is contingent on a legal agreement with similar heads of terms to the one attached to the original planning application. This would secure payment for resurfacing on Sherwood Road, a contribution to a signals upgrade on the A38/Stoke Road/Charford Road junction and bus shelter improvements.

Referral to the Secretary of State

Members are advised that resolving to approve the application would depart from the development plan, and in particular would be contrary to policy E10 of the Local Plan, as well as the 'town centre first' approach set out in various development plan policies.

It is noted that the Town and Country Planning (Consultation) (England) Direction 2009 directs that, where the Council does not propose to refuse planning permission for certain categories of development, it should consult the Secretary of State. One such category (as listed at paragraph 5.(1)) includes retail development which:

- (a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and
- (b) is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; and
- (c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is:
 - (i) 5,000 square metres or more; or
 - (ii) extensions or new development of 2,500 square metres or more which, when aggregated with existing floor space, would exceed 5,000 square metres.

The proposed development would a) be in an out-of-centre location; b) constitute a departure from the development plan; and c) would exceed 2,500 sq m. Para. 5(2) explains that the 'existing floor space' referred to should include 'retail, leisure or office floor space situated within a 1 kilometre radius of any part of the same type of use', and is either in existence, substantially completed, committed or planned. The application site is within 1 km of the existing Morrisons and approved Aldi store (09/0729). Officers are therefore of the view that, if Members are minded to grant planning permission, the decision should be referred to the Secretary of State.

RECOMMENDATION: that **DELEGATED POWERS** are given to the Head of Planning and Regeneration to determine the application subject to:

- 1) the satisfactory views of the Environment Agency;
- 2) the completion of a satisfactory legal agreement and the imposition of the same conditions attached to permission B/2005/0293; and
- 3) the application being referred to the Secretary of State under the provisions of the Town and Country Planning (Consultation) (England) Direction 2009.