

Application No: 11/00267/F	Ward: Banbury Grimsbury and Castle	Date Valid: 22 February 2011
Applicant:	Colin Knott and Jon Cookson Joint Fixed Charge Receivers	
Site Address:	Unit 1 Adj Topps Tiles, Southam Road, Banbury	

Proposal: Variation of condition no 6 of 01/01358/OUT

1. Site Description and Proposal

- 1.1 The property is located on the east side of Southam Road within a mixed commercial area. Adjacent occupiers include retailers of DIY products and car showrooms. The site is located in an out of centre location in an area that has developed as a location for the retail of 'bulky' goods.
- 1.2 Planning permission is sought for the variation of condition no. 6 of outline planning application 01/01358/OUT (which restricts the sale of certain goods from the premises) to allow an increased range of goods to be sold from the unit.

2. Application Publicity

- 2.1 The application has been advertised by way of a press notice and site notice. The final date for comment was 31 March 2011.
- 2.2 No letters of representation have been received.

3. Consultations

- 3.1 **Banbury Town Council:** no objections providing still limited with no general food sales
- 3.2 **Head of Planning and Affordable Housing Policy:** provides detailed consideration of the application concluding that whilst the proposal would make use of a long term, vacant unit, the information submitted does not demonstrate that the proposal would not adversely affect the viability and vitality of the town centre.
- 3.3 **County Highways Liaison Officer:** raises no objections stating that the proposal would not generate any increased level of traffic or parking demand that would have a significant impact upon on the local highway network.

4. Relevant Planning Policies

- 4.1 Planning Policy Statement 1: Delivering Sustainable Development
- 4.2 Planning Policy Statement 4: Planning for Sustainable Economic Growth
- 4.3 Planning Policy Guidance 13: Transport

- 4.4 South East Plan
Policy TC2: New Development and Re-development in Town Centres
- 4.5 Adopted Cherwell Local Plan (1996): No relevant saved policies
- 4.6 Non-Statutory Cherwell Local Plan
Policy S1: Sequential Approach
Policy S2: Maintenance of a Compact Central Shopping Area

5. Appraisal

- 5.1 Members will recall that this application was deferred at the Committee Meeting on 19 May this year as since the publication of that committee report the applicant provided further information, in relation to which SDPHE considered that further assessment was required. To assist with this assessment, SDPHE sought the views of CBRE (CB Richard Ellis) which accounts for the delay in re-reporting this application to committee. The views and conclusions from CBR are referred to throughout the report.

5.2 Main Planning Considerations

- 5.2.1 The main issues to consider in the determination of this application are as follows:
- Planning History
 - Variation of condition
 - Transport, Highways and Sustainability
- Each of these matters are considered in turn below.

5.3 Planning History

- 5.3.1 See parallel report (11/00266/F)

5.4 Variation of Condition

- 5.4.1 The proposal seeks to vary condition 6 of 01/01358/OUT which is set out in paragraph 5.3.2 of the parallel report. The condition was imposed with the view to restricting the range of non-bulky goods that could be sold from the unit in order to protect the vitality and viability of Banbury's Town Centre.
- 5.4.2 This application has been submitted so that the unit can be used by Dunelm which is a homeware and soft furnishings store. Given the range of products that this retailer sells, permission is sought to vary the condition so that a wider range of items can be lawfully sold from the site in addition to those products referred to within the condition. The additional wording that Dunelm wishes to add to the condition is 'fabric, household goods, homewares, soft and hard household furnishings and decorative products'. A parallel application seeks to extend the floor area by way of constructing a mezzanine floor measuring 1,006sqm (see 11/00266/F), but the proposal to vary the condition can only be considered under this application in relation to the current floor space (1,394sqm).

- 5.4.3 At the time of publishing the previous Committee report for this application at the meeting on 19 May 2011, SDPHE was not convinced by the submitted details that the application would not have an unacceptable impact upon the vitality and viability of the town centre. And at that time, the restrictive condition was interpreted as allowing only bulky goods to be sold from the unit.
- 5.4.4 However since that time further consideration has been given to the precise wording of the existing condition, and whilst most of the items listed do indeed refer to bulky goods (such as building materials, DIY products, floor coverings, hardware and furniture), the terms household furnishings, motor accessories, electrical goods and office supplies in fact cover wide product ranges that are not necessarily 'bulky goods'.
- 5.4.5 Furthermore, Dunelm has submitted further supporting information about their product range and SDPHE has sought specialist advice from CBRE (CB Richard Ellis) a company that prepared the 2010 retail study update for the District as part of the LDF evidence base.
- 5.4.6 The additional information supplied by Dunelm claimed that the store could sell 85% of its current product range if the company were to occupy the building. It is stated that there is uncertainty about the remaining 15% which is what the application seeks to clarify.
- 5.4.7 In support of this CBRE agrees that Dunelm could almost certainly sell at least 85% of its product range under the current condition and, with a liberal interpretation, perhaps more. In CBRE's view the main products that would be excluded are those relating to crafts and hobbies and non-durable kitchen equipment. In an appendix of the submitted Retail Assessment, these items would amount to 6.1% of the sales floorspace which in this case would be 146.4sqm.
- 5.4.8 The fact that the impact assessment in relation to the parallel application is not considered to be sufficient should be borne in mind in relation to this proposal to vary the restrictive condition, however SDPHE considers that it is appropriate to conclude that the level of impact arising from 146.4sqm would be so small that it could be argued that it would be insignificant.
- 5.4.9 However, as CBRE has referred specifically to two product areas that are not covered by the original condition, it is considered that rather than adding the words 'fabric, household goods, homewares, soft and hard household furnishings and decorative products' to the original condition, that the words 'crafts and hobbies products and non-durable household goods' (rather than specifically kitchen goods) should be added to the condition instead. This would restrict the occupation of the unit by a standard retailer in the future should Dunelm vacate the unit.

5.5 Conclusion in Relation to Variation of Condition

- 5.5.1 As the wording of the condition is not as robust as it may have initially been planned to be and given the conclusions drawn by CBRE, SDPHE considers that the Council would not be in a strong position to recommend refusal for the variation of the condition as the difference in the product range that could be sold from the unit if approval is granted would be so minor that it may even be argued that the impact is non-material. However, it is considered necessary to amend the wording for the variation of the condition. Therefore and for the avoidance of doubt the

varied condition would read:

*That the retail use hereby permitted shall be limited to building materials, DIY home and garden improvement products, hardware, self assembly and pre-assembled furniture, household furnishings, **craft and hobbies products, non-durable household goods**, floor coverings, motor accessories, electrical goods and office supplies and for no other purpose whatsoever notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) Order 1987 (as amended), other than the ancillary sale of sweets or food consumption on the premises, providing the area given over to the sale of such items does not exceed 10% of the floor area of the unit.*

[NB: **bold** indicates additional wording]

5.6 OTHER MATTERS

5.6.1 Transport Impact/Highway Safety/Sustainability

5.6.2 The Local Highway Authority raises no objections to the proposal to vary the existing planning condition relating to the site, stating that it would not generate any increased level of traffic or parking demand that would have a significant impact upon on the local highway network. The Local Highway Authority continues by stating that the application site is poorly served by alternatives to the private motor car; however there is some opportunity for linked trips and neighbouring uses are broadly similar to that proposed. Also, it is consider that the proposed use would not significantly alter the nature of goods sold, ie 'bulky' and such items would be inconvenient to transport around town centres, especially by public transport.

5.6.3 SDPHE notes the conclusions drawn in terms of the impact of the proposal upon the level of traffic generated by the proposal although the fact that the site is poorly served by alternatives to the private motor vehicle must be taken into consideration. It is also contested that the proposed use is broadly similar to neighbouring uses. Whilst Dunelm does sell an element of bulky goods, as referred to above the main focus is on home textiles which does not compare to the likes of Homebase and B&Q. To that end, the nature of goods sold from the site would not necessarily all be bulky in conflict with the Local Highway Authority's conclusions and therefore the inconvenience experienced with transporting such goods around the town centre must be questioned.

5.6.4 Visual Amenity

5.6.5 No physical alterations are proposed in relation to this particular proposal. As such the application to vary the condition would have no impact upon visual amenity, complying with general design principles as set out in PPS1: Delivering Sustainable Development.

5.7 Conclusion

5.7.1 SDPHE accepts that the variation of condition 6 of 01/01358/OUT, subject to the revised wording as set out above, would represent a minor increase in retail activity that would be so small when compared to the activity that would lawfully take place within the unit, that its impact on the vitality and viability of the town centre could be absorbed without causing harm. As such the application is recommended for

approval for the reason stated and subject to the conditions below.

6. Recommendation

Approval; subject to the following conditions

1. Time Limit (RC1)
2. That the retail use of the unit shall be limited to building materials, DIY home and garden improvement products, hardware, self assembly and pre-assembled furniture, household furnishings, craft and hobbies products, non-durable household goods, floor coverings, motor accessories, electrical goods and office supplies and for no other purpose whatsoever notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005, other than the ancillary sale of sweets or food consumption on the premises, providing the area given over to the sale of such items does not exceed 10% of the floor area of the unit.

Reason: In order to minimise the impact on the vitality and viability of the retail outlets in Banbury Town Centre and to comply with PPS4: Delivering Sustainable Economic Development and Policy EC2 of the South East Plan.

3. The retail unit hereby permitted shall not be subdivided to enable any single unit to comprise less than 465 square meters (5,000sq.ft) gross floorspace.

Reason: In order to minimise the impact on the vitality and viability of the retail outlets in Banbury Town Centre and to comply with PPS4: Delivering Sustainable Economic Development and Policy EC2 of the South East Plan.

4. That no goods, materials, plant or machinery shall be stored, repaired, operated or displayed in the open without the prior express permission of the Local Planning Authority

Reason: (RC50).

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan, unless material considerations indicated otherwise. Incorporating and adhering to the above conditions, the development is considered to be acceptable on its planning merits as the proposed development is considered to be acceptable in principle as it would not cause harm to the vitality and viability of Banbury Town Centre and would not give rise to any unacceptable transport or visual impact. As such the proposal is in accordance with PPS1: Delivering Sustainable Development, PPS4: Delivering Sustainable Economic Development, PPG13: Transport, Policies CC1, TC2, T1 and T4 of the South East Plan 2009 and Policies S1 and S2 of the non-statutory Cherwell Local Plan. For the reasons given and having regard to all other matters raised including third party representations, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

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