

Application No: 09/00580/F	Ward: Bloxham and Bodicote	Date Valid: 30/04/09
Applicant:	Mr. J. Smith	
Site Address:	3A – 3B Cotefield Farm, Oxford Road, Bodicote OX15 4AQ	

Proposal: Use of units for the sale of goods by auction for up to 30 days per year.

1. Site Description and Proposal

- 1.1 The site is situated on the south-west side of the Banbury to Oxford road (A4260), south of Bodicote. The site currently has a number of former agricultural buildings which over the past few years have changed use to B1 and B8. The application site forms buildings 3A and 3B and provides approximately 15, 000 sq. ft (1460 sq. m) of floorspace. The site is remote from the village of Bodicote and lies within the countryside
- 1.2 The proposal seeks to change the use of the building from B8 to a sui generis use for auction use. No external alterations to the building are proposed and car parking is provided within the site. The application is seeking a permanent permission for use of the site for the sale of goods by auction for up to 30 days per year (approximately every other weekend).

2. Application Publicity

- 2.1 The application has been advertised by way neighbour letters and a site notice. The final date for comment was 28/05/2009
- 2.2 219 letters of support received commenting on the following:
- Current premises at Bicester not suitable for auction use;
 - Site has ample parking;
 - Banbury town centre is too busy at weekends;
 - Possibility of over 200 extra cars in Banbury during auction weekends and potential congestion;
 - J. S. Auctions help to reduce waste through recycling of household goods i.e. washing machines, fridges, freezers, furniture, TV's etc..
 - Small firms should be supported in times on economic uncertainty;
 - Use does not detract from the area;
 - Auction attracts customers from far and wide;
 - Site is easily accessible by road, train and bus;
 - There is no where else for the company to trade;

1 letter of objection received commenting on:

- Inappropriate development in the countryside;
- A town centre/edge of centre is a better location for the proposal;
- Applicant has already appealed.

Banbury Civic Society

We do not usually comment on applications beyond Banbury's historic bounds, but feel that this application is highly relevant to Banbury people, not only because of the use they have made of the auctions at Cotefield in the past, but also because of the additional trade that the auctions formerly brought to the town by attracting visitors from a wide area, many of whom are likely to have combined the auctions with shopping in town.

When previously located at Cotefield, J&S Auctions seemed very well suited to the location and existing facilities there, which would remain unchanged under the application. No significant visual intrusion, traffic, noise or parking nuisance was ever noticeable, even on the busiest sale days.

Whilst the site is readily accessible by bus, cycle or taxi, the site is very well suited for a typical 'country auction' clientele who generally expect to take their purchases home on the day and who thus generally arrive by car. We would observe that the auction formerly attracted a clientele from a wide catchment area. The edge-of-town Cotefield location would appear to be ideal, minimising traffic congestion in the town centre, yet close enough to the town centre to suit both Banbury residents and visitors wishing to combine the auction with a shopping trip. We understand that the applicants have arranged for a purposive bus service to Banbury on sale days.

The auctions at Cotefield were clearly popular and were, we believe, a benefit both to Banbury and the wider area. The purpose of the planning system is to regulate development in the public interest. We cannot see what public benefit would arise from the refusal of this application.

1. Consultations

- 3.1 **OCC Highways** – Further to previous highway consultations for planning application 08/02587/F, which remains applicable, the Highway Authority has the following comments;

The supporting information indicates that approximately 30 auctions/sales will occur per annum, each generating a parking demand of 200+ spaces (consideration given to delivery vans/larger vehicles) on sale days. The submitted documents do not provide details of where the car parking provision for this number of vehicles will be allocated within the red line area. It is clear that any car park within the illustrated curtilage would not facilitate 200+ vehicles. The Highway Authority would not support an application which does not sufficiently provide adequate level of on-site parking, and which may encourage vehicles to park informally, at a potential detriment to highway safety.

Furthermore, there is little evidence to suggest that consideration has been given to previous Highway Authority comments, with specific regard to traffic generation, junction impact analysis and measures to improve sustainable transport.

Given the above, the Highway Authority recommends refusal.

4. Relevant Planning Policies

- 4.1 South East Plan 2009 – Policy RE3, CC6 and T1
- 4.2 Adopted Cherwell Local Plan 1996 – Saved Policies S25, C7 and C8
- 4.3 Non-Statutory Cherwell Local Plan 2011 – Policy S22
- 4.4 Planning Policy Statement 1: Delivering Sustainable Development
- 4.5 Planning Policy Statement 6: Planning for Town Centres
- 4.6 Policy Guidance Note 13: Transport

5. Appraisal

- 5.1 The key issues to be considered in this case are:-

- The History of Previous Applications on the Site; and
- Policy Position;
- Clarifications;
- The Sequential Assessment;
- Visual Impact;
- Impact on the Highway;
- Summary

5.1 The History of the Site

- 5.2 The site has been the subject of a previous application to retain the retail use at the site. Application 03/01007/F allowed a temporary permission for one year while Holloway's, a local auction business in Banbury, refurbished their town centre premises. This was considered acceptable by the LPA as it was for limited period and approved subject to a one year temporary permission.
- 5.3 A further application for the use of buildings 4A and 4B for the storage, display and distribution of antique furniture including internet sales and occasional on site retail sales was refused permission under application 04/00766/F and subsequently dismissed at appeal (Appendix 1).
- 5.4 In dismissing the appeal for buildings 4A and 4B, the Inspector reported the following:

'The site is clearly not in a town centre or on the edge of a centre, being located outside the built up area of Bodicote.. Although the site is on a bus route, this service is infrequent...as regards bulky goods retailing, it rests with developers and retailers to demonstrate that a majority of their goods cannot be sold from town centre stores. Developments involving the sale of bulky goods are not exempted from meeting the policy tests within PPG6 [now PPS6]...I do not accept that it [the use of the building] could not be accommodated in a town centre. This is confirmed by my own experience in retail development that many antique shops, including those selling furniture, are located within town centres. No evidence has been

provided to support the appellant's argument that the business could not support a retail rental.'

5.5 The Inspector accepted that the guidance within Planning Policy Statement 7: Sustainable Development in Rural Areas had significant weight in deciding the appeal, encouraging the re-use of agricultural buildings. However, he concluded that the conflict with the policies of PPG6 (now PPS6) outweighed the objectives of PPS7 and dismissed the appeal.

5.6 The application site was the subject of an enforcement notice that was served against J. S. Auctions for the failure to comply with condition 1 of application 03/01007/F which required the use of buildings 3A and 3B as an auction room to cease after 1 year. J. S. Auctions were the then occupiers of the building and appealed the enforcement notice. The appeal was subsequently dismissed (Appendix 2). It should be noted that the Inspector considering the appeal confirmed that the site operated for auctions every other Saturday or approximately 30 days per year. This is the same duration as proposed as part of this application

5.7 In dismissing the appeal the Inspector commented that,

'the use of building No 2 for the storage of furniture and other goods and the associated sale of such goods by auctions constitutes a sui generis use in terms of the Town and Country Planning (Use Classes) Order as a mixed storage, business and retail use... I therefore conclude that retail sales form a central part of the use and as such the use of the building for which planning permission is being sought must be considered against national guidance and local planning policies for retail development.'

5.8 Therefore, whilst the use of the building would be sui generis, the proposal contains a retail element and must therefore be assessed against national policy within Planning Policy Statement 6: Planning for Town Centres.

5.9 **Policy Position**

5.10 Policy RE3 of the South East Plan 2009 refers to the supply of employment land. The policy is a strategic overview of the supply of employment land and directs Local Planning Authorities to consider the provision of such land for employment in locations that;

- i. are or will be accessible to the existing and proposed labour supply;
- ii. makes efficient use of existing and underused sites and premises, through increasing the intensity of use on accessible sites;
- iii. focus on urban areas
- iv. promote the use of public transport.

5.11 Policy CC6 of the South East Plan 2009 refers to sustainable communities and the character of the environment. It states that this will be achieved by developing and implementing a shared local vision that,

- i. respects and where appropriate enhances the character and distinctiveness of settlements and landscapes;
- ii. use innovative design processes to create a high quality built environment

which promotes a sense of place. This will include consideration of accessibility, social inclusion, the need for environmentally sensitive development and crime reduction.

- 5.12 Saved policy S25 of the Adopted Cherwell Local Plan 1996 states that, with the exception of those developments which accord with saved policies S26, S27 and S28 (small scale retail outlets, garden centres and small shops or extensions to small shops), all new retail development in the countryside and rural areas will generally be resisted.
- 5.13 Policy S22 of the Non-Statutory Cherwell Local Plan 2011 affirms saved policy of the Adopted Cherwell Local Plan 1996 with the exception of the developments referred to therein (namely the same exceptions as those identified within saved policy S25 of the Adopted Cherwell Local Plan 1996) and the area of Kidlington.
- 5.14 Planning Policy Statement 1: Delivering Sustainable Development promotes sustainable development as the core principle underpinning planning. With this in mind, LPA's are encouraged to focus development which attract a large number of people within existing centres where they are accessible by a range of means.
- 5.15 Planning Policy Statement 6: Planning for Town Centres seeks, among other things, to ensure that retail development is located in areas that are easily accessible by other means than the private car, normally within town centres or the edge of town centres. Should a proposal be put forward for a retail development in an out to town location, the sequential tests would need to be applied. It would be for the applicant to provide evidence that a town centre or edge of centre site is not available.
- 5.16 Planning Policy Statement 7: Sustainable Development in Rural Areas recognises that development should be focused in or close to town centres but also refers to the re-use of appropriately located buildings within the countryside, where it would meet sustainable development objectives. PPS7 also recognises the importance of farm diversification and its role in helping support farm enterprises.
- 5.17 As the proposal seeks a retail development (the sale of the goods by auction) it is required to be assessed under the guidance within Planning Policy Statement 6: Planning for Town Centres (PPS6). Paragraph 2.44 PPS6 states,

'A sequential approach should be applied in selecting appropriate sites for allocation within the centres where identified need is to be met. All options in the centre (including, where necessary, the extension of the centre) should be thoroughly assessed before less central sites are considered for development for main town centre uses. The sequential approach requires that locations are considered in the following order:

- first, locations in appropriate existing centres where suitable sites or buildings for conversion are, or are likely to become, available within the development plan document period, taking account of an appropriate scale of development in relation to the role and function of the centre; and then
- edge-of-centre locations, with preference given to sites that are or will be well-connected to the centre; and then
- out-of-centre sites, with preference given to sites which are or will be well

served by a choice of means of transport and which are close to the centre and have a high likelihood of forming links with the centre.'

- 5.18 For the purposes of PPS6 the site represents an out of town site. The applicant has applied the sequential approach and states in their planning statement at paragraph 6.14 that,

'J.S. Auctions have carried out a detailed search in the study area into a suitable relocation property to accommodate its business needs. The search commenced prior to the submission of this planning application and has continued to the present date...'

- 5.19 In assessing suitable alternative sites, the applicant surveyed an area covering a 15 mile radius from Bodicote and took into account the towns of Banbury, Bicester, Chipping Norton and then Kidlington. From the assessment of these areas the applicant concluded that there are neither town centre or edge of centre locations available for their needs. In searching for town centre and edge of centre locations the applicant circulated a letter to local land and property agents setting out their requirements as follows:

- An open plan salesroom and storage area of around 17, 000 – 22, 000 sq. ft in floor area;
- The building must have a minimum of 3 metres eaves height for at least 10, 000 sq. ft;
- The loading bay door in the building must not be less than 5 metres high;
- A maximum purchase price of £800, 000 or annual rental not exceeding £60, 000.
- Minimum parking for 5 commercial vehicles and not less than 4 car parking spaces;
- On-site customer parking and loading facilities;
- Sales day requires a need in the region of 200 conveniently located parking spaces. Auctions are normally held on a Saturday and the premises will therefore need convenient access to off-site car parking facilities in the immediate locality of the property.

- 5.20 The applicant has stated that following the criticism of the thoroughness of the initial sequential approach, the above search criteria was relaxed and the geographical area extended. However, the issue of economics, accessibility and car parking were subsequently considered in the assessment of available properties (paragraph 6.18 of Planning Statement)

- 5.21 The applicant also states that,

'It is important to note that the nature of the proposed auctions and the low value of some of the bulky goods sold is that a proportion of customers will require private transport for the delivery and collection of goods as a result of the bulky nature of many of the goods sold. Notwithstanding this, the site can also be accessed by public transport. There are stops along Oxford Road, along with regular services to and from Banbury to Oxford. In order to help reduce further journeys by private car, staff will be encouraged to use alternative means of transport or car share.'

5.22 Clarification

- 5.23 Before the sequential assessment is considered, a number of issues should be clarified regarding the site at Cotefield Farm and the assertions made on behalf of the applicant by his agent and comments received by members of the public supporting the application.
- 5.24 The issue relating to bulky goods is not in itself a reason to allow the proposal. As stated earlier at paragraph 5.4, the Inspector dealing with the appeal at buildings 4A and 4B stated that developments involving the sale of bulky goods are not exempted from meeting the policy tests within PPG6. Moreover, it is for customers to arrange collection of items they have bid for. Therefore, those bidding on items would know in advance the type of transportation required to collect the item.
- 5.25 The site is not easily accessible by public transport. The bus service (59, 59a and 59b run by Stagecoach) runs hourly past the site. This, as confirmed by the Inspector dealing with the building 4A and 4B appeal, is not considered a frequent service. Moreover, the letters of support received from the public largely state that they visit the site by private car. It is unrealistic to state that the site is therefore within a sustainable or easily accessible location and that customers visiting the site will use public transport, whether this would be by bus or train.
- 5.26 While the overall use of the site is considered sui generis, a retail element of the business would operate at the site. Therefore, together with the findings of the Inspector considering the recent appeal at the site, the retail sales form a central part of the use and as such the use of the building for which planning permission is being sought must be considered against national guidance and local planning policies for retail development, i.e. PPS6.
- 5.27 A number of supporters of the application have stated that Bonham's Auctions at Shipton on Cherwell, near Kidlington as an example of auction sales that occupy an out of town centre and was approved by the Local Planning Authority (LPA). However, historically the building was used as a car show room with sales. Therefore, the site had a retail use that could be continued without further permission from the LPA.
- 5.28 In addition to this, a number of supporters have referred to the garden centre opposite the site. Importantly, garden centres are permitted in rural locations under saved policy S27 of the Adopted Cherwell Local Plan 1996.

5.29 The Sequential Assessment

- 5.30 In undertaking a sequential assessment of the site, the applicant states at paragraph 6.9 on page 22 of the Planning Statement that a,

'retail position is not required by the business. The Auction Sales rooms are not open to the public on any days other than viewing and sales days which would be limited to 4 days a month on average. Such an operation would harm the vitality and viability of the centre rather than positively enhance it. It would therefore conflict with the objectives of national and local planning policies for existing retail centres.'

- 5.31 The above statement is rather perverse in its assessment of national and local plan policies relating to the location of retail development. It is clear from local plan policies and the advice within PPS6 that retail development should be located within town centres/edge of centres where a concentration of such uses would attract customers who in turn can travel via other means than the private car. It is not for the local plan to control the opening hours of retail units, this is clearly a business by business decision. However, the fact that the auctions only open for public viewing/bidding 4 days a month is immaterial to the location of the development, it remains that when trading, the business has the ability to attract large numbers of customers and the only, realistic means of transport to the site is by private car.
- 5.32 The application provided a sequential assessment of the area and concluded that no sites/buildings are available, either within a town centre or edge of centre and that the only option for the applicant is to utilise an out of town site such as Cotefield Farm.
- 5.33 However, it is considered that the size of the building and parking requirements are particularly onerous for town centre or even edge of centre locations to meet such expectations. Whilst not included within description of buildings/site required in the applicant's search (although taken into account when considering such sites) the provision of 5 parking spaces for commercial vehicles is not something that a town centre location could easily provide. Moreover, the applicant has not demonstrated how the need for such commercial vehicle spaces fits in with its business plan or how it would be affected without such spaces. The requirement for at least 200 conveniently located customer parking spaces is particularly onerous and would be extremely difficult to provide within most town centre locations. This requirement for large numbers of customer parking spaces only serves to highlight the amount of customers who would travel to the site during auction days.
- 5.34 The applicant has identified a number of sites within the search area and includes details of why these particular sites were dismissed. The applicant has dismissed all properties within its search area for a number of reasons. The most common reason for dismissing a property has been the lack of parking. In addition, a number of the sites that are currently in commercial/industrial use were considered. However, a change of use for retail use would be required. It is unlikely that this would be supported by those LPA's affected by the proposals as the change of use of these buildings would also be the subject of a sequential assessment.
- 5.35 The applicant again refers to the need to provide accommodation for the sale of bulky goods. This issue was examined at appeal whereby the Inspector reported at paragraph 13 that,
- 'the range of goods on offer for sale come in all sizes from small items which purchasers could easily carry home, to large items of furniture which would require delivery by vehicular transport, normal practise in town centre stores selling bulky items.'*
- 5.36 Moreover, the Inspector also reported at paragraph 12 that,
- 'I consider that there would be ample opportunity for appropriate windows displays [within a town centre location] and I note that there are existing auction uses in the town centre of Banbury.'*

- 5.37 Despite the applicant's search for suitable premises (that have all been discounted for various reasons) it is not considered that the applicant has considered all available retail units. For example, a quick search revealed that there are 2 empty retail units at Banbury Retail Park (Southam Road) and the vacant B Wise and Woolworth's sites in the town centre that have not been considered as part of the assessment.
- 5.38 The size of the building required is also rather confusing. The applicant states that as part of the search criteria, the applicant requires a building of
- 4, 500 – 6, 000 sq. ft (418 – 557 sq. m) of open plan saleroom space or
 - a single site of between 15, 000 – 22, 000 sq ft (1393 – 2043 sq. m) and the potential for 6, 000 sq. ft for auction use.

However, taken from the appeal decision, when operating from Cotefield Farm the business had the following floorspace:

- 3, 024 sq. ft (281 sq. m) auction sales space; and
- 7, 373 sq ft (685 sq. m) storage space.

Therefore, the business operated with a total of 10, 397 sq. ft (946 sq. m) of floorspace for trading and storage, yet the search criteria required a building of between 15, 000 – 22, 000 sq. ft (1393 – 2043 sq. m) of storage space with the potential to change at least 6, 000 sq. ft for sale space. This is almost double what the applicant operated from when the appeal was considered in 2007

- 5.39 The size of the property also appears rather onerous when considered against other auctions houses that operate within the town centre. For example both Bonham's and Holloway's operate effectively within the town centre and both have large, bulky items for auction. The last auction held by Holloway's at Parsons Street, held on 19th May 2009, included within its catalogue a number of large items such as bookcases, desks, tables, chairs, sofas, chests of drawers and cupboards. It is expected that customers would arrange to pick up items themselves.
- 5.40 The argument that the applicant requires a large building to operate is not accepted. Many retailers, including other auction houses, trade from town centre/edge of centre locations and offer bulky goods for sale. The applicant is not suggesting that **all** items for sale are bulky, rather a proportion of them are.
- 5.41 The Inspector considering the appeal also stated at paragraph 12 that,

'Given that the building is only 281 sq. m in floor area it seems to me that an alternative location could potentially be found either in or on the edge of the town centre of Banbury, which is only 2.5kms (2 miles) from the appeal site. In this context I have no evidence that the use would result in congestion on sales days causing nuisance and disruption to neighbours or create a dead frontage. I consider that there would be ample opportunity for appropriate window displays and I note that there are existing auction uses in the town centre of Banbury. While I note that the operator's profit margins are narrow, I have no evidence that this would preclude the development from being accommodated on a town centre or edge of centre site.'

5.42 The applicant has also stated that the low value of some of the items means that additional transport costs are prohibitive and that his profit margins are low. However, again it is expected that a customer would know in advance of any auction which items they are likely to bid on and the transportation required to collect them. Moreover, Holloway's indicated a price guide of £20 - £30 for large items (sofas, tables, bookcases etc.), yet still operate from the town centre.

5.43 The applicant has not provided business accounts for the LPA to consider. Therefore, there is no evidence to suggest that the profit margins/operating costs prohibit a town/edge of town location. It should also be noted that the profit margins/operating costs are not a reason in themselves to allow the proposal.

5.44 With regard to the re-use of a former agricultural building, the site already has an accepted B8 use which is currently being carried out. Moreover, the Inspector reported on this matter at paragraph 10 by stating,

'as already mentioned, planning permissions have been granted for the re-use of four of the former farm buildings on the site, including the appeal building No. 2, for business and/or storage uses. The options are therefore available for building No 2 to be re-used for more acceptable non-retail purposes providing alternative employment and economic opportunities for the locality with national guidance and local planning policies.'

5.45 **Visual Impact on the Character and Appearance of the Area**

5.46 In considering the recent appeal at the site, the Inspector reported that the retail use of the site would harm the character and appearance of the area as a result of the high volume of people and vehicles attracted to the site on viewing and auction days. The applicant has failed to demonstrate that this would not be case. Therefore, the application also fails on its impact on the rural character and appearance of the area.

5.47 **Impact on the Highway**

5.48 OCC Highways have considered the proposal and are concerned that the potential draw of customers would have a detrimental impact on the highway network. The Highway Authority have stated that as a result of the lack of highway information received as part of the application, the proposal should be recommended for refusal.

5.49 **Summary**

5.50 To summarise the above, it is considered that the application fails for the following reasons:

- Both units 3A, 3B, 4A and 4B have been the subject of recent appeal decisions for the use of the buildings for retail purposes (auctions) that were dismissed;
- The search criteria (in terms of the size of the building and car parking requirements) are particularly onerous for a town centre location;
- Other auction houses operate effectively from a town centre location;

- The sale of bulky items does not in itself justify an out of town location;
- The sequential assessment does not appear to have considered all vacant retail units with existing town centres/edge of centres.
- The applicant has not considered a storage unit closer to Bicester where he currently operates.
- The retail use of the site would have a detrimental impact on the rural character and appearance of the area.
- There is no evidence to support the claim that congestion would ensue within Banbury town centre as a result of the proposal;
- The profit margins/operating costs of the business have not been provided.

5.51 Therefore, it is considered that the applicant has failed to adequately demonstrate through a thorough sequential assessment that potential alternative town centre or edge of centre sites are available, or likely to become available, for the proposed use. Moreover, it is considered that the use of the site for retail purposes is outweighed by the advantages to be gained through locating the development within a town centre or edge of centre location in the interests of sustainability and accessibility required by both local, structure and national plan policies.

6. Recommendation

Refusal, for the following reason:

- 1. The use of the building for retail purposes would result in an unacceptable retail activity at an out of town location which is in an unsustainable location for its use. The applicant has failed to demonstrate that town centre or edge of centre site is not available through a thorough sequential assessment of the area. If allowed the development would result in a retail use which would attract large numbers of customers to an unsustainable location whereby the only realistic means of visiting the site would be by private car. In addition, the retail use of the site would have a detrimental impact on the rural character and appearance of the area. The proposal is therefore contrary to Policy RE3 of the South East Plan 2009, saved Policy S25, C7 and C8 of the Adopted Cherwell Local Plan 1996 and policy S22 of the Non-Statutory Cherwell Local Plan 2011, Planning Policy Statement 1: Delivering Sustainable Development, Planning Policy Statement 7: Sustainable Development in Rural Areas, Planning Policy Statement 6: Planning for Town Centres and Planning Policy Guidance Note 13: Transport.**
- 2. In the absence of a detailed survey and details of proposed parking arrangements/highway improvements, it is considered that the additional vehicular movements associated with the proposed development would be detrimental to the safety and convenience of users of the public highway due to the increased use of the site. The proposal is therefore contrary to the provisions of PPG13:Transport and Policy T1 of the South East Plan 2009.**

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