



# Appeal Decisions

Hearing held on 17 July 2007

by Miss Anne Parkhill BA LLB DipTP MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government

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Date  
15<sup>th</sup> August 2007

## Appeal A: APP/C3105/C/06/2032063

### Building No 2, Cotefield Farm, Oxford Road, Bodicote,

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991
- The appeal is made by R P Bratt against an enforcement notice issued by Cherwell District Council.
- The Council's reference is ENF 22/06
- The notice was issued on 14 November 2006
- The breach of planning control alleged in the notice is failure to comply with a condition of a planning permission Ref 03/01007/F granted on 7 July 2003
- The development to which the permission relates is change of use of former potato store (Building No 2) to sale of furniture and other goods by auction for a temporary period of one year. The condition in question is No 1 which states that "*at the expiration of one year from the date hereof the use specified in your application shall be discontinued and the land shall be restored to its former condition on or before that date*". The notice alleges that the condition has not been complied with as Building No 2 is continuing to be used for the storage of furniture and other goods for auction sale and the holding of public auctions
- The requirements of the notice are
  - Stop using Building No 2 at Cotefield Farm for public auctions or any other retail activity
  - Stop using Building No 2 at Cotefield Farm for storage of furniture and other goods for sale by auction
  - Remove from Building No 2 at Cotefield Farm all furniture and other goods that are currently being stored there for sale by auction
  - Make Building No 2 at Cotefield Farm available for agricultural use
- The time for compliance with the requirements is 28 days for the first requirement and 84 days for the second, third and fourth requirements
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.**

## Appeal B: APP/C3105/A/06/2024476

### Cotefield Farm, Oxford Road, Bodicote, Banbury, Oxon OX15 4AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission

- The appeal is made by R P Bratt against the decision of Cherwell District Council
- The application Ref 06/00192/F, dated 31 January 2006, was refused by notice dated 29 March 2006
- The development is retrospective change of use of former potato storage building No 2, to storage of furniture and other goods with occasional sales by auction

**Summary of Decision: The appeal is dismissed.**

### **Procedural Matters**

- 1 Planning permission was granted on 22 July 2002 under Ref 02/00737/F for the change of use of potato storage building No 2 to use for B1 (Business) and B8 (Storage and Distribution) The Council was uncertain when issuing the enforcement notice as to whether or not this planning permission was ever implemented prior to the then unauthorised auction use of the building by Holloway's (Auctioneers) A statement was submitted to the hearing by Mr J H Dauphin, Managing Director of Jaydee Motors Ltd, confirming his Company's use of the building in late 2002 for temporary storage while the Company's business premises at Bodicote received a comprehensive refurbishment He stated that the period of use ceased on 24 December 2002
- 2 The Council's Planning Officer accepted the statement by Mr J H Dauphin as confirmation that the planning permission granted in July 2002 for the change of use of the building to use for B1 (Business) and B8 (Storage and Distribution) had been implemented As the alleged breach of planning control relates to a breach of condition of an existing planning permission no correction of the enforcement notice is necessary Should the enforcement notice be upheld it is within my powers to vary its requirements to take account of the existing authorised use of the building for B1 (Business) and B8 (Storage and Distribution) purposes

### **Background**

- 3 The site is situated on the south-west side of the Banbury to Oxford road, the A4260, beyond the edge of the village of Bodicote, on the outskirts of Banbury, about 3.5 kms (2 miles) from Banbury town centre It is served by a new access off Oxford Road with a ghost island and right turning facility, granted planning permission in March 2005 The appeal building No 2 forms part of a complex of former agricultural buildings in the open countryside south of the village where planning permissions have been granted for change of use from former potato storage buildings to use for B1 (Business) and B8 (Storage & Distribution) in buildings Nos 1 & 2 and change of use from former potato storage buildings to use for B8 (Storage & Distribution) in buildings Nos 3A & 3B and 5), shown on a site location plan (Appendix 1) submitted by the Council
- 4 Temporary planning permission was granted on 7 July 2003 for the change of use of building No 2 to sale of furniture and other goods by auction for a temporary period of one year by Holloway's, a local auction business in Banbury, while their town centre premises were being refurbished In assessing the planning application, the Council considered that a temporary consent could be accommodated on the site as it was to be for a limited time scale only until the existing auction house in Banbury had been refurbished A retrospective application for the change of use of buildings Nos 4A and 4B for display, storage and distribution of antique furniture and effects including internet sales and

occasional on site retail sales was refused on 26 May 2004 and dismissed on appeal on 21 January 2005. As I saw on my visit during the Hearing, appeal building No 2 and buildings Nos 3A & 3B are presently in use by J S Auctions for the storage of furniture and other goods for sale by auction.

#### **Ground (a) & Section 78 Appeal**

- 5 The **main issues** are first, the nature of the use for which planning permission is being sought, secondly, the compatibility of the development with the planning policies for the area and national guidance, and thirdly, the effect of the development upon the character and appearance of the area.
- 6 I find as matters of fact from the evidence submitted to the Hearing that building No 2 is used by J S Auctions as an operating centre for the collection, sorting, repairing, cleaning and storage of furniture and other goods for sale by auction from that building. A small area is set aside for the administrative tasks involved in recording and cataloguing items to be offered for auction. Most of the items for auction are acquired through house and office clearances from an area centred on Banbury and within a 30 mile radius. Auction sales are currently held on two Saturdays a month with viewing on the previous Friday by potential bidders, who are required to register. The building is 281 sq m in floor area. The operator also occupies 50%, that is, a floor area of 665 sq m, of the adjacent buildings Nos 3A and 3B, which are used for the storage of furniture and goods waiting to be processed.
- 7 I conclude from the evidence that the use of building No 2 for the storage of furniture and other goods and the associated sale of such goods by auction constitutes a sui generis use in terms of the Town and Country Planning (Use Classes) Order as a mixed storage, business and retail use. While the method of selling at an auction is different to that of a shop where priced goods are offered for sale to the public, I conclude from the evidence that the underlying purpose of the use of the building is to display and sell the furniture and other goods stored to visiting members of the general public via the auction process. 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.
8. The development plan for the area includes the Oxfordshire Structure Plan 2016 adopted in 2005 and the adopted Cherwell Local Plan 1996. Policy G1 of the Structure Plan sets out the general strategy of the Plan which seeks, amongst other matters, to concentrate development in locations where a reasonable range of services and community facilities exist or can be provided, and the need to travel, particularly by private car, can be reduced and walking, cycling and the use of public transport can be encouraged. Policy TC1 identifies Oxford city centre and town centres such as Banbury as the main locations for the development of retail and other facilities. Policy T1 promotes sustainable travel through reducing the dependence on cars and ensuring that those forms of transport that are more environmentally acceptable are fostered. Transport measures and development proposals are required to give emphasis to the needs of pedestrians, cyclists and public transport and balance these against ease of traffic movement, thereby improving travel choice and reducing dependence on private motorised travel. Policy S25 of the Local Plan states that with the exception of developments which accord with Policies S26, S27 and S28, namely small-scale retail outlets ancillary to existing acceptable land uses, garden centres and small shops or extensions to existing shops, all new proposals for retail development in the

countryside will generally be resisted. The Non-Statutory Cherwell Local Plan 2011 was approved by the Council in 2004 as interim planning policy for development control purposes pending the preparation of a Local Development Framework (LDF) for the District under the new planning system. Policy 22 affirms existing Local Plan Policy S25 that with the exception of the developments referred to, further proposals for retail development in the rural areas (excluding Kidlington) will not be permitted.

- 9 National guidance in PPS 1 (2005) promotes sustainable development as the core principle underpinning planning. Planning authorities are encouraged to focus developments that attract a large number of people, especially retail, leisure and office developments, in existing centres to promote their vitality and viability, social inclusion and more sustainable patterns of development, reduce the need to travel and encourage accessible public transport provision to secure more sustainable patterns of transport development. PPS 6 (2005) affirms this principle and sets out the Government's key objective of promoting the vitality and viability of town centres by planning for the growth and development of existing centres, and promoting and enhancing existing centres, by focusing development in such centres and encouraging a wide range of services in a good environment, accessible to all. Market towns and villages should be the main service centres in rural areas, providing a range of facilities, shops and services at a scale appropriate to the needs and size of their catchment areas. The guidance states that the sequential approach to site selection should be applied to all development proposals for sites that are not in an existing centre nor allocated in an up-to-date development plan document. PPS 7 (2004) promotes sustainable development in rural areas. Away from larger urban areas, planning authorities should focus most new development in or near to local service centres. The re-use of appropriately located and suitably constructed existing buildings in the countryside is supported where this would meet sustainable development objectives. Policy criteria include potential impact on the countryside, settlement patterns and accessibility to service centres. The guidance acknowledges that farm diversification into non-agricultural activities is vital to the continuing viability of many farm enterprises. PPG 13 (2001) promotes more sustainable transport choices for people, accessibility to jobs and shopping by public transport, walking and cycling, and reducing the need to travel, especially by car. In rural areas most development for shopping should be located in local service centres.
- 10 I conclude that the use of the site for the auction sales of furniture and other goods is contrary to the Structure and Local Plan policies for the area and national guidance in PPS 1, PPS 6, PPS 7 and PPG 13 referred to above, which seek to concentrate such developments in town or local service centres. The site is not in a town centre or a local service centre, being situated in the open countryside beyond the built-up area of Bodicote. The village of Bodicote has only local amenities including a post office and three public houses. Nor does the use fall within the categories of development listed under Local Plan Policies S26, S27 and S28. I attach considerable weight to the national guidance in PPS 7 promoting the re-use of existing buildings in the countryside. However, as already mentioned, planning permissions have been granted for the re-use of four of the former farm buildings on the site, including 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 consistent with national guidance and local planning policies.

- 11 Notwithstanding the explicit guidance in PPS 6 that the sequential approach to site selection should be applied to all development proposals for sites that are not in an existing centre nor allocated in an up-to-date development plan document, I find no evidence in the appellant's agent's Report on Results of a Sequential Test that such an approach has been applied to the appeals' development nor any evidence of alternative sites having been investigated. The national guidance in PPS 6 is that first preference should be for locations in appropriate existing centres where suitable sites or buildings for conversion are, or are likely to become, available, 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. No floorspace thresholds are imposed such as appeared in the former guidance in PPG 6, replaced by PPS 6.
- 12 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 2.5 kms (2 miles) from the appeal site or in a local centre. 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 town centre site.
- 13 I conclude from letters submitted by third parties and signatories to the petition signed by visiting members of the public, submitted by the appellant, that many persons attending the auction sales come from far afield, although most of the signatories to the petition live within Banbury and its surrounding area. While there would appear to be a fairly regular bus service passing the appeal site, I conclude from the evidence given at the Hearing and the petition that the majority of persons attending the auction sales come by car, parking on the large area of hardstanding located between the access road and building No 2. I therefore consider that locating the development in or on the edge of Banbury town centre would offer more sustainable transport choices thereby reducing the need for people attending the auctions to travel by car, consistent with national guidance and local planning policies in promoting sustainable development and accessibility within established centres, and adding to the vitality and viability of the town centre. As I saw on my visit during the Hearing, 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 practice in town centre stores selling bulky items. Whilst the appeal site offers some advantages in terms of providing storage space for the furniture and other goods, I consider that this benefit would be outweighed by the advantages to be gained through locating the development in a town centre or local centre location in the interests of accessibility and sustainability, consistent with national guidance and local planning policy objectives.
- 14 In reaching my conclusions on the planning merits of the development I have considered its impact upon the character and appearance of the area. I consider that because of the high volume of people and vehicles attracted to the site on viewing and auction days, with people and vehicles coming and going from the site, its use for auction sales would detract from the

rural character and appearance of this countryside area. I observed on my visit the garden centre and ruby club located in the vicinity of the site. However, both uses are considered appropriate in the countryside consistent with national policy guidance.

15 I note the other appeal decisions referred to by the appellant. However, I find that the circumstances of each including the nature of the developments and their site locations differ significantly from the circumstances of the present appeals which I have considered and determined on their merits. The planning permission granted by Lewes DC in 2006 for a change of use of farm buildings to an auction house related to the circumstances of a particular auction gallery in Lewes. The decision is based entirely on the view of another planning authority which has not been tested at a higher level.

16 For the above reasons, the appeals on ground (a) and under s 78 fail.

#### **Ground (f)**

17 The appellant contends that the requirement to revert to agricultural use is excessive as the authorised use of the building is for B1 and B8 uses (Business and Storage & Distribution). It amounts to a revocation of an extant planning permission.

18 Having regard to my findings above under Procedural Matters that the planning permission granted in July 2002 for the change of use of the building to use for B1 (Business) and B8 (Storage and Distribution) had been implemented, I will exercise my powers to vary the notice by deleting the requirements to stop using building No 2 for storage of furniture and other goods and their removal from the building, and the requirement to make the building available for agricultural use. The appeal on ground (f) succeeds to this extent.

#### **Ground (g)**

19 The appellant requests a minimum of 3 years to search for alternative premises. I consider the time requested to be excessive. Having regard to my findings on the existing authorised use of building No 2 for B1 (Business) and B8 (Storage and Distribution) purposes, I consider the time for compliance of 28 days to stop using the building for public auctions or any other retail activity to be an adequate timescale in which to comply with the requirement of the notice as varied. The appeal on ground (g) therefore fails.

#### **Conclusions**

20 For the reasons given above and having regard to all other matters raised, including the role performed by the use in recycling furniture and other items, I conclude that the appeals should be dismissed. I shall uphold the enforcement notice with variations.

#### **Formal Decisions**

##### **Appeal A: APP/C3105/C/06/2032063**

21 I direct that the enforcement notice be varied by deleting the second, third and fourth requirements in section 5. Subject to these variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal B: APP/C3105/A/06/2024476**

22 I dismiss the appeal

*Anne Parkhill*

INSPECTOR

COPY

## APPEARANCES

### FOR THE APPELLANT

Mr B Cornley CEng DipTP MRTPI MICE	Planning Consultant
Mr R P Bratt	Appellant
Mr J A Smith	J S Auctions, Cotefield Farm, Oxford Road, Bodicote OX15 4AQ
Ms V Hammond	J S Auctions, Cotefield Farm, Oxford Road, Bodicote OX15 4AQ

### FOR THE LOCAL PLANNING AUTHORITY

Mr S Matthews BSc (Hons) MA MRTPI	Senior Planning Officer, Cherwell District Council
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### INTERESTED PERSONS

Mr S Davies	Bonhams, Globe House, Calthorpe Street, Banbury OX16 5EX
Mr H Paterson	Nether Cottage, North Aston OX25 6HX
Mr M Pow	33 Kingsbury Road, Coundon, Coventry CV6 1PW
Mr P King	Pay Cottage, School Lane, Priors Marston, Southam, Warwickshire CV47 7RR
Mr D Holmes	7 County View, Clifton, Banbury OX15 0PF
Mr I Slade	4 Devon Way, Banbury OX16 1UJ
Mr W Bratt	Fleet Farm House, Adderbury, Banbury OX17 3NJ

### DOCUMENTS SUBMITTED AT THE HEARING

- 1 Notification of Hearing and list of persons notified
- 2 Representations from third parties
- 3 Statement by J H Dauphin, Managing Director, Jaydee Motors Ltd