

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 area has developed as a location for the retail of 'bulky' goods but does not lie within the town centre boundary or within an identified local shopping centre.
- 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 non-bulky goods from the premises) to allow an increased range of non-bulky goods to be sold.

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 Main Planning Considerations

- 5.1.1 The main issues to consider in the determination of this application are as follows:
 - Planning History
 - Principle of out of Town Retail
 - Sequential Test
 - Impact Assessment
 - Transport, Highways and Sustainability
 - Visual AmenityEach of these matters will be considered in turn.

5.2 Planning History

- 5.2.1 00/01478/OUT: Demolition of existing building and erection of a leisure facility (Outline) (as amended by plans received on 02.02.01) – REFUSED

Reason for Refusal

The proposed development, by reason of its location, is considered to be contrary to Policy TC4 of the Oxfordshire Structure Plan 2011, Policy S1 of the Cherwell Local plan 2011 Deposit Draft and the guidance given in Planning Policy Guidance Note 6 in that the considerations of the sequential test have not been fully satisfied and that the strategy within the emerging development plan requiring major retail and commercial leisure developments to be sited in suitable town centre locations as first preference would be harmed by the proposal. Furthermore, the proposal would not contribute to the enhancement of the vitality and viability of the town centre and could prejudice the viability of commercial leisure proposals in the town centre, where opportunities exist for such development consistent with the Development Plan and PPG6.

- 5.2.2 01/01358/OUT: Demolition of existing building and erection of non-food bulky goods retail unit including alterations to existing vehicular and pedestrian access to the highway (as amended by plans received 16.09.02) – APPROVED

Condition 6: 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, 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.

Reason - In order to minimise the impact on the vitality and viability of the retail outlets in Banbury Town Centre.

- 5.2.3 02/02659/REM: Reserved matters application ref.: 01/01358/OUT for erection of non-food bulky goods retail unit (as amended by plans and letter received on 16.01.03) - APPROVED
- 5.2.4 07/01129/F: Section 73 application to vary condition 6 of permission 01/01358/OUT to allow food retail (as amended by revised plan received 27.07.07) – REFUSED and DISMISSED AT APPEAL

Reasons for Refusal

1 a) The Local Planning Authority considers that the proposal being in an out-of-centre location is contrary to Policy TC1 of the Oxfordshire Structure Plan 2016 and is also contrary to Policy TC2 of the Oxfordshire Structure Plan and the requirements of PPS6 – Planning for Town Centres as the proposal is in an out-of-centre location where the applicant has not demonstrated that a quantitative or qualitative need exists for the development nor that all sequentially preferable sites in the town centre or edge-of-centre have been thoroughly assessed as being unavailable, unsuitable or not viable before considering the proposed out-of-centre location.

b) In addition, the Local Planning Authority is concerned that the proposal, if approved, would be detrimental to the vitality and viability of the town centre insofar as it could have an adverse effect upon investment in the future provision of convenience floor space in the town centre and could impact upon existing food retailers in the town centre, which would potentially reduce the range of shops and services provided in the centre, to the disadvantage of less mobile social groups leading to increased social exclusion.

c) Furthermore, the Local Planning Authority considers that the proposal would promote increased use of the private car that runs contrary to the objectives of PPS1 and PPG13 and would increase the risk of social exclusion of less mobile groups because the site is in an out-of-centre location that is not accessible by a choice of means of transport, including public transport, and is principally accessible by private car, with limited opportunities to reduce car journeys or undertake linked trips.

d) Finally, the Local Planning Authority has concluded that there are no material considerations sufficient to outweigh the development plan and policy conflicts identified in this reason for refusal.

2. In the absence of a satisfactory unilateral undertaking or any other form of s106 legal agreement the Local Planning Authority is not satisfied that the transport infrastructure required to serve the proposed development will be provided, which would be contrary to Policies G3 and T8 of the Oxfordshire Structure Plan.

5.2.5 Summary of Inspector's reasons for Refusal

- Accessibility
 - Location not well served other than private car
 - Well beyond convenient walking distance from town centre
 - Close to little existing housing
 - Unattractive to pedestrians/cyclists
 - No evidence of buses stopping
 - Would not facilitate multi-purpose journeys
 - Linkages between the sale of bulky goods and food is limited
 - Existing arrangement discourages linked trips
 - No s106/Unilateral Undertaking
- Need and Impact
 - Would exacerbate deficiency of Town Centre convenience stores
 - Would exacerbate leakage of convenience expenditure
 - Would jeopardise trading performance of town centre stores
 - Evidence wholly unconvincing
 - Existing stores vulnerable
 - Convenience sector of town centre is lower than average
 - Under representation of convenience outlets in the town centre
 - Fails crucial PPS6 tests

5.2.6 07/02409/F: Section 73 application to vary condition 6 of permission 01/01358/OUT to allow food retail (resubmission of 07/01129/F) – REFUSED

Reasons for Refusal

Same as for 07/01129/F

5.2.7 Summary of Planning History

Based on the above planning history for the site, it can be concluded that the Council considers the site to be appropriate for a retail warehouse use, subject to a restriction over the goods sold.

5.2.8 The site has not however been considered appropriate for leisure or food shopping. The reasons for refusal include inconclusive sequential testing, the impact upon the vitality and viability of the town centre, the impact upon future town centre proposals, increased use of the private vehicle and the social exclusion of the less mobile.

5.2.9 Whilst the current proposal is not for leisure or food retail shopping, consideration must be given to these general themes when considering the proposal for the sale of a range of non-bulky goods. These matters are explored throughout the assessment of the application below.

5.3 Principle of Development

5.3.1 The proposal seeks to vary condition 6 of 01/01358/OUT which is set out in paragraph 5.2.2 above so that it can be used by Dunhelm which is a homeware and soft furnishings store. Given the range of products that this retailer sells, permission is sought to vary condition 6 so that certain items can be lawfully sold from the site in addition to those products previously referred to. The additional

items include fabric, household goods, homewares, soft and hard household furnishings and decorative products.

- 5.3.2 In their supporting statement the applicants claim that the key to the company's success has been its ability to stock a wide range of home furnishing products in large units, which it sells at value prices. Furthermore, the business model requires large retail units which are difficult to achieve in town centre locations.
- 5.3.3 Applications for the provision or extension of out of town centre retail units must be considered against PPS4 which requires thorough sequential and impact assessments to be carried out in relation to any proposal submitted. Due to its date of adoption, PPS4 outweighs the Council's adopted development plan, and as such the proposal is considered against those policies which relate to development proposed in an out of town centre location which are not in accordance with an up to date development plan.
- 5.3.4 A sequential assessment must make a thorough assessment of all town centre sites, taking into account their availability, suitability and viability. Where it is demonstrated that no town centre sites are available, preference must be given to edge of town centre locations that have good pedestrian links to the town centre and flexibility must be demonstrated (scale, format, car parking and disaggregation).
- 5.3.5 An impact assessment must take into account impact upon a) private investment in a centre or centres within the same catchment, b) town centre vitality and viability, c) allocated sites being developed in accordance with the development plan, d) in centre trade/turnover and trade in the wider area, e) the extent to which the proposal is of an appropriate scale if located in or on the edge of a town centre and f) locally important impacts on the town centre.
- 5.3.6 The agent for the application has provided a retail assessment which requires critical analysis against the relevant policies within PPS4 in order to make an assessment as to whether the application could be considered to be acceptable or not in principle.

5.4 **Sequential Assessment**

- 5.4.1 Assessment of town centre sites (taking into consideration availability, suitability and viability)
- 5.4.2 The submitted retail assessment gives consideration to the eight sites that formed part of the sequential testing for the extension to the Sainsbury's superstore on Oxford Road in Banbury in 2008, four of which are town centre locations, the remaining four are edge of town centre. Furthermore the applicant has sought to identify any further sites which have become available in the interim period, these include two sites which they state are now no longer available.
- 5.4.3 The applicant identifies three requirements for the proposed store which includes sufficient floorspace, adjacent surface level car parking and appropriate external servicing and delivery areas. The assessment concludes that no sites have been identified that are suitable and available which would viably accommodate such development.

- 5.4.4 In contrast to this application, the sequential test carried out in relation to application 10/01347/F for a hotel and restaurant at Land at Kraft Foods in Banbury gave consideration to 31 sites, 16 of which were, in the opinion of the applicant for that application, sequentially preferable. Whilst many were concluded to be unavailable or unviable at the time of that application, they have not been reconsidered as part of this proposal. The sites include Town Centre House, Car Park at Upper Windsor Street, Land at Cherwell Street, sites at Lower Cherwell Street, Station Approach and the former Spiceball Leisure Centre. Furthermore, Officers are aware of two other sequentially preferable sites which may be suitable for Dunhelm which include Crown House and Unit 1B, 10 Calthorpe Street.
- 5.4.5 Whilst evidence of sequential testing has been carried out, given that there is knowledge of other sites within town centre and edge of centre locations, Officers are not satisfied at this stage that a thorough and conclusive sequential test has been carried out which adequately demonstrates that there are no other sites suitable in these locations to accommodate the proposed Dunhelm store.
- 5.4.6 Demonstration of flexibility (scale, format, car parking and disaggregation)
- 5.4.7 It would seem from the application submission that little flexibility can be demonstrated by a Dunhelm store. It is claimed that Dunhelm's unique selling point is 'for customers to be able to obtain the full range of home furnishings all under one roof'. It is also stated that 'the approach is a wholly integrated offer without separate defined elements, with all product ranges contributing to the viability of the store. Removal of product ranges could jeopardise the viability of the whole store'. For these reasons, the retail assessment concludes that there are 'genuine difficulties associated with Dunhelm having to operate their business within a town centre location'.
- 5.4.8 Of the four indicators to take into consideration when assessing flexibility, SDPHE considers that the level to which a company can consider disaggregation has a direct impact upon scale, format and car parking. For instance, if SDPHE were to accept the argument that the full range of products (including bulky and non bulky goods) had to be sold under one roof it would be reasonable to expect that a larger scale building with adjacent car parking and servicing/delivery opportunities would be required. Due to these requirements, available opportunities for the accommodation of a Dunhelm store are more likely to be in edge of center or out of centre locations.
- 5.4.9 However, whilst noting the applicant's reference to an integrated offer of product ranges, Officers are not convinced by the submission that Dunhelm could not operate in a disaggregated way. The applicant refers to genuine difficulties associated with operating in a town centre location, which would be accepted if the whole product range were to be sold from such a location due to difficulties with the delivery and collection of bulky goods as a result of access and parking, however there is little reference to (or evidence to support) the reasons why it would be so difficult for Dunhelm to sell bulky goods from an approved retail warehouse location and the rest of the product range from a town centre location and thus a smaller scale premises.

- 5.4.10 Furthermore, the retail assessment states only that the removal of product ranges *could* jeopardise the viability of the whole store rather than stating that it would be jeopardised and there is no clear evidence to support this statement.
- 5.4.11 In relation to sequential assessment and the demonstration of flexibility, for the above reasons SDPHE is not satisfied that the submission gives consideration to the full range of potentially available sites nor does it demonstrate flexibility or that disaggregation of the product range could not be viably achieved which is in conflict with Policy EC15 of PPS4.

5.5 **Impact Assessment**

5.5.1 Public and Private investment in a centre or centers within the same catchment

5.5.2 The retail assessment states that there are no proposed town centre development schemes. It should be noted however that the Council is active in considering the future of a number of edge of town centre sites, at least some of which may accommodate some element of retail, namely Bolton Road, Old Spiceball site and Canalside. No reference has been made by the applicant in terms of the impact of the proposal upon these future sites. On a smaller scale, there are a number of recent applications (approved and proposed) for retail development including sites at Calthorpe House, Warehouse Adj 12 Marlborough Road, Pepper Alley and 5 Butchers Row. No consideration has been given to the impact of the proposal upon these commitments.

5.5.3 It is SDPHE's view that in the absence of any evidence to the contrary, the approval of an out of centre retail unit could not be considered to have no impact upon these committed and proposed retail uses. With no verification in relation to this matter SDPHE is not satisfied that public and private investment would not be impacted upon by the proposal.

5.5.4 Town centre vitality and viability

5.5.5 The applicant's reference to the Bolton Road site (Draft Core Strategy allocation) is noted, however PPS4 requires assessment in relation to town centre vitality and viability giving consideration to consumer choice and the range and quality of the comparison and convenience retail offer. It is reasonable therefore to give consideration to the existing town centre circumstances rather than those that have not yet been allocated. Banbury town centre accommodates a range of retail units which offer good provision of comparison goods retailers targeted mainly at the middle/market class (CBRE 2010 Retail Update). Giving consideration to Dunhelm's range of products, it is considered that there is the potential for a level of overlap that could negatively affect the vitality and viability of the town centre. Retailers such as Cargo Homestore, Debenhams, British Home Stores, Fashion Fabrics, Laura Ashley and Robert Dyas (together with other smaller one off retailers), all sell the products that Dunhelm wish to sell from the proposed site in addition to those that can already be lawfully sold (fabric, household goods, homewares, soft and hard household furnishings and decorative products).

5.5.6 The retail assessment accepts that as a result of Dunhelm occupying the unit in question there may be some overlap with goods sold in the town centre, however it

goes on to state that the degree of overlap would be minimal. The assessment provides no evidence to support this statement and furthermore, it is stated elsewhere that the company's main focus is on home textiles (curtains bed linen, bath linen, cushions, fabrics, quilts, rugs and soft kitchen); products which are all sold from the town centre. In addition to this, Appendix 6 of the retail assessment provides a breakdown of the product range and the percentage of floorspace of the retail unit that each would occupy. SDPHE's own conclusion from this information is that a minimum of 60% of the retail unit would offer non-bulky comparison goods that could be purchased from existing retailers in the town centre. Therefore it could only be concluded that the proposal to allow the sale of non-bulky comparison goods from the proposed unit would have the potential to attract consumers away from the town centre, therefore having an impact upon the goods sold and subsequently affecting the town centre's vitality and viability. This would have the potential to jeopardise existing retailers in the town centre creating a less compact and sustainable centre and would also result in reducing opportunities for those that are less mobile in conflict with sustainability objectives.

- 5.5.7 Given the observations and conclusions drawn, SDPHE considers that the proposal does not demonstrate that there would not be an unacceptable impact upon the vitality and viability of the town centre.
- 5.5.8 Development of existing allocated sites
- 5.5.9 The statement of the retail assessment on this issue is noted. The draft allocation of the Bolton Road site is not yet adopted and there are no other allocated retail sites within Banbury Town Centre.
- 5.5.10 In centre trade/turnover and trade in the wider area
- 5.5.11 SDPHE considers that the impact of the proposal upon trade is covered at 5.5.5 – 5.5.7 above.
- 5.5.12 Appropriateness of scale
- 5.5.13 It is considered that as the site is beyond the edge of the town centre this element of EC16 does not apply to the consideration of the proposal.
- 5.5.14 Locally important impacts on the town centre
- 5.5.15 It is not considered that the proposal would give rise to any locally important impacts on the existing town centre over and above those set out at 5.5.5-5.5.7
- 5.5.16 Advice from the Head of Planning Policy and Economic Development sets out that a full Retail Impact Assessment is essential (despite the proposal not meeting the threshold for requiring such assessments) where it is considered that the proposal would have a significant impact upon other centres. In response to this advice, the applicant does not consider that the proposal would have a significant impact upon other centres. However given the above assessment the SDPHE is not convinced that the impacts would not be significant. Indeed there is a lack of supporting evidence from the application to discount this concern. Therefore based on the inconclusive information submitted it is considered that a full Retail Impact Assessment is required.

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 Dunhelm 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 Throughout the assessment of the proposal to vary condition 6 of planning application 01/01358/OUT the applicant has not provided a comprehensive sequential assessment in relation to the proposed development and as such the resulting assumptions are inconclusive. Furthermore, SDPHE considers that more flexibility could be demonstrated together with giving consideration to disaggregation. If neither can be viably pursued, fully evidenced justification is required for each.

5.7.2 Furthermore, given the percentage of floorspace likely to be occupied by non-bulky goods, all of which could be purchased from existing shops in the town centre, SDPHE considers that the proposal would result in expenditure leakage from the town centre which would subsequently and unacceptably impact upon its viability and vitality in direct contrast with PPS4. The application is therefore recommended for refusal.

6. Recommendation

Refusal; for the following reason(s):

The Council considers that the application for the variation of condition 6 of 01/01358/OUT to allow a range of non-bulky goods to be sold from an out-of-centre location is unacceptable as the applicant has not demonstrated that all sequentially preferable sites in the town centre or edge-of-centre have been thoroughly assessed as being unavailable, unsuitable or not viable before considering the proposed out-of-centre location. Furthermore no clear justification for the lack of flexibility in terms of scale, format, car parking or disaggregation has been demonstrated. In addition, and based on the information available to the Local Planning Authority it is considered that the proposal, if approved, would be detrimental to the vitality and viability of the town centre insofar as it would have an adverse impact upon investment in the future provision of comparison floor space and upon existing retailers within the town centre, which would potentially reduce the range of shops provided, reducing the sustainability of the town centre and disadvantaging less mobile social groups leading to increased social exclusion. For these reasons, the application is considered to be contrary to PPS4: Planning for Sustainable Economic Growth, Policy TC2 of the South East Plan and Policies S1 and S2 of the non-statutory Cherwell Local Plan.

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