

Report

Report to:	Cambuslang/Rutherglen Area Committee
Date of Meeting:	26 February 2008
Report by:	Executive Director (Enterprise Resources)

Application No	CR/08/0002
Planning Proposal:	Change of Use of Shop (Class 1) to Hot Food Shop

1 Summary Application Information

- Application Type : Detailed Planning Application
- Applicant : Geraldine Capaldi
- Location : 224 Stonelaw Road
Rutherglen

2 Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) Refuse Detailed Planning Permission - For the Reasons Stated

2.2 Other Actions/Notes

The Area Committee has delegated powers to determine this application.

3 Other Information

- ◆ Applicant's Agent: Montagu Evans
- ◆ Council Area/Ward: 11 Rutherglen South
- ◆ Policy Reference(s): Cambuslang/Rutherglen Local Plan 2002, policies:
Com 8 – 'Village Centres'
SLP 7 - 'Hot Food Shop'
RES 9 – 'Residential Land Use Area'

South Lanarkshire Local Plan (Final after Modification) 2007, policies:
COM 5 – 'Village/Neighbourhood Centres'
DM 10 – 'Hot Food Shops'
RES 6 – 'Residential Land Use Area'

- ◆ Representation(s):

◆ Consultation(s):

Environmental Services

Roads and Transportation Services (North Division)

Burnside Community Council

Planning Application Report

1 Application Site

- 1.1 At the northern end of the Burnside commercial area, 70 metres south of Stonelaw Road/Viewpark Drive junction, the application site is a mid row single storey vacant retail unit on the west side of Stonelaw Road with a floor area of approximately 96 square metres. It was formerly occupied (until recently) by 'Burnside Travel' who have relocated to other premises.
- 1.2 The unit itself, in comparison to the majority of other neighbouring retail properties, has a relatively wide shop front with a blue powder coated roller shutter. At the rear there is a relatively small extension which is supported by pillars, under which there is basement floorspace. A block of flats (Viewpark Court) with windows facing the rear elevation of the application site, is separated from the site by a vehicular driveway.
- 1.3 Immediately either side of the unit there is an existing hot food takeaway (Café India) and hairdressers. On the opposite side of Stonelaw Road there is a 'Somerfield' supermarket with large car park. Stonelaw Road is a classified road (A749) and is a principle traffic corridor between Glasgow city centre and East Kilbride. Consequently the road carries a high volume of traffic throughout the day. Indeed there is a pelican crossing with 'zig-zag' road markings close to the site and parking restrictions are in force along Stonelaw Road as it passes through the commercial centre. Nevertheless a dedicated on street parking bay for 5/6 vehicles has been delineated on the carriageway outside the site.
- 1.4 There are 43 commercial units within the Burnside village Centre. Of these units, 22 of them (including the application site) are Class 1 retail units (shops) in terms of the schedule that accompanies The Town and Country Planning (Use Classes) (Scotland) Order 1997, with the remaining properties (21) being 'other' uses e.g. offices, banks, hot food shops etc. Consequently at present the percentage split between class 1 units and others is 51.2% to 48.8%

2 Proposal(s)

- 2.1 It is now proposed to change the use of the vacant shop to a hot food takeaway. No detailed information regarding the operation of the proposal (hours of opening; type of food sold etc has been lodged). In support of the application however the applicant's agent has lodged a detailed statement which in summary:
 - ◆ Claims that the percentage split between retail and other uses is greater than that detailed a paragraph 1.4 above – this difference is due to the fact that the applicant is of the view that a beauty salon falls within class 1 whilst historically the Council have treated it as a class 2 use, a position supported by previous commercial surveys/appeals. On this basis I am confident that the existing split of 51.2% to 48.2% is sound.
 - ◆ Highlights that there has been an unauthorised change of use. (This breach of planning control will be pursued in the appropriate manner in line with government advice contained in Circular 4/1999 [Planning Enforcement]).
 - ◆ Makes reference to Scottish Planning Policy, especially SPP1 'The Planning System' and SPP8 'Town Centres and Retailing' in support of the application.
 - ◆ Challenges the recommendation of Roads and Transportation Services by suggesting that the proposal will have a minimal bearing on whether or not cars park on the zig-zags as any motorist could do this and that a significant proportion of customers will visit by foot or make use of the home delivery

service. In addition it is also highlighted that a number of customers may visit other shops at the same time (a linked trip) especially the supermarket which has an extensive car park.

3 Background

3.1 Local Plan Status

In terms of the adopted Cambuslang/Rutherglen Local Plan 2002 the site is within the Burnside Village Centre, policy COM 8 (Village Centres) applicable. This policy seeks to ensure that a minimum of 50 percent of the units remain as class 1 retail units in order to support the provision of local shops. In addition policy SLP7 – Hot Food Shop – is also relevant, this policy having a number of criteria that must be complied with (no adverse impact on residential amenity or traffic circulation or public safety etc) in order that an application can be determined favourably.

3.2 The South Lanarkshire Local Plan (Final after Modification) has similar policies to the above (COM 5 and DM 10), the most significant change being that policy COM 5 requires a minimum of 60 percent of the units to be retained as class 1 shops, an increase of 10 percent when compared with the Cambuslang/Rutherglen Local Plan.

3.3 In addition to the above the neighbouring residential properties to the rear of the site are within a Residential Land Use Area (policies RES 9 and RES 6 respectively of the local plans) where the aim of the policy is to protect and enhance the existing level of amenity. Accordingly there is a general presumption against any form of development that will have an adverse or detrimental impact.

3.4 Relevant Government Advice/Policy

Scottish Planning Policy 8 “Town Centres and Retailing” provides guidance in relation to hot food outlets and advises that it is normally appropriate for such uses to be located in existing shopping or commercial areas. Assessment of such applications must consider “local problems that could arise from a concentration of such uses. Account should be taken of nuisance, odour and traffic noise particularly in close proximity to residential areas. It may be appropriate to avoid a proliferation or a clustering in order to minimise disturbance and to protect the amenity of an area.”

3.5 Planning Background.

Since 2000 there have been four previous applications relating to the property, namely:

CR/02/0120 - ‘Change of use from office to Hot food shop’. Refused July 2002

CR/02/0136 - ‘Replacement Shopfront, installation of extract ventilation/external compressors and external alterations. Withdrawn July 2002.

CR/02/0137 - ‘Erection and display of internally illuminated fascia and 2 No.internally illuminated box signs. Withdrawn July 2002

CR/03/0031 - ‘Installation of roller shutters’. Approved March 2003

4 Consultation(s)

4.1 **SLC Roads and Transportation services** – Site is located on a section of road which is protected from parking by zig-zag markings and parking restrictions. As a result parking is at a premium and the substantial number of patrons likely to visit the hot food shop by car leads me to conclude that this application should be refused. If approved, it will result in double parking, overspill of parking onto the zig-zag

markings or into adjacent residential streets. The latter of which already suffer from significant levels of non residential parking.

Response: The difficulties of parking at the Burnside Shopping area are well established. Similar applications have been refused consent (CR/02/0120) for this reason and this concern has been defended successfully at appeal. I believe another hot food establishment in close proximity to the existing ones will generate additional traffic with resultant demand for parking in the vicinity of the site. No off street parking is being proposed and therefore I consider that vehicles will be parked in areas that they should not be (zig-zag lines, corners where parking is controlled by double yellow lines etc) and that this will generate adverse traffic conditions with resultant danger to all road users, pedestrians included. Furthermore responsible drivers will utilise the surrounding residential streets resulting in a diminution in the standard of residential amenity as a result of increased traffic, especially at night, when hot food establishments traditionally attract a greater proportion of their customers.

- 4.2 **SLC Environmental Services** – No objections subject to conditions relating to noise, and ventilation. Also advise that a number of ‘Advisory Notes’ should be attached to any consent that is issued.

Response: Noted. Appropriate conditions can be imposed if the application is granted.

- 4.3 **Burnside Community Council** – Object to the proposal as it will result in the number of Class 1 retail units being less than 50%, contrary to the provisions of both the adopted and replacement local plan. In addition, proposal will result in a concentration of hot food shops in close proximity to each other, will result in illegal and inappropriate parking in the vicinity of the site and will have an adverse impact on residential amenity due to an inevitable increase in litter and noise in the immediate locality.

Response: Noted. In particular I acknowledge that the proposal will result in the retail/non retail percentage split being below that required by the local plans and that there are serious amenity considerations associated with the proposal. In addition as detailed at paragraph 4.1 above, Roads and Transportation Services have similar concerns about parking and public safety. All of the aforementioned concerns are discussed in greater detail in sections 5 and 6 below.

5 **Representation(s)**

- 5.1 Statutory neighbour notification was undertaken and due to the nature of the proposal it was advertised in the local newspaper (Reformer). Following this publicity, 22 letters of representation have been received, two of which have an attached petition signed by 19 and 4 residents respectively, whilst one letter has been sign by three individuals. In addition a number of households/businesses have lodged more than one representation.

The issues raised can be summarised as:

(a) Over Provision

Response: The proposal, if approved, would result in another hot food shop at the Burnside shops. It is well established however that the market, rather than the planning system, should influence the demand/supply of such hot food establishments and that the planning system should not be used to protect the competitive interests of retailers or other businesses.

(b) Previous refusal of consent for hot food

Response: As detailed in section 3 above, planning consent was refused in July 2002 for a hot food takeaway at the site. This was over 5 years ago but nevertheless the Cambuslang/Rutherglen Local Plan was nearing adoption (October 2002) and there has been no fundamental or material change in policy as it relates to the site or proposal. Clearly the previous refusal is a material consideration in the assessment of the present application.

(c) Restricted parking (yellow road markings etc) and resultant overspill into neighbouring residential streets

Response: Parking provision within the immediate locality of the site is limited and therefore many customers arriving by car will not be able to park outside the premises. Consequently a parking space nearby will be sought and this in many instances will result in vehicles being parked in the adjoining residential streets, especially Viewpark Drive. In addition some drivers may park irresponsibly either on the zig-zags associated with the pelican crossing or double yellow lines. These road markings exist for reasons of public safety (provide appropriate visibility) and therefore any vehicle parked in such locations will compromise public safety. Furthermore an increase in the number of vehicles being parked in the residential streets for relatively short periods will result in disturbance, increased traffic, congestion etc and this is not ideal, especially given the physical characteristics (narrowness) of the carriageway. Clearly this will also compromise road safety whilst having a negative impact on the present level of amenity enjoyed by residents.

(d) Refusal of similar application in Dukes Road and dismissal of appeal

Response: An application for hot food consent (CR/07/0025) was refused and the subsequent appeal dismissed in November last year. Whilst there are a number of similar characteristics (existing hot food takeaways nearby) that are important and relevant to the present submission it is well established that each application has to be considered on its own merits. Also the policy position/background, as detailed in the Cambuslang/Rutherglen Local Plan, differs between the sites.

(e) Adverse impact on amenity due to odours, discarded litter, noise and unruly behaviour

Response: Residential properties exist in close proximity to the site (especially the flats at the rear) and therefore the proposals impact on residential amenity is relevant. As highlighted in (c) above I am of the view that the traffic generated by the proposal will impact on residential amenity to a significant and material extent and on this basis alone the proposal should be resisted.

With regards to other amenity considerations I accept that there already are two hot food establishments in close proximity to the site and that there will be an element of competition between the existing and any new hot food shop for the same customer base. Nevertheless with an increased choice available there will, in my view, be a proportionate increase in the number of customers and vehicles. Consequently there will be an increase in the levels of activity, nuisance and disturbance, these factors being detrimental to the character and amenity of the neighbouring residential area which would be subject to the 'overspill' activity associated with the proposal. In addition any extract flue is likely to be at the rear of the premises very close to the flats. This in combination with the existing flues persuades me that an additional flue would result in a concentration of odours

which would be unacceptable. Indeed SPP 8 (Town Centres and Retailing) recognises that it may be appropriate to minimise a proliferation or clustering of hot food outlets in order to protect amenity.

(f) Further reduction in retail units

Response: I acknowledge that if consent is issued it will result in a further retail unit (shop) being lost to another use. This on its own however may not be critical as it is the cumulative impact of 'non shop' uses that is of prime importance; indeed it is this aspect that is of fundamental importance in terms of local plan policy, as it relates to the Burnside commercial area.

(g) Delay in receiving neighbour notification

Response: From the information available it is evident that the notification certificate was received by an objector approximately 4 weeks after the application was lodged. The recipient however does not adjoin the application site and therefore it would appear that a copy of the neighbour notification certificate was delivered by an interested third party and not the applicant's agent. This, along with the festive holiday period, may explain the 'delay' referred to.

6 Assessment and Conclusions

- 6.1 In terms of planning legislation the application, in the first instance, must be considered in relation to the provisions of the development plan and all other material planning considerations. In this respect Policy COM 8 of the adopted local plan is of prime importance and to a slightly lesser degree so is policy COM 5 of the South Lanarkshire Local Plan (Final after Modification).
- 6.2 Given the applicants supporting statement it is clear that there is a different interpretation in the split between class1 retail and other uses at Burnside. In this regard I am confident that the Council's figures merit support and that the issue of consent will bring the representation of class 1 units below the minimum level of 50 percent stipulated by policy COM 8. Indeed the policy requirement (COM 5) of the South Lanarkshire Local plan requires a minimum of 60 percent Class 1 which the proposal, even assuming the applicants figures and calculations to be justified, fails to meet. From a local plan policy perspective I am therefore confident that the proposal does not merit support.
- 6.3 Local plan policy is not the only material consideration. An additional hot food establishment at the location proposal has in my opinion potential to adversely impact on the residential amenity of neighbouring houses. At present adjoining properties do experience some impact on their amenity from the existing two hot food takeaways and the introduction of a third as proposed would only intensify such impacts to a significant and detrimental extent in terms of odours, noise, disturbance and litter. For this reason alone a further hot food shop should be resisted.
- 6.4 Adverse comments have been generated by Roads and Transportation Services, these comments being based on experience, observations and complaints from residents over a number of years. Indeed in 1997 a refusal of a hot food shop elsewhere in Burnside cited similar circumstances and this was successfully defended at appeal. Indeed since 1997 I would highlight that car ownership and use has increased significantly and therefore the adverse traffic considerations that were acknowledged by a reporter are, if anything, likely to have intensified over the last ten years. Again therefore the adverse comments from Roads as they related to public safety and the displacement of parking into residential streets, merit support.

- 6.5 Finally the representations received must also receive due consideration. Whilst I acknowledge that some of these comments will be from those seeking to protect their own business interests, the majority are from nearby residents who experience the existing circumstances and conditions associated with the present takeaways. Clearly from their perspective there is an adverse impact on their amenity. I am persuaded that the introduction of a further hot food shop will only intensify this impact to an extent and degree that would be of significant harm to the present level of residential amenity. In reaching this conclusion I am mindful of the fact that SPP8 provides guidance for determining applications for hot food consent and emphasizes that "It may be appropriate to avoid a proliferation or a clustering (of hot food shops) in order to minimise disturbance and to protect the amenity of the area.
- 6.6 In view of the above, previous appeal decisions and existing Council policy as detailed in both the adopted and replacement Local Plans, I am of the view that the issue of consent cannot be supported in planning terms. Accordingly the refusal of planning permission is entirely appropriate and justified given all material planning considerations.
- 7 Reasons for Decision**
- 7.1 The proposal does not accord with the relevant policies of the adopted and replacement local plan and would have an adverse impact on the amenity of the neighbouring residential areas, and the additional traffic generated by the proposal would have a significant adverse impact on road safety.

Iain Urquhart
Executive Director (Enterprise Resources)

18 February 2008

Previous References

- ◆ None

List of Background Papers

- ▶ Application Form
- ▶ Application Plans
- ▶ Neighbour notification certificate dated 19 December 2007
- ▶ Press Advertisement, Reformer, 9 January 2008
- ▶ Cambuslang/Rutherglen Local Plan 2002
- ▶ South Lanarkshire Local Plan (Final after Modification) 2007
- ▶ Scottish Planning Policy 8 'Town Centres and Retailing'
- ▶ Scottish Planning Policy 1 'The Planning system'
- ▶ Previous applications CR/96/127; /CR/02/0120; CR/02/0136; CR/02/0137 and CR/03/0031
- ▶ Appeal decisions P/PPA/380/48 and P/PPA/260/209
- ▶ Burnside Commercial Survey 4 February 2008
- ▶ Letter dated 8 February 2008 from agent with supporting statement
- ▶ E-mail dated 8 February to agent

► Consultations

Roads and Transportation Services (Cam/Ruth Area)	25/01/2008
Environmental and Strategic Services (Cam/Ruth Area)	21/01/2008
Burnside Community Council	13/02/2008

► Representations

Representation from :	William Christie (Butchers) Ltd, 228 Stonelaw Road Burnside , DATED 22/01/2008
Representation from :	Ann McKearney, Stonelaw Towers Residents Association 10 Stonelaw Towers. Rutherglen G73 3R4, DATED 17/01/2008
Representation from :	C W MacFarlane, 3 Viewpark Drive, Rutherglen, DATED 23/01/2008
Representation from :	Alan and Carole Sym, 10 Viewpark Drive, Rutherglen G73 3QD, DATED 20/01/2008
Representation from :	A S Crichton, 30 Viewpark Drive, Rutherglen G73 3QD, DATED 21/01/2008
Representation from :	John Gilbert, 6 Viewpark Drive, Rutherglen G73 3QD, DATED 20/01/2008
Representation from :	Mr and Mrs Burns, 226 Stonelaw Road, Rutherglen G73 3SA, DATED 22/01/2008
Representation from :	Owner/Occupier, 323 Stonelaw Road, Rutherglen , DATED 22/01/2008
Representation from :	Owner/Occupier , , DATED 22/01/2008
Representation from :	B T McGuigan, 'Auburn', Viewpark Drive, Rutherglen G73 3QE, DATED 21/01/2008
Representation from :	Kerr Stirling , 10 Albet Place, Stirling FK8 2QL Your Ref : CJM/LCC, DATED 14/01/2008
Representation from :	Mohammed Yasin Ali, 222 Stonelaw Road, Burnside Rutherglen G73 3SA, DATED 15/01/2008
Representation from :	Bashir Ahmed, 222 Stonelaw Road, Burnside, Rutherglen G73 3SA, DATED 15/01/2008
Representation from :	Mr B Ahmed, 222 Stonelaw Road, Burnside, Rutherglen G73 3SA, DATED 09/01/2008

- Representation from : Mr R McGirr, 17 Viewpark Drive, Rutherglen G73 3QE,
DATED 23/01/2008
- Representation from : Mrs K A McGirr, 17 Viewpark Drive, Rutherglen G73 3QE,
DATED 23/01/2008
- Representation from : Alistair McHay, 33 Viewpark Drive, Rutherglen G73 3QE,
DATED 30/01/2008
- Representation from : Mrs P Sherry, Flat 1/1 266 Stonelaw Road, Rutherglen ,
DATED 325/01/2008
- Representation from : Mr and Mrs H Gray, Flat 1/2 266 Stonelaw Road,
Rutherglen G73 3SA, DATED 25/01/2008
- Representation from : L Di Giacomo, Flat 2/2 Stonelaw Road, Rutherglen G73
3SA, DATED 25/01/2008
- Representation from : Ina J Leslie , Club Treasurer, 39 Viewpark Drive,
Rutherglen , DATED 23/01/2008
- Representation from : Derek J Allan, 20 Viewpark Drive, Rutherglen G73 3QD,
DATED 23/01/2008
- Representation from : Colin Morris, 16 Viewpark Drive, Rutherglen G73 3QD,
DATED 23/01/2008
- Representation from : Owner/Occupier, 261 Stonelaw Road, Rutherglen G73
3RN, DATED 26/01/2008

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Bill Kerr, Planning Officer, 380 King Street, Rutherglen
Ext: 847 5141 (Tel: 0141 613 5141)
E-mail: Enterprise.cam-ruth@southlanarkshire.gov.uk

REASONS FOR REFUSAL

- 1 The proposal is contrary to Policy COM 8 of the Cambuslang/Rutherglen Local Plan in that it would bring the representation of Class 1 retail units (as detailed in the schedule accompanying The Town and Country Planning (Use Classes) (Scotland) Order 1997) in the Burnside village centre to below 50% with resultant adverse impact on the vitality and viability of the centre, particularly with regard to its role in providing local convenience and comparison goods/shopping.
- 2 The proposal is contrary to Policies RES 9 and SLP 7 of the Cambuslang/Rutherglen Local Plan in that it would have a significant and adverse impact on the present level of amenity enjoyed by neighbouring residential properties, particularly those at Viewpark Court and Viewpark Drive, by reasons of increased odours, parking and other activity associated with the proposal, especially late at night.
- 3 The proposal is contrary to Policy COM 5 of the South Lanarkshire Local Plan (Final after Modification) 2007 in that it would bring the representation of Class 1 retail units (as detailed in the schedule accompanying The Town and Country planning (Use Classes)(Scotland) Order 1997 in the Burnside village centre to below 60% with resultant adverse impact on the vitality and viability of the retail function of the centre.
- 4 The proposal is contrary to Policies RES 6 and DM10 of the South Lanarkshire Local Plan (Final after Modification) 2007 in that it would have a significant and adverse impact on the present level of amenity enjoyed by neighbouring residential properties, particularly those at Viewpark Court and Viewpark Drive, by reason of increased odours, parking and other activity associated with the proposal, especially late at night.
- 5 In the interests of traffic and public safety in that the existing limited on-street parking provision is insufficient to accommodate the increased demand generated by the proposal (which has no dedicated off-street parking) thereby resulting in overspill parking on yellow lines, the zig-zag zones associated with the nearby pelican crossing and in neighbouring residential streets thereby generating adverse traffic conditions.

For information only

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