

# Appendix 6

## Further Representations

### Further Representation From

- ◆ Statement of Observations from Planning Officer on Applicant's Notice of Review



## **STATEMENT OF OBSERVATIONS**

Planning Application P/18/1104

Change of use of existing bank to form restaurant, ancillary hot food takeaway, entrance alterations on ground floor, function room on first floor and erection of flue to rear.

5 Greenlees Road, Cambuslang, G72 8JA.

### **1 Planning Background**

- 1.1 A previous Planning Application P/18/0180 for the change of use of existing bank to form restaurant, hot food takeaway, entrance alterations on ground floor, function room on first floor and erection of flue to rear at this site was refused planning consent on 24 July 2018. The supporting statement for this application projected a ratio of 50% restaurant, 25% takeaway and 25% deliveries for the business.
- 1.2 Planning application P/18/1104 was submitted by Mr Mohammed Jawab to South Lanarkshire Council on 30 July 2018 seeking planning permission for the change of use of an existing bank to form a restaurant with ancillary hot food takeaway, entrance alterations on the ground floor, a function room on first floor and erection of flue to rear of the property. The change of use proposal extends over the ground and first floor. The ground floor would consist of a restaurant, kitchen server, preparation area, internal waste storage area and an accessible toilet. On the first floor, a function room, staff room, ladies and gents toilets are proposed. A flue is proposed on the rear elevation which would extend from the ground floor passing internally to the first floor. The flue would exit through the staff room where it would be attached externally to the residential property above. The proposal also includes minor changes to the shop front by alterations to the door.
- 1.3 It is noted that the only amendment to the plans from the previous application is the removal of the text identifying the proposed takeaway area and a reduction from 25% to 10% ratio for the takeaway element of the business.
- 1.4 After due considerations, the planning application was refused by the Council under delegated powers on 17 September 2018. The report of handling dated 14

September 2018 explains the decision and the reasons for refusal are listed in the decision notice. These documents are available elsewhere in the papers.

## **2 Assessment against the development plan and other relevant policies.**

- 2.1 Section 25 of the Town and Country Planning (Scotland) Act 1997, as amended requires that an application for planning permission is determined in accordance with the development plan unless material considerations indicate otherwise.
- 2.2 The development plan in this instance comprises the South Lanarkshire Local Development Plan (adopted 2015) and its associated Supplementary Guidance documents. The site is identified as being located within Cambuslang Town Centre where Policy 4 – Development Management and Placemaking resists development that will have significant adverse impact on the amenity of the local community as a result of light, noise, odours, dust or particulates. Also applicable is Policy 8 – Strategic and Town Centres where the Council will allow a mixture of uses compatible with their role as a commercial and community focal point. Policy DM8 – Hot Food Shops of the Supplementary Guidance, Development Management, Placemaking and Design relates specifically to this type of development proposal. The policy states that proposals of this nature will not have a significant impact in terms of environmental, traffic, public safety and amenity considerations, in terms of noise, disturbance or smells, particularly in relation to residential properties above, adjacent or near to the site. The policy also states that in all cases the applicant shall demonstrate that they have control to implement any ventilation system that may be required. In addition, where a hot food shop is proposed on the ground floor and requires an external flue, there will be a presumption against this type of proposal unless evidence of agreement from all of the common owners is provided.
- 2.3 On 29 May 2018, the Planning Committee approved the proposed South Lanarkshire Local Development Plan 2 (Volumes 1 and 2) and Supporting Planning Guidance on Renewable Energy. The new plan builds on the policies and proposals contained in the currently adopted South Lanarkshire Local Development Plan. For the purposes of determining planning applications the proposed South Lanarkshire Local Development Plan 2 is now a material consideration. In this instance Policies 5, 9 and DM9 are relevant.

- 2.4 There is normally a general presumption in favour of granting planning permission for restaurants and hot food shops within retail and commercial areas. This is providing the proposal does not have a significant impact on amenity, particularly in relation to residential properties above. The applicant has not submitted the information required to demonstrate that the proposal will not have a significant detrimental impact on the surrounding residential properties or the agreement from all of the relevant owners. The potential noise levels from the proposed function room on the first floor and the flue attached to a residential property is of particular concern to the Planning Service.
- 2.5 The proposal fails to comply with Policies 4, 8 and DM8 of the South Lanarkshire Local Development Plan and Policies 5, 9 and DM9 of the Proposed South Lanarkshire Development Plan 2 for the reasons set out in the report of handling associated with the application. In summary, the proposal will introduce a significant increase of noise and disturbance to the surrounding residential units which will have an unacceptable detrimental impact on the residential amenity.

### **3 Observations of applicants 'Notice of Review.**

- 3.1 The applicant has submitted a statement to support his review. The grounds are set out below.

**a) The existing unit is vacant, the former use was a class 2 bank. The change of use will not result in the loss of a retail unit. The premises is within the town centre area of Cambuslang where uses such as a restaurant would be expected. Within the short run of units from the Main Street junction there are mixture of uses - a public bar, the vacant bank, 2 retail units & a hot food takeaway. Opposite the application site is a restaurant. These premises have late opening hours, the takeaway & bar would normally be considered far more disruptive than a restaurant. The proposed restaurant in reality would make little difference with regard to disturbance to the area.**

**Response:** The proposed use as a restaurant, ancillary hot food takeaway and function suite is a significant change of operation to the previous use as a bank. The late opening of a restaurant and disturbance from a function suite will undoubtedly impact on the amenity of the adjoining residential properties. The applicant was asked to submit a noise report to demonstrate the noise level impact to the surrounding residential properties. The noise and vibration report has not been submitted therefore noise impact could not be fully assessed.

- b) The flue at the rear of the building shall be constructed to current industry standards fixed to the rear wall by brackets with anti-vibration mountings with a vertical discharge unit with a terminal 1m minimum above the level of the eaves. The flue & its terminal shall meet current standards with regard to noise & smells, unlike establishments currently in the area operating older systems. Conditions on any consent to satisfy Environmental Health with regard to the extraction system would be accepted. To expect an applicant to provide full details of the proposed system would be unreasonable as this would prove to be very expensive when an application is to establish if the use is suitable for the location.**

**Response:** Environmental Services require the detailed information from a noise and vibration report to carry out a full assessment of the potential impact on the surrounding properties. The submissions of these technical details are particularly vital when a proposal is surrounded by residential properties. The proposed flue is attached to a residential property above the application site; therefore, the information is required before an application can be fully assessed and considered for approval. This is a standard requirement and this type of report generally accompanies an application of this nature when it is submitted. A condition to submit this information after an application has been granted is not acceptable where there is a potential significant impact to surrounding residential properties.

- c) The flue shall be secured to the rear of the building. The flue shall rise internally to the higher level of the first floor before passing through the external wall. The flue shall only be seen at a higher level than normal minimising visual impact. The rear wall is owned by all the owners of the flats, retail units & the applicant (the applicant is the largest owner within the block owning 1/3 of the entire building). Consent to fit the flue shall be sought after planning permission has been given. This is a legal matter, the flue cannot be fitted without the consent of the building's owners. This should not be a planning issue.**

**Response:** Policy DM8 of the adopted South Lanarkshire Local Development Plan states that 'in all cases the applicant shall demonstrate that they have control to implement any ventilation system that may be required'. This policy also states that 'since the rear of the building is often in common ownership, evidence of agreement from all owners should be provided to demonstrate that permission is given for the erection of the flue along the elevation of the property and on the

roof'. Policy DM9 Hot Food Shops in the proposed South Lanarkshire Local Development Plan 2 adopted on 29 May 2018 replicates Policy DM8. These policies are to ensure that all affected parties have been fully consulted and are in agreement prior to any planning approval. The submission of an agreement relating to the installation of this type of equipment is a policy requirement for this type of application and a very relevant planning issue. This requirement is clearly set out in the adopted and proposed development plans, however, none of this information was submitted.

- d) The proposed restaurant shall not increase noise disturbance to any real degree with a public house & hot food carry out already existing within the street block, in addition to the noise generated by traffic at a busy junction. A noise survey can be conditioned on any consent to satisfy the Environmental Health Department. To expect an applicant to provide a noise survey would be unreasonable as this would prove to be very expensive when an application is to establish if the use is suitable for the location.**

**Response:** Environmental Services require a noise and vibration survey to determine the potential impact on the properties directly above the proposed restaurant and function suite and where a flue is attached. Where residential properties are in such close proximity to a potential disruptive noise source, it is not considered acceptable for the Planning Service to condition the submission of a noise report post decision. The information contained within this report is a major determining factor if a proposal impacts on residential amenity. The granting of any such proposal would only be considered if the noise and vibration report demonstrates that there is not a significant detrimental impact on residential amenity.

- e) The proposed restaurant would not expect to have any more customers than one would expect for a bank. Therefore it would not expect to encourage more traffic & congestion to the area, the proposed restaurant is expected to be busier during the day having a quicker turnaround of customers than in the evening but not as busy as a bank would be.**

**Response:** No details of the previous or proposed customer levels have been submitted in relation to the planning application. The hours of operation will increase significantly from the existing use as a bank and the potential disturbance from the function suite on the first floor open until 11pm and 12am raises particular concerns.

- f) Waste shall be stored within the premises, the rear courtyard shall not be used although the applicant has a legal right to utilise the area. Waste bins shall be placed on the pavement for uplift by the council under contract at a set & regular time. Should the council wish the waste to remain on the premises until the council are ready to uplift, the applicant would abide by their wishes.**

**Response:** The applicant proposes an area for waste storage within the restaurant at the side of the main entrance. The consultation response from Environmental Services asks that a condition is attached to any planning approval requiring the submission and approval in writing of waste storage and collection at the premises. This Service advises that Regulation EC 852/2004 requires that 'Food waste, non-edible by-products and other refuse are to be removed from rooms where food is present as quickly as possible, so as to avoid their accumulation.' On that basis it is strongly recommended that any food waste stored inside the premises be removed on a daily basis. Should the application be approved, the details and frequency of waste collection will require approval in writing.

- g) The applicant shall ensure that the area to the front of the unit shall be cleaned & shall tidy the area prior to opening & at closing although it is not expected that the unit shall be the source of any rubbish as there is no intention to encourage a takeaway service.**

**Response:** The Notice of Review Statement advises that there is no intention to encourage a takeaway service however, the supporting statement submitted relating to the current application has proposed that the takeaway element of the business will be 10%. The previous application projected a ratio of 50% restaurant, 25% takeaway and 25% deliveries.

- f) The unit shall provide additional employment to the area. Initially it is expected to provide 8 full time & 8 part time jobs, though this may increase depending on the success of the restaurant.**

**Response:** The Planning Service recognises the importance of the occupation of this prominent commercial unit and proposals which increase local employment opportunities. However, the change of use proposed is not considered compatible with the surrounding residential properties.

The current planning application does not differ significantly from Planning Application P/18/0180 which was refused consent on 24 July 2018. The only change from the previous plans is the removal of the text on the proposed ground floor plan identifying the takeaway waiting area. The supporting statement submitted relating to the current application has reduced the proposed takeaway element of the business to 10%. The previous application projected a ratio of 50% restaurant, 25% takeaway and 25% deliveries. It is considered that the proposed use as a restaurant, ancillary hot food takeaway and function room will introduce a significant increase of noise and disturbance to the surrounding residential units. The late night opening and use of a function room below a residential property is considered to have a significant detrimental impact on the residential amenity.

In summary, the change of use proposal does not accord with the provisions of the adopted or proposed Development Plan or the associated supplementary guidance relating to amenity considerations of the surrounding residential properties.