

Report

Report to:	Hamilton Area Committee
Date of Meeting:	14 February 2007
Report by:	Executive Director (Enterprise Resources)

Application No	HM/06/0832
Planning Proposal:	Alterations And Part Change Of Use Of Existing Shop To Form Hot Food Delivery Service And Erection Of Flue

1 Summary Application Information

- Application Type : Detailed Planning Application
- Applicant : Mrs N Hussain
- Location : 34 Annsfield Road
Hamilton

2 Recommendation(s)

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

- (1) Refuse Detailed Planning Permission – For Reasons Stated (based on the reasons attached)

2.2 Other Actions/Notes

- (1) The Area Committee has delegated powers to determine this application.
- (2) If Committee agrees to refuse the planning application, in the event the flue is not removed within one month of the date of this decision it is recommended that enforcement action be taken to remove the flue from the building within one month of any enforcement served.

3 Other Information

- ◆ Applicant's Agent: N/A
- ◆ Council Area/Ward: 50 Cadzow
- ◆ Policy Reference(s): **Hamilton District Local Plan**
Policy RES1 – Residential Areas General
Policy DC1 - Development Control General
Development Advice Guidance Notes
Development Advice Guidance Note 5 – Hot Food Shops
South Lanarkshire Planning Policies
Policy SLP7 – Hot Food Shops
Finalised South Lanarkshire Local Plan
Policy RES6 – Residential Areas Land Use
Policy DM1 – Development Management
Policy DM10 – Hot Food Shops

- ◆ Representation(s):
 - ▶ 4 Objection Letters

- ◆ Consultation(s):

Roads and Transportation Services (Hamilton Area)

Environmental Services

Planning Application Report

1 Application Site

- 1.1 The application relates to an existing retail unit at 34 Annsfield Road, Hamilton, close to its junction with Meikle Earnock Road. Located on the north side of Annsfield Road, the property is surrounded on three sides by a mix of predominantly 2 storey semi-detached and terraced properties and by recreational ground to the rear.
- 1.2 The premises are currently used for storage for the adjoining shop and are situated on the ground floor of a 2 storey sandstone tenement block where residential use exists above.

2 Proposal(s)

- 2.1 The applicant proposes a change of use of the existing retail unit to provide a hot food delivery service and retrospective planning permission for the flue that has been erected. A planning application was previously granted on this site for the sub-division of the retail unit to two shops and alterations to shop front and it would be the intention of the applicant to implement this approval and begin operation of the hot food delivery service from the new shop unit created. The applicant has not provided hours of operation of the proposed delivery service.

3 Background

3.1 Local Plan Status

- 3.1.1 The application site is affected by the general residential policies in the adopted Hamilton District Local Plan and Finalised South Lanarkshire Local Plan and as such Policies RES1 and RES6 apply respectively. These policies are aimed at preserving the residential amenity of such areas and do not support the introduction of 'bad neighbour' uses into such areas. Policies DC1 and DM1 of the adopted and Finalised Local Plans respectively are aimed at ensuring development takes due cognisance of the surrounding area and respects the local context as well as other criteria appropriate to ensuring the development accords with its setting.
- 3.1.2 The Council's approved policy guidance on hot food shops (as detailed in Development Advice Policy Guidance Note 5) seeks to restrict the location of such uses to the most suitable locations in land use planning terms. These being the Secondary Shopping Areas of Hamilton and other Village Centres. Further policy guidance on hot food shops is provided within the Council's South Lanarkshire Planning Policies document. Policy SLP7 – Hot Food Shops states that in residential areas there will be a general presumption against the granting of hot food takeaways if residential amenity would be adversely affected to a significant degree. It goes on to state that where the proposed development is likely to have an adverse effect on existing traffic circulation or public safety, there will be a general presumption against granting permission. This policy guidance is also supported within Policy DM10 of the finalised local plan.

3.2 Relevant Government Advice

- 3.2.1 There is no government advice relevant to this application.

3.3 Site History

- 3.3.1 Most recently members may recall that a planning application for the change of use of the retail unit to form a hot food take away (planning reference number HM/05/0535) was refused at the Hamilton Area Committee on 28th September 2005

on the grounds of harm to residential amenity and traffic generation. The applicant appealed this decision and the appeal was dismissed by the Scottish Ministers in May last year.

- 3.3.2 A planning application for the sub-division to form two shop units and the formation of a new shopfront and new entrance door was approved on 1st October 2004. No hot food element was proposed as part of this application, (planning reference number HM/04/0426).
- 3.3.3 A planning application (planning reference number HM/03/0467) for the sub-division of the retail unit to form one shop and a hot food carry out shop was refused by the Council on 26th November 2003 again on the grounds of adverse impact on residential character.
- 3.3.4 A search of records has revealed that a proposal for the change of use of the retail use at 32 Annsfield Road, to use as a hot food takeaway was refused in 1982 (planning reference number HN/82/0151). The grounds for refusal related to the adverse impact on residential amenity and the proposal being contrary to approved policies.

4 Consultation(s)

- 4.1 **Roads and Transportation Service:** Advised that there is a limited amount of on street parking available at this location and that this proposal would encourage more on street parking at a bend. It is considered by the Service the development would have an adverse effect on the forward visibility at the bend and therefore recommended refusal of the application.

Response: Noted.

- 4.2 **Environmental Services:** Have recommended a number of conditions be attached relating to the proposed ventilation system and the control of noise, as well as conditions relating to the drainage of the site and control of dust.

Response: Noted. It is not considered that the imposition of the conditions suggested by Environmental Services would satisfactorily address amenity issues relating to the development.

5 Representation(s)

- 5.1 Statutory neighbour notification was undertaken and the application was advertised in accordance with Article 12(5) due to the scale or nature of operations during which period four letters of representation were received. Issues raised within the letters of representation are as follows:

(a) The proposed development would cause serious traffic congestion.

Response: Noted. It is accepted in the consultation response from the Roads and Transportation Service that there is potential for traffic congestion.

(b) There are a number of food outlets within the vicinity to serve the area.

Response: Noted. The appropriate location for a hot food service shall be examined in the Assessment and Conclusions section of the report.

(c) The smell from the premises would be a nuisance to the area and the environment.

Response: Noted. While this could to a certain extent be controlled through the use of conditions as suggested by Environmental Services, it is considered that the impact of the siting of the hot food shop at this location in relation to surrounding residential properties is unacceptable in terms of impact upon amenity

(d) The proposed development would cause underage youths to congregate around the unit which at the moment extends to around 10 to 12pm.

Response: Noted. It is generally accepted that a hot food unit will result in an increase in late night activity which is unacceptable for a residential area such as the one in which the application site is located.

(e) The applicant would willingly sell over the counter if required rather than deliver.

Response: Noted. The principle of the change of use to hot food takeaway is not considered acceptable and was refused at appeal under planning reference number HM/05/0535. The principle of a hot food delivery service is not considered acceptable either for the same reasons.

(f) There is only one shop unit at this location and there is not presently a vacant shop unit.

Response: Noted. This application relates to the change of use of part of an existing shop unit to form hot food delivery service. The description of the application has been amended to reflect this situation.

(g) The applicant has failed to undertake neighbour notification as required.

Response: Noted. The applicant has completed a planning application form in which they have identified the appropriate neighbours as having been notified. This satisfies the Planning Service's requirements relating to neighbour notification. The objector's property does not adjoin the site and does not require to be neighbour notified. However the application has been advertised in the local paper.

(h) The flue referred to in the description of the planning application has been erected previously.

Response: Noted. It is proposed that enforcement action be taken to ensure the removal of the flue from the property.

6 Assessment and Conclusions

- 6.1 The proposal relates to the change of use of an existing retail unit to provide a hot food delivery service and external flue to the gable elevation. The main determining factors in assessing the planning application relate to its ability to comply with relevant local plan policy as well as its impact upon the character and amenity of the surrounding area.
- 6.2 The application site is identified as a residential area in both the Adopted and Finalised Local Plans and as such is affected by the general residential policies in both plans. As these policies are aimed at protecting the residential amenity of such areas and make particular reference to bad neighbour developments being inappropriate uses in areas affected by these policies, it is considered that the proposed development does not comply with Policy RES1 of the adopted Hamilton District Local Plan or Policy RES6 of the Finalised South Lanarkshire Local Plan.
- 6.3 Policy DC1 of the adopted Hamilton District Local Plan and Policy DM1 of the Finalised South Lanarkshire Local Plan state that all applications for planning

permission must take fully into account the local context and built form. In determining applications for development the Council will have regard to issues such as the local context, accessibility, and environmental impact. It is considered that the proposal does not comply with Policies DC1 or DM1 in that it is not appropriate given the residential nature of the surrounding area, the recommendation of refusal from the Roads and Transportation Service relating to the impact of traffic generation, and the proximity of residential properties to the application site.

- 6.4 Within Development Advice Policy Guidance Note 5 – Hot Food Shops – the location of hot food operations are controlled and are in effect limited to the Secondary Shopping Areas of Hamilton and other village centres. The application site is not identified as one such area within the adopted Hamilton District Local Plan and it is considered that due to this and to the residential nature of the area the introduction of a hot food operation at this location would be inappropriate and would be to the detriment of the residential amenity of the surrounding area.
- 6.5 Policy SLP7 of the South Lanarkshire Planning Policies and Policy DM10 of the finalised local plan also apply a general presumption against hot food takeaways in residential areas if residential amenity is likely to be affected as well as if the development is likely to have an adverse effect on existing traffic circulation or public safety. As it is considered that the residential amenity of the surrounding properties is likely to be affected due to their proximity to the application site and the Roads and Transportation Service have recommended refusal of the application the proposal does not comply with Policy SLP7 of the South Lanarkshire Planning Policies or Policy DM10 of the finalised local plan.
- 6.6 In terms of consultation the Roads and Transportation Service recommended refusal of the planning application due to the likely traffic levels that the development would generate. Environmental Services recommended a number of conditions that should be attached to any consent granted relating to the proposed ventilation system and the control of noise. It is not considered, however, that the imposition of such conditions could address the amenity concerns of the Planning Service.
- 6.7 In terms of representation a number of issues have been raised which relate to traffic generation and harm to amenity. The letters of representation also include a decision notice from the Scottish Executive relating to an appeal for the refusal of planning permission for a change of use into a hot food takeaway for the same application site. As detailed in Section 3.3 of the report there have been a number of applications at this address for the formation of a hot food shop and these have been refused on the grounds of road safety and harm to amenity. It is not considered that the policy situation has changed to a degree that would permit the formation of a hot food delivery service at this address and that amenity and traffic issues must be considered in detail to ensure that there is no harm to the amenity of the surrounding residential area or to road safety
- 6.8 It is therefore considered that the proposed development would be contrary to Local Plan policy and would be to the detriment of the residential amenity of the area and road safety. It is therefore recommended that planning permission be refused.

7 Reasons for Decision

- 7.1 The proposed development does not comply with Policies RES1, DC1 or Development Advice Policy Guidance Note 5 of the adopted Hamilton District Local Plan, Policies RES6, DM1 or DM10 of the Finalised South Lanarkshire Local Plan or with guidance contained within Policy SLP7 of the South Lanarkshire Planning Policies to the detriment of the residential amenity of the area and road safety.

Iain Urquhart
Executive Director (Enterprise Resources)

23 January 2007

Previous References

- ◆ HM/05/0535

List of Background Papers

- ▶ Application Form
- ▶ Application Plans
- ▶ Consultations
 - Roads and Transportation Services (Hamilton Area) 06/12/2006
 - Environmental Services 14/12/06
- ▶ Representations
 - Representation from : Mrs Audrey Arthur, 23 Annsfield Road, Eddlewood, Hamilton, ML3 8BQ, DATED 19/12/2006
 - Representation from : Mr R Lindsay, 65 Meikle Earnock Road, Eddlewood, Hamilton, ML3, DATED 15/12/2006
 - Representation from : William Kane, 44 Strathaven Road, Eddlewood, Hamilton, ML3 7RE, DATED 12/01/2007
 - Representation from : Robert Welsh, 30 Meikle Earnock Road, Hamilton, ML3 8AE, DATED 21/12/2006

Contact for Further Information

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

Jamie McCracken, Planning Officer, Brandon Gate, Hamilton
Ext 3552 (Tel :01698 453552)
E-mail: Enterprise.hamilton@southlanarkshire.gov.uk

REASONS FOR REFUSAL

- 1 The proposal is contrary to Policy RES1 of the adopted Hamilton District Local Plan in that it would introduce a bad neighbour use into an area identified for residential use in the Local Plan.
- 2 The proposal is contrary to Policy DC1 of the adopted Hamilton District Local Plan in that it represents a form of development that does not comply with the criteria of the policy with specific regard to (a) it does not reflect the local context as it is located in a residential area and would be detrimental to amenity; (c) the development would encourage more on street parking on a bend, affecting forward visibility to the detriment of road safety; and (g) in that it would result in an unacceptable reduction in amenity for the surrounding residential properties through the generation of noise, disturbance and odour.
- 3 The proposal is contrary to Development Advice Policy Guidance Note 5 of the adopted Hamilton District Local Plan in that the application site is outwith those areas identified within the local plan as being appropriate locations for such proposals and would result in the introduction of operational characteristics (noise, disturbance and odour) detrimental to the residential amenity of the area.
- 4 The proposal is contrary to Policy SLP7 of the South Lanarkshire Planning Policies in that it fails to satisfy all the relevant criteria for the siting of a hot food operation within a predominantly residential area as there would be a significant impact in terms of environmental, traffic and amenity considerations (e.g. noise, disturbance and odour) particularly in relation to the residential properties above, adjacent and near to the site.
- 5 The proposal is contrary to Policy RES6 of the Finalised South Lanarkshire Local Plan in that it would introduce a bad neighbour use into an area identified for residential use in the Local Plan.
- 6 The proposal is contrary to Policy DM1 of the Finalised South Lanarkshire Local Plan in that it represents a form of development that does not comply with the criteria of the policy with particular regard to (a) it does not reflect the local context as it is located in a residential area and would be detrimental to amenity; (d) the development would encourage more on street parking on a bend, affecting forward visibility to the detriment of road safety; and (h) in that it would result in an unacceptable reduction in amenity for the surrounding residential properties through the generation of noise, disturbance and odour.
- 7 The proposal is contrary to Policy DM10 of the Finalised South Lanarkshire Local Plan in that it fails to satisfy all the relevant criteria for the siting of a hot food operation within a predominantly residential area as there would be a significant impact in terms of environmental, traffic and amenity considerations (e.g. noise, disturbance and odour) particularly in relation to the residential properties above, adjacent and near to the site.

For information only

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