

Appendix 2(a)

Report of Handling

Report dated 4 April 2011 by the Council's Authorised Officer under the Scheme of Delegation

Delegated Report

Report to: **Delegated Decision**
Date of Report: **4 April 2011**
Report by: **Area Manager (Planning & Building Standards)**

Application No HM/11/0042
Planning Proposal: Change of use of retail unit to hot food take-away and erection of flue to the rear of property

1 Summary Application Information

- Application Type : Detailed Planning Application
- Applicant : Shehbaz Hussain Allan
- Location : 2 Clarkwell Road
Hillhouse
Hamilton
ML3 9TQ

2 Decision

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

2.2 Other Actions/Notes

None

3 Other Information

- ◆ Applicant's Agent: Alex Cullen & Co.
- ◆ Council Area/Ward: 18 Hamilton West and Earnock
- ◆ Policy Reference(s): **South Lanarkshire Local Plan (adopted 2009)**
Policy RES 6 – Residential Land Use
Policy DM1 – Development Management
Policy DM10 - Hot Food Shops

◆ Representation(s):

- ▶ 0 Objection Letters
- ▶ 0 Support Letters
- ▶ 0 Comments Letters

◆ Consultation(s):

Environmental Services

Roads and Transportation Services (Hamilton Area)

Planning Application Delegated Report

1 Material Considerations

- 1.1 The applicant seeks approval for a change of use to a hot food take-away and the erection of a flue to the rear of a vacant shop unit at 2 Clarkwell Road, Hillhouse, Hamilton. The proposal does not comprise any external shopfront alterations and the proposed flue projects approximately 0.5m above the roof level at the rear of the property.
- 1.2 The unit is situated within a group of seven terraced commercial units located within an established residential area and on-street parking provision is provided to the front of the units. There is also additional parking available at a car park associated with the adjacent community centre situated to the rear of the site.
- 1.3 By means of a letter dated 9 February confirmation has been received that prior to the applicant purchasing the property it had been vacant for a period of 5 weeks; prior to this it was previously occupied by a butchers. As part of the submission the agent has confirmed that the operating hours of the proposed hot food take-away would be 11am to 11pm Monday to Friday and 4pm to 11pm on Saturday and Sunday.
- 1.4 The application site is bound on one side by a retail unit (Costcutter convenience store) and on the other by a beautician. In addition, the site is bound to the rear by a service area and thereafter the aforementioned community centre. To the front is Clarkwell Road with residential properties on the opposite side of the road.
- 1.5 The determining issues in the consideration of this application are its compliance with the adopted South Lanarkshire Local Plan and its impact on the amenity of the adjacent properties in particular and surrounding area in general.
- 1.6 The application site is located within an established residential area and is affected by Policies RES 6 'Residential Land Use,' DM1 'Development Management' and DM10 'Hot Food Shops' of the adopted South Lanarkshire Local Plan.
- 1.7 In December 2007 planning permission for a hot food takeaway at a neighbouring unit (No. 10 Clarkwell Road; HM/07/0596) was refused consent for a number of reasons including amenity and local plan policy considerations.

2 Consultation(s)

- 2.1 **Environmental Services:** Have no objection to the proposal, subject to the imposition of conditions and informatives relating to waste control, ventilation system, health and safety at work, food safety and noise.
Response: Noted. Such conditions/informatives can be imposed should consent be issued.

- 2.2 **Roads and Transportation Services:** Have no objection to the proposal, subject to the imposition of conditions relating to the use of the service yard and illuminated signage.

Response: Noted.

3 Representation(s)

- 3.1 The planning application was advertised in the local newspaper due to the nature of the proposal and for non-notification of neighbours. In addition, statutory neighbour notification was undertaken. No letters of representation have been received.

4 Assessment and Conclusions

- 4.1 The applicant seeks approval for the change of use of an existing retail unit to a hot food take-away and the erection of a flue to the rear of property at 2 Clarkwell Road, Hillhouse, Hamilton. The determining issues in the consideration of this application are its compliance with the adopted South Lanarkshire Local Plan and its impact on the amenity of the adjacent properties in particular and surrounding area in general.
- 4.2 In terms of the planning history of the terraced commercial units at 2-12 Clarkwell Road, planning consent has previously been refused for the 'change of use and alterations from shop (Class 1) to hot food take-away (Sui Generis)' (planning reference HM/07/0596) at 10 Clarkwell Road on 19 December 2007. Clearly in terms of consistent decision making this is a material consideration especially as the policy position of the development plan has not changed significantly, albeit that the adopted local plan has changed.
- 4.3 The application site is located within a designated residential area in terms of the South Lanarkshire Local Plan and is affected by the general residential policy RES6 'Residential Land Use.' RES6 establishes that within residential areas, the Council will oppose the loss of houses to other uses and will resist any development that will be detrimental to the amenity of those areas. In particular, the Council will not approve 'bad neighbour' uses which may by virtue of visual impact, noise, smell, air pollution, disturbance, traffic or public safety be detrimental to residential areas. Policy RES6 further identifies that developments of an ancillary nature may be acceptable and each application will be judged on its own merits with particular consideration given to the impact on residential amenity, proposed servicing and parking arrangements and an assessment of the contribution of the proposal to meeting an identified local need.
- 4.4 It is generally accepted that the role of 'local' shops within a predominantly residential area, such as those at Clarkwell Road, is to meet the daily shopping requirements of people within the local area. Whilst it is noted that one of the seven commercial units is an established hot food unit, it is considered that the introduction of a second hot food operation at this location would be inappropriate

and would exacerbate any existing amenity issues. i.e., odours, late night noise
On this basis it is difficult to support the proposal as it would impact negatively on residential amenity and therefore the proposed development does not comply with the provisions of Policy RES6 of the adopted South Lanarkshire Local Plan.

- 4.5 Policy DM1 'Development Management' of the adopted Local Plan establishes that all planning applications should take account of the local context and built form and be compatible with adjacent buildings and surrounding streetscape in terms of scale, massing, design, external materials and impact on amenity. In this respect I accept that the proposal will not introduce any new physical feature into the built environment and in terms of scale and mass the proposal registers no concern. Nevertheless as detailed above from an amenity perspective, I am of the view that the proposal does not reflect the existing local residential context and would consequently result in an adverse impact on the established level of residential amenity contrary to the spirit and thrust of Policy DM1.
- 4.6 Policy DM10 'Hot Food Shops' of the adopted Local Plan establishes a general presumption against hot food take-aways in residential areas unless all the criteria in Part 2 'Single Shops/Small Grouping of Shops' of the policy are met. In this regard the planning application site comprises one of seven units with the other units being a hot food take-away (Sui Generis use), a vacant unit, a betting office (Class 2 use), a Spar (Class 1 use), a beautician (Class 2 use) and a Costcutter convenience store (Class 1 use). Therefore of the five occupied units only two units provide a local retail facility. Given this level/percentage of retail provision it is considered that an adequate level of shopping provision covering a range of local shopping needs does not currently exist at this location and this would be further exacerbated by the loss of a further Class 1 unit, (the application site) contrary to the provisions of Part 2 (a) of Policy DM10.
- 4.7 In relation to the marketing of the unit, the agent has advised that the unit was marketed for a 5 week period prior to its purchase by the applicant. In addition, the agent has further advised that the unit at 10 Clarkwell Road has been closed for approximately one year which indicates a lack of demand for retail units at this location. Whilst these comments have been noted, the applicant has not demonstrated that there is a local need for a hot food use at the site. Indeed at the near by Hillhouse neighbourhood centre there are a number of hot food establishments that serve the Hillhouse area and the local plan subtly encourages such uses to locate in such established commercial centres. In addition the application property has not been successfully marketed for an appropriate period of time to the Council's satisfaction. i.e. five weeks is an insufficient period to demonstrate that it has been unsuccessfully marketed for an appropriate (retail) use. Given all of the above it is therefore considered that the proposal does not satisfy the criteria established in Part 2(c) of Policy DM10. In addition, it is considered that the residential amenity of nearby residential properties is likely to be adversely affected by the proposed development, contrary to the provisions of

Part 2(d) of Policy DM10. Subsequently, it is considered that the proposal does not comply with the provisions of Policy DM10 of the adopted Local Plan.

4.7 In terms of consultations, Roads and Transportation Services and Environmental Services have advised that they have no objection to the proposed development subject to the imposition of a number of conditions and informatives, which should be attached to any consent granted.

4.8 Overall it is considered that the proposed development is contrary to the provisions of the adopted South Lanarkshire Local Plan and would be to the detriment of residential amenity. The 1997 Planning Act (as amended) clearly advocates that applications should be determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise. In this instance there are no other material considerations of sufficient weight or merit to set aside Local Plan policy. Subsequently, it is considered that planning permission should be refused.

5 Reason for Decision

5.1 The proposed development is contrary to the provisions of Policies RES6, DM1 and DM10 of the adopted South Lanarkshire Local Plan.

Signed:
(Council's authorised officer)

Date:

Previous References

- ◆ None

List of Background Papers

- ▶ Application Form
- ▶ Application Plans
- ▶ Adopted South Lanarkshire Local Plan 2009
- ▶ Neighbour notification letter dated 9 February 2011
- ▶ Press advertisement, Hamilton Advertiser, 17 February 2011
- ▶ Correspondence from the agent, dated 9 February 2011
- ▶ Decision notice HM/07/0596, dated 19 December 2007

▶ Consultations	
Roads and Transportation Services (Hamilton Area)	16/02/2011
Environmental Services	18/02/2011

Contact for Further Information

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

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(Tel :01698 453552)
E-mail: Enterprise.hamilton@southlanarkshire.gov.uk

Detailed Planning Application

PAPER APART – APPLICATION NUMBER : HM/11/0042

REASONS FOR REFUSAL

- 1 This decision relates to drawing numbers:

1095
1096
- 2 The proposal is contrary to Policy RES6 of the adopted South Lanarkshire Local Plan in that it would introduce a bad neighbour use into a residential area detrimental to the character and amenity of the locality.
- 3 The proposal is contrary to Policy DM1 of the adopted 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 criteria (a) in that it does not reflect the local context as the proposal is located in an established residential area .
- 4 The proposal is contrary to Policy DM10 of the adopted South Lanarkshire Local Plan in that it fails to satisfy the relevant criteria for the siting of a hot food operation within a residential area as it would result in: (1) an inadequate level of shopping provision provided at the location' (2) the property has not been unsuccessfully marketed for a Class 1 use to the satisfaction of the Planning Authority and (3) it would result in an adverse impact in terms of environmental and amenity considerations (e.g. noise, disturbance and odour) particularly in relation to the adjacent residential properties.
- 5 If approved, the proposal would set an undesirable precedent which could encourage further similar applications for proposals which would exacerbate the problems stated above.