

Appendix 6

Notice of Review Process – Further Submissions

Submission From

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

STATEMENT OF OBSERVATIONS

Planning Background

Alex Cullen & Co., submitted a planning application (planning reference HM/11/0042), on behalf of the applicant Shehbaz Hussain Allan, on 7 February 2011 to South Lanarkshire Council for the change of use of retail unit to hot food take-away and erection of flue to the rear of property at 2 Clarkwell Road, Hillhouse, Hamilton. After due consideration of the application in terms of the Development Plan and all other material planning considerations, planning application HM/11/0042 was refused Consent by the Council under delegated powers on 6 April 2011 for the reasons listed in the decision notice. The report prepared for the application provides further background information and the reasoned justification for this decision.

Assessment Against the Development Plan and Other Material Considerations

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 provisions of the Development Plan, unless material considerations indicate otherwise. The Development Plan for the site comprises the approved Glasgow and Clyde Valley Joint Structure Plan (incorporating alterations) and the adopted South Lanarkshire Local Plan. The Structure Plan sets out the strategic planning policy context against which development proposals within the Glasgow and Clyde Valley area must be assessed.

The proposed development for change of use of a retail unit to a hot food take-away and the erection of flue to the rear of property at 2 Clarkwell Road, Hamilton was not considered to be of a strategic scale. It was therefore appropriate to consider the application against the policies in the adopted Local Plan, which complement Structure Plan policy. However, following due consideration and assessment of the proposal it was considered that the proposed development was contrary to the provisions of Policies RES6, DM1 and DM10 of the adopted South Lanarkshire Local Plan.

Observations on Applicant's 'Notice of Review'

In the submitted 'Notice of Review' and associated supporting information the applicant has identified a number of matters in support of their request for a review. The applicant's statement of reasons for requesting a review of the application have been summarised below and detailed comments from the Planning Service on each of these issues are as follows:-

(1) The applicant's family recently applied for planning permission for a hot-food take-away when the unit at 2 Clarkwell Road was under lease from the Council and this was refused. The applicant has now purchased the unit which requires to be utilised commercially and subsequently a new application for a hot food take-away was submitted.

There is no record of a previous planning application at the application site although planning permission for a hot food takeaway at 10 Clarkwell Road (planning reference HM/07/0596) was previously refused. It is accepted that the occupation of the unit would be beneficial but this does not necessarily have to be by a hot food shop. In any event it is well established that commercial considerations are not material to the assessment and determination of applications. Consequently the Planning Service do not consider that this should be taken into consideration in the assessment of the proposed development.

(2) The applicant's father owns the property at 6 Clarkwell Road and there would be an added advantage that the two businesses could operate close to each other.

Again this is not a material planning consideration and the Planning Service do not consider that this should be given any significant weight or merit in the assessment of the application.

(3) The plan for retail use in the area is failing as there is already one vacant unit and the unit at 2 Clarkwell Road may become vacant unless a more feasible use is allowed.

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. During the assessment of the planning application the agent submitted a letter which confirmed that prior to the applicant purchasing the property it had been vacant for a period of only 5 weeks and prior to this it was previously occupied by a butcher. Therefore it was considered that the applicant could not provide any evidence that the unit had been unsuccessfully marketed as a Class 1 (Shop) as required by the provisions of policy DM 10 of the adopted Local Plan.

Whilst the Council promote the occupation of commercial units throughout the area, the Planning Service are required to determine planning applications 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.

(4) The precedence of a hot food take-away at the unit has already been established.

It is accepted that one of the seven commercial units at Clarkwell Road is an established hot food shop, however, it was 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. Therefore, on this basis it was considered difficult to support the proposal as it would impact negatively on residential amenity. Indeed a previous application at a neighbouring unit (HM/07/0596) was refused consent previously for similar reasons.

(5) Apart from the houses adjacent to the retail block in Clarkwell Road, all of the other properties surrounding the units are not residential and a further take-away would have a minimal impact on the general area.

Whilst it is noted that the Hillhouse and Earnock Community Centre and Hillhouse Parish Church are located in close proximity to the application site, the proposals map of the adopted South Lanarkshire Local Plan identifies that the application site as being located within a designated residential area. Subsequently, the application site is affected by the general residential policy RES6 'Residential Land Use.' The development was required to be assessed against the provisions of this policy and it was considered that the proposal would impact negatively on residential amenity. In addition, in terms of policy DM10 there is a general presumption against the granting of hot food take-aways if residential amenity would be affected to a significant degree.

(6) There is a similar row of retail units at Hillhouse Road which includes three hot food take-away units and an office. In addition, the Hillhouse Bar is vacant.

Part of Hillhouse Road comprises the designated Hillhouse neighbourhood centre which has a number of hot food establishments. It should be noted that Policy DM10 'Hot Food Shops' establishes a general presumption in favour of granting planning

permission, subject to compliance with established criteria, in commercial areas such as the neighbourhood centre at Hillhouse Road.

Conclusions

In summary, the proposed development is contrary to the provisions of the adopted South Lanarkshire Local Plan. Subsequently, the Planning Service would contest that the decision to refuse consent was clear cut and soundly based on established Council policy as contained in the adopted Local Plan. It is therefore respectfully requested that the Planning Local Review Body support the decision to refuse consent and dismiss the applicant's request to overturn the refusal of planning permission HM/11/0042 based on the information contained in the delegated report and associated reasons for refusal.