



Council Offices, Almada Street,  
Hamilton

# Planning Local Review Body

## Decision Notice

Decision by South Lanarkshire Council Planning Local Review Body (PLRB)  
PLRB Reference NOR/HM/11/001

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- ◆ Site address: 2 Clarkwell Road, Hillhouse, Hamilton, ML3 9TQ
- ◆ Application for review by S H Allah of the decision by an appointed officer of South Lanarkshire Council to refuse planning permission for planning application HM/11/0042
- ◆ Application HM/11/0042 for the change of use of a retail unit to a hot food takeaway and erection of a flue to the rear of the property
- ◆ Application Drawings: Drawing Nos 1095 and 1096

### Decision

The PLRB reverses the decision taken by the appointed officer, in terms of the Scheme of Delegation, to refuse planning permission for planning application HM/11/0042 and grants planning permission subject to the conditions attached to this decision notice.

**Rosemary Lake**  
Head of Administration Services

Date of Decision Notice: *29 September 2011*

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### 1. Background

- 1.1 This Notice constitutes the formal decision notice of the Planning Local Review Body (PLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for planning permission was considered by the PLRB at its meeting on 5 September 2011. The meeting was attended by Councillors Graham Scott (Chair), Hugh Dunsmuir, Lynn Filshie, Bill Holman, Patrick Ross-Taylor (Depute), Chris Thompson and Jim Wardhaugh.

## **2. Proposal**

- 2.1 The application is for the change of use of a retail unit to a hot food takeaway and the erection of a flue to the rear of the property at 2 Clarkwell Road, Hillhouse, Hamilton.
- 2.2 The options available to the PLRB were to uphold, reverse or vary the decision taken in respect of the application under review.
- 2.3 The applicant had indicated that they were introducing new information in respect of the application under review. The PLRB, however, concluded that the information could be accepted on the basis that it related to matters which had previously been raised.

## **3. Determining Issues**

- 3.1 The determining issues in this review were:-

- ◆ the proposal's compliance with Development Plan Policy
- ◆ impact on the amenity of adjacent properties and the surrounding area

- 3.2 The PLRB established that the site was located within a designated residential area in terms of the Adopted South Lanarkshire Local Plan. Policies RES6, residential land use, DM1, development management and DM10, hot food shops, applied.

- 3.3 Policy RES6 of the Adopted Local Plan states that the Council will not approve any bad neighbour use that would be detrimental to amenity because of noise, smells, disturbance or traffic.

- 3.4 Policy DM10 states that there will be a general presumption against hot food shops unless:-

- ◆ there was no significant impact from noise, disturbance and smell
- ◆ the site had been unsuccessfully marketed for an appropriate use
- ◆ an adequate level of shopping provision covering a range of daily shopping needs would still exist

- 3.5 Policy DM1 states that all planning applications require to take account of the local context and built form and should be compatible with the surrounding area in terms of impact on amenity.

- 3.6 In considering the case, the PLRB had regard to the applicant's submission that:-

- ◆ most of the properties surrounding the unit were not residential and the proposal would not impact on the general area
- ◆ retail use in the area was already fading as there were already vacant units
- ◆ precedent for a hot food takeaway at that location had already been established as one of the 7 commercial units at that location was already an established food unit
- ◆ the unit was currently vacant and the proposal would bring it back into use

- 3.7 Having considered the above, the PLRB concluded that, while the proposal was contrary to Development Plan Policy, a departure from the Development Plan could be justified in this case for the following reasons:-

- ◆ given the distance from the nearest residential properties, the proposed use would not materially or significantly affect the established amenity of the area
- ◆ sufficient car parking was available within the vicinity to accommodate the proposal
- ◆ the unit was currently vacant and the proposal would bring it back into use

**4. Conclusion**

4.1 The PLRB considered a request to review the decision to refuse planning permission for the change of use of a retail unit to a hot food takeaway and the erection of a flue to the rear of the property at 2 Clarkwell Road, Hillhouse, Hamilton. The PLRB noted that the application was contrary to Development Plan Policy but concluded that a departure from the Development Plan could be justified in this case for the reasons detailed in paragraph 3.7.

4.2 The PLRB, therefore, reversed the decision to refuse planning permission for planning application HM/11/0042 and granted planning permission subject to the undernoted conditions and reasons.

**5. Accompanying Notice**

5.1 Attached is a copy of the Notice to Accompany Refusal, etc in the terms set out in Schedule 2 to the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

**Application Number HM/11/0042**

Change of use of retail unit to hot food takeaway and erection of flue to the rear of the property at 2 Clarkwell Road, Hillhouse, Hamilton

**Conditions**

- 1 The consent shall be carried out strictly in accordance with drawing numbers:  
  
Drawing 1  
Drawing 2  
Drawing 3  
Drawing 4
- 2 The use hereby permitted shall not operate outwith the hours of:  
  
Monday to Sunday: 11am until 11pm
- 3 Before the development is brought into use, the proposed method of ventilation shall be submitted to and approved in writing by the Council as Planning Authority. The development shall not be brought into use until the ventilation systems are operational in accordance with the approved details.  
All odours, fumes and vapours generated on the premises shall be controlled by best practicable means to prevent them causing nuisance to occupants of nearby dwellings or premises.  
The ventilation system shall:
  - a) Incorporate systems to reduce the emission of odours and pollutants and shall thereafter be maintained as necessary.
  - b) Be constructed by employing best practical means to minimise noise and vibration transmission via plant and the building structure.
  - c) Noise associated with the business shall not give rise to a noise level, assessed with the windows closed, within any dwelling or noise sensitive building, in excess of the equivalent to Noise Rating Curve 35, between 07:00 and 20:00 hours, and Noise Rating Curve 25 at all other times.
- 4 Prior to the development being brought into use, details of the storage of waste arising from the commercial activity shall be submitted to and approved in writing by the Council as Planning Authority. The agreed details shall be in place prior to the development being brought into use.

**Reasons**

- 1 For the avoidance of doubt and to specify the drawings upon which the decision was made.
- 2 To minimise noise disturbance to adjacent occupants.
- 3 To minimise nuisance to occupants of nearby buildings as a result of cooking smells, vapours, airborne pollutants or noise from the premises.
- 4 To minimise nuisance, littering and pest problems to nearby occupants.

**Informatives**

- 1 Failure to comply with the conditions imposed on this planning permission can result in the planning authority serving a Breach of Condition Notice and/or Enforcement Notice. If any of the requirements set out in these notices are not then complied with, a fixed penalty notice may be served seeking the payment of the sum specified in the penalty notice to the Planning Authority. The sum will be as set by The Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009.

- 2 The applicant is advised that as the premises will be used for commercial purposes, the Health & Safety at Work Act 1974 and Regulations made thereunder will apply. The applicant is advised to contact Environmental Services at an early stage of the project, to ensure compliance with current legislation, so that difficulties do not arise when the development is operational. Environmental Services, Atholl House, Churchill Way, East Kilbride, G74 1LU. 01355 806918
- 3 The applicant is advised that, as the premises will be used for the preparation, sale or consumption of food, the Food Safety Act 1990 and Regulations made thereunder will apply. The applicant is advised to contact Environmental Services at an early stage of the project, to ensure compliance with current legislation, so that difficulties do not arise when the development is operational. Environmental Services, Atholl House, Churchill Way, East Kilbride, G74 1LU. 01355 806918
- 4 The applicant is advised that all works carried out on site must be carried out in accordance with BS5228 Parts 1-4 1984/1986, 'Noise control on construction and open sites'. The applicant is further advised that audible construction activities should be limited to: Monday to Friday 8.00am to 7.00pm, Saturday 8.00am to 1.00pm and Sunday - No audible activity. The applicant is advised that Environmental Services may consider formally imposing these hours of operation by way of statutory notice should complaints be received relating to audible construction activity outwith these recommended hours and should such complaints be deemed justifiable by Officers from this Service. Further details of this may be obtained from South Lanarkshire Council, Environmental Services, Atholl House, East Kilbride, G74 1LU. Telephone (01355) 806915
- 5 All lifts and/or hoists, including doors, guide rails and ancillary plant and machinery, and mechanical air handling/ air conditioning plant, shall be suitably isolated from the structure of the building, and ducted systems to minimise transmission of noise and vibration.
- 6 None of the above conditions will preclude formal action being taken by the Executive Director of Community Resources against the author of any nuisance, which may arise due to the operation of the proposed development.
- 7 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

