

# 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

Mr David Jarvie submitted a planning application (planning reference HM/11/0332), on behalf of the applicant Mr Ali, on 27 July 2011 to South Lanarkshire Council for the change of use of shop to hot food take-away and erection of flue at 16 Violet Crescent, Stonehouse. After due consideration of the application in terms of the Development Plan and all other material planning considerations, planning application HM/11/0332 was refused Consent under delegated powers on 28 September 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 (change of use of a shop to a hot food take-away and the erection of flue) was not considered to be of a strategic scale. It was therefore appropriate to consider the application against the policies of 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 Appellant's 'Notice of Review'

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

**(1)With regards to Policy RES 6 and the Council's second reason for refusal, the appellant considers that the proposal will have little or no impact on any other houses in the community. The applicant intends to be a good neighbour and if required is prepared to install both a carbon filter extraction system and a public waste bin. The proposed opening hours should bring some order and control to the area.**

The application site is located within a designated residential area in the South Lanarkshire Local Plan and is affected by Policy RES6 'Residential Land Use Policy.' Policy 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. The application site is

located in close proximity to several existing residential properties. One of the characteristics of hot food shops is that they expel cooking fumes to the outside environment and consequently odours are an undeniable feature of such shops. On this basis the Council contends that the introduction of a hot food operation at this location would be inappropriate and would have an adverse impact on residential amenity due to the introduction of new elements such as odours etc to a location where they do not exist at present. It is therefore considered that the proposed development is contrary to the provisions of Policy RES6 of the South Lanarkshire Local Plan.

**(2) With regard to the Council's third reason for refusal in relation to Policy DM1, the appellant considers that the site is an ideal location for a hot food takeaway and that the proposal would increase the amenity of the area and reflect it's immediate context.**

The Council contends that the proposal does not reflect the existing local context because the area is predominately occupied by residential properties and there are no other 'bad neighbour' developments in the immediate area. Overall it is considered that the proposal would result in a significant adverse impact on the amenity of the established residential area, contrary to the provisions of Policy DM1.

**(3) With regard to the Council's fourth reason for refusal in relation to Policy DM10, the appellant considers that a hot food takeaway could be sustained by the local community and therefore is the type of operation that one would expect there. Additionally the unit has been vacant for some time and no alternative potential occupier has come forward. The owner cannot see the point of having a shop unit vacant for a few years to satisfy the Planning Department.**

Policy DM10 'Hot Food Shops Policy' of the 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. The planning application site comprises one of three units at Violet Crescent. One of the units comprises a newsagent and the other a convenience store. The shops primarily provide local shopping needs/requirements and the loss of one unit (33 % of the total) has potential to undermine the vitality and viability of the other two units given that hot food establishments primarily trade in the evening and there would be a reduction in footfall traffic during normal opening hours. On this basis the Council contends that an adequate level of shopping provision covering a range of shopping needs would not exist at this location should consent be issued, contrary to the provisions of Part 2 (a) of Policy DM10.

In relation to the marketing of the unit, the applicant's agent has been unable to demonstrate that there is no local need for a Class 1 use and that the property has been marketed for an appropriate period of time to the Council's satisfaction. Furthermore the applicant previously submitted a planning application (reference HM/10/0477) for a change of use of shop to hot food takeaway and erection of flue that was refused on 15 December 2010. During this period, the owner of the shop could have marketed the unit for a "class 1" retail unit. No evidence to this effect however was lodged with application HM/11/0332 to demonstrate same.

In addition there are no alternative shopping facilities near the site. Again it is therefore considered that the proposal does not satisfy the criteria established in Part 2 (b) and (c) of Policy DM10. In addition, it is considered that the amenity of the neighbouring residential properties would be significantly affected by the proposed

development due to their proximity to the application site, contrary to the provisions of Part 2(d) of Policy DM10. Subsequently, even if the property had been marketed in appropriate terms it is still considered that for reasons relating to amenity considerations the proposal does not comply with Policy DM10 of the adopted Local Plan.

**(4) With regard to the Council's fifth reason for refusal, the appellant considers that the proposal would provide additional amenity to the neighbourhood and would not have a significant and detrimental impact.**

The Council contends that the proposed hot food shop would have a significant and detrimental impact on the neighbouring dwellings in particular and the neighbourhood in general. With regards to impact on amenity in terms of cooking smells, the applicant proposes to install an extraction system which will have to comply with the requirements of Environmental Services. Such ventilation systems however are primarily installed for the health and well being of staff and are designed to discharge and expel cooking fumes, odours etc away from the cooking area/equipment to an external environment. I accept that such modern ventilation systems do incorporate a number of filters and other devices to contain or neutralise odours, grease etc but they do depend on regular maintenance operations and good management practice. In addition based on experience, I am of the view that ventilation systems do not contain all odours and therefore on the balance of probability it is very unlikely that the hot food establishment will be odourless. This, along with the concerns expressed by Environmental Services regarding the physical surrounds of the shop (roof being lower than the neighbouring two storey houses) persuades me that the proposal has serious potential to introduce odours/cooking fumes etc into a residential environment where none presently exist. On this basis the Council contends that there will be an adverse impact on residential amenity. Indeed this concern was evident in the 230 letters of representation received from residents in the immediate locality.

**(5) With regard to the Council's sixth reason for refusal, the appellant states that all planning applications should be judged on their own right.**

It is a statutory requirement that every planning application must be assessed on its own merit. Notwithstanding that the provisions of the development plan are a primary consideration. The Council contends that if planning consent was granted for the proposal it would set an undesirable precedent which could result in more hot food takeaways being inappropriately located in close proximity of residential properties, contrary to local plan policy.

**(6) In their conclusion the appellant also comments that the inhabitant's of this residential area expect this type of use within the area and that the proposal will provide employment. Reference is also made to the fact that although the proposals do not meet the requirements of the City Plan, the policies are not justified in this case and therefore the Council are failing to act in a competent and reasonable manner.**

During the planning application process, statutory neighbour notification was undertaken and the proposal was advertised in the local press due to the scale or nature of the operations. Following this publicity 230 letters of objection were received which clearly indicates that the proposed use within this area is not supported. The re-opening of the shop as a class 1 use would also provide employment. The appellant has wrongly made reference to the city plan (Glasgow

City Council's Local Plan). Nevertheless there are no other material considerations of sufficient weight or merit to set aside adopted local plan policy.

### **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. Furthermore the applicant failed to provide adequate supporting information to justify a departure from these policies. 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/11/0332 based on the information contained in the delegated report and associated reasons for refusal.