

Report to:	Planning Committee
Date of Meeting:	20 September 2011
Report by:	Executive Director (Enterprise Resources)

Application No	HM/11/0251
Planning Proposal:	Change of Use of Existing Shop Unit to Restaurant with Flue to Rear and Alterations to Shopfront

1 Summary Application Information

- Application Type : Detailed Planning Application
- Applicant : Kulwinder Kaur
- Location : 6-10 Union Street
Larkhall

2 Recommendation(s)

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

- (1) Grant detailed planning permission (based on conditions attached)

2.2 Other Actions/Notes

- (1) The Planning Committee has delegated powers to determine this application.

3 Other Information

- ◆ Applicant's Agent: David Jarvie
- ◆ Council Area/Ward: 20 Larkhall
- ◆ Policy Reference(s): **South Lanarkshire Local Plan (adopted 2009)**
COM 1 – Town Centre Land Use Policy
COM 2 – Core Retail Areas Policy
DM 1 – Development Management Policy

◆ Representation(s):

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

◆ Consultation(s):

Environmental Services

Roads and Transportation Services (Hamilton Area)

Planning Application Report

1 Application Site

- 1.1 The application site is located at the northern end of Union Street which is the main retail and commercial area of Larkhall. Part of the unit has flatted properties above and the adjoining unit at 2 Union Street is used as a church. To the south of the unit is a car park which relates to the properties on Raploch Street.

2 Proposal(s)

- 2.1 The detailed application proposes the change the use of a vacant retail unit (Class 1) to a restaurant (Class 3). The retail unit has been vacant for a number of years and its last known use was as a bathroom showroom. As well as changing the use of the property, it is also proposed to erect a flue externally to the rear. Externally, minor changes are proposed to the front of the building.
- 2.2 The proposed hours of operation for the restaurant are from 12 noon to midnight on a daily basis.

3 Background

3.1 Local Plan Status

- 3.1.1 Within the adopted South Lanarkshire Local Plan the application site is covered by Policies COM1 – Town Centre Land Use and COM2 – Core Retail Areas. Policy COM1 allows for a mixture of uses within town centres which maintain their role as a commercial and community focal point. Policy COM2 states that within core retail areas, proposals for changes of use which would bring the representation of retail uses to below 75% of units within any one continuous block of properties will not be supported.
- 3.1.2 In relation to development management criteria, Policy DM1 requires all planning applications to 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.

3.2 Relevant Government Guidance/ Advice

- 3.2.1 Given the scale and nature of the proposal there is no government guidance/advice directly applicable.

3.3 Planning History

- 3.3.1 In terms of planning history, an application was submitted in 2009 for the change of use to form a hot food takeaway (HM/09/0063). Following a careful assessment, the application was refused on 30 April 2009 for reasons of retail viability and amenity for the residential properties above the unit. An appeal was lodged against the Council's decision. The Scottish Government upheld the Council's decision, with the appeal decision notice, PPA/380/457, being issued on 7 October 2009 on the grounds of retail viability and non compliance with Policy COM2 – Core Retail Areas and Policy DM10 – Hot Food Shops. The Reporter did not accept however that the proposals impact on the amenity of the residents of the flat above the shop would be so significant as to be unacceptable. She commented that those who elect to live in

town centres cannot reasonably expect to enjoy the same level of residential amenity as in a wholly residential location.

4 Consultation(s)

4.1 **Roads and Transportation Service** – have no objection to the proposal as there is adequate car parking available within the town centre.

Response – Noted.

4.2 **Environmental Services** – have no objection to the proposal, however they have recommended a number of conditions and informatives to be attached to the decision notice. The conditions and informatives relate to noise, ventilation systems, waste control, food safety and health and safety at work.

Response – Conditions and informatives will be attached to the decision notice were they are considered to be relevant to the proposal.

5 Representation(s)

5.1 Statutory neighbour notification was carried out in respect of this application as well as it being advertised as 'Development Contrary to the Development Plan'. As a result three letters of objection were received. The grounds of objection can be summarised as follows:

a) **The proposal will encourage potentially dangerous, short stay parking close to one of the major junctions in Larkhall.**

Response – Consultation was carried out with the Council's Roads and Transportation Service who have offered no objection to the proposal. They have advised that there is sufficient car parking available within the town centre. Parking and traffic offences are a matter for parking wardens/ traffic police and are not therefore valid planning issues. As the unit is to be used as a restaurant, it is less likely that customers would be parking vehicles in inappropriate locations for a short period of time.

b) **The operation of the unit as a restaurant would lead to strong cooking smells within the area.**

Response – As part of the application it is proposed to install a flue. Environmental Services have raised no objections to the proposals and any issues of smell nuisance are within their remit. As intimated by the Reporter in the previous planning appeal relating to this property, residents living within town centre locations cannot expect the same level of amenity as that expected in areas which are wholly residential in character.

c) **Any take away element would result in litter, in terms of paper and food, being discarded on the pavement.**

Response – The applicant has not indicated that a takeaway element would form part of the current proposal. Consultation was carried out with the Council's Environmental Service who has raised no issues with regard to litter being generated. They have however recommended a condition be attached to the decision notice with regards to the disposal of waste.

d) **At present there is an over abundance of carryout food places/ restaurants within the local vicinity. At present there are nine establishments within 100 yards of the objector's property.**

Response – The perceived over provision of such uses is not a material planning consideration unless cumulatively they result in serious amenity

issues in a specific location. In this instance the site is located within the town centre and the proposal's acceptability or otherwise is dependent on an assessment of the balance between retail and non retail. If the level of retail falls below 75% in a single block, the proposal would fail to comply with the requirements of Policy COM2. The details of the retail survey carried out in connection with this application will be examined within the assessment and conclusion section of this report.

- e) **People come to Larkhall to shop but if this trend of carryout food places/ restaurant on Union Street continues Larkhall, as retail shopping centre could close.**

Response – Union Street forms the Core Retail area of Larkhall. Within Core Retail areas a retail provision of at least 75% should be maintained. Applications which take the level of retail below this level fail to comply with Policy COM2. A retail survey has been carried out and the results of the survey will be discussed in the assessment and conclusion section of this report.

- f) **Previously the owner of 9, 11 and 13 Raploch Street had a severe infestation of rats and land due to neglect on bins/waste disposal within the area. The operation of a restaurant may result in the issue returning.**

Response – As part of the assessment of the proposal, consultation was carried out with Environmental Services. They have not raised any concerns about the proposals and any rat infestation would be a matter for the owners to address in consultation with Environmental Services. Environmental Services have recommended a condition be attached to the decision notice with regards to waste disposal and this can be attached to any consent granted.

- g) **The proposed flue to the rear of the unit would extend over land owned by the objector.**

Response – Land ownership is a private legal matter between the parties involved. The applicant has a legal responsibility to notify the owners of all land involved in the proposal. Following the receipt of this objection, the applicant was contacted and advised to notify the objector as a land owner as clearly he owns the wall and land against which the flue is proposed to be located. The applicant has demonstrated, through the completion of an ownership certificate that this has been done.

The applicant is aware of the objection received and that he cannot implement any consent in terms of erecting the flue without the owners consent. In case an agreement can not be reach between the applicant and the land owner of the site to the rear, the applicant has advised than an alterative scheme of ventilation can be implemented. In such a circumstance, a further application may need to be submitted to the Planning Service for the altered method of ventilation.

These letters have been copied and are available for inspection in the usual manner and on the Planning Portal.

6 Assessment and Conclusions

- 6.1 The application is for the change of use of a vacant class 1 retail unit to a class 3 restaurant including the installation of an external flue to the rear of the property and alterations to the shop from at 6-10 Union Street, Larkhall. The key issues in the

assessment of the application are its compliance with local plan policy and in particular, its impact on the amenity and retail viability of the area.

- 6.2 In terms of local plan policy, the application site is covered by Policies COM1 and COM2. Together, these policies provide a framework to ensure that the area remains as the commercial and community focal point where a mix of uses is permitted. There is also a requirement that a minimum level of retail provision be retained within any one continuous block of properties, and not fall below 75%. Proposals which take the retail provision below this level will not be supported. In addition to the above, the proposal is required to be assessed in relation to Policy DM1. This policy supports proposals which take account of the local context and built form. Proposals should respect their surroundings and not have an adverse impact upon the wider environment.
- 6.3 The operation of a restaurant within a town centre is compatible with the role of the centre as a commercial and community focal point. It would add to the vitality and viability during normal retail hours (the applicant has indicated the restaurant would operate from 12 noon onwards) and would also enhance the evening use of the centre. As such can be viewed that the proposal complies with Policy COM1.
- 6.4 However Larkhall town centre is designated as a Core Retail Area within the adopted South Lanarkshire Local Plan. Within Core Retail Areas an acceptable balance between retail to non retail is required to be achieved with a desired ratio of 75% retail to 25% non retail within one continuous block. It is noted from carrying out a retail survey that this ratio is not currently achieved with 50% of the block currently out of retail use. As such if the proposed change of use was approved the block would be 100% non retail.
- 6.5 On the basis of the above if planning permission were to be approved it would be contrary to the terms of Policy COM2, however other considerations should also be taken into account in assessing the proposal. The current economic situation is having a visible impact upon the retail and commercial viability of towns within South Lanarkshire and across the country as a whole. Within Union Street a number of retail units are currently vacant and have been for a significant period of time. It is also worth noting that the application site is located on the fringe of the Core Retail Area and as such will have a much lower level of passing footfall, and as a consequence it is more likely to be unoccupied than units located more centrally. This particular unit has been unoccupied for 3 years. If planning permission was granted for the change of use it would allow the unit to be brought into use and would remove a vacant unit from the town centre. Although it would not be in retail use, it can be considered to provide footfall within the local area and could attract additional trade for surrounding retail units.
- 6.6 Taking the above into account, it is considered that the change of use of the unit from Class 1 to Class 3 is considered acceptable in this instance despite it being contrary to Policy COM2. Cognisance has been given to the previous appeal decision however the unit has been vacant since then with no retail use coming forward. Taking account of the current economic situation it is considered that allowing the unit to be used for a non retail use is an improvement over the current situation. The restaurant would be ancillary to the retail function of the street and would improve the vitality of the area.
- 6.7 With regard to general amenity, as assessed through Policy DM1, it is considered that the use of the unit as a restaurant would not have an adverse impact upon the general amenity of the area. The restaurant would add to the mix of uses which

assist the town centre in being a commercial and community focal point. It is acknowledged that the operation of a restaurant could impact upon the amenity of the flatted properties above the unit. However the flats are located within a town centre location and the level of amenity expected cannot be the same as dwellings within a purely residential setting. In addition, account should be taken of the surrounding land uses within the local vicinity. They are a number of pubs, restaurants, and hot food takeaways which already have an impact upon the level of amenity commensurable with the flatted properties.

- 6.8 A number of representations have been received and the points raised have been summarised in section 5 of this report. None of the points raised are materially sufficient to merit refusal of the application.
- 6.9 In summary, although the proposed development does not comply with Local Plan policy, specifically in relation to Policy COM2 of the adopted South Lanarkshire Local Plan, it is considered that, in this instance the proposal will not harm the retail vitality and viability of the town centre, particularly as it will result in a vacant unit being re-used. Additionally the proposal is deemed to comply with all other relevant South Lanarkshire Local Plan policies.
- 6.10 On the basis of the above it is recommended that planning permission is granted contrary to the adopted Local Plan for the following reasons:
- ▶ The proposal complies with Policies COM1 and DM1 of the adopted South Lanarkshire Local Plan.
 - ▶ The proposal will secure the re-use of a unit which has been vacant for approximately 3 years
 - ▶ The proposal is not considered to adversely affect the amenity or vitality and viability of the surrounding area.
 - ▶ There are no infrastructure implications associated with the proposals.

7 Reasons for Decision

- 7.1 For the reasons stated in paragraph 6.10 above.

Colin McDowall
Executive Director (Enterprise Resources)

13 September 2011

Previous References

- ◆ HM/09/0063

List of Background Papers

- ▶ Application Form
- ▶ Application Plans

- ▶ Adopted South Lanarkshire Local Plan
- ▶ Neighbour Notification Notice dated 24 June 2011
- ▶ Neighbour Notification Notice dated 14 June 2011
- ▶ Press Advertisement (Hamilton Advertiser) dated 23 June 2011
- ▶ South Lanarkshire Council Retail Survey dated 12 July 2011
- ▶ DPEA: Planning appeal PPA/380/457 – 7 October 2009

- ▶ Consultations

Roads and Transportation Services (Hamilton Area)	20/06/2011
Environmental Services	22/06/2011

- ▶ Representations

Representation from :	Frank B. Craig, 13/15 Union Street, Larkhall, ML9 1DX, DATED 22/06/2011
Representation from :	The Church at the Cross, 2 Union Street, Larkhall, ML9 1DR, DATED 29/06/2011
Representation from :	Jim Sweeney, 11 Raploch Street, Larkhall, ML9 1AE, DATED 17/06/2011

Contact for Further Information

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

Alisdair Simpson, Planning Officer, Montrose House, Hamilton
 Ext 3601 (Tel :01698 453601)
 E-mail: planning@southlanarkshire.gov.uk

CONDITIONS

- 1 This decision relates to drawing numbers:
 - 16189/7 (amendment 1)
 - 16189/L
 - 16189/6a
 - 16189/2a
 - 16189/1
 - 16189/4
 - 16189/5a
 - 16189/3

- 2 That the development shall be carried out strictly in accordance with the plans hereby approved and no change to the design or external finishes shall take place without the prior written approval of the Council as Planning Authority.

- 3 Development shall not commence until an assessment of the potential for the proposed use to cause noise nuisance including, if applicable, noise produced by the ventilation equipment, to occupants in the flat above has been submitted to the Council as Planning Authority. Where potential noise disturbance is identified, proposals for the attenuation of that noise shall be submitted to and approved in writing by the Council as Planning Authority. The approved scheme shall be implemented prior to the development being brought into use and shall thereafter be retained in accordance with the approved scheme to the satisfaction of the Council as Planning Authority.
Such an assessment and the recommendation of any attenuation measures shall be carried out by a suitably qualified person.

- 4 Between the hours of 0800 and 2000 the measured noise level emitted from the premises (LAeq (1hour)) shall not exceed the pre-existing background noise level (LA90(1/2hour)) by more than 4dB (A) when measured in accordance with BS4142:1997 at buildings where people are likely to be affected.
Between the hours of 2000 and 0800 the noise emitted from the premises (LAeq (5mins)) shall not exceed the pre-existing background noise level (L A90 (1/2hour)) by more than 4dB(A) when measured in accordance with BS4142:1997 at buildings where people are likely to be affected.

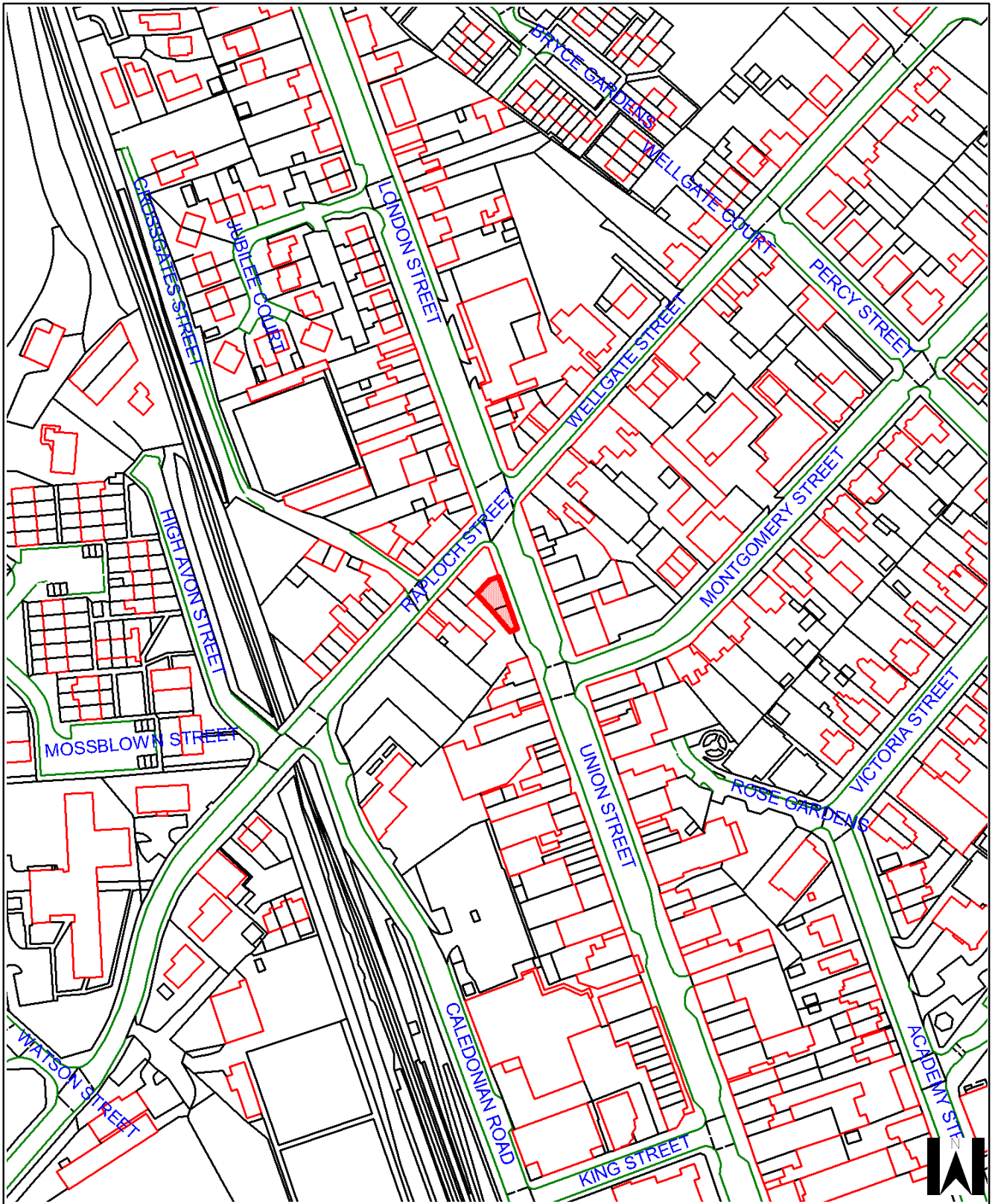
- 5 Before the restaurant is brought into use, the proposed method of ventilation shall be submitted to and approved in writing by the Council as Planning Authority. The restaurant shall not be brought into use until the ventilation systems are operational in accordance with the approved details.
All 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.

- 6 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.
- 7 That notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any such order revoking or re-enacting that order), the use of the unit hereby approved shall be restricted to use as restaurant and for no other purpose within Class 3 as defined in the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997, without the prior written consent of the Council as Planning Authority.

REASONS

- 1 For the avoidance of doubt and to specify the drawings upon which the decision was made.
- 2 In the interests of amenity and in order to retain effective planning control.
- 3 To minimise noise disturbance to adjacent occupants.
- 4 To minimise noise disturbance to adjacent occupants.
- 5 To minimise nuisance to occupants of nearby buildings as a result of cooking smells, vapours, airborne pollutants or noise from the premises.
- 6 To minimise nuisance, littering and pest problems to nearby occupants.
- 7 In the interests of amenity and in order to retain effective planning control.



For information only

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