

Report of Director of City Development

Report to Development Plans Panel

Date: 27th September 2016

Subject: Planning Policy for Hot Food Takeaways

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report considers the current and potential future planning framework to determining planning applications for Hot Food takeaways, and other uses that may give rise to negative impacts on health outcomes in Leeds. It follows a commitment to Development Plan Panel to monitor the effectiveness of the Local Development Framework in resisting, where appropriate, applications for Hot Food Takeaways (HFTs) in order to play a part in addressing wider health issues within Leeds.
2. The planning system has a clear role to play in promoting better health outcomes of Leeds residents and these ambitions are enshrined in the vision and policies of the Adopted Core Strategy alongside saved Unitary Development Plan policies. The report notes that, whilst many HFTs are successfully refused on the grounds of local amenity, very few are currently refused on the grounds of health.
3. The report scopes how the current policy framework may work better to align with other corporate activities to deal with health problems in particular localities, where a concentration of location of HFTs can be a contributing factor to persistent health issues like obesity. Other local authorities have successfully prepared Supplementary Planning Documents on the issue and the report sets out the broad scope of such a document. The report also notes that it is important that any future approach is based on sound evidence that a co-ordinated approach between planning, public health, licensing and environmental health is vital.

Recommendations

4. Development Plan Panel is invited to agree the preparation of a draft SPD, as set out in this report, to address links between health issues and planning policy, with a specific focus on tackling the location and/or concentration of Hot Food Takeaways in areas where health issues arising from unhealthy food choices are prevalent.

1 Purpose of this report

- 1.1 The purpose of this report is to review the implementation and effectiveness of current planning policies and other Council activities on planning for health as it relates to the number of new Hot Food Takeaways throughout the City.
- 1.2 The report then considers the changes that may be made to the Local Development Framework to better address the issue.

2 Background information

Planning and Health

- 2.1 Obesity is one of the most important public health issues currently being addressed in the country and in Leeds. It is a cause of chronic disease leading to early death and there is a body of evidence that suggests it is harder for people to attain and remain at a healthy weight and hardest of all for people in the most deprived areas¹.
- 2.2 The relationship between planning and health has been central to the preparation of the Adopted Core Strategy (CS) (November 2014) and the advancing Site Allocations Plan and Aire Valley Leeds Area Action Plan. A suite of policies around locations which encourage walking and cycling as well as promotion of green infrastructure and spaces for play has been central to these plans. The Core Strategy spatial context and planning vision articulates this and relates the Council's priorities on addressing health inequalities to the spatial framework and in particular for the impacts on children as part of the "Child Friendly Leeds" project. It should be noted also that the Best Council Plan (2015-20) also incorporates Breakthrough Projects including, 'Early intervention and reducing health inequalities'.
- 2.3 Development Plans Panel Members may recall a report in December 2014, which addressed the proliferation of HFTs (there are currently over 850 HFTs under license in Leeds). As the CS had only been recently adopted, Members agreed that that the development of further policies should be kept under review pending monitoring of the CS.
- 2.4 In June 2016, a White Paper was issued by Cllr Leadley that put forward the motion that:

"This Council believes that in the interests of public health and well-being it is essential that it adopts a coherent planning policy to control the siting and concentration of hot food takeaways. Therefore it instructs the Director of City Development to prepare a draft hot food takeaway planning policy to be presented to Development Plan Panel with a view to adding an appropriate document to the Leeds Local Development Framework as quickly as the statutory consultation and adoption process will allow".

¹ Local Government Association (2016) *Tipping the Scales*

2.5 At Council the Executive Member for Planning set out his response to the White Paper motion as follows,

“Thank you to Councillor Leadley for his White Paper on Hot Food Takeaway Planning Policy. In December 2014 Development Plan Panel considered the issue of Hot Food Takeaway planning policy and agreed that whilst there was no requirement to amend planning policy at that time, it was decided that the situation should be kept under review. I would agree that now is an opportune time to carry out that review by assessing the effectiveness of existing policy and the evidence that would inform the requirement for new policy. Such a review should be considered by Development Plan Panel and should encompass issues related to public health, proximity to schools, proliferation and amenity (and should closely involve colleagues working in these sectors), as well as the experiences of other authorities throughout the country. Given the pressing need for continued progress on the Site Allocations Plan, I consider that it would be appropriate for Development Plan Panel to consider this issue in the autumn of this year.”

2.6 This report reviews the effectiveness of CS policies and suggests amendments to the local planning framework. The next section sets out relevant Use Class Order definitions, national policy context, the evidence on the scale and nature of the health issues in Leeds, the current monitoring position, the current policy framework and potential for further implementation and policy changes.

Definitions and the role of planning

2.7 Hot Food Takeaways are defined as an A5 use under the Use Classes Order which specifies that they are *“for the sale of hot food for consumption off the premises”*. They are distinguished from restaurants and cafes which are an A3 use and defined as, *“for the sale of food and drink for consumption on the premises - restaurants, snack bars and cafes”*.

2.8 It is important to note that for the purpose of linking health outcomes and developments which may be a contributory cause of health problems, the planning system can largely control development which is within a particular use class, as opposed to the food that is being sold. Establishments such as McDonalds and KFC often come under the use class A3, whilst the A1 (retail) use class also covers establishments such as bakeries. The Use Classes also cannot discriminate between the types of food that is being sold by the A5 use. Therefore an A5 use specialising in healthy food options cannot be dealt with differently compared to an A5 use selling unhealthy food options, as the menu / quality or nutritional value of takeaway food is not a planning issue.

2.9 The Council’s planning powers are therefore limited in their scope to address the problem of obesity and other health problems related to unhealthy eating. As a fairly blunt tool the planning system is not designed to deal with the detail of how a business is operated, but rather with how land is used. Similarly, planning can do nothing to address problems caused by outlets that are already in place. That said, planning powers (in complementing a range of other interventions and initiatives) are a tool available to the Council and it is therefore reasonable to ensure that they are used as far as they can be in helping to tackle obesity among children and

young people, in particular or in localities where there are particularly prevalent health problems.

National Policy

- 2.10 The National Policy Planning Framework (NPPF) notes that Local Plans should *'take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs'*. It also states that Local planning authorities *'should work with public health leads and health organisations to understand and take account of the health status and needs of the local population (such as for sports, recreation and places of worship), including expected future changes, and any information about relevant barriers to improving health and well-being.'*

Local Policy

- 2.11 Currently, LCC does not have a specific policy related to the control of HFTs but measures to address the associated issues, are embedded across a number of policies. The Core Strategy sets out acceptable uses in Town and Local Centre locations, and the Saved Policies of the UDP set out acceptable uses within protected Shopping Frontages. The general saved UDP Policy GP5 protects against loss of amenity, danger to health or life and the prevention of crime. As a result, GP5 is the Policy generally used for the refusal of permission for HFTs. Its implementation is largely via an impact on amenity; rarely citing danger to health as a reason for refusal. Policies P3 and P4 of the Core Strategy cover acceptable uses in and on the edge of local centres and within local neighbourhoods and communities. Both policies state that (for the purposes of this report key sections are underlined):

Within lower order local centres, proposals for the change of use of existing retail units to non-retail units (including restaurants, cafes and take-away hot food shops) will be resisted where the vitality and viability of the centre to meet day to day local needs will be undermined and increase the need to travel, or where the proposal will lead to a concentration of non-retail uses in a locality which will detrimentally impact on the community. Proposals for such uses will be considered against the following criteria:

(i) The cumulative impact of such development, particularly upon the amenity of the area and traffic generation, especially where concentrations of such uses already exist,

(ii) Where a proposal involves evening opening, account will be taken of the proposal in relation to the proximity of the premises (and associated parking requirements), to nearby residential accommodation, the nature and character of the neighbourhood parade and existing noise levels,

(iii) The availability of public transport, convenient on/off street car and cycle parking provision and impact on highway

safety. Where there is insufficient car parking or where traffic movements are such as to create a traffic hazard, planning consent is likely to be refused.

2.12 Currently, HFTs tend to be refused on amenity grounds utilising both Core Strategy Policy and Saved UDP Policy G5. There are opportunities to legitimately use G5 in a more focussed manner to address health dis-benefits. To support the application of policy in this manner it will be necessary to carry out further evidence-base work, to make the links between health and particular development proposals, such as HFT, more explicit.

2.13 Since 2012, there have been 74 applications for HFTs, of which 24 were refused through use of Core Strategy and saved UDP Policies. The Table below shows the year by year comparison of applications. An analysis of refused A5 use applications can be found in **Appendix 3**.

	2012/13	2013/14	2014/15	2015/16	2016/17	Total
Takeaway / Drive thru applications	10	25	13	15	11	74
Pending	-	-	-	-	6	6
Approved	7	17	5	11	4	44
Refused	3	7	8	5	1	24
Appeal allowed	-	2	-	-	-	2
Appeal dismissed	-	1	-	-	1	2

2.14 The Council monitors the location of all HFTs across Leeds through Licensing Section. Whilst HFTs tend to be focussed in areas of higher deprivation initial strategic analysis of the location of HFTs and health indicators does not reveal an obvious link between HFTs and obesity in young or adult populations. However, there may be localised relationships, which can be explored further and such links whilst often hard to identify at a local authority scale may be discerned by more detailed mapping in localities.

2.15 This link between evidence and development is important for planning policies to have weight. Nationally 5 LPAs have had their policies on HFTs tested successfully on appeal - but to date there are no examples of appeals where an inspector has cited such policies as the only or chief consideration. Locally, the McDonalds appeal at the former White Bear pub in Tingley, was refused due to the adverse effects on local resident's amenity and the effect on highway and pedestrian safety. Whilst the issue of public health was raised extensively during the appeal, the inspector did not consider it as a significant reason in their final decision. This may have been due to the absence of evidence or an explicit policy framework.

Leeds Health Evidence

2.16 Nationally, 6 in 10 people are overweight and 1 in 4 people are obese. The Public Health Outcomes Framework has indicators for excess weight in adults and physical activity levels:

- 62.3% of adults in Leeds are classified as overweight or obese and this is not significantly difference from the England average,
- 63.8% of adults in Leeds are achieving 150 minutes of moderate physical activity a week and this is above the England average of 57%,
- 23.7% of adults in Leeds are classed as inactive. That is less than 30 minutes of moderate physical activity a week. Leeds performs better than the regional and national average (29.2% and 27.7%).

2.17 The GP Data Audit in January 2015, reviewed the Body Mass Index (BMI) recorded in patient records for the adult population (aged 16 years or over). This identified that 22% of the adult population are obese, compared to a 25% national average (BMI >30).

2.18 Childhood obesity stats from the National Child Measurement Programme show that they are of a similar level to national standards.

School Year	Area	Underweight	Healthy Weight	Overweight	Obese	Combined overweight and obese	% measured
Reception	Leeds	1.00%	77.40%	12.70%	8.80%	21.60%	95.40%
	Yorkshire and Humber	0.90%	77.60%	12.70%	8.80%	21.50%	95.00%
	England	1.00%	77.20%	12.80%	9.10%	21.90%	96.00%
Year 6	Leeds	1.50%	65.50%	13.70%	19.30%	33.00%	94.40%
	Yorkshire and Humber	1.40%	65.30%	14.10%	19.20%	33.30%	93.00%
	England	1.40%	65.30%	14.20%	19.10%	33.20%	94.00%

2.19 Maps showing adult obesity across the city can be found in Appendix 1 of this paper, and maps showing childhood obesity can be found in Appendix 2.

Other Local Planning Authorities

2.20 Several LPAs across the country have produced a HFT Supplementary Planning Policy (SPD) and there is evidence that in Waltham Forest and Newcastle this has been successful in deterring HFT applications. Generally, HFT SPDs have aimed to limit the concentration, clustering and proximity to schools (and other deemed sensitive areas) of HFTs. General examples of these restrictions are:

- CONCENTRATION: 5% limit on A5 frontages,
- CLUSTERING: No more than 2 adjoining frontages,
- PROXIMITY: 400m exclusionary zone around schools (but also in some cases youth facilities / community centres; playing fields / parks / children's play spaces and/or leisure centres).

3 Main issues

- 3.1 Planning powers rest within a much wider Council strategy for healthier communities, which is evidenced by the Joint Strategic Needs Assessment (JSNA). Approaches need to be co-ordinated and recognise that planning policies alone cannot restrict HFTs. Support from a range of services including, Public Health, Education (Children's Services), Environmental Health and Licensing will also be necessary to support an approach.
- 3.2 The current planning framework enables the Council to refuse HFTs when they would have an adverse effect on local amenity (including health) and establish an unacceptable concentration of non-retail uses within local centres and parades. Currently around $\frac{1}{3}$ of HFTs are refused permission on the basis of odours, traffic, noise and disturbances which can have a detrimental effect on residents living conditions.
- 3.3 Moving forward, it is proposed that the general saved UDP Policy GP5 continues to form the detailed Development Management policy basis for consideration of HFTs and that applications are considered alongside more detailed analysis of health dangers, particularly as they relate to the location of the proposal (i.e. proximity to susceptible groups) or in particular localities.
- 3.4 Policy and plans will continue to work with services (Public Health, Education, Environmental Health and Licensing, to prepare and maintain an evidence base on health, which facilitates better decisions on planning applications for health outcomes. Depending on the locality there will be opportunities for Neighbourhood Plans to prepare specific policies on this issue.

Supplementary Planning Document

- 3.5 Supplementary Planning Documents (SPD) can control and manage the impact of new hot food takeaways, addressing: a concentration and clustering of hot food takeaways in town or local centres, hot food takeaways in close proximity to susceptible existing uses such as schools.
- 3.6 Paragraph 153 of the NPPF states that, "*additional development plan documents should only be used where clearly justified. Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development.*" It is considered that the Council has a clear policy context for tackling obesity and that this is reflected in the Adopted Core Strategy. The SPD can assist more targeted use of the current policy framework of GP5, P2-4.
- 3.7 The SPD will be prepared to consider:
- limiting the concentration / clustering of HFTs,
 - avoiding proximity to secondary schools (and other deemed sensitive areas such as parks or transport hubs),

- scope for measures such as planning conditions or informative notes on consents to ensure that “healthy choice” takeaways are promoted and not prejudiced.

3.8 The preparation of an SPD is recommended on this issue but as the report already notes the use of planning powers to address health issues is not straightforward. There will need to be further scoping of which aspects of the fast food environment the Council is keen to limit and why? Whilst the focus of the SPD is intended to focus on HFTs there remains the issue of fast food restaurants. It is recommended that in the first instance officers explore the potential to apply the guidance to both A3 and A5 uses.

Current Roles of Other Services

3.9 Planning can only be used effectively as part of a wider holistic framework for tackling health. Officers have already met with officers from other Council services and will need to maintain this liaison as an SPD is prepared. A summary of what other services currently provide is as follows:

3.10 **Licensing:** Any business selling hot food and drink after 11pm needs a premises licence issued under the Licensing Act 2003 by the council. The Licensing Act is a permissive regime which means that unless the authority receives representation in objection to the application, it's automatically granted. If a representation is received, then it must be relevant to the application and show how the proposed activities will impact on one or more of the four licensing objectives:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

3.11 Negotiation is encouraged and if agreement cannot be reached between the objector and the applicant then the matter is dealt with at a hearing. We cannot take demand, health or amenity into consideration, unless these can be linked to one of the licensing objectives.

3.12 **Public Health:** Hot food outlet planning controls should not be considered in isolation and should form part of a coordinated approach to tackle unhealthy diets and obesity alongside work to promote healthy eating i.e. incentives as well as controls . Current work programmes led by Public Health and partners to improve the food environment include:

- Development of a food charter for the Council and partners across the City.
- Research into the food environment working with Environmental Health to monitor the prevalence of hot food takeaways and explore consumer behaviours.

- Exploring strategies to tackle the unhealthy food environment working with Trading Standards and Environmental Health based on good practice from other areas. Exploring Strategies include improving the quality and nutritional value of food sold in takeaway outlets. All parties are seeking funding for a pilot project so this work is dependent upon funding being available.

3.13 Many other local authority areas have funded projects to look at improving the quality of food sold, range of foods sold and promotion of products sold in hot food outlets. Public Health are currently researching other local authority areas for more details on their work and hoping to recruit additional support to review the evidence base on the most effective strategies, in order for City Council resources to be more effectively targeted.

3.14 **Environmental Health:** Environmental health can only close HFTs when a food inspector finds that there would be a 'serious effect on health'. They are not consulted on every HFT application due to limited resources within Development Management and can only assess the application in terms of the effects on noise, odour, litter and light. Generally, the adverse effects created by pubs and clubs are bigger issue within Environmental Health.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 In preparing this report a multi service meeting was held. Representatives from Policy and Plans, Development Management, Environmental Health, Public Health and Licensing met to discuss how HFTs are currently processed and the issues they currently face. The results of that meeting have helped form the basis of this report.

4.1.2 If a SPD is recommended to be the best practice in combatting the effects of HFTs, then it would require significant consultation with: local businesses, Chamber of Commerce, NHS Trusts. It would also require advice from Licensing, Environmental Health and Public Health.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality Impact Assessment (EIA) is recommended for any SPD on this issue. HFT outlets are often owned by and employ members of the Black and Minority Ethnic (BME) community in Leeds. In some localities they can also play a role as a community hub.

4.3 Council policies and Best Council Plan

4.3.1 The Leeds Best Council Plan highlights the importance of a healthy city several times throughout the document. As part of its outcomes, it requires that people 'Live longer and have healthier, active lives', all children and young people 'Enjoy healthy lifestyles' and Leeds becomes 'a city which offers its residents the best support available to maintain their health and wellbeing long into the future'.

4.3.1 The Best Council Plan 2016/17 update highlights ensuring everyone in Leeds to 'Enjoy happy, healthy, active lives' as one of its key outcomes, and 'Early intervention and reducing health inequalities' as one of its breakthrough projects.

4.3.2 Leeds also has a higher proportion of young people than the national average, including a large student population. Within this context, the City Council has a key ambition for Leeds to be a Child Friendly City - in creating places and services where children and young people feel safe and welcome and involved and informed about what goes on around them. In taking this initiative forward, 12 'wishes' have been developed for a more child friendly Leeds. These include: a healthy lifestyle.

4.4 Resources and value for money

4.4.3 The production of a SPD would be effective as costs of consultation are relatively low and there would be no Examination in Public costs. An SPD is considered a more proportionate response than a Development Plan Review.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The preparation of the proposed SPD, will be undertaken within the context of the LDF regulations and statutory requirements. This report is not eligible for call in as no decision is being taken.

4.6 Risk Management

4.6.1 Whilst the adopted Core Strategy (and Saved UDP Policies) provide a framework to address a range of public health issues, including hot food takeaways, the preparation of the proposed SPD provides an opportunity to more effectively focus upon the issues outlined in this report. This in turn will provide an opportunity for The Planning Service to collaborate with a range of City Council services and to consult with a range of agencies and businesses, in the development of a targeted approach, which is 'fit for purpose'.

5 Conclusions

5.1 In response to concerns raised by Members, this report sets out the scope of a proposed SPD, to tackle the issues associated with hot food takeaways. As emphasised above, there are key national and local imperatives to address a range of health issues associated with unhealthy diets and to promote healthier lifestyles. Within this wider context, the Planning system has an important role to play in helping to control the nature and location of new hot food takeaways. However, in meeting the wider objectives associated with this issue, the role of planning is a component alongside other Council services, together with the need for engagement and collaboration with agencies and businesses external to the City Council.

5.2 As outlined in this report, the issues are complex and the Council will need to be satisfied that the preparation of the proposed SPD, is underpinned by a robust evidence base, as a basis to support additional planning policies to help ameliorate the health and amenity issues raised as part of this report.

6 Recommendations

- 6.1 Development Plan Panel is invited to agree the preparation of a draft SPD, as set out in this report, to address links between health issues and planning policy, with a specific focus on tackling the location and/or concentration of Hot Food Takeaways in areas where health issues arising from unhealthy food choices are prevalent.