

## Report to the Cleaner, Greener & Safer Overview and Scrutiny Committee

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### Licensing of Hot Food Takeaways



**Report Author:** *Guy Benson and Julia Cleary*  
**Job Title:** *Head of Planning / democratic Services Manager*  
**Email:** [Julia.cleary@newcastle-staffs.gov.uk](mailto:Julia.cleary@newcastle-staffs.gov.uk)  
**Telephone:** *01782 742227*

#### Introduction

Concerns have been raised by Members in relation to the density of hot food takeaways in some areas of the Borough.

#### Background

The subject was identified at a scrutiny Chairs briefing and added to the work plan as a possible future scrutiny topic.

#### Questions to be Addressed

What steps can be taken by the Borough Council to limit the number of hot food takeaways operating in a specific area?

How this problem is best addressed:

- Regulatory and Planning measures
- Working with schools to reduce fast food consumed by children
- Working with the takeaway businesses and food industry to make food healthier.

#### Outcomes

The use of regulatory and planning measures to address the proliferation of hot food takeaways.

Improve public health (reduce obesity)

Improve public safety

Reduce crime and disorder

Environmental Impact (littering)

### **Supporting Information**

Planning permission is required for 'development' - this means material changes of use of land or buildings and operational works. However where the use of a building falls within one 'Class' its use for any other purpose in that same Class is not 'development' (and therefore does not require planning permission)

Use Class A5 of the Use Classes Order refers to the use of premises for the sale of hot food for consumption off the premises. It follows that no planning permission is required to change from one type of hot food takeaway to another.

In considering planning applications the change of use of premises to hot food takeaways, or alterations to their permitted opening hours, the Local Planning Authority has to have regard to the provisions of the development plan (so far as material to the application), local finance considerations (so far as material to the application) and any other material considerations (Section 70 of the TCPA). Where regard is to be had to the provisions of the development plan, the determination should be made in accordance with the provisions of the development plan unless material considerations indicate otherwise (Section 54a of the TCPA).

A critical consideration in the determination of planning application is the ability of the Local Planning Authority to grant planning permission subject to conditions. Such conditions have to meet a variety of tests set out in a Circular on the Use of conditions in planning permissions - that they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects

Newcastle has Supplementary Planning Guidance (SPG) on Hot food Takeaways. A link to the document is provided below

<http://www.newcastle-staffs.gov.uk/Documents/Regeneration%20and%20Planning/Hotfood%20takeaways%20SPG.pdf>

In planning decisions the SPG has the status of an "other material consideration". Although it dates from 1996, and is based upon and refers to policies contained within the Newcastle Local Plan that existed at that time (i.e. not the current Local Plan), it continues to be referred to by both the Planning Authority, and those who advise the Planning Authority on such applications (i.e. the Environmental Health Division). It has been referred to by Inspectors at appeals regarding planning decisions by the Borough Council and despite its age, and the fact that it is not what is termed a Supplementary Planning Document (which would have to have gone

through a more rigorous consultation procedure), Inspectors continue to give it weight in the determination of such appeals.

The Core Strategy, part of the approved development plan for the area, has strategic aims which include those of the facilitation of the “best of healthy urban living in the development of the conurbation” and of renewing “the fabric of urban and rural areas to promote the best of safe and sustainable urban and rural living”. Policy CSP1 refers to the need to ensure a “balance mix of uses that work together and encourage sustainable living” and that new development should be “accessible to all users, be safe, varied” and “contribute positively to healthy lifestyles”.

The SPG has within it the concept of categories of areas (which it defines, and uses to determine whether a Hot food takeaway is acceptable or not (in principle), and if it is acceptable (in principle) the appropriate hours of opening). It also does however indicate that in addition to other considerations, the Council will take into account the cumulative effects of the proposed development together with any others already in existence in the locality or other uses which might have a contributory effect on any nuisance caused.

Officers are aware that some other Local Planning Authorities have recently gone onto prepare or start to prepare Supplementary Planning Documents on Hot food takeaways, include Stoke on Trent City Council. The preparation of a Supplementary Planning Document involves significant resources as a number of procedures and documents have to be produced. The City Council have not yet moved to the adoption stage, having commenced the process of preparation of the SPD approximately 4 years ago, although there are reasons for this specific to the City Council. The following is a link to the relevant section of their website from which the consultation version of their SPD can be downloaded

<http://www.stoke.gov.uk/ccm/content/planning/planning-general/local-development-framework/supplementary-planning-documents.en>

The Borough Council is committed to the preparation of a Joint Local Plan and the draft timetable for that preparation approved by Cabinet at its meeting on 5th March 2014. It is your Officer’s view that the key priority for the limited resources of the Planning Service must now be the preparation of the Joint Local Plan, rather than the preparation of Supplementary Planning Documents such as one concerning Hot Food takeaways or some other variant of that topic more related to healthy lifestyles.

The materiality of health considerations in planning decisions continues to be a matter of considerable debate, particularly where there are limited controls available to the Local Planning Authority – for example the Local Planning Authority cannot determine the type of hot food to be sold from the premises.

Most importantly the Local Plan will provide the opportunity for the Borough Council to consider its development management policies including those relating to the change of use of premises to hot food takeaways. It may be that it will identify a need for an SPD to be prepared once the Local Plan has been adopted.

The Local Planning Authority is currently notified as a “responsible authority” of applications made under the Licensing Act 2003 (which includes applications for the sale of hot food after 11pm) – which clearly does not include all hot food takeaways. It provides as part of its response information on the planning permission, and it will draw attention to any situation where the required planning permission does not exist, or where proposed hours of opening indicated in a Licensing Act application are not those permitted under the terms of the planning permission for the premises. In any objection that it makes to the Licensing Authority it has to have regard to the limited considerations which can be taken into account in the determination of an application for a license – namely the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. The two regimes – Licensing Act and Planning – operate independently and do not involve the same considerations.

### **Invited Partners/Stakeholders/Residents**

Head of Planning at Newcastle under Lyme Borough Council

### **Relevant Portfolio Holder(s)**

Cllr Terry Turner: Economic Development, Business and Town Centres

Cllr John Williams: Planning and Assets

Cllr Ann Beech: Environment and Recycling

Cllr Tony Kearon: Safer Communities

### **Background Materials**

Obesity and the environment: regulating the growth of fast food outlets.

### **Appendices**

Obesity and the environment: regulating the growth of fast food outlets.