

BRIEFING PAPER

SUBJECT: BETTING SHOPS, PAY DAY LOAN PREMISES AND FAST FOOD OUTLETS
DATE: 12 DECEMBER 2013
RECIPIENT: OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE

THIS IS NOT A DECISION PAPER

SUMMARY:

At Council on 17th July 2013 Cllr Vinson moved a motion that was subsequently amended. The final version stated:

“This Council deplores the unwelcome spread of betting shops, pay-day-loan premises, cheap off-licenses and seeks to bar the opening of fast food outlets near schools. This Council calls upon the Executive to undertake a thorough review of its planning policies (including the potential for additional Article 4 Directions and supplementary planning documentation), reporting back in six months, in order to minimise the harmful impact of these unchecked and unwelcome developments in the City’s district shopping centres, especially where they are likely to harm the health and wellbeing of our more vulnerable communities.”

A report is therefore being presented to the 17 December meeting of Cabinet on betting shops, pay day loan premises and fast food outlets recommending the following:

- I. That the Council assesses all new planning applications for hot food takeaways within 500m of schools and, if there is considered to be a overriding health implication, then opening hours are restricted during lunch times.
- II. That a cross departmental group is set up to explore whether there are opportunities to influence the spread of betting shops, pay-day-loan premises, and the opening of fast food outlets near schools over the longer term and reports back to Cabinet within six months. It is considered that cheap off-licences should not be considered further as it is not a planning issue.
- III. The report back to Cabinet should consider whether an article 4 should be served to prevent the conversion of pubs to other use classes.

BACKGROUND and BRIEFING DETAILS:

1. There are effectively three different issues covered by the Cabinet report – betting shops and payday loans (these are considered together as they have considerable overlap in planning terms); cheap off-licences; and fast food outlets near schools.
2. It is considered that many of the issues raised in the report are legitimate concerns but are beyond the remit of the planning system and are better tackled in a more comprehensive way with input from various bodies. While there is a short term solution for new hot food takeaways that can be implemented immediately, the majority of the issues will require a longer term solution and should be assessed further.

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Betting Shops and Payday loan shops

3. These activities generally fall within Class A2 of the Town and Country Planning (Use Classes) Order 1987. This class covers banks, building societies, bureau de change, estate agents and employment agencies etc. Therefore, any change in a use in a building between these separate activities does not require planning permission. In addition, there is a permitted change from Use Classes A3 (restaurants and cafes), A4 (drinking establishments), and A5 (hot food takeaways) to Class A2 without planning permission. Lastly, the Government introduced further permitted development changes in May 2013 which allows a temporary change of use from an A1 Use (shops) and a B1 Use (business use) to an A2 Use. However, these new rights are only applicable for a two year period (and only apply to smaller units).
4. Therefore, the vast majority of units within the commercial centres can be converted to be used as a betting shop or payday loans use without requiring planning permission.

Planning Policy

5. Where planning permission is required, the Council's planning policies in the Core Strategy and Local Plan permit a change of use from shops (A1) to use class A2 within main shopping parades as these uses are recognised as appropriate uses for shopping centres. Policy REI3 of the Local Plan seeks to limit changes of use to non-retail activities within the primary retail frontage in the City so that no more than three adjoining units are in non Class A1 use.

Betting shops

6. In addition to planning powers (where they apply), there is also a limited scope to control the numbers of betting shops under the licensing regime. An applicant needs to have satisfied certain criteria, but once they are met and the application is made, the authority making a decision will be subject to the provisions of Section 153 of the Licensing Act. In exercising its function under this part a licensing authority shall aim to permit the use of premises for gambling in so far as the authority think it –
 - a) in accordance with any relevant code of practice
 - b) in accordance with any relevant guidance issued by the Gambling Commission
 - c) reasonably consistent with the licensing objectives, and
 - d) in accordance with the statement published by the authority.
7. The codes of practice or guidance do not contain much to assist with this matter. The statutory licensing objectives are:
 1. preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
 2. ensuring that gambling is conducted in a fair and open way, and
 3. protecting children and other vulnerable persons from being harmed or exploited by gambling
8. The first two objectives are primarily matters for the Commission and only on the third does the licensing authority have a potentially significant role, advised by the responsible authorities. Regrettably, the legislation fails to define "vulnerable persons". Persons under 18 are barred in law from betting premises.

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9. It does not appear that there has been a substantial increase in betting shops within the city. There have been seven new applications in the last five and a half years and none so far in 2013. Council officers are in regular contact with the police and there is a monthly licensing action group meeting with various partners. There has not been a concern about a rise in crime linked to betting offices.
10. From the authority's Gambling Statement of Principles the following reference is made to the location: "*Locations for gambling premises, which may pose problems, include those in close proximity to premises frequented by children or other vulnerable persons e.g. schools or parks. Each case will be considered on its merits and if adequate measures are put in place in accordance with this policy to restrict access to children, protect vulnerable persons and prevent crime and disorder, there is no reason why one location poses substantively more risk than another. We recognise that the presence of gambling premises with a constant stream of trade in what may have formerly been an underused area may serve to reduce crime and disorder, however this will only be the case where necessary safeguards are put in place either by the operator or by the licensing authority in the form of licence conditions*".
11. In summary, unless there is evidence an application will not adhere to either the codes of practice, guidance from the Gambling Commission, the licensing objectives, or the authorities statement of principles then the application has to be granted.
12. Parliament has debated the impact of betting shops and the Mary Portas's High Street Review in December 2011 recommended putting betting shops into a separate use class. Umbrella group London Councils has also argued that betting shops restrict choice on the high street, add to perceptions of declining areas, and in some cases have increased crime levels. It has also called for betting shops and pawnbrokers to be moved from use class A2 into a use class of their own. There is currently no plan for the Government to change this.
13. The Public Health team has advised that betting shops are only part of the problem and the rise in on-line gambling is a greater concern but there would be some merit in examining this issue further so better information can be gained from other sources.

Payday Loan shops

14. Current pay day loan premises in Southampton City Centre:
H&T pawnbrokers, 113a East Street
Speedy Cash, 83 Above Bar
Cash Converters, 378-380 Shirley Road

Pawnbrokers also offering Buy Back Loans / loans in Southampton
Cash Converters, 378-380 Shirley Road
Pawnbroker Southampton. 14 The Mall, Marlands Shopping Centre
Cash Recycle, 249 Portswood Road
The Money Shop, x3 (14 Shirley High St, 319 Shirley Rd, 25 Hanover Buildings)
There may be others that we are not aware of following our short survey.
15. There are no additional controls open to the Council covering where a payday loan business can operate. SCC does not licence pay day loan shops as the licensing regime is currently run by the Office of Fair Trading and will be moving to the Financial Conduct Authority (FCA) in April 2014. Trading Standards will be notified of an application for a license.

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16. There has been a review of Payday lending but this is likely to be overtaken by the structural review of the licensing regime. This will introduce a new licensing regime similar to that run by the existing FSA which itself will be split and part will go to the FCA. However, the requirements of these licences and the Local Authority role has been reduced.
17. Local Credit Unions are also available which provide a reliable source of financial help. Two examples are the Solent Credit Union (153A High Street), and United Savings & Loans Hampshire (a service point is in Shirley Housing Office).

Cheap off-licences

18. These fall within use class A1 and therefore any shop (also Use Class A1), financial and professional services (Use Class A2), restaurants and cafes (Use Classes A3), drinking establishment (Use Class A4), and hot food takeaways etc. (Use Class A5) can be converted to an off-license without needing planning permission. Planning policy supports an A1 use in any commercial frontage, and so while most off-licences would not require planning permission, if they did, they would tend to be supported in planning terms.
19. The Public Health team have advised that off-licences are not the source of the main problem with underage or excessive drinking as supermarkets, corner shops, and garage sales appear to generate the majority of these drinking problems. Off-licences require a license for the sale of alcohol and are required to comply with the licensing objectives.
20. The issue appears to be more one around national policy on unit price of alcohol and health awareness campaigns rather than a local issue that the planning system can resolve. Therefore, it is considered that this matter should not be considered further as part of this work.

Takeaway (fast food) outlets near schools

21. Officers have analysed how many takeaways are situated near to secondary schools in the city ('near to schools' defined as within 500 metres of the school gates). Appendix 1 sets out the findings, and includes an analysis (where appropriate) of how the uses within the nearest local or district centre has changed since 2005. This shows that only two schools in the city (15%) are situated near to takeaway premises, and even these are situated just outside the 500m distance (Cantell School near to Burgess Road Local Centre, and Sholing Technology College near to Merryoak Local Centre).
22. However, in those two instances the Council's regular Retail Surveys show that the proportion of (A5) takeaways have increased since 2005 (up 43% in Burgess Road Local Centre, and up 70% in the Merryoak Local Centre). Conversely the proportion of (A1) shops reduced by 8% and 10% respectively.
23. The Council's has produced a "Fit 4 Life" Strategy for Southampton (2008-2013). This is clear that "*a significant proportion of the population does not eat the recommended amount of fruit and vegetables and fibre on a daily basis but eat more than the recommended amounts of fat, saturated fat, salt & sugar.... It is also critical to consider the wider cultural & social context to individual's behaviours such as food & drink access & availability and in particular food pricing, food availability (both purchasing power & ease of access to food outlets.*"

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24. The report also highlighted that prevention of obesity requires changes in the environment and organisational behaviours as well as changes in group, family & individual behaviour. The action plan includes action that the Council can take in schools to provide an environment which positively promotes eating well and being active. For example through the school meals provided on site through school catering, including a Food in Schools Coordinator who will promote meal uptake. All children would be encouraged to choose a healthy school meal on a weekly or daily basis.
25. The Council also undertook an Obesity Inquiry through a Healthy City Scrutiny Panel in 2010. Among the recommendations were ones covering a wider environmental / whole system approach. This included ensuring that "*the Planning and Development Service takes opportunities, as they arise, to review the provision of fast food outlets in Southampton*". This has not been done in a systematic way but on a case by case basis.
26. Current planning policy
- Hot food takeaways fall with Class A5 of the Use Classes Order and are considered in current policy terms to be an acceptable use for a shopping frontage (Saved Local Plan Policies RE13 – RE17 / Core Strategy Policy CS3). The Council therefore has no current planning policy that would justify refusing planning permission for takeaways near to schools. It would also be difficult to establish if the presence of one has a detrimental health effect on children.
 - From the planning perspective, a takeaway may serve unhealthy food, but not all takeaways will necessarily serve only unhealthy food. Therefore, the Council would need to look at these on a case by case basis to establish the potential harm to the health of children; this may be more appropriately provided by the Public Health team. An alternative approach could be to work with any new businesses to encourage the development of healthier menus, in line with the Government's responsibility deal for businesses.

The Government's attitude to the issue of hot food takeaways

27. The Town and Country Planning (Use Classes) Order 1987 (SI 764) puts hot food takeaways for consumption of food off the premises into use class A5.
28. In March 2009 the Health Select Committee reported on health inequalities. It recommended that local councils should be given greater planning powers to restrict the number of fast food outlets on high streets. Case law has shown that proximity to a school and the existence of a school's healthy eating policy can be a "material consideration" for a local authority taking a planning decision in relation to an A5 takeaway establishment. Further decisions on appeal by Planning Inspectors have shown, however, that in order to successfully refuse planning permission on these grounds a local authority must also show that there is an over-concentration of A5 establishments in the area and provide evidence to show a link between childhood obesity and the proximity of A5 establishments to schools. It was also found that a policy explicitly seeking to control proliferation of fast-food outlets near schools, would make it easier for a Planning Inspector to uphold a decision to refuse an application. Following these decisions, several councils have now published supplementary planning documents relating to takeaway establishments.

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Supplementary Planning Documents (Local Authorities)

29. Salford City council adopted a *Hot Food Takeaways Supplementary Planning Document* (SPD) in 2007. It provides additional advice to prospective takeaway operators about the development and use of premises in Salford as hot food takeaways. It also explains the Council's overall approach to such development, and sets out detailed advice on appropriate concentrations of hot food takeaway establishments, measures to protect the amenity of surrounding residential occupiers, appropriate standards for parking, and servicing for delivery and waste collection services.
30. Worcester City Council adopted its *Takeaway Food Outlets SPD (2011)* which included a requirement for applications to demonstrate the need for a takeaway facility in an area. Details of the number of other takeaway outlets in the surrounding area must be submitted as part of any application. A health policy also states that "*When applications for Takeaway Food Outlets within close proximity of schools, colleges and community centres (400m) are received, the relevant organisations should be consulted*". In its Local Plan (2004) Policy SH5 states that - Planning permission will be granted "*for food outlets and hot food take-away shops where all of the following conditions are met: ... The proposed use will not cause the proportion of units in food/drink (use class A3) use to exceed 20% in the areas defined as approach corridors and St John's district shopping centre as shown on the proposals map*".
31. Sandwell Metropolitan Borough Council adopted a Hot Food Takeaway SPD (2012) with three 'Intervention Points' -
- Proximity to schools: No new Hot Food Takeaway (HFT) Developments will be permitted where they are within 400 metres of a secondary school or college as measured in a direct line from the school entrance.
- Vitality and Viability: A percentage limit for the appropriate number of Hot Food Takeaways in centres (Strategic, Town, District and Local) is as follows:
- In centres with more than 40 units – there should be no more than 10 % of frontages occupied by HFTs.
 - In centres with less than 40 units – there should be no more than 15% of the frontages occupied by HFTs.
- Furthermore, a limit of two outlets together is the maximum appropriate. Should this be exceeded (e.g. three outlets or more together) then the application will not be permitted due to excessive clustering of these types of outlets together
- Environment: Development of new Hot Food Takeaways must not prejudice existing residential developments and must be designed in such a way that they do least harm to the environment, with a number of conditions set out.
32. Three appeals in Sandwell have tested this policy approach, and in all three cases of refusal the appeals were dismissed (one primarily on residential amenity, the other two primarily relating to the percentage limits).
33. Dudley Metropolitan Borough Council adopted its *Planning for Health SPD* in October 2013. This sets out that 10.2% of reception year pupils in Dudley are obese and the borough faces "rising levels of obesity" to which takeaways within walking distance of

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schools are "a contributing factor". More widely, the SPD argues that, while hot-food takeaways can complement other retail uses, they are "more likely to have a detrimental impact on amenity and on retail character and function of shopping centres". Within the Borough's protected frontages planning permission for hot food takeaways will only be granted where no more than 5% of the units will consist of A5 uses. In all the Borough's centres, retail parades and all other areas, no more than 2 A5 uses will be permitted adjacent to one another. Additionally, hot food takeaway shops will be resisted where the proposal will fall within 400m of the boundary of an existing school, or other youth centred facility (e.g. after school clubs, youth centres).

34. In Southampton, no planning policy exists that would justify refusal for a takeaway near to schools, if they are on a shopping parade (Local / District Centre). Outside shopping frontages, there are potential grounds for refusal. Any new policy for takeaways (including any new Supplementary Planning Document) would need to give clear evidence of direct harm arising from a business near a school – given the number and distribution across the city this may be difficult to establish. This would require *at least* 12 months to prepare, consult & adopt a policy.

Options

Article 4 direction (restricting permitted change of use to A2 Use Class)

35. An Article 4 Direction can be served which will remove current permitted changes of use from one use class to another so that a planning application is required to be submitted. However, this will not stop changes of use *within* a use class. Therefore, there would be no way to stop banks, estate agents and employment agency premises from going to betting/payday uses (as they are already in an A2 use class).
36. In addition, to serve an article 4 direction, the Council would have to have clear evidence of harm that a particular use is causing in the city to take the step of serving an article 4 direction as this is seen by the Government as interfering with peoples' property rights and therefore, not something to be done lightly. It is not considered that there is clear evidence of directly attributable harm at this stage.
37. Consideration also needs to be given to the fact that even if it an article 4 direction was served, it only requires a planning application to be submitted and the Council's current policies generally support A2 uses in commercial centres.
38. Article 4 Directions must be made in accordance with national Government guidance given in the National Planning Policy Framework which directs that there must be a clear justification for removing national permitted development rights. The use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
39. There are circumstances in which local planning authorities may be liable to pay compensation having made an article 4 direction. Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they: i) refuse planning permission for development which would have been permitted development if it were not for an article 4 direction; or ii) grant planning permission subject to more limiting conditions than the regulations would normally allow, as a result of an article 4 direction being in place.

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40. It should also be noted that before April 2010 the Secretary of State confirmed certain article 4 directions, it is now for local planning authorities to confirm all article 4 directions (except those made by the Secretary of State) in the light of local consultation. While article 4 directions are confirmed by local planning authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most article 4 directions at any point.

41. To avoid claims of compensation, the Council is required to give a year's notice of its intention to serve an article 4 direction. In parallel to this, evidence would have to be produced to support an SPD to consider how planning applications would be supported but in light of the lack of policies in the local plan, it is considered that this is not a suitable option.

Article 4 direction (restricting permitted change of use to A1 Use Class)

42. This option to try to restrict the spread of off-licences would not be possible for the planning system to control as A1 uses are supported in commercial centres. Any existing premises in any A use class can automatically change to an A1 shop and it is considered that evidence does not exist that would show off-licences directly relate to health problems as a use. This is not considered to be a suitable option.

Impose conditions on planning applications for takeaways within 500m of a school

43. It is possible to impose conditions restricting opening hours on a takeaway where it is located within 500m of a secondary school to ensure it does not open during school lunch times. This should be done on an individual basis where the hot food takeaway is examined where it is shown the menu will, on balance, focus on the sale of unhealthy food. There is some risk with this approach as it may prove difficult to argue the one takeaway is detrimental to the wellbeing of the local community but it is considered this is possible.

Set up a cross Council working group

44. It is considered that there is synergy between various departments across the Council and that there would be benefit in a cross-cutting team being set up to consider the relationship between public health, licensing, police, environmental health, trading standards, anti-poverty, schools, and possibly some other departments. The Council took on responsibility for public health on 1st April 2013 and the public health team have a vast amount of evidence and experience that would be useful to consider further and developing linkages would benefit all. It is likely that the Public Health team will also know more about these types of premises and so the evidence base would be improved as a result so options can be explored further.

Do nothing

45. This is possible but it is considered that for the small amount of work involved in pursuing options 4c and 4d would be worth pursuing.

Investigate the harm caused to local communities from the loss of pubs

46. At Full Council on 18th September, a motion was passed to write to the Secretary of State for Communities and Local Government to request that the legislation was changed to require planning permission for the conversion of pubs. However, the Secretary of State has advised that the Council should instead consider the use of article 4 powers. Therefore, it has been suggested that consideration should be given to that as part of this work and so has been added to the recommendations.

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RESOURCE/POLICY/FINANCIAL/LEGAL IMPLICATIONS:

Financial

47. No significant impact on the recommended options 4c and 4d apart from officer time. Options 4a and 4b (not recommended) would involve a significant amount of officer time and potential risk of legal action and/or compensation.

Property / Other

48. None

Legal

49. Town & Country Planning Act

Policy

50. None

Appendices/Supporting Information:

Appendix 1 – Analysis of takeaways within 500m of Secondary School premises

Further Information Available From:

Name: Chris Lyons

Tel: 023 8083 2044

E-mail: Chris.lyons@southampton.gov.uk