

DECISION-MAKER:	CABINET COUNCIL			
SUBJECT:	BETTING SHOPS, PAY DAY LOAN PREMISES AND FAST FOOD OUTLETS			
DATE OF DECISION:	CABINET 17 JUNE 2014; COUNCIL 16 JULY 2014			
REPORT OF:	LEADER OF THE COUNCIL			
<u>CONTACT DETAILS</u>				
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STATEMENT OF CONFIDENTIALITY

NOT APPLICABLE

BRIEF 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.”

The Executive considered the motion at Cabinet on 17th December 2013 and resolved:

- (i) That the Council assesses all new planning applications for hot food takeaways within 500m of schools and, if there is considered to be an 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 also consider whether an article 4 should be served to prevent the conversion of pubs to other use classes.

Recommendation (i) is already taking place, although it was accepted by Cabinet that in reality it would often prove difficult to conclude that a single proposed hot food takeaway would result in an overriding health implication with current planning policies. Therefore, this will be looked at in more detail as part of the new Local Plan adoption process, which is now underway, to assess whether more detailed policies are required and Planning will work with Public Health to assess this.

This report now feeds back on the findings of the cross departmental group that met and the consideration around using an article 4 direction to prevent the conversion of pubs to other uses.

RECOMMENDATIONS:

CABINET:

- (i) That the Planning & Development team assess the impact of betting shops, pay-day loan businesses, and takeaways near schools as part of the work on the new Local Plan to see if new policies are necessary to give more control.
- (ii) To delegate authority to the Director of Place to do anything necessary to progress new policies through the Local Plan process in line with recommendation (i) above if deemed to be appropriate to provide effective planning controls.
- (iii) To delegate authority to the Director of Place to progress work on an article 4 direction to prevent the conversion of pubs to other uses, giving one years notice before the article 4 will take effect. This will include guidance on how any subsequent planning applications will be determined for the conversion of a pub. This will require determination by a subsequent Cabinet and Full Council meeting to assess the evidence to support an article 4 direction before making a final decision.

COUNCIL:

- (i) To note the content of the report.

REASONS FOR REPORT RECOMMENDATIONS

1. It is considered that many of the issues raised in this report are legitimate concerns and while the Council is working on many of the areas, there is insufficient evidence of significant harm or suitable policies in place, to justify the service of an article 4 direction relating to betting shops, pay-day loans, or takeaways near schools. However, there is sufficient evidence of harm and suitable policy support to support the service of an article 4 direction relating to the conversion of pubs, subject to undertaking due process to bring such a direction into force.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. Do nothing. This is possible in the current economic climate where further work may be considered to not be cost effective but, on balance, it is considered that the input of officer time to serve an article 4 direction to stop the loss of pubs without proper consideration is worth pursuing.

DETAIL (Including consultation carried out)

3. There are effectively three different issues covered by this report – betting shops and payday loans (these are considered together as they have considerable overlap in planning terms); fast food outlets near schools; and the conversion of pubs to other uses.

Betting Shops and Payday loan shops

4. 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).
5. 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

6. 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

7. 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 Gambling Act 2005. 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.
8. The codes of practice or guidance do not contain much to assist with this matter. The statutory licensing objectives are:
 - preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
 - ensuring that gambling is conducted in a fair and open way, and
 - protecting children and other vulnerable persons from being harmed or

exploited by gambling

9. 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.
10. It does not appear that there has been a substantial increase in betting shops within the city. 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.
11. 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”.
12. 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.
13. In September 2013, the Association of British Bookmakers (ABB) published a ‘Code for Responsible Gambling and Player Protection in Licensed Betting Offices in Great Britain’. The ABB is the leading trade association for Licensed Betting Offices (LBOs) in Great Britain and represents the operators of around 80% of LBOs in Britain, including Gala Coral, Ladbrokes, Paddy Power, William Hill and about 100 independent bookmakers. This code contains a new “Harm Minimisation Strategy” focusing on how the industry is seeking to improve its performance at four levels of harm minimisation:
 - Issuing clearer and more accessible information on how to gamble responsibly and highlighting the sources of help available;
 - Providing customers with new tools such as mandatory time and money based reminders, the ability to set spend and time limits on gaming machines and to request machine session data;
 - Training staff to detect the signs of potential problem gambling more quickly and how to interact more effectively with those identified; and

- Undertaking more consistent central analysis of data to identify abnormal activity both in specific shops and, where possible, that relating to individual customers.

14. Recent national developments relating to betting shops have focused on Fixed Odds Betting Terminals (FOBTs). Nearly £200m was gambled in Southampton last year alone by residents on FOBTs, which is a similar amount to that spent on the entire health budget of Southampton's clinical commissioning group. In December 2013 the Labour Party leader announced that the next Labour Government would modify the Gambling Act 2005 to enable local authorities to review betting shop licences in their area and reduce the number of FOBTs in existing locations. An Opposition Motion was debated and defeated in January 2014.

Payday Loan shops

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 now run by the Financial Conduct Authority (FCA), having moved responsibility from the Office of Fair Trading in April 2014. Trading Standards will be notified of an application for a license and are of the opinion that the FCA is more likely to place a greater emphasis on the 'customer benefit' outputs of the business. There is an increasing political pressure for the FCA to address the overall impact of business activities rather than specific examples of technical non-compliance which was the approach taken by the OFT.
16. 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).

Proposals for betting shops and pay-day loans

17. The role of the local authority is somewhat limited in dealing with both betting shops and pay-day loans companies. Changes in business practice mean that areas of concern are also more with on-line business with the Public Health team advising that the rise in on-line gambling is a greater concern, for example. As noted, there also appears to be some signs of a change in approach with more attempts at self-regulation as concern grows.
18. The Council is working on these issues, where it is able, and has already included details about choices of lower costing finance on publications and has blocked public access to the main payday loans companies from SCC computers. There is also a debt toolkit available online, joint working has taken place on credit 'hot spots', training given on 'loan sharks', courses run, funding bid for, and the Credit Union has been promoted. Work is now underway on the next phase to update the economic wellbeing section of the Joint Strategic Needs Assessment, on-going working with the Illegal Money Lending Team is being planned, and advice will continue to be issued where possible. Therefore, the Council is already very active in supporting residents on financial issues.
19. Looking at the national picture, 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 under the planning system. This was supported by other groups and in the 2014 Budget, the Government advised that it is looking at creating a 'wider' retail use class but excluding betting shops and payday loan shops from this use class. This would effectively require planning permission for a change of use to these premises.

20. The only real means of dealing with betting shops and pay-day loans under the planning system at present would be to serve an article 4 removing the existing permitted development rights and requiring planning permission. However, this would cover the entire A2 use class and therefore any change of use to *any* use within A2 – banks, building societies, estate and employment agencies, professional and financial services etc. would all require planning permission. This would both impact on the businesses and the Council's resources determining applications for all of these uses, when the majority do not raise any concern.
21. It should also be remembered that this only covers change of use to an A2 use from another use and so there is no control over a change of use from an existing A2 use and there are already many buildings in an A2 use in the city centre. In addition, an article 4 simply requires that an application is made for planning permission, and as was explained earlier, the current planning policies would support such a use in the commercial centres. Therefore, if there are particular concerns to be addressed, the policy framework would need to be more explicit about the potential social impact from such developments. This is something that could be considered as part of the new Local Plan to see if more detailed policies could be considered. However, it should be noted that this process will take at least 3-4 years to develop so will not be a quick solution.
22. However, Government guidance about issuing an article 4 direction is clear that local planning authorities should only consider an article 4 in "exceptional circumstances" and where there is evidence that the existing permitted development rights are harming the proper planning of the area. It is considered that, at present, while betting shops and pay-day loan shops raise concerns, they are not an exceptional issue and there is insufficient evidence to support an article 4 direction and insufficient policy guidance on what a planning application would then seek to address.

Recommendation on betting shops and pay-day loans

23. Therefore, it is recommended that the Council continues with the work that it is doing but that it waits to see if the Government changes the Use Classes Order to create a separate use class for these types of uses (that would require some accompanying guidance on how to deal with planning applications for those uses). In the longer term, the Council should review its planning policies to see if a new policy could be produced as part of the new Local Plan to address concerns.

Takeaway (fast food) outlets near schools

24. Officers have previously assessed the number of takeaways near to secondary schools and found that less than half of secondary schools have a takeaway within 500m. However, most of these have had fast food

takeaways since 2005 (the date of the previous survey) and so they are a long standing use. There is no evidence that this is a significant problem and there is nothing that can be done about existing shops in planning terms.

25. 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."

26. 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.

27. 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.

Current planning policy

28. 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 REI3 – REI7 / 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.
29. 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

30. 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.

31. However, in Southampton, no planning policy exists that would currently 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 guidance) 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.
32. At the previous Cabinet meeting in December 2013, it was recognised that healthy eating is a complex issue and takeaways near schools are only a small part of the problem.

Recommendation on takeaway policy

33. It is considered that there is a renewed focus on health issues within the planning system and now that Public Health is part of the Council, this will improve the ability to tackle health issues through the planning system. For example, Public Health England published a briefing paper on “Obesity and the environment: regulating the growth of fast food outlets” in March 2014 and makes some useful suggestions. However, it also points out the need for existing policies in the local plan to be suitable and so this needs to be the focus.
34. In March 2014, the Government published new national Planning Practice Guidance and it now includes a section on “Health and wellbeing” and supports planning looking at the wider health issues of proposals. Therefore, the Council needs to assess whether a new policy should be produced to deal with takeaways (and wider health issues) as part of the new Local Plan.

Conversion of pubs to other uses

35. There have been a considerable number of pubs converted to other uses (primarily small retail units) over recent years. There is a permitted change of use from pubs (use class A4) to A1 (shops), A2 (financial and professional services), and A3 (restaurants and cafes). Therefore, while any required extensions or signage may require planning permission or advertisement consent, the actual use of the pub building for one of these uses is not controlled by the planning system.
36. There has been considerable concern by the public about this lack of control and concern that issues, such as parking, deliveries, intensification of use, etc. are not being assessed when the use changes. In addition, there is a

concern that sometimes the pub fulfils an important community function where local people can congregate and if there are no other similar community facilities, this can lead to a detrimental impact on community life. Obviously there is a need to weigh up the economic circumstances of the pub, as many are going out of business, and an active alternative use is likely to be preferable to an empty building. However, these are the sorts of issues the Local Planning Authority should be considering and assessing and currently it cannot do that. Likewise, significant change can happen within a community and they have no say on that.

37. At Full Council on 18th September 2013, 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. It is considered that as there is unlikely to be a change in national approach that this needs to be considered.
38. The National Planning Policy Framework specifically states that the Local Planning Authority should consider community facilities and mentions pubs in the list of such facilities (see paragraph 70). Therefore, there is existing national policy support for an article 4 to relate to. However, there would need to be some detailed guidance (likely via a Supplementary Planning Document) drawn up to assess that once an application is submitted for conversion of a pub to another use, what issues would be assessed in making a decision.
39. It should be noted that the article 4 only requires planning permission to be sought and the subsequent planning application would not involve the payment of any fee.
40. It should also be noted that 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.
41. 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.
42. To avoid claims of compensation, the Council is required to give a year's notice of its intention to serve an Article 4 Direction. It should be noted that this could lead to a rush of conversions in the year to avoid the deadline. In parallel to this, evidence would have to be produced to support guidance to consider how planning applications would be considered.

Recommendation on pub conversion

43. It is considered that due to the loss of community facilities in a piecemeal fashion and the potential uncontrolled use of large premises in residential areas, that the existing permitted development rights to convert pubs is harmful to the proper planning of the city. Therefore, it is recommended that Planning & Development staff pursue an article 4 direction and the production of suitable guidance to assess how planning applications will be determined. It is likely this would only apply to pubs outside of the city centre. It is suggested that to minimise the risk of compensation claims that a years notice is given of the intention to serve the article 4 direction.
44. The service of an article 4 direction requires evidence of the harm that is being caused and consultation with affected groups before a final decision is taken. Therefore, this report is seeking authorisation to pursue this work and then a full report will be considered by a subsequent Cabinet and Full Council meeting when the evidence can be weighed up and considered.

RESOURCE IMPLICATIONS

Capital/Revenue

45. There is unlikely to be a significant additional or unbudgetted cost, although there is a risk of legal challenge or compensation claims from an article 4 direction. There will also be significant amount of officer time taken to deliver the article 4 direction and then to produce a suitable guidance document that weighs up all the relevant issues.

Property/Other

46. No implications

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

47. Town & Country Planning Act 1990

Other Legal Implications:

48. In undertaking any review the Council must have regard to the implications (if any) of the Equalities Act 2010 and the Human Rights Act 1998 when taking any action which may interfere with any protected characteristics of individuals or rights protection under the European Convention on Human Rights. As planning permission and development control functions invariably impact upon the property rights protected in the first protocol of the Convention, due consideration and impact assessment of all proposed planning controls highlighted in this paper will need to be undertaken in preparing the relevant planning policies and article 4 directions however the Council is satisfied in principle that the interference with these rights is justified and necessary in the circumstances to protect the wider public and public realm as set out in this report..

POLICY FRAMEWORK IMPLICATIONS

49. The proposals in this report are consistent with the Council's Core Strategy, 2010 and Local Plan Review, 2006

KEY DECISION? Yes

WARDS/COMMUNITIES AFFECTED:	All wards
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SUPPORTING DOCUMENTATION

Appendices

1.	None
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Documents In Members' Rooms

1.	None
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No – future reports relating to article 4 directions will.
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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