

BRIEFING PAPER

SUBJECT: BETTING SHOPS, PAY DAY LOAN PREMISES AND FAST FOOD OUTLETS
DATE: 12 JUNE 2014
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.”

This was then amended at Cabinet on 17th December 2013 to agree:

- (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 also consider whether an article 4 should be served to prevent the conversion of pubs to other use classes.

Point (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, which is now underway, to assess whether more detailed policies are required and Planning will work with Public Health to assess this. The report to Cabinet on 17th June 2014 recommends:

- (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.

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- (ii) That the Planning & Development team progress work on an article 4 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 before making a final decision.

BACKGROUND and BRIEFING DETAILS:

1. The first recommendation from the 17th December 2013 Cabinet set out that if there is a planning application for a hot food takeaway to open within 500m of schools, then consideration should be given to restricting opening hours during lunch times if there is considered to be a overriding health implication. However, the Cabinet accepted that trying to prove an overriding health implication will be very difficult when healthy eating issues are more than just lunchtime access to a new takeaway and when lunchtimes at many schools are so short as to make it difficult for pupils to visit the premises.
2. In addition, 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.
3. 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.
4. 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.
5. It is considered that there is potential to influence the location of hot food takeaways near to schools but that the best way to do this is to consider whether a new policy could be written and a Supplementary Planning Document produced to follow this up

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if necessary. There are good links with the public health team and work has started on the new local plan with an intention to adopt it in 3-4 years time and so it is recommended that work on this aspect continues as part of the new local plan.

6. The second recommendation from Cabinet in December 2013 was that a cross departmental group was to be 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. This was to report back to Cabinet within six months and cheap off-licences were removed from the scope of the work.
7. Betting shops and pay-day-loan premises 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).
8. 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.
9. 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.
10. 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 but in reality this is very limited in scope. There has not been a substantial increase in betting shops in the city and Council officers are in regular contact with the police. There is also a monthly licensing action group meeting with various partners but there are not concerns about a rise in crime linked to betting offices.
11. 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.
12. There are no additional controls open to the Council covering where a payday loan

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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.

13. 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).
14. 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.
15. 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.
16. 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. This still appears to be considered by the Government.
17. 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.
18. It should also be remembered that this only covers change of use to an A2 use from

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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.

19. 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.
20. Therefore, it is recommended that the Council continues with the work that it is doing and 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 if there is no change nationally.
21. 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. Therefore, it was suggested at the December Cabinet meeting that consideration should be given to that as part of this work and so was added to the recommendations.
22. 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 that this will only apply to pubs outside 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.
23. 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.

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RESOURCE/POLICY/FINANCIAL/LEGAL IMPLICATIONS:

Financial

24. The recommendations would involve a reasonable amount of officer time and there is a potential risk of legal action and/or compensation. It is considered this is manageable.

Property / Other

25. None

Legal

26. Town & Country Planning Act

Policy

27. None

Appendices/Supporting Information:

Further Information Available From:

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