

BROMSGROVE DISTRICT COUNCIL

CABINET

2ND DECEMBER 2009

SCRUTINY INVESTIGATION INTO IMPACT OF HOT FOOD TAKEAWAYS ON COMMUNITIES AND THE ENVIRONMENT

Responsible Portfolio Holders	Councillor R. Hollingworth – Leader of the Council Councillor Mrs J. Dyer M. B. E.
Responsible Head of Service For Overview and Scrutiny	Mrs. C. Felton – Head of Legal, Equalities and Democratic Services

1. SUMMARY

- 1.1 To consider the findings and recommendations contained within the attached Scrutiny Board report on Hot Food Takeaways (Appendix 1).

2. RECOMMENDATION

- 2.1 The Cabinet is requested to:
- (a) consider the attached Scrutiny Board report and recommendations contained within it;
 - (b) to either agree, amend or reject each of the Scrutiny Board recommendations contained in the report;
 - (c) provide an Executive Response to the Scrutiny Board report and recommendations, which includes an Action Plan to summarise how and when each of the agreed scrutiny recommendations will be implemented.

3. BACKGROUND

- 3.1 The topic of hot food takeaways was first considered by the Scrutiny Board at its meeting on 19th May 2009. This was in response to a scrutiny proposal form which had been submitted by Councillor David Pardoe.
- 3.2 Subsequently a meeting of the Joint Overview and Scrutiny Board was held to consider a petition which had been received by the Council from local residents in Rubery. The April 2009 changes to the Constitution assigned the function of receiving petitions to the Joint Overview and Scrutiny Board. The signatories to the petition were concerned about the increase in number of hot food takeaways in Rubery High Street and the effect late night opening was having in terms of problems with litter, crime and disorder and antisocial behaviour. The Joint Overview and Scrutiny Board met on 9th

June 2009 when the petition was presented by Sarah Campkin, a local retailer who had organised it.

3.3 The terms of reference for investigation were to find out more information about the following aspects of hot food takeaways:-

- The approach of other local authorities to the regulation of hot food outlets
- The content and selection of food offered and the contribution to healthy eating
- The effect of hot food takeaways on commercial activity
- The effect hot food takeaway stores on street cleanliness and litter
- Use of licensing conditions
- Enforcement of planning conditions
- Crime and Disorder issues.

3.4 Further details can be found on the Terms of Reference and Membership of the Scrutiny Board investigation in the attached report.

4. OVERVIEW AND SCRUTINY RECOMMENDATIONS

4.1 Overview and Scrutiny committees do not have decision making powers but make recommendations to the Cabinet and other decision makers. Scrutiny recommendations are published and presented to the Cabinet in accordance with Part 14.1 of the Council Constitution.

4.2 Upon consideration of the recommendations of the Scrutiny Board the Cabinet is requested to provide an Executive Response and executive decision in respect of each recommendation.

4.3 The recommendations of the Scrutiny Board are summarised on page 30 of the Scrutiny Board report attached.

5. THE EXECUTIVE RESPONSE

5.1 The Cabinet is asked to provide an Executive Response to the Scrutiny Board report and recommendations and to either agree, reject or amend each of the recommendations set out in the report. The relevant portfolio holder(s) are also requested to present the Executive Response to the next meeting of the Scrutiny Board on 26th January 2010.

5.2 The Executive Response should provide clarity about what executive decisions are being made by Cabinet in respect of each recommendation. The Executive Response should also provide a target implementation date or timetable to clarify when each agreed scrutiny recommendation will be implemented.

5.3 The Executive Response presented to the Scrutiny Board should include an Action Plan to summarise:

- the Cabinet decision,
- the service(s) responsible for implementation,
- any key stages of the implementation process with key dates, and
- the target implementation date.

This will enable the Scrutiny Board to monitor the implementation of agreed recommendations effectively.

5.4 The Cabinet Decisions made in respect of Overview and Scrutiny recommendations will be monitored and reviewed by the Scrutiny Board to check on how they are being implemented, until each of the recommendations have been fully implemented.

6. FINANCIAL IMPLICATIONS

6.1 For the majority of recommendations there are either no financial implications or minimal financial implications as outlined in the attached report. All of these costs can be met within the existing budget.

7. LEGAL IMPLICATIONS

7.1 There are no legal implications relating to this report.

8. COUNCIL OBJECTIVES

8.1 This report links to Council Objectives Sense of Community Well Being.

9. RISK MANAGEMENT

9.1 The risk of not implementing the recommendations contained within the attached scrutiny report is that this Council does not address an issue of significant public concern.

10. CUSTOMER IMPLICATIONS

10.1 The anticipated implications of implementing the recommendations of the Scrutiny Board would be to enhance community well being for residents of Bromsgrove District by encouraging a more socially sustainable development of the fast food sector and the promotions of healthier lifestyles.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

11.1 There are no implications directly relating to this report for the Council's Equalities and Diversity Policies.

12. VALUE FOR MONEY IMPLICATIONS

12.1 There are no value for money implications for the purpose of this report.

13. OTHER IMPLICATIONS

Procurement Issues – None.
Personnel Implications – None.
Governance/Performance Management – None
Community Safety including Section 17 of Crime and Disorder Act 1998 – None
Policy Implementation of the recommendations contained in the report may result in the development of Council planning policy through the introduction of a Supplementary Planning Document.
Environmental – None.

14. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	No.
Chief Executive	No.
Executive Director (Partnerships and Projects)	No.
Executive Director (Services)	No.
Assistant Chief Executive	No.
Head of Service	Yes
Head of Financial Services	No.
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No.
Corporate Procurement Team	No.

15. WARDS AFFECTED

All Wards.

16. APPENDICES

Appendix 1 – Scrutiny Board Investigation into the Impact of Hot Food Takeaways on Communities and the Environment

17. BACKGROUND PAPERS

None.

CONTACT OFFICER

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Appendix 1 – Scrutiny Board Investigation into the Impact of Hot Food



Takeaways on Communities and the Environment

**Scrutiny Board Investigation into the Impact of
Hot Food Takeaways on Communities and the
Environment**



November 2009



Bromsgrove
District Council

www.bromsgrove.gov.uk

INTRODUCTION

The purpose of the investigation was to examine the impact of takeaway hot food stores on communities and the environment.

Members explored this subject and heard evidence over a series of meetings of the Scrutiny Board. In addition Members were assisted by colleagues from the London Borough of Waltham Forest who passed on their experiences of issues regarding hot food outlets through a fact finding visit by BDC members to Waltham Forest.

SUMMARY OF RECOMMENDATIONS

Recommendation 1

Introduction of Supplementary Planning Document on Hot Food Takeaways

1. That the Cabinet task the Strategic Planning Department to scope the extent to which the issues identified in this report contribute to the negative impact on sense of community and well being and the environment and how these issues can be addressed by the adoption of a Supplementary Planning Document on hot food takeaways and present a report detailing their findings and draft policy to the Cabinet.

(Cost: Nil)

Recommendation 2

Referral to LDF working party

2. That the Cabinet refer consideration of the adoption of a draft Supplementary Planning Document on hot food takeaways to the LDF working party to be included as an agenda item and considered at the next scheduled meeting of the LDF.

(Cost: Nil)

Recommendation 3

Healthy eating – how the Council can work with partners to encourage healthy eating and healthy lifestyles

3. That the Cabinet direct officers to carry out further research into healthy eating/ healthy lifestyles and the means by which through working with partners in the LSP the Council could contribute to delivering services to address the LAA targets on obesity in children, mortality rate from circulatory diseases for under 75s, adult participation in sport and children and young people's participation in high-quality PE and sport. The Board further recommends that a report detailing the findings of the research is presented to Cabinet by June 2010.

(Cost: Nil)

MEMBERS

List of Members who participated in the investigation:

Name	Position
Cllr D. Pardoe	Chair of Scrutiny Board
Cllr S. Colella	Chair of Overview Board
Cllr C.B.Taylor	Vice Chair of Scrutiny Board
Cllr A.N. Blagg	Scrutiny Board
Cllr R.J.Deeming	Scrutiny Board
Cllr S.R. Peters	Scrutiny Board (from October 2009)
Cllr C.R.Scurrrell	Scrutiny Board
Cllr C.J.Tidmarsh	Scrutiny Board

TERMS OF REFERENCE

The investigation sought to find out more information about the following aspects of hot food takeaways:-

- The approach of other local authorities to the regulation of hot food outlets
- The content and selection of food offered and the contribution to healthy eating
- The effect of hot food takeaways on commercial activity
- The effect hot food takeaway stores on street cleanliness and litter
- Use of licensing conditions
- Enforcement of planning conditions
- Crime and Disorder issues.

MEETINGS AND WITNESSES

The topic of hot food takeaways was first considered by the Scrutiny Board at its meeting on 19th May 2009. This was in response to a scrutiny proposal form which had been submitted by Councillor David Pardoe. In summary the subject areas for investigation were as follows:-

- The approach other local authorities have taken in the regulation of hot food outlets
- The content and selection of food offered and the contribution to healthy eating
- The effect of hot food takeaway stores on commercial activity
- The effect of hot food takeaway stores on street cleanliness and litter

Members debated the issues and tasked officers to provide further information on the policies and consultation exercises of other authorities with reference to hot food

takeaways, together with information from licensing on imposing conditions on premises licences. Officers were also asked to try and arrange for a guest speaker from another authority operating a policy on hot food takeaways to attend at a future meeting of the Board.

Prior to the next scheduled meeting of the Scrutiny Board due to take place on 30th June 2009 it was necessary to hold a meeting of the Joint Overview and Scrutiny Board to consider a petition which had been received by the Council from local residents in Rubery. Under April 2009 changes to the Constitution the function of receiving petitions had been assigned to the Joint Overview and Scrutiny Board. The signatories to the petition were concerned about the increase in number of hot food takeaways in Rubery High Street and the effect late night opening were having in terms of problems with litter, crime and disorder and antisocial behaviour. The Joint Overview and Scrutiny Board met on 9th June 2009 and the petition was presented to the Board by Sarah Campkin a local retailer who had organised it.

Issues raised by Sarah Campkin included the increase in the number of hot food takeaways in comparison with other types of retail outlets and late night opening leading to problems with litter, street cleanliness and anti social behaviour. Taking into consideration the matters which had been raised by the petition, the Joint Overview and Scrutiny Board decided to widen the remit of the inquiries on hot food takeaways to be considered by the Scrutiny Board on 30th June 2009 to include:-

- Litter
- Enforcement
- Crime and Disorder
- Members resolved that the Portfolio Holder for Economic Development be invited to attend the meeting on 30th June 2009 on the issue of encouraging a wider range of retail shops in Rubery and throughout the District.

The Scrutiny Board met on 30th June 2009 and heard evidence as follows:-

- from Councillor Duddy relating to economic re-generation.
- from Mike Bell Head of Street Scene and Waste Management in relation to litter and street cleanliness.

The Scrutiny Board met on 27th July 2009 and heard evidence as follows:-

- From John Godwin Deputy Head of Street Scene in relation to crime and disorder issues
- Members resolved to go ahead with the planned fact finding visit to Waltham Forest and that Cllr Pardoe Chairman of Scrutiny Board and Cllr Colella Chairman of Overview Board should attend as representatives for the Scrutiny Board.

The fact finding visit to Waltham Forest took place on Friday 11th September 2009. Cllr Pardoe and Cllr Colella were accompanied by Phil Street, Executive Director and by

Rosemary Williams from the Council's Strategic Planning Team. The representatives from Waltham Forest were Gordon Glenday, Head of Spatial Planning and Cllr Terry Wheeler, portfolio holder for Economic Regeneration. The aims of the visit were to find out more information about issues linked to hot food takeaways in Waltham Forest and the introduction and effectiveness of Waltham Forest's Supplementary Planning Document "Hot Food Takeaway Shops" adopted by the Council in 2009. There was a presentation on the work Waltham Forest has done to adopt a planning policy on hot food outlets together with a chance to discuss the relevant issues and visit some local sites within the borough.

The Scrutiny Board met on 29th September 2009 and heard evidence as follows:-

- From PC Stan Baker from West Mercia Police in relation to crime and disorder issues
- From Liz Altay from the Worcestershire PCT in relation to the health issues linked to hot food takeaways.
- Phil Street, Executive Director took Members through the slides provided by Waltham Forest (from the Member visit) and outlined the process followed to set up the policy, the key components of the policy and feedback on whether it's use to date has been successful.

The Scrutiny Board met on 27th October 2009 and heard evidence as follows:-

- From Michael Dunphy, manager of the Strategic Planning Team in relation to the process and timescale for BDC to adopt a supplementary planning document on hot food takeaways.

Others contacted to provide evidence were: Sharon Smith, Licensing Officer at BDC regarding the use of conditions on premises licence and Dale Birch, Development Control Manager at BDC regarding planning enforcement who submitted written information.

A full list of those contacted is set out in Appendix 1

RESEARCH

The main background information considered by Members included:-

- Waltham Forest Supplementary Planning Document March 2009
- Waltham Forest Sustainability Appraisal Report
- The planning policies of other Councils on hot food takeaways including Dudley MBC and the London Borough of Newham.
- Government publication "Health weight, healthy lives: A cross government strategy for England"
- Statutory guidance on the process for introducing an SPD – the Town and Country Planning (Local Development) (England) Regulations 2004.

PUBLIC INVOLVEMENT

A press release was issued on 18th August 2009 informing the public of the investigation into hot food takeaways by the Scrutiny Board. Members of the public were encouraged to submit their views, comments and suggestions.

A summary of the comments received is set out in Appendix 2

A number of members of the public and ward members attended the meeting of the Scrutiny Board as observers.

FINDINGS

Based on the evidence presented to the Scrutiny Board the main themes which emerged can be categorised as follows:-

1. Perceptions - impact of hot food takeaways within the District
2. Crime and disorder/ policing issues
3. Town Centre/ use of retail outlets
4. Litter/ street cleanliness
5. Regulatory enforcement by Licensing/ Planning Enforcement
6. The role of planning policy in regulating the granting of A5 uses
7. Health issues linked to poor diet and obesity

1. Perceptions – impact on communities of hot food takeaways
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The Board heard conflicting evidence on the extent to which hot food takeaways may or may not be affecting the district.

In planning terms there is a distinction between a shop (Class a1), a restaurant or café (Class A3), a drinking establishment (Class A4) and a hot food takeaway (Class A5). Statistically the overall percentage of retail units used as hot food takeaways (defined in planning terms as use class A5) within Bromsgrove town centre is not high. This is calculated by looking at the total number of retail outlets and the number of those which have an A5 use.

Taking the town centre as a whole the percentage of A5 uses is 5%. This breaks down as 1% in the main High Street area (Primary Shopping Area) and 13% in the Secondary Shopping Area which includes part of Worcester Road.

When the public consultation exercise on the Council's new core strategy was undertaken in early 2009 the issue of hot food takeaways did not appear to be a major problem. Analysis of the results did not highlight this as an area of concern for members of the public.

As against this the investigation found that within the District as a whole there are a number of areas of concentration of A5 use including Worcester Road in the town centre, Rubery High Street and Golden Cross Lane in Catshill. Evidence from the presenter of the Rubery petition, ward Members and the police supported the view that in these locations the number and concentration of hot food outlets is having a negative impact. Reported problems included takeaway customers dropping litter and vomiting; takeaway customers congregating in groups often after having consumed alcohol; minor vandalism such as smashed windows and more serious crime and disorder incidents involving a police response.

Although not captured by any official statistics the feedback received from ward members appears to be that the issue of hot food takeaways is one that is being raised with them by members of the public.

With reference to the Rubery petition, the original copy submitted to the board had 201 signatures but Members were informed that by 9th June 2009 this had increased to over 1000 signatures.

2. Health issues linked to poor diet and obesity
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Liz Altay from the Worcestershire NHS PCT provided information on the health impact of takeaways including issues of poor diet and obesity and referred Members to the government publication “Healthy weight, healthy lives”. This document was published in January 2008 and sets out the government strategy for tackling the issues of obesity through positively influencing diet and levels of activity to help people to maintain healthy weights and lead healthier lives. Liz Altay also provided statistics relating specifically to the population of Bromsgrove. The main points have been summarised in the table below.

Key statistics

Percentage of UK population forecast by the government to be obese by 2050 *	Men 60% Women 50% Children 25%
Percentage of children in Bromsgrove who are obese or overweight at school reception age (2009) **	23%
Percentage of children in Bromsgrove who are obese or overweight at age 11 (2009) **	30%
Number of meals eaten outside the home	One in six
Percentage of all cancer deaths among non-smokers related to obesity *	10 %
Percentage of Type 2 diabetes attributable to obesity *	58%

Percentage of heart disease attributable to obesity *	21%
Average reduction in life expectancy of individuals affected by obesity linked diseases *	9 years

* Healthy Weight, Healthy Lives: A Cross-Government Strategy For England

** Worcestershire Childhood Obesity Strategy and Action Plan

In terms of impact on diet typically food from takeaways is high in calories, high in saturated fats and high in sugar. These nutritional aspects in turn contribute to the UK's growing problem with obesity. As one in six meals is now eaten outside the home there is a need to improve the nutritional content of meals. Figures for the UK show a clear rise in obesity rates probably accelerating in the late 1980s and early 1990s. The same trends can be seen in figures from developed nations worldwide. As the population ages, this can create a time bomb effect. For example the impact of this is already starting to be felt in the US. The UK is following a similar pattern although the levels of obesity in the population are lower at this time. As set out in the table above government predictions for obesity levels in 2050 are that obesity will rise to 60% in men, 50% in women and 25% in children.

Obesity is important in health terms because being obese or overweight can increase the risk of serious diseases including heart disease, type 2 diabetes and cancer deaths in non smokers. This impacts both on an individual level to those affected who will have a lower life expectancy and at a wider level to society through the financial burden of funding the NHS to provide more healthcare services.

The Bromsgrove statistics for obesity are broadly similar to the national average figures. For example the level of reception age children (4 to 5 years) in England who are obese and overweight is 25%. This compares to a figure of 24% for Bromsgrove. There is a link between obesity and deprivation, based on which you might expect the figures for Bromsgrove to be lower as the area generally has lower than average levels of deprivation. Research has not established a proven link between density of hot food takeaways and levels of obesity.

Based on current figures children entering school in reception year in Bromsgrove are made up of 8% obese and 23 % obese and overweight. At age 11 the figure for obese and overweight in Bromsgrove is 30% as compared to 33% nationally. These statistics are compiled based on children being monitored and measured at school.

The challenge for government and local authorities is to promote healthy food options and more activity. "Healthy weight, healthy lives" specifically advocates that measures should be targeted primarily at children and young people. Initiatives suggested by the government include promoting more cycling/walking, working with the food and drink industry to reduce consumption of fat, sugar and salt and giving better information about healthy food choices. The document also makes reference to plans to:

“promote the flexibilities contained within planning regulations, so that local authorities are able to manage the proliferation of fast food outlets in particular areas e.g. near parks or schools”.

Under the Worcestershire Local Area Agreement there is a target for partners within the County to work together to reduce levels of obesity in children. This is under indicator N156 – “Obesity in primary age children in Year 6”. This indicator measures the percentage of children in Year 6 who are obese as shown by the National Child Measurement Programme.

There is further detail of how the Worcestershire Partnership will address obesity in children contained in the Worcestershire Childhood Obesity Strategy and Action Plan.

There are also 3 other LAA targets linked to health issues (but not directly relating to obesity) as follows:-

NI121 – Mortality rate from circulatory diseases for under 75s

N18 – Adult participation in sport

NI57 – Children and young people’s participation in high-quality PE and sport.

3. Crime and disorder/ policing issues
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The general picture presented to the Board was that whilst there have been no documented studies which have proved conclusive links between hot food takeaways and crime and disorder, based on local police experience and data there are issues for the police. In particular, incidents late at night in the Worcester Road area of the town centre. Statistics show that between July 2008 and July 2009 there were 17 incidents recorded in the town centre relating to takeaways. The same period showed 25 criminal offences although this category included restaurants as well as takeaways.

Anecdotal evidence is that the problem is made worse due to the effect of customers at takeaways late at night who have been drinking. The typical situation is that when licensed premises close for the evening the clientele move on to the nearest takeaways. The shops themselves are often small. This leads to groups of customers who are intoxicated being squeezed into confined areas. Under these conditions arguments can quickly escalate into incidents of crime and disorder. The police felt incidents such as these were bad for the reputation of Bromsgrove and contributed to fear of crime and the feeling amongst some in the community that they were too scared to go out at night.

Practical options suggested to the Board for combating this included looking carefully at lay out and size of establishments, co-ordination of operating hours between takeaways and licensed premises, location of taxi ranks and avoiding clustering of takeaways in specific areas. This would have to be balanced against the importance of economic activity.

In terms of the part played by licensed premises it was noted that it is often not possible to link an incident to an actual premises as the incidents usually take place at a later time and in a different location. In any event the police have existing powers under the Licensing Act 2003 to request that if there are issues of crime and disorder that a pub or bar can have its premises licence reviewed.

The police favour strengthening of the planning regime through a supplementary planning document for takeaways. They cited examples of having objected to planning applications in the past but their objections being over turned on appeal by the Planning Inspectorate. The police believe a supplementary planning document could strengthen their ability to raise issues of crime and disorder as objections to planning applications.

4. Economic activity/ use of retail outlets

The issue of empty retail units being converted to takeaways and the loss of a more mixed retail base was considered by the Board. This problem appears to be acute in Rubery and was highlighted by the presenter of the petition on 9th June 2009. Whether or not it is linked to the current down turn in the economy is not clear. The perceived danger is that empty retail units will be converted to takeaways but that when the economy improves that particular unit will have been lost and will no longer be available for a different use. There is also the issue of an area becoming “unattractive” to other types of retailer if there is an over predominance of takeaways which may be closed during the day leading to loss of passing trade.

The Board was informed by the portfolio holder for Economic Development, Town Centre Regeneration and Revenue Generation, Cllr James Duddy, of the work the Council is doing to support small businesses. This includes:-

- Offering start up grants for small businesses
- A scheme for giving business rate relief for small businesses
- Publishing a quarterly industrial and commercial property guide detailing vacant shops and properties in the District

5. Litter/ street cleanliness

Problems with litter and cleanliness were highlighted by the presenter of the Rubery petition and referred to by ward members for the town centre on 29 September. The board was informed by the Head of Street Scene and Community, Mike Bell, that all business premises are required to have an appropriate waste disposal contract and the Council would act on any evidence received or concerns raised about litter. There are Council services in place to regularly empty public bins and keep streets clean. These teams can, if required, be deployed urgently in response to a specific report of a problem although generally levels of street cleanliness in the District have improved.

Persistent problems with commercial premises would be dealt with in the first instance under the DEFRA (Department of Environment Food and Rural Affairs) voluntary code of practice for reducing litter called “food on the go”. If the problem continued the second stage would be to use legislation and enforcement through legal action.

6. Regulatory enforcement by Licensing/ Planning Enforcement

The Board received written submissions on enforcement and licensing issues which are attached at Appendix 3.

The Licensing Act 2003 makes it clear that Planning is seen as separate from Licensing. All decisions taken under the Licensing Act must be based on the four licensing objectives which are:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

There is a role for the Licensing Authority to consult the Planning Authority when new applications are received, and the Planning Authority can submit representations as a responsible authority. However as decisions on licensing must accord with the licensing objectives listed above, it is not open to the licensing committee to refuse an application based on a material planning consideration or planning policy. In this respect there are issues which may be relevant to planning decisions which do not carry the same weight when considered from a licensing perspective.

Members noted the apparent inconsistencies between the systems. However given the constraints imposed by the separate legislation for each regime there is a limit to what steps can be taken to bring about any harmonisation.

Licensing conditions can be used to help promote the licensing objectives. These have to be considered on a case by case basis and dependent on the evidence before relating to each particular application. The conditions must be proportionate and tailored to the individual premises they apply to. It is not possible to introduce “standard conditions”.

There is no standardisation of closing times of takeaways in Bromsgrove. The explanation for this is that many existing pubs, bars and restaurants have no planning conditions at all having been in existence prior to the current planning regime. Other businesses do have planning conditions that clearly set out the opening hours of the premises. The law requires that any hot food takeaway operating after 11 pm (regardless of any planning conditions on opening hours) has to apply for a late night refreshment licence to sell hot food after 11 pm.

As stated above, such application cannot be decided on the basis of planning policy; each application has to be treated individually based on any objections which are received from interested parties or the responsible authorities. The objections must link to one of the four planning objectives.

The practice of the Licensing Officer is to remind new licensing applicants that they also need to check with the Planning Department to make sure that there are no restrictions on their opening hours. Of the two regimes, for enforcement purposes it is the planning conditions that take precedence. The Council routinely responds to reports that takeaways are opening in breach of planning conditions. The enforcement team is currently fully staffed (one principal planning officer and two investigators) and will if appropriate and expedient to do so take formal enforcement action to control persistent and evidenced breaches.

Where members of the public or responsible authorities have evidence that a takeaway licensed for late night refreshment is not complying with the terms of its licence or breaching any of the licensing objectives, then it is possible to ask for a review of the licence under the Licensing Act. This will enable the Licensing Sub-Committee to call a hearing for the evidence to be considered and a decision made as to whether the licence should continue, be amended (including the addition of conditions) or be revoked.

7. The role of planning policy in regulating the granting of A5 uses
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Bromsgrove District Council does not currently have any local planning policies which relate specifically to hot food takeaways. The Council's approach to local planning is currently set out in the Bromsgrove District Local Plan which was adopted in 2004. Due to changes in planning legislation local plans are being replaced with a different system of local policies known as the Local Development Framework. The Council has started work on preparing the Core Strategy and other documents that will make up the Local Development Framework and this process is expected to be finalised in 2010.

Members were interested to learn from the experience of other local authorities that had introduced planning policies relating to hot food takeaways. The number of authorities involved in this area is relatively small. The mechanism that is available in planning terms is to adopt a policy known as a supplementary planning document (SPD).

The statutory procedure that has to be followed is set out in the Town and Country Planning (Local Development)(England) Regulations 2004. Regulations 17 and 18 prescribe the type of information that should accompany the SPD, and details of who should be consulted and the manner of public participation. The Council as the local planning authority must consider any representations made under the consultation in accordance with section 18(4).

The SPD must also be prepared by taking into account certain DCLG guidance. Once adopted, the SPD will become a material planning consideration. In practice this will mean that in addition to the normal planning considerations that are taken into account the Local Planning Authority will have the ability to rely on the SPD as a material planning consideration. This would be relevant where parts of a scheme conflict with the policy.

It should be noted that it is important from a legal perspective that any policy which is adopted under the regulations needs to be supported by a body of evidence demonstrating the need for the policy and that its contents have been subject to a thorough public consultation exercise. The results of the public consultation exercise are required to be published. If the policy is not thoroughly researched and supported by the outcome of the public consultation it will be open to challenge. This would most likely be in the form of an appeal to the planning inspectorate against a decision to refuse planning permission based on the policy. If an appeal were successful the implications for the Council would

be that the policy would be undermined and be more likely to be challenged in the future by other developers. The Council would also be required to pay the costs of the appeal.

Members found the fact finding visit to the London Borough of Waltham Forest very helpful to their enquiries. Waltham Forest adopted a detailed SPD on hot food takeaways in March 2009. Members were able to discuss the process followed and whether the policy has been successful, with the Waltham Forest Head of Spatial Planning Gordon Glenday and with the relevant portfolio holder at Waltham Forest Councillor Terry Wheeler. The findings of the visit are summarised at Appendix 4.

Whilst it is acknowledged that there are many differences between Bromsgrove and Waltham Forest, clearly Waltham Forest have been able to use the planning regime to produce a policy on which they are now able to rely in terms of being able to control and restrict the opening of new A5 outlets.

The Waltham Forest SPD explains the Council's overall approach to hot food takeaway development and sets out considerations relating to:-

- Appropriate concentrations of hot food outlets
- Measures to protect amenity of surrounding residential occupiers
- Measures to address community health
- The impact of proposals on the street scene and public realm
- Appropriate extraction systems
- Highway safety
- Disposal of waste products and litter
- Access

The policy enables the Council to raise objections to planning applications under a broader range of reasons than previously. Although only in operation for 5 months at the date of the visit at that time 7 applications had been presented all of which had been refused. The policy has not yet been subject to an appeal to the Planning Inspectorate.

It should be noted that the SPD forms only one part of a wider approach to addressing the issues of obesity and healthy lifestyles being pursued by Waltham Forest. Other elements include working with partners and the private sector to promote healthy food choices, improve the quality of food served, maintain a mix of retail uses and encourage good street cleanliness.

Waltham Forest Council has also established a Hot Food Takeaway Corporate Steering Group, the membership of which is drawn from officers of the Council and the LSP. The aims of the group are:

- To investigate how collectively the different agencies can ensure the hot food takeaway businesses operate as responsibly as possible.
- To develop strategies for tackling the wider environmental and economic issues associated with the proliferation of hot food takeaway shops.

CONCLUSIONS AND RECOMMENDATIONS

The investigation has highlighted a number of key issues surrounding the increasing trend for consumption of meals out side the home and the growing numbers of hot food takeaway stores which are opening to meet this demand.

Members involved in the investigation are of the view that the Council has a role to play in tackling the issue of obesity in adults and particularly children. This links to the Council's responsibilities as a partner in the Local Area Agreement, and specifically to the Local Area Agreement target N156 – Obesity in primary school age children in Year 6. The statistical evidence of the health problems linked to obesity provides a strong argument in favour of taking action to support healthier eating options.

Members also feel strongly that the Council should use it's ability to influence other aspects of hot food takeaways which are being reported as having a negative impact on communities. In particular, crime and disorder issues, street cleanliness and litter. The evidence has demonstrated that this can be achieved through the planning system by the adoption of a supplementary planning document. Accordingly, Members are recommending that the Council introduces of a Supplementary Planning Document.

In considering what should be included in a policy Members of the Scrutiny Board have taken into consideration a number of issues which have been raised through the investigation together with ideas arising from the visit to Waltham Forest. These are set out in the table below:

Issue		Reason
Clustering of takeaways	Measures to ensure that groups of hot food outlets are not concentrated in particular locations.	This links to preserving a good mix of retail uses and ensuring that problems associated with takeaways such as litter and crime and disorder are not concentrated in specific areas.
Highway Safety	Consideration of impact on safety of pedestrians and road users including parking for customers, safe and legal loading areas and proximity to traffic features such as public crossing and bus bays.	To protect safety of other road users and prevent traffic congestion.
Areas where children congregate	Measures to control the ability of takeaways to open in streets/ locations where children	Obesity issues/ healthy food choices for children

	congregate.	
Residential amenity	Measures to control the granting of permission for new A5 uses in locations which are predominantly residential.	To protect the residents in such areas from disturbance by noise, traffic, late opening etc.
Ventilation and Extraction/ Disposal of Waste Products	Measures to ensure that new premises have adequate ventilation/ extraction units installed together with suitable storage for waste products and use of grease traps where appropriate	To disperse cooking odours and smells
Litter	Measures to ensure that new businesses act responsibly with regard to the collection and disposal of litter outside their premises.	To ensure that the streets are maintained in as clean a condition as possible and to deter vermin.
Crime and Disorder	Measures to allow the police to be consulted on new applications as to internal design and impact of location on any local issues of crime and anti social behaviour.	To protect the public from the impact of crime and disorder incidents

Although the above list is not exhaustive, and Members appreciate that there needs to be further work carried by Strategic Planning to draft a policy that would be robust in legal terms, it sets out the type of issues the Members would wish to see included in a supplementary planning document for takeaways in Bromsgrove.

During the course of the report writing phase of this investigation there have been further detailed discussions with Strategic Planning as to the processes required for a Supplementary Planning Document to be adopted. In summary the position is that Strategic Planning will need to carry out some pre-consultation of interested partners such as the PCT and the police. Work will also have to be undertaken to write a draft policy that is suitable to the specific circumstances of Bromsgrove. It would be intended that any policy cover the District as a whole including the town centre and outlying areas. From a planning perspective any policy needs to be individually tailored to account for the geography and characteristics of the location to which it applies. This means that in terms of policy development, different considerations will have to be applied to different areas of the District. It would also be normal practice to include consultation with the LDF (Local Development Framework) Working Party on the proposed policy.

Once a draft policy is ready then the next phase is for the policy to be put out to public consultation. In terms of having a robust policy that can withstand legal challenge then it is vital that the public consultation exercise is carried out properly. The regulations impose a consultation period of 4 to 6 weeks. The regulations also require the Council to publish the outcome of the responses to the consultation and further time needs to be built into the process to allow those responses to be considered.

Once the consultation has closed and the responses have been considered a final report to the Executive on the findings can be compiled and decision taken on whether to adopt the Supplementary Planning Document.

There would be risks attached to not following the process as outlined above in that the policy would then be more vulnerable to legal challenge by developers. This would occur in the form of an appeal to the planning inspectorate if an application was refused based on grounds in the Supplementary Planning Document. This is referred to at paragraph 7 above.

Recommendation 1

Introduction of Supplementary Planning Document on Hot Food Takeaways

Recommendation 1

That the Cabinet task the Strategic Planning Department to scope the extent to which the issues identified in this report contribute to the negative impact on sense of community and well being and the environment and how these issues can be addressed by the adoption of a Supplementary Planning Document on hot food takeaways and present a report detailing their findings and draft policy to the Cabinet.

Financial implications

None. The work involved can be completed out of existing budgets.

Recommendation 2

Referral to LDF working party

Recommendation 2

That the Cabinet refer consideration of adoption of a draft Supplementary Planning Document on hot food takeaways to the LDF working party to be included as an agenda item and considered at the next scheduled meeting of the LDF.

Financial implications

None. The work involved can be completed out of existing budgets.

Recommendation 3

Healthy eating – how the Council can work with partners to encourage healthy

eating and healthy lifestyles

Members have discovered through the course of the investigation that the problems surrounding hot food takeaways are complex and to tackle them effectively will require a range of approaches. Whilst better use of regulatory powers through the planning system is one option, this needs to go hand in hand with raising public awareness of the effects of obesity and educating people about healthy lifestyles. The Council through its own service areas such as “Scores on the Doors” and sports development may be able to make a positive contribution. Another area where the Council and LSP partners may be able to have a positive effect is by working with the private sector to give the public more information about meal content and healthy alternatives.

There are a number of LAA targets relating to obesity and health lifestyles as set out in section 2 of the report. Members are of the view that this is an area where the Council needs to examine what could be achieved through partnership working and how the Council could contribute in practical ways to encouraging the public to exercise and eat more healthily. Members are therefore recommending that this aspect be scoped in more detail by officers and the findings be reported back to Cabinet in 6 months time.

Recommendation 3

That the Cabinet direct officers to carry out further research into healthy eating/ healthy lifestyles and the means by which through working with partners in the LSP the Council could contribute to delivering services to address the LAA targets on obesity in children, mortality rate from circulatory diseases for under 75s, adult participation in sport and children and young people’s participation in high-quality PE and sport. The Board further recommends that a report detailing the findings of the research is presented to Cabinet by June 2010.

Financial Implications

None. The work involved can be completed out of existing budgets.

REVIEW

A review of the investigation will be included in the work programme for the Scrutiny Board for December 2010 when the Board will review the outcome of this report including whether or not recommendations were approved and implemented and the impact of these actions.

Councillor D. Pardoe Chair of Scrutiny Board

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