

CABINET

15 JULY 2014

HOT FOOD TAKEAWAYS IN MEDWAY: A GUIDANCE NOTE

Portfolio Holder:	Councillor Jane Chitty, Strategic Development and Economic Growth Councillor David Brake, Adult Services
Report from:	Robin Cooper, Director of Regeneration, Community and Culture
Author:	Catherine Smith, Planning Manager - Policy Therese Finn, Planner (Policy)

Summary

The purpose of this report is to seek approval of Hot Food Takeaways in Medway: A Guidance Note (attached as Appendix 1) for adoption and use as a material consideration in the determination of planning applications for hot food takeaways in Medway.

This report sets out the comments received during the consultation, and suggests responses to the issues raised.

1. Budget and Policy Framework

- 1.1 The guidance note builds on a 'saved' policy R18 within the Medway Local Plan 2003 and so is in accordance with the policy framework. It is therefore a matter for the Cabinet.
- 1.2 The costs of the work have been met within existing budgets, and the consultation methodology sought to engage people through the use of existing meetings where possible to minimise costs and reach wider audiences.

2. Background

- 2.1 In 2010, a Task Group of the Children and Young People Overview and Scrutiny Committee recommended that the Council investigate the possibility of developing a Supplementary Planning Document restricting fast food outlets from operating near schools, parks and leisure centres or at areas that are already highly concentrated with fast food outlets. This was agreed by

Cabinet on 28 September 2010. This matter was also identified as a priority action for 2013/14 in the Health and Wellbeing Strategy for Medway 2012 – 2017 in promoting healthy eating.

- 2.2 The National Planning Policy Framework (2012) and the National Planning Practice Guidance (2014) have made explicit the role planning should play in creating healthier environments.
- 2.3 The Joint Health and Wellbeing Strategy has identified the need to reduce health inequalities in developing new local policy in tackling obesity in defined neighbourhoods. It further indicates that planning has a role in restricting access to unhealthy fast food. An integrated approach should be taken to tackle the issue.
- 2.4 Work on the preparation of a “Hot Food Takeaways in Medway Guidance Note” has emerged as part of a holistic package of measures to promote better health in Medway. It seeks to manage the siting and opening hours of new hot food takeaways particularly in locations in close proximity to schools. The guidance note was presented to Cabinet in draft form on 11 March 2014. Cabinet approved the publication of the guidance note for public consultation.
- 2.5 The draft guidance note was brought before Business Support Overview and Scrutiny Committee on 19 March 2014. At that meeting, members provided comments on the draft guidance note, advised on community groups and organisations to be consulted, and requested that the results of the public consultation be submitted for consideration by the Committee at its meeting on 3 July 2014 before the matter being reported to Cabinet.
- 2.6 Public consultation was carried out over a 6-week period from 20 March to 2 May 2014.

3. Options

- 3.1 Following analysis of the responses to the consultation it is considered that there are three broad options at this stage:
 - To adopt the guidance note in its current form
 - Not to progress with the guidance note as proposed; or
 - To amend the guidance note in consideration of the comments received during the consultation process.
- 3.3 The option not to proceed with the guidance note is not favourable, as it could result in a levelling off of obesity levels in Medway when other initiatives are seeking to further reduce its prevalence. A number of responses to the consultation noted that primary schools do not permit pupils to leave the school premises at lunchtimes. It is therefore considered reasonable to amend the draft guidance note to reflect this; and as a result, the third option is viewed as the preferred direction. A proposed approach to amend the guidance note is set out below in Section 4.

4. Advice and analysis

Responses to the consultation

- 4.1 The Council sought the views of the local community, businesses and organisations on the proposals in the draft Hot Food Takeaway guidance note to seek to manage the location and opening hours of new takeaways. The consultation process is outlined in Section 6 below. There were 20 formal written responses received.
- 4.2 It was decided to seek the support of the Medway Young Inspectors to directly get the views of young people on the proposals in the draft guidance note given that its aim is to help combat obesity in children in particular.
- 4.3 The Young Inspectors programme is designed to bring young people together and support them to influence local services for young people. The programme recruits young people with a range of life experiences aged from 13 to 19 and up to 25 for those with disabilities and/or learning difficulties.
- 4.4 The role of the young inspectors is to go out and inspect services that are aimed at children and young people. 147 young people responded to surveys conducted by the Medway Young Inspectors.
- 4.5 The data collated by the Young Inspectors would indicate that the proposed guidance is a legitimate intervention in tackling obesity, as over one third of the people surveyed eat from hot food takeaway outlets once a week and 8.2% of respondents eat from hot food takeaways daily.
- 4.6 15.6% of those surveyed (23 people) eat from hot food takeaways after school, and of these, over 40% or 11 people go with friends.
- 4.7 Officers have considered the comments made to the consultation, and how the council should respond. This information is set out in Appendix 2.
- 4.8 Of the 20 formal responses received, 14 were in support of the proposal, 5 were opposed and 1 response was neither in support or opposed to the proposal. 75% of the respondents indicated they were residents. The remainder were a mix of business interests, both residents and business owners, or did not identify their interests in responding.
- 4.9 The responses received from the schools varied in their opinion. The sole response from a primary school was in opposition to the proposal, stating that new hot food takeaways within the borough and located within 400 metres of a school should not have their opening hours restricted. This particular school was not within 400 metres of an existing hot food takeaway.
- 4.10 Two secondary/grammar schools responded to the consultation and were supportive of the proposals.
- 4.11 A Diversity Impact Assessment Screening Form (Appendix 4) has been carried out on the guidance note document.

Grounds of support

- 4.12 Of the 147 respondents to the Young Inspectors surveys, 56.4% agreed that hot food takeaways should have restricted opening hours during school lunch times if they are located within 400 metres of schools. Further details of the results of this survey of young people are attached at Appendix 3.
- 4.13 Views raised by the Business Support Overview & Scrutiny Committee in March 2014 were also considered. The majority of the Members were in favour of implementing some measures to tackle the issue of obesity in Medway particularly among children. However concern was raised as to how the impact of the proposals would be measured and the effectiveness of the document in bringing about the desired changes.
- 4.14 There was a general consensus amongst most groups who were consulted through targeted meetings that there is a high concentration of hot food takeaways in Medway, and having restrictions on opening hours and measures to reduce the prevalence of these uses in Medway were considered favourable.
- 4.15 A recent Obesity Summit in Medway has recognised the wider role of the built environment in tackling obesity in the area. The objectives of the day were to raise the issue of obesity and increase people's awareness; that all partners understand the current initiatives to tackle obesity and; the ways in which Medway partners can do more. The draft guidance note was considered a positive step in helping to combat obesity and create healthier environments.

Concerns raised

- 4.16 One Member of Business Support Overview & Scrutiny Committee was wholly opposed to the proposals as set out in the guidance note, and has responded to the consultation. This response has been considered in Appendix 2.
- 4.17 Issues were raised by two respondents during the consultation regarding the impact on access to hot food takeaways by elderly people particularly in relation to social isolation, and the potential disproportionate impact the proposals in the guidance note would have on specific groups/ hot food takeaway businesses.

Consideration of response to concerns raised

- 4.18 The guidance note would not have any impact on hot food takeaways that are already in existence in the area and so existing provision of these uses would not be affected. The guidance note does not support any particular hot food takeaway vendor – rather, it considers all hot food takeaways as a land use under the use class order, and does not distinguish between the various types of food on offer in hot food takeaways.
- 4.19 The draft guidance note proposed the restriction on the opening hours of new hot food takeaways in Medway during school lunchtime hours and for a period after school. This would apply to new hot food takeaways locating within 400 metres of schools, but not if located in a defined retail, local or neighbourhood centre.

- 4.20 Some respondents to the consultation have raised issues regarding the restriction on hours of operation, stating that primary school children are not permitted to leave the school premises at lunchtimes.
- 4.21 Officers considered a response to the wording in the draft policy. It is for this reason that a planning condition restricting the hours of operation at school lunchtime hours will only apply to hot food takeaways within 400 metres of secondary schools. Restricting the hours of operation for a period after school will apply to both primary and secondary schools in order to encourage healthier eating habits.
- 4.22 Members are asked to consider the amended version of the guidance note which is attached at Appendix 1.
- 4.23 Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 4.24 Areas of high footfall such as town centres would not be affected by a restriction on hours of operation. In town, neighbourhood and local centres there would be consideration of a threshold permitting new hot food takeaways where there is not an existing over provision (as set out in paragraph 5.12 of the guidance note), or where it would not undermine the primary retail function of that area. The majority of hot food takeaways within Medway are located in defined centres.
- 4.25 It is proposed that hot food takeaways that are given planning permission will be required to pay a contribution through the use of a Section 106 agreement. This has been reflected in the proposed changes to the Developers Contribution Guide which will be reported to Cabinet on 15 July. None of the comments received as part of the consultation have been opposed to this element of the proposal.
- 4.26 Planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in kind and scale to the development.

Proposed changes to the Hot Food Takeaways in Medway: A Guidance Note

- 4.27 In line with the comments received during the consultation, it is suggested that minor amendments be made to the draft guidance note as follows;
- New hot food takeaways will not be permitted to operate between the hours of 12:00 – 14:00 if located within 400 metres of a secondary school. Hours of operation will also be restricted between 15:00 – 17:00 in areas where new hot food takeaways are located within 400 metres of a primary or secondary school.
 - New hot food takeaways over 100m² will be subject to a contribution of £1,000; £100 per 10m² (please refer to the proposed changes to the Developers Contribution Guide).

- Developer contributions will be directed towards the costs of public health initiatives to tackle the issue of obesity in Medway.

5. Risk Management

Risk	Description	Action to avoid or mitigate risk
Decision not to implement the guidance note	Medway Council would not be taking into consideration paragraph 171 of the National Planning Policy Framework and would fail to adopt an integrated approach to tackling obesity in Medway. An increase in levels of obesity would act as a trigger. Should this materialise, the health of Medway's residents would deteriorate. Risk is considered significant and critical - C2.	The guidance note will set out the objectives of planning in tackling obesity through the built environment in accordance with the National Planning Policy Framework.
Possibility of there being more appeals	Appeals against the local authorities decision to refuse hot food takeaways. Risk is considered high and critical – B2	Consultation on the guidance note will ensure its robustness. The guidance is informed by best practice and case law in other planning authorities. Using the guidance note will help build a case for refusing a planning application for a hot food takeaway in inappropriate locations.

6. Consultation

Methods of Consultation

- 6.1 The Council sought to widely publicise the draft guidance proposals. The Council's website was updated to make people aware of the draft guidance note. This was posted on the front page of the website to encourage responses to the consultation. Both the guidance note and accompanying response form were uploaded together with some introductory text.
- 6.2 A document with frequently asked questions was also uploaded to further explain the guidance note, and to help people understand the proposal and encourage a greater response rate.
- 6.3 It was considered that by attending existing community meetings where possible, this would appropriately target specific groups, in environments they are comfortable in, and therefore generate a wider response. Where it was not possible or practicable to attend a scheduled meeting, offers were made to facilitate meetings in Gun Wharf.

Consultees

- 6.4 Various stakeholders were consulted as part of this public consultation. These included internal stakeholders within the Council and other public entities that were considered likely to have an opinion on this matter and/or may be affected by it. Officers noted the advice of the Business Support Overview and Scrutiny Committee given at the meeting in March 2014, on the need to contact specific community groups and organisations during the consultation process.
- 6.5 Particular contacts were made to the Universities at Kent, schools in Medway, the Federation of Small Businesses, Kent Invicta Chamber of Commerce, the Clinical Commissioning Groups (CCG), Public Health England (PHE), Medway Ethnic Minority Forum, AIR Football, and residents and young people within the area.
- 6.6 As part of the consultation, officers met with resident groups, attended a youth club to obtain the views of young people, spoke to members of the Medway Ethnic Minority Forum, collaborated with colleagues and stakeholders at a Public Health event and contacted members of the CCG and PHE directly.
- 6.7 Every endeavour was taken to liaise with as wide a range of people as possible. Where a meeting was not practicable, it was encouraged that people respond to the consultation using the online response form.
- 6.8 The Medway Young Inspectors were used to survey young people in various locations in Medway, and to report back on the findings. A presentation of the survey results is set out at Appendix 3.

Business Support Overview and Scrutiny Committee

- 6.9 The Business Support Overview and Scrutiny Committee considered the outcome of consultation on 3 July 2014.
- 6.10 The Chairman welcomed Therese Finn, Planning Policy Officer to the meeting, thanked her for all her hard work on this project and, on behalf of the Committee, wished her well for the future as this was her penultimate day with the Council.
- 6.11 The Committee was advised that the report presented the results of the consultation on the Hot Food Takeaways in Medway Guidance Note and set out who had been consulted, the stakeholders involved in the Consultation, how the consultation was carried out and how it was publicised. The Young Inspectors had gained a very good response to the consultation and had carried out a great deal of work. It was noted that one in ten children in Medway were obese by their first year in school and this was above the national average. By Year 6 32% of children were obese which was comparable to south east and national statistics. The Committee was also advised that 36% of respondents to the consultation stated they eat takeaway food once a week and 8% eat from hot food takeaways on a daily basis. Over 50% of the respondents agreed that hot food takeaways should have restricted opening hours at school lunchtimes and 51% were supportive of the

Council creating a healthy environment. The Committee was reminded that Cabinet would be considering the results of the consultation process at its meeting on 15 July 2014.

6.12 Members then raised a number of points and questions including:

- The Committee considered the high response to the consultation as a result of the work of the Young Inspectors impressive and thanked them for their efforts.
- With reference to recent press coverage of this initiative members emphasised that the proposed guidance should not be considered in isolation as it was part of an integrated package of public health interventions. It was noted that whilst the impact of the guidance would only affect future applications for new takeaways it sent a clear message of Medway's commitment to promoting improved health. It was also hoped the new guidance would have an impact in reducing the number of take away applications approved on appeal as the Council would now be able to demonstrate a clear policy position on the matter.
- The Committee discussed the clustering of takeaways in many high streets across Medway with Best Street cited as a particular example. Members requested a briefing note on "Saved" Policy R18 and the extent to which this has been used previously to minimise the clustering or proliferation and operating hours of takeaways as it appeared to Members this had been a missed opportunity. The view was expressed that application of "Saved" Policy R18 may have more immediate impact in reducing clustering and controlling operating hours than the proposed new guidance note.
- In response to a question about the proposed meeting with the Federation of Small Business, Councillors were advised that whilst a date for the meeting had been set, unfortunately no members of the Federation Small Businesses had been available to attend. However the FSB had been encouraged to widely disseminate information about the consultation exercise among its members using social media.
- Discussion took place on the difference between A3 and A5 use classes and the complications arising where restaurants and cafes with A3 use class extend their business to offer takeaway food. Members asked for further clarification on this. Reference was made to shop units owned by the Council and whether or not the Council could decide they should not be designated A5 use class with Landlords being encouraged to opt for alternatives to A5 use class where these were commercially beneficial.
- Clarification was requested on paragraph 4.11 of the report which referred to a restriction of takeaway operating hours during school lunch times and for a period after school for secondary schools. It was clarified that the draft guidance note proposed a restriction on both primary and secondary schools during school lunchtimes and for a period after school. Following officers consideration of the responses

to the consultation, it is intended that restrictions on the hours of operation will be imposed on new hot food takeaways located within 400 metres of primary and secondary schools for a period after school. New hot food takeaways located within 400 metres of a secondary school will also have their hours restricted during school lunchtimes. This information was included in the report that would be considered by Cabinet on 15 July 2014. The Committee considered that this was new information and requested a short adjournment. The Chairman adjourned the meeting between 6.50pm – 6.58pm, following which members were advised by the Monitoring Officer that the proposed differentiation between secondary schools and primary schools in relation to a restriction in operating hours for takeaways could properly be recommended to Cabinet by officers. The consultation exercise had covered the issue of variable operating hours and the recommended approach was in response to the feedback from consultation.

- The potential for the licensing and planning processes to contradict each other in relation to decisions on takeaways was raised. It was noted that these were two separate regulatory regimes and licensing would only be relevant if a takeaway wished to also sell alcohol.
- It was suggested that in Section 106 agreements the minimum floor space of 100sqm on the contributor's matrix, might usefully be reduced to 50sqm for new takeaways.

6.13 At the end of the debate Councillor Irvine formally requested that his opposition to the proposed planning guidance be placed on record.

6.14 The Business Support Overview and Scrutiny Committee agreed the following:

6.14.1 The Committee noted the responses received on the consultation on the draft Hot Food Takeaway guidance note.

6.14.2 The Committee passed on their appreciation to the Young Inspectors for all their hard work in relation to the consultation on this guidance note.

6.14.3 The Committee supported the introduction of the guidance note as part of an integrated package of health interventions.

6.14.4 The Committee supported the restriction of opening times for new hot food takeaways within 400m of schools and noted that it was intended that new takeaways near secondary schools would be restricted at lunchtimes and for the period after school and new takeaways near primary schools would be restricted from opening in the period after school.

6.14.5 A Briefing Note to be sent to the Committee on "Saved" Policy R18 and the extent to which this has been used previously to minimise the clustering and operating hours of takeaways and the scope for it to be invoked more proactively in the future.

6.14.6 A briefing note be sent to the Committee clarifying the position on A3 and A5 use classes, the potential for further work to restrict the number of premises being designated with A5 use class with particular reference to shops owned

by the Council and the Council's response to restaurants and cafes with A3 use class which subsequently expand to offer takeaway food.

6.14.7 The Committee wished Therese Finn – Policy Planning Officer all the best for the future.

6.14.8 The Committee asked for an investigation into the possibility that Section 106 agreements minimum floor space of 100sqm on the contributor's matrix be reduced to 50sqm for takeaways.

7. Financial implications

7.1 The costs of the consultation have been met within existing budgets. The consultation methodology made effective use of established community organisations, groups and settings to reach a range of people at minimal costs.

7.2 Costs of developing the guidance note can be met from existing budgets. It is recognised that there is the possibility of appeals against refusals of planning applications, and their associated costs. However, it is considered that the guidance note will assist in defending costs against the Council.

8. Legal implications

8.1 Preparation of the Council's guidance note including the process of public consultation and consideration of representation, is regulated in accordance with the Town and Country Planning (Local Planning) Regulations 2012.

8.2 It is noted that the guidance note does not constitute a formal Supplementary Planning Document. Despite this, the guidance note is supported by a robust evidence base which gives weight to it being used in deciding planning applications and as such should be regarded as a material consideration.

8.3 If the guidance note is approved by Cabinet, it will be a material consideration to be used alongside other planning considerations when determining planning applications for hot food takeaways. A material consideration is a matter that should be taken into account in deciding a planning application or on an appeal against a planning decision.

8.4 Members' attention is drawn to the public sector equality duty which is set out in page 1 of the Diversity Impact Assessment at Appendix 4. Members will also see the potential risks of failing to comply at the foot of page 1.

8.5 Due regard should be given to the consultation responses in coming to a decision about the guidance.

9. Recommendation

9.1 That Cabinet approve the changes as set out in paragraph 4.27 of this report and in the amended guidance note (attached as Appendix 1) with adoption of the document as a material consideration in the determination of planning applications for hot food takeaways in Medway.

10. Suggested reasons for decision

- 10.1 Implementation of the guidance note is likely to help reduce the levels of childhood obesity in Medway in combination with other initiatives introduced by the Public Health Directorate.

Lead officer contact

Therese Finn, Planner (Policy), Gun Wharf, ext 4321 therese.finn@medway.gov.uk

Background papers

Hot Food Takeaways in Medway: A Guidance Note (Consultation Draft, 2014).

Available at:

[http://www.medway.gov.uk/pdf/Hot%20Food%20Takeaways%20in%20Medway%20-%20A%20Guidance%20Note%20\(2\).pdf](http://www.medway.gov.uk/pdf/Hot%20Food%20Takeaways%20in%20Medway%20-%20A%20Guidance%20Note%20(2).pdf)