

CABINET

8 June 2010

REPORT OF CORPORATE DIRECTOR OF FINANCE AND COMMERCIAL SERVICES

<p>Title: Local Development Framework: Approval of Supplementary Planning Document (SPD) “Saturation Point: Addressing the Health Impacts of Hot Food Takeaways”</p>	<p>For Decision</p>
<p>Summary</p> <p>On 28 July 2009 the Executive recommended to approve “Saturation Point – Addressing the health impacts of hot food takeaways” Supplementary Planning Document for consultation and as a material consideration by Development Management. This report, sets out the consultation results. Strong support was received from academic institutions and health organisations but there was strong objection from fast food operators. Despite the strong objections Officers consider that the Supplementary Planning Document is capable of being adopted; however, as highlighted in the earlier report there is a risk of legal challenge.</p> <p>This SPD is one of a range of measures within the Barking and Dagenham Childhood Obesity Strategy and Action Plan. The Supplementary Planning Document (SPD) aims to reduce the risk of obesity amongst the Borough’s population and in particular children by:</p> <ul style="list-style-type: none"> • Reducing opportunities for new hot food takeaway shops, especially those in proximity to schools. • Seeking developer contributions from new takeaways towards initiatives to tackle obesity. • Working with hot food takeaways to improve the nutritional value of the food they sell. • Improving the opportunities to access healthy food in new developments. <p>The SPD is provided at Appendix 1. Copies of the Consultation Report are available in the Members’ Rooms at the Civic Centre and Town Hall.</p> <p>Wards Affected: All</p>	
<p>Recommendation(s)</p> <p>The Cabinet is asked to recommend to the Assembly the adoption of the “Saturation Point – Addressing the Health Impacts of Hot Food Takeaways” Supplementary Planning Document as set out at Appendix 1.</p>	
<p>Reason(s)</p> <p>To help deliver the Community Plan objective: “A healthy Borough, where health inequalities are reduced with greater knowledge of lifestyle impacts on health.”</p>	

Implications

Financial

The costs of adopting and implementing the SPD through the Development Management process will be met from the existing Regeneration and Economic Development budget.

The implementation of the other policies and initiatives referred to in paragraph 2.9 below are met from within existing Council and partnership funds. This guidance will restrict the ability of new hot food takeaways to locate in the borough and therefore may affect the ease with which vacant units whether Council owned or not can be let to hot food takeaway operators.

The SPD proposes the implementation of a £1,000 one-off fixed approval fee for new hot food takeaway premises. It is proposed to obtain this fee through a Section 106 Agreement. The Section 106 contributions will form part of any funding for Council strategies for the reduction of childhood obesity. At this stage it is not possible to quantify the number of new hot food takeaways which may be approved and so the level of any additional income.

Legal

The Local Development Framework (LDF) regime was introduced by the Planning and Compulsory Purchase Act 2004 (the "2004 Act"). It replaces the Unitary Development Plan. The process is set out in secondary legislation namely the Town and Country Planning (Local Development) (England) Regulations 2004. The Regulations were amended in June 2008 by the Town and Country Planning (Local Development) (England) (amendment) Regulations 2008

The Local Authorities (Functions and Responsibilities) (Amendment) (No 2) (England) Regulations 2004 states that adoption of LDF documents is not a Cabinet function, so the resolution to adopt LDF documents under section 23 of the Act must be carried out by the Assembly.

It is possible for a charge to be levied on new developments as long as it meets the tests set out in the Community Infrastructure Regulations 2010 which state that;

"a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development."

In addition to planning considerations, the provision of late night hot food or drink between the hours of 23:00 to 05:00 is likely to require a Night Café Licence under the Licensing Act 2003. There is a presumption under the Licensing Act that such licences will be granted unless there are relevant representations. Under the Council's Licensing Policy the Licensing and Regulatory Board will take into account representations made by the Council as Planning Authority where they impact on the Licensing considerations of prevention of crime, prevention of nuisance, protection of children from harm and public safety.

Contractual

No specific implications

Risk Management

Risk	Probability	Impact	Priority	Action
Failure to meet legal requirements.	Low	High	High	Relevant Act and Regulations have been followed in preparing the SPD and will be followed in adopting it.
Policy not applied successfully	Low	High	High	Development Management staff will be fully briefed. The SPD is a good example of spatial planning as espoused by Central Government and the Planning Inspectorate. It should therefore receive their support.
Failure to integrate fully with other Council policies and strategies	Low	High	High	The SPD has been prepared in consultation with Barking and Dagenham NHS and relevant Council services.
Guidance is not upheld at appeal	Medium	High	High	This SPD is in line with latest Government guidance in taking a spatial rather than a narrow land use approach to planning. Therefore it is hoped that it would be supported at appeal but there is no guarantee of this. The Planning Inspectorate and the Government Office were consulted on the draft document.
Policy is challenged by Fast Food operators	Medium	High	High	Other local authorities have issued similar guidance. However, several fast food operators have raised the prospect of legal challenge in response to the consultation.

Staffing

No specific implications.

Customer Impact

In line with legal requirements the consultation was undertaken in line with the Council's Statement of Community Involvement. This included a mail out to all the consultees on the Planning Policy database. This included age concern, the Barking and Dagenham Faith Forum, and the Barking and Dagenham Race Equality Council. However, no responses were received from these groups.

Copies of the SPD were made available in the libraries and key Council buildings as well as

being available online on the Council's website. Those members of the public that did respond to the consultation support the measures in the SPD.

All groups within the Borough will benefit from the impact of this policy which is focused on tackling the high levels of obesity amongst borough residents.

An Equalities Impact Assessment has been done for this document. Whilst no data exists as to the ethnicity of the owners of hot food takeaways, or those who work in such establishments, it is apparent that many of these premises are owned or managed by Black Asian and Minority Ethnic (BAME) communities. The SPD is not targeting these existing hot food takeaways, instead it is seeking to limit the opportunities for future hot food takeaway establishments irrespective of who owns or works in these businesses. The policy may therefore restrict opportunities for new hot food takeaway businesses some of which may be owned and run by people from BAME groups.

The Council will closely monitor the impact of the policy by noting the number of new BAME business start ups to ensure that there is no negative impact on the BAME community. The indicators to be used are:

- Number of VAT registered businesses in Barking and Dagenham
- Proportion of business registrations per 10,000 resident population aged 16 and above

If opportunities for those from BAME groups to establish or gain employment in new hot food takeaways is restricted then they can take advantage of a number of initiatives which the Council supports aimed at increasing resident access to employment opportunities and improving their skills, mobility and employability, and support to anyone considering self employment and business start-up in the borough.

There is also a suggestion that a disproportionate number of people on lower incomes and young people tend to use Hot Food Takeaways so this policy may impact on them.

Safeguarding Children

Hot food take-always mainly sell food that is high in fat, salt and carbohydrates. Our children are already amongst the most obese in the country; this reduces their life chances significantly. Our safeguarding responsibilities include supporting them to access healthy eating options to prolong life expectancy.

Crime and Disorder

Hot food takeaways can attract anti-social behaviour. It is hoped that by limiting the opportunities for new hot food takeaway outlets there will be a positive impact on crime and disorder.

Property / Assets

It should be noted that restrictions on any type of development may affect the volume of private sector interest in development, the level of investment and / or the viability of business. The financial impact on the Council of this cannot be estimated.

Options appraisal

The policies in the SPD are evidenced based and take forward a commitment in Barking and Dagenham's NHS Childhood Obesity Strategy and Action Plan.

The SPD is not a statutory document at the same time obesity is a serious issue in the Borough and therefore to not produce this SPD would be neglecting an important opportunity to help

address this.		
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1. Background

- 1.1 The Planning and Compulsory Purchase Act 2004 requires Barking and Dagenham to replace its Unitary Development Plan with a Local Development Framework. The Local Development Framework is a key corporate document which is focused on implementing the spatial dimensions of the Community Plan.
- 1.2 Four Local Development Framework documents were reported to Councillors in 2009:
- Core Strategy
 - Borough Wide Development Policies
 - Site Specific Allocation
 - Barking Town Centre Area Action Plan
- 1.3 This report covers another important part of the Local Development Framework, a Supplementary Planning Document (SPD) which is focused on controlling new Hot Food Takeaways in the Borough. The SPD is required to help tackle the growing obesity problem in the Borough.

2. Report detail

- 2.1 The SPD, "Saturation Point – Addressing the health impacts of hot food takeaways", is part of a broader strategy to tackle obesity in Barking and Dagenham.
- 2.2 It will contribute towards meeting the Local Area Agreement (LAA) target for Barking and Dagenham – to halt the year-on-year rise in obesity among young children and young people.
- 2.3 The SPD responds to the Government's aim, which is for the UK to become the first major country "to reverse the rising tide of obesity and overweight in the population, by ensuring that all individuals are able to maintain a healthy weight".
- 2.4 The recently published *Healthy Weight, Healthy Lives*, a cross-governmental strategy for England, identified the Thames Gateway region, in which Barking and Dagenham is a central constituent, as being an area which should act as an exemplar in working to reduce the levels of obesity. The document also

encourages local authorities to use existing planning regulations to control more carefully the number and location of fast food outlets.

2.5 The SPD provides more detail on the implementation of Unitary Development Plan and Local Development Framework planning policies.

2.6 The SPD does not have the same status as the development plan but, once adopted, it will be an important material consideration in the determination of planning applications.

2.7 The provisions of this SPD will be implemented as part of the development management process through the determination of planning applications for hot food takeaway development.

2.8 The SPD seeks to curb the numbers and concentrations of hot food takeaways in proximity to schools and other sensitive uses. It aims to achieve this through the following measures:

SPD Implementation Point 1 – Proximity to Schools

- This policy seeks to prevent the development of new hot food takeaways by a 400m exclusionary zone around primary and secondary schools in the Borough.

SPD Implementation Point 2 – Concentration and Clustering

- This policy seeks to reduce opportunities for new hot food takeaways in existing retail parades – this is the percentage of retail units which are operating as takeaways on a retail parade.
- In addition it seeks to prevent the ‘clustering’ of new hot food takeaways – this is the number of hot food takeaways located adjacent to one another.

SPD Implementation Point 3 – Hot Food Takeaway Levy

- To mitigate the effects of new hot food takeaways, where they are acceptable, this policy will introduce a flat rate levy. This fee would contribute to initiatives to reduce obesity in the Borough.

2.9 In addition to the policies outlined above the SPD draws attention to other initiatives and partnership working in the Borough:

- **Healthy food choices:** NHS Barking and Dagenham is working with existing hot food takeaways to reduce the fat, sugar and salt content of their meals and to offer healthier food options.
- **Schools:** NHS Barking and Dagenham and the Council’s School Improvement Service are working with schools to provide healthier meal choices.
- **Council Property:** Tenants of Council owned properties will be encouraged to reduce the number of hot food takeaways in their premises.
- **Major commercial, retail and town centre developments:** Developers of large sites will be encouraged to reduce / prohibit fast food outlets from their schemes. This would be achieved through early discussions with developers and the

implementation of planning conditions on a case-by-case basis. Barking Riverside is a good case study of where this has worked successfully.

- **Mobile Food Vans:** Restricting mobile food vans from operating outside schools.

3. Consultation

3.1 The SPD was consulted on between 25 August 2009 and 3 November 2009. The consultation was in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004 (the regulations) and the Council's adopted Statement of Community Involvement.

3.2 The consultation received 23 responses from a broad range of stakeholders, which can be summarised as follows:

Individual:	8
Academic:	4
Health Organisation:	6
Hot Food Takeaway Organisation:	5

3.3 **Individuals.** The majority of individuals supported the SPD and its intention to control the numbers of hot food takeaways.

3.4 **Academic.** There was strong support for the SPD amongst this group of respondents. Indeed, Professor Jack Winkler, Director of Food and Nutritional Policy at London Metropolitan University stated that:

'Barking and Dagenham has placed itself at the forefront of a progressive movement for cultural and nutritional change. [The] SPD on hot food takeaways advances the policy framework, now being considered by many other London boroughs...the SPD focuses primarily on health. This is important when we are in the midst of an obesity epidemic...we have to take action now. Improving hot food takeaways is not the complete answer to our diet problems, but given the proliferation of hot food takeaways in recent years, it is an important component in any effective nutrition policy. And local authorities like you are at the frontline of that sector.'

3.5 As a consequence of the consultation and the support received on the SPD from academics, such as Professor Winkler, the Council is considering working with a University on the monitoring of the SPD. This will further enable the understanding of obesity in UK cities. This group of respondents were also very supportive of the work outlined in Section 7 of the SPD (Strategic Working).

3.6 **Health Organisations.** There was strong support for the aim and purpose of the SPD from this group of respondents. The National Heart Foundation stated that:

'Planning policy must consider not just a community's economic health, but the health and wellbeing of the people living, working and shopping in the area.'

3.7 It was recognised that the Council is taking a spatial planning to improving health and reducing inequalities in the Borough. Health Organisations endorsed the clear *'link between the built environment and health and wellbeing'* which underlines the

SPD. Organisations in this group also valued the holistic approach to the SPD. The SPD is just one element of a coordinated approach Council is taking in collaboration with NHS Barking and Dagenham to reduce levels of obesity in the Borough.

- 3.8 The mapping work which the Council conducted to assess the location of existing hot food takeaways in relation to schools, open space leisure and children's centres in the Borough was also commended (Figure 1 in the SPD).
- 3.9 **Hot Food Takeaway Organisations.** There was strong opposition to the SPD from this group of respondents which comprised Kentucky Fried Chicken, McDonalds, Domino's Pizza, Pizza Hut and the Papa Pizza Pasta and Italian Food Association. Opposition to the SPD from this group can be summarised as follows:
- The SPD is not consistent with national, regional or local planning policy
 - The SPD should not include policies
 - The SPD does not supplement UDP and LDF policies
 - The Hot Food Takeaway Levy (Implementation Point 3) does not meet the Secretary of State's tests of Circular 05/05
 - Lack of evidence to support the SPD objectives
 - The SPD would harm job creation
 - Hot food takeaways bring vitality and viability to the high street
 - The SPD will not impact on obesity levels in the Borough
 - Other shops (non-A5 Use Class) contribute to obesity
- 3.10 Officers have responded to these objections in the consultation statement and clarified that:
- The SPD does supplement the policies in the LDF. The Core Strategy is due to be adopted in July 2010 and the SPD will be supplementary to this.
 - The SPD does not include planning policies but implementation points which provide further detail on the implementation of LDF policies
 - The SPD is consistent with national, regional and local planning policy, including Planning Policy Statements 1 and 12 and the London Plan.
 - The Hot Food Takeaway Levy does meet the tests set out in Circular 05/05. Please note these tests have recently been changed by the Community Infrastructure Regulations as detail in the legal section of this report.
- 3.11 Where they are located and managed properly, hot food takeaways can provide a complementary service in town centres and that they do contribute to the local economy, creating employment opportunities. This is reflected in paragraph 6.9 of the SPD.
- 3.12 However, in response to the numbers of hot food takeaways in Barking and Dagenham officers consider that the measures proposed in the SPD are proportionate and considered. Moreover, the SPD is one of a range of measures within the Barking and Dagenham Childhood Obesity Strategy and Action Plan which aims to reduce the risk of obesity amongst the Borough's population and in particular children. The SPD is founded on national Government guidance in addition to peer reviewed scientific papers.

- 3.13 In addition to the formal consultation responses it should be noted that the SPD has been featured in media articles and has been of interest to a number of high profile health organisations who have been supportive of the SPD's overarching objectives. In addition to this the Department of Health is interested in using the SPD, should it be adopted, as a best-practice case study on a website it is launching. In October 2009 the National Institute of Clinical Excellence (NICE) interviewed the Council on the SPD for background research to NICE guidance on the prevention of cardiovascular disease at population level. Part of the results from the Barking and Dagenham case study (SPD) will be incorporated into a final report which forms the fieldwork review section for the NICE guidance.
- 3.14 In accordance with regulation 18(4)(b) all representations made in response to the consultation have been considered. A Consultation Statement has been prepared which provides a summary of the main issues raised and how they have been addressed in the SPD. Due to the size of this document it has not been attached to the report but is available in the Members' Rooms in the Civic Centre and Town Hall.
- 3.15 A number of minor changes have been made to the SPD to address some of the responses received but these strengthen rather than weaken the document.

4. Links to Corporate and other Plans and Strategies

- 4.1 This SPD is focused on meeting the Local Area Agreement target for Barking and Dagenham to halt the year-on-year rise in obesity among young children and young people. It delivers an action in the Barking and Dagenham Childhood Obesity Strategy and Action Plan.

5. Consultees

- 5.1 The following were consulted in the preparation of this report:

Councillor McCarthy, Cabinet Member Regeneration
Tracie Evans, Corporate Director, Finance and Commercial Services
Jeremy Grint, Division Director, Regeneration and Economic Development
Lee Russell, Group Manager Resources and Budgeting Team
Yinka Owa, Legal Partner Procurement, Property and Planning
Vivienne Cooling, Group Manager Marketing and Communication
Andy Butler, Group Manager for Area Regeneration
Dave Mansfield, Development Management Manager
Mark Tyson, Group Manager Policy and Partnerships
Sue Lees, Divisional Director Asset Management and Capital Delivery
Andy Bere, Corporate Asset Manager
Helen Jenner, Corporate Director of Children's Services
Meena Kishinani, Head of Children's Policy and Trust Commissioning
Jane Hargreaves, Head of Quality and School Improvement
Mike Freeman, Group Manager Schools Estate
Darren Henaghan, Divisional Director Environmental and Enforcement Services
Rob Williams, Group Manager Environmental and Trading Standards
Ann Bristow, Corporate Director of Adult and Community Services
Heather Wills, Head of Community Cohesion and Equalities
Glynis Rogers, Divisional Director Community Safety and Neighbourhood Services

6. Background Papers Used in the Preparation of the Report:

- Executive Report and Minute 40, 28 July 2009, [Approval of Draft Hot Food Takeaways Supplementary Planning Document](#).
- Barking and Dagenham Childhood Obesity Strategy and Action Plan, March 2007
- Barking and Dagenham Community Strategy, March 2009
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- Currie, J., DellaVigna, S., Moretti, E., Pathania, V., The Effects of Fast Food Restaurants on Obesity, *American Association of Wine Economist*, February 2009.
- Department of Health, Obesity. Available online at: <http://www.dh.gov.uk/en/PublicHealth/HealthImprovement/Obesity/index.htm>, (assessed 20 May 2009)
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- HM Government, White Paper - Choosing Health: Making Healthy Choices Easier, November 2004
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- Lake, A. and Townshend, T., Obesogenic environments: exploring the built and food environments, *The Journal of the Royal Society for the Promotion of Health*, 126, 6: 267-262, 2006
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- Prentice, A.M. and Jebb, S.A., Fast Foods, Energy Density and Obesity: A Possible Mechanistic Link. *Obesity Reviews*, 4: 187-194, 2003
- Sheffield Hallam University, Tackling Obesities: The Foresight Report and Implications of Local Government, March 2008
- Smith et al., Takeaway food Consumption and its associations with diet quality and abdominal obesity: a cross-sectional study of young adults, *International Journal of Behavioural Nutrition and Physical Activity*, May 2009

- Summerbell C, Waters E, Edmunds LD, Kelly S, Brown T, Campbell KJ. Interventions for preventing obesity in children. *The Cochrane Database of Systematic Review*, 3, 2005
- The School Fringe, From Research to Action. Policy Options within schools on the Fringe. Education Research, Sarah Sinclair, JT Winkler, Nutrition Policy Unit, London Metropolitan University, January 2009
- The School Fringe: What pupils buy and eat from shops surrounding secondary schools. Sarah Sinclair and Jack Winkler. Nutrition Policy Unit. London Metropolitan University, July 2008

7 List of appendices:

Appendix 1 - Saturation Point Addressing the Health Impacts of Hot Food Takeaways (Supplementary Planning Document, March 2010)