

## **APPENDIX 1**

### **DENBIGHSHIRE COUNTY COUNCIL**

#### **DRAFT SUPPLEMENTARY PLANNING GUIDANCE: HOT FOOD TAKEAWAYS**

**OCTOBER 2014**

#### **1. INTRODUCTION**

- 1.1 This note is one of a series of Supplementary Planning Guidance notes (SPGs), amplifying the development plan policies and other issues in a clear and concise format with the aim of improving the design and quality of new development. The notes are intended to offer broad guidance which will assist members of the public and officers in discussions prior to the submission of planning applications and assist officers in handling and members in determining planning applications.

#### **2. STATUS AND STAGES IN PREPARATION**

- 2.1 The Council's SPGs are not part of the adopted development plan. The Welsh Government has confirmed that following public consultation and subsequent Local Planning Authority (LPA) approval, SPG can be treated as a material planning consideration when LPAs, Planning Inspectors and the Welsh Government determine planning applications and appeals. This SPG document was formally approved for consultation by Denbighshire County Council's Planning Committee on XXXX.
- 2.2 These notes have been prepared in accordance with guidance contained in Planning Policy Wales (November 2012); Local Development Plans Wales (December 2005); and Welsh Government Technical Advice Notes.

#### **3. BACKGROUND**

- 3.1 This SPG is intended to assist with proposals for hot food takeaways. In dealing with these the Council seeks to balance the need to find beneficial use for vacant shops, the commercial interests and requirements of such proposals with the need to safeguard the viability and character of the commercial area or ensuring acceptable amenity standards to residents of nearby properties.
- 3.2 The Town and Country Planning (Use Classes) Order 1987 subdivides different types of use into separate Classes of Use. Hot food takeaways (along with restaurants, public houses, cafes and wine bars) fall within Class A3. Hot food takeaways are defined as establishments whose primary business is the sale of hot food for consumption off the

premises. In determining the primary use of the premises, consideration will be given to:

- The proportion of space designated for food preparation and other servicing in relation to designated customer circulation space
- The number of tables or chairs to be provided for customer use.

3.3 The table below provides examples of the shop types that would normally be considered as hot food takeaways. However, this list is not exhaustive.

Examples of hot food takeaway shop types	Examples of shop types <b>not</b> considered as hot food takeaways
Chicken shops	Restaurants
Fish and chip shops	Cafes
Pizza shops	Public houses
Kebab shops	Wine bars
Chinese, Indian or other takeaway shops	Night clubs
Drive-through premises	

#### 4. PLANNING POLICY

4.1 Potential applicants should refer to refer to policies RD 1 and PSE 8 of the Council's Local Development Plan (LDP) which outlines the general policies and criteria under which such proposals are determined. The broad aims of these policies, in respect of hot-food takeaways, are:

- To enhance the vitality and viability of town centres
- To prevent an unacceptable imbalance of retail and non-retail uses
- To locate hot-food takeaways where they maintain the viability and character of the surrounding area.

#### 5. GENERAL LOCATION

5.1 In assessing the suitability of the location of proposals, the following guidance will apply:

- Generally such proposals are acceptable in defined town centres subject to their satisfying the criteria in LDP policy PSE 8.
- Hot food takeaways may also be considered acceptable outside of defined town centres (and within development boundaries). However the Council will ensure that the number and concentration of such units does not detract from the function, character and attractiveness of the centre.
- Particular care needs to be exercised in locating such uses in or near primarily residential areas, including residential accommodation above or adjacent to the proposal.

- 5.2 **Proposals for new hot food takeaways will not be allowed within 400 metres<sup>1</sup> of the boundary of a school or tertiary college.** The close proximity of such outlets to schools can tempt children to consume cheap energy-dense and nutrient-poor foods. The Welsh Health Survey (2012) found that 34% of children in Wales are overweight or obese, which has significant implications for long-term health and associated costs to health services.
- 5.3 Case law has shown that proximity to a school and the existence of school's healthy eating policy can be a material consideration when considering planning applications for hot-food takeaways. The Healthy Eating in Schools (Wales) Measure 2009 places a duty on Local Authorities and school's governing bodies to take action to promote healthy eating by pupils. This is supported by the 'Appetite for Life' guidelines on food and nutrition standards in schools, which can be undermined by the provision of hot food takeaway outlets close to schools. NICE public health guidance 'Prevention of cardiovascular disease' (2010) and the 'All Wales Obesity Pathway' (2010) also recommend that Local Authorities should limit the number of fast food outlets in specific areas, such as close to schools.

## 6. OTHER CONSIDERATIONS

- 6.1 Having established the general suitability of the location in policy terms the other main issues in relation to hot food takeaways can be summarised as follows:
- Noise and disturbance;
  - Concentration / clusters of similar uses;
  - Hours of opening;
  - Traffic, Parking and Access;
  - Smells, and;
  - Litter.

The majority of these concerns can be mitigated by condition and careful thought to the location and operation of the takeaway use.

### 6.2 Noise and Disturbance

- Takeaways generate frequent comings and goings of customers, whether by foot or by car.
- Such activity may generate noise that becomes a nuisance from customers congregating on the street, car doors slamming and car radios where the proposed use is located in a primarily residential area, although problems may arise where the use is located in a town centre with flats above.

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<sup>1</sup> 400m is considered to be a reasonable equivalent to 10 minutes walking distance, taking into account physical barriers (eg buildings, traffic lights etc).

- For the above reasons, planning permission is generally not granted in primarily residential areas.
- Adequate noise insulation measures will need to be undertaken to the walls and ceiling of the property, before the use commences.

### 6.3 **Concentration / Clusters of Similar Uses**

- Generally across the County these uses are dispersed. However, there are pockets where there is concentration of such uses, including premises (pubs/clubs/restaurants) which have a distinctive character and late night opening. Different considerations may apply here in respect of additional uses and opening hours.
- Concentrations or clusters of such uses should be avoided as they often have an adverse impact on the character of an area.

### 6.4 **Hours of Opening**

- Whereas most businesses usually operate from approximately 9.00 a.m. to 5.30 p.m., hot food takeaways tend not to open until lunch time and owners may request that the premises be permitted to remain trading until the early hours of the following morning.
- It is often necessary to use planning conditions to limit the opening hours to minimise disturbance to the surrounding community. However, one set of time limits would not be appropriate throughout the County because areas vary so much. An application must be determined on its own merits. It may be acceptable for proposed hot food takeaways in areas where late night opening occurs to remain trading until midnight or beyond. Other town centres/locations should be more controlled, whereas proposals which have residential properties in the vicinity should not remain trading until late evening in the interests of the amenity of local residents.

### 6.5 **Traffic, Parking & Access**

- Hot food takeaways located in the larger town centres will probably attract a large number of customers by foot. However, those on main routes out of towns and in local shopping parades or village centres will attract a large proportion of car-borne customers requiring short stay parking very close to the property. Properties outside town centres should, therefore, have a readily accessible vehicular parking area in close proximity to the site (e.g. lay-by to the front). A rear service yard or a public car park some distance away is unlikely to be used and properties on double yellow lines outside town centres are normally unsuitable.
- Adequate visibility for cars entering and leaving the premises will be required and proposals at or near junctions especially traffic - controlled junctions are unlikely to be supported, especially if there are no off-street parking or servicing arrangements.

## 6.6 Smells

- Cooking smells from takeaways can cause amenity problems for nearby residents
- Problems relating to smells should be mitigated by the installation of suitably designed extraction facilities.
- The actual design will vary from premises to premises, but all should be located to the rear of the property, with a colour and design such that the unit does not appear as an incongruous feature in the street scene. It is normally considered that modern equipment, combined with high level ventilation is adequate to reduce smell nuisance to tolerable levels except in the most sensitive of location.
- A condition requiring that a scheme for the extraction of cooking odours be approved by the local planning authority, and that the equipment be installed prior to the use commencing, will be attached to planning approval. The use of charcoal filters will not be acceptable.
- Where practicable and especially in conservation areas or on listed buildings, a flue liner inside an existing chimney should be used.

## 6.7 Litter

- However careful the owner/operator, hot food takeaways have a tendency to generate litter. Whilst this is essentially outside his/her control the proprietor must make every effort to keep the area around the premises litter-free. A legal agreement to that effect may be appropriate, particularly for larger national chains. The local authority has the power, through environmental legislation, to take enforcement action against littering offences and this can ultimately lead to prosecution by a court.
- Where appropriate, a condition to require the operator to provide (at his/her expense) containers for the deposit of litter, in accordance with details to be submitted to the Local Authority, will be attached to planning approval.

## 7. PLANNING PERMISSION

- 7.1 Hot food takeaways (along with restaurants, public houses, cafes and wine bars) fall within Class A3 which allow the use of a property for the sale of food or drink for consumption off the premises. Hence, it would be possible to change a property currently selling one type of hot food, e.g. fish and chips, to one selling a different type of hot food, e.g. Chinese take-away, without requiring planning permission. However, if it is intended to use a property as a hot food take-away which is currently not used for that purpose then a change of use planning application will be required. Operators of bakery shops and sandwich shops which sell a small proportion of hot food would not normally be

required to apply for planning permission as a hot food take-away, depending on the scale of the operation.

- 7.2 Mobile catering, for example trading on a street from a vehicle or stall, is not within the control of the planning system and is therefore not covered by this SPG. Such uses will be subject to other licensing regimes, and guidance should be sought from the Council's Licensing Team.

## **8. OTHER LEGISLATION**

- 8.1 Proposals will also require any approvals under other legislation e.g. Environmental Protection, and Building Regulations. Applicants must ensure compliance with these requirements.

## **9. CONTACTS**

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