

Public Examination of the Development Management Local Plan

London Borough of Lewisham response to the Inspector's agenda item 12 regarding DM18: Hot food take-away shops (A5 uses)

It would be helpful if the Council can provide more information about any other Councils which have had such a policy successfully or unsuccessfully defended at a development plan examination.

Planning Policy – February 2014

Council response

This paper sets out examples of London boroughs where similar take away shop policies have, firstly, been successfully defended and, secondly, been unsuccessfully defended at development plan examination.

1. Examples of Councils which have successfully defended similar policies at a development plan examination.

- 1.1 Set out below are examples of six London boroughs' policies regarding hot food take away shops. The Council has focussed on other London boroughs as examples on the assumption that the characteristics of London boroughs, rather than elsewhere in the country, are likely to be similar to Lewisham and given the fact that they operate under the same regional policy context. The borough policies detailed below are:

Council	Concentration	Clustering	Proximity	Plan stage
Waltham Forest	5% limit on A5 frontage; no A5 within 400m of existing A5 [outside designated areas]	No more than two adjoining frontages to be A5; at least two non-A5s between groups of A5	400m around schools, youth centres and park boundaries	Adopted.
Tower Hamlets	5% limit on number of A5 uses	At least two non-A3, A4 and A5 between A3, A4 and A5.	Proximity to schools/leisure centres taken into consideration.	Adopted.
Southwark	5% limit on A5 uses in shopping	No more than two adjoining A5 uses; no	400m zone around secondary	Awaiting Inspector's report.

	frontages	less than two non-A5 uses between groups of A5	schools	
Barking and Dagenham	5% limit on A5 units and/or frontage	No more than two adjoining frontages to be A5; at least two non-A5s between groups of A5	400m around primary and secondary schools (measured from school boundary)	Adopted.
Islington	-	Resisted where there is a negative cumulative impact	A5 uses resisted where they are in proximity to schools	Adopted.
Greenwich	25% limit on non-A1 frontage	Do not lead to an excessive clustering	-	Awaiting Inspector's report.

1.2 The sections below provide further information about each of the relevant borough policies.

1.2.1 London Borough of Waltham Forest

Development Management Policies
Examination in Public: May 2013
Current status: Adopted. October 2013

Waltham Forest include a policy relating specifically to A5 take away uses in their Development Management Policies Local Plan. It resists an over-concentration of uses, with criteria depending on the proposed location. Within Primary, Secondary and Retail Parades uses are restricted to 5% of units. Outside designated frontages and centres, the policy restricts take away uses by their proximity to each other and by a 400 metre exclusion zone around schools, youth centres or parks.

Adopted Policy:

The following sections of DM23 are relevant.

Policy DM23

Health and Well Being

...

Hot Food Takeaways (A5 Uses)

C) The Council will resist proposals for Hot Food Takeaways (A5) where:

i) It results in an over concentration of such uses which is detrimental to the vitality and viability of a town centre, neighbourhood centre or local parade. An appropriate concentration of A5 uses will be assessed based on the following:

Within Primary, Secondary and Retail Parades

- *No more than 5% of the units shall consist of A5 uses*

Within Tertiary Zones and outside designated centres:

- *No more than one A5 unit will be allowed within 400m of an existing A5 unit.*

ii) It forms a cluster of similar uses. In order to resist the clustering of A5 units:

- *No more than two A5 units should located opposite or adjacent to an existing A5 use; and*
- *There should be at least five non A5 units between an existing A5 uses.*

iii) The proposal falls with 400m of the boundary of an existing school, youth centre or park;

iv) A proposal is considered to have an unacceptable impact on highway safety;

v) A proposal has a significant impact on residential amenity in terms of noise, vibrations, odours, traffic disturbance, litter or hours of operation;

vi) A proposal operates with inappropriate hours of operation;

vii) A proposal does not provide effective extraction of odours and cooking smells;

viii) A proposal does not provide adequate on site waste storage and disposal of waste products;

Full text of the policy is available at pages 140 - 146 of the Development Management Policies document:

<https://www.walthamforest.gov.uk/Documents/DMPPolicies%20Adoption%20Version%20October%202013.pdf>

This policy is supported by a Supplementary Planning Document (SPD), 'Hot Food Takeaway' (March 2009), which provides further guidance on the location and managing the impact of hot food takeaways in the borough. Of particular relevance are sections on over concentration, clustering and proximity to schools, youth facilities and parks. The SPD can be accessed here:

<https://www.walthamforest.gov.uk/documents/spd-hot-food-takeaway-mar10.pdf>

1.2.2 London Borough of Tower Hamlets

Managing Development Document
Examination in Public: September 2012

Current status: Adopted. April 2013
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The Managing Development Document includes a policy that restricts take away uses by not allowing an over-concentration, not allowing more than 5% take away uses in District centres and by taking into consideration the location of a school or leisure centre. The justification to the policy refers to an evidence base paper 'Tackling the takeaways'.

Adopted Policy:

The following sections of Policy DM1 are relevant.

4. *To further support the vitality and viability of town centres, restaurants, public houses and hot food takeaways (Use Class A3, A4 and A5) will be directed to the CAZ, THAA and town centres provided that:*
 - a. *they do not result in an overconcentration of such uses; and*
 - b. *in all town centres there are at least two non-A3, A4 and A5 units between every new A3, A4 and A5 unit.*
5. *Furthermore where A5 uses are supported in town centres:*
 - a. *in district centres, the total percentage of A5 uses must not exceed 5% of the total number of units; and*
 - b. *the proximity of an existing (or proposed) school and/or local authority leisure centre will be taken into consideration.*

The full text of the policy is available at pages 20-23 of the 'Managing Development Document (April 2013)': http://www.towerhamlets.gov.uk/lgsi/451-500/494_planning_guidance/local_plan.aspx

This policy is supported by an evidence base paper titled 'Tackling the Takeaways' (2011) which is available here: http://www.towerhamlets.gov.uk/lgsi/451-500/494_th_planning_guidance/evidence_base.aspx

1.2.3 London Borough of Southwark

Peckham and Nunhead Area Action Plan
Examination in Public: July/August 2013
Current status: Awaiting Inspector's final report

The London Borough of Southwark have developed take away policies tailored to individual areas which are included in various policy and guidance. The Elephant and Castle SPD (March 2012) restricts take away uses by percentage (5%) and by proximity to each other. The Canada Water Area Action Plan (March 2012) restricts take away uses to no more than two units per frontage. The most recent Area Action Plan to be subject to Examination is the Peckham and Nunhead Draft Area Action Plan which restricts take away uses by percentage (5%), proximity to each other and by

establishing a 400 metre exclusion zone around secondary schools.

Submission policy (supported by Figure 9 showing a 400m exclusion zone around secondary schools):

Policy 4: Hot food takeaways

We will encourage a healthy population and vibrant town and local centres by controlling the amount and location of hot food takeaways (Class A5).

We will do this by:

1. *Ensuring that that the proportion of units which are hot food takeaways does not rise above 5% in Peckham town centre and Nunhead local centre protected shopping frontages. In those frontages which have already reached the 5% saturation, we will not allow any further A5 use. In addition:*
 - *No more than two A5 units should be located adjacent to each other.*
 - *No less than two non-A5 units should be located between a group of hot food takeaways.*
2. *Defining a 400 metre exclusion zone for new hot food takeaway use around secondary schools. Proposals for new hot food takeaways within 400m of a secondary school will not be supported. The location of secondary schools and approximate 400m exclusion zone around each are shown on figure 9.*

Full text of the Submission plan is available as document 'CD1 Peckham and Nunhead Area Action Plan':

https://www.southwark.gov.uk/downloads/download/3394/peckham_and_nunhead_are_a_action_plan_aap-core_documents

Inspector's comments to the Council (26 April 2013):

2. Policy 4: Hot food takeaways

Policy 4 is well-supported and no objection thereto has been brought to my attention. I therefore anticipate at present that it need not be discussed at a Hearing. Nonetheless, I note that the Council's table of proposed minor changes (Core Document CD22) includes a change to the way in which this policy would be applied, in that it amends the exclusion zones for new hot food takeaways centred on the area's secondary schools as set out in Figure 9 of the plan.

As I understand it, the change arises from the relocation of Tuke School. However, its effect is to remove an exclusion zone which took in much of Peckham High Street and establish a new one in the north-western corner of the Action Area. The latter introduces new considerations on which people might reasonably expect to comment: for example, a person wishing to establish a new takeaway within the area covered by new exclusion zone may wish to object.

The Council should therefore consider a Main Modification to the plan as submitted to include the model policy or a similarly worded alternative. I

consider that the incorporation of this amendment into the AAP as a ‘minor change’ would render it unsound. I would welcome the Council’s response, with an indication of how it intends to address this matter, at this early stage.

Full text of the Inspector’s letter to the Council is available as document ‘Inspector’s letter to the Council (26 April 2013)’:

https://www.southwark.gov.uk/downloads/download/3422/peckham_and_nunhead_aap-examination_in_public

Main modifications advertised:

Three main modifications were advertised in relation to this policy. Two related to figure 9 and the fact that the location of schools and the 400m exclusion zone is indicative. The third related to the fact that the Council wished to amend the location of one of the schools and therefore the exclusion zone surrounding the school.

Full text of the Main Modifications is available as document ‘CDP2 Table of potential main modifications required by the Inspector, October 2013 final’:

https://www.southwark.gov.uk/downloads/download/3637/main_and_minor_modifications

No representations were received in relation to the advertised main modifications for this policy.

1.2.4 London Borough of Barking and Dagenham

Borough Wide Development Policies
Examination in Public: September 2010
Current status: Adopted. March 2011

The Borough Wide Development Policies document contains a policy restricting hot food take away shops to 15% of the retail frontage. The justification to the policy refers to a Supplementary Planning Document for further guidance, particularly in relation to hot food take away uses near schools (within 400 metres of the boundary of a primary or secondary school).

Adopted Policy:

The following sections of Policy BE1: Protection of Retail uses are relevant:

Hot Food Take Aways

In relation to all retail centre classifications, hot food takeaways (A5 Use Class) are restricted to a maximum of 15% of the measured frontage.

Basis for Calculations

All % calculations will be based on measured frontage. The % is based on both:

- the proportion of non-A1 uses in each identified primary or secondary frontage; and*
- the proportion of non-A1 uses across the entire primary frontages, secondary frontages or neighbourhood frontages in question.*

For Neighbourhood Centres, the % calculation is solely based on the proportion of non-A1 uses in the entire neighbourhood shopping area.

The location and proposed boundaries of the Major, District and Neighbourhood Centres and the primary and secondary shopping frontages within them will be detailed in the forthcoming Barking Town Centre Area Action Plan DPD and the Site Specific Allocations DPD, and will be shown on the Proposals Map.

Particular emphasis will be placed on retaining shops selling fresh fruit and vegetables and the provision of farmers' markets and new shops selling fresh fruit and vegetables.

Full text of the policy is available at pages 45-47 of the Borough Wide Development Policies document:

<http://www.lbbd.gov.uk/Environment/PlanningPolicy/LocalPlan/Documents/BoroughWideDevelopmentPoliciesDPDMar2011.pdf>

This policy is supported by a Supplementary Planning Document (SPD), Saturation Point: Addressing the health impacts of hot food takeaways (July 2010), which provides further guidance on the location of hot food takeaways in the Borough. It aims to reduce the prevalence and clustering of hot food takeaways, especially those in proximity to primary and secondary schools. The SPD can be accessed here:

<http://www.lbbd.gov.uk/Environment/PlanningPolicy/LocalPlan/Documents/saturation-point-spd-july-2010.pdf>

1.2.5 London Borough of Islington

Development Management Policies
Examination in Public: December 2012
Current status: Adopted. June 2013

Islington's policy seeks to manage the location and concentration of take away uses where they would result in an unacceptable concentration of uses in one area and where they are in proximity to schools or sensitive community facilities. The justification to the policy states that take away uses within 200 metres of primary and secondary schools will be resisted.

Adopted policy:

Policy DM4.3

Location and concentration of uses

A. Proposals for cafés, restaurants, drinking establishments, off licences, hot food takeaways, lap dancing clubs, nightclubs, casinos, betting shops, amusement centres and other similar uses will be resisted where they:

- i) Would result in negative cumulative impacts due to an unacceptable concentration of such uses in one area; or*
- ii) Would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area.*

B. Proposals for drinking establishments, off licences, hot food takeaways, lap dancing clubs, nightclubs, casinos, betting shops, amusement centres and other similar uses will be resisted where they are in proximity to schools or sensitive community facilities.

Full text of the policy is available at pages 61-62 of the Development Management Policies document: [http://www.islington.gov.uk/publicrecords/library/Planning-and-building-control/Publicity/Public-consultation/2013-2014/\(2013-12-11\)-Development-Management-Policies-\(adopted-June-2013\).pdf](http://www.islington.gov.uk/publicrecords/library/Planning-and-building-control/Publicity/Public-consultation/2013-2014/(2013-12-11)-Development-Management-Policies-(adopted-June-2013).pdf)

1.2.6 Royal Borough of Greenwich

Core Strategy with Development Management Policies
Examination in Public: December 2013
Current status: Awaiting Inspector's final report

Greenwich limit food and drink uses (including hot food take away shops (A5)) to 25% of the shopping frontage. Take away uses are to be focussed on existing shopping centres and will be permitted provided they do not lead to an 'excessive clustering or disproportionate level of such uses'. The justification to the policy restricts new hot food take away uses within 400 metres of a school.

Submission policy (no changes proposed following Examination):

Policy TC(b) Non-retail Uses in Protected Shopping Frontages

The Council will support the provision of a range of activity generating non retail uses in town centres including evening activities where environmentally appropriate, subject to the ground floor retail thresholds set out in Policy TC(a).

Non retail proposals:

...

- iv. *Will not be permitted if, as a result, breaks between occupied A1 premises exceed two units in core frontages or three in fringe or local frontages; and*
- v. *Will not be permitted if, as a result, either the use class category proposed or the combined total of A3, A4, and A5 uses would occupy more than 25% of all designated frontage premises within that centre or individual block.*

Policy TC(c) Hot Food Take-aways

Major, District and Local Centres and Neighbourhood Parades are the preferred location for hot food take-away establishments including drive through restaurants (Use Class A5). Hot food take-aways will be permitted providing:

- i. The proposed use and the level of activity it generates is appropriate in the location proposed and would not unacceptably impact on residential or workplace amenity, nor on the environment or character of the area;*
- ii. Customer visits by car would not unacceptably impact on existing or proposed public transport provision, traffic movements, road or pedestrian safety;*
- iii. The proposal complies with applicable retail frontage policies and does not jeopardise the provision of an essential local service;*
- iv. Proposals outside Major, District and Local Centres predicated on serving a wider than 'walk-in' catchment demonstrate that:- they serve a need not generally met by existing facilities, that there are no sequentially preferable sites available and that they are conveniently and safely accessible by public transport as well as by cycle and on foot; and*
- v. They do not lead to an excessive clustering or disproportionate level of such uses within the centre or frontage.*

Full text of the policies are available at pages 83-85 of document reference G1: Core Strategy with proposed further modifications:

http://www.royalgreenwich.gov.uk/info/1004/planning_policy/869/local_development_framework/5

2. Examples of Councils which have unsuccessfully defended similar policies at a development plan examination.

Council	Concentration	Clustering	Proximity	Plan stage
Newham	Take into consideration the cumulative impact of A5 uses	-	-	Adopted.

2.1.1 London Borough of Newham

Core Strategy
Examination in Public: September 2011
Current status: Adopted. January 2012

Newham's submitted policy included a 400 metre exclusion zone around secondary schools. Through the Examination in Public the Inspector found that there was not

enough evidence to support the exclusion zone. The adopted policy therefore only considers the cumulative impact of A5 uses, not the location of the uses.

Adopted Policy:

The following sections of Policy SP2 Healthy Neighbourhoods are relevant:

Objective

6.10 Promote healthy lifestyles, reduce health inequalities, and create healthier neighbourhoods.

Policy

The Council supports health care partners' efforts to promote healthy lifestyles and reduce health inequalities and recognises the role of planning in doing so through the creation of healthy neighbourhoods and places.

To this end, development proposals which respond to the following contributors to health and well-being will be supported:

- 1. The need to promote healthy eating through taking into consideration the cumulative impact of A5 uses (hot food takeaways);...*

The full text of the policy is available at pages 88-91 of the Core Strategy:

<http://www.newham.gov.uk/Documents/Environment%20and%20planning/CoreStrategy2004-13.pdf>

Inspector's report:

Inspector's final report following examination of the Core Strategy:

Are the criteria of Policy SP2 regarding healthy neighbourhoods justified? How will the policy be delivered?

34. Criterion 1 of Policy SP2 seeks to support the health and well being of the Borough's residents through an exclusion zone of 400m for all Class A5 uses around secondary schools. The policy responds to local concerns about some outlets within the use class, in particular 'chicken shops', which are thought to provide an insufficiently balanced diet for those who rely on them. However, the policy is not supported by evidence at present; a map plotting the incidence of Class A5 outlets shows clusters in local and district centres but not near secondary schools. As the Council admitted, significant health problems develop at primary school age. As worded, the policy would preclude any type of Class A5 outlet, however healthy the type of food being sold, which falls outside town planning control. The Council refers to some support for the approach by a Section 78 appeal decision in the adjoining Borough of Tower Hamlets but the particular issues in that appeal may not be applicable as a basis for Borough-wide policy. While the objective of the policy is laudable, I

have strong reservations that the approach to the problem is proportionate, as claimed by the Council. I consider this part of the policy would be ineffective and therefore unsound; it should be deleted as shown in [IC2].

Changes that the Inspector considers are needed to make the plan sound.

IC2 Policy SP2 Delete: ‘and the establishment of a 400m exclusion zone for these uses around secondary schools.’

Evidence base:

The submitted policy was supported by a study ‘Food Outlet Mapping in the London Borough of Newham’ July 2010. This report looked at the location of take away shops, fruit and vegetable shops and cheap alcohol shops.

[http://www.newham.gov.uk/Documents/Environment%20and%20planning/FoodOutletMappingintheLondonBoroughofNewham190710\[1\].pdf](http://www.newham.gov.uk/Documents/Environment%20and%20planning/FoodOutletMappingintheLondonBoroughofNewham190710[1].pdf)