

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

9 SEPTEMBER 1997

SUBJECT: HOT FOOD TAKEAWAYS - POLICY

REPORT BY DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT

Abstract: This report presents a possible policy for the handling of hot food takeaway applications.

1 RECOMMENDATION

It is recommended that members:-

- (a) approve the policy contained within this report;
- (b) agree to its inclusion in the emerging Angus Local Plan; and
- (c) authorise its publication as an addition to the Council's standardised range of Advice Notes.

2 BACKGROUND

- 2.1 Recently the Council lost an appeal in Brechin for the establishment of a hot food takeaway outlet. The Reporter in his statement made it clear that had the Council produced a policy on this subject, his decision would probably have been different.
- 2.2 Members with past experience will be aware of the complexities surrounding this type of development and the wide-ranging issues that it invariably raises. Because of these complexities, no policy had, until now, been evolved. Spurred-on by the Reporter's comments, research has been undertaken, particularly in respect of other appeal decisions nation-wide, leading to the production of a suggested policy.
- 2.3 If adopted by the Committee this policy should result in consistent decisions that are defensible on appeal.

3 INTRODUCTION

- 3.1 There can be little doubt that while hot food takeaways meet a public need and create employment, they can give rise to a number of problems for residential neighbours and other occupiers over a large area. These problems include cooking smells, noise, disturbance, anti-social behaviour, litter and others associated with traffic and parking and late night opening.

Because of the difficulties in securing acceptable locations for takeaways, planning policies and guidance are needed in order to address the acknowledged problems and to ensure a consistent approach to decision making.

4 THE ISSUES

1. **LOCATION** : Undoubtedly the major planning issue which to some extent will embrace most of the following specific issues. Are there particularly suitable or indeed, unsuitable locations for takeaways? Are they acceptable in town centre "prime" shopping areas or in predominantly residential areas and, if so, under what criteria or conditions? Perhaps most important of all is the relationship between takeaways and residentially occupied property.
2. **COOKING SMELLS** : It is sometimes argued that modern odour extraction systems are capable of eliminating the problem of smells to adjacent residential properties. The Council's experience is that while technology has certainly made advances, an odour-free takeaway has not yet been achieved leading to continuing complaints from neighbours.
3. **NOISE** : Takeaways can generate noise from several sources: clientele within the premises; music sources; extraction fans; clientele immediately outwith the premises; and vehicular. These too can be the source of continuing complaints.
4. **PARKING** : Is it essential for takeaways to have readily available off-street parking? If it is not available there is a temptation to park on double yellow lines or in nearby, perhaps residential areas. Conversely, if centrally located, should takeaways be treated in the same way as other commercial/retail premises where parking is rarely a material planning issue?
5. **FOOTWAYS** : Because of a tendency for clientele to gather outside a takeaway, is the width of the pedestrian footway a material issues in respect of road safety?
6. **LITTER** : Litter dropped by clientele is often quoted by objectors as a reason for refusing a takeaway. The problem, however, is more likely to arise at some distance from the premises.
7. **OPENING HOURS** : Takeaways often operate into anti-social hours causing problems for nearby residents usually associated with noise generation. Is it appropriate for conditions restricting opening hours to be imposed on planning consents or should it be left to the Civic Licensing Committee?
8. **VENTILATION** : The satisfactory provision and positioning of essential ventilation and extraction equipment can present problems to both visual and residential amenity. External flues, for instance, require careful siting if they are not to produce eyesores.

5 POLICY

1. **LOCATION** : Takeaways, unlike sit-down hot food facilities, are not complementary to the shopping experience and, therefore, if permitted in prime shopping areas would dilute the retail character of those areas. Neither do takeaways lend themselves to a residential location. They do, however, provide a valuable service, particularly in the evening and therefore they must be catered for. Accordingly the following locational policies will apply:-

Within designated prime shopping areas, change of use from existing retail to hot food takeaway will not be permissible. Subject to the other listed criteria being met, it may be possible to utilise existing non-retail premises for takeaway purposes.

Hot food takeaways will not normally be permitted in predominantly residential areas unless at a free-standing location that in the opinion of the Planning Authority, will not unduly detract from the existing residential amenity.

The preferred locations for hot food takeaways is within the periphery of town centres outwith designated prime shopping areas or in mixed-use areas where the other criteria can be met and where there already exists a significant number of properties in non-residential use or in association with similar/related facilities (eg public houses).

Even where the general location is acceptable, a nuisance can still result where residential property immediately abuts the proposed takeaway. Accordingly, in order to protect the existing amenity of residential properties, the following locational policy will also apply:-

Hot food takeaways will not be permitted to occupy premises directly abutting (to any side or immediately above) property occupied for residential purposes which is not within the control (usually owned or leased) of the takeaway proprietor.

2. **COOKING SMELLS** : Details of the odour extraction equipment to be utilised will be sought as part of any planning application. This information must be sufficient to satisfy both Planning and Environmental Health officials, that smells from the takeaway will not be a problem to nearby property occupiers.
3. **NOISE** : It would be unreasonable for the Planning Authority to oppose a takeaway which meets the locational policies indicated above, on the ground of external noise, particularly in central locations where some additional disturbance has to be accepted. However, Planning and Environmental Health Officials will wish to satisfy themselves that internally generated noises do not create a nuisance, particularly to nearby residential properties. This may lead to the request for more information or to conditions being imposed in

respect of noise levels, music, extraction equipment and sound insulation and the application of the following policy in appropriate situations:-

Where residentially occupied property is located diagonally above (see diagram) a site proposed for a hot food takeaway, suitable sound proofing measures will be required and should form part of the planning application.

4. **PARKING** : It would be unreasonable, indeed unrealistic, for the Planning Authority to expect dedicated off-street parking to be provided by a hot food takeaway business. An exception would be a major new facility sited outwith town centres.

Accordingly, of more consequence is the availability or otherwise of public parking be it off-street or on-street and the implications for road safety and amenity. The policies for parking in respect of hot food takeaways will be:-

In town centre locations, the availability of public car parking spaces (off-street or on-street) will rarely be a significant planning issue unless objected to by the Director of Roads or Police because of, eg proximity to a busy junction or pedestrian crossing.

Outwith town centre locations, availability or unavailability of public car parking will constitute grounds for refusal if parking impinges on the amenity enjoyed in nearby residential streets or is regarded as presenting a road safety hazard by the Director of Roads or the Police.

5. **FOOTWAYS** : Many hot food takeaways lead to the congregation of members of the public immediately outwith the premises. In certain circumstances this can present a potential road safety hazard. The policy, therefore, will be:

Where in the opinion of the Planning Authority, the footway outside the proposed premises is narrow (less than 1.5 metres) and the adjoining carriageway narrow and busy and as a result is likely to produce a road safety hazard, consent for a hot food takeaway will not be forthcoming.

6. **LITTER** : The dropping of litter by customers is outwith the control of the proprietor and as it is covered by alternative primary legislation, is not a relevant planning issue. However, it is probable that a condition will be attached to any consent requiring the provision of a litter receptacle outwith the premises.

7. **OPENING HOURS** : While it is legitimate for opening hours to be specified in any planning consent for a hot food takeaway, in the interests of fair competition it is appropriate, with few exceptions, for all operators to be treated equally. It is felt that this can be best achieved through the Council's licensing powers. Accordingly, only in exceptional circumstances will an opening hours restriction be imposed upon a planning consent to establish a new hot food takeaway facility.

8. **VENTILATION** : Full details of the means of ventilation, extraction flues, etc., will be required in order to determine their acceptability in terms of functionality, appearance, location, etc. In the case of flues, evidence will be required (eg proof of ownership) to demonstrate that the applicant has the necessary controls to erect the flue at the chosen location and to the standards required by the Director of Environmental and Consumer Protection.

Full details of extraction/ventilation systems and any associated flues will be required as part of any planning application for the establishment of a hot food takeaway outlet, including proof of legal ability to erect any flue along the indicated route.

6 RESTAURANTS AND CAFES

- 6.1 Restaurants and cafes providing hot meals are very closely allied to hot food takeaways and while many of the issues and problems are common, others are not. It would not seem inappropriate then to identify within a policy note for hot food takeaways, the stance that will be taken by the Council in dealing with application for restaurants or cafes.

Except in the following instances the same approach will be taken for all applications for hot food establishments:-

1. **LOCATION** : The Council takes the view that the availability of 'sit-down' eating facilities compliments the shopping experience. Accordingly restaurants and cafes offering such a facility as the primary use will be accepted within designated prime shopping areas.

While restaurants and cafes will not normally be allowed to establish directly below residential property not within the control of the proprietor, subject to suitable sound-proofing measures being installed, a location immediately abutting residential property on the ground floor, may be acceptable in central locations.

2. **PARKING** : Because of the time taken to consume a sit-down meal, the turnover of customer's vehicle is much decreased and there is less temptation to park on double yellow lines. Accordingly, road safety will rarely be an issue in respect of customer parking for restaurants or cafes. Affect on residential amenity, however, might still be relevant in determining a planning application.
3. **FOOTWAYS** : The concerns and policy in respect of narrow footpaths adjacent to takeaway premises, will not be relevant in a restaurant/cafe situation.
4. **LITTER** : Is not a relevant issue where restaurants are concerned and, therefore there will be no requirement to provide an external litter receptacle.

7 FINANCIAL IMPLICATIONS

- 7.1 The only financial commitment will be a small amount for printing the Advice Note which can be easily accommodated within the departmental revenue budget.

8 CONSULTATION

- 8.1 The Chief Executive, Director of Finance, Director Law and Administration and Director of Environmental and Consumer Protection have been consulted in the preparation of this report.

NOTE

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AA/AB/SP/KW

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