

**Name of meeting:** Cabinet

**Date:** 21 September 2022

**Title of report:** Adoption of Hot Food Takeaway Supplementary Planning Document (SPD)

**Purpose of report:**

To request that Cabinet seek to adopt the Hot Food Takeaway SPD.

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>Yes - KDN published 27 July 2022</b>  <b>Affects all electoral wards</b>
<b>Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u>?</b>	<b>Key Decision - Yes</b>  <b>Private Report/Private Appendix - No</b>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	<b>Yes</b>
<b>Date signed off by <u>Strategic Director</u> &amp; name</b>	<b>David Shepherd (Strategic Director - Growth and Regeneration) - 1<sup>st</sup> September 2022</b>
<b>Is it also signed off by the Service Director for Finance?</b>	<b>Eamonn Croston (Service Director - Finance) - 1<sup>st</sup> September 2022</b>
<b>Is it also signed off by the Service Director for Legal Governance and Commissioning?</b>	<b>Julie Muscroft (Service Director - Legal, Governance and Commissioning) - 5<sup>th</sup> September 2022</b>
<b>Cabinet member <a href="http://www.kirklees.gov.uk/you-kmc/kmc-howcouncilworks/cabinet/cabinet.asp">portfolio</a></b>	<b>Cllr G Turner - Portfolio holder Regeneration</b>

**Electoral wards affected:** All

**Ward councillors consulted:**

The following ward councillors have been consulted/briefed on this item:

- Cllr McBride (Note: Cllr McBride is no longer a councillor since May 2022), Cllr Turner, Cllr Khan, Cllr Mather, Cllr Firth briefings
- Economy & Neighbourhood Scrutiny Panel (19 October 2021)
- Leadership Management Team (cabinet members) (7 January 2020, 11 October 2021 & 14 July 2022)
- Planning Committee Chairs briefings: Cllr Lyons, Cllr Hall & Cllr Hussain (7 October 2021)
- Briefing note sent to Cabinet members, Planning Committee Chairs and Lead members (23 September 2021 & 5 July 2022)
- Separate Members briefings:

- Green Party briefing – Cllr's Cooper, Allison and Lee-Richards (21 October 2021)
- Cllr Lukic (7 July 2022)
- Cllr Lawson (14 July 2022)
- Economy & Neighbourhood Scrutiny Panel (30 August 2022) - Briefing on the outcomes of the public consultation

**Public or private:** Public

**Has GDPR been considered?**

The SPD does not contain any personal data. The storage of information received in relation to the consultation on this document will be in accordance with the Planning Policy Privacy Notice which can be viewed on the council's website.

### 1. Summary

The purpose of this report is to seek approval for Cabinet to adopt the Hot Food Takeaway Supplementary Planning Document (SPD) as set out at Appendix 1.

The Hot Food Takeaway SPD is identified in the council's Local Development Scheme to provide further guidance to businesses and the local community on how the Local Planning Authority will assess planning applications for new hot food takeaways under Local Plan policies. The Local Plan Planning Inspector sought confirmation that an SPD was going to be produced in relation to Local Plan policies LP16 (Food and drink uses and the evening economy) and LP47 (Healthy, active and safe lifestyles).

As set out in the National Planning Policy Framework (NPPF) (20 July 2021), Supplementary planning documents (SPDs) are "*Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan*".

The Hot Food Takeaway SPD provides clear guidance about how the council will implement Local Plan policies LP16 and LP47 and how decisions will be made which balance the need to consider the vitality and viability of centres whilst promoting healthy, active and safe lifestyles.

The SPD will embed the objectives from the Council Plan, the Kirklees Health and Wellbeing Plan 2018-2023 and the Healthy Weight Declaration (details are set out on page 9 of the SPD) and provide the context around the wider determinants of health and the role that the SPD can play alongside other initiatives to address the obesogenic environment.

The SPD has been produced through joint working with Public Health, Environmental Health, Waste Services, Planning Development Management, Highways Development Management, Designing Out Crime Officer and Planning Policy to ensure a joined up and justified approach. It is considered an important tool in supporting the council's health objectives and includes signposts to other council initiatives to promote healthy eating and lifestyles.

Once adopted, SPDs are a material consideration in planning decisions, which support relevant Kirklees Local Plan policies, but are not themselves part of the development plan. The date of adoption will be the date of Cabinet, in this case 20<sup>th</sup> September 2022. SPDs are subject to public consultation but not an Examination in Public. Now that the public consultation has taken place, the decision whether to adopt the SPD will be a Cabinet decision. As with all SPDs, we will apply a 'comply or justify' approach where the applicant will need to comply with the guidance unless the council is satisfied evidence provided by the developer warrants a different approach.

### 2. Information required to take a decision

#### Background

The SPD will provide clear guidance to businesses and the local community how the Local Planning authority will assess planning applications for new hot food takeaways in partnership with Public Health and Environmental Health to provide guidance how Local Plan policies LP16 and LP47 will be used. The SPD explains the overall approach to the

location of new hot food takeaway development across Kirklees and applications will be assessed against 7 principles, including:

#### Public Health Toolkit

- Using local health intelligence to inform decision making via a health toolkit (HFT1);  
Town centre vitality and viability
  - Recognising the role of hot food takeaways in the vitality and viability of town and other centres (HFT2);
  - The over concentration and appropriate level of clustering of hot food takeaways in centres (HFT2);  
Proximity to schools
  - Limiting opening hours within 400m of primary and secondary schools (HFT3); and  
Residential amenity principles
  - Limiting the impacts of takeaways in relation to environmental health, highways issues and general residential amenity (HFT4-7).
- 
- Providing signposts to other health initiatives and guidance.

The SPD seeks to provide a framework to support a balanced and fair approach to supporting local business and economic growth whilst also taking steps to ensure our environment supports the health and wellbeing of our residents.

The draft SPD document was considered by LMT on 14<sup>th</sup> September 2021 in advance of public consultation. A presentation on the structure of the documents was taken to Economy and Neighbourhood Scrutiny Panel (19<sup>th</sup> October 2021).

#### Consultation

Public consultation on the draft document took place for 6 weeks (Tuesday 9<sup>th</sup> November to Tuesday 21<sup>st</sup> December 2021).

Planning Policy worked closely with Public Health and Environmental Health to do a wide-ranging targeted consultation that included the following groups:

- Adjoining authorities
- Town & Parish Councils
- Neighbourhood Planning groups
- Statutory consultees
- Kirklees schools
- Kirklees children's groups
- Health related organisations
- Kirklees Employee Networks
- Local groups and organisations
- Local and regional business groups
- Kirklees based fast food chains
- Random sample of Kirklees takeaways
- Fast food related organisations
- Multi nationals
- Kirklees GP surgeries
- Agents Forum
- Private individuals

A summary of the main issues raised during the public consultation and the Council response to those issues is attached at Appendix 2. The main focus of the representations was on:

- The SPD and toolkit are not supplementary to the Kirklees Local Plan policies
- Unreasonable to attribute poor health to hot food takeaways alone
- No evidence to support that hot food takeaways in the vicinity of school's influences health outcomes
- The thresholds of 10% in town centres and 15% elsewhere – why were these thresholds used?
- Unreasonable to ask businesses to close during the day if they cannot be secured. The SPD should allow shutters to be closed during the day

The full consultation process and comments received and how these issues have been addressed in the SPD are set out in the Consultation Statement (Appendix 3). This includes a full schedule of comments received during the consultation on the draft document and the council's responses, including changes made to the documents as a result of consultation. As a result of the consultation the main focus of the principles within the SPD have not changed. The officer's proposed modifications seek to clarify or update existing text and do not represent significant changes. A further consultation exercise is therefore, not required. Cabinet approval is now being sought to adopt the SPD which will be used in the assessment of new hot food takeaways alongside the Kirklees Local Plan and other relevant planning guidance.

### Economy & Neighbourhood Scrutiny Panel - 30 August 2022

The panel raised a number of issues, relating to the content of the SPD, which have been picked up in the main body of the report. The Panel also raised, in summary, the following:

1. The operational date of the document  
*The date of adoption will be the date of Cabinet, in this case 20<sup>th</sup> September 2022.*
2. What type of food outlet does this SPD apply to?  
*This SPD applies to hot food takeaways where planning permission is required, for example new hot food takeaways or applications for a variation of opening times. The definition of a hot food takeaway is set out in the SPD at page 13 (Chapter 3 What is a Hot Food Takeaway?). This chapter also sets out the difference between a restaurant and hot food takeaway. Restaurants will be dealt with under existing Kirklees Local Plan policies.*
3. Education/extent of the issue and is further education included  
*As set out in the SPD at page 6 Kirklees currently has the highest proportion of fast-food outlets per 100,000 population (143.4) and as set out in Appendix 1 Kirklees has significant issues relating to health and well-being in both adults and children.*  
  
*The option of including further education in HFT3 was considered, the main reasons why it wasn't included within the consultation draft was, a lack of evidence to support such an approach, some FE establishments are in the main town centres where HFT3 does not apply and there are no set start and finish times at colleges/further education as pupils can come and go as they please, therefore making it difficult to apply restrictions to these areas.*
4. How do we enforce SPD's?  
*As with all SPDs, we will apply a 'comply or justify' approach where the applicant will need to comply with the guidance unless the council is satisfied evidence provided by the developer warrants a different approach.*

5. Are recycling and litter are covered in the SPD?

*Recycling and litter are covered in the SPD at HFT5 Waste Disposal, where we encourage the applicant to consider recycling and other initiatives such as 'litter picks' in the vicinity of the takeaway. Applicants are also encouraged to consider the use of sustainable food packaging, such as cardboard boxes and paper straws.*

*This however cannot be conditioned as part of a planning application.*

### Options

The council has now reached the adoption stage of the preparation of the Supplementary Planning Document. A wide range of options were considered when preparing this SPD to best address the Council wide, whole systems approach to supporting healthy environments and reducing obesity. It was considered that the SPD as proposed is the best option to meet strategic objectives in the Council Plan and the Kirklees Health and Wellbeing Plan. The alternative option would be not to adopt this guidance document, but this would restrict the Council's ability to deliver planning decisions relating to future hot food takeaways in the district which balance the need to consider the vitality and viability of centres whilst promoting healthy, active and safe lifestyles.

### 3. **Implications for the Council**

The main implications of the SPD for the council are that it adds greater clarity to the application of Local Plan Policy LP16 and LP47 and that it provides consistency and greater clarity for the local community and developers, agents, other stakeholders and development management to facilitate the determination of planning applications. It also provides clear guidance for developers submitting planning applications. The SPD will not only help deliver planning decisions but will support joint council and Public Health outcomes for children and healthy lifestyles.

- **Working with People**

The SPD will enable communities to understand the council's expectations about the approach in considering appropriate locations for hot food takeaways. The council has undertaken public consultation on the SPD in accordance with the Statement of Community Involvement (SCI). It will raise awareness of the Council's whole system approach and the wider work of the Council in providing advice and guidance on healthy eating and healthy lifestyles.

- **Working with Partners**

The SPD will enable developers and statutory consultees to understand the council's expectation with regard to the approach in considering appropriate locations for hot food takeaways. The SPD will signpost businesses and partners to sources of advice on providing healthy food options and other design guidance such as the Kirklees Waste Design Guidance.

- **Place Based Working**

The SPD will balance the need to consider the vitality and viability of centres with places that promote healthy, active lifestyles. The SPD content relating to the impact on residential amenity seeks to protect the quality of places.

- **Climate Change and Air Quality**

The SPD requires that all new hot food takeaways have effective kitchen odour control and extract systems. It also encourages recycling and other initiatives such as 'litter picks' in the vicinity of the takeaway. Applicants are also encouraged to consider

the use of sustainable food packaging, such as cardboard boxes and paper straws. Consideration is also given to adverse impacts on highway efficiency.

- **Improving outcomes for children**

Where planning applications for new takeaways or variation of opening times are considered, the SPD will assist in seeking healthy outcomes for children through the appropriate location of hot food takeaways and principles relating to the opening times of takeaways in a 400m radius of a school. The potential for restricting opening times will also have positive impacts on improving the health of children.

- **Other (eg Legal/Financial or Human Resources)**

Legal - The requirements for producing SPD's are set out in the Town and Country Planning (Local Planning) (England) Regulations 2012 and the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017 including the consultation requirements and sets out that SPDs must not conflict with an adopted development plan.

An assessment of the Council's public sector equality duty has been undertaken in accordance with Equality Act 2010, section 149 in the form of a stage 1 Integrated Impact Assessment (IIA), this concluded that no Stage 2 assessment is required with the assessment being neutral or positive in nature in relation to equality and environmental impacts [Integrated impact assessments | Kirklees Council](#)

A Strategic Environmental Assessment (SEA) screening was undertaken by the council in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004. This showed that a full SEA was not required (Appendix 4).

SPDs must be consistent with the National Planning Policy Framework (July 2021). NPPF, Section 8 Promoting healthy and safe communities, paragraph 92c states that: *"Planning policies and decisions should aim to achieve healthy, inclusive and safe places which: c) enable and support healthy lifestyles especially where this would address identified local health and well-being needs - for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling."*

The council is required to prepare an adoption statement and publish this following the Cabinet decision (Appendix 5).

Financial - This guidance provides further clarity in relation to the implementation of Local Plan policies LP16 (Food and drink uses and the evening economy) and LP47 (Healthy, active and safe lifestyles), in doing so it provides detailed guidance for applicants. The work is included in the Local Development Scheme (LDS); therefore, it has been undertaken within existing budgets.

Human resources - The SPD is identified in the revised LDS and as such existing resources have already been identified for the project. The SPD provides additional guidance to Local Plan policies and its use for development management purposes will help to improve clarity for all which will save time in decision making and enhance the development management process.

## Do you need an Integrated Impact Assessment (IIA)?

An Integrated Impact Assessment (Stage 1) has been undertaken in relation to the SPD. This showed that a Stage 2 assessment was not required. The Integrated Impact Assessments can be viewed at: [Integrated impact assessments | Kirklees Council](#)

### 4. Consultees and their opinions

External - A Strategic Environmental Assessment (SEA) Screening has been undertaken by the council, which concluded that a full SEA is not required. The three statutory consultees (Environment Agency, Natural England and Historic England) agreed with this conclusion and this is set out in the SEA Determination Statements published on the council's website.

Consultation included interested parties identified on the Local Plan consultation portal, statutory consultees, Kirklees schools, children's groups, health related organisations, Kirklees Employee Networks, Community Hubs, local groups and businesses, random sample of Kirklees takeaways, fast food related organisations, multi-nationals and Kirklees GP surgeries.

The appendices to this report set out the consultation comments received in further detail and the council's response including appropriate changes to the documents.

Internal (officers) - Consultation has taken place internally with council officers who input into planning applications (Public Health, Environmental Health) and officers who determine planning applications (Development Management).

Internal (members) - Since the consultation, the following briefing has occurred:  
5 July 2022 – Cllr Turner and Cllr Firth briefed on the outcomes of the consultation and proposal to seek a Cabinet decision to adopt the SPD.  
7 July 2022 – Cllr Lukic briefed on the SPD the outcomes of the consultation.  
14 July 2022 – Cllr Lawson briefed on the SPD the outcomes of the consultation.

### 5. Next steps and timelines

Once the SPD is adopted by Cabinet this will be published on the Council's website and used to determine planning applications.

Following adoption, legislation allows for a three-month period to lodge a legal challenge against the Council's decision to adopt (as set out in Regulation 11d of the Town & Country Planning Act (Local Planning) (England) Regulations 2012). An application can be submitted to the High Court for permission to apply for judicial review of the decision to adopt the SPD.

#### Officer recommendations and reasons

It is recommended that Cabinet:

- 1) Note the contents of this report and consultation responses and the Council's response at appendices 2 and 3.

**Reason:** The Council is statutorily required under Regulation 12 to produce a Consultation Statement before we adopt an SPD. Also, to show transparency on how the Council has responded to consultation comments and subsequent modifications to the consultation draft.



- 2) Adopt the Hot Food Takeaway Supplementary Planning Document (full document set out at Appendix 1). The adoption date is 20<sup>th</sup> September 2022. Once adopted the SPD will be published on the council's website and used to make decisions on planning applications.

**Reason:** The proposed Hot Food Takeaway SPD will provide improved clarity for the community, officers, elected members and developers in determining planning applications in accordance with the Local Plan. The SPD has been appropriately amended following public consultation in November and December 2021.

- 3) Delegate authority to the Strategic Director for Growth & Regeneration to make any further minor modifications to the document that relate exclusively to factual updates, grammatical and formatting corrections for the purposes of publishing the SPD and supporting documents.

**Reason:** To ensure that the council has up-to-date supplementary planning documents and guidance that are as accurate as possible.

## 6. Cabinet Portfolio Holder's recommendations

Cllr Turner was briefed on 5<sup>th</sup> July 2022.

The Cabinet Portfolio Holder recommends that Cabinet should seek to adopt the SPD.

## 7. Contact officer

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## 8. Background Papers and History of Decisions

**Appendices to this report:**

- **Appendix 1 Hot Food Takeaway Supplementary Planning Document (SPD)**
- **Appendix 2 Summary of key issues and Council response**
- **Appendix 3 Hot Food Takeaway SPD Consultation Statement**
- **Appendix 4 Hot Food Takeaway SPD SEA Determination Statement**
- **Appendix 5 Hot Food Takeaway SPD Adoption Statement**

Council website links:

- Integrated Impact Assessments  
[Integrated impact assessments | Kirklees Council](#)
- Local Plan adopted 27<sup>th</sup> February 2019  
[Kirklees Development Plan | Kirklees Council](#)
- Local Plan Examination Library  
[Local Plan examination library and examination news | Kirklees Council](#)
- Hot Food Takeaway SPD Consultation  
[Hot food takeaway supplementary planning document \(SPD\) consultation | Kirklees Council](#)

## 9. Service Director responsible

David Shepherd

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