
**Manchester City Council
Report for Resolution**

Report to: Economy Scrutiny Committee – 9 January 2013
Subject: Hot Food Take-aways and Off-Licences
Report of: Sara Todd - Assistant Chief Executive (Regeneration)

Summary

The report considers the potential to prepare further Council policy to support the management of hot food takeaways and off licences in centres in Manchester.

Recommendations

Request the Executive to ask for a report that evaluates the operation of existing Council policy as it applies to the control of hot food take- aways and off-licences and proposes revisions where these are considered necessary to assist in the Council's objectives of maintaining vibrant successful district centres and the promotion of healthier lifestyles.

Note the recommended policy approach set out in this report to managing hot food take-aways within Manchester's centres, subject to the necessary evidential support.

To establish whether there is an evidential basis to justify the revision of the City Council's Licensing Policy with a view to introducing restrictions:

1. For the grant of licences, or variations to existing licences to extend the hours permitted for the sale of alcohol, for off-licences
 2. In respect of hot food takeaways
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Wards Affected:

All

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1.0 Introduction

- 1.1 The Economy Scrutiny Committee has requested a report that proposes a more radical approach to the management of hot food takeaways and off licences in local and district centres in Manchester, including consideration of a cap on the number of such premises permitted.
- 1.2 The Core Strategy provides the planning policy context for the City, and directs hot food takeaways and off-licences to town, district and local centres, in line with national policy. The policy position outlined in the Core Strategy is to permit this type of development as long as the vitality and viability of a centre is not negatively affected. This is measured by examining cumulative impact, residential amenity and ensuring, as far as possible, that local centres remain vibrant and active during the day and in the evening. While this policy reflects the approach the Council has applied in the past, there is concern that it has not always been successful in maintaining an appropriate balance of uses, over time, in some local centres.. At the same time, Public Health Manchester has been examining the issue of hot food takeaways in terms of their impact on health and is actively involved in a number of initiatives working directly with take-away operators.
- 1.3 Although planning policy can seek to control the number and location of hot food takeaways, planning legislation categorises off licences as shops, and therefore their future management and growth can only be addressed through licensing policy and not through planning control. The City Council has a series of licensing policies to control the location and hours of operation of the off sale of alcohol. In addition it may be possible to adopt a special policy to address problems associated with the cumulative impact of off licences if there have been a series of complaints in a specific area. However, in respect of hot food takeaways any licensing restriction would only have effect between 11pm and 5am, as the sale of hot food and hot drink is not licensable outside of these times. Therefore, a hot food takeaway could operate until 11pm without the need of a licence.

2.0 Main Issues

- 2.1 District and Local Centres are having to adapt to challenging trading conditions. Their role in local shopping provision is affected as a result of changing patterns of shopping and behaviour at a national level undermining the role of centres. Reduced levels of overall spending due to the recession, the increased scope of supermarkets in meeting local shopping needs and the shift to larger regional centres and the internet for non-food shopping are all having an impact. It will therefore be important that any future policy for hot food takeaways and off-licences takes account of this changing context. It is likely that successful district centres will be those that continue to attract visitors throughout the day, based on securing a mix of uses that are able to maintain levels of vitality. This could include retail, employment, services, leisure, hospitality and residential.

- 2.2 Hot food takeaways and off-licences can contribute to the mix of uses in a vibrant centre, adding to diversity and helping to make a centre an attractive place to visit.
- 2.3 However, in recent years and in some centres concern has been growing about the growing numbers of hot food takeaways and off-licences and the impact they are having on neighbourhoods, centres and health. Hot food takeaways and off-licences often locate in district and local centres and small parades, which broadly reflects current planning policy. However, there is concern that an excessive number or concentration of these uses can create issues related to:
1. Loss of vitality, either through the loss of units which could potentially be used for traditional shopping space, or through dead frontages when the premises are closed during the day, especially if concentrated.
 2. Loss of amenity due to noise, smells, disturbances (particularly during the late evening) and litter
 3. Impacts on highway safety
 4. Health impacts related to the quality of diet of the local population
- 2.4 Current Council planning policy aims to manage the development of new hot food takeaways in the light of these considerations, but also judging each case on its specific circumstances. This approach allows judgements to be made and weight to be given to issues relevant to a particular case; and set of circumstances for example in North Manchester new hot food take aways have been granted on the basis of aiding regeneration, where the premises in question remained vacant for some time..
- 2.5 Any licensing policy approach must be formulated in the context of the duty of the Licensing Authority to promote the four licensing objectives set out in the Licensing Act 2003, which are:
- The prevention of crime and disorder;
 - The prevention of public nuisance
 - Public safety; and
 - The protection of children from harm
- 2.6 Issues such as health impacts or loss of vitality in an area are not, therefore, matters that can properly be taken into account when formulating any new licensing policy proposals.

3.0 Approach

- 3.1 Developing a response to these issues will require the Council to consider what changes may be required to existing planning and licensing policy and how such changes should be coordinated with the Council's wider role in managing local neighbourhoods in terms of environmental quality and anti-social behaviour.

Planning Policy

- 3.2 A possible proposed approach would be to seek to introduce a planning policy with an appropriate cap on the number of hot food takeaways across Manchester's centres or the number of non-shop uses within a centre. This could consider any complementary location management and design policies to safeguard vitality of a centre such as:
- Where in a centre permission will be granted for hot food takeaways
 - Limitations on shutters being closed during the day
 - Restricting the concentration of hot food takeaways, for example, no more than two hot food takeaway units together and then at least two other uses before another
- 3.3 This approach may provide greater clarity on the policy context.. It is an approach which has been adopted by other local authorities including Birmingham City Council. However, in order that this policy position is robust, it is important that any cap or other restriction is based on clear evidence that demonstrates the harm that would be caused if the absence of a change in policy. Otherwise, the Council would be exposed to challenges either to the policy itself or to decisions made in the light of the policy.

Licensing Policy

- 3.4 The recommended approach to licensing issues is to establish whether there is an evidential basis to justify the revision of the City Council's Licensing Policies with a view to introducing restrictions on the grant of licences or variations to existing licences to extend the hours permitted for the sale of alcohol for off-licences
- 3.5 In some areas, where the number, type or density of premises selling alcohol is high or exceptional, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from those premises. The potential impact of a concentration of licensed premises upon the licensing objectives (i.e. the "Cumulative impact") is a proper matter for a licensing authority to consider in developing its licensing policy statement, but only in so far as such consideration promotes the licensing objectives set out above.
- 3.6 Where there is appropriate evidence and following public consultation (in accordance with the requirements of the Licensing Act,2003) a licensing authority may be satisfied that it is appropriate to include an approach to cumulative impact in its licensing policy statement, through the implementation of a special policy.
- 3.7 The effect of adopting a special licensing policy in respect of cumulative impact is to create a rebuttable presumption that applications for the grant or variation of a licence (for an off-licence) which are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations (which could be specified by the authority), provided that objections are received against the application. Therefore, in such circumstances, an

application would only be granted where the applicant can demonstrate in their application that there will be no negative cumulative impact on one or more of the licensing objectives.

- 3.8 The licensing of hot food takeaways is limited to only between the hours 11pm and 5am, where the sale of hot food and hot drink is a licensable activity defined as “the provision of late night refreshment” under the Licensing Act 2003. Establishing an evidential basis of the Cumulative Impact of hot food takeaway premises, is likely to be even more difficult than it is for off licences, given that any special policy could only restrict the operation of such premises between those limited hours.

4.0 Next Steps

- 4.1 There is separate planning and licensing legislation relevant to hot food takeaways and off licences. Consequently, there are different objectives and procedures in respect of which new planning and licensing policies can be prepared. Although potentially part of a cohesive Council policy response, the planning and licensing policies would require discrete production processes. Therefore, to develop this work further the City Council could seek to:
- Prepare a Supplementary Planning Document to assist with the implementation of the Leisure and Evening Economy Core Strategy policy (C9)
 - Explore whether there is an evidential basis to propose the adoption of Special Licensing policies relating to cumulative impact within the Council’s Statement of Licensing Policy to restrict the grant of further licences in respect of hot food takeaways (trading after 11pm) and off-licences within any areas of the city.
- 4.2 To take this forward Scrutiny are recommended to request that Executive ask for a report requesting that, where feasible, the Council’s respective planning and licensing policies are updated to incorporate further controls on the increase in the numbers of hot food takeaways and off-licences, where such controls are based on robust evidence and within the parameters of the Planning and Licensing regimes, as relevant.
- 4.3 To prepare a robust and defensible planning policy, evidence will need to be prepared to underpin the detailed policy approach. Once the policy is drafted a period of stakeholder engagement will follow and then there is an opportunity for any modifications to be made before final adoption. Similarly, there should be an evidential basis for any decision to include a special policy relating to cumulative impact within the statement of licensing policy.
- 4.4 The steps to be followed in considering whether to adopt a special policy within the statement of licensing policy are set out in statutory Guidance to the Licensing Act by the Secretary of State as follows:
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- Identify concern about crime and disorder; public safety; public nuisance; or protection of children from harm.

- Consider whether there is good evidence that crime and disorder or nuisance are occurring, or whether there are activities which pose a threat to public safety or the protection of children from harm.
- If such problems are occurring, identify whether these problems are being caused by the customers of licensed premises, or that the risk of cumulative impact is imminent.
- Identify the boundaries of the area where problems are occurring (this can involve mapping where the problems occur and identifying specific streets or localities where such problems arise).
- Consult with the public and particular bodies specified under the Licensing Act 2003 e.g. Police, and subject to the outcome of the consultation, include and publish details of the special policy in the licensing policy statement.

5.0 Conclusion

- 5.1 For the City to deliver neighbourhoods of choice including vital and vibrant district and local centres it is important to gain a better understanding of the challenges and opportunities facing district and local centres in the light of changing shopping patterns, including some assessment of the commercially realistic range and scale of different uses. As part of the development of the policy it is proposed that there would be some form of assessment related to the commercial aspects of District Centre uses, and ensure that this policy complements wider work through District Centre plans and further Local Development Framework documents. From this it would be possible to understand and respond to concerns regarding the future role of centres within the city and within this context consider how uses such as hot food takeaways and off-licenses contribute, and the best strategy to balance positive and negative impacts.