

Report of:	Director of Regeneration, Richard Horniman Executive Member for Regeneration, Cllr Ashley Waters
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Submitted to:	Executive 17 th March 2020
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Subject:	Revision of the Interim Hot Food Takeaway Policy
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Summary

Proposed decision(s)
That Executive approves the revision of the Interim Hot Food Takeaway Policy.

Report for:	Key decision:	Confidential:	Is the report urgent?
Decision	Yes	No	No

Contribution to delivery of the 2020-23 Strategic Plan		
People	Place	Business
This proposal will support the Council’s aim to improve health and wellbeing, and will make a direct impact on tackling obesity, by making it more difficult to open hot food takeaways.	Fewer takeaways will make a positive contribution in transforming our town centre, and will help to make Middlesbrough look and feel amazing.	The policy will help rebalance uses in our town centre, making it more vibrant and vital, which will result in positive perceptions of our town.

Ward(s) affected
All Wards

What is the purpose of this report?

- To seek approval to revise the Interim Hot Food Takeaway Policy.

Why does this report require a Member decision?

- Whilst not a statutory planning matter, this report is seeking approval for changes to the Interim Hot Food Takeaway Policy, which is adopted Council policy. Such decisions require Executive approval.

Report Background

3. In July 2019, the Council agreed a new timetable for preparing the Local Plan. This was to help facilitate a review of the priorities contained within the draft plan, in order to address a number of improvements, including a greater focus on town centre living, and to allow sufficient time to re-establish the evidence base in compliance with new national planning policies.
4. As part of this decision, it was also agreed that the Council would adopt the emerging Hot Food Takeaway Policy on an interim basis. This specific topic is not covered by an existing policy, and it was considered that a policy was needed to give the Council a basis upon which to make decisions on future planning applications, to help control the proliferation and concentration of these uses.
5. Since the interim policy came into effect, it has become apparent that part of the policy is not working as originally intended. The policy requires the submission of a Health Impact Assessment (HIA), with permission not being granted where adverse health impacts are identified. The purpose of this was to encourage new Hot Food Takeaways to become healthier. However, colleagues in Public Health have confirmed that there will be no circumstances where a Hot Food Takeaway would not result in an adverse health impact, and that they would be offering a standard objection on health grounds to every planning application for such uses. Part of the reason for this is that once planning permission is obtained, it is not possible to control either the operator/occupier of the premises or the menu being offered.
6. The consequence of this is that the HIA will not have any impact on the Council's determination of the application. As such, the interim policy is currently placing an unnecessary additional requirement on applicants. It is likely that at least some applicants would incur additional costs in order to satisfy this aspect of the interim policy and, as such, there is a risk that any refusals that are subject to an appeal could result in costs being awarded against the Council, regardless of whether the appeal is successful or not.
7. In addition, there is a minor wording error under bullet c. of the interim policy. The reference to 'designated Shopping Frontage' should refer to 'designated Primary Shopping Frontage'.
8. It is, therefore, recommended that the interim Hot Food Takeaway Policy be amended to remove the requirement for planning applications to be accompanied by a HIA (bullet point e.), and for bullet c. to be amended to include the term 'designated Primary Shopping Frontage' (see Appendix 1).

What decision(s) are being asked for?

9. That Executive approves the revised Interim Hot Food Takeaway Policy.

Why is this being recommended?

10. To ensure the Interim Hot Food Takeaway Policy is appropriate for use, does not place unreasonable burdens on those making planning applications for hot food takeaways, and to minimise the exposure of the Council to the risk of costs associated with any future appeals against the refusal of such applications.

Other potential decisions and why these have not been recommended

11. **To continue to use the Interim Hot Food Takeaway Policy as it is** – Should the decision be made to continue to use the interim policy as it is, the Council would be asking those who are making planning applications to undertake further work than is necessary, which would ultimately not influence the decisions being made. This could be considered unreasonable and may lead to costs being awarded against the Council should refused applications be subject to appeal.
12. **To revoke the Interim Hot Food Takeaway Policy** – Should the Council revoke the interim policy it would be reliant on existing policies from the Local Plan for making decisions on planning applications for hot food takeaways. The interim policy was introduced to provide a basis for preventing the proliferation and concentration of hot food takeaways; revoking the policy would remove this basis, and it would become more difficult to control these uses.

Impact(s) of recommended decision(s)

Legal

13. The Interim Hot Food Takeaway Policy is a Council policy, but does not form part of the statutory development plan. It is a material consideration in the consideration of planning applications for hot food takeaways.

Financial

14. The costs associated with the revision and implementation of the Interim Hot Food Takeaway Policy will be met from established service budgets.

Policy Framework

15. This decision does not amend the policy framework.

Equality and Diversity

16. The impact of the changes has been assessed and will not have a negative impact. The impact assessment is attached at Appendix 2.

Risk

17. The Interim Hot Food Takeaway Policy currently places an additional burden to prepare a HIA on those making planning applications for hot food takeaways. The Council's Public Health Team have advised that the completion of these assessments will not affect their response to planning applications, meaning that they will not influence the decision of the Council. This is considered to be unreasonable as there are likely to be additional costs involved in preparing assessments. There is, consequently, a risk that any appeals against Council decisions to refuse hot food takeaways could result in an award of costs against the Council if HIAs are continued to be sought.
18. The revision to the Interim Hot Food Takeaway Policy would have a positive impact on the Council's risks. It will support economic growth (O1-005), and make a positive impact on the retail environment (O1-050).

Actions to be taken to implement the decision(s)

19. The Interim Hot Food Takeaway Policy will be amended to remove the requirement for planning applications to be accompanied by a HIA (bullet point e.), and for bullet c. to be amended to include the term 'designated Primary Shopping Frontage', and placed on the Council's website. The revised interim policy will become a material consideration in the determination of planning applications for hot food takeaways.

Appendices

- Appendix 1: Revised Interim Hot Food Takeaway Policy
- Appendix 2: Impact Assessment

Background papers

20. No background papers were used in the preparation of this report.

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