Micro scale health decision making and the challenge of the policy and regulatory construct

Adam Sheppard
UWE Bristol
Adam.Sheppard@uwe.ac.uk
Proposition...

*If* planning has intentions to further influence health, wellbeing and lifestyle at the micro scale then it is potentially poorly positioned to realise this in some areas and is arguably being undermined by regulatory changes, inadequate policy, and decisions.
Health in history

• The emergence of the modern planning system has origins in public health legislation – the welfare reforms of the 19th Century

• Focused primarily upon amenity and sanitary conditions

• Health and planning are intrinsically linked

• Emphasis (overt) has ebbed and flowed but prominent currently.
How intervention has manifested itself

• Health and wellbeing (in the broadest sense of the words) in planning policy; national and local

• Health Impact Assessments in association with major development proposals

• Supplementary Planning Documents

• Regulatory changes:
  o 2005 – A3 (food and drink) use class divided into A3 (café/restaurant), A4 (drinking establishments), and A5 (hot food takeaways) (England)
  o Betting shops and payday loans become Sui Generis (England)
  o Casinos in Sui Generis (England)

• Burgeoning academic interest in this area
A clear ambition...

NPPF Para. 7 - There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

• an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

• a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and

• an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.
‘What is the role of health and wellbeing in planning?*

Paragraph: 001 Reference ID: 53-001-20140306

‘Local planning authorities should ensure that health and wellbeing, and health infrastructure are considered in local and neighbourhood plans and in planning decision making. Public health organisations, health service organisations, commissioners and providers, and local communities should use this guidance to help them work effectively with local planning authorities in order to promote healthy communities and support appropriate health infrastructure.’
• Strategic Objectives - 5. **Better health and wellbeing**: a pattern of development and urban design that promotes good health and wellbeing and provides good places and communities to live in. Bristol will have open space and green infrastructure, high quality healthcare, leisure, sport, culture and tourism facilities which are accessible by walking, cycling and public transport. This will help enable active lifestyles, improve quality of life and reduce pollution.

• Policy BCS21- Quality Urban Design: Deliver a safe, **healthy**, attractive, usable, durable and well-managed built environment comprising high quality inclusive buildings and spaces that integrate green infrastructure.

+ Health care provision, Green infrastructure, Social and travel infrastructure etc
Policy DM14: The Health Impacts of Development:

Development should contribute to reducing the causes of ill health, improving health and reducing health inequalities within the city through:

i. Addressing any adverse health impacts; and

ii. Providing a healthy living environment; and

iii. Promoting and enabling healthy lifestyles as the normal, easy choice; and

iv. Providing good access to health facilities and services.

Developments that will have an unacceptable impact on health and wellbeing will not be permitted.

A Health Impact Assessment will be required for residential developments of 100 or more units, non-residential developments of 10,000m² or more and for other developments where the proposal is likely to have a significant impact on health and wellbeing. Where significant impacts are identified, measures to mitigate the adverse impact of the development will be provided and/or secured by planning obligations.
The challenge

Policy application

Decision making limitations

Structural approach

Regulatory limitations
The challenge

• The challenge of application within a *discretionary* planning system:

Policy DM14: The Health Impacts of Development:

“...Developments that will have an *unacceptable impact* on health and wellbeing will not be permitted.”

How do we demonstrate this?

• From the perspective of health, hot food takeaways have been expressly targeted
Target: Takeaways

• Takeaways particular have amenity and vitality challenges

• They also appear to have distinct health implications:

“*There is evidence that there are elevated levels of obesity in communities with high concentrations of fast food outlets (Zenk 2009) and further evidence that such concentrations are highest in areas of greatest deprivation (PHE 2014a). There is also evidence that the type of food on sale nearest to schools may influence the diet of schoolchildren. (Engler-Stringer, 2014; Smith, 2013)*”

LGA (2016) Tipping the Scales. Pg. 5-6

• They *can* be influenced
Target: Takeaways (Case Study Bristol)

Policy DM10: Food and Drink Uses and the Evening Economy:

i. The number, distribution and proximity of other food and drink uses, including those with unimplemented planning permission; and

ii. The impacts of noise and general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas; and

ii. The availability of public transport, parking and servicing; and

iv. Highway safety; and

v. The availability of refuse storage and disposal facilities; and

vi. The appearance of any associated extensions, flues and installations.

Takeaways in close proximity [400m] to schools and youth facilities will not be permitted where they would be likely to influence behaviour harmful to health or the promotion of healthy lifestyles.
Case law: (Source – Development Control Practice) 
*The need to consider*

- *Copeland v London Borough of Tower Hamlets 11/6/2010* – Found that the council had **acted unlawfully** in granting planning permission for a takeaway by failing to take into account the **proximity of a secondary school with a healthy eating policy as a material consideration** even though the council had **no planning policy** relating to this issue.

- The council subsequently decided that the scheme would add to the proliferation of takeaways which would erode its ability to combat the effects of poor diet in the local community. It highlighted the proximity of various schools and that the premises would attract children. On appeal the inspector agreed that the council’s core strategy did seek to reduce an over-concentration of uses that would detract from the ability of residents to adopt healthy lifestyles but found **no over-concentration within 300 metres of the site** and there was no clear-cut evidence that the proposal would increase child obesity or undermine the healthy eating policies in local schools. The appeal was allowed.
Case law: (Source – Development Control Practice)
Considering the context and supporting the intention

- Newham 25/05/2012 – Takeaway with residential over and rear flue exiting in close proximity to window in a predominantly residential area.
- Weight given to a policy where cumulative impact with nearby takeaways on health discussed.
- Site would breach a 400m takeaway exclusion zone around secondary school
- Site would unacceptably add to existing concentration.
- Inadequate details provided regarding mitigating measures for flue noise and fumes nuisance and disturbance with likelihood of unacceptable impact upon residential flat above
- Appeal dismissed.
Case law: (Source – Development Control Practice)

Consideration, not refusal

• ‘Waltham Forest (07/12/2010) - A location within 40m of a park was found to be in conflict with the council’s SPG:

  “With regard to proposals which fall outside designated town centre and local parade locations, hot food takeaway shops will be resisted where the proposal will: 1. Fall within 400m of the boundary of an existing school or youth centered facility (e.g. YMCA, after school clubs). 2. Fall within 400m of a park boundary.”

• This was considered on balance to be insufficient grounds for withholding permission (Appeal dismissed for other reasons).

• The need to demonstrate harm....
Case law: (Source – Development Control Practice)

Our life choices

- East Riding of Yorkshire 25/08/2011

- The inspector concluded that the college promoted healthy lifestyles and accordingly the students had the ability to make an informed choice on whether to use the facility on a regular basis

- Healthy lifestyles and childhood obesity discussed noting site was near to a college but decides students have sufficient knowledge to make choices and other hot food available nearby
Case law: (Source – Development Control Practice)

Responsible adults and life choices

• ‘A distinction between primary and secondary schools has been made in two cases. In Islington 20/06/2012 the inspector concluded that children of primary school age would be accompanied by an adult who would be able to guide food choices.

• In Rotherham 09/01/2012 the inspector similarly considered it that unlikely that children would travel to and from school unaccompanied by an adult and pointed out that the children would not normally be permitted to leave the premises at midday.’
Case law: (Source – Development Control Practice)

Access and conditions

• Barking and Dagenham 11/02/2011 – ‘A takeaway was found to have a neutral effect on the health and wellbeing of local residents notwithstanding its location within 400 metres of a primary school in conflict with an SPD, but in that case the inspector had regard to the appellant’s willingness to accept a condition requiring its counter service to close between 15:00 hours and 16:30 hours on school days’

• Brighton and Hove 03/03/2011 – ‘the issue of proximity to a secondary school was given substantial weight despite there being no relevant development plan policy but the health issue was considered to be satisfactorily addressed by a planning condition to restrict sales to after 16:00 hrs.’
Target: Takeaways

• Clear challenges with detailed and specific policy application

• Lifestyle choices

• Reasonable controls through conditions

• Planning as part of a holistic approach....but how much a part at the micro scale?

Making use of their licensing powers as part of healthy weight and healthy school strategies, some councils have taken steps to improve the offer or restrict the location of street food vendors (which are not covered by the planning system).

Guildford City Council introduced a street trading policy which requires at least one healthier meal option to be provided on the menus of street food vendors.

www.guildford.gov.uk/CHttpHandler.ashx?id=1808&p=0

Hillingdon Council passed a resolution prohibiting ice cream vans from trading in the vicinity of schools.

www.hillingdon.gov.uk/article/19042/itinerant-ice-cream-sales

After being approached by head teachers, Leicester City Council introduced a new street trading policy to prevent burger vans trading outside school gates.


LGA (2016) Tipping the Scales. Pg. 7
Policy application

The challenge

Decision making limitations

Structural approach

Regulatory limitations
The regulatory challenge

• The regulatory construct does not support wider control concerning health, wellbeing and lifestyle

• A [necessarily?] rigid regulatory construct in a dynamic world

• The distinct classification of A5 (Takeaways) allows for a degree of control but...

• ...the impact of the controls that exist could be argued to be limited and opportunistic in some respects
<table>
<thead>
<tr>
<th>Food</th>
<th>Fat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chip shop chips</td>
<td>30g (medium serving)</td>
</tr>
<tr>
<td>Starbucks (A3) cookie</td>
<td>19g</td>
</tr>
<tr>
<td>Greggs (A1/A3) Sausage roll</td>
<td>25g</td>
</tr>
<tr>
<td>Subway (A1/A3) Chicken and Bacon Ranch Melt</td>
<td>30g</td>
</tr>
<tr>
<td>Melton Mowbrey Pork Pie (Tesco – A1)</td>
<td>36g</td>
</tr>
<tr>
<td>The overpriced and frankly underwhelming chicken and bacon sandwich I bought from SPAR (A1) yesterday</td>
<td>20g</td>
</tr>
</tbody>
</table>
The regulatory challenge

<table>
<thead>
<tr>
<th>Cafe</th>
<th>Drink</th>
<th>Category</th>
<th>Sugar per serving (g)</th>
<th>Teaspoons of sugar per serving**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starbucks</td>
<td>Hot mulled fruit - Grape with chai, orange, and cinnamon - Venti</td>
<td>Hot mulled fruit</td>
<td>99.0</td>
<td>25</td>
</tr>
<tr>
<td>Costa</td>
<td>Chai latte - Massimo - Eat In</td>
<td>Chai latte</td>
<td>79.7*</td>
<td>20</td>
</tr>
<tr>
<td>Starbucks</td>
<td>White chocolate mocha with whipped cream - Venti</td>
<td>White mocha</td>
<td>73.8*</td>
<td>18</td>
</tr>
<tr>
<td>Starbucks</td>
<td>Signature hot chocolate - Venti</td>
<td>Hot chocolate</td>
<td>60.0*</td>
<td>15</td>
</tr>
<tr>
<td>KFC</td>
<td>Mocha</td>
<td>Mocha</td>
<td>58.8*</td>
<td>15</td>
</tr>
<tr>
<td>Caffe Nero</td>
<td>Caramelatte - Drink in</td>
<td>Caramel latte</td>
<td>50.6*</td>
<td>13</td>
</tr>
</tbody>
</table>

* Contains some sugars (lactose) naturally occurring in the milk
** 4 grams of sugar is equal to 1 teaspoon of sugar

Source: Action on Sugar
The challenge

Policy application

Decision making limitations

Regulatory limitations

Structural approach
Elsewhere….planning loses control...

• Permitted Development Rights for Office (Light Industrial and Warehouse) to Residential only considers:
  (a) transport and highways impacts of the development;
  (b) contamination risks on the site,
  (c) flooding risks on the site; and
  (d) Noise

• Permitted Development Rights (Prior Approval) for Agricultural to Residential use specifically excludes sustainability of location
A clear ambition...?

NPPF Para. 7 - There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

• **an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

• **a social role** – supporting strong, vibrant and **healthy** communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and

• **an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.
Compromising the proportionality hierarchy
The challenge

Policy application

Decision making limitations

Structural approach

Regulatory limitations
Limited scope of controls

- Betting shops, payday loan shops and casinos all now Sui Generis in England.
- Provides the need for permission and \textit{potential} for control
- Limitations of ability to resist change – principally concerning retail impact (vitality and viability) and amenity:
  - Demands a policy basis; and
  - Demands evidence
- Planning verses licensing (see hot food takeaways too)
- How far will we accept state intervention? Lifestyle choices? Morals?
Case law: (Source – Development Control Practice)
Limited scope of controls

• In Guildford 21/05/2007 DCS No 100-048-996 a leisure development including a casino. The inspector took into account written objections to the casino on moral grounds concerning the social impacts of providing more gambling opportunities but remarked that the licensing regime remained the primary focus for considering such points.

• An amusement centre was proposed in a shopping street in Portsmouth 12/08/1999 DCS No 032-034-414, objectors suggested that the use would have a “negative influence”. However, the inspector took the view that moral issues did not in themselves form a proper planning consideration.

• A bingo use was proposed at the Maryhill Shopping Centre, see Glasgow 11/04/1995 DCS No 046-564-240. A reporter noted that he recognised the instinctive feeling of some residents and councillors that bingo will not assist people struggling to survive on a low income, but it is not part of the planner’s role to act as licensing authority.
A hierarchy of answers required...

• If planning is to become more influential in health, wellbeing and lifestyle choices (and morality?), the micro scale needs considering – should it be doing this?

• If planning is to become more influential in health, wellbeing and lifestyle choice at the micro scale, stronger policy and guidance is required – is this wanted?

• If planning is to become more influential in health, wellbeing and lifestyle choices at the micro scale, regulatory change is required – is this possible?

[And we need to stop compromising the system]
Adam Sheppard
JDLC Course Director and Senior Lecturer
Department of Geography and Environmental Management / Centre for Sustainable Planning and Environments
University of the West of England (UWE)
Frenchay Campus – 3Q13
Coldharbour Lane
BRISTOL
BS16 1QY
United Kingdom
tel. +44 (0)117 3283070
centre. adam.sheppard@uwe.ac.uk

Upcoming book – The Essential Guide to Planning Law in the UK:
https://policypress.co.uk/the-essential-guide-to-planning-law

Centre for Sustainable Planning and Environments:
http://www1.uwe.ac.uk/et/research/spe.aspx
Course Director for the MSc Urban and Rural Planning by
distance learning: http://courses.uwe.ac.uk/K44062/2016