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Sir/Madam  
Solihull Metropolitan Borough Council  
Policy and Engagement  
Solihull MBC  
Solihull  
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Date: 14<sup>th</sup> Dec 2020

Dear Sir/Madam

**ON BEHALF OF DOMINO'S PIZZA UK & IRELAND****REPRESENTATIONS TO THE SOLIHULL LOCAL PLAN REVIEW – POLICY P18 HEALTH AND WELLBEING**

On behalf of our client, Domino's Pizza UK & Ireland, please find below representations in respect of Policy P18 of the draft submission version of the Solihull Local Plan Review.

**INTRODUCTION**

It is recognised that across the United Kingdom, obesity is a public health issue. We support the policy's aim of promoting healthier living and tackling obesity. However, the proposed policy approach is unsound and fails to provide an evidence-based way of achieving the policy's objective. Such an approach has been found unsound by several planning inspectors elsewhere, both at appeal and Local Plan examination stage.

It is too restrictive and prevents a more positive policy approach as advocated by national policy. The London Borough of Waltham Forest has had such policy in place for over a decade and its application has proven ineffective in tackling obesity. Furthermore, Nottingham City Council have very recently had a similar policy thrown out by the Local Plan Inspector.

The Framework states that Local Plans should "plan" positively for development; be justified; effective; and consistent with the Framework. We consider that limiting the proximity to local schools of hot food takeaways and limiting their number within a centre without appropriate evidence would be unsound. We have not been able to find within the background papers any adequate evidence to justify the underlying assumption, that locating any A5/Sui Generis use within certain distances of schools causes adverse health consequences, which would in turn have negative land use planning consequences.

In summary, it is considered that the evidence for this policy does not provide the link necessary to justify the restrictions which imposes a blanket ban on A5/SuiGeneris uses within 400-metres from schools, youth centre or similar location. Nor is there sufficient evidence to demonstrate the need for restricting the number of such uses within a Centre or frontage, given the important role such uses have in the vitality and viability of Centres.

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## THE POLICY

Policy P18 covers a range of health and wellbeing matters. It seeks to identify opportunities for new development to promote health and wellbeing (criteria 1 and 2). Criteria 6 to 10 outlines the need for all developments that may have a significant impact on health and wellbeing will be required to submit a Health Impact Assessment.

The main thrust of this representation, however, relates specifically to the criteria relating to Hot Food Takeaway operations. The draft policy states:

3. *Proposals for hot food takeaways, or premises which will provide an element of hot food takeaway alongside other supporting uses, should not lead to an overconcentration of such uses within any one individual locality by overly dominating the street scene or have an adverse impact on the standard of amenity for existing and future occupants of land and buildings. It is also appropriate to control the number of outlets where there are concerns regarding levels of obesity.*
4. *Applications for hot food takeaways will be based on the following factors:*
  - i. *Within the three main town centres, no more than 15% of the units will be in use as a hot food takeaway;*
  - ii. *Within local centres and local parades, no more than 10% of the units will be in use as a hot food takeaway;*
  - iii. *At all locations no more than 2 hot food takeaways should be located adjacent each other.*
5. *Applications for hot food takeaways will not be granted within a 400m radius from an entrance to a primary or secondary school, youth centre or similar location.*

## DOMINO'S PIZZA

Domino's Pizza pride themselves on their responsibilities to the communities within which they operate. Community values have always been at the heart of what they do; including their charitable funding, links with community groups and more recently assisting in keeping key workers fed during the difficulties of the pandemic. In addition, Domino's are particularly sensitive in who they target from a marketing perspective.

In terms of health and obesity, Domino's pizza pride themselves on great quality ingredients, including 100% mozzarella and vine ripened tomatoes.

In 2016, they set up a dedicated internal steering group focused on ensuring they make progressive changes to their food ahead of evolving customer expectations.

They want their customers to be in charge. Customers are able to choose the toppings, the crust, the type of cheese and most importantly, the number of slices they eat. They offer low fat options for their toppings including different types of cheeses and work hard to be transparent, giving customers information and choice to make informed decisions.

In August 2016 and March 2017, the Government published its Childhood Obesity Strategy and specific product category targets respectively, with the latter outlining requirements to reduce sugar across a range of product categories in the UK. Domino's have formulated a selection of products in line with category targets and continue to work towards the 20% reduction target. Any trans-fats within their products were removed several years ago.

They also continue to work with suppliers to reduce the amount of salt in their products. They have achieved the Food Standards Agency salt targets for 2017 on individual ingredients, as well as the Public Health England Out of Home Salt Targets.

From a marketing perspective, Domino's have made significant changes in recent years, partly as a result of changes in Government legislation, but also in light of Domino's focus on their community responsibility. In terms of their marketing strategy, the following is highly relevant:

- They do not target under-16s in any advertising;
- All advertising on digital channels is actively targeted at 18-year-olds and above;
- Ensure they do not use influencers with >25% of their fan base consisting of under-16s

- Advise the franchisees against engaging in promotional activity near schools or children’s playgrounds; and
- They advise franchisees against using characters aimed at under-16s in their promotional activity, such as superheroes and Danny Domino.

Domino’s may be a famous international brand, but each Domino’s store is an important part of its community, providing employment for local people and choice for local pizza lovers.

## REPRESENTATIONS

Outlined below are our comments in respect of criteria 3-5 of draft policy P18. This should be read in conjunction with the representation form submitted alongside.

### 5. Whether the Policy is legally compliant, sound, or has complied with the duty to co-operate

#### The Requirement from the NPPF

The NPPF clearly states at paragraph 81:

*“Planning policies should:*

- a) set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration;*
- b) set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;*
- c) seek to address potential barriers to investment, such as inadequate infrastructure, services or housing, or a poor environment; and*
- d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.”*

[emphasis added]

Section 8 of the Framework addresses the matter of health and safe communities. In paragraph 91c it states:

*“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.”*

It is noteworthy that the policy is positively worded by encouraging planning decisions and policies to aim to achieve access to healthier food. It does not seek to restrict access to unhealthy food.

Notwithstanding this, Planning Practice Guidance does identify the potential to manage certain uses albeit with some strong caveats, stating:

*“Planning policies and supplementary planning documents can, where justified, seek to limit the proliferation of particular uses where evidence demonstrates this is appropriate (and where such uses require planning permission). In doing so, evidence and guidance produced by local public health colleagues and Health and Wellbeing Boards may be relevant.”<sup>1</sup>*

It continues to confirm that certain issues will influence the decision, including:

- *proximity to locations where children and young people congregate such as schools, community centres and playgrounds*

<sup>1</sup> <https://www.gov.uk/guidance/health-and-wellbeing>

- *evidence indicating high levels of obesity, deprivation, health inequalities and general poor health in specific locations*
- *over-concentration of certain uses within a specified area*

National policy contains no support for a policy approach containing a blanket ban or exclusion zone for A5 (or indeed any other) uses. Such an approach conflicts sharply with central planks of Government policy such as the need to plan positively and support economic development, and in particular the sequential approach that seeks to steer town centre uses – which include A5 uses - to town centres.

### What Other Inspectors have done

The number of instances where Appeal or Local Plan Inspectors have gone against Local Planning Authority decisions or policies in relation to hot food takeaways and their location to local schools is growing. This submission seeks to identify two such cases, one appeal and one local plan example.

The first case (ref: APP/H4315/W/19/3228033) involved an appeal by Brothers Burger to allow an A5 use at an A3 restaurant in St Helens. St Helens Metropolitan Borough Council's SPD advises that permission for a hot food takeaway will only be granted provided that it is located beyond a 400m exclusion zone around a primary or secondary school. Despite the fact that the appeal site was within 400m of not just one, but three primary schools, the Inspector allowed the appeal stating that *'it seems unlikely that primary age pupils would be allowed to travel off the school premises to the site during school hours in order to purchase food'*. The Inspector was not persuaded that *'healthy eating by school pupils, or indeed any resident in the locality, is likely to be affected to such a degree in this instance that the appeal should fail'*.

Nottingham City Council issued a draft Land and Planning Policy Document (Part 2 Local Plan)<sup>2</sup> which included Policy LS1 which required the following (relevant section underlined):

*Outside the City Centre, as shown on the accompanying Policies Map, planning permission will be granted for development involving food and drink uses (Use Class A3, A4 and A5) and licensed entertainment venues where:*

- a) the proposal is located within an existing Centre, or meets the requirements set out in SH4;*
- b) the proposal is compatible with the scale, character and function of any Centre in which it is located, and maintains or enhances the vitality and viability of that Centre;*
- c) the proposal would support and not undermine any local development strategy for the area and / or up to date and adopted SPD for the site, Centre or area;*
- d) the proposal would not result in any unacceptable impacts on nearby residents and occupiers in terms of noise and disturbance (generated either inside or outside the premises and by activity attributable to its operation), vibration, fumes, waste generation, litter, anti-social behaviour and crime having regard to the effectiveness of available measures to manage potential harm through the use of planning conditions and / or obligations;*
- e) the cumulative impact of food, drink and entertainment uses, in the Centre or area, taking into account the number and distribution of existing premises, and any evidence of harm caused by such uses is not of an unacceptable level;*
- f) the proposal would not result in a prejudicial effect on future residential development initiatives; and*
- g) in the case of an A5 (hot food takeaway use), it is located within an existing Centre or at least 400 metres from a school or it can be clearly demonstrated that the proposal will not have a negative impact on health and wellbeing.*

As a result of various representations made to the draft policy and following heated debate during the Examination hearings, the Local Plan Inspector for Nottingham City Council in his report to the Council, dated December 2019 states (para.196):

<sup>2</sup> [Nottingham City Land and Planning Policies Development Plan Document \(Local Plan Part 2\), Publication Version, January 2016](#)

*“This policy aims to ensure that proposals for food, drink and licensed entertainment venues outside the City Centre are appropriately located and sets criteria against which such development proposals will be considered. At present the policy seeks to prevent the development of A5 (hot food takeaway) uses outside the City Centre other than within an existing Centre or at least 400 metres from a secondary school unless it can be clearly demonstrated that it will not have a negative impact on health and wellbeing. This aspect of the policy was the subject of much discussion at the hearing sessions and has the support of the Local Clinical Commissioning Group and the Health and Wellbeing Board. However, I am not satisfied that there is sufficient evidence to support the link suggested between childhood obesity and the concentration or siting of hot food takeaway uses within 400m of a secondary school so as to justify this specific criterion of the policy and, in any event, consider it unlikely to be effective. Therefore, MM31 is necessary to ensure that the policy is justified and effective by deleting this criterion.”*

In line with the Inspector’s modification, the adopted plan has excluded the relevant criterion from its policy – Policy LS1 of the Land and Planning Policy Document (Part 2 Local Plan)<sup>3</sup>.

### What is the evidence for the Policy?

The evidence base which informs this policy consists of the following two documents

- Solihull Health and Wellbeing Strategy 2019 – 2022; and
- Joint Strategic Needs Assessment – Evidence Summary (January 2019)

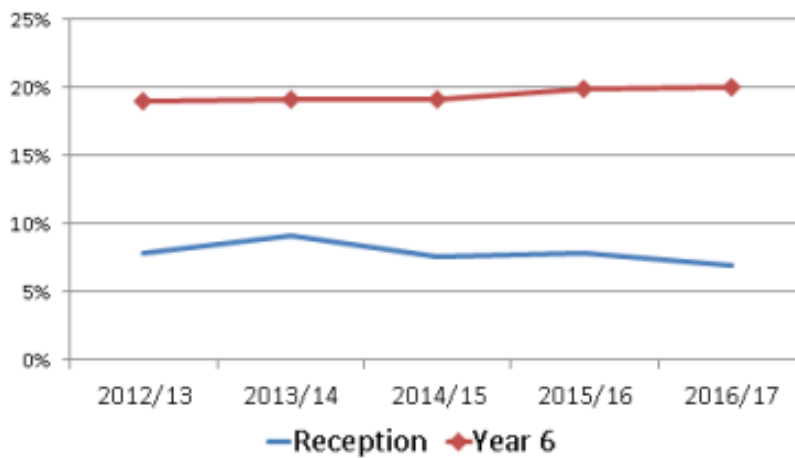
Both documents highlight the importance of making healthy dietary choices to stay healthy and reduce ill health, a position we would agree with. However, the Joint Strategic Needs Assessment (JSNA) also sets out some context as to the current position in Solihull in respect of childhood obesity. Pages 13 to 18 confirm the following:

- The number of 15-year olds in Solihull who ate five portions of fruit and veg a day was 5% higher than the England average;
- The number of 15-year olds in Solihull who exercised for an hour a day was 1.3% lower than the England average.
- The percentage of pupils in Reception years in Solihull who are obese is 2.7% lower than the England Average;
- The percentage of pupils in Year 6 in Solihull who are obese is 2.8% lower than the England Average;
- Number of Solihull children classified as obese in reception has fallen slightly (2012/13 7.8%, 2016/17 6.9%) whereas in England it is virtually unchanged;
- Whereas, like England as a whole, obesity levels in Year Six have trended upward (2012/13 14.6%, 2016/17 17.2%).

The below table from the JSNA graphically demonstrates the position for Solihull as compared to the national average:

<sup>3</sup> [The Land and Planning Policy Document \(Local Plan Part 2\) \(nottinghamcity.gov.uk\)](http://nottinghamcity.gov.uk)

## Solihull Children Classified as Obese



Source: Public Health England

It is noteworthy that some of this evidence is somewhat out-of-date. The National Child Measurement Programme, England 2019/20 produced by the NHS sets out BMI measurements within school kids at reception and year 6<sup>4</sup>. The data shows that across-the-board Solihull is below the national average on most, if not all obesity statistics.

It is also noteworthy that neither of the above documents a) refer to takeaways as a specific issue; b) make a link between the location of schools next to hot food takeaways and unhealthy eating habits; and c) neither do they identify a proliferation of such uses where obesity rates are higher in specific wards within the Council's area.

### Is the Proposed Policy Justified?

The general policy aims, i.e. to promote healthy lifestyle choices to reduce obesity are largely encouraged, however, its focus on a specific use is entirely un-justified and inconsistent with national policy. It seeks to solely restrict new development that comprises an element of A5/Sui Generis use. However, A1 / Class E retail outlets and A3/Class E food and drink uses can also sell food that is high in calories, fat, salt and sugar, and low in fibre, fruit and vegetables, and hot food from an A3 unit can be delivered to a wide range of locations, including schools. This is particularly prevalent during these current pandemic times.

This means that the policy takes an inconsistent approach towards new development that sells food and discriminates against operations with an A5 use. It also means that the policy has a disproportionate effect on operations with an A5 use.

The local policy team do not appear to have fully assessed the potential impact of the policy. It essentially creates a moratorium against A5 uses leaving nowhere reasonable for them to locate. This goes against national planning policy in that it contradicts paragraph 80 of the framework, which states:

*"Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development."*

It is noteworthy that in Chapter 8 – Promoting Healthy & Safe Communities of the Framework, that no reference is made to the weight that should be applied to these matters, whereas as outlined above *significant* weight should be applied to economic growth.

<sup>4</sup> <https://digital.nhs.uk/data-and-information/publications/statistical/national-child-measurement-programme/2019-20-school-year/region>

The test of soundness requires that the policy approach is “justified”, which means that it should be the most appropriate strategy when considered against the reasonable alternatives and based on proportionate evidence (paragraph 35 of the Framework). Furthermore, as outlined earlier in this submission, the PPG identifies that such policies should be used where *justified* and *where evidence demonstrates this is appropriate*.

As highlighted above, as compared against the England average, Solihull fares very well in terms of childhood obesity, being well below average in most data fields. It is difficult therefore to understand see what the evidence is to justify this policy. If such restrictions were considered necessary, there ought to be some critical assessment of whether the underlying evidence supports the proposed policy approach, we would contend there is none. There is no clear evidence of any such assessment having been undertaken. The provisions of the policy appear to have been drafted on the basis of a ‘finger in the air’ approach with no evidence to support the position that more than 10 or 15 % of uses within a Centre would lead to increases in un-healthy eating habits, nor that a such uses within 400m of a school would lead to increases in obesity.

The evidence is simply not there.

The approach is, however, likely to result in significant harmful impacts on the local economy due to the fact that it is restricting hot food takeaways to such an extreme level without any regard to the local area or the economy; sharply in contrast with the requirements of the Framework.

There is also conflict with the sequential test requirements, which has its own locational requirements. Paragraph 86 of the Framework is clear in its expectation that an up-to-date local plan will adopt the sequential approach, and that local authorities should “require” applications for main town centre uses to locate in town centres. The sequential approach would be seriously undermined by the approach proposed, as the policy provides no flexibility for sites which could be within 400m of a school but within a designated centre.

The Framework cannot be interpreted to provide generic restrictions on a particular use class. There is no basis for such a blanket approach in the Framework or Planning Practice Guidance. In fact, the Planning Practice Guidance emphasises that planning authorities should look at the specifics of a particular proposal and seek to promote opportunity rather than impose blanket restrictions on particular kinds of development.

## 6. Necessary Modifications

As outlined above, there is no sound justification for criteria 3 to 5 of Policy P18 Health and Wellbeing of the Solihull Local Plan Review. The imposition of a blanket ban on A5 uses within a 400m radius of any school, youth centre or similar location is entirely un-justified and unclear. Criterion 3 should be re-worded to deal only with the amenity impacts of such a use, whereas criteria 4 and 5 should be deleted from the plan and policy altogether.

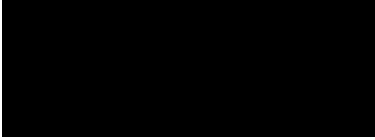
## CONCLUSION

Domino’s Pizza UK & Ireland support any initiative to promote health, wellbeing, and obesity. As an organisation they continue to evolve their offer to ensure that healthy choices can be made by the customer and have made significant changes to reduce the salt and sugar levels in their food. Furthermore, the positive economic benefits of a Domino’s Pizza from job creation and occupation of often vacant units within a local centre are significant. Each new store will create between 20-30 new jobs; will operate during the day and into the evening (creating active frontages); and will drive footfall in an area to the benefit of vitality and viability of the centre.

National policy clearly outlines that a positive approach should be taken to plan preparation and policies. It places significant weight on economic health/growth and the importance local retail centres have to a community’s economic wellbeing. It is acknowledged that it also places a requirement on planning positively for the health and wellbeing of the population; albeit this is only where evidence clearly demonstrates a need.

Solihull Metropolitan Borough Council's own evidence shows that obesity is well below national average. They have made no critical assessment of the need for the measures outlined in the draft policy P18 – Health and Wellbeing. The evidence is simply not there, and therefore, given recent Planning Inspector decisions, the policy should be found to be non-compliant, ineffective and unsound.

Yours sincerely



Osian Roberts  
**Principal Planner**  
**DPP**

