

DLP29

It is noted that draft Policy DLP29 states, inter alia, that proposals for new hot food takeaways, as a primary use of a planning unit, will not be permitted within designated Town Centre Core Areas which would include most units and land forming part of the Merry Hill retail complex.

As to why such onerous provision is being proposed in respect of the Merry Hill Core Area is unclear and we would welcome clarification from officers in this regard (NB we do not intend to comment on the acceptability of hot food takeaways within the Brierley Hill High Street Core Area unless relevant as this Area is considered to be entirely separate).

Indeed, Merry Hill is not generally known for its unacceptable clustering of hot food takeaway establishments owing in large part to the fact that it is under single ownership which means that the clustering of such uses can be appropriately managed / controlled without giving rise to an unacceptable impact on amenity and threatening the vitality and viability of this part of the Brierley Hill Strategic Centre.

Not only would such unacceptable impacts not be tolerated by the owner of the Centre (they would be seen as wholly contrary to its overarching objective to implement a long term sustainable business plan strategy for the Centre), but the evidence we have seen shows no indication of such impacts currently occurring or likely to occur in the future. For example, the Black Country Centres Study Update 2021 – Volume 2 Health Checks (BCCSU 2021 – Vol 2) concludes that Merry Hill has “*good leisure provision in terms of national fast food & casual dining chains*”. The same Study also does not identify an oversaturation of such uses within the ‘weaknesses’ or ‘threats’ section of its assessment.

Paragraph 31 of the NPPF (December 2023) states that the preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be: “*adequate and proportionate, focused tightly on supporting and justifying the policies concerned and take into account relevant market signals*”.

The evidence we have seen points to the benefits of hot food takeaway uses at the Centre with the BCCSU 2021 – Volume 2 concluding that Merry Hill has “*good leisure provision in terms of national fast food & casual dining chains*”. It is also the case that BCCSU 2021 – Volume 2 highlights a survey which asked respondents ‘what, if anything, would they improve in the Centre that might encourage them to visit more’; to which 75% of respondents stated ‘nothing’ and 19.3% stated ‘more/better food shops.’

It is therefore unclear as to why the blanket presumption against new hot food takeaways as a primary use within the Merry Hill Core Area is considered justified. To impose such a restriction would be unjustified, disproportionate and damaging to the Centre’s ability to adapt, expand its non-retail offer and tackle persistent vacancies. Contrary to the supporting justification provided at Para 10.38 of the draft Plan, the evidence (BCCSU 2021 – Vol 2) clearly recognises the contribution that national fast food & casual dining chains make to the Centre’s vitality and viability.

It is also the case that this draft policy and its supporting justification assumes that all hot food takeaways are harmful and rely on a disproportionate link (that is, relative to any other land use at or from which food may be consumed or purchased) between proximity of hot food to the incidence of obesity, overweight or other adverse health outcomes; evidence for which we would argue is weak and contradictory. We assert that there is no evidence of any causal link between the presence of hot food takeaway uses and increases in obesity or poor health outcomes (particularly in relation to Merry Hill).

We note the findings of the 2016 report prepared by the Local Government Association (Tipping the Scales) which looks at case studies on the use of planning powers to limit hot food takeaway and finds that noise, litter, and anti-social behaviour is particular to takeaways that are part of the night-time economy. It is however the case that Merry Hill functions primarily as a regional shopping centre, with a small, admittedly increasing, contribution to the evening economy which is being carefully managed by Centre Management.

Accordingly, and even with the introduction of a small number of additional hot food takeaway uses, the Centre does not currently and is highly unlikely give rise to the congregation of intoxicated people around takeaways, with potential for adverse impacts on the local area. Further, Merry Hill is a secured managed environment as it benefits from private security which is not a typical characteristic in other centres that encompass external public areas, making it difficult to physically control people around potentially sensitive uses.

Based on the above, we are of the opinion that given the nature, character, and arrangement of the Merry Hill Centre and wider site, hot food takeaways are justified in the Merry Hill Core Area as defined by the Brierley Hill Inset Plan Policies Map. This is most notably due to the fact that Merry Hill differs to centres that fall lower within the hierarchy of centres as defined by the draft Plan, as well as the Brierley Hill High Street Core Area, in that there are far fewer sensitive receptors in the vicinity of the Centre with the potential to be impacted by odours, noise, and general disturbance.

Permitting the further introduction of such uses (with each proposal assessed on its relative merits) would also help to address persistent vacancies across the Centre. Indeed, the draft policy fails to recognise that empty units are more harmful to retail character and function of centre, with 'rising vacancy' being identified as a key threat within the BCCSU 2021 – Vol 2.

As a final point, it is noted that Policy DLP29 permits in principle, new hot food takeaways within the town centre boundary, albeit outwith designated Core Areas. It is our view that contrary to the policy's intention, allowing the latter imposes greater threat to the vitality and viability of Merry Hill as a regional shopping centre / Strategic Centre. Contained within the Brierley Hill Town Centre Boundary there is a mix of different uses mainly featuring retail and commercial functions. It is widely known that given the rise of e-commerce, physical retail locations are suffering from fewer visitors and lower utilisation. As such, the requirement exists for shopping centres such as Merry Hill to offer greater leisure amenities which cannot be attained whilst shopping online, in order to attract visitors to the site. The BCCSU 2021 – Vol 2 supports this by stating that restaurant and hot food takeaways *"[serve] as a key footfall attractor to the Centre."*

It would therefore be more effective to make the presumption against hot food takeaways outwith Merry Hill Core Area, so that the new development can benefit the Centre's primary retail and leisure function as a complimentary use through increasing the likeliness for its users to visit retail stores out of convenience of being within greater proximity to the shops. Allowing hot food takeaways in select locations across the Centre would not prevent other retail and leisure uses coming forward and occupying larger spaces as most appropriate.

The draft policy as existing would not support the increased vitality and viability of the Centre, as it prohibits a contribution to an identified desire of the centre's key stakeholder. It additionally fails to accord with Paragraph 85 of the NPPF which states that policies should help create the conditions in which businesses can invest, expand, and adapt.

Paragraph 32 of the NPPF states that significant adverse impacts on economic, social, and environmental objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. As an alternative and in accordance with Paragraph 10 of the NPPF, development would be pursued in a 'positive way' if the Merry Hill Core Area was excluded from Section 2A of draft Policy DLP29 and instead, applications for hot food takeaways assessed on their individual merit with conditions being used where necessary to mitigate any impact on the amenity of the surrounding area, the fundamental principle and justification for the policy, whilst maintaining a presumption in favour of development which expands to wider economic benefits.