

Representation form

Dudley Local Plan Publication Plan

Consultation October 2024



DUDLEY LOCAL PLAN

We are inviting your views on the publication version of the Dudley Local Plan. This form should be used to make comments (known as representations) in response to the consultation.

Guidance notes are available to help you complete this form and can be found online at www.dudley.gov.uk/localplan

The consultation period begins on Friday 18 October 2024, and closes at 5pm on Friday 29 November

Comments can be submitted:

Online: On our online portal available here www.dudley.gov.uk/localplan

By email: planning.policy@dudley.gov.uk

By post: Dudley Local Plan, Planning Policy, Planning & Regeneration, Council House, Priory Road, Dudley, DY1 1HF.

Additional copies of this response form can be downloaded at www.dudley.gov.uk/localplan or a copy can be posted to you - please call us on 01384814136.

This form has three sections:

Section A: Personal details

Section B: A declaration which you will need to read and sign

Section C: Your representation/comments on the Plan, Sustainability Appraisal or supporting evidence.

Please note:

- 1 You can use this form to comment on more than one site and/or policy. For each comment, please tell us the site/policy reference that your comment refers to. A separate form C should be completed for each comment.
2. Responses must include your name and address.
3. Your comments cannot be treated as confidential. By completing this form, you agree to your details being shared and your name and comment (but not your address or other personal details) being made available for public viewing.
4. It is recommended that groups that share a common view send a single response rather than multiple copies of the same response. Please attach a list of the contact details of each person who supports the comments, including their names and addresses.
5. **Completed forms should be received by us no later than 5pm 29 November 2024.**
6. Paper copies of this form and guidance notes can be found in selected libraries - visit www.dudley.gov.uk/localplan for the full list and at Dudley Council House, 1 Priory Road, Dudley, DY1 1HJ.

Individual acknowledgement of receipt will not be possible.



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Part A - Personal details

	1. Personal details	2. Agent's details (if applicable)
Title		
First name		
Last Name		
Job Title (where relevant)		
Organisation (where relevant)		
House No./Street		
Town		
Post Code		
Telephone Number		
Email address (where relevant)		

Notes:

1. If you are responding as an individual (e.g. a resident) you do not need to fill in the job title and organisation boxes unless you are responding as a member of an organisation.
2. If you are an agent responding on behalf of an organisation please ensure that your details are in the Agent's details column and give the details of the client you are responding for in the Personal details column, only the title, name and organisation boxes are necessary.

Please indicate which of these best describes you / your role in responding to this consultation	
Resident or Individual	
Planning Agent or Consultant	✓
Developer or Investor	
Landowner	
Land & Property Agent or Surveyor	
Local Authority	
Public service provider e.g. education establishment, health etc	
Public agency /organisation	
Community or other Organisation	
Charity	
Other (please specify in space below)	

Please note that copies of all comments received, including the name(s) of the respondent(s) will be made available for the public to view. All other personal details will remain confidential. Dudley Council will process your personal data in accordance with the Data Protection Act 2018. Our Privacy Notice is at the end of this form.

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Part B: Declaration

How we will use your personal information

The personal information you provide on this form will be processed in accordance with the requirements of the Data Protection Act 2018. The information you provide will only be used for the purposes of the preparation of the Local Plan as required by the Planning and Compulsory Purchase Act 2004, and may be used by the council to contact you if necessary regarding your submission. Your name, organisation and comments will be made available for public inspection when displaying and reporting the outcome of the statutory consultation stage and cannot be treated as confidential. You will not be asked for any unnecessary information and in order to protect personal data, we will not publish signatures, telephone numbers, addresses or email addresses on the internet.

Your details will be kept until the Local Plan is adopted plus a further ten years to evidence that a fair and transparent process has been followed. Processing is kept to a minimum and data will only be processed in accordance with the law. When other agencies are involved in Local Plan preparation, we may need to share details about you to enable us to work together for your benefit. Information will only be shared with third parties if they have genuine and lawful need for it. Information shared on this basis will not be reused for any other purpose. We will take all reasonable precautions to protect your personal data from accidental or deliberate loss or unauthorised disclosure.

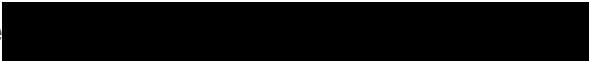
Please sign and date this form.

Forms signed electronically will be accepted.

Declaration:

By completing and signing this form, I agree to my name, organisation and representations being made available for public inspection on the internet.

Signature



Date: 29 November 2024

I understand that in submitting my representations, that my details will be added to the Dudley Local Plan Consultation database and I may be contacted at future stages of the local plan process.

All personal data will be processed in accordance with the Data Protection Act 2018 and the General Data Protection Regulation ('GDPR'). If you do not wish to be contacted further, please advise us.

No, I do not wish to be contacted about the Local Plan

A copy of our privacy notice is available at <https://www.dudley.gov.uk/privacy-disclaimer-statement/regeneration-and-enterprise-dudley-local-plan-privacy-notice/>

Thank you for taking the time to provide your response.

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Part C: Representation

(Please fill a separate sheet for each representation you wish to make)

Q1. To which part of the document does this response relate?

Title of document	Dudley Local Plan Part One (Spatial Strategy and Policies) – Publication Version (Regulation 19)		
Paragraph/section		Policy	Policy DLP29 (Hot Food Takeaways)
Site		Policy Map	

Responses can address any of the Supporting Documents and Evidence by relating them to the resulting paragraph, policy or site in the Dudley Local Plan.

Q2. Do you consider the Local Plan is:

1. Legally compliant Yes No
2. Sound Yes No
3. Complies with the Duty to co-operate Yes No

(Mark as appropriate)

Please refer to our guidance notes for help with the above definitions - 1 to 3.

Q3. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

Continue on a separate sheet if necessary.

We do not consider that the Council's response to our previous comments on this draft policy (made in connection with the Regulation 18 Consultation Version of the Local Plan) to be sufficiently robust to justify no amendments to its wording:

"Noted, however no change" (Page 97 of 231 of the Dudley Local Plan Consultation Statement dated October 2024).

Our previous comments in respect of Draft Policy DLP29 are set out below for ease of reference. Furthermore, we understand an oversupply of takeaways in a town centre location can lead to a poor-quality retail environment, especially on a high street with broken ownerships, where there may be multiple shops closed and shuttered during the daytime. A high-quality managed shopping centre environment however, which is managed in one-ownership, does not carry this same risk. The owners of Merry Hill are incentivised to maintain a vibrant location for all of its tenants. Hot food takeaways tend to be open all day to cater for shoppers and are generally of a high quality, with a variety of offers and cuisines.

We would urge the Council to reconsider and provide a more detailed response. We would otherwise request that the Inspector presiding over the local plan examination (as and when this takes place) review and come to their own conclusions as to the soundness of this policy. Until such time, we can only conclude that this policy (in terms of its applicability to Merry Hill) is unjustified and thus unsound.

We also query the requirement for a Health Impact Assessment when the criteria relating to the acceptability of proposals for hot food takeaways is already extensive. It is also unclear as to what such an assessment will need cover.

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**Extract from Williams Gallagher Response to Regulation 18 Consultation
Draft Policy 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 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.

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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.

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Q4. Please set out the modification(s) you consider necessary to make the Local Plan legally compliant and sound, in respect of any legal compliance or soundness matters you have identified at Q3. above. (Please note that non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

Having regard to the above, it is considered that a blanket ban on hot food takeaway uses across the Merry Hill estate is wholly unjustified rendering the policy unsound.

The key point being that hot food takeaway uses can potentially come forward in locations out with the Centre – these locations being potentially far more susceptible to their associated impacts. Given the nature, character, and arrangement of the Merry Hill Centre and wider site, hot food takeaways can be appropriately managed; unlike 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 and out of centre locations. There are also far fewer sensitive receptors in the vicinity of the Centre with the potential to be impacted by odours, noise, and general disturbance.

The relevant part of the draft policy currently reads as follows:

1. *All applications for Hot Food Takeaways (Sui-Generis), whether through new build or change of uses, will be assessed on their individual merits, subject to considerations on their location and the number, distribution and proximity of other Hot Food Takeaways and impact on the vitality and viability of centres.*
2. *Proposals for Hot Food Takeaways will be subject to provisions applicable to their locations:*
 - a. *Proposals for new Hot Food Takeaways, as a primary use of a planning unit, will not be permitted within a designated Town Centre Core Areas.*
 - b. *[...]*

Our proposed amendment to this part of the draft policy is as follows:

1. *All applications for Hot Food Takeaways (Sui-Generis), whether through new build or change of uses, will be assessed on their individual merits, subject to considerations on their location and the number, distribution and proximity of other Hot Food Takeaways and impact on the vitality and viability of centres.*
2. *Proposals for Hot Food Takeaways will be subject to provisions applicable to their locations:*
 - a. ***With the exception of Merry Hill Shopping Centre***, *proposals for new Hot Food Takeaways, as a primary use of a planning unit, will not be permitted within a designated Town Centre Core Areas.*
 - b. *[...]*

The wording of the policy in its entirety will still give the Council control over the number of hot food takeaway uses at Merry Hill through the other criteria listed at Draft Policy DLP29.

Continue on a separate sheet if necessary.

Please note: *In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.*

After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.

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Q5. If your representation is seeking a modification to the plan, do you consider it necessary to participate in examination hearing session(s)?

No, I do not wish to participate in hearing session(s)

Yes, I wish to participate in hearing session(s)

***Please note**, that while this will provide an initial indication of your wish to participate in hearing session(s), you may be asked at a later point to confirm your request to participate.*

Q6. If you wish to participate in the hearing session(s), please outline why you consider this to be necessary:

In order to ensure our client's interests are protected and to provide a response to opposing views on policies affecting the future vitality and viability of Merry Hill / Brierley Hill Strategic Centre (where necessary). Also, to defend our position as regards the blanket ban on hot food takeaway uses across the Core Retail Area of Merry Hill Shopping Centre which is considered neither reasonable or justified.

***Please note**, the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate in hearing session(s). You may be asked to confirm your wish to participate when the Inspector has identified the matters and issues for examination.*

Representations cannot be kept confidential and will be available for public scrutiny, including your name and/or organisation (if applicable). However, your contact details will not be published.

Completed representations forms can be submitted by emailing: planning.policy@dudley.gov.uk

Please enter **Dudley Local Plan Representation** in the subject field of the email.

Alternatively, completed consultation forms can also be submitted by post to: **Planning Policy, Planning Services, Dudley Council, Council House, Priory Road, Dudley DY1 1HF by 5pm 29 November 2024.**

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