

1 **Abstract**

2 Background: The National Planning Policy Framework advocates the promotion of  
3 'healthy communities'. Controlling availability and accessibility of hot food takeaways  
4 is a strategy which the planning system may use to promote healthier environments.  
5 Under certain circumstances, for example, local authorities can reject applications for  
6 new hot food takeaways. However, these decisions are often subject to appeal. The  
7 National Planning Inspectorate decide appeals - by upholding, or dismissing cases. The  
8 aim of this research is to explore and examine The National Planning Inspectorate  
9 decision-making.

10

11 Methods: The appeals database finder was searched to identify hot food takeaway  
12 appeal cases. Thematic analysis of appeals data was carried out. Narrative synthesis  
13 provided an overview of the appeals process and explored factors that were seen to  
14 impact on The National Planning Inspectorate decision making processes.

15

16 Results: The database search identified 52 appeals cases. Results suggest there is little  
17 research in this area and the appeals process is opaque. There appears to be minimal  
18 evidence to support associations between the food environment and health and a lack  
19 of policy guidance to inform local planning decisions. Furthermore, this research has

20 identified non-evidence based factors that influence The National Planning  
21 Inspectorate decisions.

22

23 Conclusions: Results from this research will provide public health officers, policy  
24 planners and development control planners with applied public health research  
25 knowledge from which they can draw upon to make sound decisions in evaluating  
26 evidence to ensure they are successfully equipped to deal with and defend hot food  
27 takeaway appeal cases.

28

## 29 **Introduction**

### 30 **Literature Review**

#### 31 **Links between planning and health**

32 In recent years there has been a significant move to reunite planning and health in  
33 England (1). This has been closely associated with two key changes at a national level.  
34 In terms of planning, the National Planning Policy Framework (NPPF) makes explicit the  
35 need to promote healthy communities, including issues such as “access to healthier  
36 food” (2, 3). Furthermore, the Health and Care Act transferred responsibility for public  
37 health to upper tier local authorities.

38 The UK planning system, however, is designed to reconcile the many, often conflicting,  
39 interests that are inherent in the development of land. As such, control of  
40 development is not as central to planning in the UK as might be assumed, and key  
41 principles of negotiation, mediation and discretion come into play. At local level plans,  
42 generically termed the 'Development Plan' for the area, comprising the Local Plan, any  
43 neighbourhood plans and other spatial strategies, are required to be in general  
44 conformity with the NPPF. The suite of plan documents guide development but are not  
45 a 'blueprint' for what will and will not happen. Moreover, while there is primacy of the  
46 Development Plan, other "material considerations" will be taken into account in all  
47 planning decision making.

48 Evidence that urban planning is implicated in contemporary health problems has  
49 existed for some time. In relation to obesity, for example, the Foresight report *Tackling*  
50 *obesities, future choices* (4), highlighted the emerging evidence around the built and  
51 food environments (5). Moving forward, guidance and SPD documentation is now  
52 emerging which hopes to provide practical support for LA's who wish to use the  
53 planning system to address public health issues such as obesity (6).

54

55 **Neighbourhood Food Environments and Hot Food Takeaways**

56 The environments in which we spend our daily lives influence what we choose to eat,  
57 when and where. This can be further broken down into five issues of availability,  
58 accessibility, affordability, acceptability and accommodation (7). Clearly some of these  
59 issues are out with the scope of the planning system, but availability and accessibility  
60 are issues, which at least to some extent, the system has control over. Access and  
61 availability of food for both home and out of home consumption might be defined as  
62 the neighbourhood food environment, a combination of retail outlets (from small  
63 shops, to supermarkets) as well as cafes, takeaways and restaurants (8). In England,  
64 food outlets fall into different categories in terms of urban planning (see below),  
65 however only hot food takeaways have their own specific category; therefore the  
66 review of evidence focuses on this category of outlet. One issue that is important to  
67 consider is total exposure to fast food availability, in other words the environments  
68 where we work, or go to school and those we travel through in our daily lives as well as  
69 where we live (7, 9).

70 Evidence suggests that individuals do not make informed decisions regarding the  
71 healthfulness of food (10). There are a complex synergy of determinants which  
72 surround food choice, of which the environment and proximity to HFTs are  
73 contributing factors (11). Residing within areas which are abundant in HFT outlets

74 increases the likelihood of individuals accessing unhealthy food (12, 13). Additionally,  
75 those who make purchases from HFT's are also more likely to do so on a frequent basis  
76 (11, 14-16). Overcoming obstacles, such as distance to make HFT purchases is  
77 becoming more common, particularly in young adults. Recent studies carried out with  
78 secondary school aged children in both London and Newcastle upon Tyne indicated  
79 that young people reported travelling significant distances within school lunch breaks  
80 to obtain a HFT meal from their preferred establishment (14-16). Taxi and bus rides  
81 were stated as a means to facilitate consumption of such purchases and illustrate the  
82 lengths some will go to, in order to acquire the food they desire, irrespective of health  
83 consequences.

84

85 Reviews of takeaway fast food access have been somewhat equivocal, with some  
86 studies finding a significant relationship between access and diet; while others have  
87 failed to do so (11, 17, 18).

88

89 One aspect that seems to attract broad consensus among researchers is around  
90 takeaway food, nutrition and social deprivation. Food served within takeaways tends  
91 to be nutritionally poor and energy dense (19). Research has also shown that takeaway  
92 outlets cluster in areas of social deprivation (20, 21) and of concern the trend of

93 socioeconomic disparity and in takeaway food outlet density seem to be increasing  
94 (20). Moreover, research on socio-economic status (SES) and fast food consumption  
95 suggest that is an exaggerated impact on lower SES groups from exposure to fast food  
96 outlets. In this study lower SES group consumed more fast food, tended to have higher  
97 body weight and were more likely to be obese (22).

98 Analysis of cross sectional data from the UK National Diet and Nutrition Survey (2008-  
99 1012) explored the frequency and socio-demographic correlates of eating meals out  
100 and take-away meals at home. Results indicated that one-fifth to one-quarter of  
101 individuals ate meals that were prepared out of home on a weekly basis. Moreover,  
102 the proportion of participants eating both meals out and take-away meals at home at  
103 least weekly increased considerably in young adults (aged 19-29 years). Additionally, in  
104 adults, affluence was positively correlated with consumption. However, similar  
105 correlations were seen for children living in less affluent areas (23).

106

#### 107 **Regulation of Hot food takeaways (A5) through SPD and Policy**

108 The Town and Country Planning (Use Classes) Order 1987 (as amended) places various  
109 uses of land and buildings into 'use classes', this is in order to control change between  
110 one use and another, or to control particular uses in specific areas. Shops, including

111 food shops are class A1 and this covers everything from small independent corner  
112 shops and sandwich shops, through to the largest 24hour supermarket outlets. A3  
113 Restaurants and cafes also covers a wide range of establishments from an independent  
114 vegan wholefood café, to a multi-national fast food chain, as long as a significant  
115 provision for on-site consumption is provided. This topic is returned to in the  
116 limitations section below.

117

118 The Order is amended periodically and a specific 'A5' Hot Food Takeaways (HFTs) was  
119 introduced in 2005. Control of use classes in specific areas may be part of the planning  
120 *policy*, as part of the Local Plan, or as guidance produced as Supplementary Planning  
121 Documents (SPDs) which either include issues too detailed to go into the core policy,  
122 or where rapid response is required to an emerging issue. Policy carries more weight in  
123 planning decision making than guidance, but ideally for an issue such as controlling fast  
124 food outlets might require both. The earliest SPD aimed at controlling fast food  
125 proliferation was focussed on nuisance and antisocial behaviour associated with hot  
126 food takeaways (Waltham Forest), however 2010 the London Borough of Barking and  
127 Dagenham produced their SPD 'Saturation Point' which gave weight to health impacts  
128 and evidenced public health and nutrition research (24). A recent census of all of

129 England's local government areas (n=325) found that 164 (50.5%) areas had a policy  
130 that focused on takeaway food outlets; while 56 (34.1%) focused on health (25).

131

### 132 **Planning Appeals**

133 Planning policies and/or guidance that aim to restrict the opening of new HFTs can be  
134 used by local planning officers to reject new planning applications for this use. In doing  
135 so they consider whether their case is robust enough to argue at appeal. Applicants  
136 have a right to appeal the local authority decision and do so by lodging an appeal with  
137 the National Planning Inspectorate

138 (<https://www.gov.uk/government/organisations/planning-inspectorate/about>) (PINS);

139 in these cases they are referred to as the appellant. Many appeals involving HFTs are  
140 decided under a process known as 'written representations', in other words the  
141 inspector will gather all the evidence together in the form of written statements from  
142 the appellant, the local planning authority (LPA) and anyone else who has an interest  
143 in the appeal. Each party has the opportunity to comment on each other's statements,  
144 however no verbal submissions are made. However, a hearing or inquiry may also be  
145 held. Hearings are relatively informal, essentially a round table discussion led by the  
146 inspector, where people can put their case across and respond to the inspector's  
147 questions. A hearing is a much more formal process where parties present their case



148 and witnesses are questioned by the inspector and the other parties as to the evidence  
149 that they have presented.

150 Inspectors decide appeals on a case by case basis, however procedure is tightly  
151 prescribed and in reaching their decision they should consider, any material submitted  
152 to the local planning authority regarding the case; all the appeal documents; any  
153 relevant legislation and policies, including changes to legislation; any new Government  
154 policy or guidance and any new or emerging development plan policies since the local  
155 planning authority's decision was issued; finally they may include any other matters  
156 that they consider material to the appeal. Appeals will either be upheld, in which case  
157 the inspector finds in favour of the appellant and overturns the original local authority  
158 decision, or dismissed, in which case the inspector find in favour of the local authority.

159 It should be noted that planning appeals encompass a vast array of matters, for  
160 example environmental issues, highway safety, design and health to name but a few  
161 diverse topics. At present, Planning Inspectors are not required to hold any special  
162 qualifications and/or receive instruction in relation to any of these specialist subjects,  
163 and it might be questioned, therefore, whether there is adequate training. Moreover,  
164 while inspectors will have a vast amount of experience to draw on, given the relatively  
165 recent increased emphasis on health, their knowledge of this field in relation to  
166 planning may be quite limited.

167 While we are aware nationally of a number of appeals around hot food takeaways, and  
168 the appeals procedure is clearly prescribed (25), there has been little systematic  
169 research in relation to decision making in this area.

170

171 **Aims**

172 The aim of this research was to explore the appeals process further by examining  
173 influences, including barriers and facilitators to the inspectorate's decision to either  
174 uphold or dismiss cases.

175

176 **Methods**

177 In May 2018 a one-day seminar was held examining the control of proliferation of A5  
178 uses by the planning system. This included a half-day workshops for planning and public  
179 health practitioners, who had either already produced guidance/policy on this topic, or  
180 were in the process of doing so. Some of the practitioners had experience of HFT  
181 appeals which was particularly valuable to the study. Findings from the discussions in  
182 this workshop are not presented in this paper, but contributed to the design of this  
183 study.

184

185 Data from the appeals database was analysed using a thematic content analysis  
186 approach, building on our discussions with practitioners (26). This aimed to identify  
187 commonalities and differences in the data, prior to focusing on relationships between  
188 different parts of the data, thereby seeking to draw descriptive and/or explanatory  
189 conclusions clustered around analytical themes. Interpretation of the data into  
190 analytical themes allowed for relationships between themes to be identified and  
191 proved useful in determining whether or not themes were barriers or facilitators to the  
192 National Planning Inspectorates decision making processes. Narrative synthesis of  
193 evidence generated will be discussed to provide an overview of the appeals process  
194 and explore factors that may potentially impact on decisions made.

195 In June 2018, the database *Appeals Finder* ([https://www.gov.uk/appeal-planning-](https://www.gov.uk/appeal-planning-inspectorate)  
196 [inspectorate](https://www.gov.uk/appeal-planning-inspectorate)) was searched for planning appeals related to obesity, health and fast  
197 food. *Appeals Finder* indexes over 160,000 planning appeal decisions from all of  
198 England and Wales from 2010 onwards. We searched using the keywords “A5” AND  
199 “food” AND “obesity” which generated 62 results. After assessing the titles and brief  
200 detail of each result, 52 results were retained for further assessment (Fig 1). All  
201 documents linked to the 52 results were saved. Textual information in terms of  
202 evidence that may impact on the decision making processes within each case was  
203 obtained from the database and examined for recurring themes using a framework  
204 approach (26).

#### 205 **Figure 1: Results from Appeals Finder database search**

206

#### 207 **Results**

#### 208 **Appeals cases**

209 Of the 52 appeals cases, 26 were upheld (local decision over-turned and Planning  
210 Inspector (PI) found in favour of the business) and 26 dismissed (i.e. permission not  
211 given to the hot food takeaway). Of those that were dismissed, 23 were independent

212 stores and three were multinational chain retailers. Similarly, of those that were  
213 upheld, 22 related to independent stores and four were multinational chain retailers.  
214 Regions with the most appeal cases were London (n=17) and the North East of England  
215 (n=10). In London, 35% of cases were dismissed (i.e. permission *not* given to the hot  
216 food takeaway) as opposed to 60% in the North East. The majority of inspectors  
217 (>94%) were male. Twenty-three different named inspectors were responsible for  
218 making the 26 upheld decisions with three of those being assigned to two cases and  
219 the remainder only one. Similarly, there were 24 different named inspectors that were  
220 responsible for the 26 dismissed cases with two being assigned two cases and the  
221 remainder only one. Six of the inspectors were involved in both upheld and dismissed  
222 cases. There were a number of themes identified as having an impact on the appeals  
223 decision making process and many were common to both upheld and dismissed  
224 appeals.

225

226 **Findings 1 Appeals upheld** (i.e. planning permission granted to HFT)

227 *Non-evidence based decisions*

228 It is to be expected that the quasi-legal procedure of appeals would be based on  
229 evidence, very much as case in law. Overall, however, while PINS would argue that

230 inspectors make difficult decisions based on professional judgement, as outlined  
231 below, some decisions at least seemed to largely based on un-evidenced statements,  
232 rather than being supported by any current academic/health evidence and/or policy.

233 In many appeals upheld, Inspectors stated that the 'evidence' provided to them  
234 regarding HFTs and health impacts, such as obesity prevalence was insufficient to  
235 guide their decision making,

236 *"There is also little substantive evidence before me that would lead me to conclude*  
237 *that the location of the proposal would have a direct correlation with childhood*  
238 *obesity"* (ID 20)

239 As outlined in the introduction evidence between fast food consumption and  
240 childhood obesity does exist, but in this case the evidence presented in the statement  
241 from the LPA was not deemed substantive. However, the precise reason that evidence  
242 was deemed deficient, in this case and in other similar cases, is generally unclear. For  
243 example,

244 *"Accordingly, I conclude that the principle of the use would be acceptable.... while any*  
245 *conflict with the SPD would not warrant a refusal of the proposal."* (ID 11)

246 Despite the existence of an SPD clearly little weight is afforded to it, but again why is  
247 unclear.

248 Another issue was that there appeared to be a disconnect between what inspectors  
249 believed to be enforceable as opposed to what practitioners suggested in the seminar  
250 is realistically achievable once an appeal has been upheld and granted. For example,  
251 there are instances of upheld appeals with inspectorate recommendations that the  
252 HFT establishments should consider opening hours that do not make unhealthy foods  
253 easily accessible to children attending local schools. These are clearly to inform  
254 planning conditions imposed on the permission however, the extent to which they are  
255 enforceable may be questioned. LPA enforcement is often under severe pressure.  
256 Moreover, unlike a structure that is built without planning permission for example,  
257 opening hours are arguably much trickier to monitor.

258 *“Takeaway permission granted – however conditions applied to opening hours “The X*  
259 *Collegiate, which educates teenagers of secondary school age, is well within the 400m*  
260 *threshold identified for the purposes of conditioning opening hours to prevent ready*  
261 *attraction of children of secondary school age at lunch-time”.* (ID 50)

262 Again, while PINS would undoubtedly point to the vast experience and knowledge that  
263 inspectors bring to appeals cases, there was evidence of less than ideal practice in  
264 some cases. For example, the reasoning and text to support two quite different  
265 appeals that were upheld within one region, one day apart, consisted of an identical  
266 concluding statement by the Inspector. The appropriateness of such ‘cut and pasting’

267 when decisions are supposed to be individually considered might be questioned. It  
268 could suggest a lack of assessment rigour, or point to an under-resourced system  
269 under strain where the odd corner is taken by hard-pressed professionals. Whatever  
270 the reason, it may be argued that it does call into question the overall integrity of the  
271 decision making process.

272

273 *Impact on health*

274 A number of decisions relating to cases upheld were made based on the assertion that  
275 the impact of HFTs on obesity were minimal and therefore, had little impact on health.

276 *“Very little substantiated or objective evidence has been presented to show*  
277 *conclusively that the presence of the proposed restaurant [large retail chain restaurant]*  
278 *and takeaway would be ‘likely to influence behaviour harmful to health or the*  
279 *promotion of healthy lifestyles’”. (ID 56)*

280 Some of these decisions had a somewhat dismissive tone about the association  
281 between HFTs and obesity. For example, statements from inspectors indicated that  
282 they believed the planning department were not responsible for decisions that would  
283 have an impact on health issues such as obesity, which would certainly seem to run  
284 counter to the spirit of the NPPF. Others ranked the importance of obesity below other



285 issues that were provided as justifiable reasons for case dismissal for example noise,  
286 rubbish, car parking:

287 *“Although proposals for new takeaway facilities can legitimately be refused on grounds*  
288 *of amenity, car parking, noise and loss of retail facilities, etc., it is acknowledged that*  
289 *questions of obesity and unhealthy living are insufficient on their own to refuse*  
290 *planning permission”.* (ID 1)

291 In this case it is unclear whether the inspector’s position is based on the evidence  
292 presented in the appeal, or whether they believe this to be the case more generally.

293 Other inspectors stated that the addition of one more takeaway would not be  
294 influential enough to have an impact on health in general, inequalities, obesity and the  
295 creation of healthier neighbourhoods.

296 *“The Council raises a concern about allowing a further hot food takeaway outlet in*  
297 *respect of the health implications relating to obesity levels within the local community.*  
298 *However, I have received insufficient evidence that the addition of this single outlet*  
299 *would be a material exacerbating factor, particularly as there is a wide choice of food*  
300 *retail outlets in the area available to local residents”.*

301 Further cases suggested there was no evidence that takeaways encourage unhealthy  
302 eating (ID15), two cases that the location of the HFT did not directly correlate or was

303 linked directly to childhood obesity (ID20; ID54) and a further three cases which stated  
304 there was no evidence to suggest a direct link between HFT provision and childhood  
305 obesity (ID26, 45 and 46). With all of the above issues, there is a wealth of evidence  
306 available, but it may not be in a form that is easily translated to individual cases.

307 *“The site is located near to several schools and rates of childhood obesity are*  
308 *particularly high in X (location). However, there is no detailed evidence before me to*  
309 *demonstrate a causal link between this issue and the provision of takeaway*  
310 *establishments”*. (ID 45)

311 Although it was acknowledged that an unhealthy diet could potentially affect health,  
312 this was sometimes outweighed by other factors which were deemed equally or more  
313 important such as providing a variety of food options.

314 *“The concern is that an unbalanced diet, perhaps combined with insufficient exercise,*  
315 *over-reliant for example on meals with high fat and salt content, will be unhealthy,*  
316 *even dangerous, over a period of time. This consideration needs to be balanced against*  
317 *the desirable ability for individuals, including adults, to have a range and choice of*  
318 *eating options which might include occasional take-away meals, saving them time and*  
319 *causing them no harm”*. (ID 29)

320 In this case, one might seriously question what evidence the inspector is basing their  
321 decision on. How do they support their assertion that the desirability of having a range  
322 of eating options, including takeaways outweighs the possible harm they may cause?  
323 As far as the authors are aware, there is no robust evidence to support this claim.

324

#### 325 *Parental control*

326 The issue of parental control and responsibility was also cited several times as being an  
327 important factor when discussing accessibility of HFTs to children. When assessing the  
328 location, distance and ease of access of takeaways to school children and its' impact on  
329 health, several inspectors felt that parents should be held wholly responsible. This was  
330 particularly true for cases involving younger children attending local primary schools as  
331 it was assumed that these children walked to and from school accompanied by their  
332 parents. It was also felt that it was the parent's responsibility to influence and steer  
333 their child's food choice.

334 *"Any potential effect on the health of school children is a material consideration.*

335 *However, I am mindful that children of primary school age would mostly be*

336 *accompanied by an adult, who are able to guide food choices". (ID 47)*

337 The assumption of parental responsibility also held true in cases where children were  
338 free to leave school premises at lunchtime although there was no evidence given to  
339 support this.

340 *“Whilst I note the evidence that the primary school does allow children to leave the*  
341 *premises at lunchtimes, I consider that primary school children would usually be*  
342 *accompanied by and be under the supervision and responsibility of parents or carers*  
343 *when travelling to and from school. Therefore, at these times, the primary school*  
344 *children would be under the responsibility of adults and would not have unfettered*  
345 *access to the takeaway”.* (ID 5)

346 Again, in these cases there is no robust evidence to support the assertions made by  
347 the inspectors. For example, in the UK there is no minimum legal age for child to walk  
348 to school unaccompanied and younger children may be accompanied by an older  
349 sibling (the most at risk group to HFT exposure) rather than a parent.

350

351 *Economic argument*

352 Having a blanket ban on HFTs, even within areas that have an obesity prevalence rate  
353 higher than 10% was perceived to be detrimental to the local economy by some

354 planning inspectors. In some cases, inspectors perceived that HFTs supported other  
355 local businesses and provided additional employment opportunities for local people.

356 *“I find the harm to the emerging policy insufficient to outweigh the requirements of the*  
357 *Framework to support a growing economy and the positive, albeit small, contribution*  
358 *the proposal would make to local job creation.” (ID 31)*

359 Others felt that the positive local economic impact that the proposed HFT would offer  
360 prevailed over any detrimental concerns such as excessive proliferation of HFT  
361 establishments and financial impact on other businesses.

362 *“Whilst I acknowledge that there are other fast food retailers in the area and a*  
363 *perceived lack of need for similar uses, the appellant is content that the proposed*  
364 *businesses are viable and this matter does not outweigh the support for the scheme*  
365 *that I have found. Nor does the potential for increased competition with other*  
366 *businesses given that the development would contribute to the local economy”.* (ID 37)

367 Here, once again the evidence that inspectors are using to support the economic case  
368 is somewhat unclear. In terms of alcohol sales for example, some analysis has shown  
369 that benefits to the local economy are outweighed by additional cost to local health  
370 service provision, but as far as the authors are aware no such similar cost benefit  
371 analysis has been carried out on HFTs.

372 *Opening hours*

373 The suggestion of HFTs considering time restrictions on opening hours so they do not  
374 fall within school start, finish and break times was made in four cases. In these cases,  
375 inspectors believed that if opening hours were limited, this would solve the problem of  
376 children visiting and purchasing unhealthy food from these establishments. They made  
377 assumptions that restrictions on opening hours would be easily enforceable and could  
378 be applied for various times such as in school holiday and term time.

379 *“Takeaway permission granted but with restrictions on hours – consider a condition*  
380 *restricting term time opening of the proposal to be necessary to prevent potential harm*  
381 *arising from children's access to unhealthy foods.” (ID 17)*

382 However, as already stated the practicalities of enforcement at a time when many  
383 LPAs services are under pressure is unclear.

384

385 *Disputing facts*

386 Finally, factual evidence which had been included in LPA statements, and therefore  
387 should have provided robust grounds for dismissal, was disputed by the planning  
388 inspector in a number of cases. For some, this related to the distance that the schools

389 were located from the proposed HFT, concentration of HFT outlets within the local  
390 area and the weight, relevance and availability of local policy and/or guidance.

391 *“My attention has been drawn to the links between takeaway food and poor health*  
392 *generally and child obesity in particular. However, I do not consider such matters would*  
393 *constitute a reason to dismiss the appeal in the absence of definitive Government*  
394 *planning guidance and development plan policies on the issue.” (ID 43)*

395 In another example, information provided by the appellant was considered when  
396 making decisions in relation to proximity of the HFT to the local school when assessing  
397 health impacts.

398 *“It has been identified that some pupils of the local school are likely to pass by the site*  
399 *and I note concerns that the development would encourage unhealthy eating habits*  
400 *and contribute to child obesity. However, the school is around 800m from the site*  
401 *according to the appellant and the development would not be located in the immediate*  
402 *environs of the school where pupils would be encouraged to visit on a regular basis.*  
403 *The fact that some pupils may choose to frequent the proposed businesses would not*  
404 *significantly impact on local health”.* (ID 37)

405 Here, what the inspector’s decision seems to hinge on the appellant’s statement that  
406 800m was too far for children to access the HFT. However, Brighton and Hove’s impact

407 study 'Hot food takeaways near schools', found that pupils regularly travelled further  
408 than 800m during lunchtimes to visit their favourite hot food outlets and also observed  
409 that, fast food purchase was linked to other unhealthy behaviour such as smoking (27).  
410 Therefore, not only is the decision based on an assumption that is un-evidenced, it is  
411 also factually incorrect.

412

413 **Findings 2: Appeals dismissed** (i.e. the local decision is maintained, and planning  
414 permission for HFT is denied)

415

416 Decisions made that resulted in a case being dismissed (i.e. denial of permission to  
417 become a HFT) were based upon a number of factors. However, these factors were  
418 often based on reasons other than health such as, impact on neighbours living  
419 conditions, noise pollution and highway safety. The weight given to the Development  
420 Plan appeared somewhat unclear with a number of inspectors disregarding policies  
421 and/or guidance documents when making decisions.

422

423 *Disregarding childhood obesity*



424 Some inspectors felt that the issue of pupils accessing HFTs and any link with childhood  
425 obesity was simply irrelevant to the case given that, in their opinion, it will only be  
426 accessible to a small number of pupils. A disregard of adherence to local policies in  
427 relation to health was evident. Some inspectors felt that the issue of population health  
428 was not deemed as being sufficient enough to warrant a dismissal.

429 *“...while the proposal’s proximity to the schools and its effect on healthy eating and the*  
430 *well-being of children are material considerations, I conclude that the number of pupils*  
431 *from these schools that would use the premises during the school day would not be*  
432 *significant. Consequently, in this respect the proposal would not conflict with Policy 13*  
433 *of the Core Strategy.” so not related to obesity or unhealthy eating”. (ID2)*

434 *“Although the proposal might conflict with national policies concerning the promotion*  
435 *of healthy lifestyles and reduction of childhood obesity, this does not justify dismissal of*  
436 *the appeal on these grounds” (ID7)*

437 The reasoning behind these views was unclear.

438

439 *Economics*

440 Appellants frequently highlighted the economic benefit their business would bring to  
441 the local high street by increasing custom for other establishments and providing  
442 employment. However economic reasons, although considered were dismissed by  
443 inspectors in favour of what they believed to be more significant issues such as  
444 highway restrictions and breach of policy.

445 *“However, neither these matters, nor the employment and career opportunities which*  
446 *would be created, outweigh the harm identified. I have considered all other matters*  
447 *raised, but they do not alter my decision.” (ID 33)*

448 *“Drawing these threads together, whilst there would be some economic benefit*  
449 *derived from the proposal this, on its own, is not sufficient to outweigh the conflict with*  
450 *a very recently adopted local plan policy.” (ID 9)*

451

452 *Support of local policy and planning*

453 Approximately 40% (n=10) of cases were dismissed on the basis that the proposed  
454 business would violate local policy and planning. Acknowledgement of obesity and  
455 health were evident in some (n=8) cases and this was provided as the primary reason  
456 for dismissal.

457 *“...The appeal proposal would however lead to a proliferation of takeaways in the local*  
458 *area, which, given their close proximity and easy walking distance to these schools,*  
459 *would be likely to attract custom from children and undermine the Council's efforts in*  
460 *creating and developing healthy communities.” (ID 36)*

461 However, the significance of obesity given to cases was variable and it was clearly  
462 stated in others, that obesity was not an adequate enough reason.

463 *“Takeaway permission denied – however “The effects of takeaway food on child obesity*  
464 *would not constitute a reason to dismiss the appeal.” (ID 49)*

465 In some cases, childhood obesity was cited as “adding weight” to the dismissal and not  
466 a prioritising or deciding factor.

467 *“The objective of the SPD, to establish healthy eating habits and reduce childhood*  
468 *obesity, is an important one and whilst not a main issue, the proposal's failure to*  
469 *comply with it adds weight to my decision.” (ID 8)*

470 Inspectors also recognised that, although appellants claimed that they would make  
471 adjustments to their business, for example, making pledges to create a healthier menu  
472 that there would be no way of enforcing and/or monitoring this.

473 *“The appellant states that it is his intention to offer a healthy alternative to the existing*  
474 *takeaways in the area. However, I agree with the Council that this is not a factor that*  
475 *can be controlled. I therefore conclude that the proposed change of use would*  
476 *undermine the Council’s objectives to improve community health.” (ID 38)*

477

478 **Discussion**

479 In a number of cases presented it is clear that the NPPF and local policy guidance were  
480 influential in the inspectors’ decision making and indeed, in some cases, a determining  
481 factor.

482 Yet, the over-riding finding was that inspectors considered that they had insufficient  
483 evidence concerning HFTs and health impacts to base their decision making on, though  
484 why the evidence was found wanting was generally unclear. However, it is worth  
485 considering the issue of evidence from the inspector’s perspective. Though the *kind* of  
486 evidence presented at each appeal follows a similar pattern, its quality and quantity  
487 may vary considerably from case to case. Inspectors place a great deal of weight on  
488 robust evidence at local level, however the availability of any such evidence to an  
489 individual local authority varies considerably. Generally, for example, much health  
490 evidence is produced at the national level and its applicability to specific cases limited.

491 Therefore, a clearer framework for interpreting macro-national level data at the micro-  
492 local level would be highly desirable.

493

494 While it is appreciated that inspectors have an extremely difficult job balancing a vast  
495 array of issues in appeal cases, the general lack of engagement with health issues in  
496 decision making was concerning. However, this does mirror previous work exploring  
497 planners and public health practitioners' views on addressing obesity (28). This  
498 research identified a range of barriers that prevent planners from engaging with  
499 obesity prevention. These include having an insufficient understanding of the causes of  
500 obesity and the importance of addressing obesity through multiagency approaches. It  
501 was concluded that planners could and should be better engaged in the obesity  
502 prevention agenda (28); however, this necessitates proper resourcing and in many  
503 LPA services have faced severe cutbacks and are struggling to meet even statutory  
504 requirements.

505

506 One key issue that inspectors could easily be aware of, is that evidence suggests  
507 individuals do not always make or are not always *able* to make informed healthy food  
508 choices and that those who reside within the vicinity of a significant number of HFT's

509 are more likely to consume them on a frequent basis than those who do not (12).  
510 Moreover, and for reasons that are not entirely understood, poorer less educated  
511 individuals are more susceptible to consume to excessive levels, which in turn may  
512 exacerbate health inequalities (12, 29). It would also be helpful if inspectors were  
513 aware of the lengths that some individuals, particularly older children will do to access  
514 HFTs. Moreover, there is no evidence that greater choice of HFTs is in any way  
515 beneficial to local communities. The less establishments there are will help control  
516 access and in turn the potential detrimental effects on health. It might be suggested  
517 that such key points could be covered in a relatively concise briefing note, for example.

518

519 There is also an issue of transparency in decision making. No doubt, the inspectors  
520 would argue that all decisions were based on professional opinion, drawing on the  
521 evidence presented, and making a judgement as the weight to give each aspect of the  
522 case. However, in trying to undertake a dispassionate review based on the paperwork  
523 alone, it was often quite difficult to understand the inspector's reasoning. For example,  
524 in some cases completely un-evidenced (and even factually incorrect) statements  
525 made by appellants were given credence. While in other cases LPA guidance and  
526 policy, which would have at least undergone scrutiny in its preparation, was dismissed  
527 as unimportant. This is clearly an issue which is beyond the immediate topic of A5 use

528 and runs to the heart of appeal decision making. However, decisions in A5 appeals  
529 have the potential to adversely impact the health and wellbeing of individuals and  
530 communities. This would not be the case with every type of planning appeal. It could  
531 be argued, therefore, in such cases only those matters that have robust evidence to  
532 support them should be taken into account in reaching a decision to uphold or dismiss  
533 an appeal. The onus, therefore, on all parties should be to provide compelling evidence  
534 to support their case, however it would also be useful to local authorities in particular  
535 to receive more direction in cases where their evidence base falls short, to assist them  
536 in preparing cases in the future.

537

538 The issue of planning conditions and opening hours is another topic that addresses  
539 matters beyond A5 use, given that other types of establishment may have open hours  
540 imposed on them. We have no evidence that planning conditions to control A5  
541 premises are ineffectual. We are also unaware of any research on this topic. However,  
542 there is clearly a concern among planning practitioners that controlling opening hours  
543 through enforcement is not necessarily a straightforward task. One practitioner also  
544 pointed out that small independent HFTs often change hands on a regular basis and  
545 that enforcement officers may well find themselves constantly playing catch-up as to  
546 who they were taking enforcement action against.

547

548 That childhood obesity in particular is a topic of extraordinary importance, can surely  
549 not be questioned. The damage to young developing bodies can be significant and that  
550 health problems track through into later life, even if individuals subsequently lose  
551 weight is proven (30). Childhood obesity is a societal problem and it is everyone's  
552 responsibility to do their part to address it (31). Planning is no exception and that  
553 planning has a role to play in obesity prevention is long established (4). However, it  
554 must be acknowledged that this is a relatively new role for planning and it is a  
555 challenging one (28). Elements that are coming in to play, such as the use-classes  
556 system were devised in very different times, shaped by different sets of dynamics. If  
557 the challenge of delivering healthy communities as promoted by the NPPF, some  
558 aspects of the planning system made require major overhaul, but these changes may  
559 take considerable time. Meanwhile its beholden on all involved to try and make the  
560 best of the current situation; and within this we include academia, especially in  
561 provision of an appropriate and timely evidence base.

562 In local authorities, it is suggested that programmes such as the NHS Healthy New  
563 Towns approaches (32) be used to provide insight in helping to identify policy drivers  
564 which could strengthen existing planning policies and that a Health in All Policies  
565 approach as advocated by WHO and the UK Local Government Association, be adopted



566 to ensure that all decisions made consider all relevant health implications (33, 34).  
567 Additionally, this will encourage an all-encompassing move within planning and health  
568 from a silo to a systems wide approach.

569 In terms of appeals, local authorities with the most robust, locally informed evidence  
570 bases have the greatest chance of success in having their decisions upheld. In England,  
571 local authorities are more likely to have planning policies around health and hot food  
572 takeaways if they have a high number of HFTs and higher rates of childhood obesity  
573 (35).

574 This is a rapidly evolving field of health/built environment evidence. All planners  
575 accredited by the Royal Town Planning Institute (RTPI) must complete 50 hours of  
576 Continuing Professional Development (CPD) during a 2-year period. Reviewing a 4-  
577 month period of RTPI promoted CPD (May-Oct 2019) revealed that among the many  
578 and varied events only one addressed health issues (36); though it should be pointed  
579 out the campaigning organisation Town and Country Planning Association (TCPA) has  
580 been far more proactive in this regards (37). Additionally, there are local authorities  
581 who have shown that using policy guidance in support of cases are resulting in positive  
582 outcomes. For example, in Gateshead (North East of England) a recent (March 2020)  
583 appeal for a multi-national fast food outlet was dismissed based on the local SPD  
584 restriction of HFT's, with inspectorate highlighting the potential impact of such

585 establishments in areas that already have high levels of obesity. It is also important to  
586 note that there is strong proactive involvement of researchers in this region which may  
587 also be seen as a contributing factor in addressing the issue. In adopting such  
588 approaches and learning from LA's good practice and collaborative efforts the ability to  
589 harness evidence effectively in appeals decision making can be achieved.

590

#### 591 **Limitations**

592 There are a number of limitations relating to this research which must be considered.  
593 Firstly, information obtained from the database appeals finder was collected from  
594 2010 and therefore additional and potentially relevant data which may have arisen in  
595 cases prior to this will not have been captured. Similarly, only information entered into  
596 the database appeals finder was considered, yet there is a chance that data could have  
597 been omitted for various unknown reasons.

598 Although various attempts were made by the authors to speak to PINS this proved to  
599 be unsuccessful. In order to provide context and added depth to the data derived from  
600 the appeals finder it would have been preferable to discuss individual cases with PINS.  
601 This would have resulted in a better understanding of decisions and to highlighted any  
602 possible barriers and/or facilitators that they may have encountered. This is one of the

603 key limitations of this research and it is suggested that future work includes working  
604 closely with local authorities and in particular, PINS to understand this process.

605 Finally, an issue that was brought to the attention of the research team by planning  
606 practitioners is the blurring between use class orders, which may undermine policy  
607 attempts to control unhealthy food access. For example, many of the large multi-  
608 national fast food chains operate premises as A3 restaurants and cafes, by providing  
609 seating areas, even when from a business point of view these are largely unwarranted.  
610 Planning processes seeks to root out our 'back door' A5 applications, but the distinction is  
611 not always clear. Similarly, A1 convenience stores, bakers and so on may sell a small  
612 selection of hot take-away food products, again blurring the A1/A5 boundary. These  
613 are significant challenges and will be addressed in future work.

614

## 615 **Conclusion**

616 The importance of health and in particular, the threat of obesity and associated  
617 complications needs to be included and be mandatory within all planning and policy  
618 documentation. All material considerations need to be taken into account and  
619 assessed on a case by case basis, whilst remaining mindful of the consequences on  
620 population health. Decisions need to be evidence based and official government

621 planning policy and guidance easily accessible and available to help steer judgements  
622 on any decisions that may impact on health. Importantly consideration of all evidence  
623 needs to be weighed up collectively rather than being based on mere assumptions or  
624 opinion and health in all policies should be consistently encouraged and prioritised.

625

## 626 **Acknowledgments**

## 627 **Conflict of Interest**

628 The author(s) declare no potential conflicts of interest with respect to the research, authorship  
629 and/or publication of this article.

630

## 631 **Funding**

632 This work was supported by Teesside University Seedcorn funding. This research did not  
633 require ethical approval as the data analysed was obtained from the appeals database finder  
634 which contains freely accessible information: <http://www.gov.uk/appeal-planning->

635 [inspectorate](http://www.gov.uk/appeal-planning-inspectorate). There are no conflicts of interest to report.

636

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