

Health and Planning – Evidence

Local Authority Planning Decisions: Considering Health

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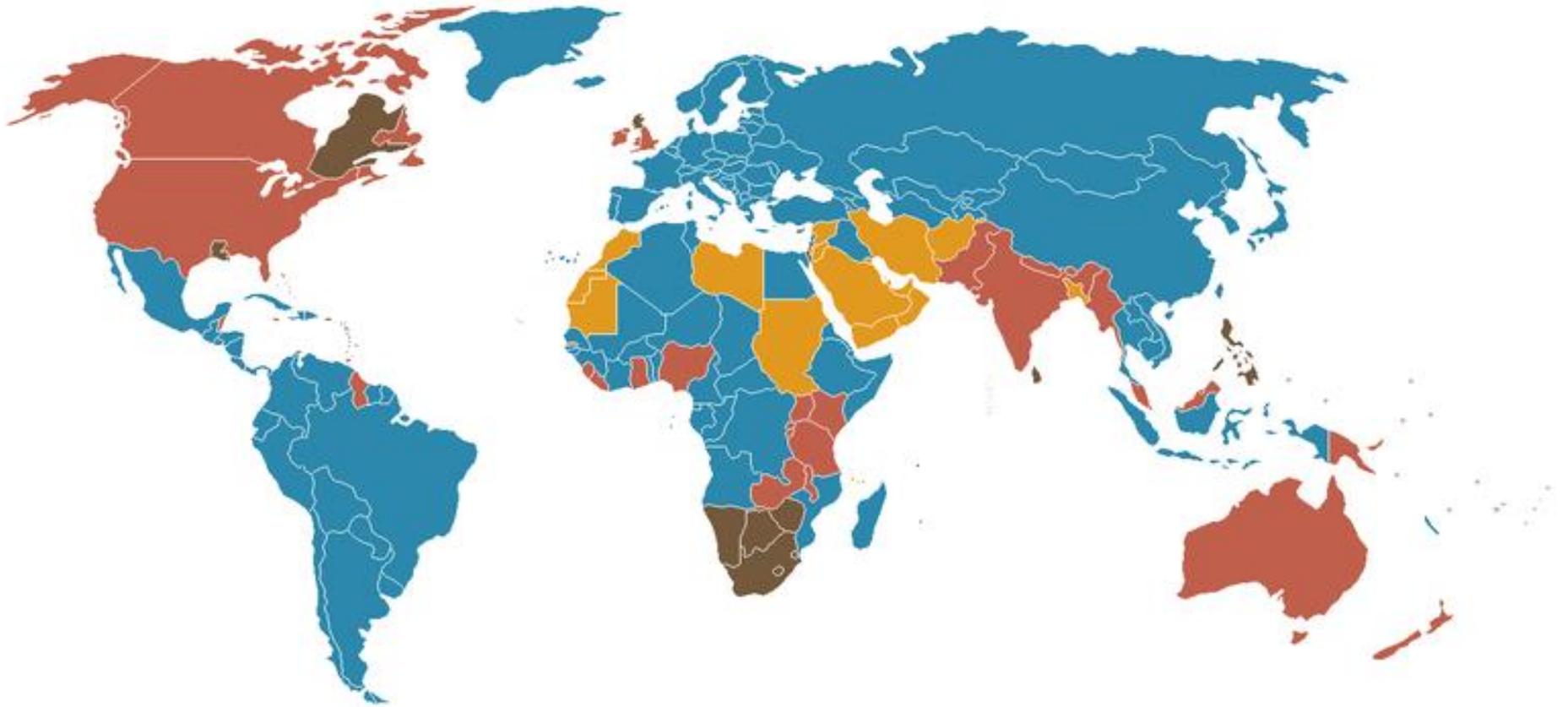
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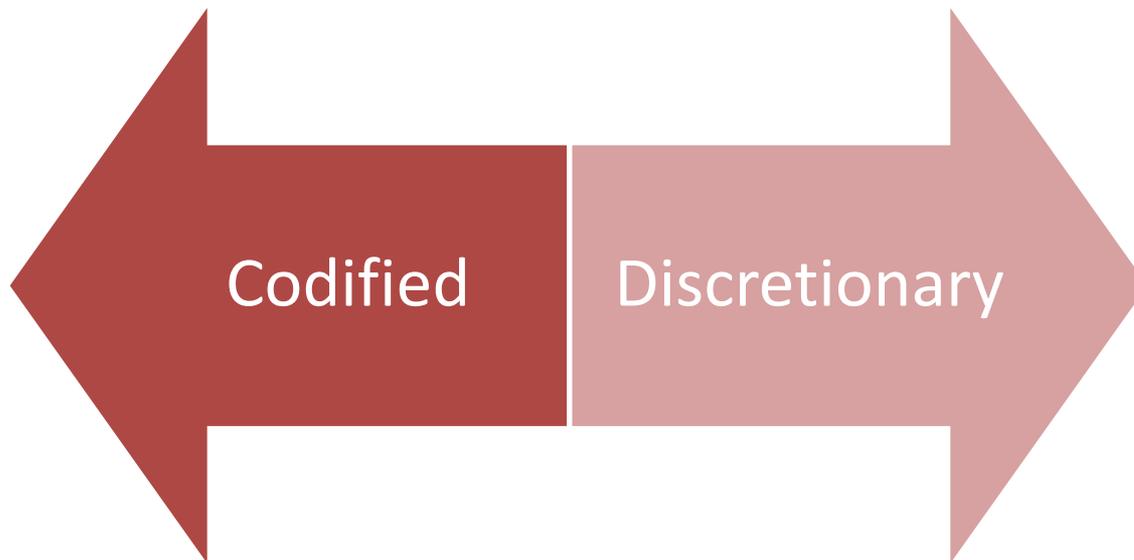
Planning decision making

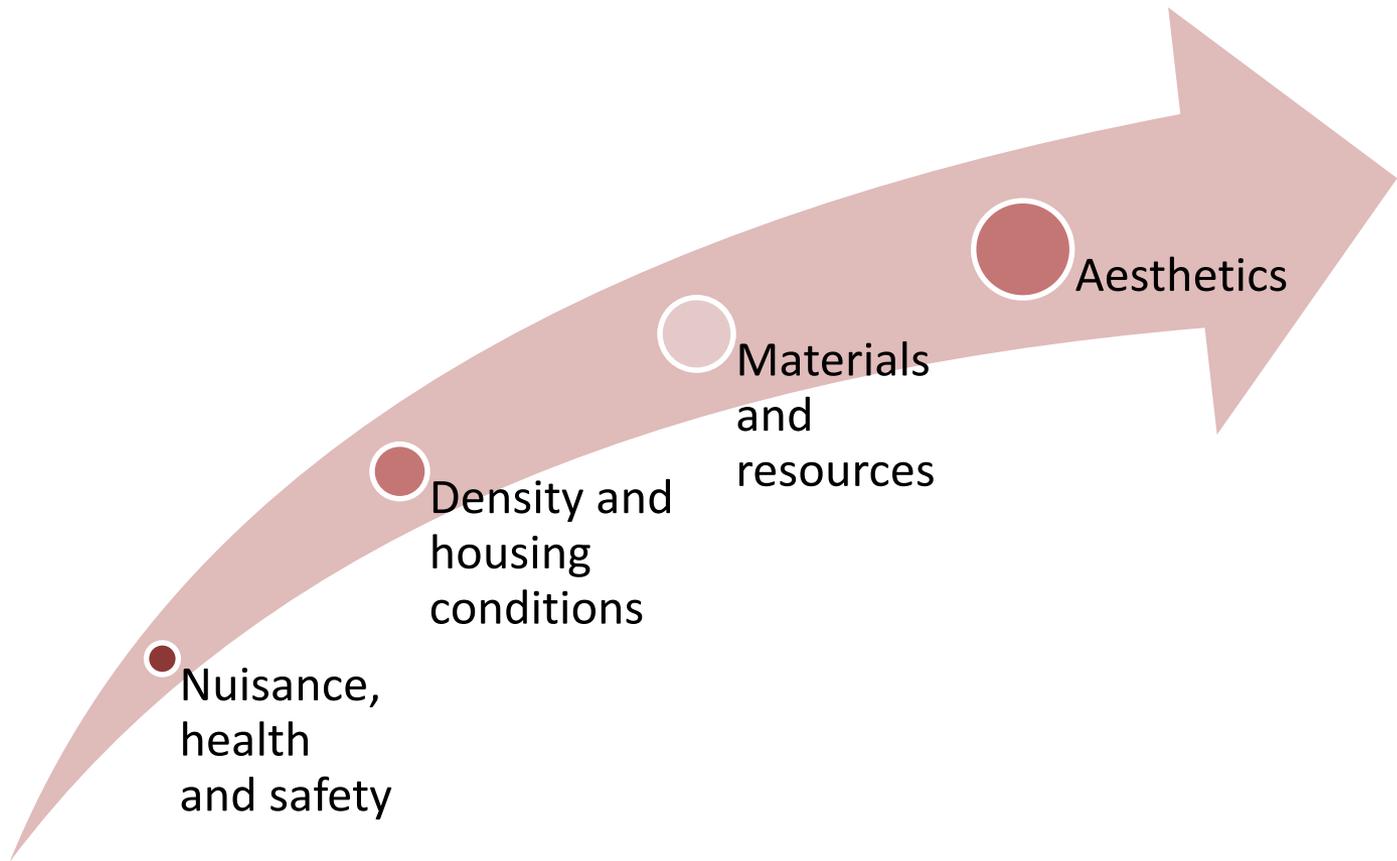
- The nature of planning decision making in the UK
 - Considering health in decision making
-

Legal systems



The spectrum of planning systems





Development of governance and measures of control

Time

Systems of control

Assize of
nuisance
(1275)

Proclamations
acts, bylaws

Planning

Building
control

Environmental
health

Licensing

etc etc

Making a Decision

Planning and Compulsory Purchase Act 2004

Section 38 (6)

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning acts the determination must be made in accordance with **the plan** unless **material conditions indicate otherwise.**”

(replaces Section 54a of the 1990 Act)

The development plan: after 2011

Neighbourhood
plan

The diagram consists of a light pink rounded rectangle containing two dark red circles. The left circle is labeled 'Neighbourhood plan' and is associated with 'Parish/Community 'Council'' below it. The right circle is labeled 'Development Plan Documents' and is associated with 'Local Planning Authorities' below it. A red plus sign is positioned between the two circles, indicating their combination. The entire diagram is framed by a dashed red line at the top and bottom.

Development
Plan
Documents

Parish/Community 'Council'

Local Planning Authorities

The 'Plan'

A **Development Plan** will include:

- an overall vision which sets out how the area and the places within it should develop
 - strategic objectives for the area, focusing on the key issues to be addressed
 - a delivery strategy for achieving these objectives
 - clear arrangements for managing and monitoring the delivery of the strategy
 - It is a series of documents
-



Area Action
Plan

Local Plan /
Core Strategy

Proposals
map

Development
Management
Policies

Site
Allocations

The Bristol context: example

- Core Strategy (strategic)
 - Joint Strategic Needs Assessment of Health and Wellbeing in Bristol
 - Site Allocations and Development Management Policies (focused)
 - Bristol Central Area Plan (focused)
-

The Bristol context: Core Strategy

Strategic Objectives - 5. Better health and wellbeing: a pattern of development and urban design that promotes good health and wellbeing and provides good places and communities to live in. Bristol will have open space and green infrastructure, high quality healthcare, leisure, sport, culture and tourism facilities which are accessible by walking, cycling and public transport. This will help enable active lifestyles, improve quality of life and reduce pollution.

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

+ Health care provision, Green infrastructure, Social and travel infrastructure etc

The Bristol context: Site Allocations and Development Management Policies

Policy DM14: The Health Impacts of Development : Development should contribute to reducing the causes of ill health, improving health and reducing health inequalities within the city through:

- i. Addressing any adverse health impacts; and
- ii. Providing a healthy living environment; and
- iii. Promoting and enabling healthy lifestyles as the normal, easy choice; and
- iv. Providing good access to health facilities and services.

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

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

Weight

Development Plan policy will have been based upon evidence and community requirements/needs/wishes thus enabling the state to act in the public interest. This will have been tested.

The weight and stage of transition is significant:

- Age of adopted plan?
- Conformity with National Planning Policy Framework?
- Post adoption decisions

You need to either establish conformity with the Development Plan, or demonstrate that the policy context is *now* flawed and/or other material considerations justify your proposal

Making a decision

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Material Considerations

“Any consideration which relates to the use and development of land is capable of being a planning consideration”

(Stringer, 1970)

But must:

- relate to the purpose of planning legislation which is to regulate the development and use of land in the public interest;
 - fairly and reasonably relate to the application concerned
-

What are Material Considerations?

- Whilst not being defined in law, the Courts are the arbiters of what constitutes a material consideration;
 - Planning Policy Statements & Circulars;
 - Emerging policy;
 - Previous decisions;
 - Written parliamentary answers;
 - After dinner & conference speeches (by Ministers).
-

Material Considerations

- Consultations with statutory and non-statutory bodies
 - Planning history
 - Statements, letters, guidance notes
 - Surrounding uses
 - Conservation
 - Design/appearance
 - Access
 - Traffic generation/parking
 - Environmental/social/economic/sustainability factors
 - Health
 - Negotiations/off-site works
 - Amenity
-

ENERGY DEVELOPMENT

Distraction for cricketers blocks turbine

A proposal for an 18m wind turbine in the West Yorkshire green belt has been turned down due to the adverse impact it would have on cricketers using a nearby sports pitch.

The inspector agreed that the turbine would not adversely affect the area's character or local residents' amenity. However, he noted that the structure would be visible to batsmen on some of the wickets and fielders might also be distracted. This would reduce enjoyment of the game, he held. He recognised that this consideration was somewhat unusual but decided that it tipped the balance.

DCS Number 100-068-989

Inspector Philip Major; Written representations

Distinctions

The law makes it clear that there is a distinction between the question of whether something is a material consideration or not and the weight which should be given to it;

i.e. the former is a matter of law & the latter is a question of planning judgement (by the decision maker).

Discussion

In 2008 the Government published 'Healthy Weight, Healthy Lives: a Cross Government Strategy for England', which stated that local authorities should use existing planning powers to control more carefully the number and location of fast food outlets in their local areas.

A new fast food takeaway is proposed in close proximity to an educational establishment.

TASK:

Consider the key questions, deciding factors and information requirements associated with making a decision for such a proposal

Discussion

What is the planning policy context?

What are the other material considerations?

- Nature of educational establishment
- Concentration
- Amenity considerations
- Ability to manage access
- Etc

What is a balanced judgement in this case?

The Bristol context: Site Allocations and Development Management Policies

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

- i. The number, distribution and proximity of other food and drink uses, including those with unimplemented planning permission; and
- ii. The impacts of noise and general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas; and
- iii. The availability of public transport, parking and servicing; and
- iv. Highway safety; and
- v. The availability of refuse storage and disposal facilities; and
- vi. The appearance of any associated extensions, flues and installations.

Takeaways in close proximity to schools and youth facilities will not be permitted where they would be likely to influence behaviour harmful to health or the promotion of healthy lifestyles.

Case law: (Source – Development Control Practice)

- *Copeland v London Borough of Tower Hamlets 11/6/2010* – Found that the council had acted unlawfully in granting planning permission for a takeaway by failing to take into account the proximity of a secondary school with a healthy eating policy as a material consideration even though the council had no planning policy relating to this issue.
 - The council subsequently decided that the scheme would add to the proliferation of takeaways which would erode its ability to combat the effects of poor diet in the local community. It highlighted the proximity of various schools and that the premises would attract children. On appeal the inspector agreed that the council's core strategy did seek to reduce an over-concentration of uses that would detract from the ability of residents to adopt healthy lifestyles but found no over-concentration within 300 metres of the site and there was no clear-cut evidence that the proposal would increase child obesity or undermine the healthy eating policies in local schools. The appeal was allowed.
-

Case law: (Source – Development Control Practice)

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

Case law: (Source – Development Control Practice)

- East Riding of Yorkshire 25/08/2011
 - The inspector concluded that the college promoted healthy lifestyles and accordingly the students had the ability to make an informed choice on whether to use the facility on a regular basis
 - Healthy lifestyles and childhood obesity discussed noting site was near to a college but decides students have sufficient knowledge to make choices and other hot food available nearby
-

Case law: (Source – Development Control Practice)

- 'Waltham Forest 07/12/2010 - A location within 40 metres of a park was found to be in conflict with a council's SPG on community health ground but was considered to be insufficient grounds for withholding permission.'
 - 'A distinction between primary and secondary schools has been made in two cases. In Islington 20/06/2012 the inspector concluded that children of primary school age would be accompanied by an adult who would be able to guide food choices. In Rotherham 09/01/2012 the inspector similarly considered it that unlikely that children would travel to and from school unaccompanied by an adult and pointed out that the children would not normally be permitted to leave the premises at midday.'
-

Case law: (Source – Development Control Practice)

- Barking and Dagenham 11/02/2011 – ‘A takeaway was found to have a neutral effect on the health and wellbeing of local residents notwithstanding its location within 400 metres of a primary school in conflict with an SPD, but in that case the inspector had regard to the appellant’s willingness to accept a condition requiring its counter service to close between 15:00 hours and 16:30 hours on school days’
 - Brighton and Hove 03/03/2011 – ‘the issue of proximity to a secondary school was given substantial weight despite there being no relevant development plan policy but the health issue was considered to be satisfactorily addressed by a planning condition to restrict sales to after 16:00 hrs.’
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