Written evidence submitted by Adam Chaffer (PHP0133)

EXECUTIVE SUMMARY

1. The House of Commons Select Committee’s report, ‘Childhood Obesity – Brave and Bold Action’ (17 November 2015) contains recommendations which if implemented could start to reverse the obesity epidemic that the country currently faces.

2. The current format of Planning Law protects children and adolescents from the risk of becoming obesity to an extent. Material considerations are only beneficial as a method of protection if the Local Planning Authority is minded to give the point considerable weight otherwise the point will effectively become redundant.

3. There is scope for Parliament to broaden the Public Health protection against obesity by amending Planning Law. This could include legislating to create exclusion zones around schools as used in Gateshead, Tyne and Wear. By broadening the protection within Planning Law and controlling what can be developed on a site would mean that Public Health would be able to regulate access to unhealthy eating near to schools.

4. Where a community organisation is contesting a significant question of law or public policy, in this case Public Health, which has the potential to have repercussions beyond the nexus of their local community more should be done to allow their case to be funded by the State to ensure that adequate representation can be made on their behalf. Parliament should give consideration to reforming Access to Justice to ensure that parties can operate on an equal footing in such circumstances.

INTRODUCTION
5. My name is Adam Chaffer I am a Trainee Solicitor in Durham. Alongside my full time role I also serve as a Public Governor on the Board of Governors at the Newcastle upon Tyne Hospital’s NHS Foundation Trust.

6. I hold a degree in Law (2012) from Northumbria University and also hold a Masters in Law (2016) with a dissertation which considered the fairness and methods of challenge to the current resource allocation model in the National Health Service.

7. I make this statement in relation to my ongoing work on behalf of the No McDonald’s Kenton Action Group (Rule 6 Party) which I am undertaking on a pro bono basis.

8. From the outset can I be clear that this evidence is submitted in my professional capacity and therefore any opinions made herein are my own views and opinions and should not be taken to be representations or opinions of my employer or any other organisation which I represent.

**SCOPE OF EVIDENCE**

9. Having considered the term of reference for the Health Select Committee Public Health Post-2013 Inquiry I note that evidence is sought for specific aspects of public health provision.

10. This submission will consider the question of how Public Health can be protected through Planning Law. To contextualise this point I will rely on the Kenton Planning Inquiry as a working example.

11. The working example of the Kenton Planning Inquiry is an ongoing Inquiry which is due to conclude on the 30th June 2016. A decision of the Planning Inspector is expected shortly thereafter. In light of this the submissions made herein will only refer to points which have appeared in the Statement of Common Ground as agreed between the parties and does not include any evidence relating to the merits of the
case. Any points which are raised in relation to Planning Law and Public Health are based on existing and established guidance or case law.

12. Alongside this evidence will be presented to outline the challenges faced by pro bono clients seeking to protect a Public Health concern within their community and how Parliament could remedy the situation.

**BACKGROUND TO THE CASE STUDY**

13. In 2014, McDonald’s Restaurants Limited (the ‘Appellant’s’) through its planning agent sought to make a planning application to develop a plot of land adjacent to the Kenton Bar roundabout and erect a two storey McDonald’s takeaway and drive thru restaurant.

**The Action Group**

14. The No McDonald’s Kenton Residents’ Action Group (the ‘Action Group’) was formed in direct response to the McDonald’s Resturants Limited initial planning application in May 2014 to build a restaurant on the site of the former Crofters Lodge pub.

15. The Action Group represents an eclectic mix of residents, diverse in age, outlook and the property rights they hold. For example, the Action Group represents local residents from 8 to 80 years old; it represents those who have freeholds, tenancies or Council and Social Housing; it represents residents from Blakelaw; Kenton Bar; Central Grange, Kingston Park, Montague Estate, North Kenton, the Gardens Estate and Kenton.

16. Further to the residents the Action Group was joined in its cause by a number of pre-existing groups: the Kenton Bar Tenants and Residents’ Association, the Montague Estate Residents’ Group, the Central Grange Management Company and Friends of Kenton Dene. Finally the Action Group
17. On the 11 September 2014 the planning application was considered and subsequently refused Newcastle City Council. The refusal to grant planning permission was based on three reasons; the pedestrian safety risks; the urban design at a prominent gateway of the City and finally the application is located in an area of deprivation and sufficiently proximate to Kenton School to provide greater access and opportunity for people, and especially children, to eat unhealthily.

18. The Action Group initially constituted a large but informal collection of local residents’ with strong views on the proposed development. It was not until the Appellant’s decision to challenge the Council that the Action Group took more of an official stance and formulated a working committee.

Kenton

19. In order to put this planning application into context it is important to consider the demographic of the local community. Kenton is a suburb of lying to the North West of the centre of the City of Newcastle upon Tyne with a population of approximately 11,605 (2011 census).

20. According to data published by Public Health England the Kenton ward has an entrenched obesity epidemic. The data collated by Public Health England shows that in Kenton 67.4% of those aged 10/11 are either obese or overweight compared to 52.4% nationally.

21. The proposed site is situated 486 meters from Kenton School which with over 1900 students is the largest secondary school situated outside of London. Taking annual intake fluctuations into consideration approximately half of the student cohort is classed as being from families who are ‘low income households’. Based on the information outlined in paragraphs 19 to 21 it is not unreasonable to assess Kenton as having a number of socio economic challenges beyond the national average.
Effect of Obesity

22. The House of Commons Health Select Committee has already undertaken an Inquiry into Childhood Obesity the findings of which are commendable and I hope can be enacted on by the government for the long term benefit of young people. There are, however, a number of points which are worth detailing in this report to add context to the impact of Public Health in Planning Law.

23. The Childhood Obesity Inquiry conducted by the Health Select Committee produced the ‘Childhood Obesity – Brave and Bold Action’ report (17 November 2015). This report concluded at paragraph 5, ‘whilst children who are overweight and obese are now being identified, few effective interventions are in place to help them, and few obese children become adults of normal weight’.

24. In addition the Health Select Committee made a recommendation that, ‘a simple way to boost local authorities’ effectiveness in this area would be change planning legislation to simplify the processes for limiting the proliferation of unhealthy food outlets in local areas, which we have heard can be time-consuming and difficult. We recommend that this change should be made. In particular, health should be included as a material planning consideration.’ I will be returning to this point in due course.

25. Looking beyond the dynamics of this Planning Inquiry the effect of Obesity is creating clear pressures on the NHS. Since obesity can cause long term health problems including heart disease, cancer, and mental health problems. The current challenges that the NHS faces allied with the obesity epidemic is creating a potential health economic crisis which if left unattended will have a deleterious impact on the operational effectiveness of the NHS. It is likely that without a level of preventative action these pressures will become exasperated in a very short space of time.

PLANNING LAW AND PUBLIC HEALTH
26. In order to appreciate the how Planning Law approaches the question of Public Health it is beneficial to walk through the points raised in the Kenton Planning Inquiry by way of an example.

27. Since 2012 the National Planning Policy Framework (NPPF) produced by the Department of Communities and Local Government has aided local planning authorities and decision makes in how to interpret the Government’s approach to planning. Section 8 of the NPPF concerns the promotion of healthy communities.

28. In addition to the NPPF, Parliament requires Local Planning Authorities to have a ‘local plan’ pursuant to the Planning and Compulsory Purchase Act 2004 (as amended). A local plan sets out local planning policies and identifies how land is used, determining what will be built where. Adopted local plans provide the framework for development across England.

29. In the context of an example, Newcastle City Council operates a joint plan with Gateshead Council known as the ‘Core Strategy and Urban Core Plan’ (the Core Strategy) which was adopted in March 2015. At paragraph 12.3 the Core Strategy recognises that within the area of Newcastle and Gateshead there are existing health problems which should be considered by planners and the Local Planning:

‘Across Gateshead and Newcastle there are marked differences in physical and mental health and life expectancy between the most deprived and most affluent neighbourhoods. Evidence shows that health inequalities are linked to social and economic issues and that action is required across the wider social determinants of health. The wider determinants of health are closely linked to the quality of life enjoyed by residents. This includes … healthy food and care and health facilities. Development has the ability to positively
influence wellbeing and health, and spatial planning aims to consider and positively influence the determinants of health.’

30. In respect of limiting takeaway food the Core Strategy makes specific reference to health and wellbeing at CS14. This document provides that the Local Planning Authorities in Gateshead and Newcastle are exploring the potential through planning applications to, ‘controlling the location of, and access to unhealthy eating outlets.’

31. More recently Newcastle City Council has spent time drafting and consulting on a Supplementary Planning Document for Hot Food Takeaways. The document proposes an exclusion zone around schools based on walking distance and pedestrian movement corridors rather than using a linear approach to measuring the distance from a school. The efforts of Newcastle City Council to address this public health problem are commendable.

32. In neighbouring Gateshead the Council have taken create an environment where healthy choices are the accepted choices for food by effectively banning new planning applications for hot food takeaways. This is an example of a significant step in addressing a major public health concern. The Planning Inspectorate recently upheld this approach in the decision of Heworth (APP/H4505/C/15/3133370) (2016).

33. Alongside the statutory guidance provided by the NPPF and the Core Strategy the Planning and Compulsory Purchase Act 2004 at section 38(6) requires planning applications to be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

34. In relation to the very specific question of planning applications for takeaway food situated near schools the Courts have established that this is a material consideration. In the notable case of R (Copeland) v Tower Hamlets London Borough Council [2010] EWHC 1845 Admin the High Court held that promoting
social objectives may be a material consideration in the planning context. In this instance, Mr Justice Cranston found that a proposed application to build a takeaway near a school was a material planning consideration.

35. Concurrently with the High Courts approach to takeaways and planning law the Planning Inspectorate have also built up a body of persuasive decisions which support the Courts view point. In both Islington (20th June 2012) DCS No 100-077-825 and Rotherham (9th January 2012) DCS No 100-075-699 state that any potential effect on the health of school children is a material consideration. They draw a distinction between proximity to primary schools, the pupils of which, who will rarely walk to school by themselves and therefore have less autonomy regarding purchasing fast food, and proximity to secondary schools, the pupils of which are more likely to walk to school by themselves and be in a position to purchase fast-food.

36. In some cases the Planning Inspectorate has added planning conditions to limit the effect of a development. In the Barking and Dagenham (11 February 2011) DCS No 100-071-105 and Brighton and Hove (3 March 2011) DCS No 100-071-282, decisions concerned restricting sales of fast food establishments from nearby schools until after the school day was over.

REFORMING PLANNING LAW TO BENEFIT PUBLIC HEALTH

37. As it can be seen in the paragraphs 26 to 36 of this submission there is an existing body of guidance and supporting case law which clearly shows that the impact of a development which includes a takeaway restaurant is a material consideration when it comes to planning decision making.

38. In the Health Select Committees report on Childhood Obesity a recommendation was made that would make building takeaways near to schools a material consideration
(paragraph 24 of this submission). Unfortunately the impact of material considerations is limited and therefore I do not think such a step would create the necessary protection that the Health Select Committee may have envisaged.

39. A material consideration is only an effective preventative measure if the Local Planning Authority gives the appropriate amount of weight to it; it is therefore subjective at best. It would be more beneficial to improving Public Health and specifically reducing the obesity epidemic if Planning Law took a more objective approach to fast-food takeaways if a more stringent prohibition on unhealthy eating outlets proximate to schools is taken. This change would reduce access to high sugar, high fat, energy dense foods which whilst not the sole cause of obesity are certainly a dominant cause and would then create a food environment that makes the healthy choice the easy choice.

40. The current format of Planning Law protects children and adolescents from the risk of becoming obesity to an extent. Material considerations are only beneficial as a method of protection if the Local Planning Authority is minded to give the point considerable weight otherwise the point will effectively become redundant.

41. There is scope for Parliament to broaden the Public Health protection against obesity by amending Planning Law. This could include legislating to create exclusion zones around schools as used in Gateshead, Tyne and Wear. By broadening the protection within Planning Law and controlling what can be developed on a site would mean that Public Health would be able to regulate access to unhealthy eating near to schools.

42. If Parliament was to consider legislating on this point then the most logical approach would be to create an exclusion zone round both primary and secondary schools. Within the exclusion zone there would be an outright ban on planning applications for
takeaway food unless fifty percent of the menu offering contained healthy options. At first instance a simple exclusion zone of a ten minute walking radius around the school would be appropriate. However, consideration should also be given for pedestrian movement corridors which will take into consideration the fact that students tend to follow certain routes, if a route is heavily populated then the exclusion zone could be extended to take this into consideration.

LEGAL REPRESENTATION

43. One of the challenges faced by the Action Group concerned obtaining legal representation whilst faced with limited legal resources. It is my understanding that with the assistance of the residents’ local Member of Parliament they sought representation through the Bar Pro Bono Unit to no avail. I became involved in the Inquiry in June 2015 at which stage the Action Group were moving near to the deadline of their Statement of Case, the document which sets down their case and forms the basis of how their argument will advance thereafter. I took the case both due to my commitment to providing a level of pro bono support to the local community and also due to interesting merits of this particular case. I was fortunate enough to be supported by a barrister from London who agreed to also act pro bono and the three expert witnesses who I approach also agreed to act without incurring fees.

44. The notion of Access to Justice is an imperative principle within the concept of the Rule of Law that conversely forms the underpinning of a democratic society. This case study clearly identifies that whilst pro bono services advances Access to Justice it should not be perceived as the solution to other forms of State funded legal advice and representation. Having adequate representation to advance the case of the Action Group and contest the assertions of other parties is a vital component ensuring that parties operate on an equal footing.
45 In the opening stages of the Inquiry the barrister acting for the Action Group addressed the Inquiry by saying that the, ‘National Planning Policy Framework says that planning should empower local people to shape their surroundings. This is exactly what the Action Group hopes to do; it is local democracy at its finest.’

46. As it stands the current model of seeking support entirely through the goodwill of a legal practitioner willing to operate pro bono is an unworkable and unfair model. On one hand it is based on the assumption that there will be a legal practitioner willing to take the case and who is conversely able to sustain the case for a long period of time without causing a detriment to employer or clients. On the other hand it is an unfair model since it creates a, ‘David v Goliath’ with one party having near unlimited resources to advance their position compared to the pro bono party who do not have the financial resources to sustain a legal campaign at such a magnitude. Parliament should give consideration to reforming Access to Justice to ensure that parties can operate on an equal footing in future.

30 June 2016