

Overview & Scrutiny Committee

Tuesday 7 May 2013
6.00 pm
160 Tooley Street, London SE1 2QH

Supplemental Agenda No. 1

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Date: 29 April 2013

BRIEFING NOTE

Overview and Scrutiny Committee: May 7 2013

Health, vitality and viability of Elephant and Castle town centre:
Business Mix on Walworth Road

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1. Overview and Scrutiny Committee requested a briefing note to respond to issues discussed at the meeting on 15 April 2013.

Betting Shops, Pay day Loan, Pawnbrokers

2. There is an issue of perceived proliferation of betting shops, pay day loan shops and pawn brokers within the Elephant and Castle town centre. Under the Use Classes Order¹, these uses fall within the A2 use class. The A2 use class also includes Banks, Building Societies, Bureau de Change, Professional Services, Estate Agents and Employment Agencies. Changes between uses in the A2 use class do not require planning permission.
3. In addition, the General Permitted Development Order allows a change of use from restaurants and cafes (Use Class A3), drinking establishments (Use Class A4) and hot food takeaways (Use Class A5) to a use in the A2 use class without requiring planning permission.
4. Map 1 shows the number of Betting Shops, Pay day Loan, Pawnbrokers and also Hot Food Takeaways, Cafes/Restaurants and Pubs/Bars. There are 8 Betting Shops, 4 Pay day Local shops, 5 Pawnbrokers. In addition there is an amusement arcade (sui generis).

Addressing the proliferation of Betting Shops, Pay day Loan, Pawnbrokers

5. Boroughs have planning powers to control the uses of high street shops through the Use Class Order. However, as described above, permitted development rights limit boroughs' powers in key respects
6. A recent private members Bill, the Betting Shops Bill (2010-2012) proposed an amendment to the Town and Country Planning (Use Classes) Order to create a separate use class for betting shops. It also sought to give boroughs the ability to assess demand for betting shops and place a cap on the number of these premises for which planning permission may be granted in any area. However, the Bill failed to complete its passage through Parliament.
7. In a debate in Parliament on Bookmakers and Planning (Haringey) (HC Deb 24 November 2010 c406), David Lammy MP raised concerns that his constituency had 39 betting shops but no bookshop. He proposed that betting shops were re-classified as sui generis so that a planning application would be required to change use from any other establishment to a betting shop. The then Planning Minister, Robert Neill rejected the proposal and recommended the use of an Article 4 Direction whereby the Council can suspend the use of permitted development rights in certain circumstances.
8. The Mary Portas Review (2011) into the future of the UK's high streets included a recommendation to put betting shops into a separate use class category i.e. sui generis. Following the Portas Review, the Government published *High Streets at the Heart of our Communities: the Government's Response to the Mary Portas Review*. In this document the use of an Article 4 Direction was highlighted as the appropriate tool for controlling certain uses such as betting shops, by removing permitted development rights, and requiring a planning application to be made. The National Planning Policy Framework (NPPF) (2012) advises that the use of Article 4 Directions should be limited to situations where this is necessary to protect local amenity or the well-being of the area.
9. In July 2012 the London Assembly's Economy Committee launched an investigation into empty shops on London's high streets². The Committee identified a number of measures that could boost the performance of the high street, including making the high street more diverse and recommending the Government to amend the Use Classes Order to establish betting shops, pay day loan shops and pawnbrokers into *sui generis* use class. The report also highlighted the issue of the clustering of betting shops and the Mayor's pledge to lobby the Government to give local Council's greater control over their proliferation. The Mayor's

¹ Use Classes Order (2007) (UCO) and the General Permitted Development Order 1995 (GPDO). Together these instruments act to deregulate aspects of the planning system, classifying land uses into separate use classes and allowing changes within and between these classes in certain circumstances without planning permission.

² London Assembly: Open for Business 'Empty shops on London's high streets' March 2013

draft Town Centres SPG (January 2013) specifically states (para 2.2.10) “*There are genuine planning issues affecting amenity and the continued success of town centres which justify allowing planning authorities to consider the merits of proposals for betting shops. Betting shops are different in planning terms from the other types of use in the A2 class; they have different hours of operation from other uses covered in A2 (typically they open seven days a week for up to twelve hours a day – rather longer than the typical financial/business use), with different impacts on local amenity. It is recognised that the planning system can only be used to secure land use objectives. It is also recognised that there are current limitations in the ability of boroughs to control betting shops by virtue of their A2 use classification. The Mayor has written to the Secretary of State on this issue which will be considered in the context of the current review of the Use Classes Order.*”

10. In September 2012, the Government consulted on changes to the Use Classes Order. The changes proposed did not consider Betting Shops, Pay day Local shops or Pawnbrokers. In response to the consultation Southwark Council requested that these particular types of use are re-classified as ‘sui-generis’ use (from their A2 use class), which would require a separate planning application to be made. We understand that the Government is not proposing to make any changes in this respect. However, the Government is taking forward a change to the General Permitted Development Order with respect to vacant or redundant buildings, to allow them to convert temporarily to a set of alternative uses including shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices (B1) for up to two years. This change will therefore allow uses in the A2 category which includes Betting Shops, Pay day Loan and Pawnbrokers to move into empty buildings which have a different established Use Class (such as A1) without requiring planning permission.
11. The concern with this change is that we do not know whether it will fully distinguish between redundant buildings and those currently occupied by thriving businesses and other activities. Such businesses could be threatened by the change if owners sought to maximise their financial return through the replacement of established occupiers rather than filling vacant premises with new uses. The change could also have wide ranging and unintended adverse consequences as it may compromise existing planning policies which seek to balance the mix and spatial pattern of uses in town centres. Existing policy protection for uses such as shops (A1) in our protected shopping frontages (i.e. the proportion of units in A1 use must not fall below 50%) would be undermined by this proposal. It may also prove difficult in terms of local authority administrative resources to monitor the enforcement of the expiry of the two year temporary period.

Local Authority level – case studies

12. In 2009 the London Borough of Lewisham sought powers to set a cap on the number of betting shops in the borough and to require planning permission for new premises. Lewisham Council were attempting to use powers under the Sustainable Communities Act but the proposal was not taken forward by the government.
13. Barking and Dagenham Council have obtained resolution from their Cabinet that notice be given of the Council’s intention to make a non-immediate Article 4 Direction, covering the whole Borough, withdrawing permitted development rights for conversion of A3, A4 and A5 uses to A2. This is in conjunction with approving the consultation of a Supplementary Planning Document (SPD) “*Evening the Odds: curbing the proliferation of betting shops*” which aims to assist officers in the processing of forthcoming applications for betting shops.
14. Lambeth Council are currently out for public consultation on their Local Plan. Draft Policy ED10 – ‘A2 uses’, sets out criteria for the assessment of new A2 use proposals. The criteria consider over-concentration, with a threshold of 25 per cent or more of total ground floor units in a defined shopping frontage; clustering i.e. no more than 2 in 5 consecutive premises in A2 in areas outside primary shopping centres and in local centres; consideration of whether the proposal leads to a reduced vitality and commercial viability in the area and whether it will give rise to anti-social behaviour and disturbance to local residents and users of the town centre and a risk to the level of crime. Where permission is granted, conditions may be imposed to control future A2 uses on the site. The policy is however weakened as the Use Classes Order allows the permitted development between A use classes.
15. Haringey Council is consulting on a Development Management policies plan and has set out a requirement that in district town centres uses such as banks/estate agents/betting shops and other financial uses (A2) are limited to 25% of units in town centres. Where planning permission is required for betting shops, the council will only allow a betting shop where there are fewer than three operational betting shops in the Centre. The consultation document does recognise however that the draft policy would still be limited in its impacts due to the current Use Classes Order and permitted development rights. It is concerned that

implementing an Article 4 Direction is a blunt tool and the additional bureaucracy may outweigh its effectiveness, for example a bar would need permission to convert to a post office.

16. Newham Council has become the first council in the country to use the 'primary activity' of a betting shop in their decision to reject a licence application. Members of the licensing sub-committee rejected an application by the owners of the Paddy Power betting chain to open new premises at 297 Green Street, under section 153 Gambling Act 2005. The council believed the premises would add to the 'cluster' of betting shops that already operate on the street. Members decided the application did not meet the criteria for a betting shop licence as the premises would not be primarily used for betting and that the purpose of the application was to increase the number of Fixed Odds Betting Terminals (FOBTs) in the street rather than enable traditional betting. Paddy Power is now pursuing a legal challenge against the refusal.
17. The Mayor of Hackney (and Chair of London Councils), Jules Pipe, has written to Leaders and elected Mayors of London boroughs to ask for support in a submission to government of a proposal to request a change in the law (using the Sustainable Communities Act) to create a specific Use Class for betting shops to seek greater local planning powers to control and reduce their concentration. By submitting the proposal under the Act, it requires the government to consider the proposal and decide whether to implement or reject it. The government must give its assessment of the proposal in writing. Any proposal that is not implemented by government can be taken up by the "Selector" - a fully independent body that is currently the Local Government Association. Central government must negotiate and try to reach agreement with the Selector on whether the initially rejected proposal is implemented. The results of this process can lead to reconsideration or compromise from the government on proposals.
18. The Mayor of Newham has also written to London boroughs to ask for support in sending a joint letter to the Secretary of State for Communities and Local Government to request the Queen's speech include legislative changes within the planning and licensing systems for betting shops. These include putting betting shops into a separate use class; the power for local authorities to place problematic uses in a use class of their own; and changes to the Gambling Act.

Legal Implications of an Article 4 Direction

19. Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 enables local planning authorities to restrict permitted development rights in its area or part of its area, or in respect of a particular development if the Secretary of State or the appropriate local planning authority is satisfied that it is expedient to do so. This can include restricting the permitted development rights to convert A5 (hot food takeaway), A4 (drinking establishment) and A3 (restaurant or cafe) uses into A2 (Financial and Professional service) uses. It should be noted that while an Article 4 Direction would require changes from A3, A4 and A5 use classes to an A2 use class to obtain planning permission, it would not affect changes within the A2 use class. A bank, or a building society or an estate agent could be converted into a betting shop without needing planning permission.
20. In imposing an Article 4 Direction, the Council would not be able to single out a particular use such as a Betting shop within the A2 use class. The Direction would need to apply to all uses within the A2 use class, so a change of use to a bank for example would also require permission. An Article 4 Direction does not prevent the development from going ahead, but instead requires that planning permission is first obtained from the local planning authority for that development.
21. Any such planning application would then be determined against relevant policies contained in the Council's Local Plan. It would be difficult to grant planning permission for a bank and refuse a betting shop as the Use Classes Order dictates that they have the same characteristics, unless the cumulative impact of an additional betting shop was assessed and policies were in place to address the clustering of specific retail uses.
22. Once planning permission is granted for A2 use, the Article 4 Direction would also not be able to control changes of use to another A2 use such as a betting shop. However, the Council would be able to condition planning permissions for new A2 use to prevent this where it can be justified. This may include the imposition of a restriction of use condition which could specifically exclude certain A2 uses within the A2 use class. However, as such a condition would be restricting future change of use which the Use Classes Order would otherwise allow, it should be used in exceptional circumstances and requires robust evidence to support its use to avoid being construed as unreasonable. Paragraph 87 of Circular 11/95: *Use of conditions in planning permissions* contains a presumption against such restrictions as set out below:

“Both development orders and the Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by development orders or future changes of use which the Use Classes Order would otherwise allow. The Secretary of State would regard such conditions as unreasonable unless there were clear evidence that the uses excluded would have serious adverse effects on amenity or the environment, that there were no other forms of control, and that the condition would serve a clear planning purpose.”

23. Article 4 Directions can cover any geographic area from a specific site to local authority wide. However, there should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area e.g. those covering the entire area of a local planning authority. An example where it would be reasonable would be where the operation of the permitted development would undermine local objectives. The Council would need to be satisfied there is good evidential reason(s) to make the Article 4 Direction and that if so it should be borough wide. Alternatively, the Article 4 Direction could cover a specific area and would need to be made for each shopping parade where tighter control was required and a boundary would need to be defined. However, the boundary of the Council's shopping parades may not include all of the shops within the local area and some units may still be situated outside of the boundary.
23. There are stringent guidelines on the application of an Article 4 Direction. Circular 9/95 'General Development Order Consolidation 1995' contains Government guidance which states:
- “permitted development rights have been endorsed by Parliament and consequently should not be withdrawn locally without compelling reasons. Generally... permitted development rights should be withdrawn only in exceptional circumstances.”*
24. An Article 4 Direction to remove permitted development rights to reduce the clustering of betting shops must be supported by a substantive body of local evidence which demonstrates local need and the harmful effects of clustering.

Resource Implications of an Article 4 Direction

25. In 2010 the Government published the Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135). This sets out where local authorities' will be liable to pay compensation where they make Article 4 Directions:
- Where 12 months' notice is given in advance of a direction taking effect there will be no liability to pay compensation; and
 - Where directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions. Compensation may be claimed for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights. For example the Council could be liable for the loss of income a property owner suffers by not being able to convert their property into a betting shop where this is due to the Article 4 Direction. However an immediate direction may incentivise property owners to claim for compensation for changes of use to betting shops they would not otherwise have carried out. This could leave the Council with a very significant liability.
26. Therefore to avoid potential compensation claims the Council would need to provide 12 months notice in advance of an Article 4 Direction taking affect. This is called a non-immediate direction.
27. The procedure for making a “non-immediate” Article 4 Direction is as follows:
- Give 12 months notice of direction
 - Seek representations
 - Cabinet approval
 - Advertise direction and notify Secretary of State
28. The Direction would come into effect 12 months after the notice had been placed.
29. There would be a need to be extensive public and business consultation in the areas proposed for an Article 4 Direction to limit permitted development rights. Any body of evidence compiled to support an Article 4 Direction which sought to control the proliferation of betting shops would have to be robust and

conclusive in terms of any harm resulting as a result of this proliferation or potential challenge from interested parties.

30. The benefits from a successful Article 4 Direction would need to be weighed against the scale of resources required to support an Article 4 Direction.

Fees

31. Where an Article 4 Direction has been made, the planning application fees should be waived as the application for planning permission is only required by virtue of an Article 4 Direction removing permitted development rights (Paragraph 5 (1) b(i) of *The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012* confirms the fee exemption).

Protected shopping frontage policy

28. Southwark Plan Policy 1.9 'Change of use within protected shopping frontages' protects A1 retail use (general retail shops). A change of use from A1 will only be permitted where the proportion of units in A1 does not fall below 50%. We also take into consideration A1 premises which have been vacant for a period of at least 12 months with evidence that there has been a demonstrated effort to let it out, or the business has not made a profit over a 2 year period.
29. Given that the current policy sets a threshold of 50% of units as non-A1 use, it can prove difficult to refuse an application for an A2 use. The A use class hierarchy of the Use Classes Order is arranged in a manner which categorises the uses based upon 'relative impact'. Therefore it would be difficult to justify under the current Use Classes Order, a specification for more A3, A4 or A5 uses as opposed to A2 uses, within a protected shopping frontage policy.
30. The policy would need to be reviewed and further evidence collated to justify the cumulative impact of betting shops/pay day shops upon the retail environment, to support a preference for other uses.

Table 1

Planning class	Description / example uses	Permitted changes (without approval)
A1 Shops	General retail, hairdressers, travel agents, post offices, dry cleaners, sandwich bars, supermarkets, discount stores, charity shops	Within A1
A2 Financial and professional services	Banks, building societies, estate agents, betting shops, pawnbrokers, payday loan shops	Within A2, or to A1
A3 Restaurants and cafés	Units selling food and drink for consumption on the premises	Within A3, or to A1, A2
A4 Drinking establishments	Public houses and wine bars, but not including night clubs	Within A4, or to A1, A2, A3
A5 Hot food takeaways	Units selling hot food for consumption off the premises	Within A5, or to A1, A2, A3

31. Table 2 below sets out the history of the shop units, where known, currently being used for A2 Betting shop, Pay day loan shops and Pawnbrokers. Four Betting Shops and one Pay day loan shop have planning permission history. It is assumed the remaining shops are in operation through permitted development.

Table 2

William Hill	204 Walworth Road	Betting Shop (A2)	Planning Permission: Change of use from a A1 to a A2 Licensed Betting shop refused 06/07 and granted on appeal 03/08
Paddy Power	220-222 Walworth Road	Betting Shop (A2)	History: New shopfront, a/c units and satellite dishes for existing Bookmaker granted on 07/04
Oakham Loans	240 Walworth Road	Pay day loan (A2)	No planning history
Bet Fred	262 Walworth Road	Betting Shop (A2)	Permitted Development History: Replacement of existing internally illuminated signage fronting Walworth Road and Penrose Street for Woolwich Society Bank granted on 07/03.
Albone Jewellers	296 Walworth Road	Pawnbrokers (A2)	No planning history
Cash Converters	312 Walworth Road	Pawnbrokers (A2)	No planning history
William Hill	386-388 Walworth Road	Betting Shop (A2)	New shopfront to existing Bookmaker granted on 06/98
Cash City	229 Walworth Road	Amusement Arcade (sui generis)	Planning Permission (not yet implemented): Change of use from amusement arcade (sui generis) to A1 - swapped with 281 Walworth Road
Fish Brothers - Pawnbrokers	241 Walworth Road	Pawnbrokers (A2)	No planning history
Ladbrokes (formerly Nationwide)	259-261 Walworth Road	Betting Shop (A2)	Permitted Development History: Removal of condition 1 of planning permission Ref: TP/1065/259/ dated 25th January 1977: which provided for the use of the site as a building society office; condition 1 presently reads: 'The building shall only be used for a building society office and for no other purpose, including any other purpose in Class II of the Schedule of the Town and Country Planning (Use Classes Order 1972)', to enable the premises to be used by other Class A2 operators granted on 07/11 Was formally Nationwide Bank
Speedy Cash Loans (formerly Atlantic Clothing)	269-271 Walworth Road	Pay day loan (A2)	Planning Permission: Change of use granted from A1 to A2 on 01/11
Adult Gaming Centre (in process)	281 Walworth Road	Amusement Arcade (sui generis)	Planning Permission: Swap with 229 Walworth Road - change of use from A1 to amusement arcade (sui generis) (being implemented). Further Planning application submitted in 2012 for change of use from amusement arcade (sui generis) to Bingo Hall (D2) (not yet decided)
Albermarle & Bond	301 Walworth Road	Pawnbrokers	New signage to an existing pawnbroker granted on 05/10
Walworth Road Cheque Cashers	331-333 Walworth Road	Pay day loan (A2)	No planning history
Agora Betting Shop	353 Walworth Road	Betting Shop (A2)	Planning Permission: Change of use from A1 to A2 granted 10/1996
BetFred	361-363 Walworth Road	Betting Shop (A2)	Planning Permission: Change of use from A1 shop to licensed betting shop (A2) granted 05/2004
H & T Pawnbrokers	391 Walworth Road	Pawnbrokers (A2)	No planning history
The Money Shop	5 Camberwell Road	Pay day loan (A2)	No planning history
Coral	7-11 Camberwell Road	Betting Shop (A2)	No planning history

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