

Item No. 7.	Classification: Open	Date: 8 October 2013	Meeting Name: Planning Committee
Report title:		Article 4 Directions to withdraw the permitted development rights granted by Schedule 2, Part 3, Class C and Schedule 2, Part 4, Class D of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)	
Ward(s) or groups affected:		All	
From:		Director of Planning	

RECOMMENDATIONS

That the planning committee:

1. Approves an immediate Article 4 Direction (Appendix A) to withdraw the permitted development rights granted by Schedule 2, Part 3, Class C, for changes of use from of A3 (restaurants and cafes), A4 (drinking establishments) and A5 (hot food takeaways) to A2 (financial and professional services) in Southwark's protected shopping frontages (Appendix C).
2. Approves an immediate Article 4 Direction (Appendix B) to withdraw the permitted development rights granted by Schedule 2, Part 4, Class D for a change of use to a flexible use falling within either class A1 (shops), class A2 (financial and professional services), class A3 (restaurants and cafes) or class B1 (business) from uses falling within use classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes), A4 (drinking establishments), A5 (hot food takeaways), B1 (business), D1 (non-residential institutions) and D2 (assembly and leisure) in Southwark's protected shopping frontages (Appendix C).
3. Notes the equalities analysis of the proposed Article 4 Directions (Appendix D).

BACKGROUND INFORMATION

4. Southwark's planning policies seek to maintain a network of successful town centres and shopping frontages which have a range of shops, services and facilities to help meet the needs of Southwark's population. However, the council has recently become concerned with the proliferation of betting shops, payday loan shops and pawnbrokers on the borough's high streets. These uses fall within use class A2 of the Use Classes Order 1987 (as amended) which comprises financial and professional services. In addition to betting shops, payday loan shops and pawnbrokers, the A2 use class also includes banks, building societies, post offices, travel agents and estate agents.
5. Local authorities' ability to manage the balance of uses on the high street and proliferation of individual uses is constrained by the Town and Country Planning General Permitted Development order 1995 (as amended). Schedule 2, Part 3, Class C of the Order allows a change of use from Class A3 (restaurants and cafes), Class A4

(drinking establishments) and Class A5 (hot food takeaways) to uses in Class A2 without the need to apply for planning permission.

6. Moreover, on 30 May 2013, the government introduced further flexibility under Schedule 2, Part 4, Class D which allows a change of use to a flexible use falling within either Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes) or Class B1 (business) from uses falling within use classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes), A4 (drinking establishments), A5 (hot food takeaways), B1 (business), D1 (non-residential institutions) and D2 (assembly and leisure) for a period of two years.
7. In September 2012, the government consulted on changes to the Use Classes Order. In response to the consultation Southwark requested that betting shops are re-classified as a 'sui-generis' use (from their A2 use class), which would require a planning application for a change of use. This course of action was also recommended by the Portas Review (2011). However, the government's response to the Portas Review confirmed that it would not be implementing this recommendation and instead noted that: "The planning system also provides a tool (Article 4 directions), to help local authorities and communities control certain uses, such as betting shops, by removing permitted development rights, and requiring a planning application to be made" (High Streets at the Heart of our Communities, CLG, March 2012).
8. This approach was also referred to in a parliamentary debate in 2010 by the then Planning Minister, Bob Neil MP, who rejected a proposal to reclassify betting shops into a separate use class and instead recommended the use of an Article 4 Direction to manage the issue (Bookmakers and Planning (Haringey) (HC Deb 24 November 2010 c406)).

Article 4 Directions

9. An Article 4 Direction can be used to remove specific permitted development rights in all or parts of the local authority's area. It would not restrict development altogether, but instead ensure that development requires planning permission. A planning application for the proposal would need to be submitted that would then be determined in accordance with the development plan.
10. In imposing an Article 4 Direction, a local authority cannot single out a particular use such as a betting shop. Rather the Direction would need to apply to all uses within the relevant use class. For example, if permitted development rights were withdrawn for a change of use from A3 (restaurants and cafes), A4 (drinking establishments) and A5 (hotfood takeaways) to A2 (financial and professional services), a change of use from these uses to any use in Class A2, including banks, estate agents, travels agents etc. would require planning permission.
11. It is also important to note that an Article 4 Direction cannot restrict changes within the same use class. For example, even if an Article 4 Direction were confirmed, a bank or travel agent would continue to be able to change to a betting office without requiring planning permission.
12. The National Planning Policy Framework (NPPF) advises that the use of Article 4 Directions to remove national permitted development rights should be limited to

situations where it is necessary to protect local amenity or the wellbeing of the area (paragraph 200).

13. Article 4 Directions can either be immediate or non-immediate depending upon whether notice is given of the date on which they come into force. In the case of this report, the council is proposing to make two immediate Article 4 Directions for which the process is as follows:
 - Stage 1 (the current stage) – The council makes an Article 4 Direction withdrawing permitted development rights with immediate effect.
 - Stage 2 – Publication/Consultation stage. The council:
 - 1) publishes the notice of direction in a local newspaper
 - 2) formally consults with the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of 21 days
 - 3) and places a notice up on site for 6 weeks.
 - Stage 3 – On the same day that the notice is given under Stage 2 above, the council refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction.
 - Stage 4 – Confirmation Stage – The Direction comes into force on the date on which the notice is served on the owners/occupiers of the land. The council has between 28 days from the date of when the notice comes into effect and 6 months to decide whether to go ahead and confirm the Direction, taking into account any representations which have been received. If this does not happen within 6 months, the Direction will lapse.

Compensation

14. In some circumstances the council can be liable to compensate developers or landowners whose developments are affected by Article 4 Directions. Local planning authorities are liable to pay compensation to landowners who would have been able to develop under the permitted development rights that an Article 4 Direction withdraws, if they:
 - Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction; or
 - Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 Direction being in place.
15. In the above circumstances compensation is payable almost as if the council had granted planning permission for the development and had then subsequently revoked it. Compensation may also be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. 'Abortive expenditure' includes works carried out under the permitted development rights before they were removed, as well as the preparation of plans for the purposes of any work.
16. Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.
17. However, the compensation arrangements differ for cases where a development order in respect of prescribed development is being withdrawn. The definition of prescribed development can be found in section 2 of the Town and Country Planning

(Compensation) (England) Regulations 2013. In cases such as these compensation is only payable if the following procedure is followed, as set out in section 108 of the Town and Country Planning Act:

- The planning permission withdrawn is of a prescribed description as set out in the Town and Country Planning (Compensation) Regulations 2013.
 - The permitted development right is withdrawn in the prescribed manner.
 - Notice of withdrawal is given in the prescribed manner:
 - Not less than 12 months before it takes effect.
 - Not more than the prescribed period (two years in the case of Part 4 Class C and indefinitely in the case of Part 3, Class C).
18. As can be gleaned from above, where prescribed development permitted development rights are withdrawn, compensation will not be payable if more than 12 months notice of the withdrawal is given. Permitted development rights granted by Schedule 2, Part 4, Class D are a prescribed development, which means that compensation will only be payable for 12 months from the date that the Direction comes into force. In contrast to non-prescribed development if the authority were to give 12 months notice before bringing the Direction into force, no compensation would be payable.
19. Permitted development rights granted by Schedule 2, Part 3, Class C is non-prescribed development, which means that should the local authority refuse planning permission for development which otherwise would have been allowed under the GDPO, the landowner/developer will have a period of 12 months within which they can make a claim for compensation to the council. Claims for compensation will be assessed under s107 of the Town and Country Planning Act 1990.

Planning applications

20. If permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. In Southwark's case, the development plan includes the London Plan, the Core Strategy, saved policies in the Southwark Plan and adopted area action plans. The relevant saved policy in the Southwark Plan is policy 1.9 Change of use within protected shopping frontages. This states that change of use from an A1 (shops) use to another A class use will be granted provided that the proportion of A1 shops in the frontage does not fall below 50% and the premises have been vacant or not made a profit over 12 months and that the proposal does not harm the vitality of the frontage. Where frontages are within town centres, policy 1.7 would also apply which requires that proposals do not harm the vitality and viability of the centre.
21. It should be noted that where submission of a planning application is required as a result of withdrawal of permitted development rights through an Article 4 Direction, the council cannot charge a planning application fee.

KEY ISSUES FOR CONSIDERATION

22. As is noted above, the NPPF advises that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. Further guidance on the use of Article 4 Directions is set out in Replacement Appendix D to Department of

Environment Circular 9/95: General Development Consolidation Order 1995 which was issued in June 2012. This states that an Article 4 direction would be appropriate only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. This includes consideration of whether permitted development rights undermine local objectives to create or maintain mixed communities.

Impact on high street diversity and health

23. Nationally, the NPPF recognises the role of the planning system in addressing social deprivation, supporting the vitality of town centres and promoting healthy communities. Paragraph 23 of the NPPF states that local planning authorities (LPAs) should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality. LPAs should set out policies that make clear which uses will be permitted in such locations, and promote competitive town centres that provide a diverse retail offer which reflects the individuality of a town centre.
24. Creating and maintaining mixed, balanced and sustainable communities is a strategic objective of the Core Strategy. Through planning policy the council seeks to maintain a network of successful town centres and protected shopping frontages which have a range of shops, services and facilities to help meet the needs of Southwark's population. For the borough's high streets to be successful it is imperative that there are a range of retailers and types of uses providing a breadth of products and services and encouraging a diverse customer base and increased footfall.
25. Concern has been expressed by the local community and councillors regarding the numbers of betting shops, pay day loan shops and pawnbrokers in shopping frontages in the borough and the impact the clustering of these businesses is having on town centre vitality and the well-being of local residents. A campaign 'High Streets First' was started in Southwark in 2012 by local residents and a councillor from The Lane ward and a petition was sent to Eric Pickles MP (Secretary of State for Communities and Local Government) to restrict the number of betting shops on Southwark's high streets through further government regulation.
26. A report by Harriet Harman MP 'The Problem of Betting Shops Blighting High Streets and Communities in Low-Income Areas' (2011) highlighted that a snapshot of local authority areas shows that an unintended consequence of the Gambling Act 2005 has been a dramatic proliferation of betting shops in deprived areas and a clear clustering of these shops in high street locations in these areas.
27. The use of permitted development rights for A5, A4 and A3 uses to change to A2 uses has resulted in a common perception that there has been an overall increase in the number of betting shops in recent years in Southwark. However over the period 2007-2012 the number of betting shop licenses issued remained at a total of 77. Since this data was obtained the actual number of licences has decreased to 75.
28. Licensing data would appear to indicate that 41% of these betting shops are operated by one major gambling operator.

Operator	Units
William Hill	31
Ladbrokes	15

Operator	Units
Betfred	12
Coral	8
Paddy Power	6
Jennings Bet	2
McDonnell Bookmakers	1

29. Whilst the overall number of betting shops in the borough has not increased in the last 5-6 years there has been a noticeable clustering of these businesses on our high streets. Appendix E shows the distribution of betting shops in Southwark. High street retail surveys undertaken throughout the borough have found an over concentration of particular services. These include:
- Walworth Road and East Street – 11 betting shops, 6 pawnbrokers and 5 pay day loan shops
 - Rye Lane and Peckham High Street – 9 betting shops, 4 pawn brokers, 2 pay day loan shops within a short walking distance of one another
 - Southwark Park Road – 4 betting shops
 - Camberwell Road – 5 betting shops.
30. The Gambling Act 2005 limits the number of Fixed Odd Betting Terminals (FOBT) per betting shop. This is currently set at four per premises. Bookmakers derive over 40% of their profits from these machines and less from traditional gambling, like horseracing. One approach to manoeuvre around the FOBT limit is to open another betting shop. This has led to the clustering of betting shops, and this may explain why in Peckham town centre there are three Ladbrokes betting shops in close proximity. Along Walworth Road there are two William Hills, and two Betfreds. On East Street there are another two William Hills and one more Betfred. Clustering also increases the likelihood of anti-social behaviour and impacts on the diversity of the high street which in turn is to the detriment of vitality and viability.
31. Overall, the clustering of betting shops and other types A2 uses such as pay day loan shops and pawnbrokers in the borough's shopping frontages can have a detrimental effect on the diversity and therefore the health of the high street.
32. Southwark's ability to manage the balance of high street uses and proliferation of A2 uses is constrained by both the permitted development rights granted by Schedule 2, Part 3, Class C and the permitted development rights granted on 30 May 2013 which allow temporary changes of use, to classes which include A2, for a period of two years.
33. In addition to impacts on A2 uses, the new permitted development rights granted on 30 May 2013 could have other wide ranging and unintended adverse consequences on Southwark's high streets and compromise Southwark's ability to use planning policies to manage its high streets. Whilst the new permitted development rights apply to temporary use, for two years, after which the lawful use of the building in question reverts to its previous use, that two year period can begin at any future date, as the commencement of the temporary use is not time limited. Moreover, the council may also encounter difficulties in securing a reversion to the previous lawful use at the end of this two year period. This makes it impossible for the council to know when A1 (retail), B1 (office) and D1 (non-residential institution) uses might be lost.

34. One of the main reasons for introducing the new permitted development rights on 30 May 2013 was to “allow redundant buildings to be brought back into use” (DCLG, New opportunities for sustainable development and growth through the reuse of existing buildings, July 2012). While reports in the press have suggested that high levels of vacancy are an issue in some parts of the country, it is not generally an issue which is experienced in Southwark. Our most recent surveys of Peckham town centre, Walworth Road, Lordship Lane, Tower Bridge Road and Borough High Street suggest that vacancy levels are 10%, 6%, 3%, 10% and 6% respectively.
35. The loss of current A1 (retail) units will impact upon the quantum of retail provision in the borough, which could deprive local communities of important accessible provision of everyday essential services. The new permitted development rights will also affect the council’s ability to plan properly for D1 (non-residential institution) uses, which will provide essential provision of community facilities for a growing densely populated borough.
36. A particular concern is the ability for A1, B1 and D1 units to convert to A2 or A3 uses, which are considered more likely to have harmful impacts, including those associated with noise, odours, loitering, anti-social behaviour and hours of operation. There is concern that the proposal would increase the likelihood of potentially problematic or noisy uses being introduced in situations where there is residential accommodation above or adjoining the premises. The council would lose the opportunity to require adequate installations which would mitigate against any potential adverse impacts e.g. noise, increase in traffic, odour etc. Operators may not wish to invest in these measures due to the temporary nature of the use. Also, there might be little or no control over hours of operation unless this could be regulated through licensing, which may not always be an available option.
37. The potential loss of B1 (office) space resulting from the new permitted development rights is lower than from the other recent amendment to the GPDO which allows change of use from office to residential, due to the limit of 150 square metres to which it applies. However, it is considered essential to assess any loss of office space within the planning application process, particularly as smaller office space is most suited to SMEs. This space is protected through the Core Strategy and Saved Southwark Plan and is considered to be vital to the economic development of the borough.

Socio-economic impacts

38. Southwark is the 12th most deprived borough in London and 41st most deprived borough out of the 326 local authorities in England. Areas within eight out of 21 wards in Southwark fall within the top 20% ranking of most deprived wards in England. These are in East Walworth, South Bermondsey, Nunhead, The Lane, Faraday, Newington, Camberwell Green and the north part of Livesey. There is evidence to suggest that the clustering of A2 uses and betting shops in particular is especially prominent in areas with high levels of social and economic deprivation. Analysis of the location of betting shops in Southwark by social deprivation demonstrates that approximately 42 out of 75 (56%) of betting shops in Southwark are located within these wards.
39. The 2010 British Gambling Prevalence Survey found that at-risk gambling and problem gambling were associated with area deprivation, educational qualifications and ethnicity. The survey found that black and minority ethnic communities, men, younger adults (16-24) and those from the most economically deprived communities are more

likely to become problem gamblers¹. It also found that gambling prevalence is lowest among the least deprived areas in England and higher among more deprived areas. Problem gambling prevalence was also found to be associated with employment status being highest among the unemployed.

40. Both Bermondsey & Old Southwark and Camberwell & Peckham parliamentary constituency's rate in the top 50 of constituencies in the country in relation to unemployment ranking. Within this list, both constituencies rank in the top ten for both the number of betting shops and also the number of Fixed Odd Betting Terminals, which shows a link between economically deprived communities and numbers of betting shops.
41. A report commissioned by Haringey Council² concluded that there is a reasonable body of scientific evidence that shows access to gambling venues (including betting shops) leads to increased gambling behaviour and that this, in turn, is associated with poor health outcomes. The characteristics that often facilitate and encourage people to gamble in the first place are primarily features of the environment, such as location of the gambling venue and the number of venues in a specified area. These variables may be important in both the initial decision to gamble and the maintenance of the behaviour.
42. The local police in Peckham have raised concern over the number of betting shops (and off-licences) operating in the area. The Lane Safer Neighbourhood Team have contacted the council's licensing team to highlight the policing issues which correlate with complaints of anti-social behaviour, begging, urinating in the street, drunken fighting, public order, prostitution, general blocking of pavements, noise disturbance and also a general impact on the local environment which affects trade to the area and the local image. They have asked the council to consider and address the wider social issues already present in the local area and the cost of policing, NHS and social services for every new licensing application.
43. In recent years payday loans businesses have increased through high street outlets and on-line. Payday loan shops function as short-term, low-value lenders, providing high-interest loans in cash to those able to show proof of income. While payday lenders can be a convenient source of quick cash, filling a credit gap in many communities, they can also trap borrowers in a spiral of debt. The government estimates that around seven million people currently fall into the trap of high-cost credit, with some being charged more than 6000% interest.
44. Areas with higher densities of payday loan lenders are often those whose populations have higher proportions of minority ethnic groups, relatively low educational achievement and modest income levels i.e. levels of income that can manage repayments but are not large enough to cover unexpected expenses or fluctuations in earnings³. As banks, estate agents and building societies vacate outlets due to a lack of business, pay day loans companies, which have the same A2 use class can move straight in. The loss of banks and building societies in an area often leads to financial exclusion; their replacement by pay day loan shops serves to exacerbate the problem.

¹ <http://www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf>

² 'Health evidence base for the emerging policy concerning retail provision' Ben Cave Associates Ltd Oct 2012

³ Ibid

45. With regard to the loss of office space, SMEs play an important role in Southwark's economy. The majority of business space which underpins the local office property market in Southwark is located in the town centres and SE1 fringe locations. Loss of existing business space in these locations without prior assessment of whether the continued business space is viable or not, could serve to fragment these agglomerations which are critical to Southwark's economy and undermine the council's Economic Wellbeing Strategy.
46. Similarly with D1 uses, it will be difficult to properly plan for sufficient infrastructure provision if the council does not know when these types of uses will be lost for a temporary two year period through permitted development rights granted by Part 4, Class D and if it will be possible to ensure a speedy reversion to previous lawful use at the end of this period. Community facilities encompass a wide range of uses, such as health, leisure, educational, youth and general community space. The council needs to be able to protect community facilities where there is an identified need.

Areas affected

47. Issues associated with the proliferation of A2 uses and ability of the authority to manage the balance of high street uses mainly affect the borough's protected shopping frontages. In line with definition of primary and secondary frontages in the NPPF, the protected shopping frontages contain a high proportion of retail uses, including food, drinks, clothing and household goods, as well as other uses appropriate in shopping frontages. The designation of protected shopping frontages is consistent with NPPF paragraph 23 which states that authorities should identify shopping frontages and set policies which make it clear which uses will be permitted in such locations. Core Strategy policy 3 and saved Southwark Plan policy 1.9 recognise the importance of the continued viability of these locations and the importance of the services they provide. In the light of the importance given to protected shopping frontages by planning policy and the fact that it is these areas which are most affected, it is considered that protected shopping frontages should be the relevant area for a withdrawal of permitted development rights.

Conclusions

48. An Article 4 Direction can be made if the council is satisfied that it is expedient that development should not be carried out unless planning permission is granted on application. In determining whether it is expedient the council should have regard to material considerations including the advice given in Replacement Appendix D to Circular 09/95 (DCLG, June 2012). As noted the advice given by the government is that local authorities should only consider making Article 4 Directions in exceptional circumstances. Such exceptional circumstances exist in the case of the proposed Article 4 Directions which are the subject of this report.
49. It is not possible to withdraw permitted development rights for selective developments within a Class in the GDPO, for example to solely remove rights to change to A2 or A3 flexible uses. The new right introduced in May gives permission for A1, A2, A3, A4, B1, D1 and D2 units to change to a package of flexible uses (A1, A2, A3 and B1). The council cannot use an Article 4 Direction to permit some of these and withdraw rights for others. Although change of use to A1 is likely to be generally acceptable, change of use to A2 and A3 has a greater likelihood of harm. Overall it is considered that the potential for harm generated by change of use to A2 uses or A3 uses significantly

outweighs the benefits gained by enabling occupiers to exercise permitted development rights for other changes, including changes to A1.

Consultation

50. Consultation on the Article 4 Directions will comply with provisions set out in Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010. Notice of the Directions will be made by:
- Local advertisement in the press;
 - At least two site notices placed in each of the borough's protected shopping frontages for a period of at least 6 weeks; and
 - Written notification sent to every owner/occupier within the protected shopping frontages, specifying a period of at least 21 days in which representations can be made.
51. Following consultation and within 6 months, a report recommending whether the Direction should be confirmed will be reported back to planning committee.

Community impact statement

52. Southwark has a diverse retail character with a strong emphasis on small and independent shopping. It is important to ensure that the vitality and viability of Southwark's protected shopping frontages are not adversely affected by clustering or over-dominance of particular uses, and that these frontages are able to continue to provide a diverse range of services including everyday essential services - to meet local community needs. The Article 4 Directions are part of a longer term strategy to improve the diversity and vitality of the borough's high streets, and help tackle the over and under representation of particular uses.
53. Southwark's planning policy framework helps to prevent over-concentration of uses, but this will be circumvented through the 'flexible town centre uses' permitted development right, which could cause permanent damage to the character and function of an area, even if they are only operating for a temporary period. Unrestricted ad-hoc development could undermine the sustainable development of the borough, particularly in terms of economic and social sustainability. In particular, the Article 4 Directions will help the council to continue to plan properly for B1 office uses, especially those suitable for SMEs which are prevalent throughout the borough and for D1 social infrastructure uses, which will provide essential provision of community facilities for a growing, densely populated borough. It will also help the council to effectively address potential harmful impacts commonly associated with A2 and A3 uses, such as noise, odours, loitering, anti-social behaviour and hours of operation.
54. With regard to betting shops they can provide a form of entertainment and enjoyment for responsible gamblers. However, research by the Gambling Commission and has found that BME communities, men, younger adults, and those people living in the most economically deprived areas are more likely to become problem gamblers. The Article 4 Directions are also seeking to protect those groups most vulnerable to problem gambling, in line with the licensing conditions betting shops must adhere to.

55. The equalities analysis (Appendix D) has concluded that the Article 4 directions will have a positive impact on equalities and they will assist the council in implementing its planning policy framework, which has also undergone equalities analysis.

Financial implications

56. As is noted above, should the local authority refuse planning permission for development that otherwise would have been granted by Schedule 2, Part 3, Class C the landowner/developer will have a period of 12 months in which they can make a claim to the council for compensation. Any compensation may relate either to a depreciation in the value of land or buildings which results from failure to gain planning permission or to abortive expenditure. Therefore there is a risk that the proposed Direction will make the council liable to compensation claims. Because circumstances vary widely, it is not possible to gauge the magnitude of such claims. Any claim for compensation will be dealt with through the council's official complaints procedure and it is anticipated that any award would be contained within the Planning division's budget. Should this not be possible support from council reserves would be sought.
57. In the case of the Direction to remove permitted development rights granted by Schedule 2, Part 4, Class D, which falls within the definition of "prescribed" development, compensation will only be payable for 12 months from the date that the Direction comes into force. As described above there is a risk that the proposed Direction will make the council liable to compensation claims and because circumstances vary widely, it is not possible to gauge the magnitude of such claims. If it wished, the council would have the option of giving 12 months notice before bringing the Direction into force. This course of action would remove the council's liability to pay compensation. Any claim for compensation will be dealt with through the councils' official complaints procedure and it is anticipated that any award would be contained within the Planning division's budget. Should this not be possible support from council reserves would be sought.
58. Any potential drawdown from council reserves for the payment of compensation claims will be subject to agreement by the relevant cabinet member, or full cabinet in the case of claims over £50,000.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services (SH/09/13)

59. Planning committee is being asked to approve the making of two immediate Article 4 Directions, one of which relates to prescribed development. Part 3F of the constitution under the section titled "Matters reserved for decision by the planning committee" at paragraph 3 reserves to planning committee any authorisations under Article 4 of the Town and Country Planning Permitted Development Order. This therefore confirms that planning committee has authority to take these decisions.
60. Section 108 of the Town and Country Planning Act 1990 (as amended) specifies the circumstances under which compensation is payable for the refusal or a conditional grant of planning permission which was formerly granted by a development order or a local development order. Replacement Appendix D of Circular 9/95 published in June 2012 states at paragraph 6.4 that all claims from compensation must be made within

12 months of the date on which the planning application for development formerly permitted is rejected or approved subject to conditions.

61. Section 107 of the 1990 Act which sets out the entitlement to compensation where planning permission has been revoked and modified is of relevance here as section 108 of the 1990 Act extends the entitlement for compensation under s107 to circumstances where planning permission granted by a development order has been withdrawn by an Article 4 Direction.
62. However, section 108 has been recently amended to deal with those circumstances where permission granted under a development order has been withdrawn for development of a 'prescribed description' which is defined in section 2 of the Town and Country Planning (Compensation) (England) Regulations 2013. The effect of these new provisions is to limit the circumstances where compensation is payable for "prescribed description" development. In cases where notice of the withdrawal of the permitted development rights was published at least 12 months before the direction took effect NO compensation will be payable, even if the claim was made within 12 months of the direction coming into effect. Therefore, if the council were to give 12 months notice of the Article 4 Direction which is the subject of recommendation 2 the council would not need to pay any compensation.
63. In the case of the Article 4 Direction being made under recommendation 1, which relates to rights granted by Schedule 2, Part 3, Class C the provisions under s107 of the 1990 Act would apply as it is non-prescribed description development and therefore as long as the 12 month time limit for making a claim for compensation was complied with then compensation would be payable.
64. In the case of recommendation 2 which relates to rights granted by Schedule 2 Part 4 Class D the provisions of s108 (2A) would apply as it is a 'prescribed description' development. However, given that this is an immediate direction and the council is not giving more than 12 months notice of the making of the direction then the council will need to pay compensation for claims made within 12 months of the date of the direction.
65. The value of the claim for compensation would differ in each individual case but in the event that claims are between £5,000 – £50,000 then they would be sanctioned by the relevant cabinet member under Part 3D paragraph 5 of the constitution. Any compensation claims over that amount would require the approval of full cabinet.

Human rights and equalities

66. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various Convention rights may be engaged in the process of making and considering the Article 4 Direction, including under Articles 1 and 8 of the First Protocol. The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole". Both public and private interests are to be taken into account in the exercise of the council's powers and duties as a local planning authority. Any interference with a Convention Right must be necessary and proportionate.

67. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of those affected by the proposed Article 4 Direction have been considered under the Human Rights Act 1998 and it has been determined that none of the Articles will be triggered. The council therefore considers that the advantages of making the Article 4 Direction substantially outweigh the disadvantages to those who will no longer be able to benefit from the permitted rights currently granted by Schedule 1, Part 3, Class C and Schedule 2, Part 4 Class D of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
68. In consulting upon the introduction of the Article 4 Direction the council has had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010.
69. The PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.
70. The council has given consideration to all the protected characteristics in the Equality Act 2010 to ensure that any potential impacts of the proposed non-immediate Article 4 Direction on these groups of people have been considered and where possible mitigated.

Strategic Director of Finance and Corporate Services (CE/MD/13/08)

71. The financial implications in paragraphs 56 to 58 above are noted. It is recognised that the implementation of these articles may lead to the council being liable to pay compensation to some of the parties affected, and that such costs will either be covered by existing departmental budgets or funding will be sought from centrally held reserves.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Saved Southwark Plan 2007	http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan	planningpolicy@southwark.gov.uk
The Core Strategy 2011	http://www.southwark.gov.uk/info/200210/core_strategy	planningpolicy@southwark.gov.uk
Rt. Hon. Harriet Harman QC MP The Problem of Betting Shops Blighting High Streets and Communities in Low-Income Areas November 2011	Southwark council, 160 Tooley Street SE1 2QH	planningpolicy@southwark.gov.uk

APPENDICES

No.	Title
Appendix A	Draft Article 4 Direction to withdraw the Permitted Development Rights granted by Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)
Appendix B	Draft Article 4 Direction to withdraw the Permitted Development Rights granted by Schedule 2, Part 4, Class D of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)
Appendix C	Protected Shopping Frontages
Appendix D	Equalities analysis
Appendix E	Map of Betting Shops in Southwark

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning		
Report Author	Barbara Ann Overwater, Senior Planning Officer		
Version	Final		
Dated	27 September 2013		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER			
Officer Title		Comments sought	Comments included
Director of Legal Services		Yes	Yes
Strategic Director of Finance and Corporate Services		Yes	Yes
Cabinet Member		No	No
Date final report sent to Constitutional Team			27 September 2013