

Item No.:	Classification: Open	Date: 3 June 2015	Decision Taker: Cabinet Member for Finance, Modernisation and Performance
Report title:		Promoting a Vibrant, Sustainable Retail Estate Aligned to Local Need	
Ward(s) or groups affected:		All	
From:		Eleanor Kelly, Chief Executive	

RECOMMENDATIONS

That the Cabinet Member for Finance, Resources and Community Safety

1. Agrees a clear and consistent definition (See Appendix 1) of uses that are judged not to promote a vibrant, sustainable range of retail and service activities across the council's retail estate, encompassing:
 - a) Activities that shall be absolutely prohibited, and;
 - b) Those where head of property shall have discretion, and determine criteria for deciding the same.
2. As part of their general estate inspections, the portfolio management team will identify and enforce against these activities where they are in breach of the lease User provisions in their leases.
3. Negotiate user clauses in new lettings leases to exclude the prohibited uses and freedoms of change of use without landlords consent. In addition, wherever it is possible and prudent to do so, lease terms will seek to minimise negative environmental and health impacts of retail uses in council premises generally;
4. To refuse assignments to prohibited uses insofar as this is permissible under the leases and Landlord and Tenant legislation;
5. Conveyances of land in disposal cases (including the grant of long leases) to contain restrictions against the use of the land for any prohibited use.
6. On approval to publish a Policy Statement setting out the above.

BACKGROUND INFORMATION

7. The council owns a portfolio of approximately 490 retail units, distributed across the borough with particular concentrations in SE16 (Jamaica Road / Albion Street) and SE17 (Walworth Road / East Street). Elsewhere there are a number of smaller local neighbourhood parades, including those with relatively distinct catchments as part of individual housing estates.

8. The primary purpose of these assets is to generate income for the council, principally to the benefit of the Housing Revenue Account. The annual rent roll currently stands at £5.2 million.
9. The top-level strategy for the management of these assets is defined in the Asset Management Plans 2008 and 2010 as approved by the council's administration.
10. Reiterated in 2010, the 2008 Asset Management Plan provides that

“Although retail parades have always been actively managed in terms of uses the priority has been the maximisation of income. However this can have a negative impact on the sustainability of the investment over medium to long term, with parades being dominated by a limited range of competing businesses, but not always addressing the wider needs of the local community. In time this can lead to regular business failure, void shop units and loss of rent.

Although maximisation of incomes must still be a priority greater consideration is given to the following when considering a new letting, assignment or application for a change of use:

- Tenant mix
- Vibrant and sustainable shopping locations supporting independent trades
- Protection of neighbourhood character
- Local services to communities

The objective is successful parades meeting local needs with local traders as well as maximising the investment value of the parade.”

11. Therefore in the wider context the council's shopping parades need to be viewed in terms of supporting choice, the local economy, entrepreneurship, community and influencing sense of place. The presence of incompatible uses in a given parade can individually, and more particularly in a cumulative way where these uses proliferate, have a disproportionate adverse impact on how a locality is perceived and local amenity. As the Department for Communities and Local Government's 2012 report "Parades to be Proud Of" explains, "Parades of shops have a strong link to their communities and form an integral element of local 'place'.

KEY ISSUES FOR CONSIDERATION

12. In setting its property policies it is important that any landlord, including the council, should not discriminate on certain grounds i.e. race and ethnic background, religion, sex and disability.
13. However, beyond these specified grounds, a landlord may decide to whom it will or will not let its premises, provided it is consistent and can evidence its policies and how the criteria have been applied. Appendix I sets out the council's position clearly and unequivocally.
14. The protocol extends only to those premises where the council is landlord. Privately owned premises may adopt different strategies and are not subject to

the same estate management based initiative recommended in this report. Nevertheless, the council may be able to exert influence through other controls including Panning and Licensing.

Landlord & Tenant Considerations

15. 18 of the council's commercial premises are currently let to relevant uses under business tenancies.
16. Tenants have the right under their leases, to operate within the user clause, which normally defines a specific trade e.g. bookmakers. The only way a landlord can stop a particular use in an ongoing lease would though negotiation with the tenants, which in most cases would to be unsuccessful.
17. If an existing tenant wished to change the use of the premises to a use not permitted in their lease, the council could refuse consent depending on the type of user clause in the subject lease. Some council leases strictly prohibit any change of use, however the majority of council leases permit a change of use subject to the Landlord's consent, **not to be unreasonably withheld**. In these instances the test of reasonableness would be based on estate management grounds. For example if there were already a number of identical traders operating in the same parade of shops, it would be reasonable for a landlord to reject this due to oversupply. It would also be possible to reject a change of use on the basis that the proposed use did not have planning consent.
18. With regards to letting vacant premises the council has a free hand to decide the use to which a property is to be put. If it was decided certain uses are to be prohibited, the council could reject those applications.
19. On lease renewal, under Landlord and Tenant legislation a tenant has the right to renew their lease on the same terms as original granted or subsequently varied. The only ways the council could oppose the grant of a new tenancy would be if the tenant had persistently breached the terms of the expired lease or that the council required the premises back for redevelopment or its own occupation. The tenant would therefore usually be entitled to renew the lease for a lease length equivalent to the previous lease.
20. In the case of leases being transferred to a new tenant, if a change of use was requested it would be subject to the same tests outlined in paragraph 18.
21. In terms of existing tenants, in a few cases the user clause is fairly open and would accommodate a range of uses that might include one of the Schedule 1 activities (in practice to date they are not used for this purpose). Some would require planning consent for the change, where not already allowed as Permitted Development under planning (and may require additional licensing).

Regeneration

22. It should be noted that that council holds one lease itself which might fulfill the Appendix 1 definition. This has been acquired in the course of a regeneration scheme (Spa Road) where it was necessary to relocate an existing tenant to facilitate regeneration scheme of wider benefit to the locality

23. Some areas of the borough will. Of course, experience acute transformational change in the coming years and the question of use will need to be balanced against the greater wellbeing secured in each instance.

Resource Considerations

24. As regards the councils own portfolio of approximately 490 retail properties, an income of approximately £330,000 (primarily to the HRA) is currently derived from the 18 lettings where the use of the premises might be considered undesirable on the grounds set out.
25. The majority of the lettings concerned are to betting shops, have been of a long standing nature and represent a reliable stream of rental income.
26. The council will need to satisfy itself that change in the income position is outweighed by the social and economic benefits of removing the use in question from the portfolio. In context, the income stated represents approximately 6% of the income generated by from the retail portfolio (in terms of numbers, the 18 interests concerned make up only 3.5% of the portfolio). However, in practice change would happen over time rather than being immediate to any one budgetary year. In mitigation, rents foregone would generally be replaced by those from incoming new tenants in the premises concerned, although with the possibility of some erosion of covenant strength (see para. 25). As a result the impact on income is expected to be negligible.
27. Cabinet should note that in some of the key locations where these uses proliferate e.g. Walworth Road there is the issue that the council owns only some of the shops. Therefore if the council refuses a letting the prospective tenant may simply look elsewhere and to other landlords on the same street.

Policy implications

28. The council is bringing forward a number of measures geared against the proliferation of uses that are deemed to be unsustainable. Whereas current Planning Policy, for example has limited scope to curb these activities, other interventions including policy on the letting of the council's own premises would have more direct impact; allowing however that some changes will only be affected over time because of contractual and statutory limitations (Landlord and Tenant legislation). This report's proposals are geared to support the council's aspirations in this regard, and to align the management of the tenanted non-residential estate with emerging initiatives at local level and beyond.
29. Therefore cabinet may wish to require the development of a cross-council approach led by director of regeneration covering all aspects of the potential contribution the council's retail parades might make to the of the economic, social and environmental wellbeing of the borough.
30. As regards Planning Policy it is noted that the preparation of the New Southwark Plan (which will replace the Core Strategy and Southwark Plan) will provide an opportunity to explore a more "fine grained" approach to assessing mix of uses in shopping frontages. Options could include setting a maximum percentage

amount for particular uses (e.g. A2 which would apply in the case of betting shops) in protected shopping frontages, or specifying a maximum number of adjacent uses to prevent clustering. The council has already started using a similar approach to A5 (hot food takeaway) uses.

31. Planners' recent (10 December 2013) report to cabinet "Cabinet response to Overview and Scrutiny Committee recommendations set out in "Walworth Road Business Mix: report of the Overview and Scrutiny Committee", looks specifically at initiatives for the Walworth Road area.

Community impact statement

32. There are no specific equality implications arising directly from this report. Indirectly the decision to eliminate the uses referred to from the council's portfolio will signal that the council does not support those activities and their potential impact on the most vulnerable sector of the community in particular.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

33. The council is landlord of a number of business properties (approximately 490) within the borough and this report seeks to introduce an element of control in respect of certain uses which are deemed to be unsuitable.
34. The report recognises that the council's ability to control such uses is limited partly because of the availability of other premises where the council does not have a property interest and partly through the protection afforded to business tenants under the terms of the Landlord and Tenant Act 1954 which allows tenants to renew their lease on substantially the same terms unless one of a limited number of exceptions applies
35. In accordance with section 123, Local Government Act 1972, the council is under an obligation to obtain best consideration for its property assets. However, para. 26 of the report assesses that any impact from the revised letting policy is expected to be negligible.
36. Para 12 of the report emphasises the requirement that the council must ensure that such a policy does not discriminate against protected minority groups.

Strategic Director of Finance and Corporate Services (CE/13/025)

37. This report seeks approval from the cabinet member for finance, resource & community safety to publish a policy statement which defines uses that are judged not to promote a vibrant, sustainable range of retail and service activities across the council's retail estate. The financial implications are detailed in paragraphs 24 to 27.
38. The strategic director of finance and corporate services notes that rents foregone would generally be replaced by those from incoming new tenants in the premises. In the event of any reductions in income, this will be reported though

the council's budget monitoring and action will need to be taken to address the shortfall.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Asset Management Plans 2008 & 2010	Property Davison, 160 Tooley Street	Matthew Jackson 020 7525 1332

APPENDICES

No.	Title
Appendix 1	Prohibited Uses

AUDIT TRAIL

Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Matthew Jackson, Corporate Asset Manager	
Version	Final	
Dated	3 June 2015	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET 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		3 June 2015

APPENDIX I

SCHEDULE OF PROHIBITED USES

PART A ABSOLUTE PROHIBITION

1. Payday loan shops and associated financial services
2. The definition shall exclude not for profit co-operatives whose purpose is to provide affordable financial services for members of the local community
3. Betting & gambling shops
4. Amusement arcades

PART B DISCRETIONARY PROHIBITION

4. Pawnbrokers where pawnbroking is the primary or constitutes a substantial part of the business conducted from the premises
5. The definition shall exclude jeweller's businesses where pawnbroking is conducted ancillary to the main use

NOTE

The schedule will be kept under review by the Director of Regeneration and revised from time to time as necessary.

