

Item No. 7.	Classification: Open	Date: 2 February 2016	Meeting Name: Planning Committee
Report title:		Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class D of the Town and Country Planning (General Permitted Development) Order 2015	
Ward(s) or groups affected:		All	
From:		Director of Planning	

RECOMMENDATIONS

That the Planning Committee:

1. Confirms the immediate Article 4 Direction (Appendix A) to withdraw the permitted development rights granted by Schedule 2, Part 3, Class D of the Town and Country Planning (General Permitted Development) Order 2015 for changes of use from of A1 (shops) to A2 (financial and professional services) in town centre protected shopping frontages.
2. Note the Article 4 Directions, confirmed on 7 April 2014, which withdrew 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).
3. Note the equalities analysis of the proposed Article 4 Direction (Appendix C).

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 introduction of non-shopping uses (class A1 of the Use Classes Order 1987, as amended) on the borough's high streets and the loss of class A1 space. In particular, there is a concern around the introduction of uses in class A2, which comprises financial and professional services. The A2 use class includes estate agents, banks, building societies and employment agencies.
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) 2015. Schedule 2, Part 3, Class D of the Order allows a change of use from Class A1 (shops) to uses in Class A2 without the need to apply for planning permission. This permitted development right was introduced by the government in April 2015.
6. At its meeting of 21 July 2015 Southwark's cabinet received a deputation request from residents of Highshore Road and the surrounding area to consider putting in place an Article 4 direction to withdraw permitted development rights from estate agents and brand name chains with immediate effect. Cabinet resolved "That in consideration of

the representations from residents of Highshore Road and the surrounding area the next meeting of the planning committee be requested to consider a report recommending the invocation of an Article 4 Direction for immediate implementation (protected shopping frontages).”

7. On 8 September 2015 Planning Committee resolved to approve an Article 4 Direction with immediate effect to remove permitted development rights granted by Schedule 2, Part 3, Class D of the Town and Country Planning (General Permitted Development) Order 2015 for changes of use from of A1 (shops) to A2 (financial and professional services) in town centre protected shopping frontages. Subsequently a period of public consultation has taken place from 24 September to 23 December 2015. The consultation was extended due to a discrepancy with the email address where responses were invited to be sent. This was made clear in subsequent notification in accordance with the requirements of the legislation.
8. The regulations require the council to take into account any representations received during the consultation period when confirming an Article 4 Direction. These are outlined within the report. The Direction must be confirmed within 6 months of the date in which the Direction came into force (21 March 2016) to prevent expiration of the Direction.

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 it would require 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. 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 A1 (shops) to A2 (financial and professional services), a change of use from Class A1 to any use in Class A2, including banks, building societies and employment agencies 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 building society would continue to be able to change to an estate agent 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. The government’s on-line national planning practice guidance (NPPG) sets out guidance on the use of Article 4 Directions. The NPPG states that an Article 4 Direction to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. It also states that in deciding whether an Article 4 Direction would be appropriate, local planning

authorities should identify clearly the potential harm that the direction is intended to address (paragraph 038).

14. Article 4 Directions can either be immediate or non-immediate depending upon when notice is given of the date on which they come into force. Immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area (NPPG paragraph 045). Planning Committee agreed to make an immediate Article 4 Direction, withdrawing the permitted development rights described above in the town centre protected shopping frontages. In accordance with Schedule 3 of the General Permitted Development Order (2015), the council went through the following stages to make the Article 4 Direction.

	Requirement	Progress
Stage 1	The council makes an Article 4 Direction withdrawing permitted development rights with immediate effect.	Complete. The Article 4 Direction was made with immediate effect on 21 September 2015 (Appendix A).
Stage 2	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;	Complete Consultation on the Article 4 Direction was undertaken between 24 September and 23 December 2015 (Appendix B).
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.	Complete. The Secretary of State was notified on 21 September 2015 and written acknowledgement was received on 30 September 2015.
Stage 4	Confirmation 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.	Current stage This report recommends that planning committee confirm the Article 4 Direction for continued implementation before the end of the 6 month period (i.e. before 21 March 2016) The representations to the consultation are set out within this report.

Consultation

15. The consultation undertaken following the implementation of the Article 4 Direction on 21 September 2015 has complied with the provisions set out in the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015.
16. Notice of the Direction was made by:
 - Local advertisement in the Southwark news
 - By placing no fewer than two site notices in each of the protected shopping frontages for a period of at least six weeks
 - Written notification sent to every owner/occupier within the protected shopping frontages, specifying a period of at least six weeks in which representations can be made
 - Email notification sent to our planning policy mailing list database (around 1,000 residents, businesses and organisations) specifying a period of at least six weeks in which representations can be made.
17. In accordance with government guidance and legislation, the notification documents for the Article 4 Direction included:
 - A description of the development and the areas to which the direction relates i.e. the town centre protected shopping frontages
 - A statement of the effect of the direction i.e. removing permitted development rights
 - Specifying that the direction is made under article 4(1) of the GPDO
 - Specifying a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority i.e. the representation period was noted as being from 24 September 2015 to 23 December 2015.
 - Specifying details as to how the direction and accompanying maps can be viewed i.e. by appointment at the council offices at 160 Tooley Street, London SE1 2QH, between the following hours: 9am – 4.30pm Monday to Friday, on the council's website:
http://www.southwark.gov.uk/info/856/planning_policy/3289/article_4_directions, and contact details of the planning policy team.
18. On the same day that the notice of the Article 4 Directions were published (21 September 2015), the council notified the Secretary of State by forwarding a copy of the Article 4 Direction and the maps defining the protected shopping frontages to which the Direction relates, as well as a copy of the notification letter to the National Planning Casework Unit at the Department for Communities and Local Government. The notification was acknowledged but no response has been received to date from DCLG on the Article 4 Direction.

19. Any representations received during consultation must be taken into account by the local planning authority in determining whether to confirm a direction. Material changes to the direction resulting from consultation will require re-consultation.
20. Immediate Article 4 Directions will expire six months after they come into force, unless confirmed (Schedule 3, GPDO 2015). Therefore this report sets out the justification for the continued implementation of the direction and recommends it is confirmed before the expiry date of 21 March 2016.

Summary of representations

21. We received four representations in support of the Direction, one of which particularly supports Rye Lane as a high street for retail outlets to trade affordably. One respondent questioned the need for a new Article 4 Direction due to the existing Article 4 Directions already in place in the Borough. Highways England and TFL responded to the consultation however had no particular comments to make as it was considered the Article 4 Direction would have limited transport impacts. A small number of queries and clarifications on the purpose of the Article 4 Direction and its process were also received and fielded by officers throughout the consultation period. Only one objection was received to the consultation. Provided below is a summary of the objection from Metro Bank.

Metro Bank

22. Metro Bank object to the Article 4 Direction for the change of use from A1 (shops) to A2 (financial professional services) in the town centre protected shopping frontages. Metro Bank considers that banks should be considered independently from other A2 class uses in respect of their relative impact on the vitality of shopping frontages. The respondent is supportive of the Borough's wish to control the proliferation of certain A2 professional service uses but considers that banking is an essential service of the high street and should not be restricted from permitted development in the same way.

KEY ISSUES FOR CONSIDERATION

23. 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. This is reiterated in the NPPG which also states local planning authorities should identify clearly the potential harm that the direction is intended to address and that immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area.

Overall need for retail (A1 use class space)

24. Nationally, the NPPF advises that planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period (paragraph 23). To help achieve this, this paragraph 23 notes that it is important that needs for town centre uses can be met in full and that local authorities should undertake an assessment of the need to expand town centres to ensure a supply of sufficient sites. Strategic policy 3 in the Core Strategy identifies a hierarchy of centres which reflects their sizes and roles. The largest centres are designated as major centres. These are Peckham (which has

around 75,000sqm of existing retail space), Elephant and Castle/Walworth Road (69,000sqm of existing space) and Canada Water (45,000sqm of existing space). Below the major centres, the district centres are Camberwell (21,000sqm), Lordship Lane (21,000sqm), London Bridge (45,000sqm), Bankside and Borough (17,000sqm) and Herne Hill (7,000sqm). This approach to identifying a hierarchy of centres is consistent with the approach in policy 2.15 of the London Plan, albeit the latter varies the approach in the Central Activities Zone (CAZ) and designates CAZ frontages reflecting the distinct nature of retail provision in areas such as London Bridge and Borough and Bankside.

25. Core strategy policy 3 explains the council's strategy for managing retail provision over the plan period, including the objective of increasing the amount of retail space and in particular comparison goods retail space, which as well as improving choice for Southwark residents will reduce trips made to places further away outside the borough and boost the local economy. The policy identifies the potential for growth in retail space at Peckham, Canada Water, Elephant and Castle, London Bridge and Borough and Bankside. The largest areas of growth are at Elephant and Castle and Canada Water which have the potential to deliver 45,000sqm and 35,000sqm respectively of additional retail and leisure space. Policy 1 in the Peckham and Nunhead area action plan (2014) reiterates the council's objective of increasing and improving retail space in Peckham town centre.
26. The Core Strategy was informed by Southwark's 2009 Retail Study. This study indicated that in view of expected increases in population and expenditure, by 2018 there was a need for an additional 11,554sqm of convenience shopping floorspace and 13,996sqm of comparison goods floorspace (both would be within the A1 use class). In preparing the New Southwark Plan the council has updated this analysis which confirms the trends identified in the 2009 study, identifying need for an additional 5,280sqm of convenience goods floorspace and 25,442sqm of comparison goods, over and above current commitments, by 2031. The need for growth in convenience and comparison goods retail floorspace is projected in all areas of the borough. Paragraph 4.2.4 of the Peckham and Nunhead AAP reiterates the findings of the Southwark Retail Study in relation to Peckham confirming that there is scope to increase the comparison goods shopping and also provide a small amount of additional convenience goods shopping within Peckham town centre to retain and strengthen its market share.
27. The town centres are the locations best able to accommodate growth in retail spaces. Schedule 2, Part 3, Class D of the GPDO 2015 allows change of use from Class A1 to Class A2 without the need for planning permission. The loss of current A1 space will impact on the council's ability to meet need for additional space, constraining the ability of the council to ensure that retail needs can be met and undermining Core Strategy policy 3.

Maintaining and reinforcing the vitality and viability of high streets

28. The NPPF also 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 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.

29. 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.
30. While town and local centres perform a variety of roles, their function in providing local shopping facilities remains paramount. Table 1 shows that the town centres benefit from generally high proportions of A1 uses.

Table 1: Proportions of retail uses in in town and local centres

Town/local centre	A1 use
Peckham (major)	71%
Walworth (major)	70%
Elephant and Castle (major)	57%
Canada Water (major)	57%
Camberwell (district)	55%
Lordship Lane (district)	56%
Herne Hill (district)	62%
London Bridge (district)	44%
Bankside and Borough (district)	33%
Nunhead (local)	52%
The Blue (local)	58%
Dulwich (local)	59%

Source: Southwark Retail Study 2014

31. The importance of the need to retain high proportions of A1 use was emphasized in a town centre visitor survey study commissioned by the council in 2014. This study surveyed around 910 visitors in the following town centres: Borough and Bankside (Borough High Street), Peckham, Canada Water, Camberwell and Elephant and Castle/Walworth Road (Walworth Road). The surveys demonstrated that with the exception of Borough High Street, shopping in stores remains the dominant reason for visiting these town centres. Over 50% of respondents cited shopping in stores as one of the main reasons for visiting in Peckham, Walworth Road and Canada Water. The other main reasons for visiting were to shop in supermarkets and because respondents lived locally. In all town centres surveyed there was a consensus that the mix of uses is "about right". In Peckham for example, around 72% of respondents considered that provision of food shopping was "about right". With regard to enhancements, in all the centres surveyed between 36% (Peckham) and 43% (Walworth and Borough/Bankside) stated that they wanted to see more non-food shopping. When asked what would persuade respondents to visit more often, "more retailers" was one of the most frequent responses, particularly in Canada Water and Camberwell. The study reinforces the Southwark Plan and Core Strategy objectives of retaining high proportions of A1 use in the town centres.

32. While the function of town and local centres in providing shopping facilities is of the utmost importance, the centres do perform diverse roles. The visitor surveys generally suggest that after shopping, eating and drinking is one of the main purposes for visiting town centres. Again while the respondents survey generally felt that provision of cafes and restaurants are about right, there were some centres in which respondents indicated that more of such uses could be provided. In Peckham and Canada Water for example, 40% and 35% of respondents respectively considered that more cafes and restaurants should be provided.
33. With regard to A2 uses, again respondents felt that provision was about right. In explaining their main reasons for visiting the centres, only 28 of 900 respondents referred to A2 uses and these were all related to visiting banks. No respondents gave visiting an estate agent as one of their main reasons for visiting the centres.
34. These survey findings are also reflected in the deputation to cabinet made by residents of Highshore Road, referred to above, which emphasised the concern that permitted development rights granted by Schedule 2, Part 3, Class D will threaten local businesses and the well being of the community, restricting the council's powers to manage change of use from shops and other use classes, to financial and professional services such as estate agents. The immediacy of the threat to the amenity of the area was highlighted by the fact that the council received a planning application for a proposed change of use from an A1 retail unit to an estate agent (A2 use) on Rye Lane, Peckham, which cited permitted development rights as a material consideration. The application was subsequently refused planning permission.
35. That particular proposal was on a prominent corner site in a key shopping area on Rye Lane and emphasised the need to be able to consider impacts on the balance and distribution of uses in Peckham. This is consistent with Policy 1 of the Peckham and Nunhead AAP which states the objective of strengthening the existing retail parades on Rye Lane and Peckham High Street by promoting and maintaining a vibrant balance of uses and improving the shopping environment to appeal to a wider catchment. It also accords with Policy 3 of the AAP which references the need to maintain a vibrant mix of uses in shopping frontages. In justification, AAP paragraph 4.2.18 states that planning policies will help ensure that the shopping frontages continue to provide shops and do not just provide other A use (such as cafes, takeaways and restaurants) and that unsuitable new development is not allowed within the protected frontage.
36. The vitality and viability of town and local centres is affected by the overall proportions of uses, as well as the distribution of uses. Clusters of non-A1 uses can break up frontages and erode their functionality as shopping areas. Similarly the presence of non-A1 uses in important locations may impact on the retail function and character of the centre. It is important that the council is able to assess the impact of permanent changes of use in shopping frontages, including changes from class A1 and to class A2 to help maintain an overall balance of uses and avoid harm to their vitality and viability. The approach set out in policy 1.9 has the added benefit that it enables the council to consider market demand and allows flexibility where it can be demonstrated where demand for A1 use is low. However, the ability of the council to assess demand is compromised by permitted development rights.
37. Southwark's ability to manage the balance of high street uses is critical to delivering the strategic objectives of the Core Strategy. It is undermined by the permitted

development rights granted by Schedule 2, Part 3, Class D which allows changes of use from A1 to A2. Withdrawal of permitted development rights that allow changes of use from classes A1 to A2 would complement the council's Article 4 Directions already in place to withdraw rights to change from classes A3, A4 and A5 to A2 and temporary changes of use.

Areas affected

38. As is noted above, it is the town centres that have the greatest amounts of retail space, and the greatest capacity to provide additional space. Consequently, it is the town centres which are most likely to be adversely affected by permitted development rights granted by Schedule 2, Part 3, Class D.
39. Within the town centres, it is apparent that there are significant concentrations of A1 use. This is the case particularly in the centres of Elephant and Castle/Walworth Road (Walworth Road), Peckham (Rye Lane), Camberwell (Denmark Hill) and Lordship Lane. Of the remaining town centres, the proportions of A1 use are lower at London Bridge and Borough and Bankside, reflecting the role they play in meeting the needs of significant worker and visitor populations and well as local residents. Herne Hill is shared with Lambeth and the majority of retail space is located in Lambeth. The majority of A1 space at Canada Water is located within the Surrey Quays Shopping Centre and is the subject of pre-application discussions involving a redevelopment.
40. Paragraph 23 of the NPPF states that councils should define the extent of town centres and primary shopping areas, based on designations for primary and secondary frontages and set policies for which uses will be permitted in such locations. The NPPF glossary describes primary shopping areas as those where retail development is concentrated and indicates that primary frontages are likely to include high proportions of retail uses which may include food, drinks, clothing and household goods, while secondary frontages provide greater opportunities for a diversity of uses such as restaurants, cinemas and businesses.
41. The saved Southwark Plan and Core Strategy provide a single classification for protected shopping frontages. Notwithstanding this, it is apparent that A1 uses are concentrated in particular locations, which are effectively the primary shopping areas. These frontages are shown in Appendix A. The proportions of A1 use in these frontages are generally very high. This is shown in Table 2 below.

Table 2: Proportion of A1 use in the primary shopping areas

Location	A1 use
Rye Lane	83%
Walworth Road	75%
Denmark Hill/Camberwell Church Street/Camberwell New Road	61%
Lordship Lane	54%

Source: Southwark Retail Study 2014 and Experian Goad surveys 2013

42. Southwark is currently reviewing its local plan and once adopted, the New Southwark Plan will replace the Core Strategy and saved Southwark Plan. The New Southwark Plan is currently in its Preferred Option stage and consultation is open until 12 February 2016. The council has reviewed its approach to the designation of shopping frontages and town centres in policies DM27 and DM29. Policy DM27 sets out the

major, district and local town centres including two new local centres at Tower Bridge Road and Old Kent Road/East Street. Policy DM29 now distinguishes primary and secondary shopping frontages and outlines the proportion of retail (A1 Class Use) which should be retained in each frontage. An updated list of proposed primary and secondary shopping frontages is provided at Appendix 3 of the New Southwark Plan. The 2015 Southwark Retail Study recognises the value of maintaining high proportions of retail use in the primary shopping areas and advocates the use of designating primary shopping frontages as a mechanism for achieving this (paragraphs 9.38 and 10.15-10.17).

43. It is the frontages in the primary shopping areas which are most affected by permitted development rights granted by Schedule 2, Part 3, Class D. Consequently it is considered that these should be the relevant areas for a withdrawal of permitted development rights.

Consideration of consultation responses

44. The consultation responses received have been fully considered in making the recommendation to confirm the Article 4 Direction. With respect to the objection received by Metro Bank, whilst it is appreciated the company has made wider representations to seek to distinguish banks from other A2 class uses, in this case is not possible to remove specific types of uses from permitted development by an Article 4 Direction. The Article 4 Direction can only remove permitted development rights relating to the whole use class group as specified in the GPDO. Banks are included within the A2 use class and planning permission is not required for the change of use of premises under the A2 use class category i.e. a bank could be changed to use as an estate agent or vice versa without the need for planning permission. Hence it is justified that the Article 4 Direction covers the whole A2 use class for the reasons of maintaining the vitality of high streets and the protection of shops within the A1 class use.
45. It is noted the Metro Bank has made representations to central Government to differentiate banks from other A2 class uses within the Use Classes Order. The Article 4 Direction allows the council greater control to protect A1 uses within key town centre protected shopping frontages. Within these key shopping locations, whilst permitted development will no longer apply, the option of submitting a planning application for change of use from A1 to A2 uses remains. The council would consider any planning application proposals for change of use on an individual basis and a decision would be made on the individual merits of the proposal.

Compensation

46. 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 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.
47. 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.
48. 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.
49. 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 2015. 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 2015.
 - 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 of two years.
50. Permitted development rights granted by Schedule 2, Part 3, 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. If more than 12 months notice of the withdrawal were given no compensation would be payable. The expiry of the compensation period for this Direction is 21 September 2016 as the Direction was made with immediate effect on this date in 2015.

Planning applications

51. 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 marketed 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. In the Preferred Option version of the New Southwark Plan, Policy DM29 now distinguishes primary and secondary shopping frontages and outlines the proportion of retail (A1 Class Use) which should be retained in each

frontage and Policy DM27 requires A Class Uses to be retained in town centres or replaced by a use that provides a service to the general public and would not harm the vitality and viability of the centre. At the time of writing only limited weight can be attributed to the policies within the New Southwark Plan as the Preferred Option is still subject to consultation.

52. 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.

Existing A4 directions

53. In April 2014 the council confirmed two Article 4 Directions which withdrew permitted development rights granted by the GPDO 1995 for:

- A change from classes A3 (restaurants and cafes), A4 (drinking establishments) and A5 (hot food takeaways) to A2 (financial and professional services) in Southwark's protected shopping frontages.
- Temporary changes of use for up to 2 years from classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and 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.

54. The purpose of the Directions was to give the council greater control in managing the balance of use in protected shopping frontages. Notwithstanding the introduction of a new General Permitted Development Order in 2015, the council is of the view that these remain extant and consequently planning applications are required for the changes of use described.

Conclusions

55. 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 and that in the case of immediate directions, development presents an immediate threat to local amenity or prejudices the proper planning of an area.
56. The council is satisfied that permitted development rights granted by Schedule 2, Part 3, Class D constrain the council's ability to meet need for Class A1 space over the plan period and manage the balance of uses in key shopping locations in the town centres and consequently prejudice the proper planning of the borough and present an immediate threat to the provision of shopping facilities which are needed by the borough's residents.
57. Taking into account the representations submitted as part of the consultation, it is recommended that the Article 4 Direction is now confirmed.

Community impact statement

58. Southwark has a diverse retail character with a strong emphasis on small and independent shopping. It is important to ensure that Southwark is able to provide within its centres the range of services and facilities that the local community needs. Retail shopping is a vital part of that and concentrations of A1 uses should be maintained the town centres which are generally easily accessible on foot, by bicycle and by public transport. The Article 4 Direction is 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.
59. The equalities analysis (Appendix C) has concluded that the Article 4 direction 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

60. 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 D, the council's potential liability for compensation is limited to one year from the date the Direction is introduced. 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.
61. 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 Law and Democracy

62. In September 2015, Planning Committee resolved to approve the original Article 4 Direction referred to in this report with immediate effect. It is a requirement that where an Article 4 Direction is made, then it is confirmed within 6 months and otherwise the Direction will expire. This report is therefore simply seeking to confirm the decision of the September Planning Committee.
63. Before an Article 4 Direction can be confirmed, it is necessary in accordance with the appropriate regulations that a consultation has been undertaken and details of this are referred to in the report with specific details being included at Appendix B.
64. This decision is a matter for Planning Committee in accordance with paragraph 3, Part 3F, of the Council Constitution.
65. Prior to making their decision, Members are referred to the equalities analysis which has been undertaken and which is shown as Appendix C to this report. It is for

Members to satisfy the Public Sector Equality Duty which is contained within the Equality Act 2010 and Members therefore need to be satisfied that consideration has been given to all the protected characteristics mentioned within the Equality Act 2010 and that consideration is given to any potential impacts of making the Article 4 direction on these groups and where possible these impacts have been mitigated.

Human rights

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 confirming 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 2, Part 3, Class D of the Town and Country Planning (General Permitted Development) Order 2015.

Strategic Director of Finance and Governance (CE/15/024)

68. The financial implications in paragraphs 60 to 61 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
Southwark Retail Study 2009	http://www.southwark.gov.uk/downloads/download/1672/retail_study_main_report	planningpolicy@southwark.gov.uk
Southwark Retail Study 2015	http://www.southwark.gov.uk/info/200272/evidence_base/1612/economic	planningpolicy@southwark.gov.uk
Town centre surveys, February 2014	http://www.southwark.gov.uk/downloads/download/3879/town_centre_surveys_and_interviews_2014	planningpolicy@southwark.gov.uk
New Southwark Plan Preferred Option 2015	http://www.southwark.gov.uk/info/856/planning_policy/3315/the_new_southwark_plan	planningpolicy@southwark.gov.uk

APPENDICES

No.	Title
Appendix A	Article 4 Direction to withdraw the Permitted Development Rights granted by Schedule 2, Part 3, Class D of the Town and Country Planning (General Permitted Development) Order 2015 and maps of shopping frontages to be subject to proposed Article 4 Direction
Appendix B	Consultation notification letters, site notice and newspaper advert
Appendix C	Equalities analysis (available on the council's website) at http://www.southwark.gov.uk/info/856/planning_policy/3289/article_4_directions

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning	
Report Author	Laura Hills, Senior Planner, Planning Policy	
Version	Final	
Dated	20 January 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Democracy	Yes	Yes
Finance Director	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		21 January 2016