

CABINET

19 December 2012

Title: Betting Shops - Withdrawal of Permitted Development Rights and Supplementary Planning Document	
Report of the Cabinet Member for Regeneration	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Divisional Director: Jeremy Grint, Divisional Director Regeneration	
Accountable Director: Graham Farrant, Chief Executive	
Summary: <p>The proliferation of betting shops has been a concern of the Council for several years. Under the current Use Classes Order, which sets out the changes of use that are permitted without planning permission, many high street premises can be converted into betting shops (which fall under Use Class A2) without a grant of permission, including restaurants and cafes (Use Class A3), drinking establishments (Use Class A4) and hot food takeaways (Use Class A5).</p> <p>The Council can withdraw permitted development rights through an Article 4 Direction where they undermine local objectives to create or maintain mixed communities. This report recommends that an Article 4 Direction is introduced to withdraw permitted development rights for conversion of A3, A4 and A5 uses to betting shops, in conjunction with the introduction of a Supplementary Planning Document (SPD) to assist officers in the processing of forthcoming applications for betting shops (attached as Appendix 1).</p> <p>The draft SPD includes:</p> <ul style="list-style-type: none">• A 400m exclusion zone around existing betting shops to prevent the clustering and concentration of such premises• Outside of this zone it only allows proposals for betting shops where a number of other criteria are met including that:<ul style="list-style-type: none">- It is within Barking Town Centre, or Dagenham Heathway, Chadwell Heath and Green Lane District Centres or one of the Neighbourhood Centres.- It will lead to no more than 5% of the units within the centre or frontage being betting shops <p>As the Supplementary Planning Document is a Local Development Framework document its adoption on finalisation after consultation is a non-executive function and will need to be approved by full Council (the Assembly).</p>	

To avoid the need to pay compensation a non-immediate Article 4 Direction is recommended which would require 12 months notice to be given. The Direction would come into effect 12 months after the notice had been placed.

Recommendation(s)

The Cabinet is asked to:

- (i) Agree that notice be given of the Council's intention to make a non-immediate Article 4 Direction, covering the whole Borough, withdrawing permitted development rights for permitted changes of use to betting shops;
- (ii) Approve the draft Supplementary Planning Document 'Evening the Odds: curbing the proliferation of betting shops' at Appendix 1, for public consultation; and
- (iii) Note that, following the outcome of consultation, a report will be presented to the Assembly seeking approval of the final Supplementary Planning Document (SPD) 'Evening the Odds: curbing the proliferation of betting shops'.

Reason(s)

To assist the Council to achieve its Policy House objectives "Better Together", "Better Health and Wellbeing" and "Better Future".

1. Introduction and Background

What is an Article 4 Direction

- 1.1 This Report proposes that the Council utilise its power as a Local Planning Authority to change the operation of permitted development for a change of use of existing premises. The general principle is that change of use of a property is likely to be considered development for which permission must be granted by means of application to the local planning authority. However a number of changes of use are permitted by a statutory instrument, the Town and Country Planning (General Permitted Development) Order 1995. This Order identifies certain changes of use entitled to be treated as permitted development. The purpose is to allow changes in use that are broadly acceptable and so as to avoid every single development being referred to planning authorities. However local circumstances may be that the change in use is not in keeping with the local conditions and so Article 4 of the Order enables planning authorities to remove the permitted development by resolution and ensure that the change in use requires consent.
- 1.2 The 2012 Government Guidance (National Planning Policy Framework) 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. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Why the need for an Article 4 Direction and Supplementary Planning Document

- 1.3 The London Borough of Barking and Dagenham is the seventh most deprived Council in London and has the sixth highest concentration of betting shops in London per capita. There are currently 50 licensed premises across the borough and notable concentrations within Barking Town Centre, Dagenham Heathway, Chadwell Heath and the shopping parades of the Becontree Estate. The proliferation of betting shops has been a concern of the Council for several years. The Council considers that in the interests of the social and economic welfare, and health, of the borough's residents and the vitality and viability of its town centres that, this proliferation needs to be carefully controlled. It is for these reasons that the Council has decided to provide further guidance and control on the location and concentration of betting shops.
- 1.4 Research indicates that betting shops are part of a wider degradation of high street diversity and vitality since the onset of the recession. Successive high street surveys of the borough have found an over concentration of particular services, with betting shops consistently over represented. The number of betting shops not only restricts the retail choices available to local communities, but can also have a damaging effect on people's health and finances.
- 1.5 Gambling addiction has been linked to a range of health and social problems including alcoholism, substance abuse, severe debt problems, crime, depression and suicide. Gambling addiction, known in the industry as 'problem gambling' is recognised as a health disorder and is linked to domestic violence – a finding which is significant given that Barking and Dagenham has the highest reported domestic violence incidence rate in London.
- 1.6 In the UK there are an estimated 250,000 problem gamblers. Groups at particular risk of becoming problem gamblers include those with existing mental health or substance misuse problems, adolescents and those from:
 - Minority ethnic groups
 - Lower socio economic groups
- 1.7 The Government, in its response to the Portas Review (2011) recommendation to put betting shops into a separate use class, has emphasised the availability of Article 4 Directions as the appropriate planning tool for controlling uses such as betting shops, by removing permitted development rights, and requiring a planning application to be made.
- 1.8 An Article 4 Direction would mean that proposals to convert a restaurant or cafe (use class A3), a drinking establishment (use class A4) or a hot food takeaway (use class A5) into a betting shop would require planning permission. Any such planning application would then be determined against the Betting Shops SPD and other relevant policies contained in the Council's Local Plan. Although the SPD would not have the same status as the Council's development plan documents, it would be an important material consideration in the determination of planning applications. The Article 4 Direction would not be able to control changes of use from other A2 uses to a Betting Shop. However, the Council is able to condition permissions for new A2 use to prevent this where it can be justified.

2. Proposal and Issues

2.1 The proposed SPD seeks to curb the numbers and concentrations of betting shops in the borough. It aims to achieve this through the following:

- **SPD Implementation Point 1 – Preserving High Street Diversity**
This policy seeks to preserve the diversity of the high street by implementing a 400m exclusion zone within the boundary of an existing permitted betting shop.
- **SPD Implementation Point 2 – Concentration and Clustering**
Outside of the exclusion zone this policy seeks to reduce opportunities for betting shops in existing retail parades – this is the percentage of retail units which are operating as betting shops on a retail parade. In addition it seeks to prevent the clustering of new betting shops – this is the number of new betting shops located adjacent to one another.

2.2 Consultation with the statutory consultees, identified in accordance with the National Planning Policy Framework (2012), will be undertaken for a period of 6 weeks and the remainder of the local consultation will be undertaken in line with the Council's Statement of Community Involvement. Officers will address the comments received and bring a final copy of the SPD to the Cabinet and Assembly for approval.

Process for making an Article 4 Direction

2.2 In 2010 the Government published the Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135). This reduces local authorities' liability to pay compensation where they make Article 4 Directions as follows:

- Where 12 months' notice is given in advance of a direction taking effect there will be no liability to pay compensation; and
- Where directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions.

2.3 Therefore to avoid potential compensation claims the Council needs to provide 12 months notice in advance of an Article 4 Direction taking effect. This is called a non immediate direction.

2.4 The procedure for making a "non-immediate" Article 4 Direction is as follows:

- Give 12 months notice of direction
- Seek representations
- Cabinet approval
- Advertise direction and notify Secretary of State

2.5 The Direction would come into effect 12 months after the notice had been placed.

3. Options Appraisal

- 3.1 Failure to make the Article 4 Direction and adopt the SPD would substantially reduce the ability of the Council to control the proliferation and concentration of betting shops.
- 3.2 For the reasons set out in the report officers consider that doing nothing is not an option. Making a non-immediate Article 4 Direction does mean that there is an intervening 12 month period when people can take advantage of current permitted development rights. However, it is not anticipated that there will be a rush to convert high street premises (A3, A4 and A5 uses) into betting shops as there has already been a notable growth in betting shops in the borough in recent years. The Article 4 Direction is part of a longer term strategy to improve the diversity and vitality of the borough's high streets, and tackle the over and under representation of particular uses. As covered in the report an immediate direction would leave the Council open to compensation claims payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions.
- 3.3 Compensation may be claimed for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights. For example the Council could be liable for the loss of income a property owner suffers by not being able to convert their property into a betting shop where this is due to the Article 4 Direction. However an immediate direction may incentivise property owners to claim for compensation for changes of use to betting shops they would not otherwise have carried out. This could leave the Council with a very significant liability. For this reason officers recommend that the non-immediate direction is the most appropriate course of action.

4. Consultation

- 4.1 No consultation on the SPD or Article 4 Directive has taken place to date. The procedure for the Article 4 Direction is set out above. To bring forward the SPD, consultation with the statutory consultees, identified in accordance with the Government's National Planning Policy Framework, will be undertaken for a period of 6 weeks and the remainder of the local consultation will be undertaken in line with the Council's Statement of Community Involvement. Officers will address the comments received and bring a final copy of the SPD to the Assembly for approval.

5. Financial Implications

Implications completed by: Philip Horner, Principal Accountant

- 5.1 There are no costs involved in obtaining an Article 4 Direction.
- 5.2 If the Council issues a "12 months notice of direction" the risk of compensation claims will be largely avoided. The only financial implication will be in respect of compensation that may be claimed for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights. Although the Council is not likely to receive any claims of this nature, the value of the financial implication cannot be accurately estimated.

6. Legal Implications

Implications completed by: Paul Feild, Corporate Governance Lawyer

- 6.1 This report proposes the making of an Article 4 Direction, covering the whole borough, withdrawing permitted development rights for conversion of A3, A4 and A5 uses to betting shops.
- 6.2 As a general principle developments require planning permission from the Council as the Local Planning Authority. To avoid every single development being referred to planning authorities; the Town and Country Planning (General Permitted Development) Order 1995 (the "Order") gives the Secretary of State the power to issue directions that specified developments may be "permitted development" that is to say that they do not require planning consent. Article 4 of the Order provides that a local planning authority may resolve to withdraw a specific "permitted development" and instead require that development will still need to seek planning permission from the authority.
- 6.3 Article 4 Directions are one of the tools available to local planning authorities in responding to the particular needs of their areas. An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority for that development.
- 6.4 DCLG Guidance in the National Planning Policy Framework 2012 states that the use of Article 4 Directions 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. For all Article 4 Directions the legal requirement is that the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application.
- 6.5 Article 4 Directions covering any geographic area from a specific site to a local authority wide can be made. However, the Guidance also provides that there should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area e.g. those covering the entire area of a local planning authority. An example where it would be reasonable would be where the operation of the permitted development would undermine local objectives. This means that the Council needs to be satisfied there is good evidential reason(s) to make the Article 4 Direction and that if so it should be borough wide.
- 6.6 As the proposal is to make the directive borough wide it is important that consultation is carried out and due regard given to any responses.
- 6.7 To avoid the need to pay compensation a non-immediate direction is recommended which would require 12 months notice to be given. The Direction would come into effect 12 months after the notice had been placed.

7. Other Implications

- 7.1 **Risk Management** - Officers consider that there is a legally sound basis for making this Article 4 Direction and Supplementary Planning Document. Whilst the Council

has to notify the Secretary of State when the Article 4 Direction is published it is unlikely he/she would intervene. Please see the options appraisal section for the risks associated with making immediate and non-immediate directions.

- 7.2 **Customer Impact** - Betting shops provide a form of entertainment and enjoyment for responsible gamblers. There are already 50 betting shops across the borough, which are in some cases less than 15 metres apart. However, all groups within the Borough will benefit from the impact of this policy which is focused on tackling the high levels of betting shops in the borough's high streets. Whilst black, Asian and other minority ethnic (BAME) communities and those from the most economically deprived backgrounds are probably disproportionately represented in the customer base of betting shops they are on balance likely to be advantaged by the Article 4 Direction. Research by the Gambling Commission and the NHS has found that BAME communities and those from the most economically deprived communities are more likely to become problem gamblers. The Article 4 Direction is seeking to protect those groups most vulnerable to problem gambling, in line with the licensing conditions betting shops must adhere to. As cited earlier, problem gambling can result in a plethora of related social, economic and health problems, so the Article 4 Direction and SPD will be to the benefit of all residents.
- 7.3 **Safeguarding Children** - Withdrawing permitted development rights will help to contain the potential for future betting shops growth in the Borough. Two of the many social problems that may result from problem gambling are family breakdown and domestic abuse. Therefore, by seeking to reduce the issue of problem gambling, the Article 4 Direction will help to safeguard children.
- 7.4 **Health Issues** - Problem gambling is seen as a health disorder and has been identified as 'gambling that comprises, disrupts or damages family, employment, personal or recreational pursuits. Groups at risk of becoming problem gamblers include minority ethnic groups, those with existing mental or substance misuse problems and adolescents. Therefore, the Article 4 Direction and SPD will be of benefit to the health and wellbeing of the borough's residents.
- 7.5 **Crime and Disorder Issues** - Research by the NHS and other organisations has identified links between problem gambling and a wide range of crime, from theft and fraud to domestic abuse. Therefore, withdrawing permitted development rights will help to address these issues.
- 7.6 **Property / Asset Issues** - It should be noted that restrictions on any type of development may affect the volume of private sector interest in development, the level of investment and/or the viability of business. The financial impact on the Council of this cannot be estimated.

Background Papers Used in the Preparation of the Report:

- 1995 (General Permitted Development) Order (as amended)
- Core Strategy, LBB, 2010
- Borough Wide Development Plan Policies, LBB, 2011

- DCLG, National Planning Policy Framework, 2012
- High streets at the heart of our communities: The Government's response to the Mary Portas Review, 30 March 2012, DCLG
- Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995
- The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (2000 No. 2853)
- Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010
- Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135)
- London Borough of Barking and Dagenham Neighbourhood Health Check, 2006, Atkins, p.4-3
- Barking Town Centre Retail Study: Update 2009, King Sturge, May 2009, p.27
- Barking Town Centre, Retail Study Update: 2012, Jones Lang LaSalle, February 2012, p.28

List of appendices:

Appendix 1 - Draft Supplementary Planning Document: Evening the Odds – Curbing the proliferation of betting shops

Appendix 2 - Betting Shop Exclusion Zone