

CABINET

21 January 2014

Title: Betting Shops - Withdrawal of Permitted Development Rights and Consultation Draft Supplementary Planning Document	
Report of the Cabinet Member for Regeneration	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Summary: <p>At its meetings on 19 December 2012 and 19 March 2013, Cabinet agreed to the making of a non-immediate Article 4 Direction, covering the whole Borough, withdrawing permitted development rights for changes of use from use class A5 (hot food takeaways), use class A4 (drinking establishments) and use class A3 (restaurants and cafes), to a betting office (use class A2) and to consult on a draft Supplementary Planning Document (SPD) 'Evening the Odds: Curbing the Proliferation of Betting Shops'. (Minutes 77 (19 December 2012) and 118 (19 March 2013) refer).</p> <p>The Council consulted on the Article 4 Direction and draft SPD from 15 May 2013 to 26 June 2013. The consultation response was substantial. A number of the objections from the betting shop industry did raise a need for officers to reconsider the most effective approach to secure the Council's proposed course of action. This has caused officers to review the evidence base for the Article 4 Direction and the consultation draft SPD. In the light of this officers consider that the focus of the Article 4 Direction and SPD be directed at managing the clustering of betting offices rather than their proliferation and have revised the SPD accordingly.</p> <p>Officers still consider that it is right to introduce an Article 4 Direction to remove the right to change use from an A5, A4 or A3 use to a betting office (A2) but that this should apply to the frontages that comprise the borough's major, district and neighbourhood centres rather than the whole borough. Officers originally advised that it was possible to make a non-immediate direction to avoid compensation claims for the withdrawal of permitted development rights. However, this is not possible and therefore officers are recommending that the original non-immediate Article 4 Direction is not confirmed and that Cabinet agrees an immediate Article 4 Direction which would have immediate effect.</p> <p>Officers have revised the SPD. Previously it stated that planning permission for a new betting office would not be granted within 400 metres of the boundary of an existing betting office. It is accepted that such a measure could have too severe an effect. It is the case</p>	

that since 2007 the number of betting offices has remained at 40 but due to the pattern of closures and openings they have become more concentrated in Dagenham Heathway and Chadwell Heath district centres and Barking Town Centre in particular. The clustering is most pronounced in Barking Town Centre and due to the problems this has caused, and the experiences of other London Boroughs, the Council has decided action is needed to control clustering throughout the borough to prevent these problems occurring elsewhere. It is important to note however that the Council cannot control changes of use from one A2 use to another such as from a bank or an estate agent to a betting office.

Recommendation(s)

The Cabinet is recommended to:

- (i) Approve an immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class C of the General Permitted Development Order as amended, for changes of use of A3 (restaurants and cafes), A4 (drinking establishments) and A5 (hot food takeaways) to betting office (A2) in Barking and Dagenham's designated primary, secondary and unrestricted shopping frontages;
- (ii) Approve the draft Supplementary Planning Document (SPD) 'Controlling the clustering of betting offices' at Appendix A, for public consultation and as a material consideration for Development Management;
- (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) 'Controlling the clustering of betting offices'; and
- (iv) Request the Leader and the local MPs write to the Secretary of State for Communities and Local Government requesting a separate Use Class for Betting Shops.

Reason(s)

To assist the Council in delivering the community strategy vision to encourage growth and unlock the potential of Barking and Dagenham and its residents and the priorities of reducing crime and the fear of crime and improving health and wellbeing through all stages of life.

1. Introduction and Background

- 1.1 Cabinet agreed to the making of a non-immediate Article 4 Direction, covering the whole Borough, withdrawing permitted development rights for changes of use from use class A5 (hot food takeaways), use class A4 (drinking establishments) and use class A3 (restaurants and cafes), to use class A2 Betting Office and to consult on a draft Supplementary Planning Document (SPD) 'Evening the Odds: Curbing the Proliferation of Betting Shops'. (Minutes 77 and 118 of 19 December 2012 and 19 March 2013 Cabinets refers).
- 1.2 The Council consulted on the Article 4 Direction and draft SPD from 15 May 2013 to 26 June 2013.

1.3 A total of 102 people, organisations and businesses responded as shown in table 1.
Table 1

	Object	Support	Neutral
Association of British Bookmakers (ABB)	1		
Paddy Power	1		
Ladbrokes	1		
William Hill	1		
NLP on behalf of Corals	1		
Knights Solicitors LLP on behalf of Power Leisure Bookmakers	1		
GLA		1	
Estates and Agency		1	
HUDU		1	
Campaign for Fairer Gambling		1	
Resident	1	78	2
Metropolitan Police		1	
Non Resident/unknown		10	
Total	7	93	2

1.4 Provided below is a summary of the main points raised in the objections from ABB, Corals, Paddy Power, Power Leisure Bookmakers, Ladbrokes and William Hill.

- Thinly disguised ban on betting offices. Will stifle development and contrary to National Planning Policy Framework (NPPF).
- Inaccurate and misleading evidence base, no justification or exceptional circumstances demonstrated for Article 4 or SPD. Particularly strong justification needed for borough wide Article 4 Direction and there is no basis for this.
- No evidence whatsoever has been presented to show that clustering of betting offices in Barking and Dagenham increases likelihood of anti-social behaviour, impacts on the diversity of the high street and detrimentally affects vitality and viability.
- Betting offices generate as many linked trips and as much footfall as other town centre uses.
- Consultation can be legally challenged because it is biased.
- No evidence to suggest betting offices have resulted in loss of retail or that they are clustering.
- Borough has a high vacancy rate - betting offices help reduce vacancy rate
- The number of betting offices has only increased by two since 2007 despite borough's population growing by 14% since 2001.
- Borough does not have a disproportionately high number of betting offices.
- Borough has 17th highest concentration of betting offices in London and lower than London average.
- Customers will go elsewhere to bet and therefore local jobs will be lost and footfall reduced.

- No evidence that crime and anti-social behaviour is linked to the location of betting offices or their clustering.
- No reference made to economic contribution that bookmakers bring to the local economy.
- No evidence to link the location of betting offices within the borough to the presence of deprivation.
- No reference in Cabinet report to DCLG guidance on use of Article 4 Directions.
- Other boroughs have concluded that the use of an Article 4 Direction is unnecessary and unwarranted.
- No evidential link between number of betting shops on the high street and the health of the local population.
- Article 4 Direction would not affect the retail to non-retail ratio of shops on the high street as shops already require planning permission to convert to an A2 use such as a betting office.
- Council's borough wide neighbourhood health check does not identify an over concentration of betting shops neither do Barking Town Centre studies and no mention made of betting offices in Barking Town Centre Area Action Plan.
- Allowing one betting shop every 400 metres does not preserve high street diversity and is contrary to the town centres first policy.
- Article 4 Direction can only be used to limit a change of use to an A2 use class from an A3, A4 or A5 use and cannot single out betting shops. It is therefore unlawful.
- Conflicts with the aims and intentions of the Gambling Act 2005 specifically with regard to the provision of greater consumer choice.
- Even when a planning application is not required a licence application must still be made to the local authority.
- There is no evidence to support the assertion that demand for betting shops may be result of an addiction or that they contribute to ill health and other social problems.
- The Council already has the power to refuse, revoke or amend licence applications, permissions and conditions if it can be shown that there is a real concern based upon evidence.
- No attempt has been made to analyse the prevalence or causes of problem gambling in Barking and Dagenham.
- The addition of new gambling facilities in already serviced environments does not causes an increase in problem gambling.
- Research by Gerald Eve LLP shows that nationally the number of betting offices is likely to remain stable in the future.

1.5 Support was received from:

- Icen projects on behalf of Estates and Agency Properties Limited
- Greater London Authority
- NHS London Healthy Urban Development Unit
- Metropolitan Police
- Campaign for Fairer Gambling
- 78 Members of the public

1.6 Below is a summary of the main points raised in their support:

Iceni projects on behalf of Estates and Agency Properties Limited

- Clustering of betting offices has restricted retail choice and attractiveness and appeal of Borough's shopping centres has declined as a result.
- Migration of betting offices into local shopping centres has increased trading pressures on independent retailers.
- Betting offices have contributed to an increase in local rental values.
- Guidance should also ensure proposals will not result in two or more adjacent betting shops within any centre of frontage in the borough.

Greater London Authority

- SPD is in general conformity with the London Plan and in particular policy 2.15 on Town Centres.
- Support the issues the guidance raises in controlling the proliferation of betting shops and to address the implications this can have for maintaining the vitality and viability of town centres and protecting their amenity and safety.

NHS London Healthy Urban Development Unit

- Support the approach to control the proliferation of betting offices in response to the link between gambling addiction and a range of health and social problems.

Metropolitan Police

- It has been our recent experience that the clustering and concentration of betting shops can increase the likelihood of crime and anti social behaviour (ASB).
- The police have had ongoing issues with gangs hanging around the doorways of two particular betting shops in Station Parade, which are opposite each other. The groups were the subject of many public and Councillor complaints. There was evidence that they were engaged in drug dealing both inside and outside these premises. This resulted in two drug warrants being executed on these premises on 27th June 2013 whereby 9 people were arrested. It was also apparent that one of these premises did not have appropriate management structures to deal with the issues that were being presented. These gangs regularly gathered outside of these premises and were found to be intimidating by the general public.
- The police are not suggesting that all the crime and ASB in Station Parade is directly linked to the presence of betting shops but it does appear that betting shops have become a focal point for crime and ASB in this specific area.

Campaign for Fairer Gambling

- The only long term, cost effective and manageable system for curbing the prevalence of betting shops and Fixed Odds Betting Terminals is to return them to their own use class, thus returning control over high streets back to

local authorities and communities. Until this is corrected, Article 4 is the only option left to Councils

- Bookmakers are increasingly relocating tertiary shops from secondary locations onto primary high streets
- The correlation between betting shops and areas of deprivation has been evidenced through research by Geofutures.
- Secondary research based on the British Gambling Prevalence Surveys has estimated that 23% of revenue from fixed odds betting terminals is derived from problem gamblers.
- The negative impacts associated with problem gambling are wide ranging. Many gambling addicts are also addicted to alcohol and more than half of problem gamblers have co-morbid mental health conditions. Problem gambling can lead to loss of work productivity, relationship breakdowns, debt and child neglect. It can also lead to criminal activity.

Residents

Out of 81 residents responding to the consultation 78 were in support. 47 of these residents took the time to provide more detailed comments. In summary these were most concerned about the impact of the cluster of betting offices in Barking Town Centre in particular anti-social behaviour and intimidation. Other common concerns expressed were problem gambling and knock on impacts on family breakdown, health, alcoholism, drugs and crime. Respondents were also concerned about the general attractiveness of Barking Town Centre and Dagenham Heathway as places to shop due to the preponderance of betting offices, pawnbrokers, takeaways and pound shops. Comments provided include:

- “We must not allow a culture of betting shops to invade our community, inculcating and grooming a generation of gamblers. whose ambition and aspiration is to win the next 'sweep stake”
- “There is a visible problem regarding some of the betting shops in Barking town centre. Large groups of young males hang around outside and it feels very intimidating.”
- “I feel this has come too late due to the 3 betting offices within close proximity to each other on the Heathway. William Hill, Coral and Bet Fred. This has not attracted any good businesses to the area.”
- “Betting shops are proving to be a magnet for anti-social behaviour and other criminal activities within LBBD.”
- “Betting shops only add to the misery of the unemployed and unskilled, they mainly operate in areas of high poverty and unemployment and add to crime for some to fund a gambling habit.”
- “I'm concerned about the proliferation of betting shops in our community and the temptation offered to people in our community who can scarcely afford the essentials, let alone lining the pockets of the gambling industry.”
- “I am very pleased to see that the council wants to take action on this issue. I live in an area where betting shops have been springing up left right and centre and I am aware of how detrimental they are to some people's lives.”
- “There are far too many betting places between the train station and the Lemonade Building. I don't feel safe walking home as often there are groups of mobs around these places. I often don't use the pedestrian pavement to avoid any conflicts”

- “Barking's high street already has too many betting offices. More needs to be done to attract a greater variety of businesses to Barking's high street and the Vicarage Field shopping centre”
- “I strongly do feel there are way too many betting shops around Barking town centre. I very much find this detrimental to the town centre's attractiveness to a vibrant atmosphere and the potential of business spirit and initiative. Seeing the wrong kind of people outside those shops is often rather intimidating, especially towards women. I very much hope the council will take strong action against the spread of such shops and will promote a better variety of shops and restaurants.”

1.7 The Secretary of State for Communities and Local Government had no comments to make in respect of the Direction.

1.8 The full schedule of the responses to the Draft Supplementary Planning Document ‘Evening the Odds – Curbing the proliferation of betting shops’ is available to view on the Council’s website at <http://www.lbbd.gov.uk/Environment/PlanningPolicy/LocalPlan/Pages/BettingOffices.aspx>

2. Proposal and Issues

Policy and evidence review

2.1 The responses from the betting companies and the Association of British Bookmakers (ABB) stress the positive impacts of the betting industry. The ABB response lists the following benefits:

- Contribute £3.2bn to UK GDP
- Support 100,000 jobs
- Pay £1bn in taxes
- For every £1 of Gross Value Added generated, they generate an additional 61p in the wider economy through indirect and induced impacts
- 99% of the economic benefits in London stay in London
- Of the 55,000 jobs provided by betting shops (or 10% of the entire number provided by the leisure industry) 50% are filled by women and over 25% are filled by 18-24 year olds. The latter compares with only 8% across the economy as a whole.

2.2 The betting companies also question the accuracy of the Council’s evidence base. The Gambling Act came into force in 2007. Since that time four betting offices have closed and four betting offices have opened and additionally three betting offices have been refused and have been appealed. One of these betting offices, at 33 Faircross Parade, was allowed on appeal on 12 December 2013.

2.3 Therefore there has been no net increase in the number of betting offices in the borough since 2007. Moreover the ABB highlight that nationally the number of betting offices peaked in 1968 at 15,782 and at 30 September 2012 it was 9049. The ABB cite research by Gerald Eve LLP that the number is likely to remain stable in future.

- 2.4 However whilst the number of betting offices locally has not changed since 2007 the betting offices that have closed with one exception have been in neighbourhood centres and the betting offices that have opened have been in Barking Town Centre and the district centres of Dagenham and Chadwell Heath and have been in close proximity to existing betting offices.
- 2.5 In Dagenham Heathway planning permission was granted for a BetFred betting office in 2007 in Unit 25 of the Mall within 20 metres of the existing William Hill betting office at 220 Dagenham Heathway which was approved in 1997. In 2008 a Coral betting office was approved at 251-253 Dagenham Heathway opposite William Hill and Bet Fred.
- 2.6 In Barking Town Centre Paddy Power in 2011 used permitted development rights to open a betting office at 23 Station Parade opposite Corals which had also used permitted development rights to open a betting office at 24 Station Parade in 2005.
- 2.7 In Chadwell Heath District Centre Betfred used permitted development rights in 2008 to open a betting office within 50 metres of a Ladbrokes at 1-2 Tudor Parade and within 150 metres of a Paddy Power at 13-15 Station Road.
- 2.8 The three planning applications which have been appealed include a Paddy Power at 243-245 the Heathway within 50 metres of the Corals at 251-253 the Heathway and a Paddy Power at 51 East Street Barking with 100 metres of the Ladbrokes at 29a East Street. The third appeal concerned a Paddy Power at 33 Faircross Parade within 50 metres of a Corals at 24 Faircross Parade. This was allowed on appeal on 12 December 2013.
- 2.9 Therefore, whilst nationally the ABB may be correct in forecasting the number of betting offices may remain stable, locally four applications have been received since the publication of the Gerald Eve LLP research, 10% of the existing number of functioning betting offices.
- 2.10 Of the 40 functioning betting offices only three have used permitted development rights and one of these was a change of use within the A2 use class which an Article 4 Direction cannot control. However these two betting offices, the Corals at 24 Station Parade and the Paddy Power at 23 Station Parade have formed a particularly problematic cluster in the heart of Barking Town Centre.
- 2.11 The ABB correctly identify that the Council's Neighbourhood Health Check in 2006 established that 13% of the units in the Council's 41 local centres were in A5 use as Hot Food Takeaways, 8.5% were hairdressers and 3% were bookmakers. However hairdressers are an A1 use whilst bookmakers are A2. The Council has already introduced planning controls on Hot Food Takeaways. It is also the case that the patterns of closures and openings has seen a migration of betting offices from lower order neighbourhood centres to higher order district and town centres since 2006.
- 2.12 The ABB also highlight that the 2009 and 2012 Barking Town Centre Retail Studies whilst stating that betting offices were over represented do not suggest that they created a significant difficulty. However, comparing the 2009 to 2012 studies the floorspace and outlet index for betting offices has increased significantly surpassing that of Hot Food Takeaways which the Council has acted on in July 2010 when it published its planning guidance on hot food takeaways. An outlet index of 183

effectively means that there are 83% more betting offices in Barking Town Centre than the UK average. It also shows that restaurants, pubs and cafes are underrepresented.

	Floorspace Index	Outlet Index
2009	129	146
2012	140	183
Source Barking Town Centre Retail Study 2009 and 2012 update – Jones Laing Laselle/King Sturge Goad.		

- 2.13 The ABB states that the borough has the 17th highest concentration of betting offices per capita in London based on the 2011 census not the 6th as officers quoted in the original Cabinet Report, and that this is lower than the London average density.
- 2.14 The original Cabinet Report misinterpreted licensing data by counting premises that were not betting offices and as already covered there are 40 functioning betting offices in the borough. The Council has revisited its data but in calculating the number of people per betting office has focused on those residents at 18 and above, the legal age for gambling, and divided this by 40. The borough has 1 betting office for every 3,373 residents aged 18 and above. This is the 16th highest concentration in London and ranked 2nd of the Outer East London Boroughs. By comparison Newham to the west has 1 betting office for every 2,858 residents. Using this ratio the borough would have 47 betting offices. NLP on behalf of Coral's highlight that the borough has one of the lowest proportion of betting offices by 1,000 sqm retail floorspace in London. However, on closer inspection the same data reveals that the opposite is true. VOA data estimates that in 2012 the borough had 253,000 square metres of retail floorspace and therefore 1 betting office for every 6,325 square metres of retail floorspace, which represents the 11th highest concentration in London and the highest concentration in Outer East London and not dissimilar to Southwark who have recently made an immediate Article 4 Direction.
- 2.15 The fact that the Council has recently dealt with applications for a further four betting offices evidences that the borough has not reached a saturation point. Had these been approved the borough would have been ranked 10th by capita and 4th by floorspace. The direction of travel therefore is towards the concentrations of betting offices experienced in inner London Boroughs such as Southwark and Hackney.
- 2.16 The ABB state that there is no evidence to link the location of betting offices within the borough to the presence of deprivation. However, the ratio of residents aged 18 and over to betting offices across London, and ratio of retail floorspace to betting offices, shows that the two most deprived London Boroughs, Hackney and Tower Hamlets feature in the top five and the two least deprived London Boroughs, Richmond Upon Thames and Kingston Upon Thames feature in the bottom five. In Barking and Dagenham the highest concentration of betting offices is in Barking Town Centre and Dagenham Heathway which are centres serving some of the most deprived wards in London.

Anti-social behaviour

- 2.17 The ABB state that no evidence has been presented to show that the clustering of betting offices in Barking and Dagenham increases the likelihood of anti-social behaviour, impacts on the diversity of the high street and detrimentally affects vitality and viability.
- 2.18 The response to the consultation from the police evidences that they are concerned about the link between the clustering of betting-offices in Station Parade, Barking and anti-social behaviour. This is reinforced by the responses from the residents to the consultation which are summarised in paragraph 1.14 which evidences the very real problems that clustering has caused on how people perceive Barking Town Centre. An important Community Strategy priority is to reduce crime and the fear of crime.

Impacts on the diversity of the high streets and detrimentally affects vitality and viability

- 2.19 This report has already evidenced that there has been a recent trend of betting offices clustering in Barking Town Centre, Dagenham Heathway, Green Lane and Chadwell Heath and recent planning applications which are currently the subject of appeal would exacerbate this. It has also evidenced that in Barking Town Centre there are 83% more betting offices in comparison to the UK average, but that equally there is an underrepresentation of cafes and restaurants. This is substantiated by the borough having the highest ratio of betting offices to retail floorspace in Outer East London and not far behind inner London Boroughs such as Southwark. The response from Icenic on behalf of Estates and Agency a company who own a number of sites in and around the town centre highlights their concerns about betting offices contributing to an increase in local rental values and the impact this has had on independent retailers.
- 2.20 The ABB highlight with reference to the Barking Town Centre Retail Study Update 2012 that there were 51 vacant units in Barking Town Centre, 19.6% of the total in the town centre. However the report later clarifies that 22 of these units were earmarked for demolition, which has since occurred. Consequently the vacant space in Barking Town Centre is 12.18%, which would be below the national average. It goes on to say that the retail core of the centre, such as, East Street and Vicarage Field have few vacancies and this area presents a better measure of the health of the centre. It is also the case that, as at 25 November 2013, from 1- 41 Station Parade, 2-74 Station and 2-40 Longbridge Road within which the cluster of five two Corals, one Paddy Power, 1 Metrobet and 1 Ladbrokes are located there was not a single vacant retail unit. Therefore with regard to the response from NLP on behalf of Corals it is not accurate to say that the SPD would threaten the high street by increasing the potential for long standing vacant units to remain vacant. Moreover there are two vacant premises with planning permission for betting offices in neighbourhood centres. These are 11 Royal Parade Dagenham and 121 Rose Lane in Marks Gate.
- 2.21 Paddy Power are correct to highlight that the Article 4 Direction will not affect A1 uses but the Council is concerned that the clustering of betting offices is detrimental to the character of the high street which affects all town centre uses. The consultation response from the Metropolitan Police highlights the concerns from

members of the public about the intimidating presence of gangs outside the premises on Station Parade and this is substantiated by the feedback the Council received from the public on the draft SPD. Both these premises were established through the permitted development rights that the proposed Article 4 Direction seeks to withdraw. Whilst the licensing regime provides some control over this issue it has a narrower remit than the planning system. Equally whilst the anti-social behaviour and intimidation from gangs outside these premises has improved recently officers consider it is reasonable for the Council to have more control over the location of betting offices so that it can have more control over the planning of its town centres to avoid similar problems arising in the future not only in Barking Town Centre but in shopping frontages in all the borough's centres.

Problem gambling

- 2.22 The ABB state that there is no evidence to support the assertion that demand for betting shops may be result of an addiction or that they contribute to ill health and other social problems. The original draft SPD highlighted with reference to data from the Gambling Commission, the NHS and the British Medical Association and the National Centre for Social Research the prevalence of problem gambling, the groups most at risk, and the health and social problems gambling addiction can cause. It then highlighted with reference to data from Geofutures that the growth of betting shops is particularly prominent in areas with high levels of social and economic deprivation, and this report has provided further evidence to support this. It then evidenced with reference to established research that the level of problem gambling is known to be linked to the available opportunities to gamble. The SPD then focused on the profits bookmakers derive from Fixed Odd Betting Terminals and the limits placed on these by the 2005 Gambling Act to try and explain why the clustering of betting offices was occurring. The response to the consultation from the Campaign for Fairer Gambling reinforces the evidence presented in the SPD.
- 2.23 The ABB in response say that it is simply untrue that the borough has a disproportionate number of betting offices and that while reliance is placed upon problem gambling no attempt has been made to analyse the prevalence or causes of problem gambling in Barking and Dagenham. They then state that there is no respectable body of opinion holding that the addition of new gambling facilities in already serviced environments cause an increase in problem gambling due to the opportunities to gamble in other environments such as the national lottery, amusement centres, casinos and online. They turn to a Government response to this issue in parliament which states that casual links with problem gambling are poorly understood and to impose new restrictions without clearer evidence of harm risks ineffective legislation that unnecessarily threatens businesses and jobs. Finally the ABB point out that the SPD ignores the controls imposed by the licence conditions bookmakers must abide by.
- 2.24 Improving health and wellbeing through all stages of life is a Community Strategy priority. Whilst officers stand by their original analysis and the body of work which was referenced it is clear that this is an issue which is very contentious and subject to claim and counter claim. Officers do not consider that the justification of the Article 4 Direction or the draft SPD rests on establishing the link between the opportunities to gamble, fixed odd betting terminals and problem gambling in Barking and Dagenham.

Other boroughs

- 2.25 The ABB point to the conclusions reached by the London Boroughs of Haringey and Southwark whose respective scrutiny committees concluded that Article 4 Directions were not the best tool for controlling betting offices. Haringey's committee highlighted the financial and legal challenges involved. However, despite these challenges the London Borough of Southwark has recently made an immediate Article 4 Direction withdrawing permitted developments for A5, A4 and A3 uses to change use to any A2 use. Paddy Power refer to the conclusions reached by Merton that there is not an over concentration of betting offices in the borough. However data from NLP on behalf of Corals shows that in Merton there is one betting office for every 11,000 sqm of retail floorspace, using this ratio in Barking and Dagenham there would be 23 not 40 betting offices in the borough.

Article 4 Direction

- 2.26 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 (see paragraph (1) of Article 4 of the GPDO). Additionally, for directions with immediate effect, the legal requirement is that the local planning authority considers that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenity of their area (see paragraph (1)(a) of article 6 of the GPDO).
- 2.27 Replacement Appendix D to Department of the Environment Circular 9/95 gives further guidance. It states Local Planning Authorities should consider making Article 4 Directions 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.
- 2.28 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. In deciding whether an Article 4 direction might be appropriate, local planning authorities may want to consider whether the exercise of permitted development rights would:
- Undermine the visual amenity of the area or damage the historic environment.
 - Undermine local objectives to create or maintain mixed communities.
 - Lead to the subdivision of agricultural land other than for purposes reasonably necessary for agriculture, or to the loss of agricultural land.
 - Lead to an intensification of development in close proximity to a military or aviation safeguarding zone.
 - Have a direct and significant adverse effect on a flood risk area, flood defences and their access, the permeability of ground, and management of surface water or flood risk;
 - Lead to an intensification of development or use in areas affected by coastal erosion.

- 2.29 Finally the circular says that there should be a particularly strong justification for the withdrawal of permitted development rights covering the entire area of a local planning authority.
- 2.30 In addition paragraph 200 of the National Planning Policy Framework says 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.
- 2.31 The Council's original Article 4 Direction applied to the whole borough. Officers accept this was disproportionate since the planning concern is to the borough's district centres and Barking Town Centre and to a lesser extent neighbourhood centres. Therefore, officers propose that the direction should apply to the borough's neighbourhood centres, district centres and Barking Town Centre. Officers did consider whether it was necessary to apply the direction to neighbourhood centres given recent migration of betting offices from these centres to district centres and Barking Town Centre. However, the recent appeal decision at 33 Faircross Parade less than 50 metres from an existing Corals evidences the threat of clustering remains for the borough's neighbourhood centres.
- 2.32 Officers considered in the December 2012 and March 2013 Cabinet Reports that by making a non-immediate direction compensation claims for the withdrawal of permitted development rights could be avoided. This is not possible. Section 2 of The Town and Country Planning (Compensation) (England) Regulations 2013 specifies for the purposes of section 108(2A)(a) and (3C)(a) of the Town and Country Planning Act 1990 as amended by section 189 of the Planning Act 2008 which development granted by Schedule 2 of the 1995 GPDO as amended is prescribed and for which compensation can be avoided if 12 months notice of the withdrawal of permitted development rights is given. The permitted development rights granted by Schedule 2, Part 3, Class C of the 1995 GPDO as amended are not specified as prescribed development by the 2013 regulations and therefore it is not possible to prevent claims for compensation through the issuance of a non-immediate direction.
- 2.33 At the same time Government guidance provided in Replacement Appendix D to Department of the Environment *Circular 9/95* makes clear that Local Planning Authorities could elect to make a non-immediate direction in instances where it would be legally possible to make an immediate direction- i.e. although there are only certain types of permitted development rights that may be restricted by an immediate direction, it does not follow that these rights must be restricted by an immediate direction. It goes on to say that the immediacy of the threat and potential compensation liability may be considerations in determining whether to use a non-immediate or immediate direction. Since it is not possible to avoid the potential compensation liability and the threat of further clustering of betting offices is immediate as evidenced by the continued interest of bookmakers in opening more premises in the borough officers recommend that the Council makes an immediate direction. Therefore it is recommended that the original non-immediate Article 4 Direction is not confirmed.
- 2.34 The next section of this report will evidence, in light of the above, why officers consider, despite the objections from the betting office industry that an immediate Article 4 Direction is justified.

- 2.35 The Town and Country Planning Use Classes Order as amended classifies betting offices within the A2 use class which comprises Financial and Professional Services. They currently enjoy permitted development rights granted by Schedule 2 Part 3 Class C of the General Permitted Development Order as amended to change use from an A5, A4 or A3 use without planning permission.
- 2.36 The ABB response considers that an Article 4 Direction should not be used to control particular business operations within use classes. Power Leisure Brokers representatives Knights say they have sought opinion from leading Counsel who has advised that an Article 4 can only be used to limit a change of use to an A2 use class from an A3, A4 or A5 use and that the Council cannot use an Article 4 to direct that no permitted development rights should simply attach to “betting shops”. The London Boroughs of Southwark and Haringey have also reached the same conclusion. However, the Council has sought opinion from leading Counsel who has confirmed that it is legally possible to withdraw permitted development rights from the entire A2 use class or for betting offices alone. Counsel concludes in weighing the two options the better approach to be that permitted development rights can be removed for a specific A2 use such as a betting office. This is because if an omnibus order is advanced the local planning authority must be satisfied that the harm caused by betting offices is sufficiently great as to require the serious step impinging on the other activities as well. This includes estate agents, banks and building societies.
- 2.37 Officers recommend that this permitted development right be withdrawn via an immediate Article 4 Direction. Officers consider this is expedient because of the need to exercise more control over planning for betting offices in the interests of the proper planning of the borough’s town centres. This aligns with the Council’s Community Strategy vision to encourage growth and unlock the potential of Barking and Dagenham and its residents. Of particular concern is the fact that:
- Clusters of betting offices have become established in Barking Town Centre and the District Centres.
 - The most significant cluster of betting offices in the borough is along Station Parade in Barking Town Centre. This has coincided with problems of anti social behaviour in the area, is detrimental to the character of the high street and local amenity and how people perceive the town centre. Two of these betting offices used permitted development rights which the proposed Article 4 Direction would remove.
 - There is potential for existing betting office clusters in Barking Town Centre and the Borough’s District Centres to intensify or new ones to be formed (including in neighbourhood centres) and the issues experienced along Station Parade to be repeated. Two decisions have recently been appealed which would intensify existing clusters in Barking Town Centre and Dagenham Heathway. A third appeal was allowed on 12 December 2013 for a Paddy Power at 33 Faircross Parade within 50 metres of a Corals at 24 Faircross Parade.
- 2.38 Officers also consider that these circumstances are exceptional since locally the establishment of clusters in Barking Town Centre and the District Centres is a new and worsening problem. The most significant cluster in Station Parade in Barking Town Centre has had an impact on local amenity and the Council wishes to avoid a

repeat of this elsewhere. The spate of recent applications for betting offices does not reassure the Council that the borough has yet reached saturation point in terms of further development of betting shops. Nor do the experiences of boroughs such as Newham, Hackney and Southwark.

- 2.39 It is also the case that central Government continues to promote an Article 4 Direction as the most appropriate means of controlling betting offices where justified. Nick Boles MP on 3 June 2013 speaking in parliament stated;

“There is still, as there has always been, an ability to suspend a permitted development that is not right for an area. That is why Barking and Dagenham Council is consulting on an Article 4 direction, which we welcome. That is exactly the right use of the law, which existed under the Government whom the hon. Lady supported.”

- 2.40 On 3 September 2013 Nick Boles MP also confirmed to the Council in writing that he was not persuaded that a separate use class for betting offices was justified. However the Local Government Association continues to campaign for Councils to be provided with the ability to set out permitted development rights locally through a local super use class so they can have more control over the composition of their high streets. Similarly London Council's in their report "Streets Ahead" and the London Assembly in their report "Open for Business" recommend that a number of A2 uses including betting shops be moved from use class A2 to sui generis. Finally a group of London Councils led by the London Borough of Hackney and including Barking and Dagenham are looking for Government, under the Sustainable Communities Act, to put betting shops in a separate and specific user class. It is recommended therefore that the Council continues to lobby Government for betting offices to be put in a separate use class.

Supplementary Planning Document

- 2.41 In light of the issues raised during the consultation and addressed in this report officers have reviewed the draft Supplementary Planning Document. The main proposal was that planning permission would not be granted for new betting offices within 400 metres of an existing permitted betting office. The proposed 400 metres buffer zone would have effectively excluded new betting offices, or at least those that needed planning permission, from locating in the borough. Officers accept the point made by the ABB that this amounted to a ban on betting offices and would stifle development contrary to the NPPF. Officers consider that a balance needs to be struck between controlling the clustering of betting offices whilst not closing off opportunities for betting offices to locate in the borough. For this reason officers are proposing that a new betting office should not be permitted within 100 metres of an existing betting office. For example the three betting offices on Dagenham Heathway are within 50 metres of one another and the two Coral's, Paddy Power and Ladbrokes on Station Parade are within 100 metres of one another. A map is provided of these zones in **Appendix A** to this report and demonstrates the 100m buffer would help control clustering whilst still allowing considerable scope for betting offices to locate in the borough.
- 2.42 On 30 May 2013 the Government introduced a new temporary permitted development right. Schedule 2 Part 4 Class D of the GPDO now allows for a temporary change of use from shops, financial and professional services, cafes,

pubs, fast food takeaways, offices, non residential institutions, assembly and leisure (A1, A2, A3, A4, A5, B1, D1 and D2) to shops, financial and professional services, cafes and offices (A1, A2, A3 and B1) for a single continuous period of up to two years, subject to a 150 sqm size limit. However, the Council understands from the ABB that bookmakers, at least those it represents, would be unlikely to use this permitted development right since the investment necessary in fitting up a premise cannot be justified for a two year period. Therefore officers do not recommend that these rights are removed.

National Planning Policy Framework and London Plan

- 2.43 Corals acting on behalf of NLP states that the SPD is not consistent with the NPPF's objective to enhance the vitality and viability of the borough's town centres and is threatening the High Street by increasing the potential for long term standing units to remain vacant. They consider that the Council should be planning positively for betting offices to encourage economic growth and the Article 4 Direction and SPD does the opposite. As this report has already evidenced betting offices are migrating from lower order neighbourhood centres to prime retail locations in Barking Town Centre and the District Centres. The NPPF states that planning should not simply be about scrutiny but a creative exercise in finding ways to enhance and improve the places in which people live their lives. There are already 40 betting offices in the borough which represents the highest concentration in relation to total retail floor space in Outer East London and not dissimilar to Southwark who have recently issued an immediate Direction. The Direction and SPD can only control new betting offices and then only those which require planning permission. Moreover the proposed revised SPD whilst controlling clustering still provides opportunities for betting offices to locate in the borough, notwithstanding that betting offices will be able to convert from other A2 uses in any event. Consequently, the Council is planning positively its town centres moreover the SPD will help as set out in the NPPF promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres. It is also consistent with the NPPF's desire for planning to promote safe and accessible environments where crime and disorder and the fear of crime do not undermine quality of life or community cohesion.
- 2.44 The GLA have confirmed that the SPD is in general conformity with the London Plan particularly Policy 2.15 on Town Centres. Paragraphs 2.2.8 to 2.2.10 of the Mayor of London's draft Supplementary Planning Guidance on Town Centres highlight that betting offices cluster in centres in less prosperous areas which can lead to a narrowing of a centre's offer, and may well put some off from visiting and shopping in them altogether – particularly because of concerns about crime and anti-social behaviour that they can give rise to. It goes on to state that there are genuine planning issues affecting amenity and the continued success of town centres which justify allowing planning authorities to consider the merits of proposals for betting shops. Betting shops are different in planning terms from the other types of use in the A2 class; they have different hours of operation from other uses covered in A2 (typically they open seven days a week for up to twelve hours a day – rather longer than the typical financial/business use), with different impacts on local amenity.

Licensing

- 2.45 An important consideration in understanding the expediency of the Article 4 Direction is to understand the relationship between the planning and licensing regimes.
- 2.46 The Council is responsible for issuing premises licenses for betting offices. The licensing objectives are:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.
 - Ensuring that gambling is conducted in a fair and open way.
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 2.47 A report by the London Health Inequalities Network titled “Responding to the Cumulative Impact of Betting Shops” highlights that Gambling Commission guidance suggests that evidence of public nuisance and anti-social behaviour in and of itself is unlikely to demonstrate an undermining of the Gambling Act objective related to crime. This is because the Gambling Commission’s guidance takes the issue of crime to be ‘severe’, which may imply more than just anti-social behaviour. It is also difficult for the Council to take into account the cumulative impact of betting offices in assessing proposals against all three of the licensing objectives. This report has already highlighted that the justification for the Article 4 Direction and draft SPD does not rest on problem gambling and its impacts; however there is clearly a distinction between the matters which the planning system can legitimately take into account and the licensing system. As already quoted the NPPF promotes safe and accessible environments where crime and disorder and the fear of crime do not undermine quality of life or community cohesion which is a broader remit than the licensing objectives. In addition policy BP11 of the Council’s Local Plan states that development should protect or enhance the character and amenity of the area. Officers consider that the clustering of betting offices locally is detrimental to the character and amenity of the high street and has been a contributing factor to the anti-social behaviour experienced in Station Parade and impact on amenity.

Consultation

- 2.48 Since the draft SPD has been substantially changed it will need to be consulted on. 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 Article 4 Direction

- 2.49 The process is as follows:
- Council makes an Article 4 Direction withdrawing permitted development rights with immediate effect.
 - Council gives notice of Article 4 Direction and refers decision to Secretary of State.

- Council takes into account representations received during consultation in determining whether to confirm direction.
- Council confirms direction within six months of it coming into force but not earlier than 28 following the date the notice was published.

Compensation

- 2.50 The Council is liable to pay compensation to those whose permitted development rights have been withdrawn if it:
- Refuses planning permission for development which would have been permitted development if it were not for an Article 4 direction; or
 - Grants planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 direction being in place.
- 2.51 Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. All claims for 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 that go beyond those in the GPDO).
- 2.52 Claims for compensation will be assessed against Sections 107 and 108 of the *Town and Country Planning Act 1990* as amended. Costs can include the depreciation in the value of land or a building when its value with the permitted development right is compared to its value without the right. The Council may also be liable to the cost of abortive expenditure including 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.
- 2.53 It is very difficult to quantify what these costs may be for each case and how many claims may be made. The liability for compensation exists for as long as the Article 4 Direction is in force.
- 2.54 Compensation will be payable where an application is made, that would otherwise not be necessary, and refused by the Council for a change of use from A5, A4, or A3 to an A2 betting office. As previously stated there have been two instances since 1987 where betting offices have opened using the permitted development rights which this Article 4 Direction proposes to remove. Moreover the ability to change operations within the A2 class remains. Whilst the Council is proposing to limit betting offices to beyond 100m of one another this still leaves opportunities for betting offices to locate in the borough.

3. Options Appraisal

- 3.1 Failure to make the Article 4 Direction and adopt the SPD would reduce the ability of the Council to control the clustering of betting shops. The report explains that it is not possible to avoid liability for compensation by making a non-immediate direction and an immediate direction is recommended. In the draft SPD officers are recommending a 100 metre rather than the original 400 metre buffer zone to control clustering whilst leaving scope for betting offices to locate in the borough.

4. Consultation

- 4.1 The proposed consultation on the immediate Article 4 Direction and draft SPD are set out in paragraphs 2.48 and 2.49.

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 Should the local authority refuse planning permission for a 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, however, 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 existing budgets.
- 5.3 As a result of the strong objections received from the betting office industry there is a risk of a legal challenge through a Judicial Review and the costs of this would have to be met by the Authority. Obviously, at this stage, such costs cannot be accurately assessed.

6. Legal Implications

Implications completed by: Paul Feild, Corporate Governance Lawyer

- 6.1 The measures set out in this report require different processes. The Making of the Article 4 Direction is an Executive function whereas the Planning and Compulsory Purchase Act 2004 required the Council to replace its Unitary Development Plan (UDP) with a Local Development Framework (LDF) now known as the Local Plan. The SPD will inform the Local Plan.
- 6.2 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended provides that adoption of Local Plan documents are not solely to be an Executive function, so the resolution to adopt SPD documents must be carried out by the Assembly.
- 6.3 As set out in the report body and risk implications the proposals in the report are not without the risk of challenge. This is likely to take the form of legal action and it is therefore crucial that any material objections regarding the Article 4 Direction and the SPD are considered and taken into account before confirmation.

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. The report details the strong objections received from the betting office industry and its umbrella group the Association of British Bookmakers. The report has been reviewed by Leading Counsel who noted the extensive consultation and the careful work in preparing the clear report. He also noted that the General Permitted Development Order is not the best drafted document but that the approach to it had been to enable the sort of action contemplated in the report. However the threat of legal challenge exists and the cost of this would be met from the Regeneration cost centre.

Leading Counsel has also reviewed a letter from Planning Potential dated 17 December 2013. In this letter Planning Potential, on behalf of their client Power Leisure Ltd (Paddy Power) considered that the Article 4 Direction should only come into force once the SPD is fully adopted and that the report to 18 December 2013 Cabinet be deferred so that Members could consider the recent appeal decision for 33 Faircross Parade. The report was deferred to allow officers to seek the advice of leading Counsel on the contents of the letter. Officers have received Counsel's advice and in light of this are content for the report to go to this Cabinet.

- 7.2 **Customer Impact** – This course of action is necessary to allow the Council to have more control over the location of betting offices in its shopping frontages so that it can control clustering and increase the chances that it can avoid the problems which have arisen on Station Parade in Barking Town Centre occurring elsewhere in the borough. Clearly this is in the interests of all residents who use the borough's retail centres. At the same time the course of action does not impact on existing betting offices and embodies sufficient flexibility to allow betting offices to open up new premises in the borough and therefore does not prevent local people partaking in this traditional past-time.
- 7.3 **Health Issues** - Officers do not consider that the justification of the Article 4 Direction or the draft SPD rests on establishing the link between the opportunities to gamble, fixed odd betting terminals and problem gambling in Barking and Dagenham.
- 7.4 **Crime and Disorder Issues** - The consultation response from the Metropolitan Police highlights the concerns from members of the public about the intimidating presence of gangs outside the premises on Station Parade and this is substantiated by the feedback the Council received from the public on the draft SPD. Both these premises were established through the permitted development rights that the proposed Article 4 Direction seeks to withdraw. Whilst the licensing regime provides some control over this issue it has a narrower remit than the planning system. Equally whilst the anti-social behaviour and intimidation from gangs outside these premises has improved recently officers consider it is reasonable for the Council to have more control over the location of betting offices so that it can have more control over the planning of its town centres to avoid similar problems arising in the future not only in Barking Town Centre but in shopping frontages in all the borough's centres.
- 7.5 **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:

1. London Borough of Barking and Dagenham Neighbourhood Health Check, 2006, Atkins
<http://www.lbbd.gov.uk/Environment/PlanningPolicy/LocalPlan/Documents/KeyEvidenceBase/3.RetailandTownCentre/1.town-centre-health-check.pdf>
2. Barking Town Centre Retail Study: Update 2009, King Sturge, May 2009
<http://www.lbbd.gov.uk/Environment/PlanningPolicy/LocalPlan/Documents/KeyEvidenceBase/3.RetailandTownCentre/2.btc5.pdf>
3. Barking Town Centre, Retail Study Update: 2012, Jones Lang LaSalle, February 2012
<http://www.lbbd.gov.uk/Environment/PlanningPolicy/LocalDevelopmentFramework/Documents/Retail%20Study%20Update%20Feb%202012%20final.pdf>

List of appendices:

Appendix A - Draft Supplementary Planning Document: Controlling the clustering of betting offices