

## Appendix 3 – Article 4 Direction Justification

### ***Conversion of A1 retail, A2 financial and professional services and specified town centre-compatible Sui Generis uses (Betting Offices and Payday Loan shops) to C3 residential***

#### **1. Introduction & Background**

- 1.1. The Council recognises the importance and significance of town centre uses to meet the needs of local communities throughout the Borough, and through the planning process, a range and balance of such uses is sought within town centres.
- 1.2. Retail uses are a particularly important focus for the Council. Their protection and enhancement is a theme which underpins the adopted Core Strategy's vision (2010) as well as featuring in the Managing Development Plan (2013) and emerging Local Plan as policies. In regards to the emerging Local Plan in particular, policies were drafted in response to a number of local concerns raised during regulation 18 and 19 stages of the Local Plan process highlighting an accelerated loss of local shopping facilities in the Borough.
- 1.3. Furthermore, the objective to 'improve the retail offer on the high street' within the Tower Hamlets High Streets & Town Centre Strategy (2017-2022) is identified as a key part of achieving the council's strategic mission for town centres. This is in recognition of the unique retail landscape within Town Hamlets in that it predominately comprises very small, independent retailers that provide essential services to our local communities<sup>1</sup>.
- 1.4. The Government introduced in April 2014 a change to the General Permitted Development Order ('GPDO') which allows for:
  - (a) a change of use of a building and any land within its curtilage from
    - (i) a use falling within Class A1 (retail) or Class A2 (financial and professional services) of the Town and Country Planning (Use Classes) Order 1987 (as amended) ("Use Classes Order");
    - (ii) a use as betting office or pay day loan shop, or
    - (iii) a mixed use combining use as a dwellinghouse with (aa) a use as a betting office or pay day loan shop or (bb) a use falling within either Class A1 (retail) or Class A2 (financial and professional services) of that Schedule (whether that use was granted permission under Class G of this Part or otherwise) to a use falling within Class C3 (dwellinghouse) of that Schedule, and

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<sup>1</sup> Tower Hamlets High Street & Town Centre Strategy 2017-2022

(b) building operations reasonably necessary to convert the building referred to in paragraph (a),  
to a use falling within Class C3 (dwellinghouses) of that Schedule without requiring planning permission. The new rules only apply to premises not exceeding 150 square metres of floor space in conjunction with a number of other conditions. In the new GPDO introduced in April 2015, this PD right was amended to include betting shops and pay day loan shops, which have since been excluded from Use Class A2 and are now sui generis in use.

- 1.5. Prior Approval must be sought on this permitted development (PD) right, whereby the applicant is required to apply to the Local Planning Authority for a determination as to whether approval of the authority is required related to several matters. These matters include:
- Transport and highways impacts;
  - Contamination impacts;
  - Flooding impacts;
  - Design and external appearance; and
  - The impact of the change of use from A1/A2 to C3 in relation to:
    - the adequate provision of A1 and A2 uses services where there is a reasonable prospect of the building being used to provide those services; and
    - the sustainability of the shopping area where the building is located where the building is located in a “key shopping area”.
- 1.6. Although the prior approval process set out above allows for the council to assess the impacts of the change of use in question, there is still scope to argue all these points and “key shopping area” isn’t properly defined in national guidance, thereby risking the loss of viable retail units and designated town centres being undermined.

## **2. The need for an Article 4 Direction**

- 2.1. In view of the need to properly and effectively manage the balance of land uses within town centres through the planning system, it is therefore considered necessary for the Council to remove the PD rights set out in paragraph 1.4 through an Article 4 direction within the Borough’s town centre hierarchy which includes the Central Activities Zone, the Tower Hamlets Activity Areas, Canary Wharf Major Centre, District Centres, Neighbourhood Centres and Neighbourhood Parades. The town centre hierarchy boundaries are designated on the Local Plan Policies Map and are mapped in Appendix 2.
- 2.2. The above areas are included on the basis that they contain concentrations of sites with A1 retail, A2 financial and professional services, betting offices or pay day loan shops at risk to the conversion of C3 residential uses. These areas are also highly accessible by the Borough’s residents and visitors; provide essential local shops

services and shops; and are subject to town centre policies within adopted and emerging Local Plans as well as strategic planning guidance from the Greater London Authority.

- 2.3. The Council's approach is supported by a retail evidence base supporting both the adopted and emerging Local Plans, both of which seek to meet identified retail need and to maintain an appropriate balance of town centres. The full suite of retail evidence base documents is referenced within Annex 2 of this report. In particular, the Town Centre Retail Capacity Study (2016) most recently reviewed and identified the extent of the Borough's primary and secondary shopping frontages, primary shopping areas and town centre boundaries as a way to specifically enable the council to "*manage Permitted Development Rights, principally from retail to residential use*"<sup>2</sup>. The assessment undertaken to reach these policy recommendations is based on the robust evidence provided by Experian Goad, the Council's annual monitoring data, and other health checks in order to build a detailed retail portrait for each town centre.
- 2.4. Allowing A1 and A2 uses, a betting shop or a pay day loan shop to convert to a use falling within C3 residential use without the need for a planning permission is therefore contrary to the Council's adopted and emerging Local Plan policies which seek to manage the balance of land uses within the Borough through the planning system, particularly retail uses in the Borough's town centre hierarchy. Also by allowing retail uses to convert to residential use under PD will impact upon the Council's ability to meet identified retail need; to oversee the quality of new development and ensure minimum standards are met in terms of design, energy efficiency, parking and space standards; and to manage against other adverse socio-economic impacts in the wider community.
- 2.5. It should be noted that throughout this report, the term "retail" may be used to describe both A1 and A2 uses for the benefit of using a mutual word. Also note that although the specific sui generis uses (betting shops and payday loan shops) do fall within the proposed Article 4 direction, they are not the focus of this justification which is why they are not always referred to. This is set out in more detail within Chapter 12 of this report.
- 2.6. The purpose of this report is to recommend the issue of a non-immediate Article 4 direction in the Borough's town centre hierarchy where for (a) a change of use of a building and any land within its curtilage from (i) a use falling within A1 retail or A2 (financial and professional services) of the Schedule to the Use Classes Order; (ii) a use as betting office or pay day loan shop, or (iii) a mixed use combining use as a dwellinghouse with (aa) a use as a betting office or pay day loan shop or (bb) a use falling within either Class A1 (shops) or Class A2 (financial and professional services) of that Schedule (whether that use was granted permission under Class G of this Part or otherwise) to a use falling within Class C3 (dwellinghouses) of that Schedule, and

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<sup>2</sup> Tower Hamlets Town Centre Retail Capacity Study (2016) (page 179).

(b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule and (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule would require a planning application, which would allow a full assessment by the Council.

### 3. Policy context

- 3.1. Further to qualitative and quantitative evidence within the evidence base, there are also policy justifications at national, regional and local levels which support the introduction of an Article 4 direction. These are set out below.

#### National

- 3.2. The National Planning Policy Framework (NPPF) (2018) recognises the role of the planning system in supporting the vitality and viability of town centres and promoting healthy communities. Paragraph 85 of the NPPF states that local planning authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality.
- 3.3. The NPPF is clear in stating that Article 4 directions should not be made without clear justification. Paragraph 53 of the NPPF 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 well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)”*.

#### Regional (London)

- 3.4. Town Centres are also considered by the London Plan (2016) as a key spatial priority of the London Plan, providing access to a range of services and enabling all parts of London to make a greater contribution to London’s economic success (para. 2.69).
- 3.5. Policy 2.15 ‘Town Centres’, part C.a. advises that development proposals should sustain and enhance the vitality and viability of town centres and Policy 4.8 ‘Supporting A Successful And Diverse Retail Sector’ states that boroughs and other stakeholders including the Mayor should support a successful, competitive and diverse retail sector which promotes sustainable access to the goods and services that Londoners need. A vibrant, diverse retail sector is seen as essential to London’s success and in supporting the economic vitality and health of the whole range of town centres across London (para 4.47). Policy 4.7 ‘Small shops’ sets out the Mayor’s commitment to increase the diversity and attractiveness of the retail sector through the provision of small and affordable shops suitable for independent retailers.

- 3.6. The emerging London Plan echo's the strong town centre approach set out in the current London Plan. Policy SD6 'Town centres' in particular recognises that London's town centres are central to the lives of Londoners and provide a focus for the local community. The policy recognises the *"potential for new housing within and on the edges of town centres through higher-density mixed-use or residential development"*, although it also states that *"residential-only schemes in town centres may only be appropriate outside of primary and secondary shopping frontages where demonstrated that they would not undermine local character and the diverse range of uses required to make a town centre vibrant and viable"*.
- 3.7. The London Plan is also supported by a series of supplementary planning guidance documents or SPGs. Two of relevance to the Tower Hamlets town centre hierarchy include the Central Activities Zone Supplementary Planning Guidance (2016) (or CAZ SPG) and the City Fringe Opportunity Area Planning Framework (2015). Both documents provide a strategic policy direction for development within the Borough's CAZ designation in the west, as well as the two Activity Areas in the City Fringe and the Isle of Dogs. The essence of this strategic policy is concerned with the need to safeguard and enhance the unique mix of uses and activity prevalent within the CAZ and Activity Areas. More information on these documents and justification for the inclusion of these designations is provided in Chapter 13.

#### Local (Tower Hamlets)

- 3.8. The current Local Plan policies relevant to A1 and A2 are as follows:
- Core Strategy (2010):
- Spatial Policy SP01
- Managing Development Document (2013):
- Policy DM1 (Development within the town centre hierarchy)
  - Policy DM2 (Local shops)
- 3.9. The Council's emerging Local Plan, supported by the most up-to-date evidence base, contains the latest position in regards to designated town centres and town centre policies. The relevant emerging Local Plan policies are as follows:
- Policy S.TC1: Supporting the network and hierarchy of centres
  - Policy D.TC2: Protecting retail in our town centres
  - Policy D.TC3: Retail outside our town centres
  - Policy D.TC4: Financial and professional services
  - Policy D.TC5: Food, drink, entertainment and the night-time economy
- 3.10. The above policies were subject to examination in public between September and October 2018. Policy D.TC2 in particular contains minimum A1 thresholds for Primary

and Secondary Frontages of the District Centres (60% and 40% respectively), as well as the boundaries of Neighbourhood Centres (40%) and Neighbourhood Parades (40%). The A1 thresholds are based on a robust evidence base which establishes the proportion of retail uses and other main town centre uses that would ensure the vitality and viability of its town centres and local shopping areas.

- 3.11. As set out above, both the current and emerging local plans place the protection of retail uses in our town centres and the heart of the town centre strategy. It is considered that the PD right undermines the intent of these policies, in particular the A1 thresholds set out within Policy TC.2, but also the role of the town centre hierarchy set out in emerging policy S.TC1 and adopted policies; such as Policy DM1 (Development within the town centre hierarchy) and Policy DM2 (Local shops).

#### 4. The need for retail

- 4.1. In order to facilitate sustainable population and employment growth, the Council needs to ensure that sufficient land is available for retail floorspace amongst a number of other land uses. This is currently achieved through the planning system and the implementation of local plan policies.
- 4.2. To support the new Local Plan, the Town Centre Retail Capacity Study (2016) identified retail need across all of the Borough's designated town centres (Major, District and Neighbourhood Centres) as set out in Table 1 below. The analysis shows that all of the Borough's town centres have a need for convenience retail floorspace, creating a total borough-wide convenience need of 7,941 sqm to 2031. It is this type of need which is the Borough's priority in terms of meeting local retail need for everyday items such as groceries. The need for comparison floorspace is less significant, mainly because it takes into account the impact of large amounts of committed development, particularly in Canary Wharf, but note that this does not take into account other factors such as increased investment, expenditure or market share.

Table 1: Proportion of new retail floorspace required in Tower Hamlets to 2031

Type of centre	Name	Amount of convenience floorspace (square metres) <sup>3</sup>	Amount of comparison floorspace (square metres) <sup>4</sup>
Major Centre	Canary Wharf	1,119	No capacity
District Centre	Bethnal Green	919	1,868
	Brick Lane	54	63
	Chrip Street	381	1,077

<sup>3</sup> Tower Hamlets Town Centre Retail Capacity Study (2016)

<sup>4</sup> Tower Hamlets Town Centre Retail Capacity Study (2016). Where identified that there is 'no capacity', this represents a negative retail capacity figure as a result of committed development.

	Crossharbour	504	No capacity
	Roman Road East	565	1,523
	Roman Road West	48	No capacity
	Watney Market	471	389
	Whitechapel	2,262	3,105
Neighbourhood Centres	All	2,033	2,066
<b>Borough-wide capacity</b>		<b>7,941</b>	<b>No capacity</b>

4.3. As this justification report has already explained within Chapter 2, the emerging Local Plan sets out a number of polices and designations that seek to protect existing retail provision and provide new provision. Therefore, the PD right for the loss of retail uses without management through the planning system may inhibit the Council's ability to ensure that the Borough's town centre hierarchy retain a sufficient critical mass of retail provision to meet the identified need, as well as managing the mix and introduction of other uses (including housing) which may or may not contribute to the vitality and viability of the town centre or area. This compromises Policy S.TC1 (Supporting the network and hierarchy of centres) and Policy D.TC2 (Protecting retail in our town centres).

## 5. Impact to small shops

- 5.1. The Borough has a unique retail landscape with a strong emphasis on small and independent shopping that reflects the local traditional retailing nature of the centres<sup>5</sup>. These shops provide a critical service to our local communities whom often do not have the means to travel long distances to access essential services<sup>6</sup>. It is this understanding and evidence which forms the basis of the High Street & Town Centres Strategy as well as the Council's local planning policies to protect local retail provision.
- 5.2. The Greater London Authority (GLA) also recognise the importance of London's small shops and the extensive range of benefits that small shops have for their localities, including: serving a focus for local neighbourhoods; allowing people to shop locally on foot and thereby reducing carbon emissions; provide easy access to shops for low income groups, the elderly and those without cars; providing a critical role local employment and economy; and adding to the unique character of an area<sup>7</sup>. The Mayor's Small Shops Study also acknowledges that the existence of small shops is coming under sustained pressure and that "*the evidence documenting the decline of the small shop, independent retailer and the local neighbourhood shopping centre is clear*". The Tower Hamlets Town Centre Retail Capacity Study (2016) also makes this

<sup>5</sup> Tower Hamlets Retail Impact Threshold Study (2018) (page 10)

<sup>6</sup> Tower Hamlets has low car ownership ratio with only 37% of households owning one or more cars, compared to 43% across London (*Travel in London, Report 9, Transport for London, 2016*) (2015/16 figures).

<sup>7</sup> GLA's London Small Shops Study 2010

case and states the need to develop local policies where appropriate to support the provision of small shop units<sup>8</sup>.

- 5.3. This PD right targets smaller units in that it only applies to premises that do not exceed 150 square metres. Furthermore, the types of A1 and A2 use premises most at risk of conversion to residential have relatively small floorplates. Given the density of small shops in the Borough, this puts Tower Hamlets in a particularly vulnerable position in terms of retail provision and meeting the need identified in chapter 3 of this report.
- 5.4. Indeed, the Tower Hamlets Retail Impact Threshold Study (2018) identified the very small average size of retail units in Tower Hamlets:
- *The average unit size of units in the A1 Use Class are 149 sqm, ranging from 98 sqm to 235 sqm in the District Centres, and between 42sqm and 274 sqm in the Neighbourhood Centres.*
  - *A similar situation is noted for the units in the A2 Use Class: the average size is 69 sqm. The units range from 60 sqm to 96 sqm in the District Centres, and between 18 sqm and 93 sqm in the Neighbourhood Centres.*
  - *Across all the centres, the average unit size is 129 sqm.*
- 5.5. Therefore, the conversion of these premises under PD rights may result in a significant loss of retail space within Tower Hamlets.. It is important to ensure that the Borough's town centres are able to continue to accommodate local shops that provide everyday essential services to meet local needs, as well as providing sufficient space to accommodate small to medium sized enterprises (another strong policy direction with both adopted and emerging Local Plans. This is particular would compromise adopted Local Plan Policy DM2 (Local shops), as well as London Plan Policy 4.7 (Small shops).

## 6. Retail conversions to date

### *Loss of A1/A2 uses overall*

- 6.1. Focusing firstly on the loss of A1 and A2 uses to all other uses, Table 2 below shows that the Council has on its planning records 198 planning applications submitted in the past five years which sought the change of use from A1 or A2 other uses across the borough<sup>9</sup>, of which 116 (59%) have been approved. To put this in perspective, the average number of A1 and A2 units within the Borough's District Centres is 103. Of the 116 approved applications, 92 (or 79%) were within the town centre hierarchy showing the extent to which the hierarchy is most at threat from this PD right.
- 6.2. PD rights have also had an impact on the loss of A1 and A2 uses. A total of 41 prior approval applications have been received involving the loss of A1/A2 units to other

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<sup>8</sup> Tower Hamlets Town Centre Retail Capacity Study (2016) (paragraphs 3.43-3.45)

<sup>9</sup> Data since 23<sup>rd</sup> January 2014 from the Council's internal acolaid system



uses over the last five years, and 30 of these (73%) were in the town centre hierarchy, although a much smaller proportion of these application have been approved.

*Loss of A1/A2 uses to residential uses only*

- 6.3. As shown in Table 3, many of these A1 and A2 losses have been for the conversion to residential uses. The analysis shows that within the town centre hierarchy, approximately 20% of received planning applications and 37% of received prior notification applications are for conversion from A1 and A2 uses to residential units.
- 6.4. Focusing on the specific General Permitted Development Order for which this Article 4 direction seeks to address, there have been 15 prior approval notifications for the conversion of A1/A2 to residential uses since 2014 and nearly all these have been within the town centre hierarchy. Importantly though, 6 of the 15 applications were received during 2018 alone (of which 3 were approved) demonstrating that the impact of the PD right is increasing in recent months.
- 6.5. Overall, the analysis indicates that there is a high demand for change of use from A1 and A2 units to other uses with a total of 124 units being lost in the Borough (through both the planning system and through PD rights) over the last five years. As demonstrated throughout this report and within the emerging Local Plan, the need to retain all remaining viable retail uses is critical for the future sustainable development of the Borough, and without the Article 4 direction, the Council will not be able to manage these changes of use through the planning process.

*Table 2: Planning applications and prior approvals involving the loss of A1 or A2 units to any other use (including residential use) since January 2014*

		Total received	Approved	Refused	Withdrawn	Registered
Planning Applications	Loss of A1/A2 units to any other use <i>(Borough-wide)</i>	198	116	45	25	12
	Loss of A1/A2 units to any other use <i>(Town Centre Hierarchy)</i>	150	92	33	20	5
Prior Approvals	Loss of A1/A2 units to any other use <i>(Borough-wide)</i>	41	8	26	6	1
	Loss of A1/A2 units to any other use <i>(Town Centre Hierarchy)</i>	30	4	19	6	1

Table 3: Planning applications and prior approvals involving the loss of A1 or A2 units to residential uses only since January 2014

		Total received	Approved	Refused	Withdrawn	Registered
Planning Applications	Loss of A1/A2 units to C3 residential only (Borough-wide)	50	28	13	4	5
	Loss of A1/A2 units to C3 residential only (Town Centre Hierarchy)	29	20	5	2	2
Prior Approvals	Loss of A1/A2 units to C3 residential only (Borough-wide)	15	4	6	4	1
	Loss of A1/A2 units to C3 residential only (Town Centre Hierarchy)	11	2	4	5	0

\*Data does not take into account any gains in A1 or A2 uses over the last 5 years, only unit losses

\*\*Data does not include temporary changes of use

## 7. Retail occupancy

- 7.1. One of the main reasons for the introduction of the new PD rights was to “allow redundant buildings to be brought back into use” (DCLG, New opportunities for sustainable development and growth through the reuse of existing buildings, July 2012).
- 7.2. While reports in the press have suggested that high levels of vacancy are an issue in some parts of the country, it is not generally an issue in Tower Hamlets. The most recent surveys carried out as part of the 2016/17 Annual Monitoring Report (AMR) indicate that vacancy rates in the Borough’s Major and District Centres at 8.2% are well below the national average of 11.2%<sup>10</sup>. These figures are being further reviewed as part of the Council’s new Local Plan monitoring which will include a full review of the borough’s Neighbourhood Centres and Neighbourhood Parades.
- 7.3. The Borough’s low high street vacancy rate is also a characteristic recognised within the Tower Hamlets High Street & Town Centres Strategy<sup>11</sup>, which aims to further improve the health, competitiveness and vitality of the Borough’s town centres through a targeted investment and management plan.

<sup>10</sup> Vacancy Rates - Local Data Company (2017)

<sup>11</sup> Tower Hamlets High Street & Town Centre Strategy 2017-2022 (page 13)

- 7.4. The document contains various ways to achieve this, including enhancing the Borough's street markets; upgrading shopfronts; supporting enterprise, marketing and online presence; and managing the night time economy. Importantly however, it also recognises 'housing growth' as a major driver to improving footfall and health of our town centres, identifying the major housing schemes coming forward in close proximity to the Borough's town centres. For example, Whitechapel District Centre which will see an additional 3,614 units planned on 8 sites within 800 metres of the centre<sup>12</sup>. Given the compact nature of Tower Hamlets, all of the Borough's major housing sites identified within the latest Local Plan Housing Trajectory are within walking distance to a town centre which will serve to drive future footfall. More detail on the impact of housing growth is provided below.
- 7.5. Overall, given the Borough's already high town centre occupancy rates; the Council's targeted town centre investment and support strategies to further increase footfall; as well as the level of planned housing growth; the vitality and viability of the Borough's future retail offer is predicted to increase and it is therefore considered that this PD right runs counter to the adopted High Street & Town Centre Strategy vision.

## 8. Housing growth

- 8.1. It is contended that converting these areas to housing is not needed in terms of housing delivery. Since 2011, Tower Hamlets has overall exceeded its London Plan housing target (the largest target across all London Boroughs) and has continued to deliver more new homes than any other authority in the country. This is demonstrated by the New Homes Bonus awarded to Tower Hamlets which is almost £21 million over the past eight years - over a third more New Homes Bonus than the London Borough of Wandsworth, the second largest recipient of the award. During 2016/17 in particular, the Borough delivered 4,699 homes against a target of 3,931 homes.
- 8.2. The Council's future pipeline remains significant and it is reliant on a number of very large sites<sup>13</sup>. In this regard, the trajectory is far less reliant on the supply of singular units which is main outcome of this PD right. To help demonstrate the scale of the housing sites within the Borough, the Council's latest housing trajectory (2018) contains 101 sites with over 100 homes; 54 sites of these sites contain over 300 homes and 11 of these sites contain over 1,000 homes.
- 8.3. As stated in Chapter 6 above, housing growth is viewed as an important indicator of measuring future town centre footfall, health and vitality. Through the Local Plan, Tower Hamlets has made a commitment to secure the delivery of 58,965 homes across the borough between 2016 and 2031, equating to 3,931 homes per year.

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<sup>12</sup> Tower Hamlets High Street & Town Centre Strategy 2017-2022 (page 24)

<sup>13</sup> Examples of very large housing sites all in close proximity to town centres: include Wood Wharf (3,610 homes), Blackwall Reach (1,572 homes) and Leamouth Peninsula South (1,706 homes).

8.4. Overall, this chapter has demonstrated that:

- At this currently time, the Council's latest housing trajectory is not dependant on small sites to meet identified need; and
- Given the scale of new housing, on top of the unprecedented levels of housing delivery over recent years, it demonstrates that the role of the Borough's town centres and local services is more important than ever in order to support the growing population.

## **9. Amenity impact**

9.1. Although the Council's planning policies support a mix of uses in its town centres and elsewhere, should residential development come forward through this PD right the inability of the planning system to oversee and manage development means that there is potential for poor design and amenity impacts resulting from an inappropriate relationship between residential and commercial buildings.

9.2. For example, there is a risk of predominantly or solely residential use existing in town centres (contrary to emerging London Plan Policy SD6) which would erode those designations and the character of our town centres, meaning that they will not be able to perform their primary role of supplying shops and financial and professional services.

9.3. In addition, residential development amongst retail on the ground floor can inhibit intensification of new commercial activity through redevelopment, due to reverse sensitivity issues such as entitlement to rights of light; privacy; or noise and disturbance. Residential rights may also impose costly controls on the early and late servicing and operational activity, which is essential for maintaining a competitive business environment.

9.4. The potential for inappropriate interaction between residential and commercial uses also leads to amenity impacts on residential occupiers, with subsequent regulatory and enforcement impact on the Council. These difficulties include key design issues such as achieving minimum space standard in accordance with the Mayor's London Plan; other design issues such as single aspect dwellings and access to light; and ensuring transport impacts are accurately assessed such as parking standards.

9.5. Overall, it is considered that this PD right bypasses key planning decisions and assessment necessary to protect or ensure the amenity of both commercial uses and residential uses.

## **10. Other Socio - Economic Impacts**

10.1. There are other socio-economic impacts that must be taken into account when assessing the impact of this PD right as set out below.

- 10.2. In terms of economic impacts, the value placed on particular land uses is important. For example, residential values in Tower Hamlets have continued to appreciate over recent and most of the Borough benefits from high public transport accessibility levels which will be improved with the arrival of the Elizabeth Line.
- 10.3. Retail values on the other hand, have not increased to the same degree as residential, further exacerbating the differential in land values between retail and residential floorspace. As a result, there is evidence that landlords and letting agents are not effectively marketing their vacancies, particularly in areas such as the southern end of Brick Lane and in Roman Road West District Centres, in the hope of securing permission for conversion to residential use which commands higher returns<sup>14</sup>.
- 10.4. In relation to the above issue, the Council's town centres team have also experienced an increasing pressure from landowners converting upper floor retail storage space into residential use, which in turn puts additional pressure on the operation of the associated ground floor retail unit, as well as a risk to its future viability. This, again, is an issue particularly acute within Brick Lane District Centre.
- 10.5. In terms of social impacts, the PD right could also prevent the Council from securing affordable housing to meet its objective of increasing housing of this tenure along with all tenures across the Borough in accordance with its Local Plan. This may result in the Council not only losing retail floorspace, but would also be unable to secure affordable housing delivery. This will also undermine the objectives to create a mixed and sustainable community, which is contained in government guidance as one of the key considerations that can justify an Article 4 direction.

## **11. Betting shops and pay day loan shops**

- 11.1. As well as A1 and A2 uses, this Article 4 direction would also protect betting shops and pay day loan shops from this PD right in the Borough's town centres. While the Council supports the non-proliferation of betting shops and pay day loan shops throughout the Borough, it is preferred that a planning application is lodged for its proposed change to residential.
- 11.2. This would allow the Council to fully assess proposals and manage any potential impacts from future changes. For example, it is considered that once a betting shop or payday loan shop is lost to a residential use then it is likely to be lost in perpetuity and unlikely to ever change back to another active town centre use in the future. As detailed within this report, the gradual 'breaking up' of the Borough's shopping parades would have a significantly negative impact on the character, vitality and viability our local high streets. Residential units do not lend themselves for activity and in fact, they go as far as being 'inactive'.

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<sup>14</sup> Tower Hamlets High Street & Town Centre Strategy 2017-2022 (page 13)

## 12. Proposed Article 4 Direction Implementation Area

12.1. The proposed Article 4 Implementation Area includes the following town centre hierarchy designations which are mapped in Appendix 2 of this report:

- Central Activities Zone;
- Tower Hamlets Activity Areas;
- Canary Wharf Major Centre;
- District Centres;
- Neighbourhood Centres, and
- Neighbourhood Parades.

12.2. The key reasons for the selection of these town centre hierarchy designations are:

- they contain concentrations of sites with A1 (retail), A2 (financial and professional services), betting offices or pay day loan shops at risk to the conversion of C3 (residential) uses;
- they are highly accessible by the Borough's residents and visitors and provide essential local shops and services; and
- they are subject to retail planning policy at both local and strategic levels, including policies within the adopted and emerging Tower Hamlets Local Plan as well as the London Plan's policies and supplementary planning guidance. All layers of planning policy aim to protect retail provision in accordance with evidenced needs and in terms of promoting diverse, vibrant and economically healthy centres of activity.

12.3. A more detailed policy justification for the inclusion of each centre in the hierarchy is provided below:

### Central Activities Zone (CAZ)

12.4. The CAZ, located in the west of the Borough, is a London Plan designation. It is the geographical, economic and administrative heart of London, one of the world's most important financial and business centres, and contains the major employment, leisure and retail designations within London. The CAZ is also complemented by the 'North of the Isle of Dogs' which includes Canary Wharf Major Centre as well as the Isle of Dogs Activity Area. The North of the Isle of Dogs is 'functionally-related' to the CAZ and therefore subject to the same strategic policy.

12.5. Development within the CAZ is directed by relevant London Plan policies and the Central Activities Zone Supplementary Planning Guidance (2016) ('CAZ SPG'). The CAZ SPG in particular sets out detailed planning guidance for the CAZ. It describes the CAZ as having a "*significant agglomeration of activities combined with its character and international reputation for business, shopping, culture, tourism and heritage that make the CAZ unique in a London, national and international context*". It also states

that *“it requires a different set of policies to the rest of the country and national policy should always be tailored to the specific and unique circumstances of the CAZ”*<sup>15</sup>.

- 12.6. Retail uses are identified as a strategic function of the CAZ (see table 1 of the CAZ SPG) which means that retail is afforded significant weight in planning decisions in order to safeguard the unique mix of uses. Importantly though, although new housing development is strongly encouraged in the CAZ, it is not identified a CAZ strategic function. Paragraph 0.1.7 states that housing must not compromise the strategic functions of CAZ (including retail activities), rather they should always be complementary.
- 12.7. In conclusion, the CAZ SPG provides detailed and evidenced planning guidance to help manage new development within the CAZ, and as an SPG, this has material weight in planning decisions. There is a clear policy direction to protect the strategic function of the CAZ, which includes retail functions. Clearly, the PD right relevant to this report runs counter to the GLA’s strategic policy direction which warrants the need for an Article 4 Direction for this designation in order to fully assess the impact of proposals on the strategic importance of the CAZ through the planning system.

#### Tower Hamlets Activity Areas

- 12.8. The Borough contains two Activity Areas in the City Fringe (west) and Isle of Dogs (east). Activity Areas are bespoke policy designations that are areas of transition between the scale, activity and character of the CAZ and Canary Wharf Major Centre and their surrounding areas. Within both adopted and emerging local planning policy, the direction for development within the Activity Areas is to support a mix of uses which make a positive contribution to health and well-being and promote active uses at ground floor level.
- 12.9. Both Activity Areas are also subject to strategic planning guidance. As mentioned above, the Isle of Dogs Activity Area is located within the ‘North of the Isle of Dogs’ and therefore covered by the CAZ SPG which requires the need to protect retail uses as a strategic function of the CAZ.
- 12.10. The boundary of the City Fringe Activity Area, however, is not within the CAZ but does adjoin the CAZ. Instead, strategic policy guidance for this area is provided by the adopted City Fringe Opportunity Area Framework (OAPF) (2015). Like the CAZ SPG, the City Fringe OAPF provides a strong policy direction to protect the use mix and activity of the City Fringe area. For example, the OAPF vision is: *“Enabling the business cluster to continue to grow as a mix of large corporations, SMEs, micro businesses and start-ups and become the innovation hub driving growth in London and the UK’s the digital economy, while delivering housing and other supporting uses such as retail and leisure”*

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<sup>15</sup> Central Activities Zone Supplementary Planning Guidance (2016) - Paragraph 0.1.8

12.11. Indeed, one of the main objectives in the OAPF is “supporting the mix of uses that makes City Fringe special”<sup>16</sup>. In particular, it states that:

*The pressure for new development should not erode the qualities that draw businesses and residents to the City Fringe attractive in the first place. Ongoing provision of the mix of supporting uses such as leisure, retail and night-time economy needs to be managed in a way that doesn't compromise the character of the area and ensures “critical mass” at key locations such as special policy areas, CAZ frontages and the town centre network. Support is given to small independent traders and temporary “pop-up” uses that provide vibrancy and activity as well as provide valuable opportunities for new businesses.*

12.12. Strategy 4 sets out an approach to meet this objective, stating that “*retail development should generally be focussed into key frontages identified as part of the CAZ or the town centre network, and areas where such active uses have been identified as desirable as part of a mix including other active uses*”. Small independent shops are also an important feature of the OAPF and given strong support<sup>17</sup>.

12.13. The Tower Hamlets Activity Areas, as bespoke policy designations within the town centre hierarchy, are subject to local and strategic policy guidance which seeks to protect the mix of uses and activity within those areas. For this reason, it is considered that an Article 4 direction should also apply to these town centre designations in order to properly assess proposals for the conversion of A1 and A2 uses to residential uses.

#### Major, District and Neighbourhood Centres

12.14. Major, District and Neighbourhood Centres are the Borough's designated town centres in accordance with the London Plan definitions. These centres provide the main focus of retail provision for Tower Hamlets. Both District and Neighbourhood Centres are subject to A1 (retail) thresholds along shopping frontages within policy D.TC2 of the emerging Local Plan, in accordance with local evidence. Therefore, in order to ensuring the effective implementation of emerging Local Plan policies, clearly, Major, District and Neighbourhood Centres must be included within this Article 4 direction.

12.15. Note that the A1 (retail) threshold policy has not been applied to Canary Wharf Major Centre given the nature of its retail offer being confined within subterranean shopping malls and under single ownership (Canary Wharf Group). This means that Canary Wharf acts very differently to more traditional centres in terms of layout, footfall patterns and retailing needs, making it impossible to designate shopping frontages.

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<sup>16</sup> City Fringe Opportunity Area Planning Framework (2015) - page viii

<sup>17</sup> City Fringe Opportunity Area Planning Framework (2015) - Strategy 4: Support for the mix of uses that makes the City Fringe special



Nevertheless, Canary Wharf is still a strategic retail hub and an area 'functionally-related' to the CAZ (see paragraph 13.4) which is why the Article 4 should still apply.

### Neighbourhood Parades

12.16. Neighbourhood Parades are a further layer of the town centre hierarchy recognised within the London Plan<sup>18</sup>, providing a key localised function. They have been introduced within the emerging Local Plan as a way to specifically mitigate against the impacts of General Permitted Development Order on local shops and services. Neighbourhood Parades are also subject to A1 (retail) threshold policy within policy D.TC2 of the emerging Local Plan.

## **13. Conclusion**

### Need for an Article 4 direction

- 13.1. The making of this Article 4 direction for the withdrawal of the PD rights for Class A1 (shops), Class A2 (financial and professional services), betting shops and pay day loan shops to convert to Class C3 (residential) use in the Borough's town centre hierarchy is considered by the Council to be necessary to ensure that the balance of land uses in these centres are managed and planned to safeguard the character, viability and vitality of those centres; to protect these units from the potential loss of much needed retail floorspace; and to protect against adverse impacts on local amenity. This has been demonstrated in the above justification report and the report that this is attached to.
- 13.2. The specified PD rights conflict with the Council's ability to manage development in a sustainable manner in accordance with its Local Plan policies which have been developed from a strong evidence base, contrary to the aims of both the London Plan and the NPPF. Overall, being able to manage the change of use of Class A1 (shops) and Class A2 (financial and professional services) is critical to maintaining the vitality and viability of our local shopping offer.
- 13.3. The PD rights could have a detrimental impact on retaining core retail in the Borough's Major, District and Neighbourhood Centres, particularly given that in most of the Borough's town centres the proportion of retail uses is near or even below the minimum threshold protected, as well as that within the CAZ, Activity Areas and Neighbourhood Parades which make a significant contribution.

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<sup>18</sup> London Plan (2016) paragraph 4.50: In LDFs, boroughs should consider opportunities for new or expanded local centres where there is capacity to meet the needs of existing under-served areas or new residential communities. Co-ordinated planning and other interventions may be required to retain facilities such as corner shops or small parades (such as those in housing estates) that provide an essential social function but are on the margins of economic viability.

- 13.4. The Council is concerned that these PD rights, if left without the ability to manage development, could reduce access to local convenience shops and services for the Borough's residents and visitors. Maintaining and increasing this provision in appropriate areas is critical in a fast growing borough such as Tower Hamlets with GLA projections predicting growth of another 75,000 people to 2041<sup>19</sup>. It could also lead to the fragmentation of town centres; a decrease in their vitality and vibrancy; thereby leading to a negative impact on the Tower Hamlets local economy.
- 13.5. Although the Borough has seen a relatively small number of prior approval applications for this specific PD right since its introduction in 2014, the numbers of received applications has increased in recent months – including six during 2018 alone out of a total of 15 since 2014. Furthermore, as demonstrated in Chapter 5 there is still a significant pressure on retail uses to change to other uses through the planning system, particularly residential uses. Therefore, given the relatively small average size of the Borough's retail units (well below the 150 sqm floorspace threshold) and the ambiguity of what is meant by 'key shopping area', it is considered that the risk to our local retail provision is significant, particularly within centres with a more local shopping offer.
- 13.6. It should be noted that this Article 4 direction is not proposed so that all retail to residential development is to be refused, but without the Council's assessment of these changes and issues around viability through the planning application process, this may constitute a threat to the amenities of the Borough.
- 13.7. As noted in the report above, the advice given by the government is that local authorities should only consider making Article 4 directions in exceptional circumstances. It is the Council's view that exceptional circumstances exist in this instance necessitating the need for an Article 4 direction as detailed in this report.

#### Implications of not making an Article 4 direction

- 13.8. Failure to make an Article 4 direction to remove this PD right would likely have a negative impact, including:
- the Council's ability to protect essential local shops and services;
  - the Council's ability to provide sufficient new retail space to meet need;
  - undermining the role and function of the borough's town centres; and
  - the Council's ability to protect against adverse impacts on local amenity including design, energy efficiency, parking and space standards.

#### Recommendation

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<sup>19</sup> GLA Population Projections - Central Trend-based projection

13.9. In light of the information and evidence provided above, it is recommended that a non-immediate Article 4 direction to remove permitted development for the Conversion of A1 retail, A2 financial and professional services and specified town centre-compatible Sui Generis uses (Betting Offices and Payday Loan shops) to C3 residential (see paragraph 1.10 of this report for full definition) is made and issued by 1 November 2019 (tbc) to take effect from midnight on 1 November 2020 (tbc). The Article 4 should cover the entirety of the areas of coverage set out in Appendix 2 and should be reflected on the maps published to accompany the Article 4 direction.

#### 14. Process to bring forward an Article 4 Direction in line with the recommendation

##### Requirements and Process

14.1. The preparation of an Article 4 direction must include the following:

- Confirmation of the change of use to be addressed by the Article 4 direction;
- Identification of the geographical boundaries to which the Article 4 will apply, and for that information to be mapped and recorded;
- Compilation of robust and up-to-date evidence to justify the Article 4 direction and the boundaries/properties to which it would apply;
- Consideration of whether an immediate Article 4 direction is required, and if so for an assessment to be completed to identify the likely financial liability and risks to the Council from doing so;
- Undertaking public consultation for a period of at least four weeks, including publishing a Public Notice on the Council's website and in local press, displaying site notices at locations to be covered, and informing the Secretary of State in writing;
- Confirmation of the Article 4 by Full Council; and
- Publication of the confirmed Article 4 direction.

##### Proposed Timescales

14.2. An indicative timetable for taking forward the recommended Article 4 is outlined below:

Task	Date	
Completion of justification and supporting documents	01/01/19	
Permission to consult	DLT	18/02/19
	CLT	12/03/19
	MAB	27/03/19 (TBC)
Public consultation (TBC)	15/04/19 – 13/05/19	
Consideration of consultation responses, completion of final documents for confirmation (TBC)	13/05/17 – 24/05/19	
Permission to confirm Article 4 direction	DLT	June 2019
	CLT	June 2019
	MAB	July 2019
	Cabinet	August 2019
	Full Council	October 2019
Publication of non-immediate Article 4 direction	November 2019	

**Annex 1: Areas to be covered**

It is proposed that the primary areas of focus for the Article 4 direction include:

Central Activities ZoneTower Hamlets Activity areas

- City Fringe Activity Area
- Isle of Dogs Activity Area

Canary Wharf Major CentreDistrict Centres

- Bethnal Green Road
- Brick Lane
- Chrisp Street
- Crossharbour
- Roman Road East
- Roman Road West
- Watney Market
- Whitechapel

Neighbourhood Centres

- Aberfeldy Street
- Barkantine Estate
- Ben Jonson Road
- Burdett Road South
- Cambridge Heath
- Columbia Road
- Devons Road
- Limehouse
- London City Island
- Mile End
- Poplar High Street
- Redchurch Street
- Salmon Lane
- South Quay
- Stroudley Walk
- Stepney Green
- Thomas More

- Wapping Lane

#### Neighbourhood Parades

- Bow Road
- Burslem Street
- Cambridge Heath Road
- Caspian Wharf
- Castalia Square
- Cleveland Way
- Manchester Road
- Mile End Road
- Old Ford Road
- St Leonards Street
- St Pauls Way
- Westferry Road
- West India Dock Road/Pennyfields

#### **Annex 2: Tower Hamlets Retail Evidence Base**

##### Adopted Core Strategy (2010):

- Town Centre Spatial Strategy (2009)
- Borough Portrait for the Town Centre Spatial Strategy
- Retail and Leisure Capacity Study (2009)
- Retail and Leisure Capacity Study (Appendices) (2009)

##### Adopted Managing Development Document (MDD) (2013):

- Town Centre Boundaries and Balance of Uses Review (2012)
- Town Centre Policy Development Report (2011)

##### A new Local Plan: Managing growth and sharing the benefits (2018):

- Town Centre Retail Capacity Study (2016), including:
  - Appendix 13: Shopping Frontage Recommendations (2016)
  - Executive Summary (2016)
- Town Centre Spatial Strategy 2017 to 2022 (2017)
- Topic Paper: Town Centres (2018)
- Retail Impact Threshold Study (2018)

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