

ARTICLE 4 REPORT : by Peckham resident Michelle Male Shaw - 9th July, 2015.

**How we can Invoke an Article 4 Direction with Immediate effect;
Valid Reasons to Invoke an Article 4 to remove permitted development rights
from estate agents and / or brand name chains, either locally or borough wide.**

Please see below how the Council could potentially respond to the following Govt. Doc. Requirements (suggestions are in normal font, with the government doc. requirements in italics.)

This paper to be read in conjunction with attached written Deputation and Appendix made to the Council on 6th July 2015 (where a previous paper version was handed to the council on that day, the attached version supersedes it):-

Department for Communities Local Govt , June 2012 Document:-

'Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995' *(Please can Southwark's legal team advise on the relevance of this Govt. Doc. Eg. whether it has since been updated).*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5679/2160020.pdf

2. The use of article 4 directions

. 2.1 *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.***
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London Assembly report 'Empty Shops on London's High Streets' 10 January 2013:

'The Economic Committee acknowledged key findings from LSE Cities researcher Dr. Suzanne Hall's work on high streets in London, in particular Walworth Road and Peckham Rye Lane. It highlights the increase in independent shops on London's high streets with the possible connection to London's increase in ethnic diversity and migration, and suggests the need for a more careful consideration..... for managing high streets, especially where ethnic diversity and varied retail models might require more site-specific approaches to street stewardship.'

<https://lsecities.net/archives/empty-shops-on-londons-high-streets/>

'*Ordinary Streets* is an ethnographic and visual exploration of the spaces, economies and cultures of 'street', and engages with issues of immigration, adaptation and urban multiculturalism...'. 'Our current focus is Peckham Rye Lane, an intensely active retail strip in south London appropriated by successive waves of immigrants, and shared with established residents.'

<https://lsecities.net/objects/research-projects/ordinary-streets>

With reference to reports such as Dr. Suzy Hall's LSE study of Rye Lane and Peckham Town Centre (also commissioned by the GLA), Local Planning at Southwark can prove that Rye Lane is an exceptional circumstance, where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Dr. Hall's comparative evidence of employment data stating thousands more jobs are created within Peckham Town Centre than in Westfield, Stratford; due to Peckham's unique micro economy, the successful, vibrant shopping area of which, would be harmed by an influx of clusters of corporate estate agents/brand name chains.

Dr. Hall's LSE '*Ordinary Streets*' work showed that Rye Lane is occupied by successive waves of immigrant traders who have adapted their markets and bazaar spaces to meet retail needs and aspirations in London. These include an assortment of small, independent shops, not bound by the strict regulations of fixed rental leases but characterised by flexible, (*innovative*) retail practices.

Shops are subdivided into numerous small businesses, offering flexible rental leases and micro retail spaces. For example, chairs in hair and nail bars are rented for a week at a time, an arrangement which seems to suit both parties. 'In the case of a hair and nail proprietor, they can purchase their products cheaply from India and China and can literally start a business from a bag with £100 worth of products. If they are good at their business and can pay their rent, they are able to extend their lease for another week. If not, they are out. They are not bound by a fixed or long-term contract, which is very often a significant constraint when starting up a shop.'

This temporary occupation of shops has allowed traders to dip their toes into the retail market in an experimental and low-risk way, and business has been booming despite national downturns.

The scores of small businesses on Rye Lane between them support hundreds of Southwark families. (Comparative) Data (for Peckham Town Centre) shows that it accommodates 2,100 businesses and 13,400 employees - far greater than compared with the whole of Westfield Shopping Centre, Stratford - which accommodates 300 retail units and 8,500 jobs.

Once disrupted it is unlikely that this peculiar ecosystem could easily be moved or transferred elsewhere, without significant loss to family generations and genuine people of the local Peckham community.

Constituents strongly support the need for development (economic and social) but suggest that it needs to be very actively managed in Peckham, so as not to inadvertently put at risk a successful local micro-economy that keeps money in the local area and clearly meets the needs of specific clientele.

Estate agents tend to display very strong group behaviours: they cluster together on high streets and when one moves into a new area there is a strong driver for all the

other competitors to do likewise with an immediate impact on local rents. This would cause a sudden and potentially catastrophic disruption of the very idiosyncratic local economy. If permitted development rights are granted to estate agents, and other clusters of brand name chains, such as coffee shops, there will be no control and careful assessment measures available for councils to use to protect the community and the protected shopping frontages.

Great harm will be caused by the arrival of estate agents due to loss of footfall within the existing, vibrant shopping area. The area of Rye Lane where estate agents are currently trying to establish themselves, and is particularly vibrant with shops, is at the northern end of Rye Lane, between Peckham Rye Station, Highshore Road and Peckham High Street. This already has a high concentration of brand name chain shops which cluster together, or work in pairs; the brand name chains currently in the northern half of Rye Lane include chains such as clothes - Primark, Peacocks, Mothercare & Bon Marche; chemists - Boots, Superdrug; sports shops - Sports Direct, JD Sports; mobile phone shops - '3'eee, vodaphone, carphone warehouse, three or four £1 shops, etc. This list is not exhaustive. The brand names which are also clustered in this area of Rye Lane are not limited to A1 shop uses but also include clusters of A2 class use, such as banks and building societies; currently the clusters include Barclays, HSBC, Halifax, etc. Thus if another brand name chain, or cluster, were to come in to this northern end of Rye Lane - particularly estate agents who are well known to cluster (akin to betting shops) - there would be a far greater imbalance of chain stores, compared to independents. This would irrevocably harm the diversity and well being of Rye Lane Conservation area that local development plans wish to protect and maintain.

The loss of current A1 (retail) units will impact upon the quantum of retail provision in the borough, and to maintain a critical mass of retail uses within the protected shopping frontages. Over-concentration of uses often leads to cumulative adverse impacts on the amenity, character and function of an area. It is important to ensure that the vitality and viability of Southwark's protected shopping frontages is not adversely affected, and that these frontages are able to continue to provide a diverse range of services -including everyday essential services - to meet local needs. An estate agent is not an everyday essential service and one will usually start a cluster.

To illustrate the effect that concentrated clusters of brand name chains have an effect on high street vitality, the GLA report finds:-

GLA: Open for Business Empty shops on London's high streets, March 2013:-

'The Committee received the greatest number of complaints about the proliferation of betting shops, but also heard multiple complaints about the increase in payday loan shops, pawnbrokers, charity shops, fast food takeaways, supermarket *chains*, coffee shop *chains* and 99p/pound shops.⁵⁴ (Table 3 - see doc. in link) shows how the number of these types of shop has increased in recent years.

Impact of concentration 3.2

'The Committee has heard that reduced diversity has an impact on footfall, because fewer people will be attracted to the high street.'

'Furthermore, these shops can also have the effect of increasing rent in an area, because they are often national chains – notably major bookmakers – that can afford to pay high prices.'

http://www.london.gov.uk/sites/default/files/FINAL_Economy%20Committee_empty%20shops%20report.pdf

This evidence is not limited to 99p shops, betting shops and mobile phone shops but also to estate agents:

Most Estate-Agent Infested UK High Street Is Hoe Street, Walthamstow - The Huffington Post UK, by Asa Bennett 28.03.14:-

Walthamstow MP and Labour shadow business minister Stella Creasy told HuffPostUK: *"The proliferation of estate agents in Walthamstow comes at the same time there is evidence of sharp practices like double charging for fees which is unfair to both buyers and sellers of properties. Contracts like this **are pushing prices up and people out of our area, as well as creating unmanageable levels of debt in our community.**"*

Russell Quirk, [founder of online estate agency eMoov.co.uk](http://www.moov.co.uk), which carried out the research, said: *"Current planning laws enable estate agents to be classed like banks and building societies, meaning they can move into empty bank buildings without applying for a change of use."*

*"We often hear that estate agents are taking over our high streets, and our research has found that not only is it true, but it's true to an alarming extent. Vendors need to take a stand, save money and **sell their property online to preserve their high street for the years to come.**"*

http://www.huffingtonpost.co.uk/2014/03/28/most-estate-agents-uk-walthamstow-n_5049109.html?1396017668

'As banks, estate agents and building societies vacate outlets due to a lack of business.....' Southwark's Article 4 Report, March 2014. There are more advantages to the community to implement an Article 4 Direction against estate agencies, than disadvantages, since there is no pressing need for an A2 class use in this area, over an A1 use.

There is concern that the presence of estate agents in Peckham town centre will increase the likelihood of potentially problematic uses being introduced in situations where there is residential accommodation above or adjoining the premises. The council would lose the opportunity to require adequate installations which would mitigate against any potential adverse impacts e.g. increase in traffic, etc., there might be little or no control over hours of operation.....- Estate agents' advertising tv screens will be projecting light from the windows throughout the night, after normal closing hours. This will cause light pollution to the adjacent residential properties and conservation

areas. There will be no control over any increase in traffic caused or hours of light pollution emitted.

Southwark Town Centre Shopper Surveys - Report, March 2014 (Appendix J of Southwark's Article 4 Report) results are also relevant as part of the evidence base to justify the Article 4 Direction. The survey was undertaken over five town centres (Borough, Canada Water, Elephant and Castle/Walworth Road, Camberwell, and Peckham) to gain further understanding of shopper characteristics, behaviour and views on the pattern of retailing in our town centres. The survey asked shoppers and visitors a number of questions about what their purpose was for visiting the town centre. The majority of respondents in all town centres stated that it was for the shopping in stores and supermarkets. Furthermore, when asked what was the attraction to the town centre, the 'Choice of shops' is still the attraction for a quarter of visitors – a tribute to the resilience of these retail-led high streets.

Shoppers and visitors were also asked to choose whether there should be 'more', 'less' or 'about the same' from a list of services/facilities in the town centre. In all town centres there is a consensus that retail provision is 'about right'. In Peckham around half of people are asking for more cafes and restaurants, and more than a quarter lament the closure of pubs and bars.

The survey also asked people what would give them a reason to visit the town centre more often. From a long list of options only three reasons for visiting more often are strongly supported. These were more retailers, more public spaces for meeting/relaxing and more restaurants.

....The council needs to be able to assess new proposals on their impact on the diversity of the shopping frontage and the permitted development rights compromise the objectives of planning policy which seek to maintain a critical mass of retailers and facilities to maintain vitality and viability of shopping frontages.

Councillor Mark Williams has stated that estate agent use is unsuitable in The Elephant and Castle area, which needs Class A3 and A4 uses in order to thrive and that Class A2 financial institutions, particularly estate agents, will not help generate income or footfall in that area. There is no reason for this not to apply to Peckham town centre also.

"We want pubs, bars, restaurants and cafes so people spend time here rather than just pass through. An estate agents at this location is not part of our plan and we will work with the local community to stop this from happening."

<http://www.london-se1.co.uk/news/view/8304>

There is a threat to the existing community if the Article 4 is not in place, since the permitted development law of April 2015 does not (seem to) require a shop unit to be vacant before change of use can occur. This has led to and can lead to unreasonable, (aggressive) unwanted take overs of existing occupied shop uses by estate agents or

wealthy brand name chains, particularly those uses where there are shop owners still in occupation, happily trading and profiting. Elmbridge Borough Council won an appeal against change of use from an empty shop unit to an estate agent in a prime shopping area. However if there are no change of use planning laws enforced, many shops currently trading are in danger of being forced out by landlords who will look for opportunities in their leases to take on board brand name chains. Inspector Nicholas Taylor stated in his decision against the Foxtons Appeal of 9th December 2013:-

17. Overall, therefore, the proposed development would result in the unacceptable loss of an A1 retail unit in a prominent position within the town centre's Primary Shopping Frontage, with consequent significant harm to the vitality and viability of the town centre. I have taken account of the potential benefits of the proposal within the context of its contribution to the vitality and viability of the town centre and its impact on and ability to serve local needs. However, I conclude that the benefits would not outweigh the harm which I have identified. As such, the proposal would conflict with CS Policy CS18 and with the Framework. 18. Therefore, for the reasons set out above, the appeal does not succeed.'

<http://www3.elmbridge.gov.uk/WAM/doc/Appeal%20-%20Decision-1885450.pdf?extension=.pdf&id=1885450&contentType=application/pdf>

<http://www3.elmbridge.gov.uk/WAM/doc/Grounds%20of%20Appeal-1729537.pdf?extension=.pdf&id=1729537&contentType=application/pdf>

2.2 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.

The harm that the Article 4 Direction with Immediate effect is intended to address is the well-being of the area and sense of community being eroded from an economically successful town; even in times of recession it has continued to thrive (Dr. Suzy Hall). The presence of estate agents in Rye Lane will be seen as divisive in a town which has contrasting poor and wealthy areas. In its Article 4 report of 2014 Southwark highlighted that it is the 12th most deprived borough in London and 41st most deprived borough out of the 326 local authorities in England. There are significant contrasts of poverty and wealth within the borough. Areas within eight out of 21 wards in Southwark fall within the top 20% ranking of most deprived wards in England. These are in East Walworth, South Bermondsey, Nunhead, *The Lane*, Faraday, Newington, Camberwell Green and the north part of Livesey.

Hence there is a strong possibility that the invasion of an estate agent or brand name chain to Rye Lane may cause unrest in an area that might already harbour existing underlying tensions, recalling the riots of Summer 2011, which began in Tottenham and spread across London, including Peckham, the spiraling of the riots was not necessarily linked to the shooting incident but also to feelings of dissatisfaction within the areas:-

The National Centre for Social Research paper prepared for the Govt.:-

'August Riots in England - Understanding the involvement of young people' by Gareth Morrell, Sara Scott, Di McNeish and Stephen Webster October 2011' states:-

Societal Factors (of the riots), pg 7.

Poverty and materialism: life for some people was described as a constant struggle.the starker contrast between rich and poor in London might mean that the disparity between young people's material desires and what they could afford might be more pronounced.

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In contrast to those whose transition was underpinned by material reward, for the second transition group, behaviour change was the *opportunity to escalate their message or statement to society*. For example, there were some young people whose involvement in rioting transcended into looting. Here, looting seemed to be an extension of their *expression of grievance with the system* or police, and so was not about the financial value of goods taken. For example, one young person in custody talked about rioting against the police and then *moving on to attack large "chain shops"*. *However, when an independent store or an Oxfam store was targeted, there was noticeable anger amongst the crowd.*

Pg. 43.

Community stakeholders described some young people who saw themselves as being "on the scrapheap" while still in their teens, and how the recession and government cuts had exacerbated problems for people who were already poor, including the young.

Pg. 48.

What they described was the gap between what was portrayed in the media as representing the "good life" to which people should aspire, and what young people in their communities could actually have, given the poverty of income and opportunity. *"This country is quite cold – greed, advertisement, money, adverts on TV, greed, greed, greed and family. Like the iPhone advert: 'If you haven't got it, you haven't got IT.'" (Young person, Peckham).*

Pg. 54.

... the riots raise questions for society **about how it will respond**. In part, this is a **challenge for communities, as they rebuild and repair the damage to property and relationships in their area**. In part, *this is also a challenge to policy-makers at all levels of government. Whilst not designed to formulate policy proposals itself, this study is designed to contribute to those deliberations, and to help place them upon a more evidenced footing.*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60531/The_20August_20Riots_20in_20England_20_pdf_201mb_.pdf

The arrival of a high end estate agent will potentially further ostracise the part of the community who may already be feeling marginalised by gentrification and the arrival of those seen as 'yuppies or hipsters' to the area:-

<http://www.theguardian.com/cities/davehillblog/2015/apr/28/brixton-anti-gentrification-protest-reclaim-foxtons-estate-agent>

http://www.huffingtonpost.co.uk/2013/04/10/brixton-riots-1981-anniversary_n_3058292.html

Eight minute video 'Divisions' made by local photographer, Marcus Hessenberg demonstrates that although good natured to an extent, some tensions in Peckham exist and whilst many of the local people are tolerant of the inequalities that are becoming more obvious as gentrification takes place, the ensuing arrival of estate agencies within the shopping area of Peckham Rye Lane may push the boundaries of community spirited people; who want to live harmoniously side by side within a mixed demographic. There is a risk that tensions may grow with the arrival of an estate agent or clusters of them, resulting in potential harm to mixed relationships within the area. An estate agent presence may encourage the feeling of division in the community, its presence may be seen as offensive to more deprived residents, as there is a strongly felt perception amongst the population that estate agents will exacerbate the problems of rising rents/prices.

In its Article 4 report of 2014 (Southwark highlighted that it is the 12th most deprived borough in London and 41st most deprived borough out of the 326 local authorities in England.) Areas within eight out of 21 wards in Southwark fall within the top 20% ranking of most deprived wards in England, which include The Lane.

Additionally All Saints Church Peckham reports that 67% of CAP (Christians Against Poverty) clients haven't enough money for food in Peckham which have led to a percentage of suicides. Conversely property prices have escalated - the latest figures from the Office of National Statistics found that UK property prices were up 6.8% since last January ('Most Estate-Agent Infested UK High Street Is Hoe Street, Walthamstow' - The Huffington Post UK, by Asa Bennett 28.03.14) - making more homes and businesses an asset for the wealthy, as well as unaffordable for others.

These figures highlight there are significant contrasts of poverty and wealth within the borough, which the presence of high street estate agencies or national chains may serve to exacerbate a greater divide. The presence of estate agencies in the local area will deprive the community of more amenable, affordable and viable uses, or shop use classes.

Additionally the retention of large comparison shops help those without private transport to access items of eg. furniture more readily on the high street, instead of being forced to make long, expensive trips to industrial estates for eg. furniture outside the town centre - which would also serve to damage the economy and foot fall of the local high street.

Southwark's Economic Well-being strategy (2012-20) includes the ambition to continue to foster Southwark as a place to start and grow a business. To do this the council will use its influence to remove barriers to business growth and help nurture the supply of local jobs. Estate agencies or brand name chains are already wealthy businesses. They thus cannot be considered new business that needs nurturing. They cannot be held to

account to create local jobs if granted permitted development. This will harm the community's share of the local job market, as the brand name or estate agent will have taken the place of an independent shop that is more likely to employ local people.

Hardship will be caused where local people are no longer able to readily access everyday essentials from the high street, which estate agents do not provide. Lives will not be enhanced on the high street by the presence of a use which can be readily accessed on the internet. People need shops, including furniture or large comparison shops, where they can physically go to buy, feel, test and handle their goods. However services like estate agencies can only provide references and images of their properties. The goods they are selling are away from their premises, hence their services can be conducted entirely via the internet or from an office without high street presence. Almost all estate agent enquiries are made on-line or by telephone and most of their advertisements are obsolete before they are placed in the window, so there is no need for high street window advertising. Thus, siting an A2 class estate agent service that will be unused, or unrequired in this bustling area of shops will make the area a dead zone and force local people to travel, to shop elsewhere for more necessary goods; losing valuable footfall and removing more viable use classes and amenity from the high street frontage.

To deliver the social, recreational and cultural facilities and services the community needs, paragraph 70 of the NPPF encourages planning policies and decisions to:Guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs'

The Guardian also reports that owing to increased use of internet estate agents there will eventually be a decline for the need for estate agencies to have a high street presence - hence the community will not benefit from having estate agents on the high street if premises can be used for more essential everyday needs - the siting of estate agencies in all protected shopping frontages will prohibit this, contributing to the decline of the vitality, foot fall and vibrancy of the area.

*'In a world where valuing your own property is easy, thanks to all the online price data for comparable homes; and in a city where demand for housing drastically outstrips supply ... the [Foxtons] (typical high street) model may not be sustainable in the long term. "They have always charged a premium [commission] for sales and lettings," said Gavin Jago, a property analyst at the brokers Peel Hunt. "Online estate agents are starting to charge considerably less." The rising online firm Purplebricks.com currently charges a maximum of £1,158 to sell a London home – less than a tenth of [Foxtons'] (typical high street agents') average commission. Some senior estate agents.....predict that, over the next decade, the market share of **online firms** will grow from a thirtieth to **as much as half.**'*

<http://www.theguardian.com/business/2015/jun/17/is-foxtons-the-estate-agent-london-deserves>

Understanding high street performance, Department for Business, Innovation and Skills, December 2011; Retail sales December 2012, Office for National Statistics, January 2013:-

p.46 'Internet retail sales have grown dramatically in recent years, outstripping the increase in high street sales. It is estimated that online spending trebled between 2004 and 2010; strong growth has continued recently, with an approximate 15.5 per cent increase in internet sales in the past year'

http://www.london.gov.uk/sites/default/files/FINAL_Economy%20Committee_empty%20shops%20report.pdf

Additionally the retention of larger comparison shop units - which the development plan seeks to maintain - help the majority of the disadvantaged local community, without private transport, to access items more readily on the high street, instead of being forced to make long, expensive trips to industrial estates for eg. furniture outside the town centre - which would also serve to damage the economy and footfall of the local high street.

Also great potential harm may be caused to the community should there be a decline in affordable market stalls, which may be discouraged from use outside estate agents who want clear foot paths for clients to access their advertising tv screens. Hundreds of local people use the popular grocers' market stalls every day due to their affordability. If estate agents discourage the use of the stalls, there is a danger that affordable healthy produce will be less available, causing a decline in foot fall on the high street and poor health, if people are forced to use more expensive supermarkets for healthy produce, they will be unable to purchase as much of it, which may affect their health and well being.

*2.3 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;*

Peckham Rye Lane is a Conservation Area and has a special, unique character which should be preserved and protected. Southwark's Peckham Rye Lane Conservation Area Appraisal states that *'the presence of street markets give the conservation area a busy town centre character'*. Fruit and vegetable stalls help to promote the bustling, vibrant appeal and visual amenity of the area. Currently street stall holders share facilities with shop owners, such as boiling kettles for tea and toilet facilities. This represents a great sense of community and visual amenity which may be lost if the estate agents object to market stall holders locating outside their units, for reasons described above.

Para. 3.15 of Southwark's Peckham Rye Lane Conservation Area Appraisal also states: *'Development should preserve or enhance the special interest or historic character or appearance of buildings or areas of historical or architectural significance. Planning proposals that will have an adverse effect on the historic environment will not be permitted. The character and appearance of Conservation Areas should be recognised*

and respected in any new development within these areas. Article 4 directions may be imposed to limit permitted development rights....'

Because Rye Lane conservation area is recognised as an area of unique and special character with an eclectic, diverse mix of shops and listed buildings which cater for specific needs of the community, the presence of too many brand name chains, or clusters of estate agent brands may overwhelm the vibrant mix of existing shopping frontages - damaging the special character and local amenity that the Conservation Area seeks to preserve.

Rye Lane Conservation Area Appraisal para. 5.3.13 states 'The standard company signs of national retail and service businesses may not be appropriate either to individual buildings or the setting of the conservation area. Suitability for the building and the conservation area is considered more important than uniformity between branches of a firm'

*Undermine local objectives to **create or maintain mixed communities**;*

As per the Council's local development plans and conservation area appraisal there is a very local objective to both create and maintain mixed communities, which the arrival of an estate agent, or cluster of them, will undermine and encourage to divide, rather than to mix.

The way that estate agent clusters work together as a sector can be alienating within an already well established shopping area - the onset of too many chains can have an immediate and sudden impact on local rents - which has already started to happen. This would cause a sudden and potentially catastrophic disruption of the very idiosyncratic local economy. Well-established, or new, independent shops will be threatened if rents increase and wealthy brand chains take over, or become too abundant. This will destroy the highly sociable, diverse, special character of the area and divide the mixed community. Businesses are already fighting a doubled increase in rent, eg. Touch II Jewellers (established in Rye Lane for 25yrs), recently fought a legal battle for an increase in rent from £22,000 to £42,000 per annum. Hence an estate agent, or clusters, in this area cannot be considered a sustainable or positive improvement to the quality of the environment, or to the lives of the local people, as it will signify to landlords that leasing to brand name chains is the way forward to raising rents - resulting in pricing independents out of the area, or raising prices to the end user, which many local people cannot afford and hence poses a threat to the well being and health of the community if they can no longer afford food or other essentials, they would have formerly enjoyed.

'Due to the reasonable rents in Rye Lane twenty two years ago, we as small traders were able to grow and serve the African community with fresh Nigerian food products, but now we've noticed they are moving away to cheaper areas to live, our sales in the fresh foods are down and we're turning to restaurant use'. Rawand Khadir - Family businessman of Ali Baba grocers, food, drink outlets and restaurant, who have been in

Rye Lane for 22 years - proving that the African community and character of the area is being eroded.

'Diversity is essential to maintain a thriving high street, but in many areas there is an over-concentration of betting shops, pawnbrokers and payday loan shops. We recommend stronger local planning powers so councils can impose limits where necessary.' - this can be applied to estate agents and brand name chain shops.

http://www.london.gov.uk/sites/default/files/FINAL_Economy%20Committee_empty%20shops%20report.pdf

Lively student and artist led creative industries have helped bring forward many young entrepreneurs, due to affordable rents and studio spaces, which were more available a decade ago. People come from all over London for specific wigs, hairdressers and hair products, unavailable elsewhere. Young people are prepared to afford living in the now popular Peckham, in small flats, or in house shares; to experience the new bars, restaurants and pop-up scene. But if costs of living continue to increase, many indigenous people are forced to move out as their families grow and they have to move outside London for more affordable space, away from cherished friends and supportive relatives. Hence there is a danger that the area will suffer harmful displacement of parts of families eg. those with young children, who traditionally rely on each other for support. If driven away by high costs of living there will be the necessity to fund childcare, or go without jobs in order to care for their children because they cannot afford such care, resulting in spiraling financial difficulties, together with higher transport costs to keep in touch with families and friends, affecting the well being and health of families.

If housing and economic development is allowed to progress too hastily, without due consideration for the well being and retention of the diverse community; it will become eroded, ending up a faceless, homogenous town, with transient commuters in small, high rise apartments, gravely endangering the special character of the local community which development plans and the conservation area appraisal aim to retain. The presence of estate agents and clusters of them will not enhance the area's socio economic mix but will typically drive the rental and purchase cost of housing and retail businesses up, not down - as opposed to some shop clusters, eg. fruit and vegetable stores, which have to compete and lower their prices against each other.

<http://www.theguardian.com/business/2015/jun/17/is-foxtons-the-estate-agent-london-deserves>

Hence if estate agents and brand name chains are given permitted development rights their high street presence will undermine local objectives to create or maintain mixed communities, as parts of the diverse community are forced to move away and a homogenous middle class demographic is the only one able to afford living within the Peckham area.

*2.4 There should be a **particularly strong justification** for the withdrawal of permitted development rights relating to:*

A wide area (e.g. those covering the entire area of a local planning authority, National Park or Area of Outstanding Natural Beauty).

Cases where prior approval powers are available to control permitted development;

The Council should try to apply the Article 4 Direction with Immediate effect borough wide, to ALL of Southwark's protected shopping frontages, but this may be more difficult to achieve and justify in accordance with clause 2.4 above. Hence the Article 4 Direction with immediate effect against estate agents may have more chance of being applied within the specific Conservation Areas and protected shopping frontages of Rye Lane solely, or to all protected shopping frontages within the whole of Peckham and Nunhead SE15?

2.5 Local authorities should regularly monitor and review the appropriateness of their article 4 directions, considering whether the original rationale for the directions remains valid.

The Council will be able to review its Article 4's annually, to see if they are still appropriate to remain in place. Hence the Council can be flexible if it ever sees fit to remove the Article 4. Eg. It currently reviews its Article 4 in place for betting shops annually.

3. Powers to make article 4 directions

3.1. Provided there is justification for both its purpose and extent, it is possible to make an article 4 direction covering:

Any geographic area from a specific site to a local authority wide

Permitted development rights related to operational development or change in the use of land;

Permitted development rights with temporary or permanent effect.

If it thinks there would be an increased chance of obtaining an Article 4 against estate agents and, or brand name chains, by reducing the size of the area of application, the Council could restrict the extent of the area of application to Rye Lane Conservation Area, or to the protected shopping frontages of all of Peckham Town Centre, within the whole postcode of SE15. This may be more justifiable and achievable than application within the whole borough.

3.2 In procedural terms there are two main types of article 4 direction:

Non-immediate directions (permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following local consultation); and Immediate directions (where permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following local consultation within six months, or else the direction will lapse).

We wish to invoke an Article 4 Direction with Immediate effect, before the planning committee meeting of 14th July 2015 or as soon as possible. In order to help instantly preserve the well

being of the community and to avoid permitted development that will change Rye Lane and the whole community of Peckham Town Centre irreversibly, forever.

. *3.5 Immediate directions can only be used to withdraw a small number of permitted development rights.4*

. *4 Development permitted by Parts 1-4 and 31 of Schedule 2 to the GPDO (development within the curtilage of a dwellinghouse, minor operations, changes of use, temporary buildings and uses, and demolition of buildings).*

The Immediate Article 4 for which we need to apply is covered under 4. Above, as it is within Part 3, changes of use, of the Town and Country Planning Act.

5. Modification, cancellation and monitoring of article 4 directions

. *A local planning authority can, by making a subsequent direction, cancel an article 4 direction made by them.7 To modify an article 4 direction, a local authority would have to cancel the existing direction and prepare a replacement direction incorporating the required modifications in accordance with the procedure in Annex A. Where a direction would cancel an existing article 4 direction, the same procedures apply as for making a new direction of that type.*

. *A local planning authority does not have the power to modify or cancel a direction made by the Secretary of State.*

Is it feasible to amend the current Article 4 Directions which Southwark Council already has in place? - ie. The existing Article 4's invoked with Immediate effect in 2013, confirmed in 2014, which removed permitted development rights for changes of use to betting shops and flexible use. These Article 4's were made by the Council and not the Secretary of State, hence they may be able to modify their existing directions to add, or include, Classes D, A, F, G and H of the latest 2015 Town and Country Planning Act, which would prevent changes of use from almost all relevant use classes to use class A2, estate agents? If so, could these existing Article 4's, if modified, be deemed applicable with immediate effect? Or is it more viable and expedient for the Council to invoke completely new Article 4 Directions with Immediate effect to remove permitted development rights from estate agents and / or other brand name chains.

The council should consider that the ADVANTAGES of including all types of financial institution within the Article 4, outweigh the DISADVANTAGES. Ie. It is worth sacrificing some other financial institution types, eg. Banks, building societies and offices to have permitted development rights withdrawn, in order to gain from the benefits of withdrawing the rights from estate agents (and / or brand name chains.):-

SUGGESTED WORDING for an ARTICLE 4 DIRECTIONS(s) TO BE INVOKED with IMMEDIATE EFFECT:

To make Change of Use planning applications COMPULSORY for PECKHAM RYE LANE CONSERVATION AREA, or for ALL CONSERVATION AREAS AND PROTECTED SHOPPING

FRONTAGES WITHIN PECKHAM & NUNHEAD SE15; or for ALL CONSERVATION AREAS AND ALL PROTECTED SHOPPING FRONTAGES WITHIN THE BOROUGH OF SOUTHWARK, in respect of the TOWN AND COUNTRY PLANNING, ENGLAND The Town and Country Planning (General Permitted Development) (England) Order 2015, 15th April 2015, Schedule 2 - Permitted Development Rights, Part 3 - Changes of Use;

Class D - shops to financial and professional - Development consisting of a change of use of a building within its curtilage from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order, to use falling within Class A2 (financial and professional services) of that Schedule.

Class F - betting offices or pay day loan shops to financial and professional - Development consisting of a change of use of a building from a use as a betting office or a pay day loan shop to a use falling within Class A2 (financial and professional services) of the Schedule to the Use Classes Order.

The above list is not exhaustive - it may also be applied to Classes A, G and H, in order to help prevent changes of use from most use classes to use class A2, financial institutions, estate agents:-

Class A = Class A – restaurants, cafes, takeaways or pubs to retail/financial professional services.

Development consisting of a change of use of a building from a use falling within Class A3 (restaurants and cafes), A4 (drinking establishments) or A5 (hot food takeaways) of the Schedule to the Use Classes Order, to a use falling within Class A1 (shops) or Class A2 (financial and professional services) of that Schedule.

Class D = Class D – shops to financial and professional.

Development consisting of a change of use of a building within its curtilage from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order, to use falling within Class A2 (financial and professional services) of that Schedule.

Class F = Class F – betting offices or pay day loan shops to financial and professional.

Development consisting of a change of use of a building from a use as a betting office or a pay day loan shop to a use falling within Class A2 (financial and professional services) of the Schedule to the Use Classes Order.

Class G = retail or betting office or pay day loan shop to mixed use.

Development consisting of a change of use of a building—

(a) from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A1 (shops) of that Schedule and as up to 2 flats;

(b) from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A2 (financial and professional services) of that Schedule and as up to 2 flats;

(c) from a use—

(i) for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order, or

(ii) as a betting office or a pay day loan shop,

to a mixed use for any purpose within Class A2 (financial and professional services) of that Schedule and as up to 2 flats;

(d) where that building has a display window at ground floor level, from a use—

(i) for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order, or

(ii) as a betting office or a pay day loan shop,

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to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to 2 flats;

(e) from a use as a betting office or a pay day loan shop.

Class H = mixed use to retail

Development consisting of a change of use of a building—

(a) from a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to 2 flats, to a use for any purpose within Class A1 (shops) of that Schedule;

(b) from a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to 2 flats, to a use for any purpose within Class A2 (financial and professional services) of that Schedule;

(c) from a mixed use—

(i) for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order and as up to 2 flats,

(ii) as a betting office or pay day loan shop and as up to 2 flats,

to a use for any purpose within Class A2 (financial and professional services) of that Schedule;

(d) where that building has a display window at ground floor level, from a mixed use for any purpose—

(i) within Class A2 (financial and professional services) of the Schedule to the Use Classes Order and as up to 2 flats, or

(ii) as a betting office or pay day loan shop and as up to 2 flats,

to a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order;

(e) from a mixed use as a betting office or pay day loan shop and as up to 2 flats to a use as a betting office or pay day loan shop.

AUTHOR'S NOTE: So far, I haven't seen more than a single class, eg. Class D, being addressed by an Article 4. Ie. Is it possible to list more than one class within an Article 4? eg. Class D and F, or more, within a single Article 4 Direction?

'Stricter controls on certain use class changes have been recommended in the past, including by the London Assembly's former Planning and Housing Committee. 67 Some boroughs have introduced measures to control the spread of fast food takeaways..... The Portas Review recommended that betting shops become **sui generis**, which would allow boroughs to examine **every proposal** for a new betting shop; this proposal is backed by the Mayor and a number of London boroughs.'

<http://www.london.gov.uk/mayor-assembly/london-assembly/publications/open-business-empty-shops-londons-high-streets>

http://www.london.gov.uk/sites/default/files/FINAL_Economy%20Committee_empty%20shops%20report.pdf

Since recent Act amendments, betting shops are now placed within Sui Generis. However, based on the reasons above the council should also persuade government to place estate agents into Sui Generis class, so that they always require specific planning permission.

AUTHOR'S NOTE! - INCONSISTENCY QUERY?! :-

Cambridge City Council Article 4 report 11.6.13 states:-

Permitted development rights related to operational development or change in the use of land; An Article 4 Direction may cover several classes of permitted development or be focused down to a particular class, or a particular operation within any class. It may cover a whole (eg conservation) area or any specified part of one. In other words, a Direction can be closely tailored to a given aim.

HOWEVER THIS DIFFERS FROM SOUTHWARK'S INTERPRETATION OF ARTICLE 4, WHO SAY IT MUST INCLUDE ALL OPERATIONS WITHIN A USE CLASS, eg. Within Class A, etc.?

Southwark's Report on Confirmation of Article 4 invoked against betting shops and flexible use, 24TH March 2013 states:-

182. 'It is not possible to withdraw permitted development rights for selective developments within a use class in the GDPO, for example to remove solely the rights to change to A2 or A3 flexible uses. The new permitted development right introduced in May 2013 gives permission for A1, A2, A3, A4, B1, D1 and D2 units to change to a package of flexible uses (A1, A2, A3 and B1). The council cannot use an Article 4 Direction to permit some of these and withdraw rights for others. ...'

THEREFORE is either Cambridge Council or Southwark Council wrong? OR - ARE ARTICLE 4'S ALLOWED TO BE INTERPRETED AND APPLIED DIFFERENTLY ACCORDING TO HOW EACH COUNCIL SEES THEM? IS THERE THUS AN INCONSISTENCY IN THE APPLICATION OF THE LAW - THAT WE CAN USE TO STALL UNWANTED PERMITTED DEVELOPMENT? Stating eg. 'The council have been unable to use an Article 4 in line with their given rights due to inconsistencies, therefore can the council put a hold on any Change of Use permitted development from going through, until the inconsistencies of the application of Article 4 are resolved? Or will the government merely say that all permitted development may still go ahead if there are any issues to be resolved for Article 4? In which case it is best not to mention any inconsistencies of the application method, unless there is absolutely no other option to try and prevent imminent permitted development from going ahead.' - suggested by author.

The council should consider that the ADVANTAGES of including all types of financial institution within the Article 4, outweigh the DISADVANTAGES. Ie. It is worth sacrificing

some other financial institution types, eg. Banks, building societies and offices to have permitted development rights withdrawn, in order to gain from the benefits of withdrawing the rights from estate agents (and / or brand name chains.)

6. Compensation

6.1 There are circumstances in which local planning authorities may be liable to pay compensation having made an article 4 direction, although the potential liability is limited in many cases by the time limits that apply.

Please refer to the attached Appendix, Letter from Michelle Male Shaw, 1st June, 2015, which cites reasons why the risk of any claims for compensation would be minimal and are unheard of in practice:-

Extracts from Author's letter to Councillors and Harriet Harman, 1st June 2015:-

If A2 estate agents are able to take over other use classes and Class A1 in this instance the local community will be deprived of other uses they need such as comparison shopping. I urge members of the Planning Committee to invoke an Article 4 Direction with regard to the following considerations, some found in my letter of 23rd May 2015 and also within the Council's Article 4 Planning Committee Report dated 25th March 2014, where many of the points made in the report are as strongly relevant to the withdrawal of permitted development rights for a change of use from Class A1 shop to Class A2 estate agent, as much as they are relevant to the betting shops, or flexible uses as described in paras. 1 and 2 of the Council's report.

The application site sits within the protected shopping frontages on Rye Lane.

1. Change of use of this Class A1 shop to Class A2 estate agent is highly objectionable in planning terms and contravenes the special character of Rye Lane and Holly Grove Conservation Areas and guidance.
2. If the zone for the application of the Article 4 Direction is restricted to the protection of Rye Lane Conservation Area, its associated Protected Shopping Frontages and the amenity of nearby residential areas, any reservations expressed based on the Council's potential liability for compensation if planning permission were subsequently refused would be limited.
3. The protection of this important area should weigh heavily in the balance and I would hope that members only decline to make an Article 4 Direction if they are satisfied that it is *clearly* outweighed by the likelihood of any potential compensation claim.
[According to Southwark's interpretation of how Article 4 is applied]
4. Other vacant A2 sites may be available for the estate agent to use within their own Class A2, so there would be limited basis where the applicant could claim, except potentially for planning application expenses, as currently there are no abortive signage or development costs except at the applicant's own risk.

Michelle Male Shaw 9th July 2015

5. If there was a subsequent refusal of planning permission for change of use it would be difficult to claim for lost business opportunity as,
 - a) Southwark's Article 4 Planning Committee Report dated 25th March 2014, para. 118 states The Lane ward is one of the poorest in England; as such there is no high demand in Rye Lane for estate agencies, which would not be beneficial to the majority of the residents, or to visitors who come to shop for eg. affordable food, clothes, furniture, hair products or essential items.
 - b) Most enquiries made to estate agents are made via telephone or on-line, followed by the necessity of viewing properties off the premises, thus high street window presence is not essential and loss of any business through loss of footfall would be difficult to claim. *[As also mentioned per Guardian article report on estate agents, see Appendix notes and elsewhere in this document].*
6. The risk of compensation (as a result of the Article 4 Direction) may reduce, if the enforced change of use application is refused but also requires separate Conservation Area consent? *[Since CA consent itself might give cause for the application to be refused, thus exonerating blame from the withdrawal of the permitted change of use?].*
7. Refusing a Direction due to any fear of incurring compensation would undermine the intention of the General Permitted Development Order and Article 4 legislation.
8. If an Article 4 Direction is granted immediately it may be that it can be implemented in advance of any further permitted development (re)applications for eg. But not limited to, A1 shops to A2 estate agents. If it is invoked a year in advance of such applications I understand there can be no compensation claim made by the applicant after that year for any subsequent refusal of planning permission. *[Hence if the Direction is made immediately there will only be a one year period where it could possibly be claimed for; thereafter there can be no claims made, since the Article 4 would be known to already be in place].*
9. The report states that there were no compensation claims made during or since the immediate implementation of the particular Article 4 Directions on 17th October 2013, (against betting shops.) Further research also shows compensation is not usually claimed eg. See Appendix for Cambridge City Council Article 4 report 11.6.13. - Compensation 4.5 *The EHTF research author's experience of dealing with Article 4 Directions over 30 years had not brought to light a single case of compensation being paid in respect of the withdrawal of permitted development within a conservation area. In practice it is extremely rare for compensation to be claimed.*
10. The main issue regarding planning applications for change of use would be whether the proposed use or design and its impact on the character, well being, amenity and appearance of the area is an acceptable replacement for the existing and whether it is in keeping with the area.
11. There is *enormous* community support for an Article 4 Direction to be invoked with Immediate effect to restrict permitted development rights from estate agents and / or

brand name chains; I ask Councillors to uphold this support, expressed with similar views, for protecting the economic well being and special character of the locality and The Lane Ward area.

I hope my correspondence and attached highlighted copy of Southwark's Article 4 Report are useful for Councillors to be able to recommend to the Planning Committee that an Article 4 Direction should be made *immediately*, which has immense encouragement and support from the local community, as proven by responses to the application and within local press.

NOTE: CALLS FOR CHANGE TO THE TOWN & COUNTRY PLANNING ACT:-

There have been recent moves this year towards changing the relaxed planning laws, since not all parliament members are happy with the increased permitted development rights:-

Recommendation 5 - The government should amend the Town and Country Planning (Use Classes) Order 1987 to establish that betting shops, pawnbrokers and payday loan shops are to be considered **sui generis** for planning purposes, and therefore always require specific planning permission. The Mayor should join the Committee in urging the government to implement this proposal. He should also ensure that the London Plan and Supplementary Guidance on Town Centres include policies on addressing the over-concentration of these shops.

http://www.london.gov.uk/sites/default/files/FINAL_Economy%20Committee_empty%20shops%20report.pdf

Since recent Act amendments, betting shops are now placed within Sui Generis. However, based on the reasons above the council should also persuade government to place estate agents and / or brand name chains into Sui Generis class, so that they always require specific planning permission.

Telegraph article, naming politicians who are unhappy with the relaxed laws - can they be contacted for any advice?:-

<http://www.telegraph.co.uk/news/politics/10569751/Government-takes-nuclear-option-with-new-planning-laws.html>

Refer also to the Planning Change of Use - Government Library - SN01301

Where there is a briefing paper on calls for changes to planning law but is limited to pubs, etc. at present:-

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01301>

Michelle Male Shaw - 9th July, 2015.

Michelle Male Shaw 9th July 2015