

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 4 September 2017	<b>Meeting Name:</b> Planning Committee
<b>Report title:</b>		Confirmation of Article 4 Direction to withdraw the permitted development rights associated with the change of use, demolition and alteration of public houses in Southwark.	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Director of Planning	

## RECOMMENDATIONS

That the Planning Committee:

1. Authorises the confirmation of the Article 4 Directions (Appendix A) to withdraw the permitted development rights granted by the General Permitted Development Order 2015 (as amended) for changes of use, demolition and alteration of public houses in Southwark in accordance with the methodology outlined in this report in relation to the public houses specified in Appendix C.
2. Notes the updated equalities analysis of the proposed Article 4 Directions (Appendix E).
3. Delegates to the Director of Planning the arrangements for confirming the Article 4 Direction including compliance with the notification requirements under the Town and Country Planning (General Permitted Development) Order 1995.

## BACKGROUND INFORMATION

4. Public houses play an important role in the community and have unique historic characteristics which should be recognised as key social, cultural and heritage assets within local neighbourhoods. Nationally, the rate of public house closure has risen steadily. This increase has been exacerbated by a number of factors including the introduction of permitted development rights which allowed public houses to be changed to alternative uses or demolished.
5. The Council completed an assessment of all public houses across the borough based on an analysis of licensing data and planning applications relating to public houses. There are currently 164 public houses open in Southwark today (excluding bars / other Use Class A4 drinking establishments).
6. In total the borough has lost a third of all public houses that were present in the borough ten years ago. Over the last ten years 79 public houses in the borough have closed down and 54 of these have subsequently been lost to demolition or change of use (see Appendix B). The council now have ten public houses which are designated as Assets of Community Value (ACVs) reflecting the aspiration from the local community to protect local public houses from redevelopment or change of use.
7. A Local Planning Authority (LPA) may introduce an Article 4 Direction to remove permitted development rights where the impact of development brought forward under

provisions in the General Permitted Development Order (GDPO) (2015) (as amended) cause harm.

8. The Planning Committee resolved to make an Immediate Article 4 Direction to protect traditional public houses across the borough in recognition of their unique community and historic value. The Immediate Article 4 Direction: Public Houses; came into effect on 13<sup>th</sup> March 2017 and relates to development consisting of the change of use, demolition or alteration of public houses in respect of:
  - General Permitted Development Order 2015 (as amended)
  - Schedule 2, Part 2, Class A and Class C (alteration or construction of any means of enclosure or any exterior painting)
  - Schedule 2, Part 3, Class A and Class B (changes of use to shops (A1), financial and professional services (A2), restaurants or cafes (A3))
  - Schedule 2, Part 11, Class B and Class C (demolition of buildings or means of enclosure).
9. Subsequently on 23<sup>rd</sup> May 2017 the Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2017 came into effect. This Order amends the Town and Country Planning (General Permitted Development) (England) Order 2015.
10. Article 3 of the Amendment (No.2) Order, 2017, removes permitted development rights allowing the change of use of a building falling within Class A4 to a building within Classes A1 (shops), A2 (financial and professional services), and A3 (restaurants and cafes). Article 3 also introduces a new permitted development right allowing the change of use of a building falling within Class A4 to a use falling within Class A3, or from those uses to a use falling within Class A4. These changes are defined by a new Use Class AA, 'drinking establishments with expanded food provision'. Article 4 of the Amendment (No.2) Order, 2017, removes permitted development rights allowing for the demolition of buildings used for a purpose within Class A4.
11. Despite the Amendment (No.2) Order, 2017, the Councils Immediate Article 4 Direction: Public Houses remains relevant in protecting public houses from permitted development. The Amendment (No.2) Order, 2017 does not protect a building within Class A4 from alterations. The Article 4 Direction contains detail of the pubs in Southwark and the special protection afforded to them individually. This would protect against any future national changes to legislation and reflect the circumstances relating to public houses on a local level.
12. The next stage in implementing the Article 4 Direction: Public Houses; requires that the Planning Committee authorise confirmation of the Article 4 Direction: Public Houses. This is a requirement under Article 4 (1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
13. Paragraph 1 (9) of Schedule 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) stipulates that in deciding whether to confirm a direction made under Article 4 (1), the local planning authority must take into account any representations received during the representation period specified in accordance with sub-paragraph (4)(d) of the same.

14. Paragraph 1(10) of Schedule 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) stipulates the local planning authority must not confirm a direction until after the expiration of –
- a. a period of at least 28 days following the latest date on which any notice relating to the direction was served or published; or
  - b. such longer period as may be specified by the Secretary of State of the direction.
15. Representations received during the consultation period are outlined within the report and summarised in further detail in the attached consultation report (see Appendix F).
16. The immediate Directions must be confirmed within six months of the date in which the Direction came into force (23th March 2017) to prevent expiration of the Direction in accordance with Paragraph 2(6) of Schedule 3, of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

#### **Article 4 Directions**

17. An Article 4 Direction can be used to remove specific permitted development rights in all or parts of the local authority's area. It would not restrict development altogether but instead ensures that development requires planning permission. A planning application for the proposal would need to be submitted that would then be determined in accordance with the development plan.
18. Article 4 Directions must apply to all uses within the relevant use class and it cannot restrict changes within the same use class. In this case public houses fall within Use Class A4 which covers all drinking establishments, including bars.
19. The government's national planning practice guidance (NPPG entitled 'When is permission required?') sets out guidance on the use of Article 4 Directions. The NPPG states that an Article 4 Direction to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. It also states that in deciding whether an Article 4 Direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address (paragraph 038).
20. Article 4 Directions can either be immediate or non-immediate depending upon when notice is given of the date on which they come into force. Immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area (NPPG paragraph 045). In the case of this report, the council introduced an Immediate Article 4 Direction on 13th March 2017, for which the process is as follows:
- Stage 1 (the current stage) - The council makes an Article 4 Direction withdrawing permitted development rights with immediate effect;
  - Stage 2 – Publication/Consultation stage. The council:-
    - 1) publishes the notice of direction in a local newspaper;
    - 2) formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of 21 days;
    - 3) and place notices up on site for 6 weeks;

- Stage 3 – On the same day that notice is given under Stage 2 above, the council refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction.
- Stage 4 – Confirmation Stage - The Direction comes into force on the date on which the notice is served on the owners/occupiers of the land. The council has between 28 days from the date of when the notice comes into effect and 6 months to decide whether to go ahead and confirm the Direction, taking into account any representations which have been received. If this does not happen within 6 months, the Direction will lapse.

## Compensation

21. In some circumstances the council can be liable to compensate developers or landowners whose developments are affected by Article 4 Directions. Local planning authorities are liable to pay compensation to landowners who would have been able to develop under the permitted development rights that an Article 4 Direction withdraws, if they:
  - Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction; or
  - Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 Direction being in place.
22. Compensation may also be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. ‘Abortive expenditure’ includes works carried out under the permitted development rights before they were removed, as well as the preparation of plans for the purposes of any work.
23. Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.
24. However, the compensation arrangements differ for cases where a development order in respect of prescribed development is being withdrawn. The definition of prescribed development can be found in regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended). In cases such as these compensation is not payable if the following procedure is followed, as set out in section 108 of the Town and Country Planning Act:
  - The planning permission withdrawn is of a prescribed description as set out in the Town and Country Planning (Compensation) Regulations 2015 (as amended).
  - The permitted development right is withdrawn in the prescribed manner.
  - Notice of withdrawal is given in the prescribed manner:
    - Not less than 12 months before it takes effect.
    - Not more than the prescribed period of two years.
25. With the exception of development permitted by Schedule 2, Part 4, Class D, none of the proposed permitted development classes to be removed are prescribed development. Therefore compensation could be claimed as described above and would be payable while the Article 4 Direction remains in force. For developments relating to Class D (change of use to temporary flexible uses) compensation will only be payable on applications made within 12 months starting from the date that the immediate Direction comes into force. After expiry of 12 months no compensation would be payable.

## **Planning applications**

26. If permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. In Southwark's case, the development plan includes the London Plan, the Core Strategy, saved policies in the Southwark Plan and adopted area action plans. The relevant saved policies relating to change of use or demolition of public houses in the Southwark Plan are policy 1.7 (development within town and local centres), policy 1.10 (services outside the town and local centres), policy 3.15 (conservation of the historic environment), policy 3.16 (conservation areas) and policy 3.17 (listed buildings). Policies contained within the London Plan and the NPPF are also relevant as discussed further in the policy context section of the report below.
27. The reason for confirming the Article 4 Direction: Public Houses is because the council recognises the positive economic, social and heritage value public houses bring to the vitality of the borough and in maintaining the strong historic character of local areas. The council wishes to protect these attributes.
28. It should be noted that where submission of a planning application is required as a result of withdrawal of permitted development rights through an Article 4 Direction, the council cannot charge a planning application fee.

## **KEY ISSUES FOR CONSIDERATION**

### **Why public houses matter**

29. Public houses play an important role at the heart of many local communities. Sometimes colloquially referred to as 'the local', pubs have historically been located on the corner of residential streets, in town centres and along key transport routes. Pubs play a role in promoting community cohesion, providing places to eat, drink and socialise and acting as informal meeting spaces for local interest groups. Pubs often host events, games, sports clubs, live music and live sport, contributing to the availability of facilities and community resources in local areas to meet the needs of a wide range of community groups.

### **Why do public houses close?**

30. The London Plan refers to recent research which highlights the rapid rate of closures over the past decade and the factors behind these. The mayor of London's Town Centre SPG (2014) also acknowledges the risk and impact of pub closures and states that local authorities may consider the use of Article 4 Directions to limit the impact of permitted development rights (paragraph 1.2.21).
31. Estimates from IPPR<sup>1</sup> and CAMRA<sup>2</sup> (2012-2015) range from between 16-29 pub closures per week in Britain. The reasons for pub closures are varied, however the implications of permitted development is one factor which can result in the demolition or conversion of pubs to alternative uses without planning permission. Given the importance of local pubs as highlighted within this report, and the strength of national and local policy changes acknowledging the risk to the loss of pubs, it is considered that

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<sup>1</sup> IPPR, Muir, R. Pubs and Places: The Social Value of Community Pubs (2012)

<sup>2</sup> Campaign for Real Ale (CAMRA): Pubs Matter, Planning Briefing Note (2015)

public houses should be subject to detailed planning analysis before the change of use, alteration or demolition of the pub is accepted.

32. Over the last ten years Southwark has received 68 planning applications (including prior approval applications) in relation to the change of use or demolition of a pub. 49 of these have been implemented and the remainder refused, withdrawn or pending a decision. Out of a total of 79 pubs that have closed over the last ten years, the remaining 30 are presently vacant, or in other uses, with three pubs due to reopen after refurbishment. In total the borough has lost a third of all pubs that were present in the borough ten years ago.

## Policy Context

33. The London Plan supports the security of 'lifetime neighbourhoods' particularly where local services (including public houses) meet the needs of the local community (Policies 3.1, 4.8 and 7.1). Policy 4.8 encourages local policies to prevent the loss of valued community assets including public houses. The Mayor's Town Centre SPG (2014) also acknowledges the risk and impact of pub closures and supports the protection and enhancement of facilities and services that meet the needs of particular groups and communities<sup>3</sup>. The figures provided in this report demonstrate that pub closures have affected Southwark over the last ten years. The rate of closure is approximately 8-10 pubs per year and is fairly evenly spread in terms of location across the borough (see Appendix B).
34. The NPPF sets out the three dimensions to achieving sustainable development which lies at the heart of national policy and the purpose of the planning system. Public houses contribute to the economic, social and environmental roles of sustainable development which are at risk from permitted development which could allow demolition or change of use without planning permission or an assessment of the loss of the building or facility.
35. **The economic role:** The NPPF supports the growth of a strong and competitive economy and the vitality of town centres. Pubs support local employment, both on a primary basis and also supporting local businesses such as breweries and local food manufacturing or suppliers. Pubs also support the vitality and vibrancy of town centres, contributing to the evening economy, promoting safety and surveillance in town centres at night. The Southwark Retail Study (2015) states that food and beverage operators including pubs support other major leisure uses (such as cinemas), supporting the demand for other town centre development and growth. The food and beverage expenditure in the borough is expected to increase in real terms (excluding inflation) by 26% between 2014 and 2031.
36. **The social role:** The NPPF promotes inclusive communities including facilitating social interaction and guarding against the unnecessary loss of valued facilities and services. The NPPF supports planning positively for the provision and use of shared space and community facilities (specifically including public houses, para 70). Public houses act as a local meeting place facilitating social interaction and often acting as a community hub. Pubs support a wide range of community activities, including sports, social and members clubs.

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<sup>3</sup> Steve O'Connell A.M. Keeping Local. How to save London's Pubs as community resources. London Assembly Conservative Group, GLA 2013. CAMRA. Greater London Region / Capital Pubcheck, 2012

37. **The environmental role:** The NPPF supports the conservation and enhancement of the historic environment, recognising that heritage assets are an irreplaceable resource. Many local public houses have a unique architectural or historic value, and are often instantly recognisable, acting as local landmarks and contributing to the interesting character and historic fabric of local areas.
38. The council is also preparing the New Southwark Plan to replace the saved policies in the Southwark Plan and to set out the regeneration strategy for the borough. The Preferred Options version of strategic and development management policies was consulted on in summer 2015. Proposed Policy DM34 (Pubs) sets out a number of criteria when considering development that results in a loss of pub. The proposed policy recognises financial viability, heritage value and ACV status of pubs as material considerations in decision-making. In accordance with the NPPF decision-takers may give weight to relevant policies in emerging plans depending on the stage of preparation of the plan, the extent of unresolved objections and the degree of consistency of relevant policies in the emerging plan to the policies in the NPPF. The council received five representations to emerging Policy DM34 in the preferred options consultation in support of the policy, and one requesting a reduction in the length of marketing required. The council also received general support to the previous version of the policy in the issues and options consultation of the New Southwark Plan.

## Heritage

39. Southwark has a variety of architectural and historic public house types ranging from early country inns to Victorian and Edwardian public houses, pubs from the inter-war period, and local pubs developed as part of twentieth century housing estates. Many pubs are recognised for their quality of exterior architectural value and sometimes with original interiors, which have been the subject of statutory listing.
40. Other pubs are located in conservation areas, and are often recognised as focal points of the local neighbourhood as a significant local heritage asset or landmark.
41. Some pubs are recognised as buildings of townscape merit, or key unlisted buildings in adopted SPDs or AAPs (e.g. Blackfriars Road SPD, Peckham and Nunhead AAP etc) however the borough also has a number of pubs outside of these areas which can be individually considered of local historic interest and/or heritage merit. The typologies identified below give some indication of the types of pubs that are located within Southwark which are not statutorily listed or recognised formally as a local asset, but which demonstrate unique historic value.

## Early coaching inns

42. Public houses as a building type date back to the medieval period where features of alehouses, taverns and inns survive in some examples today. A good example is The George Inn, located off Borough High Street, being the only surviving galleried coaching inn in London and dating back to the seventeenth Century.



The George Inn

[www.nationaltrust.org.uk](http://www.nationaltrust.org.uk)

### **Pre-Victorian**

43. Many pubs in the 18<sup>th</sup> Century served specific purposes as coaching inns and taverns and were often located in ground floor shops or the front rooms of houses. They often had multiple purposes, for example the Mayflower in Rotherhithe which doubled up as a post office for seafarers docking at Rotherhithe.

#### The Mayflower, Rotherhithe Street



*The Mayflower pub stands on the site of The Shippe pub that dates back to around 1550.*

*It is close to where the Mayflower ship set sail for America.*

[www.mayflowerpub.co.uk](http://www.mayflowerpub.co.uk)

### **Victorian / Edwardian**

44. The majority of pubs in Southwark were built in the mid-nineteenth century following the Beer Act of 1830 which relaxed regulations with regard to the brewing and sale of beer. The elaborate pubs of the late 19<sup>th</sup> Century and early 20<sup>th</sup> Century came to be known as gin palaces. They are characterised by cut or etched glass panels, bold classical motifs, mirrors, decorative plasterwork, ironwork, decorative tiles and timber panelling. They were designed to be prominent and to project an image of comfort mixed with grandeur and sophistication. These were pubs which operated usually for the sole purpose of drinking and were often found in backstreets and contained a myriad of small spaces in the interior.

#### Royal Oak, Tabard Street



[www.harveys.org.uk](http://www.harveys.org.uk)

### The Gladstone, Lant Street



[www.deserter.co.uk](http://www.deserter.co.uk)

*Fine examples of later 19<sup>th</sup> Century public houses, The Gladstone is the sole surviving building to the south side of Lant Street.*

### **Inter-war**

45. Inter-war pubs reflect an important period in Britain's history and are generally plainer in architectural design. This reflects the change in the Victoria era separation of saloon and public bars and opening up pubs to the wider community, including a change in the prominence of vertical drinking. These pubs included more facilities for family-orientated recreation, games and food. The predominant styles of inter-war pubs were Neo-Georgian, Neo-Tudor or Tudor Revival and were often located in more prominent positions in the neighbourhood. Ref: Historic England

### The Old Nun's Head, Nunhead Green



*Constructed in 1935, 2 storeys with attic. Red brick ground floor. Half timbered 1st floor with red brick nogging, some in herring bone pattern, and 3 rendered panels with the pub's name in the central panel. Tiled roof with hipped dormers.*

## Post-war

46. Pubs constructed in the mid-late twentieth Century often accompanied large scale housing estate building as central community hubs, often located in local shopping parades.

### Canterbury Arms, Maddock Way



[www.whatpub.co.uk](http://www.whatpub.co.uk)

47. These typologies, among others, are evident across Southwark and represent a varied stock of building styles that are important to local historic character. Public houses were often built as the focal point of the community, both in the middle of residential areas as well as in town centres or local parades. Public houses often represent a deep local significance in the area, particularly where multiple pubs have been demolished and rebuilt over time on the same site, or through the pub name, bearing historical significance and often reflective or representative of local street names.
48. In terms of heritage value, public houses in Southwark have been assessed whether they are statutory listed buildings, whether they are in conservation areas or whether they have been formally identified as a building of local townscape merit or key unlisted building in the council's adopted SPDs and AAPs (i.e. where a characterisation study has been carried out for that area). It is important to note that there are a number of pubs that have not been formally identified for heritage merit using this methodology, but which do not preclude them from being locally important. The typologies identified above give some examples of the unique historical characteristics of pubs which should be judged on an individual basis through the planning application process.
49. Permitted development rights relating to demolition do not apply to listed buildings (as Listed Building Consent would be required). Additionally planning consent is required for

the demolition of buildings within a conservation area as required by the Enterprise and Regulatory Reform Act (2013). Therefore the Article 4 Directions need not apply in relation to demolition for pubs which are statutorily listed or within conservation areas.

50. It is recommended that the Article 4 Direction is applied in relation to demolition to the remainder of open and closed public houses based on the typologies identified above and the unique characteristics of pubs across the borough. It is considered that each pub should be considered by thorough assessment of local context and heritage merit, which can be achieved through the planning application process.

### Community role

51. The community value of pubs is recognised at national, regional and local levels as an essential part of promoting community cohesion and achieving lifetime neighbourhoods.

52. Pubs often host events, games, sports clubs, live music and live sport, as well as serving as a social hub for residents in the local area. In residential areas, public houses can provide a key focal point to the neighbourhood, acting as a local landmark and meeting place for the local community. They may often be the only type of community facility in the local area, which exacerbates the importance of retaining pubs in these areas, and particularly combined with the potential historical context or architectural/landmark value.

53. The local community and residents of Southwark are keen to identify, support and protect public houses for both their heritage and community value. Many community groups have nominated their local pubs for inclusion as an Asset of Community Value (ACV) and have campaigned strongly where pubs have been at risk from redevelopment or conversion through planning applications. Presently 10 pubs in Southwark are ACVs (or already in community ownership) and a further 3 pubs were nominated by the local community.

54. The Ivy House in Nunhead was the first pub in the UK to be listed as an ACV and the first building to be bought by a community co-operative under the community right to bid provisions of the Localism Act 2011. The pub is a venue for events, live music, comedy, theatre and food.

### The Ivyhouse, Stuart Road



*“The Ivy House owes its rather lonely situation at the brow of Stuart Road's slight hill to a German V1 bomb that crashed into the adjoining row of shops, in the afternoon of July 1st 1944, killing seventeen people. All the shops were destroyed or damaged beyond repair. When the war ended the celebration party was held in the pub, the surviving physical heart of the community.”*

[www.ivyhouseunhead.com](http://www.ivyhouseunhead.com)

55. The analysis provided in Appendix C includes assessment of whether the pub provides any of the following five community benefits (based on information available at the time of writing):

- Dart board/pool table
- Licence to show televised live sport
- Room/areas available to hire (for meetings, events or parties)
- Hosts regular events (e.g. music nights, quiz nights, karaoke, poetry recitals)
- WiFi availability

56. The analysis (for Southwark borough only) also includes whether the pub is the only public house within 600 metres (which is one of the criteria under policy 1.10 of the Southwark Plan regarding the facility being the only one of its kind within 600m). Additionally, those pubs that have ACV status or have been nominated for an ACV have been identified in Appendix C. However it is acknowledged this is not an exhaustive list of community benefits and the aforementioned benefits of social interactions and pubs acting as a local meeting point must also be given due consideration. This is particularly the case for pubs located outside of town centres and local shopping parades which may be the only community facility in the immediate vicinity of a residential area.

### **Town centre and local parades**

57. Public houses contribute to the vitality and viability of town centres, offering complementary services to the retail environment and the evening economy. Pubs bring footfall to town centres and local parades at different times of the day and night providing opportunities for recreation and social interaction. Pubs often act as an anchor to other types of leisure and retail uses in local areas, promoting vibrancy in town centres and promoting active frontages in local parades. Pubs are a unique part of the retail offer provided in town centres and local parades, which contributes to the variety of A Class uses in these areas especially beneficial to the evening economy. The potential loss of pubs to other types of retail uses through permitted development rights would have a potential negative impact on the overall function of the town centre or local parade particularly in relation to community meeting places and evening events. Public houses therefore play an important and unique economic role and contribute to sustainable neighbourhoods.

58. In Appendix C, pubs in town centres or local shopping parades are identified.

### **Methodology**

59. The NPPF advises that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. This is reiterated in the NPPG which also states local planning authorities should identify clearly the potential harm that the direction is intended to address and that immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area

60. The council has undertaken an assessment of all pubs in the borough based on the above criteria. Public houses are unique from most modern bars (other Use Class A4

drinking establishments) therefore the assessment is based on public houses only based on the historical context of pubs, heritage value and community function.

61. On the basis of the above analysis of heritage, community and town centre roles of pubs, and the significance of the number of pubs lost in Southwark over the last 10 years, it is considered that the Article 4 Directions should apply immediately for all identified open public houses in Southwark. The exceptions are where a planning application has been approved for the demolition of an open pub (in the case of The Boatman public house in Jamaica Road). The council has received prior approval applications for pubs whereby no planning assessment applies which means that the loss of a pub cannot be prevented.
62. In relation to closed pubs, those identified which are already subject to a planning application that has been granted (and has not expired), will not be protected by the Article 4 Direction. Five pubs have had planning permission granted already for change of use therefore these pubs will only be protected from demolition or alteration. The remaining closed pubs are considered to have the potential to reopen as public houses and therefore protection is considered appropriate. The Article 4 Directions will not preclude the demolition, alteration or change of use of the pubs however will ensure that assessment of whether these changes would be appropriate can be made through the planning application process. This will include the assessment of material considerations and the application of adopted policy.
63. Based on the above methodology, pubs in Southwark are considered to have unique heritage, retail and community benefits. In some cases pubs will not always be able to remain operational and change of use or redevelopment may offer the best solution for a pub site. However, due to their unique characteristics it is considered all pubs should be considered on their individual merits through the planning application process and judged individually based on applicable planning policies.

### **Areas affected**

64. The NPPG states that an Article 4 Direction to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. For the reasons outlined above it is considered the Article 4 Directions should relate to public houses only (i.e. the Article 4 Directions do not include bars or other drinking establishments) due to their historical and community significance as outlined above. The pubs and the relevant parts of the Article 4 Direction they apply to are listed in Appendix B, for which individual site plans are provided and edged red in Appendix D.

### **Conclusions**

65. An Article 4 Direction can be made if the council is satisfied that it is expedient that development should not be carried out unless planning permission is granted on application and that in the case of immediate directions, development presents an immediate threat to local amenity or prejudices the proper planning of an area. Based on concerns regarding public house closures nationally and locally, the council undertook a detailed analysis of planning applications and licensing data to ascertain the impact of public house closures in Southwark.
66. This report also outlines in detail the unique and special characteristics public houses contribute to local neighbourhoods and communities. The data collected has shown that

over a third of public house have been lost in the borough over the last ten years. Based on the rate of public house closures, the historical and community significance of public houses and the impact of amended permitted development rights in relation to their alteration, it is considered appropriate to protect public houses from permitted development by confirming Article 4 Direction: Public Houses as specified by the General Permitted Development Order 2015 (as amended).

### **Representation period**

67. The representation period on the Article 4 Direction: Public Houses complied with the provisions set out under Article 4 (1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and ran from 16<sup>th</sup> March to 27<sup>th</sup> April 2017. Notice of the direction was made by:

- Local advertisement in Southwark News (local press).
- Mail-out to 5,000+ email addresses to the council's planning policy consultation notification mailing list.
- Article 4 Direction council webpages updated with relevant information on the Direction, the representation period, the planning committee report and other supporting documents available to view and download
- Online Consultation Hub page which provided information on the Direction and a portal for submitting representations.
- Site notices outside each public house affected
- Letters to occupiers/owners of each public house affected
- Notice to the Secretary of State

68. During the representation period 37 representations were received of which 32 respondents expressed their support for the Article 4 Direction. Reasons given in support of the Article 4 Direction included concern at the loss of public houses across the borough and the impact this is having on community cohesion, local distinctiveness and the preservation of local heritage assets.

69. In support of the Article 4 Direction respondents identified impacts due to the loss of public houses as including:

- The loss of public houses resulting in the loss of local community hubs which support social and community cohesion.
- The loss of public houses contributing to a sense of diminishing local character and distinctiveness.
- The loss of public houses which in and off themselves are frequently valuable heritage assets offering significant historic value.

70. Points were raised in support of the confirmation of the Direction which cannot be considered in the decision to confirm the Direction; including:

- The council will continue to allow the loss of public houses to redevelopment and demolition to residential or other uses not protected by the Article 4 Direction.
  - The council has powers to revoke permitted development rights by applying an Article 4 Direction. It is not possible to prevent change of use, demolition or alteration to use classes which are not considered by the GDPO, 2015 (as amended).

71. This issue cannot be considered in determining whether to confirm the Direction as it relates to the determination of individual planning applications. However the Article 4 Direction gives the additional layer of protection preventing the change of use and demolition of pubs highlighting the unique historic and community importance of pubs in Southwark.

72. Five respondents objected to the Article 4 Direction. Reasons given include:

- Considers the council unwarranted in protecting pubs, If, as is the case nationally, demand for drinking in pubs is in decline. Raises concerns about the social and health problems arising from drinking in pubs.
- Considers Article 4 Direction unnecessary. If pubs are unviable then they should be used to fulfil housing needs.
- Generally Unsupportive. Considers pubs an obsolete relic.
- Justification for the Article 4 Direction is not particularly strong. It is highlighted that the committee report states 54 pubs have been lost over the past ten years to change of use or demolition although there is no analysis as to the reasons for this, including acknowledgment that this may be due to over supply.
- Government guidance is clear that Article 4 Directions should be limited to situations where it is necessary to protect local amenity or the well-being of the area. This requires a geographic analysis of availability and type of local house by area which has not taken place.
- There is no published, in-depth analysis of individual pubs. The report states that this has been undertaken but all that is available as a public document is cursory information provided in a tabulated format with no proper analysis undertaken.
- By removing PD rights from public houses, there may also be unintended consequences which could cause further difficulties to a sector already facing challenges to operating viability. For example, new operators may be discouraged from taking on struggling establishments if they do not have a fall back option of PD rights.

73. A further detailed summary of representations received during the representation period, along with the council's response, can be found in the consultation report, attached as appendix F. Paragraphs 26 to 39 discuss the issues raised through representations relevant to the confirmation of the Direction in more detail.

## **Conclusions**

74. Having taken into account the representations made and for the reasons as detailed in this report, the council is satisfied that permitted development rights granted by:

- General Permitted Development Order 2015 (as amended)
- Schedule 2, Part 2, Class A and Class C (alteration or construction of any means of enclosure or any exterior painting)
- Schedule 2, Part 3, Class A and Class B (changes of use to shops (A1), financial and professional services (A2), restaurants or cafes (A3))
- Schedule 2, Part 11, Class B and Class C (demolition of buildings or means of enclosure).

present an immediate threat to the protection of traditional public houses across the borough in recognition of their unique community and historic value and therefore the Direction should be confirmed.

## **Community Impact Statement**

75. Southwark Council is committed to achieving the best quality of life for its residents. This includes maintaining a strong local economy and revitalised neighbourhoods for the communities within Southwark. It is vital that a strong policy framework ensures the borough's heritage and community values continue to be protected for the benefit of local residents. Confirmation of the Article 4 Directions will protect against the alteration of pubs without a robust analysis through the planning process.
76. The equalities analysis (Appendix E) has concluded that the Article 4 Directions will have a neutral impact on equalities and they will assist the council in implementing its planning policy framework, which has also undergone equalities analysis.

## **Financial Implications**

77. As is noted above, should the local authority refuse planning permission for development that otherwise would have been granted by the GPDO the council has a potential liability for compensation. In the case of Schedule 2, Part 4, Class D this is limited to one year from the date the Direction is introduced. Any compensation may relate either to a depreciation in the value of land or buildings which results from failure to gain planning permission or to abortive expenditure. Therefore there is a risk that the proposed Directions will make the council liable to compensation claims. Because circumstances vary widely, it is not possible to gauge the magnitude of such claims.
78. Any claim for compensation will be dealt with through the council's official complaints procedure and it is anticipated that any award would be contained within the Planning division's budget. This position will be monitored and any award that cannot be contained within existing departmental revenue budgets will be reflected in the council's revenue budget monitoring arrangements for funding from council.
79. Any potential drawdown from council reserves for the payment of compensation claims will be subject to agreement by the relevant cabinet member, or full cabinet in the case of claims over £50,000.
80. Staffing and any other costs connected with this recommendation will be contained within existing departmental revenue budgets.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Legal Services (KC18/08/2017)**

81. Planning Committee is being asked to confirm the Directions as detailed in paragraph 1 and 2 of this report and which can be found annexed at Appendix A.
82. Part 3F of the Constitution under the section titled "Matters reserved for decision by the Planning Committee" at paragraph 10 reserves to Planning Committee any authorisations under Article 4 of the Town and Country Planning Permitted Development Order. This therefore confirms that Planning Committee has authority to take these decisions.
83. In regard to compensation matters, section 108 of the Town and Country Planning Act 1990 (as amended) specifies the circumstances under which compensation is payable for the refusal or a conditional grant of planning permission which was formerly granted by a development order or a local development order.
84. In regard to compensation matters, section 108 of the Town and Country Planning Act 1990 (as amended) specifies the circumstances under which compensation is payable for the refusal or a conditional grant of planning permission which was formerly granted by a development order or a local development order.
85. Section 107 of the 1990 Act which sets out the entitlement to compensation where planning permission has been revoked and modified is of relevance here as section 108 of the 1990 Act extends the entitlement for compensation under s107 to circumstances where planning permission granted by a development order has been withdrawn by an Article 4 Direction.
86. In regard to the immediate Article 4 Directions withdrawing rights granted under Schedule 2, Part 4, Class D is a 'prescribed description' development and because it is an immediate direction (the council is not giving more than 12 months notice of the making of the direction) then the council will need to pay compensation for claims made within 12 months of the date of the direction.
87. The value of the claim for compensation would differ in each individual case but in the event that claims are between £5,000 and £50,000 then they would be sanctioned by the relevant cabinet member under Part 3D paragraph 5 of the Constitution. Any compensation claims over that amount would require the approval of full Cabinet.

### **Human rights and equalities**

88. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various Convention rights may be engaged in the process of making, considering and confirming Article 4 Directions such as Article 1 of the First Protocol of the Convention. The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a

whole". Both public and private interests are to be taken into account in the exercise of the council's powers and duties as a local planning authority. Any interference with a Convention Right must be necessary and proportionate.

89. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of all of the owners have been considered under the Human Rights Act 1998, in particular those contained within Article 1 of the First Protocol the Convention which relates to the Protection of Property.
90. In consulting upon the confirmation of the immediate Article 4 Directions the council has had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010. The updated Equalities Analysis can be found at Appendix E to this report.
91. The PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.

#### **Strategic Director of Finance and Governance (CE17/012)**

92. This report is requesting the planning committee to authorise the confirmation of the Article 4 Directions (Appendix A) to withdraw the permitted development rights granted by the General Permitted Development Order 2015 (as amended) for changes of use, demolition and alteration of public houses in Southwark in accordance with the methodology outlined in this report in relation to the public houses specified in Appendix C.
93. The report is also requesting the planning committee to note the equalities analysis of the proposed Article 4 Directions (Appendix E) and also delegate to the Director of Planning the arrangements for confirming the Article 4 Direction including compliance with the notification requirements under the Town and Country Planning (General Permitted Development) Order 1995. Full details and background is provided within the main body of the report.
94. The strategic director of finance and governance notes that the proposed Directions may make the council liable for compensation claims but it is not possible to gauge the magnitude of such claims as circumstances vary. It is noted that any claim for compensation will be dealt through the council's official complaints procedure and sanctioned by the relevant cabinet member under the council's constitution as reflected in the report.
95. It is also noted that any agreed claims for compensation would be contained within the existing departmental revenue budgets where possible before funding from councils reserves are requested.
96. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Saved Southwark Plan 2007	<a href="https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan">https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan</a>	planningpolicy@southwark.gov.uk
New Southwark Plan Preferred Option	<a href="https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan?chapter=4">https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan?chapter=4</a>	planningpolicy@southwark.gov.uk
The Core Strategy 2011	<a href="http://www.southwark.gov.uk/info/200210/core-strategy">http://www.southwark.gov.uk/info/200210/core-strategy</a>	planningpolicy@southwark.gov.uk
General Permitted Development Order 2015	<a href="http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf">http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf</a>	planningpolicy@southwark.gov.uk

## APPENDICES

No.	Title
Appendix A	Article 4 Directions to withdraw Permitted Development Rights granted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended)
Appendix B	Map of open and closed pubs in Southwark
Appendix C	Schedule of pubs subject to the Article 4 Direction
Appendix D	Maps of public houses subject to the Article 4 Direction
Appendix E	Equalities analysis
Appendix F	Consultation Report

## AUDIT TRAIL

<b>Lead Officer</b>	Simon Bevan, Director of Planning
<b>Report Author</b>	Mark Spence, Senior Planning Policy Planner
<b>Version</b>	Final

<b>Dated</b>	18 August 2017	
<b>Key Decision?</b>	Non-key	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Director of Legal Services	Yes	Yes
Finance Director	Yes	Yes
<b>Cabinet Member</b>	Yes	No
<b>Date final report sent to Constitutional/Community Council/Scrutiny Team</b>		21 August 2017