Committee: Borough Plan Advisory Committee

Date: 07 March 2013

Agenda item: 06

Wards: all

Subject: The use of the planning system to restrict betting shops in Merton

Lead officer: Director for Environment and Regeneration, Chris Lee

Lead member: Cabinet Member for Environment and Regeneration, Councillor Andrew Judge

Forward Plan reference number: N/A

Contact officer: Claire O'Donovan, Tara Butler – Future Merton team

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Recommendations:

A. That Members note the contents of this report

B. That government be requested to give betting shops their own planning Use Class, without the ability to change to other uses.

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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1. The purpose of this report is to identify the number, location and change over time of betting shops in Merton and to explore whether the number of betting shops could be restricted in Merton through planning mechanisms such as developing planning policy or issuing an Article 4 Direction.

1.2. This report was first presented to Merton's Licensing Committee on the evening of 28 February 2013. It has been circulated to the Borough Plan Advisory Committee on 28 February 2013 and the outcome of Merton's Licensing Committee will be reported at the Borough Plan Advisory Committee meeting on 07 March 2013.

2 DETAILS

2.1. This report explores the number, location, concentration and changes over time of the numbers of betting shops in Merton and, if there is an over-concentration, whether the planning system can be effectively used to manage this.

2.2. The Gambling Act (2005) and national planning policy allow flexibility for betting shops to locate in Merton. The planning system's Use Classes Order allows certain premises (such as cafes, restaurants, bars, pubs, estate agents, banks and takeaways) to become betting shops without the need for planning permission. However, despite this flexibility there has been little change in the number or concentration of betting shops in Merton over the past 5 years, nor is future change forecast.

2.3. For the planning system to be used to restrict the development of new betting shops (via a new planning policy or an Article 4 Direction), the Council has to

provide the evidence that significant harm is being caused by the presence or concentration of betting shops.

2.4. Other London local authorities have had similar concerns with the proliferation of betting shops in their boroughs' including Barking & Dagenham, Hackney, Haringey and Lewisham. Appendix A to this report sets out the planning measures being considered included adopting policy, using Article 4 direction or lobbying the government to put betting shops in its own Use Class without any permitted changes to other uses.

2.5. Since 2011 Merton's officers have been examined planning and licensing records and antisocial behaviour records to identify if there has been a significant increase in the number or concentration of betting shops in Merton in the last few years. The research concludes that there has not been a significant increase in the number or concentration of betting shops since 2007, despite the potential for such an increase to occur under the Gambling Act 2005 and via permitted development.

2.6. Betting shops in Merton are not overly concentrated in any one area, unlike the other local authorities who have taken action.

2.7. Although government planning rules since 2005 create the potential for a large number of shop units in Merton to become betting shops without the need for planning permission, there hasn't been a significant change in the number or concentration of such premises over the past 5 years, nor is future change forecast. There is wider evidence that there has been a nationwide increase in the number and range of people gambling via the internet during this period;

2.8. Neither the Met police nor Council officers have flagged up persistence or significant antisocial behaviour issues caused exclusively by the presence or concentration of betting shops in Merton.

2.9. Research of other London boroughs found that Merton also has one of the lowest number of betting shops and that these are not concentrated into any one area.

2.10. Officers concluded that the evidence does not support the restriction of betting shops in Merton via the planning system (either a new planning policy or an Article 4 Direction).

2.11. Appendix A to this report sets out the complete research report.

3 ALTERNATIVE OPTIONS

3.1. None for the purposes of this report.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. Consultation has been undertaken with other London boroughs, and the findings are set out in Appendix A to this report.

5 TIMETABLE

5.1. None for the purposes of this report.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. As set out in Appendix A of this report.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. None for the purposes of this report.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. As set out in Appendix A of this report.

9 CRIME AND DISORDER IMPLICATIONS

9.1. As set out in Appendix A of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None for the purposes of this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

Appendix A – Merton betting shop research (February 2013)

LB Merton

Betting Shops Research

February 2013

Table of Contents

1 Introduction:

2 The purpose of this report is to identify the number, location and change over time of betting shops in Merton and to explore whether the number of betting shops could be restricted in Merton through planning mechanisms such as developing planning policy or issuing an Article 4 Direction.

Factors supporting betting shops:

3 Flexibility introduced by the Gambling Act (2005) and the planning system's Use Class Order the 'permitted development rights' allow for the potential increase and concentration of betting shops in an area like Merton. This section briefly explains how these are key factors, outside of the typical planning application process, which influences the number of betting shops in an area.

Gambling Act (2005):

4 The Gambling Act (2005) introduced a unified regulator for gambling in Great Britain and a new licensing for gambling to be conduced by the Commission or by Licensing Authorities, depending upon the matter to be licensed.

5 The Commission are responsible for granting licences for commercial gambling operators, personnel working in the industry and some larger scale gaming. The Gambling Commission assess prospective operators to ensure that it has appropriate governance procedures and is compliant with the overriding aims of the legislation. If compliant, the Gambling Commission then issue licenses to prospective gambling providers. Successful applicants may then apply for a premises license from the Licensing Authority where it wishes to conduct its gambling activities.

6 Licensing authorities have powers to license gambling premises within their area, as well as undertaking functions in relation to lower stake gaming and compliance with the Gambling Act. The Licensing Authority is required to approve premises licenses for all gambling activities in the locality including:

- Bingo;
- Betting shops;
- Adult gaming centres (high stakes electronic gaming);
- Family gaming centres (lower stakes electronic gaming);
- Casinos; and,
- Racecourses and dog tracks.

7 The Act sets out three licensing objectives, which underpin the functions that the Commission and Licensing authorities will perform. These objectives are central to the regulatory regime. They are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and,
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

8 The current gambling license framework, in which the Licensing Authority must 'aim to permit' restricts the power of the authority to act to prevent the clustering of betting shops and does not provide solutions to other amenity issues associated with the clustering of betting shops. Another significant change is the removal of a demand test within the Gambling Act which ensured that the provision of betting shops was proportionate to need.

9 In considering an application for a premises license, there are a number of license conditions which the Local authority can consider, these are known as mandatory, default and discretionary conditions of the license. Mandatory and default conditions are prescribed by the Gambling Act. Mandatory conditions cannot be varied by the Licensing Authority but default conditions can be altered or removed by the Licensing Authority.

10 The Licensing Authority does have limited powers to vary the conditions of the premises license under the discretionary guidance. Such variations may include the opening hours or security arrangements for the proposed gambling establishment. Once again, the conditions that the Licensing Authority can set within individual licenses are tightly prescribed by the Gambling Commission and cannot contravene guidance issued through the regulator. In summary, the Licensing Authority can only set conditions for a premises license where:

- They are relevant to make the building safe;
- Are directly related to the premises;
- Are fair and reasonable and relate to the scale of the premises;
- Reasonable in all other aspects.

11 When the Licensing Authority is considering a premises license from a gambling operator, the Gambling Act specifies that representations may be made from a variety or local stakeholders including responsible authorities (e.g. Local Authority, police, planning, fire authorities), a person/ resident close to the prospective gambling premises, local business interests or representatives of any of the preceding groups (such as lawyers, Councillors or other community representatives). However, representations from any of the above parties can only be made if they are relevant to the three overarching gambling objectivise as detailed in paragraph 14 above.

12 To note, public nuisance and public safety are not included in these objectives and the council cannot take these into account in any representations that may be received when licences are applied for.

13 In order to influence gambling license decisions, local representations must produce sufficient evidence to be able to demonstrate how the granting of a specific premises license will affect the overarching gambling principles. All appeals against decisions made by the Licensing Authorities in England and Wales are made to the Magistrates Court.

Use Class Order:

14 The Town and County Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categorises known as 'Use Classes'. The Use Class Order provides a schedule of class use for land and buildings under the Town and County Planning Order. The schedule of class use for land and buildings that is relevant to betting shops:

- **A1:** Retail
- **A2:** Financial & Professional Services (which includes betting shops, banks and estate agents)
- **A3:** Restaurant and Cafes
- **A4:** Drinking Establishments
- **A5:** Hot food Take-away

15 Under the current Use Class Order, planning permission is not needed under 'permitted development rights' to change from another A2 Use (for example banks, estate agents) to a betting shop, nor from Use Class A3 (restaurant and Cafes), Use Class A4 (Drinking Establishments) or Use Class A5 (Hot Food Takeaways) to a betting shop. Therefore betting shops can open in former restaurants, cafes, drinking establishments, banks, estate

16 In circumstances where there are other local or site specific concerns 'Article 4' direction to remove permitted changes of use could be considered or planning policy could be imposed to restrict the number of betting shops in Merton.

17 For a planning policy or an Article 4 Direction to restrict development the Council has to prove through evidence the harm that is being caused from the particular development.

Ways that local authorities can restrict the proliferation of betting shops:

18 This section examines the methods by which the Council could restrict the proliferation of betting shops in Merton, should evidence support this. These methods including using an Article 4 Direction or adopt a planning policy to restrict the number of betting shops in Merton.

Article 4 Direction:

19 An Article 4 Direction is applied to a specific geographic area and it removes the right to undertake the types of development specified in the Direction without seeking planning permission under the General Permitted Development Order 1995. For example, in Merton there is an Article 4 Direction for the John Innes and Wilton Crescent conservation areas that prevents people changing their windows or front doors without seeking planning permission.

20 Government's drive is to speed up the planning system and make it more flexible in responding to market changes in order to encourage economic growth. Measures to allow more development to take place without the need for planning permission are being introduced nationally (for example, permitting the conversion of offices to residential without the need for planning permission).

21 Government guidance on Article 4 directions is set out in circular 9/95 'General Development Order Consolidation 1995' and states that: *"permitted development rights have been endorsed by Parliament and consequently should not be withdrawn locally without compelling reasons. Generally…permitted development rights should be withdrawn only in exceptional circumstances".*

22 The National Planning Policy Framework (2012) paragraph 200 states "*the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so"*

23 For developments restricted by an Article 4 Direction, a planning application for development is submitted to the Local Planning Authority; in the usual way. However the local planning authority cannot charge any fees for the planning application. The submitted planning application will then be considered on its merits in the usual way, and the proposed development will be assessed against Merton's Development Plan and consider any other material factors. Should planning permission be refused, granted subject to unacceptable conditions, or is not determined within the statutory eight week period, the applicant can appeal to the Secretary of State.

24 In certain circumstance, a claim for compensation can be made to the local planning authority if planning permission is refused or is granted subject to conditions other than those conditions imposed by Schedule 1 of the General Permitted Development Order 1995.

25 Once an Article 4 Direction comes into force it remains in force indefinitely, unless the direction is cancelled by a further direction.

26 The issues relating to pursuing an Article 4 Direction to restrict the number of betting shops in Merton including:

- there needs to be evidence to support the issuing of an Article 4 Direction which proves that it is necessary to remove national permitted development rights to protect local amenity or the wellbeing of the area;
- the cost associated with the development thereof and potential cost claims; and,
- that an Article 4 Direction once adopted cannot be enforced immediately.

27 Please see *Appendix A: Summary of an Article 4 Direction* for a full summary of the process and cost involved with issuing an Article 4 direction to restrict the number of betting shops in Merton.

Planning Policy

28 We are currently working on our *Sites & Policies Development Plan*, which is intended to contain more detailed development control policies, site allocations and updates to the proposals map. We are still preparing this document and it is intended to be submitted to the Secretary of State for public examination this year (2013). Once adopted, the *Sites & Policies Development Plan*, in addition to *Merton's Core Planning Strategy* and the *Mayor's London Plan* will form the statutory development plan for Merton.

29 In 2011, at the early stages of preparing the Sites & Policies Development Plan, officers sought evidence to support a planning policy to restrict the number of betting shops in Merton as this was an issue highlighted by Councillors as a concern. Any new planning policy must conform with the government's National Planning Policy Framework and the Mayor's London Plan, both of which strongly encourage growth and flexibility in the planning system and do not support policies that restrict nationally permitted development rights without local evidence that the harm caused by this form of development outweighs the benefits.

30 However research into the number and location of betting shops in Merton and the changes over time showed that the council would not have the evidence to justify the need for a planning policy to restrict the proliferation of betting shops.

31 Betting shops are within the same planning Use Class (A2) as banks and estate agents and restaurants, cafes, bars, pubs and takeaways can change to betting shops without planning permission (thus making any planning policy redundant).

32 The nature of town centres and the way people use them is changing; the number and range of high-street premises are declining with people's changing shopping habits including online comparison and purchase. People are choosing to use town centres more for social activities (meeting friends, eating out, having coffee) than only for shopping.

33 Merton's new detailed planning policies support town centre activities that provide a social environment for residents, workers and visitors to meet and enjoy activities with family and friends.

34 The Sites and Policies Development Plan, Policy DM.R4 *Protection of shopping facilities in designated shopping frontages* puts opportunities for social interaction at the heart of Merton's town centres.

35 In summary, proposed policy DM.R4 encourages retail and more social uses such as shops, restaurants, cafes, public houses, culture and community and leisure and entertainment (in planning terms, Use Classes A1, A3, A4, A5, D1 and D2) at the heart of Merton's town centres.

36 Betting shops and other financial and professional services (A2 Use Class), amusement centres (sui generis Use Class), and hot food take-aways (A5 Use Class) are not compatible with the main retail or social function and thus are not considered appropriate uses in the heart of Merton's town centres. Under Merton's proposed policy DM. R4, these uses would be permitted to locate towards the edge of town centres, outside the core shopping frontages.

Other London boroughs':

37 There are other London local authorities who have similar concerns with the number of betting shops in their boroughs' including Barking & Dagenham, Hackney, Haringey and Lewisham.

London Barking & Dagenham:

38 The London of Barking & Dagenham has 50 betting shops located throughout the borough; representing the sixth highest number of betting shops in London. Some of these are concentrated in Barking Town Centre, Dagenham Heathway, Chadwell Heath and the shopping parades of the Becontree Estate.

39 Barking and Dagenham council's research which included successive high street surveys, local retail health checks and the borough's retail study showed that the borough has an over representation of betting shops in particular areas. It is considered that this overconcentration of betting shops is not desirable in terms of trying to sustain the viability and vitality of the borough's centres therefore limiting the proliferation of betting shops is an important component of the borough's strategic health and regeneration initiatives.

40 For this reason the council are considering a holistic approach (the planning team working with various departments such as the property, licensing and NHS team) to prevent more betting shops in the borough. As part of this the Council has brought forward an SPD as well as a corresponding Article 4 Direction with the aim of restricting the proliferation of betting shops on the high streets.

41 The Council's SPD titled "Evening the odds: curbing the proliferation of betting shops" (2012) to provide further guidance on the location and concentration of betting shops complementing policies set out in the Local Plan. This SPD is currently subject to public consultation.

42 The SPD proposes to set up:

- An exclusion zone – planning permission will not be granted for new betting shops within 400m of an existing permitted betting shop.

- Specific areas that betting shops can locate – the town and neighbourhood centres and the proposal will lead to no more than 5% of units within a centre or frontage being betting shops.

43 The Article 4 will be used to remove existing Permitted Development Rights that allows the A3, A4 and A5 uses to revert to A2 without requiring planning permission.

London Borough of Hackney:

44 In the **LB Hackney**, the Community Safety & Social Inclusion Scrutiny Commission conducted a review of betting shops. The results showed that here were 64 betting shops in the borough; many of which cluster in areas of high social deprivation. Although the total number of betting shops has not increased since the Gambling Act 2005, there is still continued concern about their saturation.

45 This review recognised that the Council had limited powers to restrict the clustering of betting shops through licensing or planning, therefore they decided to continue to gather local information and complete further research as evidence to support potential future policies and to continue to lobby central government to create a separate use class for betting shops.

London Borough of Haringey:

46 Due to considerable community concern in 2009 and 2010 with regards to the number of betting shops in LB Haringey, the Overview and Scrutiny Committee completed a Scrutiny Review of the Clustering of Betting Shops in Haringey (April 2011). The focus of the review was to examine the propensity of betting shops to cluster together and to record what impact that this has had on local communities. As part of this review, the Council looked at whether the liberalisation of the Gambling Act (2005) precipitated a rise in gambling premises licensed in Haringey.

47 At the time of writing, there were 66 betting shops located throughout Haringey; 85% were located in the east of the borough and 42% of the shops were located in areas which are among most socially deprived (top 10% in England).

48 Haringey's report concluded the following:

- the total number of betting shops has remained largely the same since the Gambling Act (2005) came into force.

- some betting shops had moved from local shopping parades to more prominent positions within local shopping centres, clustering in a number of areas throughout Harringay Green Lanes, Wood Green, Brue Grove and Tottenham Green.

- It was the view of local police that betting shops were not significant contributors to local crime figures though did conclude that betting shops had become a focal point for crime and antisocial behaviour in areas where there was already known to be a problem.

- no evidence that the clustering of betting shops generated any significant footfall or trade for local retailers, nor added to the diversity or vibrancy of the host areas; however the panel acknowledge that as may as 500 local jobs were attributed to the betting shop industry.

- noted submissions from the Gambling Commision and GamCare which suggested that there was no evidence to support an associations between the clustering of betting shops and problem gambling. Also any moves to restrict clustering would have little impact on problem gambling, give the wide availability of other forms of gambling including internet gambling.

49 The review recommended the following measures:

- further work needs to be undertaken locally to demonstrate whether an Article 4 Direction is viable to restrict additional betting shops

- existing and future planning documents could be strengthened to include a clustering policy which sought to control the clustering of any retail, business or service use; to sit within the council's LDF;

- continued efforts to lobby government for change to gambling license legislation or to planning control regulations to enable local councils and local residents to have greater influence on decisions which affect local communities.

50 As part of Haringey's emerging Development Control Plan, Policy DM26 sets out a policy which restricts the proliferation of uses including betting shops. This document was subject to public consultation in September 2012.

London Borough of Lewisham:

51 There are 71 betting shops located throughout Lewisham; with concentrations in Catford (6 units) and Lewisham town centres (9 units) and Deptford High Street. In Deptford High street there are 8 betting shops along a stretch of 600 metres. Although Lewisham's internal research has shown that the number of betting shops has not increased during the last 5 years, they note that betting shops have moved from the tertiary shopping frontages to more primary shopping frontages. Therefore betting shops are in more prominent locations thus being more visible which may be contributing towards local concern about

the retail mix in some areas as well as the occurrence of crime and anti-social behaviour associated with betting shops.

52 Due to the local concerns with the concentration of betting shops on Lewisham's high streets, officers have considered how to restrict the development of betting shops through planning policy and Article 4 Directions. With using an Article 4 Direction, they were concerned with the costs associated with the creation of Article 4 Direction which allows for compensation claims and that the Article 4 Direction would not be implemented immediately. For these reasons they decided to note move forward with issuing an Article 4 Direction.

53 Lewisham Council are currently working on their Site & Policies Plan and considered and explored the possibility of creating a policy to restrict the number of betting shops in Lewisham's shopping frontages. However, because betting shops are within the A2 Use Class (the same as banks and offices) and also other restaurants, cafes, pubs, bars and takeaways (A3, A4 and A5 use classes) could revert to A2 Use Class without requiring planning permission, officers concluded that it would be difficult to implement the policy.

54 However for changes of use to betting shops that require planning permission, Lewisham has had a few successes with restricting the proliferation of betting shops in their borough. In Deptford District Centre the Council has recently refused an application for a betting shop at 93-95 Deptford High Street, which was upheld twice at appeal (ref: APP/C5690/A/11/2151228 and APP/C5690/A/11/2168006). Planning permission was required in order to operate as a betting shop as a condition was previously imposed on a 1974 planning permission which allowed use as a building society but excluded other A2 uses, including betting shops.

55 In September 2012, Lewisham Council also responded to CLG's recommending that betting shops should be removed from the A2 Use Class and re-classified as sui generis, with no permitted change.

Merton's Research:

56 Officers examined planning and licensing records, antisocial behaviour records, street surveys and consultation results to identify how many betting shops currently operate in Merton and whether there has been a significant increase in betting shops in Merton in the last few years, and whether there is antisocial behaviour or other harm to the local amenity and wellbeing caused by betting shops in Merton that could be mitigated by the planning system.

Primary Research

57 Merton completes an Annual Shopping Survey, where a member of the Future Merton Team record changes in the location and number of shops, restaurants, cafes, pubs and bars, hot food takeaways, financial and business services (including betting shops) throughout Merton. This survey has been carried out every year since 2004 and gives a comprehensive record of change in Merton.

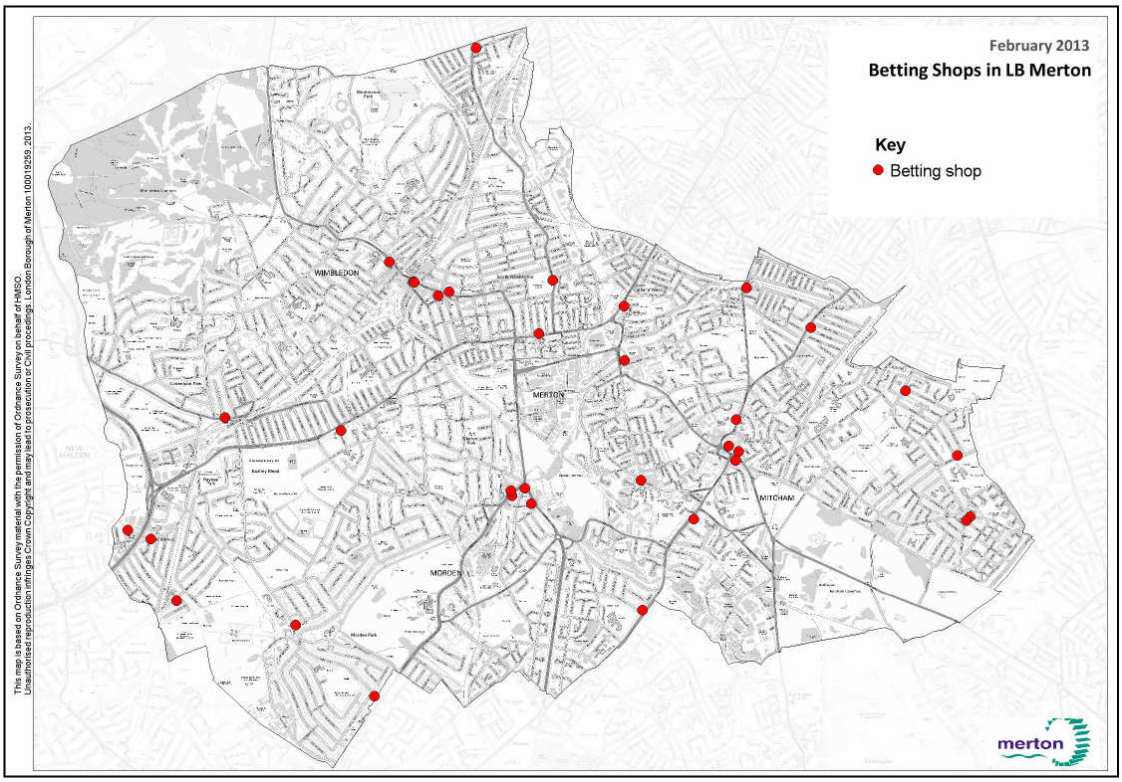
Secondary Research

58 Some uses require licenses to operate as well as planning permission, for example cafes, restaurants, public houses, hot-food take-away, leisure and entertainment. Officers used Licensing records and compared these against Merton's Annual Shopping Survey to make certain that the results in this report are accurate. Please see *Appendix B: London Borough of Merton's Registar of Gambling Premises* for a full list of gambling premises operating in Merton as of 2013. Using desktop research, we also looked at the total number of betting shops in neighbouring boroughs' and other boroughs' located in London.

Research Findings

59 In 2011, officers carried out extensive research on betting shops in Merton as this issue was highlighted by Councillors as a concern. The research aim was to establish whether there was enough evidence to show that Merton could support a new planning policy or an Article 4 Direction to restrict the development of betting shops in Merton. Officers analysed the number of betting shops from 2007 (though the gambling facilities at the Greyhound Stadium are excluded from this analysis). In addition, officers worked with the Safer Merton team to see if there was evidence of harm caused by betting shops in Merton; either due to their overall number, cumulative impact in certain centres or demonstrable harm caused by their activities. Figure 1 below shows the locations of all Betting Shops in Merton as at February 2013. Please also see graphs and maps set out in *Appendix C: Betting Shops Research.*

Figure 1: Map of Betting Shops in Merton as at 2013.



60 The research conclusions are:

- Betting shops are located throughout Merton and are not overly concentrated in any one town centre.
- Betting shops represent only a small proportion (always less than 4%, usually close to 2%) of the total number of shops in each centre.
- Although there are a large number of units in each town centre which could open up as betting shops without the need for planning permission (e.g. cafes, restaurants, pubs, bars, takeaways, banks, estate agents), there hasn't been a significant change in the number or location of betting shops over the past 5 years, nor is there any indication that future change will take place. There is wider evidence that there has been a nationwide increase in internet gambling during this period.
- Neither the Met police nor Council officers have flagged up persistence or significant antisocial behaviour issues in relation to betting shops in Merton.

61 Research of other London boroughs' found that both LB Islington and LB Newham had some of the highest number of betting shops in London; both of these boroughs' had 80 betting

shops. As illustrated in Figure 2: Merton also has one of the lowest number of betting shops in comparison to neighbouring boroughs and other London boroughs.

Conclusions:

62 Local research in Merton demonstrates that there is not an overconcentration of betting shops in Merton, that the number or concentration of betting shops has not changed over time, that there is not significant anti-social behaviour caused by the presence or concentration of betting shops in Merton. In summary, local research that does not support the restriction of betting shops in Merton via planning policy or Article 4 Directions.

63 However, in conjunction with other London boroughs, officers will continue to ask government for betting shops to be put into their own Use Class without permitted development rights.

Appendices

Appendix A: Summary of an Article 4 Direction

An Article 4 Direction is applied to a specific geographic area and it removes the right to undertake the types of development specified in the Direction without seeking planning permission under the General Permitted Development Order 1995. For example, in Merton there is an Article 4 Direction for the John Innes and Wilton Crescent conservation areas that prevents people changing their windows or front doors without seeking planning permission.

For developments restricted by an Article 4 Direction, a planning application for development is submitted to the Local Planning Authority; in the usual way. However the local planning authority cannot change any fees for the planning application. The submitted planning application will then be considered on its merits in the usual way, and the proposed development will be assessed against Merton's Development Plan and consider any other material factors. Should planning permission be refused, granted subject to unacceptable conditions, or is not determined within the statutory eight week period, the applicant can appeal to the Secretary of State.

In certain circumstance, a claim for compensation can be made to the local planning authority if planning permission is refused or is granted subject to conditions other than those conditions imposed by Schedule 1 of the General Permitted Development Order 1995.

Once an Article 4 direction comes into force it remains in force indefinitely, unless the direction is cancelled by a further direction.

Preparing an Article 4 direction:

There are strict guidelines that a local planning authority has to follow for the application of an Article 4 direction. Government guidance on Article 4 direction is set out in circular 9/95 'General Development Order Consolidation 1995' and states that:

"permitted development rights have been endorsed by Parliament and consequently should not be withdrawn locally without compelling reasons. Generally…permitted development rights should be withdrawn only in exceptional circumstances".

In addition to this *The National Planning Policy Framework (2012)* [NPPF] advises that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area.

Therefore, an application to the Secretary of State to reduce the clustering of betting shops would need to be supported by a substantial body of local evidence which demonstrates local need and the harmful effects of clustering betting shops in the specific area(s) where the Article 4 Direction is to be applied.

Merton's legal department advise that an Equality Impact Needs Assessment of the proposed Article 4 direction is completed, alongside the local evidence, so that LB Merton can demonstrate that it tool account of any impacts that the direction might have in different groups.

Stage One – drafting the Article 4 direction:

Should the consultation / research suggest that there is exists a compelling reason for the Article 4 direction, its implementation will need to be conducted through the following stages:

The directions will need to be drafted in a simple format so that owners and occupiers of the affected property and land who may not have any knowledge of planning understand what is being proposed. Also it is essential that the restrictions are set out clearly and precisely to enable them to understand what they can and cannot do.

The properties and land should be clearly identified on an Ordnance Survey plan and individually listed in a schedule. The LPA must sign, seal and date the Article 4 direction.

To note, the owners and occupiers of the affected property or land **do not** need to be notified before an Article 4 direction is made.

Stage Two - publicising an Article 4 direction:

Following the marking of an Article 4 direction, the LPA must:

- Publish a notice of the direction in a local newspapers;
- Display at least two site notices for a period of note less than six weeks;
- Notify the owners and occupiers of the affected properties and land, unless this is impractical;
- Individual notification may be considered impractical due to the number of owners or occupiers or because of problems associated with identifying one or more of them. However, where the owner is a statutory undertaker or the Crown, they must be individually notified.
- Although not a statutory obligation, it is considered good practice to publish a notice of the Article 4 direction on the Council's website.

Stage Three - confirmation by the LPA of an Article 4 direction

The Council would need to complete the following to confirm that an Article 4 direction is in place:

- An Article 4 direction **cannot** come into force on the date specified in the notice unless it has been confirmed by the Council.
- The approval of the Secretary of State is **not** required.
- The LPA must take into account any representations it receives during the representation period when deciding whether or not to confirm the Article 4 direction.
- The Article 4 direction cannot be confirmed until 28 days following the latest date the notice was served or published, or such longer period as specified by the Secretary of State.
- When the Article 4 direction has been confirmed, the LPA must:
    - Give notice of the confirmation and the date the Article 4 direction comes into force to affected owners and occupiers in the same way as required for the notification of the making of the direction
    - Send a copy of the Article 4 direction to the Secretary of State.

Please note that the Secretary of State can make a direction cancelling or modifying any non-emergency Article 4 direction made by an LPA at any time before or after its confirmation Article 5(13).

Costs:

There are two types of costs associated with the development of an Article 4 direction; definite costs and potential costs. These are as follows:

- Research costs: these would vary depending on whether the Council opts to commission independent research or deliver the research in house. The research would need to demonstrate that the concentration of cumulative impact of betting shops in Merton, and not access to gambling by Merton residents through the internet, is the cause of harm.
- Consultation process: when the LPA will seek to gauge the view of residents and carry out the necessary research that supports our view that such a curb is needed. It is difficult to quantify the cost, it will depend on how thorough the consultation and research is. The consultation could be for example via surveys, questionnaires to capture resident opinions on betting shops in the borough. In terms of research:

- advertising the direction in the local press.

- Additional research: when considering and responding to any objections to the received at the consultation, the Council may need to commission independent research to provide additional evidence supporting the Council's view.

- Free planning applications: If an Article 4 Direction is in place, the Council cannot charge a fee for a planning application relating to the Direction.

- Compensation: the planning applicant can apply for compensation for planning permission that is refused or planning permission that is granted but subject to conditions other than those conditions imposed by the GPDO. The claim for compensation can include abortive expenditure and other loss or damage directly attributable to the withdrawal of the permitted development right. This can include the difference in the value of the land if the development had been carried out and its value in its current state, as well as the cost of preparing the plans for the works. However, no compensation for the withdrawal of certain permitted development rights is payable if an LPA gives notice of the withdrawal between 12 months and 24 months in advance. In other words, if an Article 4 direction is successfully prepared, the Council should wait 12 months before implementing it to avoid compensation claims.

Appendix B: London Borough of Merton's Register of Gambling Premises as at 01 February 2013

Premises Type	Name	Address	Town/ Area	Postcode
Adult Amusement Arcade	Agora	57 London road	Morden	SM4 HT
Betting Shop	Betfred	1-3 Upper Green West	Mitcham	CR4 3AA
Betting Shop	Coral	55 Church Road	Mitcham	CR4 3BF
Betting Shop	Coral	94 The Broadway	Wimbledon	SW19 IRH
Betting Shop	Coral	7-9 The Broadway	Wimbledon	SW19 IPS
Betting Shop	Coral	251 Northborough Road	Norbury	SW16 4TR
Betting Shop	Coral	98 Bishopford Road	Morden	SM4 6BB
Betting Shop	Coral	Unit 15 Tandem Centre	Colliers Wood	SW19 2PE
Betting Shop	Coral	Unit 1, 175 Burlington Road	New Malden	KT3 4LU
Betting Shop	Jenningsbet	11 The Broadway	Wimbledon	SW19 1PS
Betting Shop	John Warren	326 West Barnes Lane	Mew Malden	KT3 6NB
Betting Shop	Ladbrokes	58/62 Coombe Lane	Raynes Park	SW20 0LA
Betting Shop	Ladbrokes	19/21 Tudor Drive	Morden	SM4 4DP
Betting Shop	Ladbrokes	2/4 Christchurch Road	Colliers Wood	SW19 2NX
Betting Shop	Ladbrokes	31 London Road	Tooting	SW17 9JR
Betting Shop	Ladbrokes	44 Wimbledon Hill Road	Wimbledon	SW19 7PA
Betting Shop	Ladbrokes	174 Merton High Street	Wimbledon	SW19 1AY
Betting Shop	Ladbrokes	415 Durnsford Road	Wimbledon	SW19 8EE

Betting Shop	Ladbrokes	175a Streatham Road	Mitcham	CR4 2AG
Betting Shop	Ladbrokes	Unit 2a Aberconway Road	Morden	SM4 5LN
Betting Shop	Ladbrokes	17/19 Upper Green East	Mitcham	CR4 2PE
Betting Shop	Ladbrokes	18 South Lodge Avenue	Mitcham	CR4 1LU
Betting Shop	Paddy Power	41 London Road	Morden	SM4 5HT
Betting Shop	Paddy Power	2/4 Gladstone Road	Wimbledon	SW19 1QT
Betting Shop	Paddy Power	3 Upper Green East	Mitcham	CR4 1RB
Betting Shop	Stan James	48 London Road	Morden	SM4 5BE
Betting Shop	William Hill	158/160 Chestnut Grove, Pollards Hill	Mitcham	CR4 1RB
Betting Shop	William Hill	176/178 Rowan Road, London	Streatham	SW16 5HX
Betting Shop	William Hill	356 Grand Drive	Raynes Park	SW20 9NQ
Betting Shop	William Hill	1/2 Fair Green Parade, Upper Green West	Mitcham	CR4 3NA
Betting Shop	William Hill	335/335a London Road	Mitcham	CR4 3HB
Betting Shop	William Hill	66/67 Monarch Parade, London Road	Mitcham	SW19 1AW
Betting Shop	William Hill	114 haydons Road	Wimbledon	SM4 5HX
Betting Shop	William Hill	5 London Road	Morden	KT3 4NW
Betting Shop	William Hill	216/218 Burlington Road	New Malden	SW20 8LR
Betting Shop	William Hill	344 Kingston Road	Wimbledon	SW17 0BL
Track	Wimbledon Stadium	Plough Lane	Wimbledon	SW17 0BL

Appendix C: Betting Shops Research

Figure 3: Development of Betting Shops over the last five years

Figure 3: Development of Betting Shops below show the number of betting shops located in Merton. These results are then compared to those over the last five years. In line with Appendix B: London Borough of Merton's Register of Gambling Premises as at 01 February 2013, though our Annual Shopping Survey was completed in 2012, there is the same number of betting shops licensed and located in Merton.

Figure 3: Development of Betting Shops over the last five years

Locations in Merton	2007	2008	2009	2010	2011	2012 & 2013
Arthur Road Local Centre (38 units)	1	0	0	0	0	0
Wimbledon Village Local Centre (127 units)	1	1	1	0	0	0
Raynes Park Local Centre (76 units)	1	1	2	1	1	1
Motspur Park Local Centre (26 units)	1	1	1	1	1	1
Morden Town Centre (154 units)	5	5	5	5	5	4
Mitcham Town Centre (151 units)	3	3	4	4	4	5
Colliers Wood Urban Centre (142 units)	1	1	1	1	1	1
Wimbledon Town Centre (261 units)	4	3	3	3	4	4
Outside town centres	17	16	19	18	19	20
Total	**34**	**31**	**36**	**33**	**35**	**36**

Figure 4: Graph showing the Development of Betting Shops over the last five years

Figure 4 below, provides this information in graph form, though provides further information to illustrate to the reader that the number of betting shops as a proportion of the overall shops in town centres are quite low. However, Figure 1 (overleaf), Figure 2 and Figure 3 do show that the majority of betting shops in Merton are located outside of the designated town and local centres.

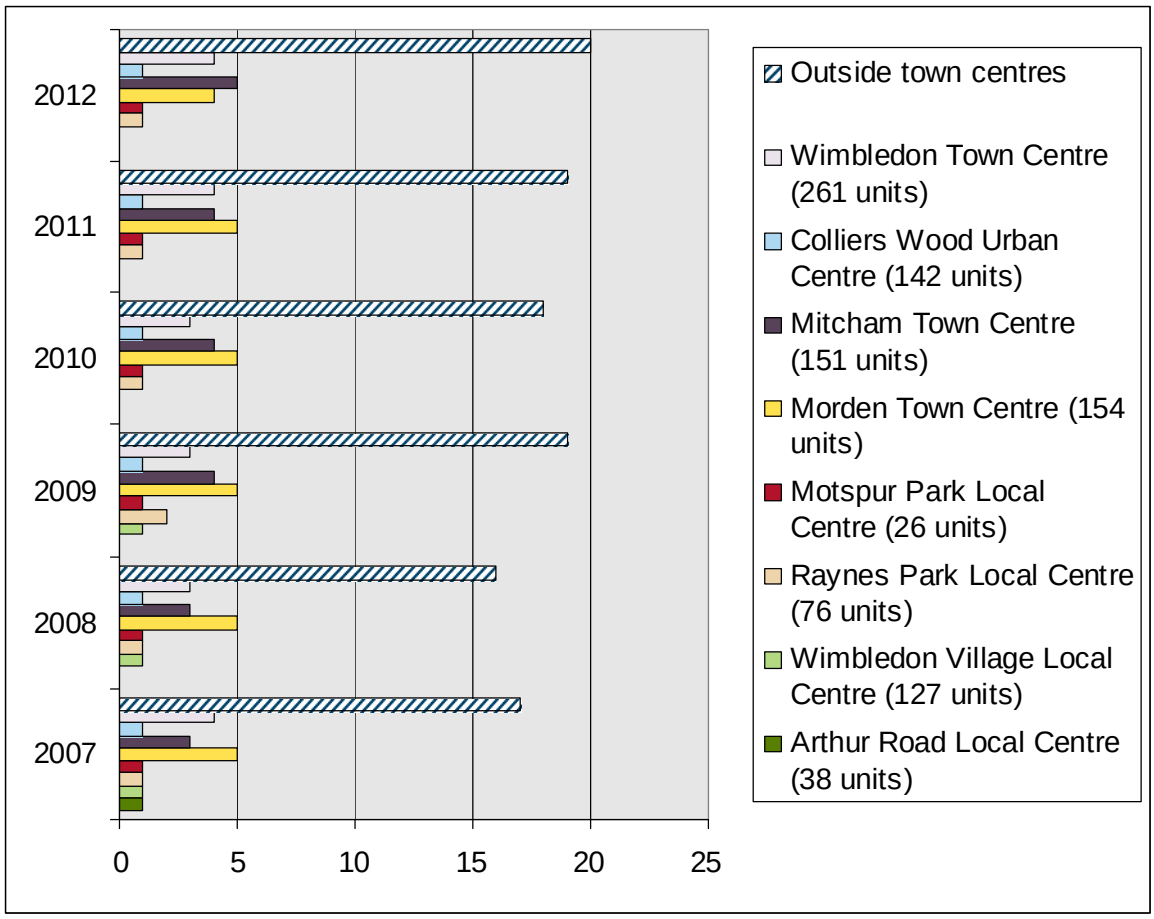


Figure 1: Map of betting shops in Merton as at 2013.