



City of Westminster

Cabinet Member Report

| | |
|-----------------------------|---|
| Decision Maker: | Cabinet Member for Built Environment |
| Date: | 5 December 2016 |
| Classification: | For General Release |
| Title: | Confirmation of Westminster's Article 4 Direction for changes of use from A1 (shops) to A2 (financial and professional services) |
| Wards Affected: | All |
| City for All Summary | City of Heritage – to ensure effective management of shopping areas to protect and enhance the retail function to ensure every neighbourhood remains a great place to live, work and visit. |
| Key Decision: | Yes |
| Financial Summary: | There are resourcing implications associated with the Article 4 Direction for changes of use from A1 (shops) to A2 (financial and professional services). |
| Report of: | Executive Director Policy, Performance and Communications |

1.0 EXECUTIVE SUMMARY

- 1.1 This report seeks approval to confirm a non-immediate direction under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO 2015") to remove permitted development rights for changes of use from A1 (shops) to A2 (financial and professional services). This follows previous notification and consultation by way of a Cabinet Member Decision Report dated 9th October 2015, press notices and advertisements. This report details those consultation responses received and sets out how these have been taken into account in accordance with Schedule 3 sub-paragraph (9) of the GPDO 2015.

- 1.2 The effect of the decision will be that from the date the direction comes into force, applications for planning permission will be required for the above changes of use.

2. RECOMMENDATIONS

- 2.1 That the Cabinet Member:

- i) Considers the representations made to the proposed non-immediate direction under article 4 of the Town and Country Planning (General Permitted Development) Order 2015 to remove permitted development rights granted by Schedule 2 Part 3 Class D of the 2015 Order for changes of use from A1 (shops) to A2 (financial and professional services) in the Core Central Activities Zone (CAZ) (as defined in Westminster's City Plan: Strategic Policies) and other designated shopping centres outside of the Core CAZ
- ii) Confirms the direction, as set out in Appendix 1 to the report, to come into effect on 1st January 2017.
- iii) Approves the giving of notice of the confirmation and date of commencement and sending of a copy of the direction as confirmed to the Secretary of State as required by paragraph 1(11) of Schedule 3 to the GPDO 2015 (Appendix 2).

3. REASONS FOR DECISION

- 3.1 The decision requires that planning applications are made for changes of use from A1 (shops) to A2 (financial and professional services) in key shopping areas to enable the council to continue to protect the retail function of its key shopping areas and ensure their continued vitality and viability using the policy framework provided by the statutory local plan and powers provided by planning legislation.

4. BACKGROUND

- 4.1 On 9th October 2015 the Cabinet Member for the Built Environment approved the making of a 'non-immediate' Article 4 Direction in respect of changes from an A1 use (shops) to an A2 use (financial and professional services) (attached at Appendix 1). The reason for the decision was:

"To enable the council to continue to protect the retail function of key shopping areas using the policy framework provided by the statutory local plan to determine planning applications for changes of use from A1 (shops) to A2 (financial and professional services) in the Core Central Activities Zone (CAZ) and other designated shopping centres outside of the Core CAZ."

- 4.2 A period of public consultation took place between 30th October and 14th December 2015; the council has received further representations following this period and met with Metro Bank PLC (the principal objector) and its advisers on 9th June, 4th July and 16th November 2016. The GPDO 2015 requires the council to take into account any representations received when confirming an Article 4 Direction and these are dealt with in detail later in this report.

Article 4 Directions: legal and national policy background

- 4.3 Under the GPDO 2015, a change of use from A1 (shops) to A2 (financial and professional services) is “permitted development”. This means that planning applications are not required for such changes. “Financial and professional services” include estate agencies, banks and building societies and employment agencies. Unlike some permitted development rights under the GPDO 2015, there is no requirement for those intending to make such a change of use to seek the council’s “prior approval”.
- 4.4 Article 4 of the GPDO 2015 enables the Secretary of State or the local planning authority to make a direction (an “Article 4 Direction”) to withdraw specified permitted development rights across a defined area. In this instance, the effect will be to require planning applications for changes of use from A1 uses (shops) to A2 (financial and professional services). Directions can cover an area of any geographical size, remove specified permitted development rights related to operational development or changes of use and can remove permitted development rights with temporary or permanent effect.
- 4.5 In order to make an Article 4 Direction the legal requirement is that the local planning authority is “satisfied that it is expedient that development should not be carried out unless permission is granted for it on an application.”
- 4.6 The National Planning Policy Framework (NPPF) sets out the Government’s planning policies for England and how these are expected to be applied. It gives guidance to which local planning authorities should have regard in taking planning decisions. Paragraph 200 of the NPPF deals with Article 4 Directions:

“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.”

- 4.7 This is expanded on in the Government’s National Planning Practice Guidance (NPPG). Paragraph 038, reference ID13-038-20140306, repeats the guidance in the NPPF and adds that the potential harm that the direction is intended to address should be clearly identified. There should be a particularly strong justification for the withdrawal of permitted development rights which, *inter alia*, relate to a wide area (such as those covering the entire area of a local planning authority) or where prior approval powers are available to control permitted development.

- 4.8 The GPDO 2015 gives the Secretary of State power to make a direction cancelling or modifying any Article 4 Direction made by a local planning authority at any time before or after its confirmation. The NPPG indicates (paragraph 051, reference ID13-051-20140306) that ministers “will not use their powers unless there are clear reasons why intervention at this level is necessary.”

Retail and town centre policy background

- 4.9 The 9th October 2015 Cabinet Member Decision report sets out the strong retail policy framework in the council’s development plan. Policy S21 of Westminster’s adopted City Plan provides protection for retail (A1) use throughout the City, as well as a degree of flexibility around changes of use for specific types of shopping areas. Relevant City Plan policies for different areas in the city are set out in the table below:

| Designated Shopping Areas | Comments |
|---|---|
| Core CAZ | Shops in the Core CAZ contribute to its vitality and viability as a global retail destination. The Primary Frontages (or International Centres) are Oxford St, Regent St, Bond St and Knightsbridge. These pre-eminent shopping streets are internationally renowned, and are home to flagship and iconic department stores such as Selfridges. They are complemented by other shopping throughout the Core CAZ. Mayfair and St James’s cover a range of international niche markets including high end fashion, jewellery and art. St James’s is an adopted Special Policy Area, and Mayfair is being designated as a new Special Policy Area, in both cases because of their specialist and niche shopping. Soho and Covent Garden are also key shopping areas which offer a different range of retailers. In addition, A1 shops are appropriate throughout the Core CAZ, providing a key feature of its mixed use character. The West End is the single biggest destination for comparison retail spend in the UK, with £2.6 billion in 2011 (Experian, 2013). The Primary Shopping Frontages are afforded strong protection by S21, S6, S7 and saved UDP Policy SS3, whilst greater flexibility is applied in other parts of the Core CAZ under saved UDP Policy SS5, for example, allowing a change from an A1 to a non-A1 uses if it does not lead to 3 or more consecutive non-A1 uses. Unrestricted loss of A1 uses could undermine the vitality and viability of the West End and Core CAZ and its role as a world leading retail destination. |
| CAZ Frontages outside the Core CAZ | These are key shopping areas identified in the London Plan. Policy S21 protects A1 uses, with flexibility afforded by UDP Policy SS5. Unrestricted loss of A1 uses could undermine the vitality and viability of the predominantly retail focus of these centres. |
| <ul style="list-style-type: none"> • Baker Street • Edgware Road • Marylebone High Street • Marylebone Road | |

- Warwick Way / Tachbrook Street

Major Shopping Centre

- Queensway / Westbourne Grove

This is located outside of the Core CAZ. It has a borough wide catchment, with an indoor shopping centre and range of town centre and other uses and services. The centre is considered important for comparison shopping.

Policy S21 protects A1 uses and Policy S13 'Outside the CAZ and NWEDA' gives priority to A1 retail. UDP Policy SS6 provides flexibility where this does not lead to over-concentration of non-A1 uses particularly in the core frontages. Unrestricted loss of A1 uses could undermine the vitality and viability of the centre.

District Shopping Centres

- Church Street/Edgware Road
- Harrow Road
- Praed Street
- St John's Wood

There are four District Shopping Centres, all of which are located outside of the Core CAZ. They are key neighbourhood centres providing convenience and some comparison retail alongside other town centre uses and local services.

Policy S21 protects A1 uses and some flexibility is also provided in Policy S12 'North Westminster Economic Development Area' for Harrow Road and Church Street, and by Policy S13 'Outside the CAZ and NWEDA' for St John's Wood. UDP Policy SS6 also provides flexibility in District Centres where this does not lead to over-concentration of non-A1 uses particularly in the core frontages. Unrestricted loss of A1 uses could reduce the range of local shopping facilities particularly convenience shopping, undermine their attractiveness and threaten their vitality and viability.

Local Shopping Centres

There are 39 Local Shopping Centres in Westminster, most of which lie outside of the Core CAZ. These typically serve a local catchment often most accessible by walking and cycling. They generally form local parades and small clusters of shops, mostly for convenience shopping and local services. Local centres are essential shopping locations in residential areas, particularly for local residents and the less mobile due to their proximity and accessibility.

Policy SS7 in the Unitary Development Plan allows flexibility in Local Shopping Centres for a change of use from an A1 use where this is outside of designated Core Frontages, and where this is not considered to result in an overconcentration of non-A1 uses. Excessive loss of A1 uses in shopping centres is considered to reduce the range of local shopping facilities particularly convenience shopping, undermine their attractiveness and threaten their vitality and viability.

- 4.10 These adopted policies are in line with National Planning Policy Framework objectives to ensure the vitality and viability of town centres (paragraph 23), and to ensure facilities and services enhance the sustainability of communities and residential environments (paragraph 69). They also support adopted London Plan policies on town centres (2.15), the strategic importance of retail in the Central Activities Zone (2.10 and 2.11) and supporting a successful and diverse retail sector
- 4.11 The mixture of uses in a centre can significantly affect its actual and perceived vitality and viability. In particular, while A2 uses can complement A1 shops and provide a valued service in shopping areas, the over concentration of uses other than A1 shops can reduce the vitality and viability of shopping areas. In recent years Westminster has seen the erosion of A1 uses in certain shopping centres, particularly to A2 uses; most notably estate agents' offices. These have increased from 179 to 228, an increase of 27.4% in the year to February 2016, which represents the largest percentage increase of all London boroughs, despite this strong policy framework to protect retail. This is an issue often raised by those surveyed as part of preparation of centre 'health checks', as explained later in this report.
- 4.12 There is a different justification for making an Article 4 Direction with respect to the Core CAZ International Centres of Oxford, Regent and Bond Streets and Knightsbridge. These are internationally renowned shopping streets, home to flagship and iconic department and other stores. The ability to use the planning system to take decisions that take into account the importance of ensuring the continued availability of retail space is important in order to maintain the pre-eminence of London's West End as a retail destination – a strategic priority identified both by the council in Westminster's City Plan and by the Mayor in the London Plan. Requiring planning applications in these circumstances will enable the council to manage the balance of uses – something that is key to maintaining the health of the International Centre, especially in the context of a constrained spatial area.
- 4.13 The role of the International Centres is complemented by other more specialist shopping areas and streets throughout the Core CAZ. The council's new and recently examined Special Policy Areas, include Mayfair and St. James's, both designated for their niche/specialist shopping. The proposed Direction will help ensure the council can use its planning powers to ensure that the often quite sensitive balance of uses in these areas is not upset, with the result that their distinctiveness is lost.
- 4.14 Retail space across the West End is in constant demand and forecast to grow further (with the West End's retail sales forecast to grow by 27.8% by 2020 (Savills, 2016)¹. Between January 2014 and December 2015, 57 retail brands opened their first ever store in London, 60% of which were located within the West End. (Savills, 2016) This confirms the continued attraction of the area to new retail businesses. Retail comparison spend is modelled to increase by 3%, once the impact of pipeline retail development is taken into account,

¹ Global Retail Destination Index (2016), Savills, on behalf of the New West End Company

further consolidating its position as London's highest ranking retail centre by spend². The balance of uses in these areas is carefully managed to maintain the attractiveness and status of the centre, which, with demands from tourists, has a unique role in the economy of the UK. The permitted development right removes the council's ability to apply its retail policy, has the potential to dilute the A1 retail offer, threatening the availability of retail supply in the Core CAZ, thereby undermining the retail function overall. The council considers that making an Article 4 Direction is necessary to protect the retail function of shopping centres, where appropriate, allowing flexibility for changes of use to other town centre uses.

- 4.15 The other shopping centres proposed to be covered by the Direction consist of:
- The CAZ Frontages outside the Core CAZ - the Queensway/Westbourne Grove Major Shopping Centre which is important for comparison shopping,
 - The four District Shopping Centres, which are key providers of convenience and some comparison retail to the local neighbourhoods of Church Street/Edgware Road, Harrow Road, Praed Street and St. John's Wood, and
 - The 39 Local Shopping Centres, most of which are outside the Core CAZ. These serve a local catchment, and generally consist of small parades and clusters of shops mostly for convenience shopping and local services.

In each of these areas vitality and viability would be undermined by an over-concentration of non-A1 uses.

- 4.16 The council monitors the vitality and viability of its key shopping areas through a series of 'health checks' in accordance with Westminster, national and London Plan policy to monitor their performance and identify issues and the need for interventions. Westminster's 'High Streets and District Centres: Health Checks' were undertaken in spring/summer 2013 for ten high street type neighbourhood centres in Westminster. Health checks were also published in 2014 for the 39 Local Shopping Centres.
- 4.17 These health checks, which were based on surveys carried out in 2013, identified the impact of permitted development rights as a potential threat. They included surveys of a number of high street style shopping centres across the City, including CAZ Shopping Frontages, the District Shopping Centres and the Major Shopping Centre. Further details of these consumer surveys are given in Appendix 3 to this report, but in summary they indicate that across the board, consumers wish to see more and better quality retail and, conversely, see unrestricted changes to A2 uses as a key factor in making centres less attractive. In these surveys generally only up to 5-10% of those surveyed responded that more 'service retailers' may be needed, with service retailers of course being a broad category that includes hairdressers, post office, as well as banks. Not only was this the least chosen response in all surveys carried out, but in most cases none of the 150 people surveyed in the shopping centres were visiting or intending to visit a bank when they

² Consumer Expenditure and Comparison Goods Floorspace Need in London, (2013) Mayor of London

participated. In some cases people mentioned “fewer estate agents” as a factor that would encourage more frequent visits. When asked what would encourage them to shop or visit the area more often, more and better quality or independent shops were generally the most popular responses.

- 4.18 These perceptions are important; loss of perceived attractiveness of a centre can lead to a reduction in footfall and the attractiveness which can in turn lead to the range of centres uses declining (which, of course, is the reason why these surveys are carried out as part of the health check process). This evidence base is explained in more detail in Appendix 6 to this report. Appendix 6 also shows the extent to which in many centres these perceptions are shown to be well-founded in fact, based on available evidence about changes of use from retail to financial and professional services. This underlines that a strong retail planning approach is appropriate and merited, and supports the Article 4 Direction.

5. CONSULTATION

- 5.1 In accordance with the requirements of Schedule 3 of the GPDO 2015 notice was given locally by newspaper advertisement and site notices. The Secretary of State was also sent a copy of the Direction, the required notice and a map showing the areas to which it relates. A period of six weeks was allowed for comments.
- 5.2 The Article 4 Direction was notified by the following means:
- Local advertisement in the local Gazette newspaper
 - Notices displayed in two locations within each ward in the Core CAZ and two locations within each designated shopping centre outside of the Core CAZ (locations attached at Appendix 3) for a period of at least six weeks.
 - Email notification to all Members of the Council
 - Email notification to specific consultees, including those subject to the statutory duty to cooperate (Section 4 of the Town and Country Planning (Local Planning)(England) Regulations 2012) and the ‘specific consultation bodies’ as defined in Section 2 of those Regulations
 - The Mayor of London and the GLA Group
 - Email notification to all consultees registered on the council’s Local Development Framework database (comprehensively reviewed in March 2013, and updated on an on-going basis, the database currently comprises about 400 consultees including members of the public, businesses and residents’ groups)
 - Internal consultees within the City Council, including Executive Management Team and other senior managers.
- 5.3 In accordance with government guidance and legislation, the notification documents for the Article 4 Direction included:

- A description of the development and areas to which the direction relates: for changes of use from A1 (shops) to A2 (financial and professional services) in the Core Central Activities Zone (CAZ) and other designated shopping centres outside of the Core CAZ.
- A statement of the effect of the direction: removing permitted development rights.
- Specifying that the direction is made under Article 4(1) of the GPDO.
- Specifying a period within which any representations concerning the direction may be made to the LPA: between 30 October and 14 December 2015.
- Specifying the date on which it is proposed the direction will come into force.
- Giving details as to how the direction and accompanying maps can be viewed i.e. at the council's offices at 64 Victoria Street, and on the Council's website at: www.westminster.gov.uk .

5.4 Eleven responses were received (attached at Appendix 4), eight of which were substantive. One of the respondents made a number of sets of representations, some of which merely elaborated on points already made, and those which are merely additive are not attached. Three responses were in support and one raised no objections. Three responses objected to the Article 4 Direction and one objected on the basis that it should apply throughout the whole of Westminster. In addition, a letter was received from the Secretary of State, acknowledging the Article 4 Direction and reminding the council to notify the Secretary of State of confirmation of the Article 4 Direction, but not seeking to annul or amend the Direction in any way (attached at Appendix 5).

5.5 In September 2016 solicitors acting for one of the objectors, Metro Bank PLC, made representations to the Department for Communities and Local Government (DCLG) seeking ministerial intervention to modify the direction, so that "a change of use from A1 retail to retail banking services is not caught by the direction". The representation argued that:

- The Direction would block the opening of new banks and building societies, and would result in banks in Westminster being heavily disadvantaged in securing prime high street properties and locations.
- The effect of the Article 4 would be to maintain an unfair playing field, where a variety of retailers currently provide banking and financial services via A1 use retail properties including the Post Office, food stores and department stores.
- There has not been a proliferation of bank and building society openings across the City of Westminster since permitted development regime changes in April 2014.

5.6 DCLG have considered the representations and the Council's reasons for making the Direction as set out in the 9th October 2015 Cabinet Member Report, and have concluded that they do not consider that the clear reasons required for intervention at Government level referred to in the NPPG are

present in this case. Metro Bank's objections are dealt with in detail later in this report.

6. REPRESENTATIONS RECEIVED

6.1 The council received three representations in support of the Article 4 Direction, and one response had no objections.

- Historic England support the Article 4 Direction as this “will enable suitable assessment of the contribution of retail uses to the character and vitality of Westminster’s town centres and shopping streets.” They acknowledged that the “vitality of traditional shopping streets is closely allied with the Borough’s exceptional heritage, and that vibrant town centres support the identity and significance of London’s historic places.”
- The business improvement districts³ supported the Article 4 Direction, noting that unrestrained changes of use from A1 to A2 use “could place at risk the vibrancy and attractiveness of our shopping streets to visitors and residents” and that it could also “dilute central London’s global reputation as the place to shop.”
- The Belgravia Residents Association also welcomed the proposed Article 4 Direction.
- Transport for London responded that they had no objection.

6.2 Three respondents objected to the removal of permitted development rights:

- Metro Bank objected on the grounds that the Article 4 Direction is inconsistent with the NPPF requirement to plan positively and support town centres. They acknowledged the wish to control other A2 uses such as estate agents, and requested that permitted development rights should not be withdrawn for banks and building societies, as these provide an essential high street retail service. They noted that there has not been a proliferation of bank and building society openings since changes to permitted development rights in 2014, and that there has been a net loss of banks in this period.
- Shire Consulting objected as they consider that the Article 4 Direction will “discourage investment and unnecessarily interfere with the operation of the market.” They also noted that there was no evidence of potential harm to amenity or the wellbeing of the area to support the introduction of the direction.
- An individual respondent also objected to the Article 4 Direction on the grounds that it would create additional costs with no overall benefit to local communities. They also considered that demand for new locations would be minimal, given the likely closure of many high street banks and building societies.

³ Baker Street Quarter Partnership, Heart of London Business Alliance, New West End Company, The Northbank, Paddington Now, Victoria Business Improvement District

- 6.3 The Pimlico Grid Residents Association objected to the Article 4 Direction on the grounds that it should apply throughout Westminster, rather than just to the Core CAZ and designated shopping centres.
- 6.4 A number of additional representations were received from Metro Bank, after the close of consultation. These included representations made by letters dated 12th May 2016 and 28th July 2016, and a letter received 23rd September 2016. Two meetings were held with representatives of the Bank and their advisors; on 9th June and 4th July. The letters received continued to request an exemption for banks, further asserting that:
- The article 4 will block new banks from opening, and specifically disadvantage challenger banks
 - The council has failed to establish the necessity for the direction to apply to *banks specifically* within the A2 use class,
 - Banks have not proliferated in Westminster since April 2014

7. KEY ISSUES

- 7.1 The key issues raised in the consultation response are considered below:
A2 banks and building societies (deposit takers) can, and should be, exempted from the Article 4 Direction
- 7.2 This is the central argument made by Metro Bank, which they make in the context of their general acceptance of the principle the Council is seeking to promote through the making of the Direction, acknowledging the importance of continuing to support and invest in shopping areas as an important economic driver for Westminster and London. Their case is that banks should be excluded.
- 7.3 Part of Metro Bank case is that their particular business model means that their use of buildings is more akin to a shop (A1) than a typical bank. They point to their longer opening hours and the physical layout of their “stores” (with active and glazed frontages). Given this, it is suggested, changes of use from A1 to their kind of A2 use does not raise the same kinds of issues that other changes of this kind might. Although they point to the distinctiveness of their business model and high street presence, Metro Bank do not argue that their premises should be classified as A1 uses rather than A2. It is not, of course, possible to make Directions based around the models of individual users.
- 7.4 Leading counsel’s advice has been taken by officers on the points raised. The advice received suggests that even if it is legally possible to ‘carve out’ or exempt a particular use from an Article 4 Direction within the wording of the General Permitted Development Order, it is entirely undesirable in this case on practical grounds. One of the important consequences of requiring

planning permission for A1 to A2 uses is that conditions can be imposed preventing further changes within class A2 – in this case from a bank or building society branch to uses such as estate and employment agencies without the need for planning permission. Such conditions can, of course, only be imposed where there is an application for planning permission; changes within the same use class do not require planning permission, of course (see s 55(2) (f) of the Town and Country Planning Act 1990 and the Use Classes Order class A2)). For this reason accepting Metro Bank's suggestion would seriously undermine the principal objective of making the Direction (an objective Metro Bank acknowledges).

- 7.5 It is important in this respect to bear in mind that what Metro Bank are effectively arguing for is a reversion to the situation between April 2014 and April 2015 when there was a separate Use Class (CA) for deposit takers with permitted development rights for change from retail to this use. Those rights were subject to specific and careful provision to prevent subsequent further changes of use to unrestricted A2 use – from this it is clear that the need to prevent further onward changes is well recognised and understood by Central Government. It is not possible for an Article 4 Direction to impose conditions on permitted developments in the way the old CA class did – the power to make directions is limited and only allows the exclusion of certain development from A2 development rights, not to impose conditions if A2 rights are lawfully exercised. Even if it were lawful to seek to impose a condition of this kind, because of the operation of article 3(4) of the GPDO (which deals only with conditions imposed by the GPDO itself) it would not bind the land and would therefore be ineffective.
- 7.6 Metro Bank have rightly pointed to the trend for bank branches to close, both in Westminster and nationally. This underlines the risks to the council's planning policies outlined earlier of effectively allowing unrestricted A2 uses which could change to any use within Class A2. Although the initial change to A2 would be entirely bona fide (and in most cases probably supported by policy), the risk is that the council would be unable to control any subsequent changes.
- 7.7 Even if these legal points are set to one side, Leading Counsel has confirmed that at this stage the council cannot lawfully modify the proposed Direction. Under the GPDO 2015 only the Secretary of State can do so. To make the kind of change Metro Bank are suggesting would require the council to start the process again from the beginning which would result in a further 12 month delay in the Direction coming into force. As mentioned earlier, Metro Bank have sought action by the Secretary of State to modify the Direction in the manner set out above but DCLG have declined to do so.

Evidence for Article 4 Direction; and the specific necessity for banks to be covered by the Article 4 (both Metro Bank and Shire Consulting question the adequacy of the evidence on which the council is acting).

- 7.8 As set out above in para 4.1-4.14, and in Appendix 6, the council has evidence to support continued strong retail policy framework, which protect the supply of retail premises, particularly in the Core CAZ where demand for retail space exceeds supply. In relation to its other shopping centres it also has evidence of the impact on vitality and viability caused by change in the character of some of its shopping centres, both those which are designated (such as Clifton Road in Little Venice), and those that are not designated (such as Bristol Gardens in Maida Vale).
- 7.9 Westminster has seen an explosion of estate agents, with premises up 27.4% in the year to February 2016, with numbers rising from 179 to 228, the largest percentage increase of all London boroughs. From consumer surveys undertaken as part of its shopping centre health checks there is evidence that consumers are aware of the proliferation of estate agents in some shopping centres, specifically requesting “fewer estate agents”, as well as more and better quality retail, to encourage them to use and visit the shopping centres more. In addition, the objection from the Pimlico Grid Residents Association seeks an extension of the Article 4 to the whole of Westminster, illustrating their concerns at the threat to vitality and viability of unconstrained change of use from A1 to A2 on their local shops. The points made by Historic England and the business improvement districts in support of the Direction also reinforce the point.
- 7.10 Metro Bank point out that banks have not been proliferate in Westminster since the introduction of permitted development rights in 2014 in order to illustrate the lack of harm. However the council contends that the harm stems partly from dilution of A1 use and partly from the unrestricted changes from A1 to A2, which would prevent the council applying its policies. The fact that bank branches have not been proliferating, and have indeed closed many branches, has been widely reported in the media as stemming from changing customer behaviour and the rise of online banking. While it is acknowledged that this is undoubtedly not the intention of Metro Bank, a number of the established banks have closed branches nationally, with reports estimating 600 bank branches having closed in the UK in the last year, due to the changing market, and increasing trends towards online banking. The introduction of permitted development rights for changes of use from A1 to A2 uses in April 2014 does not appear to have made any difference to this one way or the other
- 7.11 The council has also considered the risk of this onward change taking place. When combined with the proliferation of estate agents in Westminster (an increase of 27.4%, the biggest in London, in the year to February 2016), this is considered a significant risk which justifies the proposed approach including banks. The latest monitoring data (2013-2014) noted overall growth in A1 use,

but losses were identified for some areas including CAZ Frontage, Major, District and Local Shopping Centres. The losses were relatively low, and flexibility is allowed by policy. However, as well as providing the ability to refuse applications where the loss of A1 use is considered to be detrimental, the strong policy stance on protection of retail may also have had the effect of deterring applications from being submitted.

The Article 4 will block new banks from opening and specifically disadvantage challenger banks

7.12 The council's existing retail policy framework provides protection for retail (A1) use throughout the City, but also a degree of flexibility around changes of use for specific types of shopping areas. The Article 4 Direction does not seek to prevent A2 uses from opening in Westminster, and nor does it do so in practice; statistics on changes of use (as set out in Appendix 6) support this finding:

- In the Core CAZ between 2010 and introduction of permitted development rights in 2014 there have been a total of 20 permissions, totalling 2600sqm floorspace granted which involved change of use from A1 floorspace to A2 floorspace, while only 10 schemes (totalling 974 sqm) were refused.
- The picture is similar in the wider CAZ and the West End Special Policy Retail Area.

7.13 These figures are set against a context of a change in the GPDO since 2014, since when changes of use from A1 to A2 have been permitted development, and so since this date far fewer applications will have been submitted for straightforward change of use. Looking in particular at changes of use to a bank, of five applications received, two were permitted (Wigmore Street and Oxford Street). Of the three refused, one was an extension to the Wigmore Street bank, into an adjacent building.

7.14 It is not the Council's role as a local planning authority to intervene either to break up monopolies or enable new entrants to the banking market, and it is limited in its capacity to act by the definitions ascribed in the use classes order. Notwithstanding this the council acknowledges that banks can contribute positively to the vitality and viability of shopping centres. The council has made the following suggestions to Metro Bank:

- That it considers the use of the council's land use swaps and credits policy, to enable it to secure premises in its preferred location.
- That it engages with the council on its emerging retail planning policies as these are likely to be supportive of new bank branches given the contribution they can make to footfall and therefore viability and vitality, subject only to the need to ensure "competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres" (NPPF, paragraph 23).

- In the context of the challenges in the wider banking sector market, there are opportunities for new entrants to secure premises already in A2 use, which, when combined with the other offer above affords an appropriate solution for Metro Bank.

There is no case for a Direction that covers banks as there is unlikely to be a proliferation of bank/building society branches

- 7.15 Metro Bank point to evidence that the numbers of bank branches in Westminster has reduced by 18 between 2011 and 2016 and argues that given this trend it is unlikely that there will be a proliferation in the number of branches to the extent that the vitality and viability of centres will be imperilled.
- 7.16 The City Council does not contest either the evidence about this trend or the argument that there is unlikely to be a city-wide proliferation of bank branches. The proposed Direction is intended to provide that the council can manage any clusters that do emerge in particular centres but, more important, it will enable some degree of control of the consequences of the trend towards bank closures by imposing conditions requiring planning permission for changes of use of closed branches to other A2 uses. The important reasons for doing this have been explained earlier in this report.

Area to which the Article 4 Direction applies

- 7.17 The Article 4 Direction covers all of Core CAZ and all of the designated shopping centres outside of the Core CAZ. This incorporates 39 Local Shopping Centres, 4 District Shopping Centres, 5 CAZ Frontages and the Major Shopping Centre outside of the Core CAZ. Areas which would continue to have permitted development rights for a change of use from A1 to A2 should include only isolated shop units. Government guidance advises that the use of Article 4 directions should be limited, and that the potential harm any direction is intended to address be clearly identified. A City-wide Article 4 Direction, as requested by the Pimlico Grid Residents Association would be too widely drawn to meet the Government's criteria. The key issue is the loss of A1 shops in designated shopping areas where our adopted policies place a high priority on protecting A1 uses.

The planning tests that should be applied

- 7.18 Metro Bank argue that before making the Article 4 Direction, the Council must:
- Be satisfied that it is expedient that development should not be carried out unless express planning permission is granted
 - Analyse the different types of use falling within the A2 use class and to assess whether it is *necessary* to issue a Direction on all uses within that class in order to protect local amenity or the wellbeing of the area
 - Set out why any of the A2 uses would undermine (or fail to protect) the health, vitality and viability of the retail centres
 - Consider the consultation responses and the evidence presented

- Set out through a proper assessment which specific geographical areas it considers to be vulnerable.

7.19 Shire Consulting has made similar points. They point to the NPPF guidance about the particularly strong justification required for directions withdrawing permitted development rights for wide areas such as the entire area of a local planning authority. The council considers that this is reading too much into the provisions of the GPDO (which simply requires the local planning authority to be satisfied that it is expedient that development should not be carried out unless permission is granted for it on an application) or the wording of the NPPF quoted in paragraph 4.6 above (which requires the authority to be satisfied that a Direction is necessary to protect local amenity and wellbeing). This report explains the evidential basis for the making of a Direction. It also explains the evidential and practical reasons why the kind of approach Metro Bank advocate are either (or both) undesirable and incapable of being implemented within the legislation. In considering these issues, regard should be had to the national guidance that particular care should be taken in the case of directions covering a wide area (such as a local planning authority's entire area) and cases where prior approval procedures give a measure of control need to be taken into account – neither apply in this case.

Government intended to allow A2 uses anywhere within a shopping area

- 7.20 Shire Consulting assert that since the Government amended the GPDO to allow changes of use from class A1 to any of the financial service uses within class A2 without limitation or condition it is wrong as a matter of principle for local planning authorities to seek to restrict this freedom “in cases where there is no harm to amenity”.
- 7.21 Of course if the Government intended that local planning authorities should not have the ability to restrict these permitted development rights, it would have been open to them to have dis-applied the power to make Article 4 Directions in the GPDO itself. As already pointed out, the Department for Communities and Local Government has taken the view that the council's proposals do not raise issues they consider justifies the Secretary of State's intervention.
- 7.22 Having considered the representations made and having regard to the relevant national planning policy and guidance, officers recommend that the proposed Article 4 Direction should now be confirmed. It is further recommended that changes to emerging City Plan policies should continue to be formulated which encourage banks where these contribute positively to the vitality and viability of a shopping centre, do not result in the loss of convenience retail and do not lead to an overconcentration of banks and building societies in the area.

8. NEXT STEPS

- 8.1 Once the Council has confirmed the Article 4 Direction, by this report, the Director of Law will formally sign and date the Article 4 Direction thereby legally bringing into effect.
- 8.2 Notification of confirmation of the Article must then be served by the council on those parties originally notified of the Order including the Secretary of State. Appendix 2 contains the notification.

9. FINANCIAL IMPLICATIONS

- 9.1 The main financial implications relating to the Article 4 Direction is that the Council would incur a cost to the service as officers would need to determine planning applications for changes of use from A1 to A2 in the proposed area for which a fee is not chargeable. However, officer time is already being spent in some instances when considering certain applications that involve, for example, shop front changes (fee = £195), advertisement consent (fee = £110) etc. In the last 10 years there were 211 applications for changes of use from A1 to A2, when planning permission was required.
- 9.2 Although a fee is not now chargeable and it is acknowledged that planning fees do not always cover the cost of determining an application, this nonetheless suggests a resourcing cost of £8,124 per annum which can be covered by existing revenue budgets. The additional work required to determine applications for changes of use from A1 to A2 would be balanced against the impact of loss of A1 uses on vitality and viability of shopping streets and on the character and functions of the Special Policy Areas.

10. LEGAL IMPLICATIONS

- 10.1 The rules for making and confirming of an Article 4 direction are set out in the Town and Country Planning (General Permitted Development) (England) Order, 2015. This legislation defines the classes of permitted development, exceptions to permitted development and outlines the process for making an article 4 Direction. The compensation arrangements are at sections 107-109 of the Town and Country Planning Act 1990.
- 10.2 A number of legal issues were raised during the consultation process and the advice of Leading Counsel (David Forsdick QC) was taken on these. These issues are dealt with in section 7 of this report.

11. BUSINESS PLAN IMPLICATIONS

11.1 Confirmation of the Article 4 Direction will support ability to implement a robust policy framework within the statutory local plan to protect shopping areas will contribute towards the following priorities set out in City for All:

- City of Heritage – We will protect and enhance Westminster’s unique heritage so that every neighbourhood remains a great place to live, work and visit both now and in the future

12. IMPACT ON THE ENVIRONMENT

12.1 Confirmation of the Article 4 Direction will provide the City Council with additional powers to help protect and enhance environmental quality in town centres through the planning system. By enabling the council to take steps to ensure availability of a broad range of shops and services in local centres, it will help reduce the numbers of unnecessary journeys which will in turn reduce congestion and help improve air quality.

13. HEALTH, WELLBEING IMPACT ASSESSMENT INCLUDING HEALTH AND SAFETY IMPLICATIONS

13.1 Confirmation of the Article 4 Direction will provide the City Council with additional powers to help protect and enhance the health and wellbeing of those using town centres through the planning system. By enabling the council to take steps to ensure availability of a broad range of shops and services in local centres, it will help ensure the wide accessibility of services and opportunities to communities and encourage journeys by sustainable and healthy modes like cycling and walking.

14. EQUALITIES IMPLICATIONS

14.1 Under the Equalities Act 2010 the council has a “public sector equality duty”. This means that in taking decisions and carrying out its functions it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to foster good relations between persons who share a relevant protected characteristic and those who do not share it. The council is also required to have due regard to the need to take steps to take account of disabled persons’ disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The

2010 Act states that “having due regard” to the need to promote equality of opportunity involves in particular having regard to: the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic; take steps to meet the needs of persons sharing a protected characteristic that are connected with it; take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.

- 14.2 The courts have held that “due regard” in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equalities implications of the decision.
- 14.3 Officers have considered the need for a formal equalities impact assessment of the proposed confirmation of the proposed Article 4 Direction to control change of use from A1 (retail) to A2 (financial and professional services). This has drawn on the Integrated Impact Assessment that was carried out at the time that the proposed Direction was approved for consultation. Their conclusion is that as the Direction will enable the council to protect shopping centres by helping to maintain the number and range of A1 shops, it will help make it easier for residents to access a range of shops locally. This positive impact is especially important from an equalities point of view in the district and local shopping centres, where local people, and particular groups including older people, and disabled who may be less mobile, and families with young children, and new mothers rely on being able to access a range of local shops, particularly for convenience shopping for the type of everyday items that people require. This may also have a positive impact on particular ethnic groups to the extent that there may be concentrations of people of particular ethnicities in certain spatial areas, who may be more likely to rely on particular shopping centres. Protecting local provision of shops reduces the need to travel, and can promote walking and cycling, which is positive for health and wellbeing. The proposed article 4 Direction also ensures protection of the international shopping centres, maintaining vitality and overall health and attractiveness to shoppers. This is vital to the economy and competitiveness of London.
- 14.4 No negative impacts have been identified, and it has therefore been concluded that a full EIA is not necessary.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Nina Miles, Principal Policy Officer on 0207 641 1081 or email nmiles@westminster.gov.uk

APPENDICES

1. Article 4 Direction for changes of use from A1 (shops) to A2 (financial and professional services) in the Core Central Activities Zone (CAZ) and other designated shopping centres outside of the Core CAZ.
2. Notice following confirmation of the Article 4 Direction.
3. Locations within each shopping centre where notice is to be posted
4. Consultation responses received.
5. Letter from the Secretary of State acknowledging the making of Direction.
6. Justification and evidence supporting the introduction of the Article 4 Direction for change of use from A1 (retail) to A2 (Financial and Professional Services) uses

BACKGROUND PAPERS

1. Cabinet Member Report 9 October 2015 Article 4 Direction for changes of use from A1 (shops) to A2 (financial and professional services).
2. Westminster's City Plan: Strategic Policies (2013)
3. Equalities Impact Assessment Tool

Appendix 1 – Article 4 Direction

For completion by the **Cabinet Member for Built Environment**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME **Councillor Robert Davis MBE, DL, Deputy Leader and Cabinet Member for Built Environment**
: _____

State nature of interest if any

.....
.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled Confirmation of Westminster's Article 4 Direction for changes of use from A1 (shops) to A2 (financial and professional services).

Signed

Councillor Robert Davis MBE, DL, Deputy Leader and Cabinet Member for Built Environment

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

.....
.....

Appendix 1 – Article 4 Direction

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are staffing implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix 1 – Article 4 Direction

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015 (the "Order")

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH SCHEDULE 3 APPLIES

WHEREAS the Council of the City of Westminster, being the appropriate local planning authority within the meaning of Article 4(5) of The Town and Country Planning (General Permitted Development) (England) Order 2015, is satisfied that it is expedient that development of the description set out in the First Schedule below should not be carried out on the land described in the Second Schedule and shown shaded grey (for identification purposes only) on the Plan annexed hereto unless permission is granted on an application made under Part III of the Town and Country Planning Act 1990 (as amended).

NOW THEREFORE the said Council in pursuance of the power conferred on them by Article 4(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015 hereby directs that the permission granted by Article 3 of the said Order shall not apply to the development specified in the First Schedule hereof in respect of the land described in the Second Schedule and shown shaded grey (for identification purposes only) on the Plan annexed hereto.

FIRST SCHEDULE

In respect of land described in the Second Schedule

Being development comprised within Schedule 2 Part 3 Class D of the said Order, namely :-

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

and not being development comprised within any other Class.

SECOND SCHEDULE

Land comprising the Core Central Activities Zone and designated shopping centres as shown shaded in grey on the attached plan.

Appendix 1 – Article 4 Direction

**THE COMMON SEAL of THE LORD)
MAYOR AND CITIZENS OF THE)
CITY OF WESTMINSTER was)
hereunto affixed by Order**

Authorised Signatory


The Plan referred to in this Direction made under Article 4 (1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 by the City of Westminster

- Local Shopping Centre**
- 1 Crawford Street/Seymour Place/York Street, W1
 - 2 Chiltern Street/George Street/Blandford Street, W1
 - 3 New Quebec Street, W1
 - 4 Great Titchfield Street, W1
 - 5 Seymour Place, W1
 - 6 Cleveland Street, W1
 - 7 New Cavendish Street, W1
 - 8 Motcomb Street, SW1
 - 9 Strutton Ground/Artillery Row, SW1
 - 10 Pimlico, SW1
 - 11 Moreton Street, SW1
 - 12 Pimlico Road, SW1
 - 13 Elizabeth Street, SW1
 - 14 Lupus Street, SW1
 - 15 Ebury Bridge Road, SW1
 - 16 Porchester Road, W2
 - 17 Moscow Road, W2
 - 18 Craven Road/Craven Terrace, W2
 - 19 Leinster Terrace, W2
 - 20 Baker Street/Melcombe Street, NW1
 - 21 Westbourne Park Road, W2
 - 22 Nugent Terrace, W9
 - 23 Charlbert Street, NW8
 - 24 Abbey Road/Boundary Road, NW8
 - 25 Harrow Road (East), W9
 - 26 Harrow Road/Boume Terrace, W2
 - 27 Kilburn Lane, W9
 - 28 Kilburn Park Road, NW8
 - 29 Blenheim Terrace, NW8
 - 30 Clifton Road, W9
 - 31 Maida Vale, W9
 - 32 Formosa Street, W9
 - 33 Ledbury Road, W11
 - 34 Connaught Street, W2
 - 35 Femhead Road, W9
 - 36 Lauderdale Road/Castellain Road, W9
 - 37 Shirland Road Junction, W9
 - 38 Shirland Road/Chippenham Road, W9
 - 39 Lisson Grove, NW8

- District Shopping Centres**
- (i) Church Street/ Edgware Road
 - (ii) Harrow Road
 - (iii) Praed Street
 - (iv) St John's Wood

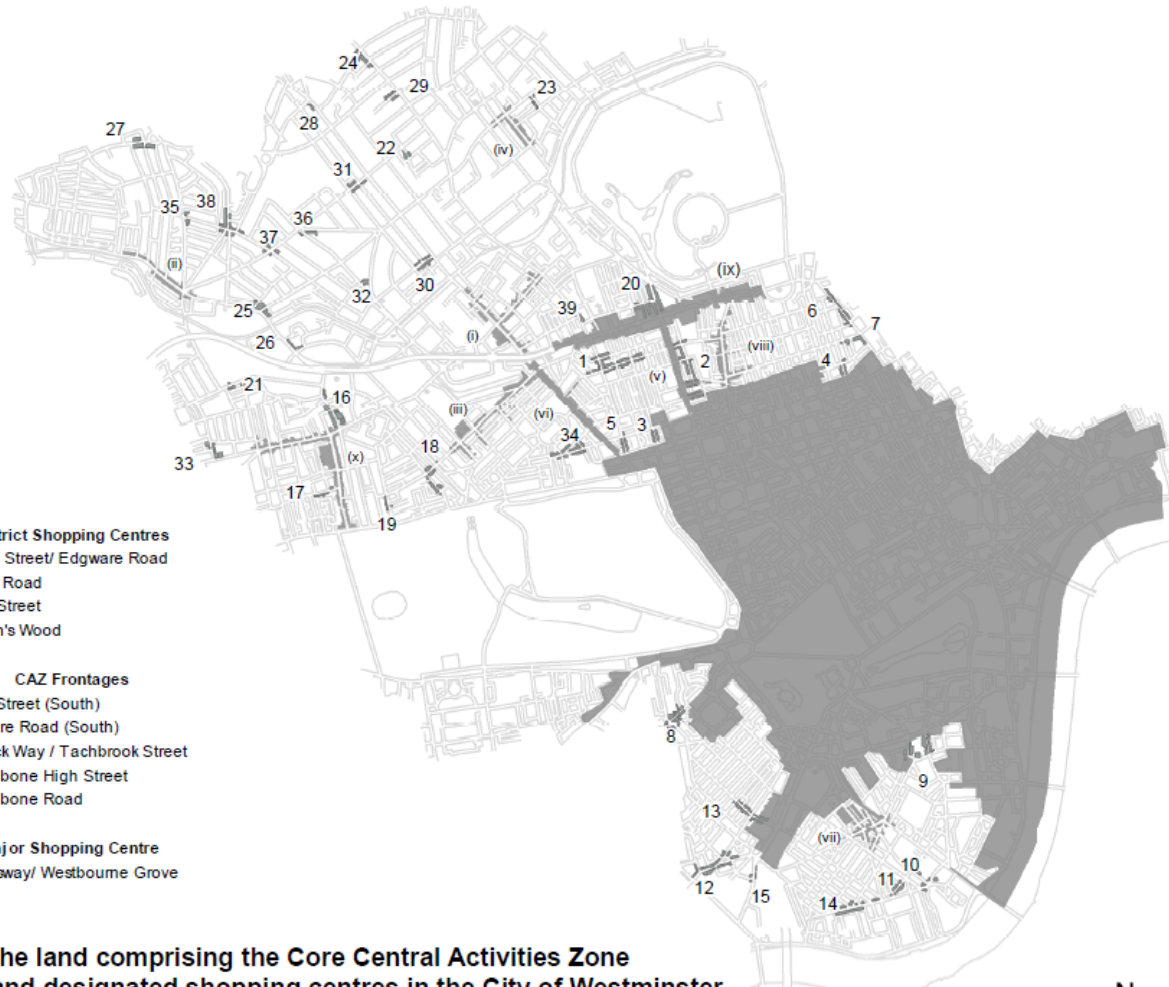
- CAZ Frontages**
- (v) Baker Street (South)
 - (vi) Edgware Road (South)
 - (vii) Warwick Way / Tachbrook Street
 - (viii) Marylebone High Street
 - (ix) Marylebone Road

- Major Shopping Centre**
- (x) Queensway/ Westbourne Grove

 **The land comprising the Core Central Activities Zone and designated shopping centres in the City of Westminster**

Reproduced from Ordnance Survey mapping with the sanction of Her Majesty's Stationery Office, Crown Copyright. Unauthorised reproduction may lead to prosecution or civil proceedings. City of Westminster LA100019597 City Planning Delivery Unit.

0 0.45 0.9 1.8 Miles



Appendix 2 – Model text for site notices

**THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED
DEVELOPMENT) (ENGLAND) ORDER 2015**

CITY OF WESTMINSTER

NOTICE OF CONFIRMATION OF A DIRECTION UNDER ARTICLE 4(1)

NOTICE IS GIVEN by the City of Westminster, being the appropriate Local Planning Authority, that it has made a Direction under Article 4(1) of The Town And Country Planning (General Permitted Development) (England) Order 2015 (GPDO) .

The Direction was made on 20th October 2015 and confirmed on the xx of xxx 2016 and applies to the Core Central Activities Zone and designated shopping centres in the City of Westminster.

The Direction applies to the development described in the following Class of the GPDO:-

Schedule 2 Part 3 Class D, in so far as it relates to development consisting of a change of use of a building within its curtilage from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order, to a use falling within Class A2 (financial and professional services) of that Schedule.

The effect of the Direction is that the permission granted by Article 3 of the GPDO shall not apply to such development and such development shall not be carried out within that area unless planning permission is granted by the City of Westminster (the "Council").

A copy of the Direction and of the Plan defining the area to which it relates may be seen at the offices of the Council at Westminster City Hall, 64 Victoria Street, London SW1E 6QP during normal office hours or can be viewed on the Council's website at www.westminster.gov.uk.

The Direction will come into force on 1 January 2017

Dated this day of December 2016

Tasnim Shawkat
Director of Law
Tri Borough Legal Services
Westminster City Council
City Hall
64 Victoria Street
London SW1E 6QP

Appendix 3 – Site notice locations

List of locations for site notices for Article 4 Directions A1 to A2

Core CAZ

Westminster Station, Bridge Street SW1
Charing Cross Station, Strand, SW1
Oxford Circus, Station, Oxford Street, W1
Bond Street Station, New Bond Street
Knightsbridge Station, Brompton Road, SW1
Hyde Park Corner Station, Knightsbridge, SW1
Millbank – near Millbank Pier
Victoria Street (south side) near Cathedral Piazza
Buckingham Palace Road - vicinity of Victoria Station
Vauxhall Bridge Road(station side) vicinity of Victoria Station
Oxford Street – north side vicinity of Marble Arch Station
Edgware Road (south of Wigmore Street)
Oxford Street (north side – vicinity of Duke Street)
Wigmore Street (vicinity of Duke Street)

District Shopping Centres

- (i) Church Street/Edgware Road
Edgware Road – junction of Boscobel Street
Church Street (south side) junction of Salisbury Street
- (ii) Harrow Road
Harrow Road (north side) – junction of Bravington Road
Harrow Road (south side) – junction Great Western Road
- (iii) Praed Street
Praed Street – junction of London Street
Praed Street – junction of South Wharf Road
- (iv) St John's Wood
St John's Wood High Street – junction of St John's Wood Terrace
St John's Wood High Street – junction of Allisten Road

CAZ Frontages

- (iv) Baker Street (south)
Baker Street – junction of Crawford Street
Baker Street – junction of Blanford Street
- (v) Edgware Road (south)

Appendix 3 – Site notice locations

Edgware Road – junction of Susses Gardens
Edgware Road – junction of George Street

(vi) Warwick Way / Tachbrook Street

Warwick Way – junction of Tachbrook Street
Wilton Road - junction of Longmoore Street

(vii) Marylebone High Street

Marylebone High Street – junction of New Cavendish Street
Marylebone High Street – junction of Crawford Street

(ix) Marylebone Road

Marylebone Road – junction with Gloucester Place
Marylebone Road – junction with Marylebone High Street

Major Shopping Centre

(x) Queensway/ Westbourne Grove

Queensway - vicinity of Whiteleys
Westbourne Grove – junction of Kensington Gardens

Local Shopping Centres - 2 notices in each centre

- 1 Crawford Street / Seymour Place / York Street, W1
- 2 Chiltern Street / George Street / Blandford Street, W1
- 3 New Quebec Street, W1
- 4 Great Titchfield Street, W1
- 5 Seymour Place, W1
- 6 Cleveland Street, W1
- 7 New Cavendish Street, W1
- 8 Motcomb Street, SW1
- 9 Strutton Ground / Artillery Row, SW1
- 10 Pimlico, SW1
- 11 Moreton Street, SW1
- 12 Pimlico Road, SW1
- 13 Elizabeth Street, SW1
- 14 Lupus Street, SW1
- 15 Ebury Bridge Road, SW1
- 16 Porchester Road, W2
- 17 Moscow Road, W2
- 18 Craven Road / Craven Terrace, W2
- 19 Leinster Terrace, W2
- 20 Baker Street / Melcombe Street, NW1
- 21 Westbourne Park Road, W2
- 22 Nugent Terrace, W9
- 23 Charlbert Street, NW8
- 24 Abbey Road / Boundary Road, NW8
- 25 Harrow Road (East), W9
- 26 Harrow Road / Bourne Terrace, W2

Appendix 3 – Site notice locations

- 27 Kilburn Lane, W9
- 28 Kilburn Park Road, NW6
- 29 Blenheim Terrace, NW8
- 30 Clifton Road, W9
- 31 Maida Vale, W9
- 32 Formosa Street, W9
- 33 Ledbury Road, W11
- 34 Connaught Street, W2
- 35 Fernhead Road, W9
- 36 Lauderdale Road/Castellain Road, W9
- 37 Shirland Road Junction, W9

- 38 Shirland Road / Chippenham Road, W9

- 39 Lisson Grove, NW8

Appendix 4 – Consultation Responses

Appendix 5 – Letter from Secretary of State

WESTMINSTER CITY COUNCIL

PROPOSED ARTICLE 4 DIRECTION TO CONTROL CHANGES OF USE FROM A1 (RETAIL) TO A2 (FINANCIAL AND PROFESSIONAL SERVICES) USES

This document expands on the evidence in sections 4.7-4.17 of the Cabinet Member Report dated 9 October 2015 that gave approval for an Article 4 Direction to withdraw permitted development rights allowing changes of use from A1 (retail) to A2 (financial and professional services). In particular it deals with points raised in the objections to the Direction made by Metro Bank and Shire Consulting. It draws particularly on the town centre health checks referred to in both the October Cabinet Member report and the “further representations” submitted by Deloitte Real Estate on behalf of Metro Bank on 28th July 2016. It is intended to support the Cabinet Member Report recommending confirmation of the Direction.

Introduction: Purpose of the Article 4 Direction

The council initially introduced the Article 4 Direction citing the following reason for decision:

“To enable the council to continue to protect the retail function of key shopping areas using the policy framework provided by the statutory local plan to determine planning applications for changes of use from A1 (shops) to A2 (financial and professional services) in the Core Central Activities Zone (CAZ) and other designated shopping centres outside of the Core CAZ.” (Cabinet Member Decision, 9th October 2015)

The Cabinet Member Decision report cited by way of background the council’s strong retail policy framework, which provides protection for retail (A1) use throughout the City, as well as a degree of flexibility around changes of use for specific types of shopping areas. While A2 uses are acknowledged as a valued complementary service to A1 shops in shopping areas, vitality and viability of shopping areas can suffer from an over concentration of non-A1 uses. In recent years Westminster has seen the erosion of A1 uses in certain of its shopping centres, particularly to A2 uses, most notably estate agents, despite this strong policy framework to protect retail.

Indeed Westminster has seen an explosion of estate agents, with premises up 27.4% in the year to February 2016, with numbers rising from 179 to 228⁴, the largest percentage increase of all London boroughs. Westminster also has instances of undesignated shopping centres turning almost entirely over to non-A1 uses, e.g. Bristol Gardens in Maida Vale, formerly a thriving retail street.

⁴ <http://www.propertyindustryeye.com/a-new-estate-agency-branch-opening-once-every-1-6-days-in-london/>

Appendix 6 – Justification

Areas covered by the Article 4 Direction

The council's proposed Article 4 Direction covers both the Core CAZ as well as other shopping centres.

Core CAZ

As set out in the 9th October Cabinet Member Decision, the Core CAZ includes the “internationally renowned” and “pre-eminent shopping streets.... home to flagship and iconic department stores”; in short a global retail destination of national and international significance. The need to protect the supply of retail premises is paramount to maintaining the health of the International Centre, especially in the context of a defined spatial area, with conservation areas covering almost the entirety of the Core CAZ. Additionally this is complemented by other more niche shopping areas and streets throughout the Core CAZ. The council's new and recently examined Special Policy Areas, include Mayfair (designated for its niche and specialist shopping) and St James (designated for its niche shopping). These have been found sound by an independent examiner and are due to be adopted in November 2016. The council's existing policies are aimed at protecting this, to ensure continued prosperity, an aim which is supported by Metro Bank:

“We wish to make clear that our intention is not to undermine Westminster's policy direction on this matter or cause undue delay, indeed we agree with the intentions to continue to support and invest in the shopping areas as an important economic driver to Westminster and London as a global City”. (Letter from Deloitte LLP, 12th May 2016)

The October report also went into some detail setting out the flexibility in the adopted policy framework around changes of use from A1, and the conditions and locations in which this would be appropriate. This flexibility which is already built into the policy framework already serves to allow change, whilst protecting the supply of A1 premises, and is considered by the council to continue to allow appropriate change of use. The Article 4 Direction does not seek to prevent A2 uses from opening in Westminster, and nor does it do so in practice; statistics on changes of use support this finding:

In the Core CAZ since 2010 there have been a total of 20 permissions, totalling 2600sqm floorspace granted which involved change of use from A1 floorspace to A2 floorspace, while only 10 schemes (totalling 974 sqm) were refused. The picture is similar in the wider CAZ and the West End Special Policy Retail Area, see table 1, below:

Appendix 6 – Justification

TABLE 1

| Core CAZ | | | | | | |
|-------------------------------------|-------------|--------------|-------------|-----------|--------------|-------------|
| | PERMISSIONS | NET A1 | NET A2 | REFUSED | NET A1 | NET A2 |
| 2010/11 | 8 | -960 | 1032 | 2 | -400 | 400 |
| 2011/12 | 2 | -100 | 100 | 3 | -382 | 382 |
| 2012/13 | 1 | -128 | 128 | 2 | -103 | 103 |
| 2013/14 | 4 | -1020 | 1020 | 2 | -18 | 12 |
| 2014/15 | 4 | -224 | 224 | 1 | -77 | 77 |
| 2015/16 | 1 | -96 | 96 | 0 | 0 | 0 |
| TOTAL | 20 | -2528 | 2600 | 10 | -980 | 974 |
| CAZ | | | | | | |
| | PERMISSIONS | NET A1 | NET A2 | REFUSED | NET A1 | NET A2 |
| 2010/11 | 11 | -1094 | 1166 | 4 | -517 | 517 |
| 2011/12 | 6 | -537 | 592 | 4 | -468 | 468 |
| 2012/13 | 2 | -174 | 174 | 2 | -103 | 103 |
| 2013/14 | 5 | -1130 | 1130 | 2 | -18 | 12 |
| 2014/15 | 6 | -327 | 327 | 1 | -77 | 77 |
| 2015/16 | 1 | -96 | 96 | 0 | 0 | 0 |
| TOTAL | 31 | -3358 | 3485 | 13 | -1183 | 1177 |
| WEST END SPECIAL POLICY RETAIL AREA | | | | | | |
| | PERMISSIONS | NET A1 | NET A2 | REFUSED | NET A1 | NET A2 |
| 2010/11 | 4 | -501 | 501 | 1 | -190 | 190 |
| 2011/12 | 1 | -59 | 59 | 1 | -190 | 190 |
| 2012/13 | 1 | -128 | 128 | 2 | -103 | 103 |
| 2013/14 | 2 | -835 | 835 | 2 | -18 | 12 |
| 2014/15 | 1 | -6 | 6 | 1 | -77 | 77 |
| 2015/16 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 9 | -1529 | 1529 | 7 | -578 | 572 |

These figures are set against a context of a change in the GPDO since 2014, since when changes of use from A1 to A2 have been permitted development, and so since this date far fewer applications will have been submitted for straightforward change of use. Looking in particular at changes of use to a bank, of five applications two were permitted (Wigmore Street and Oxford Street). Of the three refused, one was an extension to the Wigmore Street bank, into the adjacent building.

In this context the Article 4 Direction serves to protect against potential unconstrained loss of A1 retail, an eventuality which has the potential to harm the vitality and viability of shopping in the Core CAZ.

Appendix 6 – Justification

Other Shopping Centres

The other shopping centres covered by the Article 4 Direction consist of CAZ Frontages outside the Core CAZ (Baker Street, Edgware Road, Marylebone High Street, Marylebone Road and Warwick Way/Tachbrook Street), the Queensway/Westbourne Grove Major Shopping Centre, which is important for comparison shopping, the four District Shopping Centres, which are key providers of convenience and some comparison retail to the local neighbourhoods of Church Street/Edgware Road, Harrow Road, Praed Street and St John's Wood, and the 39 Local Shopping Centres, most of which are outside the Core CAZ. These serve a local catchment, and generally consist of small parades and clusters of shops mostly for convenience shopping and local services.

In each of these areas, vitality and viability would be undermined by an over-concentration of non- A1 uses. The character of some of the shopping centres is beginning to change. Clifton Road in Little Venice has suffered particularly from this loss of vitality, with three proposed changes of use from retail shops or cafes to estate agents, where there are already a number of these. The importance of these local parades of shops to individuals is highlighted by the consultation response from the Pimlico Grid Residents' Association, whose objection seeks an extension of the Article 4 to the whole of Westminster, on the basis that the residents are concerned that the Article 4 Direction which applies only to the designated shopping centres would leave other areas 'unprotected' from loss of A1 retail.

2013 Shopping Centre Health Checks

The 2013 Health Check reports prepared by *The Retail Group* surveyed a number of high street style shopping centres across the borough, included CAZ Shopping Frontages, District Shopping Centres, and the Major Shopping Centre. These included surveys of 150 consumers in each area, and included questions around what would encourage consumers to shop or visit more often, on whether they were shopping more or less than a year previously, rating their satisfaction in relation to a range of indicators, seeking views on what is missing, and their overall satisfaction level. It is notable that the surveys do not reveal a particular market demand for banks; in general responses which identify a need for 'more service retailers' (which is a broad category that could include banks, but also potentially hairdressers or any other type of 'service' business), form the smallest proportion of responses, generally from less than 5-10% of those asked, whereas what consumers want to see, as evidenced by the questions on what is missing, and on what else would encourage them to shop or visit the area more often is generally more and better quality or independent shops, which confirms that a strong approach to planning for retail is merited. In some cases e.g. Marylebone High Street, St John's Wood High Street and Edgware Road South people mentioned "fewer estate agents", and it is apparent in some areas that there are large numbers of these, as well as other A2 uses such as bureaux de change.

Appendix 6 – Justification

The summary report⁵ showed that across the different shopping centres the top two purposes for consumers visiting the centres were work and shopping. Overall satisfaction with the shopping area among consumers is generally high, especially at Marylebone High Street, St John's Wood High Street and Warwick Way/Tachbrook Street, with the lowest satisfaction at Harrow Road, and Edgware Road(South), though it was noted both of these received a high proportion of 'neither/nor' responses.

Turning to the individual shopping centre reports, the **Queensway/Westbourne Grove Major Shopping Centre** has A1 comparison floorspace as the largest retail use with over 14,000 sqm. A reduction in comparison floorspace since 2007 is due to the exclusion of the Whiteley's centre. A1 convenience retail floorspace has increased significantly to over 7,000 sqm. This is the largest shopping centre surveyed in this round of health checks, and while A2 floorspace decreased from 31 units in 2007 to 26 in 2012, this still includes 6 banks, 5 estate agents, 9 bureaux de change. The surveys of consumers showed that 55 % were shopping for convenience goods (e.g. supermarket, or baker etc.) while 3 individuals (out of 150 surveyed) were visiting a bank. The second largest group was those visiting for food and beverages at 46%. When asked about what was missing from the area less than 6% mentioned 'more service retailers' (which could include A2 uses). In response to questions on what would encourage consumers to shop or visit the area more often, 46% cited better quality shops. The top three responses relate to the improving the quality, quantity and variety of the retail offer⁶ (and see figure below).

5

http://transact.westminster.gov.uk/docstores/publications_store/Westminster_HighSt%20Health_Checks_Summary_Report_2013_V2.pdf

6

http://transact.westminster.gov.uk/docstores/publications_store/04_Final_Queensway_WbourneGrove_HC_Dec13.pdf

Appendix 6 – Justification

3.6 Thinking generally, what would encourage you to shop or visit here more often?

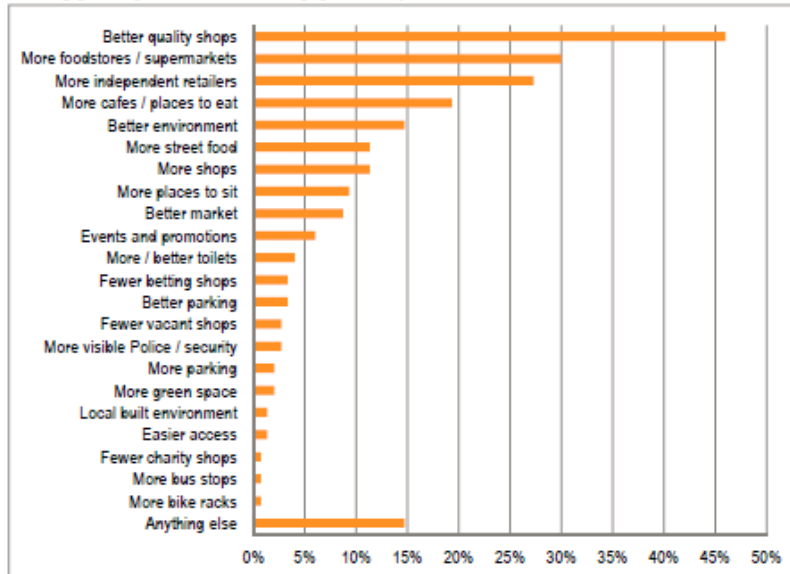


FIGURE 9: FACTORS THAT WOULD ATTRACT MORE VISITS?

The **Warwick Way/Tachbrook Street CAZ Shopping Frontage**. A1 convenience is still the single largest floorspace use, followed by A1 comparison. There was a decrease in A2 units from 24 in 2007 to 16 in 2012. In 2012 this included 8 estate agents, 2 banks and a number of other A2 uses including solicitors, and 4 betting agents (formerly A2 use). The surveys of consumers found that shopping was the top reason for the visit at 48%, with work at 21%. Over 50% of consumers were intending to use convenience shops, and over 30% visiting the market, while only 1.5% were visiting a bank or building society. When asked about what was missing from the area less than 10% mentioned 'more service retailers' (which could include A2 uses). The top three responses (see figure below) to what would encourage consumers to visit or shop more were better market, better quality shops and more independent retailers⁷.

Appendix 6 – Justification

.6 Thinking generally, what would encourage you to shop or visit here more often?

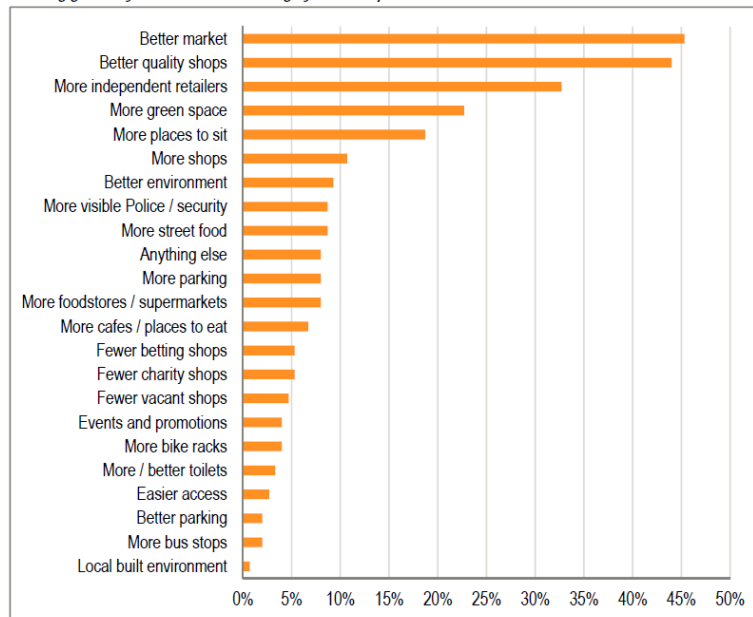


FIGURE 9: FACTORS THAT WOULD ENCOURAGE MORE FREQUENT USE

The **Church Street/ Edgware Road District Shopping Centre**, has A1 comparison as the largest retail use, A1 convenience is the second largest and up 7% on the 2007 floorspace figures. There has also been an increase in A2 financial as well as A2 convenience, A3 and A5. The area also includes a busy market. Of the 11 A2 units, there is one bank, two estate agents, two bureau de change and 6 betting offices (formerly A2 uses). The surveys revealed that shopping is by far the most common reason for people to visit the area at 69%. None surveyed mentioned banking. When asked about what was missing from the area less than 5% mentioned 'more service retailers' (which could include A2 uses). The top three responses (see figure below) to what would encourage consumers to visit or shop more were a better market, better quality shops and more foodstores/supermarkets.⁸

Appendix 6 – Justification

3.6 Thinking generally, what would encourage you to shop or visit here more often?

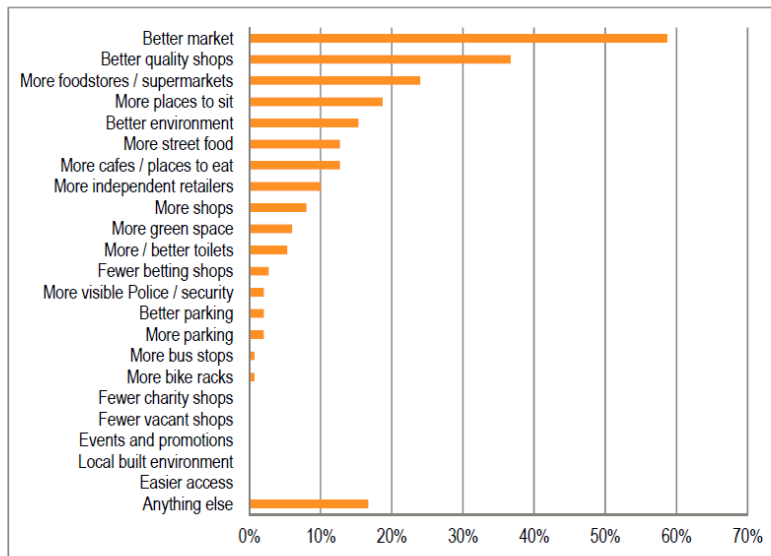


FIGURE 9: FACTORS THAT WOULD ENCOURAGE MORE FREQUENT VISITS

In **Marylebone High Street, a CAZ Shopping Frontage**, A1 comparison is the largest retail use with A1 convenience the second largest. A2 has decreased from 23 in 2007 to 20 in 2012, of which 5 are banks, 11 are estate agents and 2 are betting offices. The surveys revealed that work and shopping were equally cited as the purpose of a visit (33% each), with 6% eating and drinking or having a business meeting (5%) other reasons, cited by 15% included a range of things, including visiting friends and relatives, doctor/dentist, post office, chemist, banks and other services. When asked about what was missing from the area less than 2% mentioned 'more service retailers' (which could include A2 uses). The top response (see figure below) to what would encourage consumers to visit or shop more were 'Anything else' which included fewer tourist shops 11%, cheaper shops (9%), fewer estate agents (7%) and a variety of other individual responses including more variety, outdoor market, more leisure facilities and cheaper restaurants. The other two top responses were more independent retailers, and more cafes/places to eat.⁹

Appendix 6 – Justification

3.6 Thinking generally, what would encourage you to shop or visit here more often?

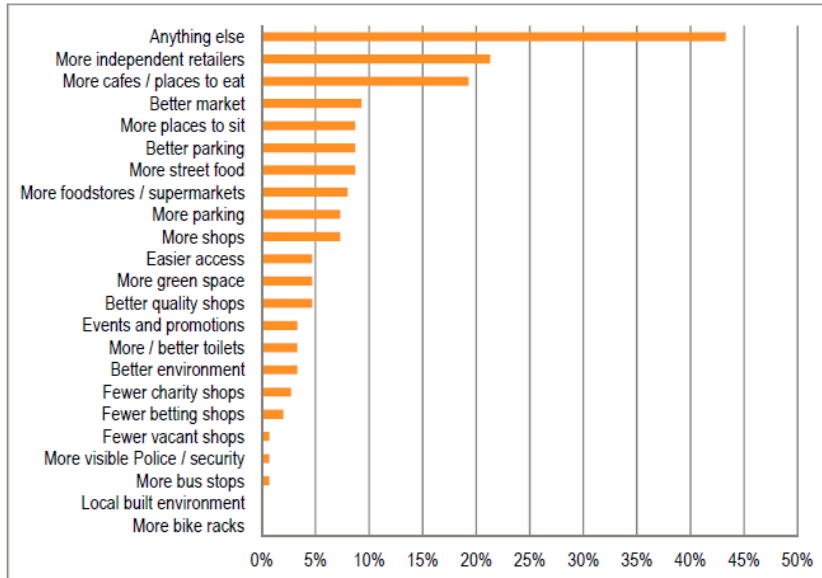


FIGURE 9: HOW TO ENCOURAGE MORE VISITS TO MARYLEBONE HIGH STREET

In the **Harrow Road District Shopping Centre**, there is marginally more comparison retail space than convenience retail space. A2 has decreased by 31% (2 units) to 8 units, one of which is a bank, the remaining 7 are estate agents. The surveys revealed that shopping was by far the biggest reason for visiting at 68%, with 12% for work, 7% passing through or commuting and living locally at 4%. Leisure and eating/drinking were only for 5% and 2% respectively, reflecting the sparse offer. When asked about what was missing from the area less than 11% mentioned 'more service retailers' (which could include A2 uses). The top 3 responses (see figure below) to what would encourage consumers to visit or shop more

Appendix 6 – Justification

were better quality shops, better market and better environment.¹⁰

3.6 Thinking generally, what would encourage you to shop or visit here more often?

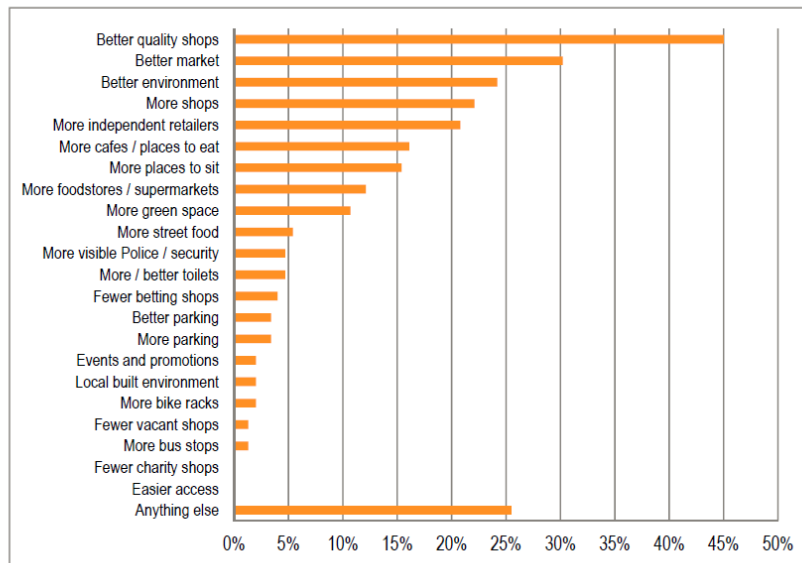


FIGURE 9: FACTORS THAT WOULD ENCOURAGE MORE FREQUENT USE

In the **St John's Wood High Street District Shopping Centre**, comparison retail is the biggest floorspace use, although there has been a decrease in A1 comparison since 2007, as more convenience and food shops have opened. This includes various bakers, butchers and delicatessens as well as a Tesco express. The area also has a long standing fashion and boutique retail offer. It also has a large number of estate agents – mainly concentrated in certain parts. A2 use is at 15.5%, having increased by 1 to 13 in 2012. Of these 9 are estate agents, and three are banks. The surveys revealed that shopping was the main reason for visiting at 44%, with 26% for work, and 6% living locally. Around 10% planned to visit a financial service e.g. bank or building society. When asked about what was missing from the area 7% mentioned 'more service retailers' (which could include A2 uses). In addition a number of people cited 'other' which included a very wide range of specific types of shops or retailers. Specifics included fewer estate agents, cheaper shops, less tourist shops, more variety, outdoor market, closer proximity to home, more leisure facilities, book shop, hardware store, cheaper restaurants, Waitrose, butchers, banks/building societies, speciality shops, fewer cafes, fewer traffic wardens, fewer fashion shops, more baby friendly facilities, cheaper independent shops, fish & chip shop, Marks & Spencer and larger cafes. The top 3 responses (see figure below) to what would encourage consumers to visit or shop more were more cafes/places to eat, more independent retailers, and better quality

Appendix 6 – Justification

shops.¹¹

3.6 Thinking generally, what would encourage you to shop or visit here more often?

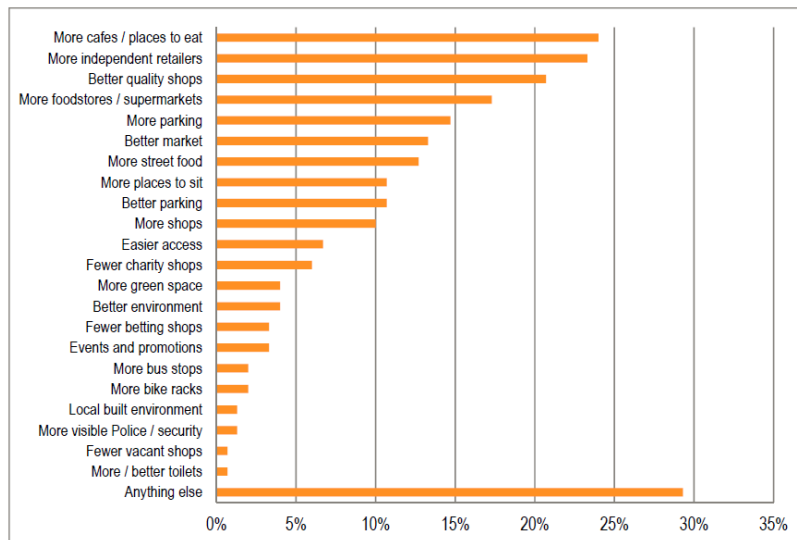


FIGURE 9: HOW TO ENCOURAGE MORE VISITS TO ST. JOHN'S WOOD HIGH STREET

The **Praed Street District Shopping Centre** has more A3 use than anything else, with more A1 convenience floorspace, and more A2 financial and professional floorspace than comparison floorspace. Both A1 convenience and comparison retail floorspace have decreased. Financial (A2) use has increased from 29 to 30 units in 2012 (of which 13 are estate agents, 8 are bureaux de change, and 4 are banks), increasing their already significant presence in terms of unit numbers. The surveys revealed that work was the main reason for visiting at 39%, with less than 15% shopping. All other reasons were less than 10% each. Around 5% planned to visit a financial service e.g. bank or building society. When asked about what was missing from the area 'more service retailers' (which could include A2 uses) was mentioned by only 8% of people, which was the least mentioned category. The top 3 responses (see figure below) to what would encourage consumers to visit or shop more were better quality shops, more foodstores/supermarkets and more cafes/places to eat.¹²

¹¹

http://transact.westminster.gov.uk/docstores/publications_store/06_Final_St_John's_Wood_HC_Dec13.pdf

¹²

http://transact.westminster.gov.uk/docstores/publications_store/07_Final_Praed_St_HC_Dec13.pdf

Appendix 6 – Justification

3.6 Thinking generally, what would encourage you to shop or visit here more often?

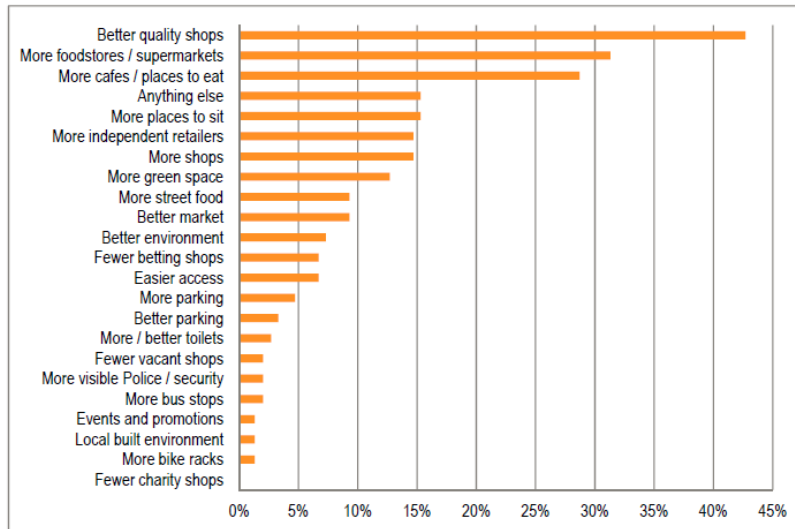


FIGURE 9: HOW TO ENCOURAGE MORE VISITS TO PRAED STREET

The **Berwick Street (other CAZ shopping Centre)** located in the heart of Soho on one of the main transitory north-south routes. Over half of retail space is comparison retail, with A3 being the next largest, and A2 consisting of a supermarket, complimented by street market with a considerable proportion of convenience food and lunch time hot food stalls. A 2 is very low, with one unit (a betting office). The surveys revealed that work was the main reason for visiting at 39%, followed by 35% shopping. All other reasons were less than 10% each. None surveyed planned to visit a financial retailer. When asked about what was missing from the area 'more service retailers' (which could include A2 uses) was mentioned by only 6% of people, which was the least mentioned category. The top 3 responses (see figure below) to what would encourage consumers to visit or shop more were better market, more independent retailers and more street food.¹³

Appendix 6 – Justification

Thinking generally, what would encourage you to shop or visit here more often?

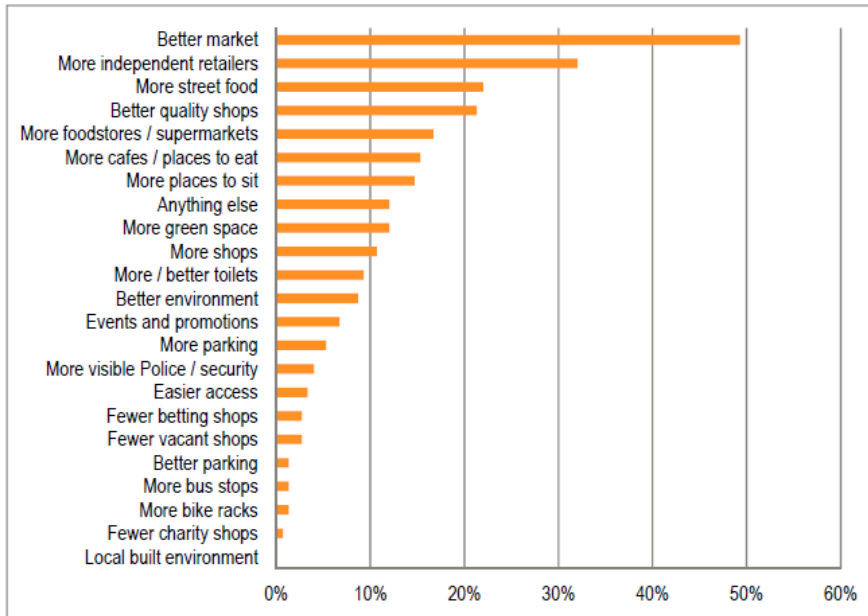


FIGURE 9: HOW TO ENCOURAGE MORE VISITS TO BERWICK STREET

The **Edgware Road South CAZ Shopping Frontage** has A1 comparison as the largest retail use, although this has decreased by 25% since 2008. There has also been an increase in A1 comparison retail since 2008. In addition A2 uses now account for over 3500sqm in the centre, an increase of 11% since 2006, now the third largest share of retail. This includes 8 estate agents, 9 banks, and a number of bureau de change and betting offices (formerly A2 use). The surveys revealed that shopping was the main reason for visiting at 58%, followed by work at 19%. All other reasons were less than 5% each. 9% planned to visit a financial retailer. When asked about what was missing from the area 'more service retailers' (which could include A2 uses) was mentioned by only 9% of people, which, jointly with more cafes and restaurants was the least mentioned category. The top 3 responses (see figure below) to what would encourage consumers to visit or shop more were better quality shops, 'anything else' and better environment. Anything else included 'fewer estate agents'.¹⁴

Appendix 6 – Justification

3.6 Thinking generally, what would encourage you to shop or visit here more often?

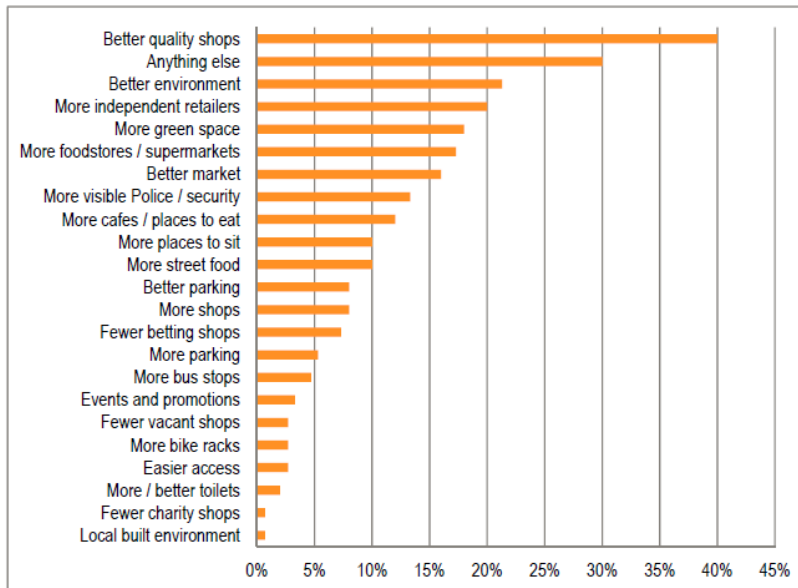


FIGURE 9: HOW TO ENCOURAGE MORE VISITS TO EDGWARE ROAD

The **Baker Street South (CAZ Shopping Frontage)** has A1 comparison as the largest retail use, followed by A3, then A2 use, and then A1 convenience use. Financial and professional services (A2) have seen a decrease from 21 to 18 units; however provision of banks and other such services remains very strong on the street (with 8 estate agents, and 5 banks or building societies). The surveys revealed that work was the main reason for visiting at 52%, followed by shopping, but this was only 13%. All other reasons were less than 10% each. Less than 15% of those surveyed said they planned to visit a financial retailer. When asked about what was missing from the area most people cited more independent shops and more fashion shops and foodstores with 'more service retailers' (which could include A2 uses) being mentioned by around only 3% of people. The top 3 responses (see figure below) to what would encourage consumers to visit or shop more were more foodstores/supermarkets, better quality shops and more independent retailers.¹⁵

Appendix 6 – Justification

3.6 Thinking generally, what would encourage you to shop or visit here more often?

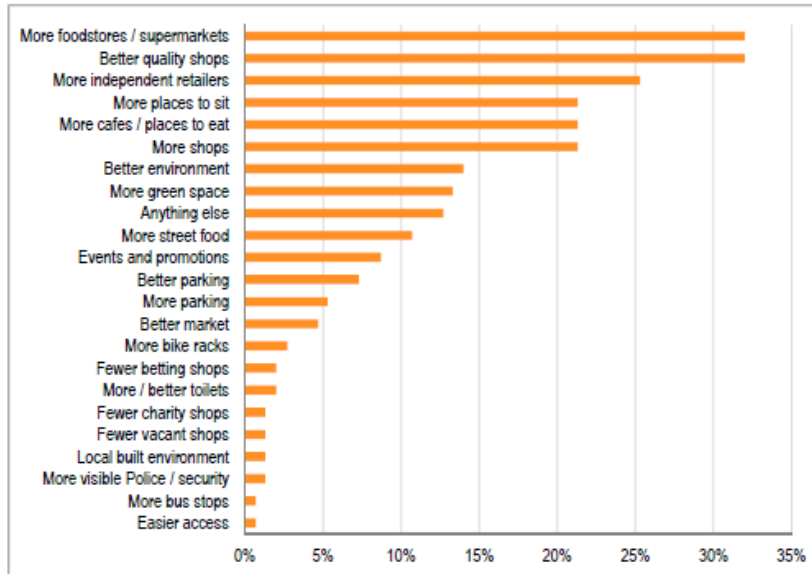


FIGURE 9: HOW TO ENCOURAGE MORE VISITS TO BAKER STREET (SOUTH)

Risk of onward change

In addition to the council's objection to the principle of carving out banks from its Article 4 Direction on the basis that it would effectively undermine the very purpose of the Article 4 Direction, the council has also considered the risks associated with exempting banks specifically. The council's concerns do not arise from a threat of a "proliferation of banks" which may harm the vitality and viability banks but rather, from the potential harm to vitality and viability envisaged, which would arise following a change of use from A1 to a bank under permitted development, (and a 'carve out' from Westminster's Article 4 Direction). If the branch was subsequently selected for closure – and there have been a great many high street bank branches closing in recent years, with 600 bank branches closing nationwide in the last year, as widely reported in the media¹⁶ - there would be no way of the council preventing, or even knowing about a subsequent change of use to another user, seeing as changes of use within the A2 class do not constitute "development".

Metro Bank acknowledge this as theoretically possible, however in the council's view the risk of this happening is not inconsiderable.

Metro Bank have sought to blame Westminster's planning policies for bank closures. But these must be seen in the context of wider changes in customer behaviour and demand. This has resulted in more customers opting for online banking, and a waning demand for in-branch transactions. While in 2011 there were 478m "customer interactions" in Britain's

¹⁶ <http://www.bbc.co.uk/news/business-36268324>

Appendix 6 – Justification

bank branches, in 2016 the figure is only 280m.¹⁷ It is established that if a bank branch closes in this instance a change of use to another A2 user eg. Estate Agents, which have been expanding in number, would not require planning permission, as it does not constitute development, and has happened in the last year in Westminster. Indeed Metro Bank's own evidence base details the rate at which bank branches have closed. One of these banks that has closed, at 186 Queensway has applied for permission to change its signage, which reveals that this is changing to an estate agent. The council will not necessarily be aware of this happening in every instance however, as a change of use within the A2 use class, does not constitute development.

Conclusion

The council considers that its adopted policy framework provides the right balance in terms of protection of retail supply, provided by S21 and flexibility contained in UDP policies SS 5-7 which already allow flexibility. An examination of shopping centre health checks from 2014 show there is continued support for policies which promote A1 retail, and that what consumers require in general is stronger retail. Analysis of figures for changes of use from A1 to A2 since 2010 reveal that there has been movement from A1 to A2, with more permitted than refused, which demonstrates that the policy framework is working.

¹⁷ <https://www.theguardian.com/money/blog/2016/sep/17/why-bank-branches-closing>