

LB Hammersmith & Fulham Local Plan Submission Draft Hearing Statement

Name: Power Leisure Bookmakers Ltd
Representor: Planning Potential
Policy / Matter: Policies TLC2, 3, 4 and 6 / Issues 6, 7, 8 and 10
Hearing Session – Tuesday 20th June



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1. Background

- 1.1. In October 2016, we wrote on behalf of our client, Power Leisure Bookmakers Ltd, to make representations on the LB Hammersmith & Fulham Local Plan Submission Draft 2017 (see **Appendix 1**).
- 1.2. In advance of the Examination in Public Sessions (EiP) on the 20th June, please find enclosed our 'Hearing Statement' relating to Hammersmith & Fulham's Local Plan.
- 1.3. This Statement is produced based on the Inspector's Main Issues and Questions raised in advance of the Hearing.
- 1.4. Power Leisure Bookmakers Ltd consider that the Local Plan is unsound.

2. Response to the Inspector's Main Issues and Questions: Policy TLC2 (Question 6)

2.1. The Inspector has asked the following questions in relation to Policy TLC2:

"Question 6 – Is the quota approach in the TLC2 (Town Centres) justified by the evidence base? Is it clear how the policy will be implemented effectively?"

2.2. Policy TLC2 notes that within town centres, no more than 40% of the length of the prime retail frontage as a whole will be permitted to change to non-class A1 uses (Part 1).

2.3. This quota is not justified by the evidence base. The Council have not provided an explanation as to why the threshold figure of 40% for non-class A1 uses has been set for the prime retail frontage. We had expected the document to provide an explanation as to why this specific threshold figure has been chosen to assess concentration of uses, but disappointingly the document is silent on this point.

2.4. We have reviewed the Council's 'Background paper on Retail Policies: September 2016', which states at paragraph 3.2 that the results of the town centre survey carried out in August 2014 indicate that 'A1 use is still strong in each of the prime retail frontages, with all three town centre frontages operating above and around the 60% quota. Hammersmith for example retains 79% of its prime frontage in A1 use'. This indicates that the centres are performing very well in terms of their A1 offer, and there is nothing within the documentation which would suggest why the specific quota was chosen.

2.5. In addition, there is no explanation as to how the policy will be implemented effectively.

2.6. The policy also notes under Part 2 that 'betting shops' amongst a number of other uses 'will not be permitted on the ground floor of prime retail frontages'. If adopted, this part of the policy will restrict legitimate town centre uses that would like to operate from a ground floor unit and who do not fall within the A-Class use category (such as Betting Shops) out of the borough's main centres.

2.7. There is a real danger that adopting such an approach will effectively place a moratorium on such new uses in centres and potentially encourage new operators and uses out of centres within the borough. Clearly such an approach is inappropriate and would fly in the face of the town centres first policy as set out in the NPPF which seeks to encourage town centre shops and services to locate within centres, rather than in out of centre locations.

2.8. We are concerned that the document is likely to have a serious impact on particular industries and healthy competition between different operators by preventing new operators from locating within a particular centre.

2.9. We note that the policy states that in non-prime retail frontages, criteria 3-6 will apply (effectively betting shops can locate there), however, as discussed later in the letter, this would be almost impossible for betting shop operators, as they would still need to comply with Policy TLC6.

2.10. If this policy and particularly parts 1 and 2 are not revised to include all town centre uses (including those within the Sui Generis category), we consider that the Plan

would be unsound on the basis that it is not positively prepared (it effectively discriminates against legitimate town centre uses and particular uses such as Betting Shops) nor is it consistent with national policy (as it is not compliant with the NPPF as outlined above).

3. Response to the Inspector's Main Issues and Questions: Policy TLC3 (Question 7)

3.1. The Inspector has asked the following questions in relation to Policy TLC3:

“Question 7 – Is TLC3 (Local Centres) and its proportions of A1 uses justified by the evidence base and consistent with national policy?”

3.2. Policy TLC3 sets quotas for neighbourhood parades, key local centres and satellite parades. If the quotas cannot be reached, the Council then state that they ‘may consider’ granting permission if the unit has been vacant for at least 1 year with evidence of marketing subject to a number of ‘other factors’. Importantly, it is noted that in calculations, applicants must take into account ‘unimplemented extant permissions’.

3.3. It is considered that this policy is overly onerous for applicants and unsound for the following reasons:

- The policy is unmeasurable and therefore it is not ‘effective’. It is difficult to measure adverse impacts on local areas. This is subjective. What is the criteria on which this assessment will be based? It is considered that this part of the policy should be removed.
- The Council have not provided an explanation as to why the threshold figures chosen for each centre have been set.
- The request for marketing information is overly onerous and will discourage operators from locating within the centres. It is therefore not in conformity with national policy which seeks to promote competitive town centres that provide customer choice and a diverse retail offer.
- The Council require applicants to calculate ‘unimplemented extant permissions’ for change of use applications within the frontages where the site is located. This requirement is overly onerous for the applicant and would take a substantial amount of work. It is considered on this basis that the policy is not measurable or effective.

4. Response to Inspector's Main Issues and Questions: Policy TLC4 (Question 8)

4.1. The Inspector has asked the following questions in relation to Policy TLC4:

“Question 7 – Is TLC4 (Parades et al) and its approach to A1 uses justified by the evidence base and consistent with national policy?”

4.2. Interestingly, the policy discriminates against betting shop uses by stating that in assessing a change of use from class A1 uses, the Council will take into account (part c) the number of uses that may adversely impact on the quality of the parade or cluster, such as betting shops and amusement centres.

4.3. It is considered that the policy is negatively worded towards betting shops. The Council have not produced any evidence to suggest that betting shops 'adversely' impact against the quality of centres, and on this basis, the policy should be re-worded to exclude this negative connotation or the policy will be unsound and it is not positively prepared.

5. Response to Inspector's Main Issues and Questions: Policy TLC6 (Question 10)

5.1. The Inspector has asked the following questions in relation to Policy TLC6:

“Question 10 – Is TLC6 (Betting Shops, pawnbrokers and Pay Day Loan Shops and Hot Takeaways) justified by the evidence base and consistent with national policy?”

5.2. Policy TLC6 states that the Council will seek to limit the amount and concentration of betting shops in areas of high concentration. It is also noted that planning permission for new betting shops, pawnbrokers and payday loan shops will not be permitted in prime retail frontage of town centres or within 400 metres of the boundary of an existing or permitted betting shops, pawnbrokers or payday loan shops. In addition, outside of these areas, planning permission will only be granted for the uses in accordance with the quotas that apply.

5.3. Firstly, we assume that the policy relates to each use separately, i.e. a betting shop should not locate within 400 metres of the boundary of an existing betting shop (rather than all uses). However, the Council should ensure that this is clarified in the supporting text if the policy is found sound.

5.4. We have already provided comments on the Council's intention to exclude betting shops from prime retail frontages within town centres. However, of further concern, is the reference to the 400 metre radius and the fact that there is nothing within the supporting text or within the Council's background evidence base documents explaining why such a policy (or a specific distance) is necessary.

5.5. The London Plan forms part of the Development Plan and was adopted in March 2015. The Local Plan should be in general conformity with the London Plan. Policy 4.8 is concerned with Supporting a Successful and Diverse Retail Sector and Related Facilities and Services and states that the Mayor will, and boroughs and other stakeholders should, support a successful, competitive and diverse retail sector which promotes sustainable access to the goods and services that Londoners need. The London Plan Town Centres SPG (July 2014) states that Councils are encouraged to manage over-concentrations of activities, for example betting shops, hot food takeaways and pay day loan outlets. The supporting text outlines current and potential mechanisms for managing the over-concentration of such uses. In particular, paragraph 1.2.28 states that “if the concentration of a use has reached saturation levels where the negative impacts outweigh benefits, local authorities can set thresholds at this level of saturation”.

5.6. We consider that in line with the London Plan and Town Centres SPG (2014) the starting point for Plan policy making is whether there is an existing over concentration or cluster of uses (including betting shops) which has reached saturation levels where positive impacts are outweighed by negative impacts.

5.7. In their justification text, the Council state that the borough has ‘a high concentration of betting shops’ (para 6.115) and an ‘over representation’ in the most ‘deprived parts of the borough’ which can have an impact on the health and finances of vulnerable members of the community (para 6.116). It is clear that the Council's intention is to limit the amount of concentration of betting shops in areas of high concentration by setting the 400 metres radius around existing uses.

- 5.8. Although the Council's background paper on betting shops, pawnbrokers and payday loan shops (September 2016) states that the number of betting shops has increased in the UK in recent years (para 2.1), the Council do not provide the evidence document that the information is taken from. It should be noted that betting shops actually represent less than 4% of the country's retail units and in most inner London areas less than 3%. Indeed, numbers of betting shops have in fact decreased by about a half across the country since the 1970s. In Hammersmith and Fulham alone, there are currently 43 betting shops (a decrease from 46 pre-2007) which is far less than many other London boroughs.
- 5.9. It is clear that the Council have a perception of what constitutes an over-concentration that is not shared when analysis of its centres is comprehensively undertaken. This is evident not only from the omission of any justified identification of existing over-concentrations within the Council's evidence base but also from recent appeal decisions we refer to below.
- 5.10. Within their evidence base document, (Betting Shops – Key Survey findings – page 6) it is clear that most betting shops are found in the boroughs town centres (21 units), which is not unusual as betting shops constitute a main town centre use. In terms of figures, it is clear that Fulham Broadway has 7 units in betting shop use, and Hammersmith Broadway and Shepherds Bush Green have 8 and 6 units respectively. However, this cannot be classed as an over-concentration of units.
- 5.11. An appeal was allowed at 620 High Road, Leytonstone on the 22 April 2015 (reference: APP/U5930/A/14/2229533). The proposals would result in 6 betting shops in the centre, meaning betting shops would account for just 3.5% of the overall centre, a figure which the Inspector considered to be "a low figure when compared with a comparison of other non-A1 uses in the centre". The Inspector also states that "the proposal would not result in any significant clustering concerns". Although a further appeal at 64 Kilburn High Road (reference: APP/X5210/W/15/3140916) was refused on the basis that it had not been demonstrated that the unit could not continue in A1 use, the Inspector was clear in that she did not consider that 8 units in the centre represented an overconcentration of betting shops or gambling facilities in the area despite the Council's concerns (para 26). The inspector commented, "even if there was a cluster, it does not necessarily mean that harm would arise" (para. 41) and that "consideration of whether a 'saturation point' has been reached must be made taking into account whether there are negative effects arising from such a cluster and if so whether the negative effects would outweigh the benefits" (para. 41). She then concluded that she did not feel that an over-concentration had arisen which would have an adverse effect on community safety or fear of crime (para 47).
- 5.12. The Council clearly have a negative view of betting shops. Paragraph 6.102 of the Local Plan states that 'in respect of betting shops and pay day loan shops, it is important that too many do not concentrate in any area and detract from the vitality and viability of the centres'. The Council state in their betting shop evidence base document that the increase in betting shops in the borough is of concern to local residents and that the Council feel that the proliferation of the use can 'damage the function and character of town centres' (para 2.2), but they have not provided evidence to suggest that the 'apparent' cluster of units would lead to a

saturation levels where negative impacts outweigh benefits. Indeed, evidence they do present by the House of Commons is clear in that the “correlations and associations between gaming machines and gambling related harm are poorly misunderstood” (para 5.2). In addition, at paragraph 5.10, the Council note that there is concern over clusters of betting shops and refer to the Committee report of a former Director of Sales and Lettings at property firm Grosvenor. However, the quote used states “actually, it does not matter whether it is a betting shop or a mobile phone shop. It is the users. You just do not want six out of ten shops the same”. It is therefore unclear why the Council feel the need to discriminate against betting shop use (which is already within its own use class) when there is not an identified cluster of units within the borough’s centres.

- 5.13. Within their ‘Betting shops – Key survey findings’ part of the report, the Council note that ‘39% of betting shops are within the most deprived areas of the borough, showing a strong correlation between the location of betting shops and socio-economic deprivation’ (page 6). We disagree with this comment and do not consider there to be a correlation. The Council present a map in Appendix 1 which provides information on multiple deprivation alongside betting shops (including a 400 metres buffer). The map extract is shown below:
- 5.14. It is clear when interrogating the map that there are only 2 betting shops in the most deprived areas of the borough, but conversely there are 5 betting shops in the least deprived areas. In the contrary to the Council’s information on deprivation, an ABB report “an independent analysis of betting shops and their relationship to deprivation along with their profile relative to other high street business occupiers” by the Local Data Company 2014 states:
- 5.15. Betting shops have not targeted deprived areas or the poorest socioeconomic groups (page 6);
- 5.16. The majority of shops are in average deprivation towns (page 7); and
- 5.17. The most and least deprived areas have similar numbers of betting shops (page 7).
- 5.18. Indeed, the document concludes that there is no evidence of poorer populations being targeted by betting shop operators (page 12). Interestingly, this report produced by the Local Data Company is more recent than the 2013 report the Council refer to in paragraph 2.1 of their evidence base document.
- 5.19. It is clear from the map which shows 400 metres around the existing betting shops within the borough that if the Council adopt the 400 metre radius exclusion of betting shops (alongside exclusion from prime retail frontages), betting shop use will be excluded from the majority of the borough. Taking this information into consideration and to re-iterate, there is no evidence to suggest that drawing a 400 metre radius ‘exclusion zone’ around every existing betting shop in the borough should be applied in this case, and it is considered that the local authority should not be setting such policies on distances and proximity of uses without a robust evidence base to suggest that it is necessary. In this respect, it is considered that the Local Plan is not in conformity with the NPPF or the London Plan and is not Justified (not based on a robust and credible evidence base) and is therefore unsound. It is also considered that it has not been positively prepared as it discriminates against betting shop use.

- 5.20. Taking this into consideration and in summary, we do not believe that the Council should be stating that issues such as community safety and fear of crime may arise from betting shop uses. There is no Council evidence to suggest this is the case (it is not 'justified') and fundamentally, this is a matter already dealt with under the Licensing Act and a matter that cannot really be dealt with under the Planning system. It is considered that the supporting text should be revised taking these points into consideration as the text it is not 'justified' or based on a credible evidence base.
- 5.21. Prior to turning to the Matters raised by the Inspector, it is important to note that since the Use Class Order changed in April 2015, betting shop uses are now considered as 'Sui Generis' and an application is now always required for betting shop uses.
- 5.22. We have no issue with the fact that the Council will want to scrutinise new betting shop applications and ensure that they will not lead to any concentrations which would lead to negative impacts, however, to assert unnecessary vetoes on areas where Betting Shop operators can locate, or to assert specific thresholds as a starting point for all new applications (when there is no robust evidence to support the approach) is wholly unsubstantiated and does not allow officers/members to make objective decisions. It also places unnecessary burdens on betting shops operators who already need to submit an application when looking for new units.
- 5.23. Other Local Plan EIPs in London have specifically considered whether a 400m boundary is acceptable and addresses the issue of clustering in a proportionate manner. Most recently Camden Council's Local Plan has removed reference to a 400m radius following the EIP. Their policy TC4 originally had the following wording:

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s. the use of local management agreements to ensure that the vicinity of premises are managed responsibly to minimise impact on the surrounding area.

Contributions to schemes to manage the off-site effects of a development, including for town centre management, will be sought in appropriate cases.

Betting shops, payday loan shops and pawnbrokers

To prevent the proliferation of betting shops, payday loan stores and pawnbrokers which harm the vitality and viability of our centres, the Council will generally resist schemes which result in more than one betting shop, payday loan store, or pawnbroker within 400m distance of the same use.

- 9.33 New shops, services, food, drink and entertainment uses can add to the vitality and vibrancy of Camden's centres and local areas. However, they can also have other impacts such as diverting trade and displacing existing town centre functions. As a result, the Council will seek to guide such uses to locations where their impact can be minimised. When assessing proposals for these uses, the Council will seek to protect the character and function of our centres. The Council will prevent any reduction in vitality and viability of the centres by requiring sequential assessments and impact assessments where appropriate (in accordance with the National Planning Policy Framework) and through implementing this policy.

- 5.24. Subsequently the main modifications removed this criterion as it prevented new operators from locating in town centres.

MM 86	Policy TC4 Town Centres	<p>TC4</p> <p>to whether development results in a proliferation of payday loan stores, betting shops, or pawnbrokers</p> <p>[...]</p> <p>Betting shops, payday loan shops and pawnbrokers</p> <p>To prevent the proliferation of betting shops, payday loan stores and pawnbrokers which harm the vitality and viability of our centres, the Council will generally resist schemes which result in more than one betting shop, payday loan store, or pawnbroker within 400m distance of the same use.</p> <p>9.47 The number of betting shops, payday loan stores and pawnbrokers has increased in Camden in recent years. Some centres have areas where a number of these uses are concentrated, including the south end of Camden Town and parts of Kilburn High Road (including properties in Brent). The Council considers that a the proliferation of such uses is damaging these uses could damage the character, vitality and viability of town centres. The Council will therefore monitor the number and impact of betting shops, payday loan stores, and pawnbrokers over the plan period and consider whether evidence shows there is a need to introduce limits on such uses in the future.</p>	<p>To remove references to betting shops, payday loan shops, and pawnbrokers in response to the comments of the Inspector.</p>
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5.25. There is simply no evidence to support a 400m exclusion radius in Hammersmith and Fulham, their Betting Shop background document makes reference to the draft Camden Local Plan as justification for the TLC6 wording, and the Camden policy needed modification to be found sound.

6. Summary

- 6.1. Policy TLC2 should not exclude betting shops and other non-A1 uses from prime retail frontages
- 6.2. Policy TLC4 criterion c) should have the wording 'such as betting shops and amusement centres' removed.
- 6.3. In line with other recently assessed Local Plans in London, most recently the London Borough of Camden, the Council should remove the wording in policy TLC6 that restricts new betting shops within 400m of existing operators.
- 6.4. In essence the Council has failed to provide evidence that their town centres and parades are harmed by the existing level of betting shops and that they have reached saturation point. The policies therefore require amendment.