

Non-Executive Report of the: Licensing Committee 12th September 2019	
Report of: Ann Sutcliffe, Corporate Director, Place	Classification: Unrestricted
Gambling Policy 2019 -2022	

Originating Officer(s)	David Tolley, Head of Environmental Health and Trading Standards
Wards affected	All wards

REASONS FOR URGENCY

The report was not published five clear days in advance of the meeting. Therefore, before this item can be considered at this meeting, the Chair of the Committee would need to be satisfied that it is necessary to consider the Gambling Policy at this meeting, the Committee may also take the view that it is important that there should not be an extended period without member oversight of this matter, as the Policy must be reviewed and published by no later than 5 December 2019.

Summary

As a Licensing Authority the Council must review the existing Gambling Policy and adopt and publish a new policy by December 2019, as one of the responsibilities it has to administer 'high street' premises under the Gambling Act 2005. The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered. This is highly prescribed and limited by statute. The Council is not able, for example, to ban gambling or specific forms of gambling.

Subject to agreement the Policy will be presented to Cabinet and then to Full Council for adoption under the provisions set out by the Council's Constitution

The policy is now before the Licensing Committee, after consultation, for comment.

Recommendations:

The Licensing Committee is recommended to:

1. Review the Gambling Policy 2019 – 2022 and provide any comments on the policy.

1. REASONS FOR THE DECISIONS

- 1.1 All relevant local authorities are required under the Gambling Act 2005 to review their gambling policy.
- 1.2 The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered.
- 1.3 A statutory consultation process must take place prior to the adoption of the revised Gambling Policy by Full Council.

2. ALTERNATIVE OPTIONS

- 2.1 Pursuant to the Gambling Act 2005, the Council is a responsible authority for the licensing of premises used for gambling. If the Council did not have a policy it would be acting ultra vires with regards to any decisions it makes determining gambling premises licences.
- 2.2 The Gambling Commission has laid down guidance which the Council must have regards to in carrying out their functions under the Act, including setting their Gambling policy. Departure from the guidance without good reason could leave the council at risk of judicial challenge. The Gambling Commission guidance has been followed in drafting the revised Gambling Policy. The policy focusses on the elements covered by the licensing objectives.

3. DETAILS OF REPORT

- 3.1 All relevant local authorities have to review their gambling policy, as one of the responsibilities they have, under the Gambling Act 2005.
- 3.2 The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered.
- 3.3 A statutory consultation process must take place prior to the adoption of the revised Gambling Policy by Full Council.
- 3.4 Pursuant to the Gambling Act 2005, the Council is a responsible authority for the licensing of premises used for gambling. If the Council did not have a policy it would be acting ultra vires with regards to any decisions it makes determining gambling premises licences.
- 3.5 The Gambling Commission has laid down requirements which the Council must follow with regards to the Gambling Policy. If these requirements are not followed, the Council could be at risk of judicial challenge. The Gambling Commission guidance has been followed in drafting the revised Gambling Policy. The policy is limited to considering the elements covered by the licensing objectives. The Council must follow the guidance laid down by the Gambling Commission.

- 3.6 The Gambling Act 2005 gives local authorities a range of responsibilities relating to gambling. The Gambling Policy states how the Licensing Authority will exercise this responsibility and authority.
- 3.7 This policy covers the following:
- How the Licensing Authority will use its regulatory powers in relation to applications and reviews of the activities it regulates, to the extent it is allowed by statute.
 - The main licensing objective for the authority is protecting the vulnerable.
 - The Licensing Authority approach to regulation
 - The scheme of delegation
- 3.8 The Gambling Policy is prescribed by Central Government and the Gambling Commission. The policy produced has to comply with guidance issued by both of these bodies. The current policy is compatible with this advice and guidance.
- 3.9 Members should note that some of the major issues and concerns about gambling are not addressed in the policy or during the consultation process. For example, gambling addiction is outside the remit of the consultation, as are arguments about the public benefits, or otherwise, of a more liberal gambling regime.
- 3.10 The responsibilities the Council have under the Gambling Act 2005 have not been controversial. 80 licences have been issued primarily to betting shops and adult amusement arcades. These businesses are nearly all national companies that have conducted their business within the legal requirements. The number of premises in a particular area is not a ground for objection.
- 3.11 The Local Authority does not have the powers within its Gambling Policy to regulate on-line gambling sites. All gambling websites trading with, or advertising to, consumers in Britain must have a Gambling Commission licence issued by the Gambling Commission.
- 3.12 The government has changed the use class order so that betting shops were removed from their previous A2 use class and made a 'sui generis' use. As such planning permission is now required to change the use from any other use to a betting shop. This has meant that there is slightly more control under planning legislation to control the growth of Betting Shops.
- 3.13 Planning powers cannot control existing betting shops if they have already opened up under a permitted change of use (i.e. before the recent changes to the use class order moving betting shops from A2 to 'sui generis'), however any further change of use applications for a betting shop would be subject to a planning application. As part of the determination of the application, issues such as the number of betting shops in the surrounding area could be a consideration if the area was becoming saturated with betting shops.

- 3.14 There have been several concerns raised through London Councils concerning the fixed odds betting terminals (FOBT's) that have been installed within betting shops. These B2 gambling machines play games of chance such as roulette. With a betting shop licence, the operator can install up to four machines, which have a maximum stake of £100 and a maximum prize of £500. London Councils along with others have successfully lobbied Government to reduce the maximum £100 stake on B2 machines to £2 which will assist with the prevention of the clustering of betting shops due to the profitability of such gambling machines. The reduction in the maximum stake to £2 commenced in April 2019. Tower Hamlets was a signatory to this campaign.
- 3.15 We have not experienced the same volume of applications in gambling as we have in other areas of licensing. There has been one new application since 2014, this was for a Paddy Power Shop in Roman Road. This application was objected to by the community, but after consideration by the Licensing Sub Committee and legal advice the licence was issued.
- 3.16 The issues of betting shop clustering and concern over fixed odd betting terminals (FOBT) have shown that gambling generates extremely strong feelings. Whilst licensing authorities do not have the powers to refuse new applications or limit FOBT machines, the requirement for operators to prepare local risk assessments in relation to their premises means that licensing authorities need to set out their expectations within their statements of Gambling Policy.
- 3.17 The only controversial applications have been where betting shops have applied to open in close proximity to schools or places of worship. The powers the Council have are limited and it is not possible to make either policy or decisions regarding this issue under the Gambling Policy.
- 3.18 The Gambling Policy consultation period took place from the 4th April to the 27th June 2019 and was publicised on line with letters being sent to the organisations detailed in Appendix One.
- 3.19 The changes made to the Gambling Policy are detailed within Appendix Two and have been made subject to regulatory change and updates from the Gambling Commission guidance. The changes covered the following areas:
- Updates in relation to the Councils functions
 - Further details on responsibilities with regards to child protection, interested parties, exchange of information and inspection/enforcement procedures
 - Further explanation and detail on the licensing objectives that need to be maintained
 - Additional consideration of the type of gaming premises – Betting Shops, Adult Gaming centres, Family Entertainment Centres, etc.
 - Updated requirements for business risk assessments and profile in relation to gaming

- Additional information on Hearings and reviews
- 3.20 During the consultation process a number of representations were made, these are detailed in Appendix Three. We have reviewed the comments made therein and have made changes to the original consulted document in relation:
- Location and Local Risk assessments (Public Health)
 - Additional details on voluntary exclusion schemes to protect children and vulnerable adults (Gam Care)
 - Sharing of local area risk assessments – to be in consultation with the Operators and the Gambling Commission (William Hill and Paddy Power)
- 3.21 It is proposed that the current ‘no casino’ resolution that is currently in the existing policy remains.
- 3.22 The revised Gambling Policy that is due to take effect from December 2019 is detailed within Appendix Four.
- 3.23 An Equalities checklist has been undertaken as is at Appendix Five.

4 EQUALITIES IMPLICATIONS

- 4.1 The Equalities Impact Assessment has been reviewed in respect of this policy and no adverse issues have been identified

5 OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration.
- 5.2 Best Value: The Gambling policy details the regulatory approach to gambling establishments with the Borough. The fees imposed for the licence are set by government and have been adopted by the Licensing Committee. The fees cover the cost of regulating and administering the Gambling Policy.
- 5.3 Crime Reduction: One of the key licensing objectives is to prevent gambling from being a source of crime and disorder. The policy supports and assists with crime and disorder reduction by controlling those who are able to offer gambling to members of the public and imposing conditions on relevant premises licences.
- 5.4 Safeguarding: A statutory licensing objective of the Gambling Policy concerns the protection of children and other vulnerable persons from being harmed or exploited by gambling. The Policy details how regulation through licensing promotes this objective.
- 5.5 Risk Management: There are no risk management issues with the revised policy or the consultation process.

- 5.6 Environmental and consultation implications: There are no negative environmental impacts with regard to this policy or the consultation process

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 There are no financial implications emanating from this report which updates the Council's policy on issuing gambling licenses. The Council generates a small income stream from issuing licenses which covers the cost of inspections. This forms part of the existing licensing revenue budget and is not impacted on by this report.

7. LEGAL COMMENTS

- 7.1 Section 349 of the Gambling Act 2005 ('the Act') requires the Council to prepare a statement of the principles that it proposes to apply in exercising its functions under the Act and to determine and then publish this statement. This statement is more commonly known as a 'Gambling Policy'. The legal requirement is for the preparation of the statement of principles to be undertaken every 3 years. The current statement of policy was published on 5th December 2016, and therefore any revised statement should be adopted before 5 December 2019
- 7.2 The Council has undertaken the statutory consultation as provided by section 349(3) of the Act as referred to in paragraph 3.18 of the report Appendix 3 to the report states the responses received in respect of the consultation, which have been taken into account when updating the report.
- 7.3 The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 states that a minimum of 4 weeks is required between publication and the statement coming into effect.
- 7.4 Pursuant to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 the adoption of the Gambling Policy is a Council function. This is reflected in the Constitution, under which it is a policy framework document, and must follow the procedure set out in the Budget and Policy Framework Procedure Rules prior to adoption by Council. This requires pre-decision scrutiny by the Overview & Scrutiny Committee and recommendation to Council by Cabinet. If Council wishes to change the recommendation, then the matter is referred back to Cabinet and in due course back to Council.
- 7.5 The terms of reference of the Licensing Committee under the Constitution and Delegations provides that the Licensing Committee considers statements of Licensing Policy, so consultation with the Licensing Committee is appropriate
- 7.6 In carrying out its functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons

who share a protected characteristic and those who do not (the public sector equality duty). An equality analysis quality assurance checklist has completed which specifically considers the licensing objectives in relation to protecting children and other vulnerable persons from being harmed or exploited by gambling.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- **Appendix One: List of Consultees**
- **Appendix Two: Statement of Gambling Policy review – Proposed Changes 2019-2022**
- **Appendix Three: Responses to the Gambling Policy Consultation 2019**
- **Appendix Four: Gambling Policy 2019-2022**
- **Appendix Five: Equalities Impact Checklist**

Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report

NONE

Officer contact details for documents:

N/A