


Non-Executive Report of the: Licensing Committee 8th December 2015	 TOWER HAMLETS
Report of: Steve Halsey: Corporate Director of Communities, Localities and Culture	Classification: Unclassified
Gambling Policy Review 2015/16	

Originating Officer(s)	David Tolley – Head of Consumer and Business Regulations
Wards affected	All

1.0 **Summary**

- 1.1 As a Licensing Authority the Council must review the existing Gambling Policy and adopt a new policy by November 2016, as one of the responsibilities it has to administer 'high street' licences under the Gambling Act 2005.
- 1.2 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.
- 1.3 A statutory consultation process must be undertaken, this commenced on the 19 October and last for three months. In addition there will be the opportunity for the local community to comment along with other partners.
- 1.4 Following consultation the reviewed policy will ultimately go to full Council for adoption.

2 **Recommendations**

- 2.1 That the Licensing Committee note, consider and comment on the Gambling Policy as part of the consultation process.

1. **REASONS FOR THE DECISIONS**

- 1.1 Members are not being asked to make a decision – but provide any comments on the new Gambling policy proposals.

2. **ALTERNATIVE OPTIONS**

- 2.1 None

3. DETAILS OF REPORT

- 3.1 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. This course of action is not recommended.
- 3.2 The Gambling Commission has laid down 'rules' which the Council must follow with regards to the Gambling Policy. If these 'rules' 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. There is no option but to follow the guidance laid down by the Gambling Commission.
- 3.3 The Gambling Act 2005 gives local authorities a range of responsibilities relating to gambling. The Gambling Policy states how the Licensing Authority will exercise its authority.
- 3.4 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 objectives for the authority is protecting children, preventing crime and disorder and ensuring gambling is fair and open.
 - The Licensing Authorities approach to regulation
 - The scheme of delegation
- 3.5 The statutory and regulatory limitations of the Gambling Policy should also be noted with regards to addiction, noise, clustering and the provision of gambling machines.
- 3.6 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.
- 3.7 Members should note that some of the major issues and concerns about gambling are not addressed in the policy and in any consultation. 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.

- 3.8 In addition, 'noise nuisance' is not a licensing objective, so the regime will not consider the impact of licensed premises on nearby residents. Any issues relating to noise and nuisance will be dealt with by the Council's Noise Service.
- 3.9 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.
- 3.10 Earlier this year the government 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.
- 3.11 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.
- 3.12 There have been several concerns raised though 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 are promoting that the maximum £100 stake on B2 machines should be changed to £2 to prevent the clustering of betting shops due to the profitability of such gambling machines. Tower Hamlets is a signatory to this campaign.
- 3.13 We have not experienced the same volume of applications in gambling as we have in other areas of licensing. There has been one application in the preceding year 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.
- 3.14 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 from April 2016 means that licensing authorities need to set out their expectations within their statements of Gambling Policy.

- 3.15 The additional requirements to include in the Gambling Policy are noted below:
- to set out a local profile, the Policy links to the Borough profile held on the website, therefore the profile can be updated without the need to re-consult on amending the full Policy.
 - details of the inspection format to be used
 - risk assessment format for operators
 - sample licence conditions
- 3.16 The responsibilities the Council have under the Gambling Act 2005 have not been controversial. 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 grounds for objection.
- 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 is in Appendix 1 to the report. Due to change in guidance, proposed changes to the policy are outlined in Appendix Two.
- 3.19 It is proposed that the current 'no casino' resolution that is currently in the existing policy remains.
- 3.20 An Equalities checklist has been undertaken as is at Appendix three.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 [There are no specific financial implications emanating from this report which provides the committee with a review of the existing Gambling Policy.]

5. LEGAL COMMENTS

- 5.1 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 or Statement of 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 1 November 2013, and therefore the fresh statement should be published before 1 November 2016.
- 5.2 Prior to publishing the statement, the Council must undertake the statutory consultation as provided by section 349(3) of the Act and any Regulations made under the Act. The Council must consult with: the chief officer of police for Tower Hamlets; one or more persons who represent the interests of gambling businesses in Tower Hamlets; and one or more persons who

represent the interests of person who are likely to be affected by the exercise of the Council's functions under the Gambling Act.

- 5.3 The report sets out the timeframe for consultation. The consultation should comply with the following criteria: (1) it should be at a time when proposals are still at a formative stage; (2) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response; (3) adequate time must be given for consideration and response; and (4) the product of consultation must be conscientiously taken into account. The duty to act fairly applies and this may require a greater deal of specificity when consulting people who are economically disadvantaged. It may require inviting and considering views about possible alternatives.
- 5.4 The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 set out the required form of the statement and set out a process that must be followed in respect of publishing the statement and before the statement comes into effect. In accordance with the Regulations a minimum of 4 weeks is required between publication and the statement coming into effect.
- 5.5 Pursuant to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 the Gambling Policy is required to be part of the Council's policy framework. Article 4 of the Constitution confirms this to be the case and a review of the Gambling Policy requires the procedure set out in the Budget and Policy Framework Procedure Rules. 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. This reference to the Licensing Committee is advanced consultation prior to the policy framework process and comments from the Committee will be fed into that process.
- 5.6 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.
- 5.7 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 will be required which is proportionate to the function in question (adopting a new Gambling Policy) and its potential impacts. The current equality checklist will likely require development into a more detailed analysis in the course of the consultation process.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 [An equalities impact assessment has been undertaken which shows no adverse impact.]

7. BEST VALUE (BV) IMPLICATIONS

7.1 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.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no adverse impacts identified.

9. RISK MANAGEMENT IMPLICATIONS

9.1 There are no identified risks, current licence holders and their current terms of business are not affected. Any new application, if representations are made, will still be determined by the Licensing Sub – Committee and subjected to the procedures of that Sub-Committee.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 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.

Linked Reports, Appendices and Background Documents

Linked Report

- [Linked Report – None]

Appendices

Appendix One: Gambling Policy 2013-2016

Appendix Two: Gambling Policy proposed changes for consultation

Appendix Three: Equalities Checklist

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

None.

Officer contact details for documents:

- [N/A]