

<b>Cabinet</b>  <b>26<sup>th</sup> October 2022</b>	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director Place	<b>Classification:</b> Unrestricted
Gambling Policy 2022 - 2025	

<b>Lead Member</b>	Cllr Kabir Hussain – Lead Member Environment and the Climate Emergency
<b>Originating Officer(s)</b>	David Tolley, Head of Environmental Health and Trading Standards
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	30 <sup>th</sup> May 2022
<b>Reason for Key Decision</b>	Impact on Wards
<b>Strategic Plan Priority / Outcome</b>	A Borough that our residents are proud of and love to live in

### Executive Summary

As a Licensing Authority the Council must review the existing Gambling Policy and adopt a new policy in November 2022, as one of the responsibilities it has to regulate ‘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.

The Act requires Licensing Authorities to aim to permit the use of premises for gambling in so far as it is in accordance with the regulatory framework (any codes of practice and Gambling Commission guidance) This means that the council can only refuse gambling that is not in accordance with the codes of practice and guidance and cannot for example ban gambling or specific forms of gambling.

Subject to agreement the Policy will be presented to Full Council for adoption under the provisions set out by the Council’s Constitution

### Recommendations:

The Mayor in Cabinet is recommended to:

1. To recommend to Full Council the adoption of the revised Gambling Policy

## **1 REASONS FOR THE DECISIONS**

- 1.1 All relevant local authorities are required under the Gambling Act 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 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 focuses on the elements covered by the licensing objectives.

## **3 DETAILS OF THE REPORT**

- 3.1 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.
- 3.2 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
- 3.3 The Gambling Policy complies with guidance issued by the Gambling Commission.
- 3.4 Members should note that some of the major issues and concerns about gambling are not addressed in the policy or by the approach of the 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.

- 3.5 All applicants and licence holder must promote the three licensing objectives. This Policy is written with the view to promoting the three licensing objectives of the 2005 Act. These objectives are:
- i. Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.
  - ii. Ensuring that gambling is conducted in a fair and open way; and
  - iii. Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 3.6 The Council 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 Operators licence and a Remote Gambling Licence both issued by the Gambling Commission. Remote-Gambling is regulated by the Gambling Commission and Local Authorities do not hold any powers under the act in respect of Remote Gambling (i.e., Online Gambling).
- 3.7 The responsibilities the Council has under the Gambling Act 2005 have not been controversial. At the time of writing this report there are 49 Gambling Premises (42 Betting Shops and 7 Adult Gaming Centres (AGCs)), which have licences granted by this Authority. This shows a 38% reduction in Licensed Gambling Premises since 2019. These businesses are nearly all national companies that have conducted their business within the legal framework. Furthermore, they will have had an Operator Licence issued by the Gambling Commission. The number of premises in a particular area is not a ground for objection.
- 3.8 Betting shops were removed from their previous A2 use class and made a 'sui generis' use i.e., a planning use class on their own. As such planning permission is now required to change the use from any other use to a betting shop. Planning powers cannot control existing betting shops if they have already opened up under a permitted change of use 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. Part 1 (Policy D.TC5) of the Tower Hamlets' Development Control Service's Local Plan 2031, specifically mentions Betting Shops. As a result, applicants for a Gambling Licence needs to consider the Local Plan if applying for a new Betting Shop Licence.
- 3.9 We have not experienced the same volume of applications in gambling as we have in other areas of licensing. There have been three new applications for Gambling Premises Licences since 2019 and these were all for AGCs. Two attracted representations and came before Licensing Sub-Committee, which granted one with additional conditions and refused the other. However, the latter successfully appealed to the Magistrates' Court, which granted the licence with additional conditions. The third applicant agreed additional conditions with the Police and no representations were made.

- 3.10 Licensing authorities do not have the powers to refuse new applications unless doing so would undermine one or more of the licensing objectives. The requirement for operators to prepare local risk assessments in relation to their premises also means that licensing authorities need to set out their expectations within their statements of Gambling Policy.
- 3.11 The consultation period took place from the 7<sup>th</sup> March to the 29<sup>th</sup> May 2022. The draft reviewed policy and table of changes were publicised online along with a survey questionnaire. The Responsible Authorities were written to along with those currently holding Gambling Licences issued by the Authority. Further wider consultation was completed that included writing to Councillors, Resident Associations, and a variety of interested parties. A full list of consultees is detailed in **Appendix One**.
- 3.12 The changes made to the Gambling Policy are detailed within **Appendix Two** (Table of Changes). The changes covered the following areas:
- Updates to Policy's approach toward the objective of "Protecting children and other vulnerable people from being harmed or exploited by gambling".
  - Referral to Planning Authority's Local Plan, and clarification of the Licensing Authority expectation on applicants about planning permission.
  - Relevant Representations Section added.
  - Paragraphs on Bingo in Clubs and Licensed Premises added.
  - Appeals Section added.
  - Small Society Lotteries section added.
  - Annex 5 Local Area Profile
- 3.13 During the consultation process responses were received from two Council services one gambling operator. Furthermore 14 of the 53 responders to the online survey made comments on the reviewed policy. These representations and comments are detailed in **Appendix Three**. We have reviewed the comments made therein and have made changes to the original consulted document in relation to the following:
- Location and Local Risk Assessments (Public Health) Policy now encourages applicants to speak to Public Health when producing their local risk assessments. This will assist applicants to consider any local risks relevant to the part of the borough they are intending to operate in and put in place policies and procedure to mitigate such risks.
  - Updates to sections of Children and Vulnerable Persons (Violence Against Women and Girls Team) Changes to the wording in the sections relating to vulnerable persons and an encouragement for the applicant to speak to the Council's VAWGs Service in respect to any guidance or training they can provide to applicants to better protect vulnerable persons.
  - Consideration of Planning links and CSE (Paddy Power) Responder felt that the mention of Planning and directing applicants to consider planning was not appropriate since they are separate regimes. They

made a similar comment about the policy's mention of Child Sexual Exploitation (CSE) in that this was not relevant to the objective under the Gambling Act 2005. No changes were made as a result of these comments.

- Applicants for AGCs encouraged to consider voluntarily adopting the similar hours permitted hours of operation as betting shops, in this case 7:00 am to 10:00 pm every day. Change made to reflect the comments on opening hours made during the consultation.
- 3.14 Most existing AGCs are subject to planning conditions that control opening hours. If there are reported breaches of opening hours, the Planning Service will investigate and seek to ensure opening hours are complied with. Where there are persistent breaches, there are powers available under Section 187a of the Town and Country planning Act 1990, to serve a breach of condition notice (BCN). There is no right to appeal a BCN and failure to comply can lead to a prosecution through the Courts.
- 3.15 For planning purposes AGCs are sui generis. This means that planning permission is always required to change the use of a premises to a new gaming centre. The Council's Local Plan policies seek to restrict any new facilities to the Central Activity Zone (areas around Aldgate, Bishopsgate and the Tower of London), Canary Wharf and district centres (Bethnal Green Road, Roman Road, Brick Lane, Whitechapel, Watney Market, Chrisp Street and Crossharbour). Planning policies resist changes of use where there is an over concentration of similar uses; where the site is near a school or sensitive community, cultural or social facilities or where the proposal would detrimentally impact the amenity and character of the area.
- 3.16 Results from the online survey can be found in **Appendix Four** – Let's Talk Survey Response Report, and **Appendix Five**, Let's Talk Summary Report.
- 3.17 It is proposed that the current 'no casino' resolution that is currently in the existing policy remains.
- 3.18 The revised Gambling Policy that is due to take effect from December 2022, if agreed, is detailed within **Appendix Six**.
- 3.19 An Equalities checklist has been undertaken as is at **Appendix Seven**.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 The Equalities Impact Assessment has been reviewed in respect of this policy and no specific impacts have been identified. An additional section "Equality & Inclusion in Gambling Premises has been added to address the Public Sector Equality Duty and to link to the Council's Equality Policy.

## **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 administrating 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 about 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 seeks to review and adopt a revised gambling policy from November 2022

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 Section 349(1) of the Gambling Act 2005 requires each local authority to prepare and publish, at least every three years, a statement of principles (a Gambling Policy”) to be applied in the exercise of their functions under the Act.
- 7.2 The content and form of the policy is prescribed by Regulations 4 to 6 of the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006. Regulation 7 deals with the publication requirements, which stipulate that the statement of principles be published in the prescribed manner for at least four weeks before the statement comes into effect.
- 7.3 Before publishing that statement of principles the authority must consult in accordance with section 349(3). The statutory consultees are the

Commissioner of the Metropolitan Police, one or more persons who appear to the authority to represent the interests of people carrying on gambling business in the authority's area, and one or more people who appear to the authority to represent the interests of persons likely to be affected by the exercise of the authority's functions under the Act.

- 7.4 The principles of effective consultation require that: consultation be carried out when proposals are at formative stage; the consultees must be given sufficient and accurate information and reasons so as to be allow for proper consideration; adequate time be given for responding; the fruits of the consultation must be conscientiously taken into account when making the decision.
- 7.5 Section 149 of the Equality Act 2010 requires the authority, in the exercise of its functions, to 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 and those who do not, and to foster good relations between those who share a relevant protected characteristic and those who do not. The relevant protected characteristics are age; disability gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. The duty must be complied with at the time that the decision under consideration, in this case the recommendation to adopt the Policy, is taken. It is not a duty to achieve a particular result, however.
- 7.6 The decision to approve the Statement of Gambling Principles is expressly stated in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as being a function that cannot be the responsibility of the executive. The Full Council must decide to approve the Statement. Cabinet only has power to recommend this Statement of Principles to full Council for decision

---

## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

NONE

### **Appendices**

- **Appendix One: List of Consultees**
- **Appendix Two: Statement of Gambling Policy review – Table of Proposed Changes**
- **Appendix Three: Table of Written Responses to the Gambling Policy Consultation**
- **Appendix Four: Online Survey Feedback Report**
- **Appendix Five: Online Survey Summary Report**
- **Appendix Six: Proposed Gambling Policy 2022 - 2025**
- **Appendix Seven: Equalities Impact Checklist**

**Background Documents – Local Authorities (Executive Arrangements)  
(Access to Information) (England) Regulations 2012**

NONE

**Officer contact details for documents:**

N/A