

<b>Cabinet</b>  4 October 2016	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Communities, Localities, Culture – Corporate Director	<b>Classification:</b> Unrestricted
Gambling Policy 2016 - 19	

<b>Lead Member</b>	<b>Councillor Shiria Khatun, Deputy Mayor and Cabinet Member for Community Safety</b>
<b>Originating Officer(s)</b>	Andy Bamber – Service Head David Tolley – Head of Environmental Health and Trading Standards
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	<b>A Safe and Cohesive Community</b>

### Executive Summary

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 regulate ‘high street’ licences 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), the council’s policy and is reasonably consistent with the licensing objectives. This means that the council can only refuse gambling that is not in accordance with the above 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 regard 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 focuses on the elements covered by the licensing objectives.

## **3. DETAILS OF 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 and authority.
- 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 The responsibilities the Council has under the Gambling Act 2005 have not been controversial. To date, 80 licences have been issued. These have primarily been 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.
- 3.6 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 Commission licence issued by the Gambling Commission.
- 3.7 In April 2015 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.
- 3.8 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.
- 3.9 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.
- 3.10 We have not experienced the same volume of applications in gambling as we have in other areas of licensing. There has been one 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.
- 3.11 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.

3.12 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 advice from operators
- sample licence conditions

3.13 During the consultation process a number of representations were made by national Betting shop companies. We have reviewed the comments made therein and have made slight changes to the requirements that are required of operators in relation to their local risk assessments. We have also reflected on the content of our local profile and have added this information onto the website. No further suggestions or changes have been made. The proposed policy is at Appendix One.

3.14 The comments by the Campaign for Fairer Gambling were noted in relation to the use of FOBT's, but this can only be considered on an individual application basis. The written responses are detailed within Annex 3 of the proposed policy.

3.15 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.

3.16 It is proposed that the current 'no casino' resolution that is currently in the existing policy remains.

3.17 An Equalities checklist has been undertaken as is at Appendix Two.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

4.1 There are no direct financial implications arising in this report which notes the Council's responsibilities in adoption of the Gambling Policy required under the Gambling Act 2005. The costs of each Gambling licence under the Act are reviewed annually as part of the discretionary fees and charges report to Cabinet. The fees cover the cost of administration and compliance contained within the budget for the service. The costs of the review will be met from within existing resources.

## 5. LEGAL COMMENTS

- 5.1 Section 349 of the Gambling Act 2005 (**'the 2005 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.
- 5.2 The current statement of policy was published on 1<sup>st</sup> November 2013, and therefore the fresh statement must be published before 1<sup>st</sup> November 2016.
- 5.3 Pursuant to section 25 of 2005 Act, the Gambling Commission shall from time to time issue guidance as to the manner in which local authorities are to exercise their functions under this Act, and in particular, the principles to be applied by local authorities in exercising functions under the Act. The 5<sup>th</sup> Guidance was issued in September 2015 and Part 6 of the same provides Guidance to local authorities on the preparation and publication of the statement of licensing policy. The Council should not depart from this guidance without good reason but as stated in paragraph 3.3 of this Report, the proposed Policy complies with the Guidance
- 5.4 Prior to publishing the statement, the Council must undertake statutory consultation as provided by section 349(3) of the Act. Further, in consulting, the Council must comply with the common law principles set out in *R v Brent London Borough Council, ex p Gunning*, (1985) and recently approved by the Supreme Court in *R(Mosely) v LB Haringey 2014*. Those are '*Firstly, the consultation must be at a time when proposals are still at a formative stage. Secondly, the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Thirdly, adequate time must be given for consideration and response. Fourthly, the product of consultation must be conscientiously taken into account in finalising any statutory proposals.*'
- 5.5 Consultation has been carried out as referred to in paragraphs 3.13 and 3.14 of the report. The consultation responses have been taken into account to make relevant adjustments to the proposed Policy and Annex 3 of the proposed Policy at Appendix 1 gives a summary of the issues raised in the responses.
- 5.6 The terms of reference of the Licensing Committee provide that the Licensing Committee considers statements of Licensing Policy and a report went to that Committee on 13<sup>th</sup> September 2016.
- 5.7 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 a report went to Overview & Scrutiny on 28th September 2016.

- 5.8 Also pursuant to the Council's Budget and Policy Framework Procedure Rules, the Mayor as the Executive is responsible for preparing the draft Policy for submission to the full Council. It will therefore be for the Mayor in Cabinet to recommend the draft Policy to Full Council. Prior to recommending, the Mayor as the Executive must also carefully analyse the consultation responses before making a decision to recommend to Full Council.
- 5.9 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 and its potential impacts. An Equality Analysis Quality Assurance Checklist has been undertaken and which is at Appendix 2. The result of performing such is that "the policy does not appear to have any adverse effects on people who share *Protected Characteristics* and no further actions are recommended at this stage".

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

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

## **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 environmental impacts with regards to this policy or the consultation process.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 There are no risk management issues with the revised policy or the consultation process.

## **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.

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 A statutory licensing objective of the Gambling Policy concerns the protection of children from harm. The Policy details how regulation through licencing promotes this objective.

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

#### **Linked Report**

None

#### **Appendices**

Appendix One: Gambling Policy 2016-2019  
Appendix Two: Equalities Checklist

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

None

#### **Officer contact details for documents:**

N/A