

## CABINET

14 November 2017

<b>Title:</b> Gambling Act 2005: Statement of Gambling Licensing Policy 2017 – 2020	
<b>Report of the Cabinet Member for Enforcement and Community Safety</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Director:</b> Jonathon Toy, Operational Director, Enforcement Services	
<b>Accountable Strategic Director:</b> Claire Symonds, Chief Operating Officer	
<b>Summary</b> <p>The Council, as local licensing authority for gaming and betting, is required under the Gambling Act 2005, to have in place a statement of the principles (a 'policy') by which it will abide in carrying out its licensing responsibilities and to review that policy every three years. The review of the Council's current gambling licensing policy is overdue.</p> <p>On 25 April 2017, the Cabinet approved a draft revised statement of gambling licensing policy for the purposes of public consultation. That consultation took place through July to September 2017. The consultation responses have been considered and the draft policy further revised as appropriate.</p> <p>This report returns the revised draft policy for consideration with a view to adoption as this Authority's formal gambling licensing policy for the period.</p> <p>The draft revised policy (Appendix 1) establishes that the Council has serious concerns of the impact of any further increase in the number of gambling premises may have for the most vulnerable and 'at risk' areas of the borough. The Council considers that it is necessary to seek to strictly control the number of facilities for gambling in areas where its most vulnerable residents may be placed at increasing risk, and in line with the duty, to aim to permit gambling insofar as it is reasonably consistent with the pursuit of the licensing objectives.</p> <p>All areas shown within the local area profile as being at high overall risk of gambling related harm, are generally considered inappropriate for further gambling establishments, which would tend to raise the risk of gambling related harm to vulnerable people living in those areas. Operators are asked to consider very carefully whether seeking to locate new premises or relocating existing premises within these areas would be consistent with the licensing objectives.</p>	

The draft policy goes on to set out the considerations this Council will have when determining applications for gambling premises licences and details the types of controls the Council might expect to see in place at licensed gambling establishments.

The Gambling Licensing Policy will be presented for formal adoption to the Assembly on 22 November 2017. Following approval, notice of the decision must be given in a local newspaper with the effective date made one month on.

### **Recommendation(s)**

The Cabinet is asked to recommend the Assembly to adopt the Barking and Dagenham Statement of Gambling Licensing Policy 2017 – 2020, as set out at Appendix 1 to the report.

### **Reason(s)**

The review of the policy fulfils the Council's statutory requirement to establish a gambling licensing policy and review that policy every three years.

The revision intends to take advantage of the new provisions contained within the Gambling Commission's Licence Conditions and Codes of Practice (LCCP) by developing a local area profile incorporating local data which will inform local decision-making.

The draft policy also supports the Council's priorities 'Encouraging civic pride' and 'Enabling social responsibility'.

## **1. Introduction and Background**

- 1.1 The Gambling Act 2005 ('the Act') established the national licensing regime for gaming and betting (excepting the national lottery).
- 1.2 The Act provides a two-tier licensing system. The Gambling Commission is responsible for licensing both gambling operators and key industry personnel. Local licensing authorities are responsible for licensing the premises in their area where gambling activities are intended to be provided.
- 1.3 Under the Act, each licensing authority is required to publish a statement of licensing policy and to review this every three years. This Authority published its initial statement in 2007. It has been updated periodically but is now overdue for revision. Each revision of the policy must be subject to public consultation.
- 1.4 The statement of policy aims to set out how the licensing authority intends to approach its licensing responsibilities under the Act.
- 1.5 In carrying out its licensing functions, the Authority is directed by s153 of the Act to "aim to permit" the use of premises for gambling in so far as it thinks it is:
  - In accordance with any code of practice issued by the Gambling Commission;
  - In accordance with any relevant guidance issued by the Gambling Commission;
  - Reasonably consistent with the licensing objectives; and

- In accordance with the licensing authority's own statement of policy.

1.6 The three licensing objectives stated in the Act are:

- Preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime
- Ensure gambling is conducted in a fair and open way
- Protecting children and vulnerable people from harm or from being exploited by gambling.

1.7 Local licensing authorities are concerned with the third objective (in particular) but with the first objective also.

1.8 Many local licensing authorities have held long standing concerns that, due to the "aim to permit" direction, insufficient consideration has been given to local context and circumstance within licensing decisions. This has led to: -

- Frustration within local licensing authorities over lack of discretion
- A perceived uncontrolled growth in gambling establishments, particularly betting shops driven by their ability to install up to 4 x £500 jackpot Fixed Odds Betting Terminals
- The perceived concentration of betting shops in high street locations in more deprived areas
- Concern that vulnerable people are being targeted and exploited
- Concern that children are being regularly exposed to gambling and gambling is becoming 'normalised'

1.9 In 2016, however, the Gambling Commission made some key changes to the standard Licence Conditions and Codes of Practice (LCCP) with which all licensed Operators must comply with under their Operators' Licence. The Social Responsibility Code, which forms part of the LCCP, now requires prospective and current operators to have regard within their business operating risk-assessments to local risks including any set out in the local authority statement of policy. This has provided a first opportunity for local issues to be considered within licence application determinations.

1.10 On 24 April 2017, the Cabinet considered and approved a draft revised statement of gambling licensing policy for the purpose of public consultation. The draft revision looked firstly to ensure that the policy is consistent with current legislation and the latest Gambling Commission Guidance to Local Licensing Authorities (September 2015). Additionally, in recognition of the recent changes made to the Commission's LCCP, the draft revision was supported by, and informed through, the development of a model of local area based vulnerability to gambling related harm. This 'local area profile' was compiled using spatial analysis techniques drawing on published, relevant and reliable socio-economic; public health and anti-social behaviour data sets.

1.11 In the light of the findings of the analysis, the draft policy made a number of important statements (section 42 of the draft policy):

- That the Council considers it necessary to limit facilities for gambling in areas where its most vulnerable residents may be placed at increasing risk.

- That areas where there is high overall risk of gambling related harm are inappropriate for further gambling establishments.
- That operators are asked not to consider locating new premises or relocating existing premises within such areas

- 1.12 It remained the case that each application is required, by law, to be considered upon its own merits and so the draft policy could not set out to refuse all future licence applications. However, the draft policy looked to establish a framework which best places the Council to make future licensing decisions which take into account local information and address local circumstances and concerns.
- 1.13 Under the draft policy, applicants for each category of gambling premises licences would be required to review the content of the local area profile and address the concerns raised by it, within their local business operating risk-assessments, by way of appropriate proactive mitigation and control measures. Applicants are asked to provide a copy of their local business risk-assessment as part of their application.
- 1.14 Although initially delayed by the general election, the public consultation exercise took place through July to September 2017. This report details the response received; the main issues raised within that response; and provides a revised draft policy statement for adoption. A copy of the revised statement is attached at Appendix 1, which includes a copy of the supporting risk assessment of local gambling related harm (Appendix E to the main policy document).

## 2. Proposals and Issues

### The Public Response to the Consultation on the Draft Revised Barking and Dagenham Statement of Gambling Licensing Policy 2017-2020

- 2.1 Overall, a total of 123 responses were received to the public consultation exercise. The majority of responses (119) were received through an online questionnaire made available on the Council's web site.
- 2.2 In general, the response to the draft policy from the questionnaire was very positive. Full details of the responses received through the online questionnaire are available on the Council's website at <https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MIId=9414&Ver=4>. A summary of the primary questions asked within the questionnaire is provided in Table 1 below.

No	Question	Response	No of respondents
1	Do you believe that gambling may be potentially harmful to vulnerable people	Yes 95% No 4%	113 / 119
2	Do you believe that gambling may be potentially harmful to children and young people?	Yes 93% No 6%	111/119
3	From your own personal knowledge of the numbers of gambling premises and gambling	Too much 88% About right 6% Not enough 1%	105/119

	machines available to play within LBBB, do you consider that there is?		
4	Do you consider the Council needs to have a policy which manages the level of local gambling facilities offered?	Yes 96% No 2%	113/118
5	Would you support a local policy which restricts (as far as the law allows) gambling in areas where there is high-risk of alcohol related harm?	Yes 91% No 5%	107/117
6	Would you support a local policy which aims to ensure that gambling premises have standards of management?	Yes 85% No 9%	99/117

2.3 As can be seen from Table 1, 88% of respondents considered that the numbers of gambling premises and gambling machines available to play within the borough was too high. A supplementary question asked those who considered numbers to be 'too high' to name specific areas where they considered this to be the case. A summary of the areas named most frequently is provided in Table 2 below.

<b>Table 2 – Areas where there is greatest concern over the level of gambling facilities offered</b>	
Locality	No of consultation responses
Barking Town Centre & surrounding area	45%
Dagenham Heathway	13%
Upney	6%

2.4 Barking Town Centre is identified as the main area of risk of gambling related harm in the analysis supporting the policy.

### **Detailed responses**

2.5 Additionally, more detailed responses were also received from the Council's Planning and Trading Standards Services; Public Health and The Association of British Bookmakers (ABB). Each of the responses are provided in full in Appendix 2 together with some commentary on the individual points raised.

2.6 Planning, Trading Standards, and Public Health are all generally supportive of the policy.

2.7 The ABB, however, provided a detailed and critical response which raised a number of issues. Each matter has been given careful consideration. Following review of the draft policy and the points raised by the ABB with Counsel, a number of amendments to the policy are proposed. A summary of the comments made by Counsel in consideration of the draft policy, in the light of the content of the response received from the ABB, and of the resultant amendments made to the policy is attached at Appendix 3. The main amendments are summarised below:

- The statement given in Section 42 of the policy dealing with the local area profile has been amended so as to give more acknowledgement to the current 'aim to permit' direction given to the Authority under statute and the need to judge each application on its own merits. A revised statement is proposed as follows with the amendments shown in italics –

“This position gives rise to serious concerns of the impact of any further increase in the number of gambling premises may have for the most vulnerable and ‘at risk’ areas of the borough. Because of this, this Authority considers that it is necessary to seek to strictly control the number of facilities for gambling in areas where its most vulnerable residents may be placed at increasing risk, and in line with the duty to aim to permit gambling insofar as it is reasonably consistent with the pursuit of the licensing objectives

It is this Authority’s position that all areas shown within the local area profile as being at high overall risk of gambling related harm are generally considered inappropriate for further gambling establishments, which would tend to raise the risk of gambling related harm to vulnerable people living in those areas. Operators are asked to consider very carefully whether seeking to locate new premises or relocating existing premises within these areas would be consistent with the licensing objectives.

- A similar acknowledgement is suggested in Section 47 dealing with ‘How applications for premises licences will be assessed’ as follows:

“While it will continue to be the case that each application will be considered upon its own merits with all relevant matters – including the requirement to ‘aim to permit gambling’ where to do so is reasonably consistent with e.g. the licensing objectives – see paragraph 16 above - taken into account, this Authority will expect that each applicant for a licence will:”

- Have had regard to the content of the local area profile and to the guidance and best practice advice provided within this document.
  - Have engaged in constructive discussion with the appropriate relevant responsible authorities where risks and concerns are raised
  - Be able to demonstrate that the risks raised within the local area profile, this policy and through representations have been adequately addressed by submitted operating schedules
  - Seek to promote the licensing objectives
- An acknowledgement has been added to Section 105 on location (as indicated)

“Location of the premises has already been raised within this policy under the first licensing objective. However, location carries broader considerations that can potentially impact on each of the licensing objectives and beyond. That said this Authority recognises that betting shops have always been situated in areas of high population, where there are likely to be high numbers of children nearby, and this is not of itself a problem where appropriate steps have been taken to minimise the risk of children being attracted to gambling.”

- Section 137 on premises licence reviews has been expanded to include additional information about the circumstances under which a premises licence

“By virtue of s.198, an application may, but need not, be rejected if the licensing authority thinks that the grounds on which the review is sought:

- Are not relevant to the principles that must be applied by the licensing authority in accordance with s.153, namely the licensing objectives, the

Commission's codes of practice and this Guidance, or the licensing authority's statement of policy

- Are frivolous
- Are vexatious
- 'Will certainly not' cause the licensing authority to revoke or suspend a licence or to remove, amend or attach conditions on the premises licence
- Are substantially the same as the grounds cited in a previous application relating to the same premises
- Are substantially the same as representations made at the time the application for a premises licence was considered."

2.8 As noted other amendments are detailed within Appendices 2 and 3. Additionally some statistical information and contact details have been updated where necessary.

### **Department of Culture Media and Sport (DCMS) consultation on proposals for changes to gaming machines and social responsibility measures**

2.9 In 2016, the Government launched a review of gaming machines and social responsibility measures which began with a Call for Evidence. Responses to the Call for Evidence have been published (<http://www.gov.uk/government/consultations/call-for-evidence-review-of-gaming-machines-and-social-responsibility-measures>) as part of this package. The Government's stated objective in initiating this review was to ensure that "the right balance is struck between a sector that can grow and contribute to the economy, while also ensuring it is socially responsible and doing all it should to protect consumers and communities, including those that are just about managing."

2.10 On 31 October 2017, the DCMS published a consultation that covers proposals relating to:

- Maximum stakes and prizes for all categories of gaming machines permitted under the Gambling Act 2005;
- Allocations of gaming machines permitted in all licensed premises under the Gambling Act 2005;
- Social responsibility measures for the industry as a whole to minimise the risk of gambling-related harm, including on gambling advertising, online gambling, gaming machines and research, education and treatment (RET)

2.11 The consultation closes at midday on 23 January 2018. At the time of writing of this report the content of the consultation has not yet been absorbed and considered, however, it is anticipated that an appropriate response will be prepared and submitted in due course.

2.12 The launch of this further consultation does not negate the need for this Authority's policy to be updated in the meantime, nor does it immediately impact upon the proposed content of the policy. The next update of the policy will be due by 31 January 2019 by which time the implications of the DCMS consultation should be clear.

### **3. Consultation**

3.1 Each review of the Council's statement of licensing policy is required to be subject of public consultation in accordance with the provisions of the 2005 Act. Public consultation was carried out in respect of this policy revision through July to September 2017. The consultation comprised:

- Direct notifications sent to
  - Responsible authorities and partner services
  - Local licence holders and trade representative groups
  - Representatives of local resident and known local interest groups
  - Ward councillors
  - Neighbouring licensing authorities
- An online questionnaire made available on the Council's web site, together with a copy of the policy and supporting information
- Awareness raising through use of
  - Flyers distributed across the borough
  - Information given in the local e-newsletter
  - Social media

### **4. Timetable for progression**

4.1 The final draft policy is required to be approved and adopted by the Assembly. Once that decision is made, notice of the decision must be given in a local newspaper with the effective date made one month on.

### **5 Financial Implications**

Implications completed by: Katherine Heffernan, Finance Group Manager

- 5.1 The resources devoted to the preparation of the policy are contained within the Regulatory Services budget.
- 5.2 Fees associated with this policy are reviewed and agreed by Cabinet as part of the council's standard annual Fees and Charges review process.

### **6. Legal Implications**

Implications completed by Dr Paul Feild, Senior Corporate Governance Lawyer

- 6.1 Section 349 of the Gambling Act 2005 requires the Licensing Authority to prepare and publish a Statement of Gambling Licensing Policy every 3 year. Section 25 of the Gambling Act 2005 requires the Authority to have regard to the Gambling Commission's Guidance when preparing its Policy.
- 6.2 Any other legal implications relating to the Statement of Gambling Licensing Policy are detailed within the 2005 Act.



## 7. Other Implications

- 7.1 **Risk Management** – This review of the Council’s gambling licensing policy fulfils the requirement under the Gambling Act 2005 for the Council to have and regularly review and update a statement of policy.
- 7.2 **Corporate Policy and Customer Impact** – The draft policy is intended to promote the four statutory licensing objectives. It attempts to do so in a way that acknowledges and supports the broader Council vision and priorities. The revised policy is subject of an Equalities Impact Assessment which has been informed by this process.
- 7.3 **Safeguarding Children** - The third licensing objective specifically deals with the protection of children. As such, the policy includes detailed best practice management advice around child protection issues, compiled in conjunction with expert responsible authorities. This deals with issues such as age-verification and advertising. Child Protection are a statutory responsible authority under the Act and are consulted on all new and varied premises licence applications.
- 7.4 **Health Issues** - Although public health is not a licensing objective, the draft policy recognises the potential impacts of gambling related harm and is intended to provide adequate protections to vulnerable persons. The draft policy promotes socially responsible premises management. Public Health are a statutory responsible authority under the Act and are thereby consulted on all new and varied premises licence applications.
- 7.5 **Crime and Disorder Issues** - The first licensing objective specifically deals with the prevention of crime and disorder. As such, the draft policy considers issues such as location and local levels of crime. The development of the revised policy is being carried out in conjunction with expert responsible authorities.
- 7.6 **Property / Asset Issues** - None directly. Any licensable gaming or betting activity provided on Council-run venues would be subject to the same controls as other commercially run venues or facilities.

### Public Background Papers Used in the Preparation of the Report:

- Summary of Responses to the Public Consultation from the Council’s Online Questionnaire  
<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MId=9414&Ver=4>.

### List of appendices:

- Appendix 1 – The Draft Barking and Dagenham Statement of Gambling Licensing Policy for 2017-2020 (incl. the Analysis of Gambling Related Harm provided by the Insight Hub)
- Appendix 2 – Summary of more detailed responses received to the consultation
- Appendix 3 – Summary of amendments made to the policy following consultation