

CABINET

20 February 2023

Title: LBBD Statement of Gambling Licensing Policy 2023-2026	
Report of the Cabinet Member for Enforcement and Community Safety	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
Report Author: Karen Collier, Service Manager Environmental Health & Public Protection	Contact Details: E-mail: karen.collier@lbbd.gov.uk
Accountable Director: Gary Jones, Interim Operational Director, Enforcement, Regulatory Services and Community Safety	
Accountable Strategic Director: Fiona Taylor, Acting Chief Executive	
Summary <p>The Council, as the 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.</p> <p>Section 349 of the Gambling Act 2005 requires the Licensing Authority to prepare and publish a Statement of Gambling Licensing Policy in accordance with a statutory three-year cycle.</p> <p>A period of formal consultation has been undertaken in respect of the draft Gambling Policy Statement 2023-2026 which was considered by the Licensing and Regulatory Committee on 31 January 2023.</p>	
Recommendation(s) <p>The Cabinet is asked to recommend the Assembly to:</p> <ul style="list-style-type: none">(i) Adopt the London Borough of Barking and Dagenham Statement of Gambling Licensing Policy 2023-2026, as set out in Appendix 1 of the report; and(ii) Note that the policy statement shall take effect following the expiry of the statutory period of advertising after publication, in accordance with the provisions of the Gambling Act 2005.	
Reason(s) <p>The approval and adoption of the Council's Gambling Act 2005 Policy Statement for 2023 to 2026 is in accordance with the statutory responsibilities placed on the Council by the Gambling Act 2005. The policy promotes the licensing objectives stated in the Gambling Act 2005 and is linked to each of the Council's corporate priorities.</p>	

1. Introduction and Background

- 1.1 Under the Gambling Act 2005, the Council is the licensing authority and is responsible for licensing and overseeing local gambling establishments. Part of this responsibility is the duty to prepare and publish a statement of the principles that the Council proposes to apply in exercising its functions under the Act.
- 1.2 The Council's current Gambling Act policy statement came into effect on the 24 July 2019 and was effective for three years.
- 1.3 The revision of the policy statement was overseen by the Council's Licensing and Regulatory Committee and considered at its committee meetings on the 3 October 2022 and 31 January 2023.
- 1.4 The Licensing and Regulatory Committee agreed the recommendations as set out in both the reports referred to in paragraph 1.3 above. On 3 October 2022, the committee considered the draft policy and noted the arrangements for public consultation. On 31 January 2023, the Committee considered the consultation feedback and the officer's comments in response to the consultation feedback, noted the minor clarification amendments made to the policy as a result of the consultation feedback and agreed that the report be presented to Cabinet and then the Assembly for final approval and adoption.
- 1.5 The policy statement must be adopted by the Assembly.
- 1.6 There are legally prescribed procedures that the Council must follow before the policy statement can take effect. This involves making the statement publicly available by a variety of means for at least 4 weeks and by advertising that it has been published.

2. Proposal and Issues

- 2.1 A copy of the draft revised London Borough of Barking & Dagenham Gambling Policy Statement 2023- 2026 is attached at Appendix 1. Details of the public consultation on the revised policy are set out in section 3 of this report.
- 2.2 The consultation responses focussed on two key areas of the draft policy, the statutory aim to permit and the local area profile. An overview of these key areas is provided below.

Statutory Aim to Permit

- 2.3 The Gambling Act 2005 places a legal duty on licensing authorities to aim to permit gambling, in so far as it is considered to be reasonably consistent with the pursuit of the licensing objectives. The effect of this duty is that licensing authorities must approach their functions in a way that seeks to regulate gambling by using their powers, for example, powers to attach conditions to licences, to moderate its impact on the licensing objectives rather than by starting out to prevent it altogether.
- 2.4 Consultation feedback to the online survey comments included the following:
 - Why are these premises allowed to exist?

- There should be no betting shop in borough,
- I would like to see a reduction of premises in the area, they need to be minimised and limited if they cannot be eradicated.
- There are too many gambling establishments in Barking

- 2.5 The consultation comments have been considered and noted. As explained in paragraph 2.3, there cannot be a presumption for refusal. There is a statutory aim to permit gambling where an application is consistent with the licensing objectives being achieved.
- 2.6 One of the consultation responses reported that the draft policy did not appropriately identify the permissive regime envisioned by Parliament and implemented by the Gambling Act 2005.
- 2.7 The draft policy which was consulted on did include the requirement to 'aim to permit gambling' where to do so is reasonably consistent with e.g. the licensing objectives.
- 2.8 Having considered all the feedback raised, the policy has been amended to provide additional clarity to ensure that there can be no doubt that the authority will apply the correct statutory tests. Amendments have been made to the draft policy on page 20 paragraph 57 and page 29 paragraph 93.

Local Area Profile

- 2.9 Nationally, gambling policy and the regulatory environment overall has an increasing focus on risk. A local area profile is included in the revised draft policy statement, to inform the understanding of risk and to allow appropriate decisions to be made and steps taken to mitigate these risks. Gambling establishment operators are already required to undertake 'local area risk assessments' before submitting a premises licence application or variation and will be expected to give due consideration to the information available in the Council's 'local area profile'.
- 2.10 An updated Local Area Profile was included in the draft revised policy which was consulted on. The Local Area Profile was completed with significant input from the Council's Insight Hub. The update included an analysis of gambling related harm within the Borough which was conducted using spatial analysis techniques drawing on the most recent published, relevant and reliable socio-economic, public health and anti-social behaviour data sets.
- 2.11 In response to the consultation feedback, a link to and extracts from GambleAware's recently published interactive maps have been added to the Local Area profile in appendix D of the draft revised policy.
- 2.12 One consultation feedback referred to paragraph 52 of the draft policy which their extract stated '*this authority considers that it is necessary to seek to strictly control the number of facilities for gambling in areas, where it is most vulnerable residents may be placed at an increasing risk.*' The response added that the paragraph also states, '*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.*'

- 2.13 The feedback suggested the Authority seeking to 'strictly control' premises was in direct conflict with the governing legislative framework.
- 2.14 That consultation extract was selective and misleading. As described above, a robust evidence base has been prepared. The full paragraph 57 from the draft policy which was consulted on and remains in the proposed policy is as follows:

Paragraph 57 "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. 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".

3. Consultation

- 3.1 The Gambling Act 2005 requires the Council to consult when preparing its policy statement and this has been undertaken widely with key stakeholders. The full list of stakeholders consulted can be found in Appendix B of the draft Gambling Policy Statement.
- 3.2 Formal consultation, as endorsed by the Corporate Strategy Group at its meeting on 15 September 2022, was undertaken between 26 October 2022 until 30 December 2022, which provided an opportunity, in particular, for the following stakeholders to provide feedback:
- Responsible authorities
 - Service providers and persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Act
 - Ward councillors
 - Local licensed operators and relevant trades representative groups
 - Publication on the authority's website
- 3.3 Twelve responses to the online survey were received (eleven of those were from members of the public and one was from a councillor. In addition, another three consultation responses were received directly; one from a councillor, one from GambleAware (a charity which commissions prevention and treatment services) and one from Poppleston Allen (Licensing Solicitors) representing Merkur Group.
- 3.4 The consultation feedback received together with officer comments, including any resulting minor changes to the policy statement to provide greater clarification, and where relevant the reasons why changes have not been made are available within the Licensing and Regulatory Committee report of 31 January 2023 referred to in paragraphs 1.3 and 1.4 above.

3.5 It can be noted from the officer comments to the consultation responses that the majority of responses referred to matters that were either adequately addressed within the draft policy statement or related to legal requirements that the Council has no power to amend. The minor amendments that were made to the policy statement provide greater clarification to assist both applicants in their applications and sub-committees determining applications.

4. Financial Implications

Implications completed by: Afzal Hussain, Senior Accountant

4.1 This report seeks approval for minor clarification amendments to the draft policy statement, with a view to agreeing a revised Gambling Policy Statement.

4.2 The Council, as the 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.

4.3 There is no financial impact of this proposal.

5. Legal Implications

Implications completed by: Dr Paul Feild Principal Governance & Standards Lawyer

5.1 As set out in the report, under the Gambling Act 2005, the Council is the licensing authority is required by law to have a Gambling Policy Statement which must be reviewed on a periodic basis. There is Statutory Guidance to Licensing Authorities on how the policy is developed set out in part 6 of the Guidance. As part of the process there must be consultation and due regard be given to any representation as set out in paragraphs 6.56 – 61 of said Guidance.

5.2 In determining its policy statement, the Licensing Authority must give appropriate weight to the views of those it has consulted. In deciding what weight to give, the factors to be taken into account include:

- who is making the representations, the nature of their interest and their expertise
- relevance of the factors to the licensing objectives
- how many other people have expressed the same or similar views
- how far the representations relate to matters that the licensing authority should be including in its policy statement.

5.3 The final adoption of the Gambling Policy Statement is an Assembly function.

6. Other Implications

6.1 **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. If the Council fails to prepare and publish the policy statement the Council may be challenged when exercising its functions under the Act through a number of routes, e.g. service complaints to the Local Government Ombudsman and judicial review. Conversely, by preparing and publishing the policy statement, the Council is complying with its legal obligation. In

addition, the Council provides a defined framework within which to exercise its functions and makes it clear to all stakeholders how the Council intends to exercise its functions.

6.2 Corporate Policy and Equality Impact -The draft revised policy is intended to promote the statutory licensing objectives. It attempts to do so in a way that acknowledges and supports the broader Council vision and priorities.

6.2.1 This revision of LBBD's Gambling Policy Statement and the subsequent public consultation will support the corporate strategic priorities of "Participation and Engagement" and "Well-run organization". The Policy intends to support responsible operators and sets out to offer protections to our local community. This supports the corporate strategic priorities of "Inclusive Growth" and "Prevention, Independence and resilience".

6.2.2 Equality impacts have been considered in the revision of this policy. An Equality Impact Assessment screening tool has been completed and submitted to the Strategy and Participation Team who have confirmed that the draft revised Gambling Policy Statement does not require a full Equality Impact Assessment.

6.2.3 The equalities impact was further reviewed and considered following the consultation responses. Consultation feedback referred to the need to protect children and vulnerable adults from gambling related harm. The Equality Impact Assessment screening tool has been updated to clarify the specific consultation period.

6.2.4 The groupings for whom there will be direct impacts, and with whom there will continue to be efforts made to ensure that impacts are kept under review, are as follows:

- Age, in relation to children and young people;
- Disability, in relation to vulnerable adults; and
- Social Inclusion, in relation to the above plus those whom we may describe as vulnerable.

It continues to be the case that, across all nine national Protected Characteristic groupings and our tenth grouping in Barking & Dagenham of social inclusion, based on feedback from the formal consultation, the impact is predicted to be 'low positive'.

6.2.5 A copy of the Equality Impact Assessment screening tool can be found in Appendix 2.

6.3 Safeguarding Adults and 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. The revised policy statement also continues to emphasise the Council's focus on protecting adults with care and support needs.

- 6.4 **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.
- 6.5 **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.
- 6.6 **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:

- [London Borough of Barking and Dagenham Statement of Gambling Policy](#) (effective 24 July 2019)
- Agenda Item 7 of the Licensing & Regulatory Committee Meeting of 3 October 2022 [Agenda for Licensing and Regulatory Committee on Monday, 3 October 2022, 7:00 pm | LBBD](#)
- Agenda Item 5 of the Licensing & Regulatory Committee Meeting of 31 January 2023 [Agenda for Licensing and Regulatory Committee on Monday, 3 October 2022, 7:00 pm | LBBD](#)

List of appendices:

- Appendix 1: Draft revised London Borough of Barking & Dagenham Gambling Policy Statement 2023- 2026 (Post Consultation Version)
- Appendix 2: Equalities Impact Assessment Screening Tool