

**TITLE OF REPORT: GAMBLING ACT 2005 - STATEMENT OF LICENSING PRINCIPLES 2013-2016****REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION****1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to seek the Licensing and Appeals Committee's endorsement of the Council's Statement of Licensing Principles required under the Gambling Act 2005.

**2. FORWARD PLAN**

- 2.1 This report contains a recommendation on a key decision that was notified to the public in the Forward Plan in accordance with Council procedures.

**3. BACKGROUND**

- 3.1 The licensing of gambling was previously regulated by the Gaming Board for Great Britain until the introduction of the Gambling Act 2005 with effect from 1<sup>st</sup> September 2007. Prior to this transfer, the local authority's only responsibility in respect of gambling was the regulation of small society lotteries through a registration scheme.
- 3.2 The Gambling Act 2005 ("the Act") transferred the overall regulation of gambling to The Gambling Commission, with the local authority acting as the licensing authority and having responsibility for a variety of licensing functions in respect of gambling premises such as casinos, bingo premises, betting shops, track betting and amusement arcades.
- 3.3 In preparation for this new responsibility, local authorities had to publish a Statement of Principles by 3<sup>rd</sup> January 2007 in accordance with section 349 of the Act.
- 3.4 It is a requirement under section 349 of the Act that the Statement of Principles is kept under regular review and that the Statement of Principles is formally reviewed and published every three years.
- 3.5 The current Statement of Principles was published on 3<sup>rd</sup> January 2010, therefore, the Council is required to undertake a consultation to review the existing Statement with a view to publishing a new Statement of Principles by 3<sup>rd</sup> January 2013.
- 3.6 The Statement of Principles seeks to strike a balance between the interests of residents, applicants and licence holders in the promotion of the licensing objectives. It outlines the Council's expectations of licence holders in promoting the licensing objectives whilst advising on the Council's obligations under the Act, including its interpretation of the Act and/or Statutory Guidance where necessary.

#### **4. APPROACH TO THE STATEMENT OF LICENSING PRINCIPLES**

- 4.1 The development of the Statement of Licensing Principles has been based upon a consultation process undertaken by the Licensing and Enforcement Team, with consideration to a recommended national policy template originally published by LACORS (Local Authorities Coordinators of Regulatory Services) and the Guidance issued by the Secretary of State under section 182 of the Act.
- 4.2 The consultation process was undertaken for a twelve week period between Monday 11<sup>th</sup> June 2012 and midnight on Sunday 2<sup>nd</sup> September 2012 in accordance with the Government Code of Practice on Consultation (as issued by the Department for Business Innovation and Skills). A policy consultation page was created on the Council's website including the proposed policy and an explanation of the process for making a representation.
- 4.3 A letter advising of the consultation process was sent to each of the following consultees:
- Hertfordshire Constabulary
  - Hertfordshire Fire & Rescue Service
  - Hertfordshire Trading Standards
  - Hertfordshire Safeguarding Children Board
  - NHDC Environmental Health Team
  - NHDC Environmental Protection Team
  - NHDC Development and Building Control Team
  - NHDC Legal Services
  - NHDC Community Safety Team
  - All current premises licence / club premises certificate holders under the Licensing Act 2003
  - All current premises licence holders under the Gambling Act 2005
  - NHDC Councillors (via the Members Information Service)
  - Parish / Town Councils
  - Association of British Bookmakers Ltd
  - BACTA
  - Bingo Association
  - British Association of Leisure Parks, Piers & Attractions Ltd
  - British Casino Association
  - Business in Sport and Leisure
  - Citizens Advice Bureau
  - The Gambling Commission
  - GamCare
  - Local residents (via the Council's website and local libraries)
  - NCVCCO
  - Neighbouring local authorities
- 4.4 It was felt that in general terms the Statement of Principles appeared to be working well, therefore, no significant changes were proposed in respect of content.
- 4.5 There have been no significant changes in the legislation and Statutory Guidance that would impact on the existing Statement of Principles since it was last published in January 2010.

- 4.6 The Council has recently received and determined applications for the grant of a new betting premises licence, the variation of an existing adult gaming centre premises licence and the grant of a new unlicensed family entertainment centre gaming machine permit. In determining those applications, the existing Statement of Principles proved 'fit for purpose'.

## **5. CONSIDERATIONS**

- 5.1 At the time of writing this report, the Government had not announced any intention to make significant changes to the primary legislation. Should any legislative changes subsequently take effect during the three-year period of the Statement of Licensing Principles, a further consultation exercise would be required to incorporate the effect of such changes.
- 5.2 The existing Statement of Licensing Principles, which forms the basis of the proposed Statement of Licensing Principles, has regard to the Statutory Guidance to Licensing Authorities (3<sup>rd</sup> Edition) issued by The Gambling Commission in May 2009. The 3<sup>rd</sup> Edition was the Guidance issued by The Gambling Commission that was in effect during the policy consultation exercise undertaken by the Council. A consultation was undertaken by The Gambling Commission earlier this year in respect of a proposed 4<sup>th</sup> Edition of the Guidance, however, there was no indication of its likely implementation date at the time of the Council's policy consultation.
- 5.3 The Statutory Guidance to Licensing Authorities (4<sup>th</sup> Edition) was subsequently issued by The Gambling Commission on 1<sup>st</sup> October 2012, however, it contains no significant amendments that would impact on the proposed Statement of Licensing Principles.
- 5.4 Only one response was received in respect of the consultation exercise undertaken by the Council. The response was from an existing private members' club that currently holds a club gaming permit and stated that they were content with the existing arrangements.

## **6. LEGAL IMPLICATIONS**

- 6.1 Section 349 of the Gambling Act 2005 requires the Council to publish a three-year Statement of Licensing Principles which should be reviewed from time-to-time, making revisions if necessary. In preparing the Statement of Licensing Principles, the Council must publish any proposed statement or revisions before giving them effect and consult:
- The Chief Officer of Police for the Local Authority Area;
  - One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area; and
  - One or more 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 this Act.
- 6.2 The Act specifies that a Licensing Authority shall aim to permit the use of premises for gambling in so far as the authority think it:
- in accordance with any relevant code of practice under Section 24;

- in accordance with any relevant guidance issued by The Gambling Commission under Section 25;
  - reasonably consistent with the licensing objectives (subject to the above); and
  - in accordance with the Statement of Licensing Principles (subject to the above).
- 6.3 The Licensing Authority may only depart from the Statement of Licensing Principles on an individual application where it is necessary to promote the licensing objectives and to comply with the requirements of paragraph 6.2 above. Departing from the Statement of Licensing Principles for any other reason exposes the Council to the possibility of a legal challenge.
- 6.4 The Statement of Licensing Principles must support the Gambling Act 2005 and always seek to promote the three licensing objectives specified in the Act:
- a) preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime;
  - b) ensuring that gambling is conducted in a fair and open way; and
  - c) protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 6.5 Under the Constitution, the terms of reference of the Licensing and Appeals Committee include consideration of all licensing matters, with the exception of the Statements of Licensing Policy under the Licensing Act 2003 and Gambling Act 2005. The terms of reference further state that the Licensing and Appeals Committee is able to make representations to Council on the Statements of Licensing Policy. It is Full Council's decision, however, to adopt a Statement of Licensing Principles under the Gambling Act 2005.

## **7. FINANCIAL AND RISK IMPLICATIONS**

- 7.1 Local authorities have the ability to set their own local fees for the Gambling Act 2005 on a cost recovery basis only, subject to prescribed maximum amounts. The administration of the Gambling Act 2005 should, therefore, place no additional financial burden on local authorities.
- 7.2 No new financial or risk implications are envisaged from this new Statement of Licensing Principles as it is predominately a re-confirmation of the existing policy that is reaching the end of its statutory three-year period.
- 7.3 There would be a risk to the Council of a judicial review if a Statement of Licensing Principles was not published in accordance with the requirements of section 5 of the Act.

## **8. HUMAN RESOURCE AND EQUALITY IMPLICATIONS**

- 8.1 This Statement of Licensing Principles will not place any new human resource implications on the Council.
- 8.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. We also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

## **9. CONSULTATION WITH EXTERNAL AND INTERNAL STAKEHOLDERS**

- 9.1 The Licensing Authority have consulted with all statutory consultees as defined by the Act and listed in paragraph 4.3 of this report.
- 9.2 The current Statement of Licensing Principles, as used for the consultation, is available on the Council's website. A hard copy can be forwarded on request.
- 9.3 The proposed new Statement of Licensing Principles is attached as ***Appendix A of this report.***

## **10. RECOMMENDATIONS**

- 10.1 That the proposed Statement of Licensing Principles in respect of the Gambling Act 2005, as attached at ***Appendix A*** to the report, be supported by the Licensing and Appeals Committee.
- 10.2 That the Licensing and Appeals Committee recommend to Full Council the adoption of the Statement of Licensing Principles.

## **11. REASONS FOR RECOMMENDATIONS**

- 11.1 Licensing Authorities are required to publish a Statement of Licensing Principles every three years in accordance with section 349 of the Gambling Act 2005. A new policy must be published by 2<sup>nd</sup> January 2013. It is felt that the proposed Statement of Licensing Principles builds on the successful use of the first two versions of the Policy.

## **12. ALTERNATIVE OPTIONS CONSIDERED**

- 12.1 There are no alternative options other than a Statement of Licensing Principles that may differ in content and extent. The proposed Statement of Licensing Principles, whilst comprehensive, aims to strike a balance between the minimum legal requirements and not being overly prescriptive or open to challenge.

## **13. APPENDICES**

- 13.1 Appendix A – Proposed Statement of Licensing Principles.

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## **15. BACKGROUND PAPERS**

- 15.1 Gambling Act 2005.
- 15.2 Guidance to Licensing Authorities issued by the Gambling Commission (3<sup>rd</sup> Edition).