

COUNCIL
22 NOVEMBER 2018

***PART 1 – PUBLIC DOCUMENT**

REPORT PRESENTED TO THE LICENSING COMMITTEE ON 5 NOVEMBER 2018

TITLE OF REPORT: GAMBLING ACT 2005: STATEMENT OF LICENSING PRINCIPLES 2019 – 2022

REPORT OF: LICENSING MANAGER

**EXECUTIVE MEMBER: CLLR BERNARD LOVEWELL
HOUSING AND ENVIRONMENTAL HEALTH**

COUNCIL PRIORITY: PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

1.1 The purpose of this report is for the Licensing and Appeals Committee to consider the draft Statement of Licensing Principles (“the Policy”) prepared by officers and the public consultation responses in order to recommend the adoption of a final Statement of Licensing Principles to Full Council.

2. RECOMMENDATIONS

2.1 That the Licensing and Appeals Committee consider the consultation responses and recommend the adoption of the Policy appended at Appendix A to Full Council.

3. REASONS FOR RECOMMENDATIONS

3.1 Licensing authorities are required to publish a policy every three years by virtue of section 349 of the Gambling Act 2005 (“the Act”).

3.2 A new policy must be published by 3 January 2019 to comply with this statutory requirement.

- 3.3 The Policy builds on the effectiveness of the existing policy with minor amendments to reflect changes in legislation, statutory guidance, consultation responses and further clarification on the requirement for local area risk assessments.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The only alternative option would be a policy that differs in content and/or extent.
- 4.2 An alternative policy has not been considered as the proposed Policy strikes an effective balance between ensuring the promotion of the licensing objectives and not being overly prescriptive or prohibitive to applicants and licence holders.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Executive Member for Housing and Environmental Health has been kept informed throughout the drafting of the Policy and the public consultation process.
- 5.2 The Act requires the licensing authority to consult with a prescribed group of persons (see paragraph 9.1 of the report). Further information on the list of consultees is available in section A3.4 of the Policy.
- 5.3 To comply with this requirement, the licensing authority published the Policy on a dedicated webpage on the Council's website with details of the consultation period and an explanation of how to make a representation.
- 5.4 All organisations listed in section A3.4 of the Policy were sent a consultation email or letter directing them to the consultation page.
- 5.5 Only four responses were received from Royston Town Council, GamCare, NHDC Environmental Health and the Association of British Bookmakers. The responses are summarised, with officer responses, in Appendix B and published in full in Appendix C.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 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 September 2007. Prior to this transfer, the local authorities' only responsibility in respect of gambling was the regulation of small society lotteries through a local registration scheme. For the purpose of undertaking its responsibilities under the Act, the Council are acting as the licensing authority for North Hertfordshire.
- 7.2 The Act transferred the overall regulation of gambling to the Gambling Commission with local authorities acting as the licensing authorities and having responsibility for a variety of licensing functions in respect of gambling premises such as casinos, bingo halls, betting shops, track betting and amusement arcades.
- 7.3 In preparation for this new responsibility, local authorities had to publish a policy by 3 January 2007 in accordance with section 349 of the Act. The Act requires the policy to be kept under regular review and formally reviewed by way of public consultation, and adoption by Full Council, every three years. The existing policy was last adopted with effect from 3 January 2016 therefore the statutory three year period expires on 2 January 2019.
- 7.4 The Policy seeks to strike a balance between the interests of licence holders, applicants and residents in the promotion of the licensing objectives defined by the Act. Additionally, it outlines the licensing authority's expectations of licence holders in promoting the licensing objectives, whilst advising on the licensing authority's obligations under the Act, including its interpretation of the Act and/or Statutory Guidance where necessary.
- 7.5 It is the licensing authority's intention that the Policy offers appropriate protection for residents and a streamlined approach to regulation that eases unnecessary burdens on businesses.

8. RELEVANT CONSIDERATIONS

Existing Policy

- 8.1 Officers are of the view that in general terms the existing policy is working well, therefore, the only significant changes proposed are those detailed below. The Policy has been updated to reflect minor legislative changes and revised Statutory Guidance issued since its adoption.
- 8.2 Any amendments to the existing policy have been highlighted in red text in the Policy attached as Appendix A.

Local Area Profile

- 8.3 Local authorities are now able to include a local area profile giving an overview of the district covering issues that may be relevant to the consideration of applications for gambling premises. These issues include, but are not limited to, areas of deprivation, unemployment or crime.
- 8.4 The Policy now includes a local area profile as a separate appendix. Section A2.7.2 now states that *'...applicants will be expected to have regard to the local area profile and demonstrate that there will be no adverse affect on the community in which the premises is, or is proposed, to be located'*.

Local Area Risk Assessments

- 8.5 The Gambling Commission's Social Responsibility Code has been further strengthened by their guidance document Licensing Conditions and Codes of Practice 2015 which now requires a risk assessment for each gambling premises having regard to the impact on the locality and the local area profile.
- 8.6 The Policy now sets out the minimum requirements of these risk assessments for North Hertfordshire to ensure that operators of existing and new premises are mindful of their impact on the specific locality of each premises. Additionally, the Policy makes it clear that risk assessments will form part of the Council's inspection regime and may also be considered as part of any enforcement action.

Consideration of Consultation Responses

- 8.7 Royston Town Council resolved that it welcomed the Policy although it had strong views that no further gambling premises licences should be granted in Royston. Whilst the support is welcome, one of the main principles of the Policy is that each application is determined on its own merits (see paragraph 9.4 of this report). The introduction of local area profiles and risk assessments should strengthen the existing safeguards against the provision of irresponsible gambling premises.
- 8.8 GamCare is the leading provider of information, advice, support and free counselling for the prevention and treatment of problem gambling. They operate the National Gambling Helpline, provide treatment for problem gamblers and their families, create awareness about responsible gambling and treatment, and encourage an effective approach to responsible gambling within the gambling industry. They provided a generic response to the consultation focussing primarily on their support for local area profiles and risk assessments which have now been included in the Policy.

- 8.9 GamCare also suggested that we should primarily consider applications from GamCare certified operators. Whilst the Policy promotes the importance of organisations such as GamCare and their role in promoting responsible gambling, the principles of each application being determined on its own merits remains paramount. It is not proposed therefore to include this suggestion however GamCare certification is something that could be included by operators within individual risk assessments and in addressing the local area profile as part of an application.
- 8.10 Gosschalks Solicitors, acting on behalf of the Association of British Bookmakers, made a number of comments. In general terms, as part of a generic response, they made no adverse comments in relation to our Policy; indeed they offered support to the effective use of local area profiles and risk assessments. They also referred to the national decline of betting premises, low problem gambling rates and new planning controls from April 2015 affording local authorities additional controls through the planning process. Local decision-making should focus on the promotion of the licensing objectives and these issues should not unduly influence the determination of applications.
- 8.11 Gosschalks Solicitors, acting on behalf of the Association of British Bookmakers, made a number of specific comments relating to the Policy detailed within Appendix B. Whilst a number of their comments suggested that our Policy should be revised to remove references to measures they believe are not directly linked to the licensing objectives, changes haven't been made as it is believed that these measures are all relevant considerations relating to the licensing objectives. For example, proximity to cashpoints and alcohol licensed premises is relevant when considering the potential harm to vulnerable people with gambling problems. Similarly, vulnerable persons may be visiting religious buildings for support and the proximity of gambling premises would be a relevant consideration.
- 8.12 Lastly, Gosschalks Solicitors, acting on behalf of the Association of British Bookmakers, identified a possible misunderstanding in paragraph C5.1 of the Policy which stated that licensing authorities could restrict the number of betting machines in a licensed betting premises; this doesn't make clear that the licensing authority cannot restrict the number of gaming machines. The Policy appended as Appendix A has been amended to clarify this possible misunderstanding.

9. LEGAL IMPLICATIONS

- 9.1 Section 8.2.3 (b) of the Constitution states the Licensing and Appeals Committee terms of reference include *'to make recommendations to Council on the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005'*.

- 9.2 Section 349 of the Gambling Act 2005 requires licensing authorities to publish a statement of licensing principles every three years in accordance with prescribed requirements. The adoption of the statement of licensing principles is a non-executive function by virtue of the Act and Statutory Guidance and is reserved for Full Council by virtue of section 4.2.1(e) of the Constitution.
- 9.3 In preparing the Policy, the licensing authority must (and has) published any proposed policy before giving it effect and must consult with:
- the chief officer of police for the licensing authority's 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;
 - 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.
- 9.4 The Act specifies that licensing authorities shall aim to permit the use of premises for gambling in so far as the authority thinks it:
- in accordance with any relevant code of practice issued under section 24 of the Act;
 - in accordance with any relevant guidance issued by The Gambling Commission under section 25 of the Act;
 - reasonably consistent with the licensing objectives (subject to the above);
 - in accordance with the Statement of Licensing Principles (subject to the above).
- 9.5 The licensing authority may only depart from its policy on an individual application where it is necessary to promote the licensing objectives and to comply with the requirements of paragraph 9.2 above. Departing from the policy for any other reason exposes the licensing authority to the possibility of legal challenge.
- 9.6 The Policy must (and does) support the Act and always seek to promote the three licensing objectives specified therein:
- preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime;
 - ensuring that gambling is conducted in a fair and open way;
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.

10. FINANCIAL IMPLICATIONS

- 10.1 Local authorities have the ability to set their own local fees for the Act on a cost recovery only basis, subject to centrally prescribed maximum amounts. The administration and enforcement of the Act, including the adoption of a policy, places no additional financial burden on the Council as all costs are recovered through fees. In accordance with a previous resolution of the Licensing and Appeals Committee, all locally set fees are subject to three-yearly costing exercises to ensure they recover all reasonable costs.

11. RISK IMPLICATIONS

- 11.1 If a policy is not adopted and published by 3 January 2019 in accordance with section 349 of the Act, the licensing authority would be at risk of challenge for determining applications against an unlawful policy.
- 11.2 A clear and robust adopted policy provides the licensing authority with the opportunity to enhance its work with relevant stakeholders and to mitigate local risks to the licensing objectives proactively.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion, or any other protected characteristic. Officers work with all applicants and licence holders, where appropriate, to ensure that the Council's duty under the Equality Act 2010 is met, for example, guidance noted could be provided in other languages upon request.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and the "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The Policy will not place any new human resource implications on the licensing authority.

15. APPENDICES

- 15.1 Appendix A Proposed Statement of Licensing Principles
- 15.2 Appendix B Summary of public consultation responses
- 15.3 Appendix C Consultation responses in full

16. CONTACT OFFICERS

- 16.1 Steve Cobb, Licensing Manager
steven.cobb@north-herts.gov.uk; ext 4833
- 16.2 Jeanette Thompson, Service Director – Legal and Community
jeanette.thompson@north-herts.gov.uk; ext 4370
- 16.3 James Ellis, Legal Regulatory Team Manager
james.ellis@north-herts.gov.uk; ext 4319
- 16.4 Jodie Penfold, Group Accountant
jodie.penfold@north-herts.gov.uk; ext 4332
- 16.5 Tim Everitt, Performance & Risk Officer
tim.everitt@north-herts.gov.uk; ext 4646
- 16.6 Jo Keshishian, Human Resources Business Partner
jo.keshishian@north-herts.gov.uk; ext 4314
- 16.7 Reuben Ayavoo, Senior Policy Officer
reuben.ayavoo@north-herts.gov.uk; ext 4212

17. BACKGROUND PAPERS

- 17.1 [Gambling Act 2005](#)
- 17.2 [Consultation](#)
- 17.3 [Existing policy](#)