

EAST HERTS COUNCIL

LICENSING COMMITTEE – 19 NOVEMBER 2015

REPORT BY DIRECTOR NEIGHBOURHOOD SERVICES

CONSIDERATION OF CONSULTATION RESPONSES TO THE DRAFT
GAMBLING POLICY 2016-2019

WARD(S) AFFECTED: ALL

Purpose/Summary of Report:

- To present responses to the consultation on the Statement of Gambling Policy.

RECOMMENDATION FOR COUNCIL: That	
(A)	The Committee consider the responses to the consultation; and
(B)	The revised Statement of Principles under the Gambling Act 2005 be recommended to Council for Approval.

1.0 Background

1.1 The Gambling Act 2005 requires East Herts Council to publish a Statement of Principles that it applies when exercising its functions under the Act. The statement must be published every three years and the Licensing Authority must keep the statement under constant review and consult statutory consultees as set out in the Act, and any other appropriate person, on any proposed new or revised Statement of Principles. The statement must then be re-published.

2.0 Report

2.1 The Statement of Gambling Policy was last published in January 2013. It is for Council to approve the revised policy subject to Licensing Committee's consideration of responses to the consultation detailed in this report.

2.2 During the 2 month public consultation, between 1st September 2015 and 1st November 2015, four responses were received from:

- Ware Town Council's Planning Committee
- Councillor Michael Freeman (East Herts Council)
- Gosschalks solicitors on behalf of the Association of British Book Makers
- Coral Racing Limited

2.3 Ware Town Council proposed two changes to the Statement of Gambling Principle's (**see Essential Reference Paper 'B'**):

- That the opening hours of gambling establishments should be restricted.
- That there should be no further establishments in Ware.

2.4 The Licensing Authority requested a number of additional pieces of information so that the comments could be given full consideration. These points were:

- How hours should be restricted?
- To which types of gambling premises the restricted hours should apply?
- Which types of new gambling premises should not be allowed in Ware?
- The reasons for requesting the restrictions?
- Is there any supporting evidence that the restrictions are necessary to ensure the licensing objectives are not harmed?

2.5 The Town Council were unable to provide these additional details so Member's must attach the weight they see fit to the original comments. This must be done in light of section 153 of the Gambling Act 2005 which requires a licensing authority to aim to permit the use of premises for Gambling in so far as it is reasonably consistent with the licensing objectives and in accordance with the relevant codes of practice and relevant guidance.

2.6 Officers would suggest that to restrict hours or the number of premises without valid reasoning or evidence would leave the authority open to judicial review or appeal for failing to take the Guidance into account. Therefore the suggestions should not be included in this revision of the statement.

2.7 Councillor Michael Freeman commented that on page 23 of the document "self-barring" had been incorrectly referenced (**see Essential Reference Paper 'C'**). This has been corrected.

- 2.8 The third letter was received from Gosschalks Solicitors on behalf of the Association of British Bookmakers (ABB) who represent over 80% of the high street betting market. The first four and a half pages are general comments regarding the recent changes to the Gambling Act 2005 and give the background to why the ABB have employed Gosschalks to respond to local authority's policy revisions (**see Essential Reference Paper 'D'**).
- 2.9 There are a number of specific comments regarding the revised document and these will be dealt with individually, with the legal position being explained and a clear question for Members to consider, where appropriate.
- 2.10 Gosschalks seek to have the word 'generally' removed from the sentence 'the council will generally aim to permit the use of premises for gambling...'. The letter quotes section 153 Gambling Act 2005 which states the licensing authority shall aim to permit the use of premises for gambling. The caveat is that certain criteria must be met so the authority does not have to do this in all circumstances.
- 2.11 Officers believe that the removal of the word 'generally' would not impact on the policy as a whole or weaken the position of the authority when considering applications.
- 2.12 The question for Members is: Do you agree that the word generally is removed from the sentence on page 4 of the revised policy?
- 2.13 The second point in the letter relates to the Local Area Profile (LAP). The argument put forward is that applications under the Gambling Act 2005 do not contain an operating plan as exists within the Licensing Act 2003. Officers would point out that section 20 of the application form for a premises licence under the Gambling Act 2005 is entitled 'Please set out any other matters which you consider to be relevant to your application'. This section could be used by applicants to explain how they would not exacerbate any existing problems that had been identified.
- 2.14 The mandatory and default conditions are referenced and officers agree that these would usually be sufficient. However, where they are not it is reasonable to ask an applicant to explain what else they propose at the time of application.

2.15 The letter states that ‘only where there is clear evidence of a risk of harm to the licensing objectives that the committee can consider additional conditions’ and ‘the applicant is not required to propose licensed conditions’. If the LAP identified problems which undermined the Gambling Act licensing objectives then it is reasonable that an applicant should be asked to address these but this section does not state that it is ‘required’ or ‘mandatory’. Regardless of whether or not an applicant complies with the expectation to address gambling related problems in the area they want to locate, each application will be considered on its own merits.

2.16 The statement of principles should not simply be a regurgitation of the wording of the Gambling Act or a description of the application process; these have been laid down by central government. It is intended to set out the council’s approach to applications and will guide the administration of licensing under the Gambling Act 2005. It will assist in ensuring that an appropriate balance is drawn between the interests of those wishing to provide and take part in legal gambling, and those who might be affected by such activities.

2.17 Officers would suggest that an amendment to this section of the revised policy is not necessary. The question for Members is: Should the following sentence from page 13 of the revised statement of principles remain unchanged?

‘We will expect applicants to fully explain in their applications how their proposal will not exacerbate any problems to individuals living in the vicinity.’

2.18 The comment regarding the wording of the ‘General Principles’ section on page 14 of the revised statement of principles appears to be making a point rather than asking for a change. Officers and Members are aware that any decision to impose additional conditions would need to be evidence based and this is how the authority would justify the decision as ‘appropriate’.

2.19 For the sake of clarity, particularly for those who are not aware of the requirement for evidence based decisions, the wording of the sentence could be changed to:

Licensing Authorities may exclude default conditions and attach others where the evidence makes it appropriate.

- 2.20 The question for Members is: Should the sentence on page 14 of the revised statement of principles be replaced with the sentence in paragraph 2.19 of this report?
- 2.21 The next points relate to the paragraph relating to 'Location' on page 16 of the revised statement of principles. The first comment states that a policy which identified an area where gambling premises should not be located may be unlawful. Officers are aware of this and it's been identified in paragraph 2.6 of this report.
- 2.22 The next comment relates to the sentence which puts the onus back on the applicant, if such a policy were in place, to show how concerns would be overcome. The suggestion is that the sentence should be redrafted making it clear that each application will be considered on its own merits. However, officers would suggest that no change is required as the sentence already includes 'and each application will be decided on its own merits'.
- 2.23 The final comment from the Gosschalks letter suggests that the reference to 'crime and disorder' should be amended to read 'crime or disorder'. Officers agree with this suggestion as it reflects the wording of the Gambling Act 2005 and the correction has been made.
- 2.24 The response from Coral Racing Limited, who operate 1850 betting offices in Great Britain (about 20% of all licensed betting offices), states that they are supportive of the document and proposed no amendments (**see Essential Reference Paper 'E'**).

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Revised Statement of Principles under the Gambling Act 2005, Policy for 2016-2019.

[http://www.eastherts.gov.uk/media/pdf/e/2/\(DRAFT\)_Gambling_Principles_2016-19.pdf](http://www.eastherts.gov.uk/media/pdf/e/2/(DRAFT)_Gambling_Principles_2016-19.pdf)

Gambling Act 2005

<http://www.legislation.gov.uk/ukpga/2005/19/contents>

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