

MUNICIPAL YEAR 2015/2016 REPORT NO. **121**

**MEETING TITLE AND DATE:**

Council - 11 November 2015

**REPORT OF:**

Ian Davis; Director -  
Regeneration and Environment

**Agenda – 1**

**Item: 9**

**Subject: Approval of Enfield's Gambling Act 2005 Policy and 'No Casinos' Resolution**

**Wards: All**

**Key Decision No: KD 4199**

**Cabinet Member consulted: Cllr Anderson**

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**1. Executive Summary**

- 1.1 The Council is required to prepare, consult upon and agree a Statement of Principles (Licensing Policy) every 3 years under section 349 of the Gambling Act 2005. The last policy was published on 30 January 2013, and the revised policy must be published by 30 January 2016.
- 1.2 Consultation has been undertaken in accordance with section 349 (3) of the Act and the Council is asked to approve the statement of principles shown at Appendix 1.
- 1.3 In accordance with Section 166 of the Gambling Act 2005 the Council, as Licensing Authority, may resolve not to issue casino premises licences and renew this every 3 years. The last resolution was 30 January 2013 and the Council is asked to consider passing such a resolution again.

**2. Recommendations**

- 2.1 To note the results of the public consultation and amendments made thereafter to the proposed Statement of Principles (policy), under the Gambling Act 2005.
- 2.2 To approve the Statement of Principles (policy), under the Gambling Act 2005, attached as Appendix 1.
- 2.3 To resolve not to issue casino premises licences under the Gambling Act 2005.

### **3. Background**

- 3.1 The Council has a statutory duty, following public consultation, to publish its gambling policy under the Gambling Act 2005 every three years.
- 3.2 The existing policy was last approved by Council on 30 January 2013. It is due for revision, consultation and publishing by 30 January 2016.
- 3.3 The Council may also, every three years, resolve not to issue casino premises licences under the Gambling Act 2005.
- 3.4 On 30 January 2013, the Council resolved not to issue casino premises licences under the Gambling Act 2005. It is proposed that the Council takes a new 'no casino' resolution. There are no casinos within the borough and, since January 2010, the Council has not received a single enquiry in respect of casino licences.
- 3.5 The new gambling policy needs to be approved at 11 November 2015 Council meeting in order to meet the statutory publication procedures for the policy to be in place by 30 January 2016.
- 3.6 The revised (4<sup>th</sup>) edition of the Gambling Policy is attached at Appendix 1 for consideration. The Policy was considered by the Licensing Committee on 14 October 2015 and approved for recommendation on to Council. It was also on public consultation between 17 July 2015 and 2 October 2015 (11 weeks).
- 3.7 The main changes to the Gambling Act policy reflect the significant changes in the recent revision of the Gambling Commission's Guidance document. The guidance was produced in draft for public consultation from March 2015 to 22 June 2015. The final version was published in September 2015 – during the period of public consultation on Enfield's revised Gambling Act policy.
- 3.8 The Gambling Act 2005 (section 153), requires that licensing authorities 'aim to permit' the use of premises for gambling, in so far as it is considered to be reasonably consistent with the pursuit of the licensing objectives. Licensing authorities are required to use their powers; such as imposition of licence conditions, to moderate the risks to the licensing objectives rather than setting out to prevent gambling.
- 3.9 The Licensing Objectives are:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
  - Ensuring that gambling is conducted in a fair and open way; and
  - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 3.10 Factors which cannot be taken into account when considering applications for gambling premises include:
- Unfulfilled 'demand' for gambling premises

- The clustering of gambling premises in an area/location
- Planning permission or building control approvals that may be needed under those legislation and/or if they are likely to be granted
- Whether the premises is likely to cause nuisance or anti-social behaviour (these are not a licensing objective under the Gambling Act)

#### **4.0 Existing Statement of Principles (Policy)**

- 4.1 Since January 2013, we have received 330 gambling licence applications. However, only 21 of these applications (6.4%) were applications for new licences or for variation of existing licences which could have been subject to objections and could have been referred to the Licensing Sub-Committee. In the event none of these applications received objections and none were referred to a Sub-Committee hearing.
- 4.2 Since January 2013 we have not received any applications (from our partner agencies or from local residents or businesses) to review any gambling licences in Enfield.
- 4.3 In 2013, there were 75 licensed betting shops in the borough. Since 2013 an additional 11 betting shops have been licensed, but in the same period 6 betting shops have closed. There is no obvious pattern as to the wards where the new or closed betting shops are. Therefore, currently, there are 80 licensed betting shops in the borough.

#### **5.0 No Casino' Resolution**

- 5.1 Section 166 of the Gambling Act 2005 enables the Council as Licensing Authority to resolve not to issue casino premises licences.
- 5.2 Should the resolution be passed, no applications for casino premises licences would be considered by the Council. Any applications received would be returned with a notification that a 'no-casino' resolution is in place. The resolution must apply to casinos generally and cannot be limited to geographical areas or categories of casinos.
- 5.3 If the resolution is made it may be revoked by a further resolution at any time and lapses at the end of the three-year period starting with the date on which it takes effect unless a new resolution is made.
- 5.4 If a resolution is passed it must be published in the statement of principles.
- 5.5 There are currently no casinos within the London Borough of Enfield, and there have been no enquiries.
- 5.6 When the Council was first asked to consider whether or not to make a 'no casinos' resolution, information was provided concerning:
- Demographics of the borough

- Possible risks to the licensing objective of protection of children and vulnerable adults
- Possible links between deprivation and problem gambling
- Findings of research on casino gambling
- Responses from the statutory public consultation on the statement of principles on whether the council should make a 'no casinos' resolution

5.7 No comments were received during the recent public consultation about the 'no casinos' resolution.

## **6.0 Gambling Commission's statutory Guidance to licensing authorities**

6.1 The Gambling policy forms the licensing authority's mandate for managing local gambling provision and sets out how the licensing authority views the local risk environment and therefore its expectations in relation to operators with gambling premises in the locality.

6.2 The changes to the Council's Gambling policy reflect the key changes in the revised (5<sup>th</sup> edition) Guidance from the Gambling Commission as follows:

- How the council intends to use its powers to manage risks to the licensing objectives locally;
  - Implementation of the Commission's social responsibility provisions contained within the Licence Conditions and Codes Practice (LCCP) - gambling premises operators will be required from 6 April 2016 to undertake an assessment of risk posed by their premises to the licensing objectives (taking account of the local area profile) and to identify mitigation measures;
  - Allows the Licensing authority to provide a local area profile in their Gambling Act policy that identifies sensitive buildings and vulnerable communities – to set out local risks and to assist gambling premises operators and applicants to undertake their risk assessment;
  - Reference to examples of a pool of conditions that have been attached to licences as conditions by local authorities;
  - Promotes local partnership working between licensing authorities and businesses so as to facilitate a coordinated response to local issues (e.g. such as our BetWatch Enfield scheme).
- We have also included some data about gambling habits from the English and Scottish Health Surveys 2012, and the ethnicity, age, economic makeup of the local community (not part of the statutory guidance for policies).
  - For the first time we have also introduced a Foreword to the policy from the Chair of the Licensing Committee to clearly set out the Council's approach to gambling premises and our expectations of gambling premises operators.

6.3 Gambling Policy reflecting local issues:

6.3.1 This is a new and significant opportunity for Licensing Authorities to set out what the local issues are in the borough and for gambling operators to take

these into account when considering their risk assessments and mitigation measures.

6.3.2 The former Gambling Commission guidance, and therefore our former policy statement, does not fully and adequately reflect local concerns, risks and features of the gambling landscape – for example, demographics, socio-economic profile and what mix of gambling is provided.

6.3.3 To make full use of this important licensing tool, the policy statement should be drawn up in a way that reflects the local area. The Council have their own views about how they wish to manage gambling locally and those nuances and local understanding of risk should be reflected in the policy statement.

6.3.4 Risk in this context includes actual, potential and possible future emerging risks to the licensing objectives. The statement also better reflects the expectations the LA has of both existing gambling operators and those who may apply for premises in the future.

6.4 Local area profile:

6.4.1 The Gambling Policy develops the local area profile, and includes maps and data (in Section 6 and Appendix C) relating to sensitive buildings, such as schools, hospitals, and areas of deprivation and unemployment for example. This has allowed hot spot areas to be identified of those potentially at higher risk of being exposed to gambling related harm. By setting out the local area profile in the Gambling Policy, the Council and Licensing committee can take into account the location of a gambling premises in an application in respect of proximity to sensitive buildings, socio-economic factors and the population in that area.

6.4.2 The local area profile shows the location of existing betting shops and amusement arcades in relation to facilities likely to be used by children and young people and vulnerable adults and presents data relating to vulnerability:

- Schools
- Parks
- Hospitals, GP surgeries and health clinics
- Temporary accommodation
- Youth centres
- Leisure facilities
- Areas of deprivation
- Areas of unemployment
- Areas of Job Seekers Allowance and benefit claimants
- Areas of residents with a range of mental health
- Crime hotspots
- Places of worship

6.5 Local risk assessments

6.5.1 Following revisions to Licence conditions and codes of practice (LCCP), operators with premises licences will have an obligation to produce a local risk assessment from 6 April 2016, which will assist the Council when we are considering applications. Operators must assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In making risk assessments, licensees must take into account relevant matters identified in the Council's policy, such as the local area profile.

6.5.2 However, legal advice confirms that as the presumption to grant an application still exists in the Gambling Act, the Council cannot refuse an application just because it has been identified in a high risk area. However, the new stricter conditions and codes of practice imposed on licences requires operators to put in place mitigation measures to address any concerns, and we can take account of this risk assessment and mitigation measures when considering licence applications and reviews.

## 6.6 Partnership working

6.6.1 The policy also now includes the Gambling Commission's promotion of partnership working: local authorities are to encourage and support local operators to create and maintain an information sharing network to discuss issues of problem gamblers that are identified. This will also be an opportunity for operators to discuss issues with the licensing officers and Metropolitan Police.

6.6.2 The Council already meet this requirement as the successful partnership between the Council, the Metropolitan Police and local operators was launched in the form of BetWatch Enfield in October 2013.

## 7. Public Consultation

7.1 The Gambling Commission's Guidance recommended a consultation period for Licensing Authority's Gambling Act policy statements of between 2-12 weeks. Our consultation took place between 17 July 2015 and 2 October 2015 (11 weeks) which will meet the deadlines for adoption and publication of the new policy before 30 January 2016 (adoption at the 11 November 2015 Council meeting).

7.2 Twelve responses were received during the consultation period. They comprised the following:

- 6 were received from the general public,
- 1 from an organisation supporting persons with gambling related harm (Red Card Gambling Support Project Ltd, Edmonton, N9), and
- 5 from the betting industry (4 operators – Coral, Ladbrokes, Williams Hill, Paddy Powers) and the Association of British Bookmakers (ABB – represents over 80% of high street betting market such as William Hill, Ladbrokes, Coral, Paddy Power and almost 100 smaller independents)

- 7.3 A summary of the responses to the consultation is provided in Appendix 2, and includes a summary of the amendments made to the proposed Gambling Act policy as a result of feedback received during the public consultation. The proposed policy is at Appendix 1. The consultation response from William Hill was particularly robust and threatened legal challenge of the policy where it was viewed as over prescriptive and exceeding our powers (ultravires) in relation to the risk assessment requirements and local area profile. Expert legal advice sought considered that legal challenge would not be successful, especially in the light of the amendments made to the policy following the consultation.
- 7.4 The views received were polarised. The general public generally wanted the licensing authority to exert tighter control and regulation of gambling premises, and the betting industry emphasised that they are already well regulated, acting responsibly and protecting communities from gambling related harm.
- 7.5 The most frequently commented on parts of the policy by the betting industry were in relation to the risk assessment requirements, use of the local area profile and the use of conditions. The feedback was that risk to children and vulnerable persons in the local area profile must be supported by evidence, and conditions should be only be imposed if necessary (based on evidence of risks) that are not already mitigated. Also, that the risk assessment template provided and information to be considered as part of the risk assessment is overly prescriptive, irrelevant and ultravires.
- 7.6 In summary, the responses to the consultation included:
- 7.6.1 General comments about the clarity and fairness of the policy:-
- “Enfield council do not push gambling premises to reduce antisocial behaviour or impose more staff be present within shops that have bad antisocial behaviour”
  - “Even with a policy there is still far too many gambling establishment in the borough especially in the more deprived areas”.
  - “If people want to gamble their money away let them”.
  - The Licensing Authority should not seek in the Policy to undermine the ‘aim to permit’ principle by imposing burdens/additional hurdles on operators above that outlined in the Act.
  - Objection to the phrase “invisible and insidious” nature of gambling (in foreword) as not all gambling is harmful – only problem gambling behaviour.
  - The Authority cannot circumvent the law by considering the number of premises (cumulative impact) where there is a risk to the licensing objectives as only the risk posed by the particular premises can be considered
  - In paragraphs 1.11 and 1.12, wider strategies should not be included if not relevant to the licensing objectives and not be used to hide exclusionary policies relating to betting shops

- In paragraph 1.13, the Authority has failed to use the latest data from the English and Scottish health surveys (on gambling habits). Also there has been selective use of data and quotes aimed at stigmatising “FOBTs” and betting shops generally. This betrays an element of bias in the policy which would be unlawful. Also, there has not been a significant rise in problem gambling despite increased participation (and most recent survey suggesting it has remained static) and problem gambling levels remain low.
- Find suitable local gambling support avenues for problem gamblers.
- Amend foreword to reference the desirability of licensed and regulated supply over illegal supply of gambling
- Make reference to the significant level of regulation under the operating licence and Licensing Conditions and Codes of Practice to which operators have to adhere and obtain an operators licence from the Gambling Commission before a premises licence
- In paragraph 1.7.2, should include nuisance in the list as not being a valid reason to reject an application
- The sample conditions in Appendix D should be removed as they are too prescriptive unworkable and seek to extend over and above the mandatory and default conditions.
- Additional conditions should only be imposed in exceptional circumstances where there are clear reasons for doing so. Premises are already subject to mandatory and default conditions and additional conditions should only be added if these need supplementing.

7.6.2 General comments about the new risk assessment (from 6 April 2016) and local area profile requirement, and how the Licensing Authority intends to use these to make decisions:-

- “Risk assessments that are carried out are not done to correct measures, more in favour of the company to save money, not for the safety of staff and the community”
- “They don't care all they care about is profit”
- “Gambling shops have too many constraints”
- The maps in Appendix C of the Policy showing the local area profile are of limited value to operators in assessing gambling related harm
- Maps dealing with unemployment and deprivation unhelpful unless authority considers them automatically vulnerable. Crime hotspot maps not relevant as to whether betting shops are a source of crime and disorder.
- The policy states will give careful consideration to premises located near schools, youth clubs and other establishments used by children and those who may be vulnerable. The policy should acknowledge that betting shops have been located in such areas for over 50 years and operators have developed policies and procedures to ensure only those able to access them do so. The policy should recognise that existing policies and procedures may already address the local area and provide sufficient controls.



- Careful consideration of premises near schools and other such premises and crime and disorder hotspots should be risk based and evidenced (not theoretical risks).
- Many questioned the necessity and relevance of the matters the licensing authority listed as considerations for the risk assessment
- One respondent requested a map with proximity of betting shops to bus stops that serve schools, and also figures of unemployment and homelessness
- Suggested compulsory double manning gambling premises at night where there has been at least three instances where police or local community officers have attended within 6 months. Make Betwatch meetings for licence holders within community compulsory.
- Important that any risk identified in the local area profile are supported by substantive evidence and not perceived risks. Otherwise this would be disproportionate and distort the 'aim to permit' principle by reverse the burden of proof from the local authority to prove the risks to the operator to mitigate potential risks.
- In section 6.2 and Appendix G (Risk Assessment template), the template is unsuitable and complex. Will be adapting own existing risk assessment process.
- In paragraph 6.2.3, refute that need to provide the sort of information listed as deemed unreasonable, disproportionate and ultravires. Requests that this approach is reconsidered otherwise will consider challenging the policy.
- Paragraph 6.6.3 should be removed as the terms 'sensitive' building' and 'vulnerable community' are not defined in the Act or policy, specifying within 400 metres is arbitrary and in any case is unnecessary as operators will have considered sensitive premises or vulnerable persons in their risk assessment.

#### 7.6.3 Other general comments:

- "Stop approving licenses for so many betting shops"
- "As an Enfield /Edmonton resident i would like to do something in my community with regards to helping young adults steer clear of gambling".
- Recent media coverage has suggested that there has been a proliferation in betting shops. The numbers have remained relatively stable (*figures provided for UK*). Problem gambling rates in the UK are stable (0.6%) and possibly falling.
- Examples provided of working in partnership with local authorities.
- Foreword of the policy recognises that gambling is a legitimate leisure industry but the rest of the policy appears to view it as not a legitimate industry and ones that requires heavy regulation.

7.6.4 The proposed policy was amended as considered necessary in the light of the feedback received and is detailed in Appendix 2.

## **8. Alternative Options Considered**

None.

## **9. Reasons for Recommendations**

To approve the 4<sup>th</sup> Edition of Enfield's Gambling Policy to meet the statutory duty under in the Gambling Act to prepare, consult and publish a statement of principles every 3 years. Also, for the Council to consider whether to make a new resolution not to accept casino applications.

## **10. Comments of the Director of Finance, Resources and Customer Services and Other Departments**

### **10.1 Financial Implications**

10.1.1 The application of the licensing policy will be undertaken within existing resources and it is anticipated that the policy will not have a material effect on the levels of licensing income.

### **10.2 Legal Implications**

10.2.1 Under section 349 of the Gambling Act 2005 the council are required to review their Gambling Policy every 3 years. It is possible to challenge the policy adopted by judicial review.

10.2.2 Under section 166 of the Gambling Act 2005 the council can adopt a "no casinos" resolution. If this is not renewed every 3 years then it automatically lapses. Since the Gambling Act 2005 came into force the council has always chosen to adopt such a resolution and is asked to consider renewing it again. It is also possible to challenge the "no casinos" resolution adopted by judicial review.

10.2.2 A competent legal expert in this area of law was consulted by the Licensing team to advise on the content of the policy and resolution and the process of their adoption. The legal expert advised that any legal challenge of the proposed gambling Act policy was not likely to be successful.

### **10.3 Property Implications**

None.

## **11. Key Risks**

The key risks are that the statement of principles and 'no casino' resolution are not approved and published by 30 January 2016 as required by the Gambling Act 2005. If not, the 'no casino' resolution will lapse and the Council will be non-compliant by not having a revised statement of principles in place.

## **12. Impact on Council Priorities**

## **12.1 Fairness for All**

The Statement of Principles outlines the Council's approach to regulating gambling within the borough in accordance with the Licensing Objectives in the Gambling Act which are designed to: -

- Preventing gambling from being a source of crime or 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.

## **12.2 Growth and Sustainability**

Gambling Operators applying for premises licences that are considered by the Council as being operated in accordance with the Gambling Act and licensing objectives will be licensed in accordance with the 'aim to permit' principle.

## **12.3 Strong Communities**

The Gambling Act is clear about the 'aim to permit' gambling in premises, in so far as it is reasonably consistent with the licensing objectives. The licensing objectives seeks to ensure that such premises are not the source or associated with crime and disorder, are fair and protect children and other vulnerable persons. The policy seeks to protect the community in this regard.

## **14. EQUALITIES IMPACT IMPLICATIONS**

Corporate advice has been sought in regard to equalities, and an agreement has been reached that, on this occasion, an equalities impact assessment/analysis is not relevant or proportionate for the approval of this Statement of Principles.

## **15. PERFORMANCE MANAGEMENT IMPLICATIONS**

The Policy details the Council's approach to regulation of gambling in the borough. It will underpin the soundness of decisions taken in relation to applications for premises for gambling.

## **16. HEALTH AND SAFETY IMPLICATIONS**

None

## **17. HUMAN RESOURCES IMPLICATIONS**

None

## **18. PUBLIC HEALTH IMPLICATIONS**

Gambling premises are associated in location with areas of deprivation. By definition areas of deprivation are those which are least able to afford losses of income. The clear implication therefore is that restricting risks to the gambling licensing objectives in the borough will help to reduce gambling harm, particularly in our most deprived communities.

### **Background Papers**

None.