

21 July 2015

Planning and Licensing Committee

Gambling Act 2005 – Review of Statement of Gambling Policy

Report of: Ashley Culverwell – Head of Borough Health Safety and Localism

Wards Affected: All

This report is : Public

1. Executive Summary

- 1.1 The Statement of Gambling Policy must be reviewed by January 2016. This report is to request that Members agree to an interim consultation on re-adopting the current policy as a temporary measure pending publication of significant new guidance from the Gambling Commission after which it is recommended that consultation takes place in respect of a fresh Statement of Gambling Policy.

2. Recommendation(s)

- 2.1 **That a 12 week consultation on renewing the current Statement of Gambling Policy be agreed.**
- 2.2 **That, if no representations are duly received within the consultation deadline, the Statement of Gambling Policy be recommended for adoption by Ordinary Council effective from 31 January 2016 on the basis that a full review of the policy will follow once new guidance has been issued but if one or more representations are received and not withdrawn, the matter shall be reported back to a future meeting of this Committee for consideration of such representation(s).**

3. Introduction and Background

- 3.1 Commercial Gambling in England, Wales and Scotland is regulated under provision of the Gambling Act 2005 (the Act).
- 3.2 Section 2 (1) of the Act empowers Brentwood Borough Council as the licensing authority for this Borough.
- 3.3 Under section 349 of the Act, the licensing authority are required to prepare and publish a statement of principles (Gambling Policy) that they

propose to apply in exercising their functions. This must be published every three years.

3.4 The Statement of Gambling Policy sets out how the Council, in its role as Licensing Authority, will carry out its functions under the Act. It recognises the importance of responsible gambling within the entertainment industry whilst seeking to balance this with the key objectives of the Act. The objectives are;

- 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; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

The policy should be reviewed from time to time and at least every three years.

3.4 Section 349 of the Gambling Act 2005 prescribes that:-

- (1) A licensing authority shall before each successive period of three years—
 - a) Prepare a statement of principles that they propose to apply in exercising their functions under this Act during that period; and
 - b) Publish the statement
- (2) A licensing authority shall—
 - a) Review their statement under this section from time to time;
 - b) If they think it necessary in light of the review, revise the statement; and
 - c) Publish any revision before giving it effect.
- (3) In preparing a statement or revision under this section a licensing authority shall consult –
 - a) either—
 - (i) in England and Wales, the chief officer of police for the authority's area; or
 - (ii) in Scotland, the chief constable of the police force maintained for the police area comprising that area
 - b) 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
 - c) 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.

- 3.5 The approval or adoption of the 'Licensing authority policy statement' under section 349 of the Gambling Act 2005 is by virtue of reg. 3 of the Local Authorities (Committee System) (England) Regulations 2012 SI 2012/1020 a function which can by law only be exercised by full Council.

4. Issues Options and Analysis of Options

- 4.1 The Council's gambling Policy must reflect both the guidance issued by the Gambling Commission and Government Codes of Practice. It essentially informs the process that the Council would normally follow in conducting its duties as licensing authority under the Act.
- 4.2 The Gambling Commission has recently commenced a consultation on their Guidance to Licensing Authorities (GLA) with significant changes being made. It is essential that any new or revised policy adopted by this authority should reflect this guidance and the new codes of practice that it is based on.
- 4.3 The Gambling Commission consultation is 12 weeks, ending on 22 June 2015. Following the consultation, responses will need to be collated and considered. It is anticipated therefore, that a full revised Gambling Commission policy will not be available until towards the end of this year.
- 4.4 In terms of the changes to Brentwood's gambling policy, this means that changes cannot be fully considered and incorporated in time for full 12 week consultation, consideration and adoption by 31 January.
- 4.5 There is not an option to leave the current policy in place without re-consulting and re-publishing, given the requirement to review every three years and the requirement to consult on each review.
- 4.6 The solution would be to undertake an interim consultation and to re-publish the current policy, but to fully review and fully consult (for a minimum of 12 weeks) on a new policy at the earliest opportunity following publication of the full revised GLA.
- 4.7 The alternative to the solution in Para. 4.6 would be to incorporate known changes to the policy; however, this will become obsolete prior to publication and therefore will need to be reviewed immediately.

5. Reason for Recommendations

- 5.1 The Council does not have the option of leaving the process entirely until publication of the revised GLA, as from 1 February 2015 any decision

made relating to any aspect of the Gambling Act 2005 would be ultra vires given that the policy is a requirement of the Act.

- 5.2 The alternative solution at Para. 4.7 is not particularly viable as it involves a degree of speculation as to the content of the revised GLA and potentially involves undertaking a meaningless consultation given that certain aspect of the policy will change.
- 5.3 The solution in Para. 4.6 enables the Council to fulfil its obligation to re-publish the statement of policy within the legislative timeframe. This will enable lawful decision making with regard to the Council's functions under the Act, whilst ensuring that the policy is brought up to date at the earliest opportunity.
- 5.4 There are no concerns over the conduct of commercial gambling establishments within the Borough at this time, nor have there been any significant problems since implementation of the Act. The current policy has served the Borough well over the last three years and a continuation of that policy in the short term is not anticipated to raise any issues.

6. References to Corporate Plan

- 6.1 The proposals contained within this report link directly to the following priorities of the corporate plan:

A prosperous Borough – “Safeguarding public safety through a risk based regulation and licensing service.”

Street Scene and Environment – “Develop effective partnership arrangements so all issues affecting neighbourhoods are delivered in a timely and efficient way”

Localism – Encourage local businesses to invest directly in Brentwood's communities”

7. Consultation

- 7.1 Consultation is required under provision of section 349 (3) of the Act as illustrated in paragraph 3.4 (above).
- 7.2 The full list of consultees relating to the requirements of section 349 of the Act is listed in annex A of the existing policy in appendix A of this report.
- 7.3 In addition, the consultation will be published on the Council website.

8. Implications

Financial Implications

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- 8.1 The Council's reviewed and revised Gambling Policy must be agreed, published and in place by the 31 January 2016. Failure to comply or meet with this deadline would mean that the Council could not lawfully accept or process Gambling Act 2005 applications after that date. This has the potential to have a significant negative impact on the Council being able to recover its reasonable costs in relation to operating its licensing service for this function.

Legal Implications – Monitoring Officer Comment

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- 8.2 The Council is required to review its Statement of Gambling Policy every three years in accordance with Section 349 of the Gambling Act 2005 and to widely consult on that review with responsible authorities and other interested parties. Best practice is that consultations should run for a period of 12 weeks. However, the current policy having already been consulted upon may undergo a shorter consultation of 4 weeks in view of the fact that a more detailed consultation will follow once the content of the revised GLA has been updated. This would permit the Council to fulfill its statutory obligations under the Act.
- 8.3 The Council has to have its gambling Policy agreed, published and in place by the 31 January 2016. Failure to meet this deadline would mean that the Council would be acting ultra vires in respect of gambling applications submitted after that date.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.4 There are no significant implications arising from agreement to the recommendations of this report.

9. Appendices to this report

Appendix A - Current Gambling Policy Statement

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