

## PART A

**Report to:** Council  
**Date of meeting:** 23 November 2015  
**Report of:** Head of Community and Customer Services  
**Title:** Gambling Act 2005 Statement of Principles

### 1.0 **SUMMARY**

1.1 The council is the local licensing authority under the Gambling Act 2005 and is required to review, consult upon and publish a policy document every three years. Only very minor amendments are suggested to the existing policy, and the new statement of principles will take effect from 6 January 2016.

### 2.0 **RECOMMENDATIONS**

2.1 That the council adopts the Statement of Principles under the Gambling Act 2005 as set out at appendix 1, to take effect from 6 January 2016 upon the expiry of the existing policy.

2.2 The council resolves under section 166 of the Gambling Act 2005 that from 5 December 2015 it will not issue any casino premises licences as it believes a casino would detract from its aspiration to create a safe, prosperous and family-friendly town centre.

#### **Contact Officer:**

For further information on this report please contact: Austen Young Licensing Officer telephone 01923 278474: email: [austen.young@watford.gov.uk](mailto:austen.young@watford.gov.uk)

**Report approved by:** *Alan Gough, Head of Community & Customer Services*

### 3.0 **DETAILED PROPOSAL**

#### 3.1 Background

Under the Gambling Act 2005 the council is responsible for preparing a “statement of principles” setting out how it exercises its various responsibilities in terms of issuing premises licences, liaising with the Gambling Commission (a national co-regulator), carrying out its enforcement functions and issuing permits for small-scale gambling such as machines in alcohol-licensed premises and registering small society lotteries.

3.2 The existing statement of principles, which was adopted by the council on 5 December 2012, is due to expire on 6 January 2016. The council is required to update its statement of principles, and the new draft copy of this policy is attached at appendix 1.

3.3 In preparing the statement the licensing authority must have regard to the three licensing objectives of the Gambling Act, namely:

- 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. The Gambling Commission states: “The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling”.

3.4 Officers propose only making minor amendments to the existing policy, and the changes to the policy are summarised below:

- updating information about the Borough and it’s profile (paras 4.1 – 4.12)
- the addition of a reference to the new mandatory condition on operating licences with regards to assessing the local risks of gambling (para 4.8)
- highlighting matters of concern and documents of note for operators to consider when assessing the local risks (paras 4.8 and 4.9)
- continuing the “no casino” resolution (para 12.1)
- minor changes to references throughout the document to the Gambling Commission’s Guidance to Local Authorities following updates to the guidance

3.5 To give the context for Watford, the following table sets out the current licenses issued and applications dealt with over the last three years.

Type of Licence	Currently Issued	Applications Received (within last 3 years)
Adult Gaming Centre	1	0
Betting Shop	19	1
Bingo	1	1
Club Gaming Permit	0	0
Club Machine Permit	9	2
Gaming Machines (up to 2 machines)	27	16
Gaming Machines (3 or more machines)	15	1
Small Society Lotteries	79	11
Track Betting	0	0

As can be seen the numbers of licences within Watford are generally very low.

- 3.6 Currently, Watford is not one of the areas of the country where casino licences can be issued. However, the council is advised to pass a resolution that it will not issue any casino licences in order to protect this position should the regulations regarding casino licences change. This reinforces the council's position of aspiring to create a safe, prosperous, and family friendly town centre, with a diverse night time economy. The resolution is contained at paragraph 12.1 of the statement. It is advised that this resolution be in force from 5 December 2015, which is three years since the last resolution was passed.
- 3.7 The Gambling Act requires that the following parties are consulted by licensing authorities:
- the chief officer of police for the authority's area
  - one or more persons who represent the interests of persons carrying on gambling businesses in the authority's area, and
  - one or more persons who represent the interests of parties likely to be affected by the exercise of the authority's functions under this Act.

- 3.8 Officers can confirm that the following parties were consulted on this proposal, identified as responsible authorities under the Gambling Act, and parties who represent businesses and other persons within the Borough:
- (a) Holders of premises licences, permits and gaming machine notices issued under the Act
  - (b) Trading Standards (Hertfordshire County Council)
  - (c) Residents of the Borough (residents' associations)
  - (d) Watford and West Herts Chamber of Commerce and Industry
  - (e) Watford & Three Rivers Trust
  - (f) Hertfordshire Constabulary
  - (g) Gambling Commission
  - (h) Hertfordshire Fire & Rescue Service
  - (i) Hertfordshire Safeguarding Children's Board (Hertfordshire County Council)
  - (j) Development Management (Watford Borough Council)
  - (k) Environmental Health (Watford Borough Council)
  - (l) Her Majesty's Revenue & Customs
- 3.9 The consultation took place between 25 September 2015 and 6 November 2015, and we followed the guidance on Consultation principles issued by the Cabinet Office (last updated November 2013)<sup>1</sup>.
- 3.10 Consultation Responses  
The licensing authority received three responses to the consultation on the proposed statement of principles. The responses were submitted by
- (1) the Campaign for Fairer Gambling (CFG), a group whose stated aims are to 'remove high stakes, high speed machine gambling from our high streets'
  - (2) the Association of British Bookmakers (ABB), who represent over 80% of the high street betting market and include large national operators and smaller independent bookmakers among their membership, and
  - (3) Coral Racing Ltd, who operate six licensed betting offices in the borough.
- 3.11 The comments from the CFG are generic in their approach, and concern tightening the approach towards licensed betting offices, and the gaming machines which they are able to offer. Their response is attached at appendix 2. The comments from the ABB detail the approach that the association are taking, but also do make specific comments about the proposed policy. Their response is attached at appendix 3. The comments from Coral Racing Ltd are broadly in support of the proposed policy, and the only specific concern they raise is in relation to licensed gambling premises near to schools. Their response is attached at appendix 4.
- 3.12 Officers have considered the responses and the rest of the report sets out the changes made to the policy as a result, or the reasons that changes have

---

<sup>1</sup> Available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

not been made.

3.13 **CFG**

The submission from the CFG focuses upon two specific areas of concern: enforcement, and licence conditions.

3.14 With regards to enforcement, the campaign calls for test purchasing to assess the effectiveness of self-exclusion procedures, anti-money laundering and age controls. Officers advise that the proposed statement of principles does allow for risk-based inspections and compliance visits, which can include test purchasing in conjunction with the Gambling Commission. We do have a working relationship with the Gambling Commission, and have undertaken compliance checks and investigation with our counterparts within the commission. Under para 36.32 of the Guidance to Licensing Authorities, authorities are encouraged to work with premises and raise concerns with operators before engaging with enforcement or test purchasing. This highlights a risk-based approach to compliance and enforcement, and to not taking action without evidence or concern. Officers believe that this is the approach allowed under the proposed statement of principles. Our policy does allow us to deal with cases individually, on their own merits, and so officers recommend that there is no reason to highlight test purchasing as a specific enforcement option. Officers also advise against deviating from the existing risk-based approach, which is compliant with the Regulator's Code published by the Better Regulation Delivery Office (BDRO)<sup>2</sup>.

3.15 The licensing authority's general approach to enforcement is detailed in the Environmental Services Enforcement Policy 2014 – 2019<sup>3</sup>.

3.16 In relation to conditions, the CFG are concerned primarily about two particular issues; limiting high stake betting terminals in betting shops, and requiring minimum staffing levels. CFG suggest that specific conditions are included in the policy.

3.17 At para 9.17 in the proposed policy, we state that decisions on conditions will be taken on a case-by-case basis, and this allows the imposition of conditions where it is considered necessary to address any identified risks. This is also reflected at para 9.28 of the Gambling Commission's Guidance, which states:

9.28 Licensing authorities should make decisions on conditions on a case-by-case basis, and in the context of the principles of s.153. They must aim to permit the use of premises for gambling and so should not attach conditions that limit their use except where it is necessary in accordance with the licensing objectives, the Commission's codes of practice and this Guidance, or their own statement of policy. Conversely, licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through

---

<sup>2</sup> Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

<sup>3</sup> Available at <http://www.watford.gov.uk/ccm/content/ehl/environmental-services/environmental-services-enforcement-policy.en>

the use of conditions.

- 3.18 Officers recommend that the proposed statement of principles is adopted without making reference to attaching specific conditions to certain licences in order to maintain the flexibility to treat each application on its own merits. This greater flexibility retains the ability of the licensing authority to make decisions on a local level and tailored to the local area and activities.
- 3.19 **ABB**  
Concerns from the ABB relate to the need for operators to undertake local risk assessment from April 2016 in relation to risks to the licensing objectives. Where a local authority has produced a local area profile for gambling this can be relied upon by the operator to assist them. The draft policy sought to provide some information about the area and the authorities concerns about locations. This information was not sufficient enough for it to be considered a local area profile and it did not demonstrate sufficient evidence to justify limiting activities generically. ABB highlight this and officers agree.
- 3.20 In response, and given the level of applications Watford has and the differing nature of the neighbourhoods within the borough, officers recommend that a local profile is not compiled. Instead it is recommended that officers will work with applicants and operators to develop their individual risk assessments. This is set out in paragraph 4.9 of the policy.
- 3.21 The ABB suggest amendments to paragraph 9.16 of the draft policy. It is suggested that the policy would be strengthened by making mention to the fact that licences will be granted subject to the mandatory and default conditions for premises licence as prescribed by the government. Officers do not believe that it is necessary to make this distinction, and para 9.18 explains that mandatory and default conditions where prescribed by legislation or regulations, will be attached to any granted licences. Para 9.17 states that conditions will be determined on a case-by-case basis, and does not indicate that conditions will be attached to every application.
- 3.22 The ABB query the term 'perceived need' which was used in the draft policy. For the sake of clarity, officers have replaced this phrase with wording similar to that contained within the guidance which shows that conditions may be attached where the licensing authority consider it necessary for the promotion of the licensing objectives.
- 3.23 The ABB also comment on paragraphs 14.8 to 14.11 of the draft policy in respect of the "primary use" of the premises (which can preclude the granting of a betting premises licence), and the decision in *Luxury Leisure v Gambling Commission* (May 2014). The draft policy does not explicitly state that the customers must participate in the primary activity of the premises, and the policy does state at 14.8 that sufficient facilities need only be available.
- 3.24 Officers do believe that it is right that any application to vary a licence should be assessed to ensure that sufficient facilities are still available at the premises, and that the nature of the premises has not changed since the

licensing authority's last involvement with the premises, or that the proposed changes could alter the nature of the premises and detract from the primary gambling activity. However, officers have slightly amended this paragraph so that it is clear that there are still sufficient facilities available at the premises, and not use the phrase 'actually offered', which could be interpreted as referring to the physical use of the premises.

3.25 **Coral**

Coral raise a concern that there is no justification or stated evidence for the original proposal to control betting shops near schools. Officers response is that there is some confusion over the original policy intention. The draft policy was not intended to limit the location of betting shops to schools as a blanket condition, it simply sought to encourage consideration of the associated risks. Given the amendments to the policy in relation to undertaking risk assessments officers have amended the policy as any concerns should be addressed on a case by case basis.

3.26 In light of the officers' observations above, and in response to the comments received during the consultation period, the council is recommended to adopt the revised policy attached at appendix 1, to be effective from 6 January 2016.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 The Head of Strategic Finance comments that there are no financial implications arising from this report.

4.2 **Legal Issues**

4.2.1 The Head of Democracy and Governance comments that the Gambling Act requires applications to be determined on a case-by-case basis. The policy must be adopted by full council prior to the expiry of the existing policy, and must then be advertised for at least four weeks prior to it coming into effect. Failure to adopt a policy could lead to legal challenges and the inability of the council to refuse applications or impose conditions on Premises Licences which it may otherwise wish to do so.

4.3 **Potential Risks**

4.3.1

Potential Risk	Likelihood	Impact
Policy departed from by court on appeal	1	4
Legal challenge arising from failure to properly adopt the policy	2	3
Legal challenge from failure to properly consult	1	3
Policy is unreasonable, irrational, discriminatory etc	1	3

### Appendices

Appendix 1 – Proposed Statement of Principles 2016 - 2019

Appendix 2 – Campaign for Fairer Gambling comments

Appendix 3 – Association of British Bookmakers comments

Appendix 4 – Coral Racing Ltd comments

### Background Papers

The following background papers were used in the preparation of this report.

If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Gambling Act 2005

Guidance to Licensing Authorities 5<sup>th</sup> Edition (Gambling Commission, September 2015)

Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006

Watford Borough Council Statement of Principles 2013-2016 (January 2013)

### File Reference

Gambling Policy 2016-2019