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| Item No. 8. | Classification: Open | Date: 20 June 2017 | Meeting Name: Licensing Committee |
| Report title: | | The Gambling Act 2005: Statement of Gambling Licensing Policy 2016-2019 | |
| Ward(s) or groups affected: | | All wards | |
| From: | | Strategic Director of Environment and Social Regeneration | |

RECOMMENDATION

1. That the committee agrees to consult on the revision of the Southwark statement of gambling licensing policy for 2016-2020.

BACKGROUND INFORMATION

2. The Gambling Act 2005 introduced a licensing regime for gaming and betting administered through a combination of the Gambling Commission and local licensing authorities.
3. The Act regulates the following sectors:
 - Arcades
 - Betting
 - Bingo
 - Casinos
 - Gambling software
 - Gaming machines
 - Lotteries
 - Remote (online) gaming.
4. The Gambling Commission is responsible for licensing operators and individuals involved in providing the above activities.
5. Licensing authorities are responsible for:
 - Issuing gambling operators with premises licences
 - Issuing gambling operators with permits (which allow low stakes gambling in venues which are primarily not for gambling)
 - Registering societies – allowing them to hold small lotteries
 - Compliance and enforcement of the Act locally.
6. Licensing authorities are required to prepare and publish, every three years, a statement of the principles which they propose to apply when exercising their licensing functions. The Act requires that before the licensing authority publishes its statement of licensing principles it must carry out a public consultation exercise.
7. Section 153 of the Act provides that licensing authorities shall aim to permit the use of premises for gambling in so far as they think it is:

- in accordance with relevant codes of practice
 - in accordance with the guidance for licensing authorities issued by the Gambling Commission
 - reasonably consistent with the licensing objectives
 - in accordance with the authority's statement of licensing policy.
8. This authority's statement of principles (The Southwark statement of gambling licensing policy) was first published in January 2007. It was compiled having regard to a broad range of contributions from responsible authorities; representatives of the industry; and of the community. It has been subject of several reviews and amendments as policy and guidance has changed over the years. The current version of the policy (2013-2016) was approved by council assembly in July 2013. On 25 November 2015, the council assembly agreed to 'carry over' the Southwark statement of gambling licensing policy for the period 2016-2019. The policy was due for renewal but this coincided with the release by the Gambling Commission of its guidance to local licensing authorities. Because the new release contains both additional and developed information that is central to the revision of this authority's policy, the decision to 'carry over' the policy was taken to enable a full review of the policy to take place in light of the new guidance.
 9. In September 2015, the Gambling Commission issued the fifth edition of its guidance to local licensing authorities, with parts 17 (casinos), 18 (bingo) and 19 (betting premises) amended in September 2016.
 10. The revision of the guidance includes guidance on the Commission's licence conditions and codes of practice (GLCCP) which makes a requirement for gambling premises licence applicants to consider a local area risks to the gambling objectives and allows licensing authorities to set local area profiles.

KEY ISSUES FOR CONSIDERATION

Revisions to the content of the policy

11. Changes in the Gambling Commission licence conditions and codes of practice (LCCP) requires all premises licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities in each of their premises. They also must have in place policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in the licensing authority's statement of policy, such as any identified vulnerable groups and areas where the location of a gambling premises could have a higher risk to the licensing objectives.
12. Licensees are required to undertake a local risk assessment when applying for a new premises licence. Their risk assessment must also be updated:
 - When applying for a variation of a premises licence
 - To take account of significant changes in local circumstances, including those identified in a licensing authority's statement of policy
 - When there are significant changes at a licensee's premises that may affect their mitigation of local risks.
13. Local area profiles were introduced in the current edition of the Gambling Commission guidance for Local Authorities September 2015.

14. The guidance states that there is no mandatory requirement to have a local area profile, but there are a number of benefits:
 - It enables licensing authorities to better serve their local community, by better reflecting the community and the risks within it.
 - There is greater clarity for operators as to the relevant factors in licensing authority decision making, will lead to improved premises licence applications, with the operator already incorporating controls and measures to mitigate risk in their application.
 - It enables licensing authorities to make robust but fair decisions, based on a clear, published set of factors and risks, which are therefore less susceptible to challenge.
 - It encourages a proactive approach to risk that is likely to result in reduced compliance and enforcement action.
15. It is for licensing authorities to determine whether to include a local area profile within the body of their statement of policy or separately. If included in the statement of policy, the Licensing Authority's view of local risks would be a consideration for local gambling regulation in the context of section 153 of the Act. Licensing authorities may consider this is best achieved by making reference to the local area profile, so that it can be reviewed and updated without the need for full consultation.
16. A copy of the draft Southwark statement of gambling licensing policy 2017-20 is attached at Appendix A.

Southwark local area profile

17. The local area profile for Southwark was formulated by the Southwark regulatory services analyst in consultation with the council's public health and licensing teams.
18. The document provides an overall profile in the form of hot spot maps of the borough to alert prospective applicants where there are areas of higher risk to the licensing objectives.
19. The analysis of the borough was conducted in four steps,
 - Identifying the special consideration in relation to the proximity of gambling premises within the current statement of gambling licensing policy.
 - Establish who the other vulnerable persons would be. A study conducted by Heather Wardle at the Geofutures Gambling and Place Research Hub, found that although anyone could be vulnerable to gambling-related harm, there was sufficient to strong evidence to suggest that, in addition to young people, other groups of people could potentially be more vulnerable as follows:
 - Problem gamblers who are seeking treatment
 - Those living in the most deprived areas
 - Those with financial difficulties / debt
 - Those affected by substance abuse / misuse; those affected by poor mental health
 - Those who are unemployed; those who are homeless
 - Those from minority ethnic groups.

- Identify the datasets relevant to the locations and vulnerable persons criteria listed under steps 1 and 2 relevant to Southwark.
 - Map the datasets, the mapping consists of two sets of maps, hot spot and grid maps of 600 metre square.
20. On request, a prospective applicant for a new grant, or variation, of a gambling premises licence can request a local area profile to assist the applicant in addressing the licensing objectives in their operating schedule. If contested the profile can provide members of the licensing sub-committee with information on the local area to assist them with considering the application.
 21. This approach has been proposed as the number of relevant gambling applications received is minimal, enabling a more accurate and up to date local area profile at the time without using excessive Council resources in compiling the profile information.
 22. There have been 15 relevant gambling applications in the last five years, averaging at three per year.
 23. Further details of the Southwark gambling local area profiles document are available in appendix B. As a result of the Southwark gambling local area profile, proposed amendments to the Statement of gambling licensing policy can be found at paragraphs 136-138 of Appendix A.

Community impact statement

24. The Southwark statement of gambling licensing policy recognises that as long as gaming and betting premises are well run and premises management acknowledges the value of working together with the local community, they can make a significant contribution toward building community cohesion and cultural development.
25. The policy equally recognises that negative impacts can also occur if good management practices are not followed. Potential negative impacts may arise in the form of noise, nuisance, disturbance and crime and disorder problems. With gaming and betting establishments there are also risks of individual gambling addiction.
26. The policy seeks to provide the necessary balance between responsible business operators contributing toward a thriving business and late night economy whilst ensuring that the quality of life of those who live and work in the borough is protected and enhanced through the licensing system. We believe these aims are achievable if all parties concerned work together.
27. Central to this, is a licensing process which aims to be inclusive and ensures that local community concerns are understood, debated and resolved. This is supported by offering broad support to licensees, through the range of involved authorities, to establish best practice management, and by a strong directed enforcement resource.
28. The equalities impact assessment has been revisited as part of the revision of this policy. As the extension of this policy document is primarily a technical matter, no new issues are identified at this stage.

Resource implications

29. This cost of consultation on changes to the Southwark statement of gambling licensing policy and the resource costs of managing this process may be borne within the current licensing budget.

Consultation

30. The Gambling Act 2005 requires that each revision of the licensing authorities statement of policy is subject to consultation which is required to take place with
 - Chief officer of police for the 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.
31. Notification of this authority's intention to seek to extend the 2013-1016 policy enabling proper consideration of the revised Commission guidance in advance of a full review of the policy has been given to relevant parties. Details of the public consultation on the eventual review and revision of the policy will be agreed with the committee at the time that the draft revision is presented to it.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

32. The Gambling Act 2005 ("the 2003 Act") requires the council, as the licensing authority, to prepare and publish a statement of its gambling licensing policy every three years.
33. In determining its policy, the council is exercising a licensing function and as such must have regard to with codes of practice issued under section 24, the guidance issued by the Secretary of State under section 25 of the 2005 Act. It must also give appropriate weight to the views of those persons/bodies listed in the Act which it is required to consult before determining its policy.
34. Although the guidance represents best practice, it is not binding on the council. As long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. In this event they will need to give full reasons for their decisions, which must be consistent with the objectives of the 2003 Act.
35. The council is required to have regard to the statement of licensing policy and make decisions in accordance with it. Licensing authorities may depart from their policy if the individual circumstances of any case merit such a decision in the interests of promoting the licensing objectives. In this event it is important that full reasons are given for departing from the published statement of licensing policy.
36. Members should note that the 2005 Act imposes a duty on the council, as the Licensing Authority, to carry out its functions under the Act with a view to promoting the 3-licensing objectives, 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.
37. Each of these objectives is of paramount and equal importance. There are no other licensing objectives and therefore the council cannot reject an application for a licence or impose conditions on a licence for any purpose unrelated to the promotion of these objectives.

38. The statement of gambling licensing policy cannot seek to impose blanket conditions. Each application must be considered on its own merits. Conditions can only be imposed on a licence if they are necessary to promote the licensing objectives in relation to the specific premises and are a proportionate response to the specific situation to be addressed. The guidance provides that if the situation the condition is intended to address is already addressed by a provision in the 2005 Act or any other legislation then the condition cannot be said to be 'necessary'.
39. The licensing is about regulating the carrying on of gambling activities within the terms of the 2005 Act. The statement of gambling policy should make it clear that gambling law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business carrying on gambling activities. However, the guidance also states that gambling law is a key aspect of such control and should always be part of a holistic approach to the management of the evening and night-time economy. It is therefore desirable that the statement of licensing policy is in line with the council's wider objectives and consistent with other policies.
40. Members should note that the statement of gambling policy must not be inconsistent with the provisions of the 2005 Act and must not override the rights of any individual as provided for in that Act. Nor must the statement of gambling policy be inconsistent with obligations placed on the council under any other legislation, including human rights legislation. Members should also note that the council has a duty under section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a Licensing Authority under the 2005 Act, to do all it reasonably can to prevent crime and disorder within the borough.
41. Positive equalities obligations are placed on local authorities, sometimes described as equalities duties, with regard to race, disability and gender. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995.
42. Equality impact assessments are an essential tool to assist councils to comply with our equalities duties and to make decisions fairly and equalities and human rights impact assessments that are carried out should be mindful of the protected characteristics under the Equality Act 2010.
43. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, decisions relating to licensing matters cannot be the responsibility of an authority's executive. The 2005 Act provides that whilst the majority of the functions of the Licensing Authority, are to be taken or carried out by its licensing committee, decisions relating to the statement of licensing policy cannot be delegated in such a way. The decision on whether to adopt the statement of licensing policy must therefore be taken by council assembly.

Strategic Director of Finance and Governance

44. The Strategic Director of Finance and Governance notes the recommendations for the continuation of the Southwark statement of gambling licensing policy for 2013-2016 pending a full review and that the head of service has confirmed that the cost implications of this updated policy will be contained within the existing licensing revenue budget for the division.

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|--|--|---|
| The Gambling Act 2005 plus secondary regulations The Gambling Commission Guidance to Local Licensing Authorities 2015 | The Licensing Service, C/O PO BOX 64529 London SE1P 5LX | Name: Mrs Kirtikula Read Phone number: 020 7525 5748 |

APPENDICES

| No. | Title |
|------------|--|
| Appendix A | Draft of the amended Southwark Statement of Licensing Policy 2016-2019 |
| Appendix B | Local Area Profile analysis |

AUDIT TRAIL

| | | |
|---|--|--------------------------|
| Lead Officer | Deborah Collins, Strategic Director of Environment and Social Regeneration | |
| Report Author | David Franklin, Licensing Team Leader | |
| Version | Final | |
| Dated | 26 May 2017 | |
| Key Decision? | Yes | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments Sought | Comments included |
| Director of Law and Democracy | Yes | Yes |
| Strategic Director of Finance and Governance | Yes | Yes |
| Cabinet Member | Yes | Yes |
| Date final report sent to Constitutional Team | 7 June 2017 | |