

NON-EXEMPT

EAST HAMPSHIRE DISTRICT COUNCIL

Licensing Committee

24 November 2017

GAMBLING ACT 2005 – REVIEW OF STATEMENT OF PRINCIPLES Senior Environmental Health Officer (Licensing)

FOR DECISION

1.0 PURPOSE OF REPORT

A draft revision of the Council's Statement of Principles on the Gambling Act 2005 was presented to the Licensing Committee on 29 September 2017 prior to going out to consultation on 4th October 2017 until 31st October 2017. The purpose of this further report is to present the amended draft Statement of Principles. The amendments reflect some of the comments made by the sole respondent: Gosschalks Solicitors, who responded on behalf of the Association of British Bookmakers (ABB). The amendments are presented in red as track changes in the Statement of Principles (Appendix A). The full response from Gosschalks Solicitors is included in Appendix B.

2.0 RECOMMENDATIONS

The Licensing Committee are asked to consider the revised draft Statement of Principles on gambling, detailed in Appendix A which has been updated following responses received following consultation, and make any necessary changes prior to it going to full Council for approval on 14th December 2017.

3.0 BACKGROUND

3.1 Section 349 of the Act requires all licensing authorities to prepare and publish a '*statement of the principles they propose to apply in exercising their functions*' under the Act, applicable to a three year period. To distinguish it from the Licensing Act 2003 Policy Statement it is called a 'Statement of Principles'.

3.2 Following the meeting of the Licensing Committee held on 29 September 2017, a change was made to Section 3.1 of the Policy to correct the reference to Whitehill and Bordon in both the text and on the map. This is shown in the draft statement in Appendix A.

4.0 SUBJECT OF REPORT

4.1 A response was received during the consultation period from Gosschalks Solicitors on behalf of the Association of British Bookmakers (ABB). The comments made and the proposed alterations to the statement of principles have been detailed below. Full track changes of the alterations are shown in Appendix A.

Comment from Gosschalks Solicitors on behalf of ABB:

Typographical errors in paragraphs 8.5, 9.1 and 13.6

Proposed alteration:

Corrections made

Comment from Gosschalks Solicitors on behalf of ABB:

We respectfully submit that paragraph 16.1 should be redrafted. This paragraph currently indicates that it is possible for a policy to be adopted regarding areas where gambling premises should not be located, in which case the statement of principles would be redrafted. The paragraph subsequently indicates that any such policy (which had determined that there are areas where gambling premises should not be located) would not preclude any application being made and the application being decided on its own merits. The very existence of a policy that there are areas where gambling premises should not be located may be unlawful and is certainly contrary to the overriding principle contained in s153 (and repeated within the statement of principles at paragraph 2.5) that the authority shall aim to permit the use of premises for gambling. In the circumstances, and in order that paragraph 16.1 makes sense, references to a policy where gambling premises should not be located should simply be deleted.

Proposed alteration:

16.1 In accordance with Section 153 of the Act, the Licensing Authority in determining whether to grant a premises licence will not have regard to the expected demand for the facilities which it is proposed to provide. Demand issues cannot be considered with regard to the location of premises. Only issues relating to the licensing objectives can be considered. The Licensing Authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder.

Comment from Gosschalks Solicitors on behalf of ABB:

Paragraph 17.1 indicates that the licensing authority will not take into consideration irrelevant matters and then suggests that the Guidance issued by the Home Office indicates that one of these irrelevant matters relates to whether or not the premises have planning permission. This paragraph could be amended to make it clear that s210 Gambling Act 2005 makes it clear that a licensing authority shall not have regard to whether or not a proposal by an applicant is likely to be granted planning permission

or building regulation approval.

Proposed alteration:

17.1 When determining applications, the Licensing Authority will take into consideration all relevant matters. The Guidance states that it must not consider irrelevant matters such as the likelihood of the applicant obtaining planning permission or building regulations approval for the proposal. However, the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building control.

Comment from Gosschalks Solicitors on behalf of ABB:

Condition 20.1 to 20.8 explains the licensing authority's approach to the imposition of conditions on premises licences. This section would be assisted by a clear indication that all Gambling Act 2005 licences are subject to mandatory and default conditions which are usually sufficient to ensure operation that is reasonably consistent with the licensing objectives. The statement of principles should indicate that it is only where there is evidence of a need to supplement the mandatory and default conditions that additional conditions will be considered. There are references in the statement of principles to "perceived need" (paragraph 20.2) and conditions being imposed where appropriate (paragraph 10.1). These references should be amended so that the evidential basis for the imposition of additional conditions is made clear.

Proposed alteration:

20.1 The Licensing Authority will ensure that any conditions imposed are proportionate to the circumstances which they are seeking to address, and will ensure that any premises licence conditions are:

- relevant to the need to make the proposed building suitable as a gambling facility;
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises; reasonable in all other respects.

20.2 Decisions upon individual conditions will be made on a case by case basis. However, there will be a number of measures the Licensing Authority will consider should there be a need, such as the use of supervisors, appropriate signage for adult only areas, etc. Examples of measures that may be used are shown under some of the licence types detailed later in this statement. We will also expect the licence applicant to offer his/her own suggestions as to how the licensing objectives can be met effectively.

20.3 In order to pursue the licensing objectives, the Licensing Authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include:

- supervision of entrances;
- segregation of gambling from non-gambling areas frequented by children;
- supervision of gaming machines in non-adult gambling specific premises.

20.4 The Licensing Authority will also ensure that, where category C or above machines are on offer in premises to which children are admitted:

- all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier. This must be effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- notices are prominently displayed on the entrances to any such area indicating that access to the area is prohibited to persons under 18.

These considerations will apply to premises including buildings where multiple premises licences are applicable.

20.5 The Licensing Authority is aware that tracks (see Section 27) may be subject to one or more premises licences, provided each licence relates to a specified area of the track. We will consider the impact upon the third licensing objective and ensure that each type of premises is distinct and children are excluded from gambling where they are not permitted to enter.

20.6 There are certain conditions which we cannot attach to premises licence, namely:

- any condition on the premises licence which is impossible to comply with;
- conditions relating to gaming machine categories, numbers, or methods of operation;
- conditions which provide that membership of a club or body be required;
- conditions in relation to stakes, fees, winnings or prizes.

20.7 Door Supervisors

The Licensing Authority may consider the need for door supervisors in certain circumstances. Door supervisors at casinos or bingo premises are not required to be licensed by the Security Industry Authority (SIA). However, it will apply similar standards as used by the SIA where possible.

20.8 For premises other than casinos and bingo premises, the Licensing Authority may decide that supervision of entrances and/or machines is appropriate in particular cases. This supervision may require licensing by the SIA. It will not be automatically assumed that they need to be supervised.

General Principles

10.1 Premises licences are subject to requirements set out in:

- the Act, and specific mandatory and default conditions which are set out in regulations made by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach other conditions.

4.2 In determining its policy, the licensing authority must have regard to guidance issued by the Gambling Commission and give appropriate weight to the views of those it has consulted.

5.0 Appendices:

Appendix A: Revised draft Statement of Principles dated 31 January 2018 until 20 January 2019 showing track changes addressing the responses received during the consultation process.

Appendix B: Copy of the full response received during the consultation process from Gosschalks Solicitors on behalf of the Association of British Bookmakers (ABB).

Agreed and signed off by:

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Legal Services: 15.11.17

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