

**MEETING**

**LICENSING COMMITTEE**

**DATE AND TIME**

**WEDNESDAY 11TH JULY, 2012**

**AT 7.00 PM**

**VENUE**

**HENDON TOWN HALL, THE BURROUGHS, NW4 4BG**

**TO: MEMBERS OF LICENSING COMMITTEE (Quorum 3)**

Chairman: Councillor Andreas Tambourides (Chairman),  
Vice Chairman: Councillor John Marshall (Vice-Chairman)

**Councillors**

Maureen Braun  
Alison Cornelius  
Claire Farrier

John Hart  
Wendy Prentice  
Lisa Rutter

Agnes Slocombe  
Ansuva Sodha

**You are requested to attend the above meeting for which an agenda is attached.**

**Aysen Giritli – Head of Governance**

Governance Services contact: Maria Lugangira 020 8359 2761

Media Relations contact: Sue Cocker 020 8359 7039

**CORPORATE GOVERNANCE DIRECTORATE**

## ORDER OF BUSINESS

Item No	Title of Report	Pages
1.	Minutes	
2.	Absence of Members	
3.	Declaration of Members' Personal and Prejudicial Interests	
4.	Public Questions Time (if any)	
5.	Members' Items (if any)	
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10.	Any Items that the Chairman decides are urgent	

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Meeting	Licensing Committee
Date	11 July 2012
<b>Subject</b>	<b>Gambling – Statement of Principles</b>
Report of	Interim Director of Environment, Planning and Regeneration
Summary	The Gambling Act 2005 places a responsibility on local authorities to publish a gambling statement of principles every three years. The last policy was published in January 2010. This is a report on the proposed new statement of principles

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Officer Contributors	Emma Phasey, Trading Standards and Licensing Manager Michelle Rudland, Licensing Officer
Status (public or exempt)	Public
Wards Affected	All
Key Decision	N/A
Reason for urgency/ exemption from call-in	N/A
Function of	Council
Enclosures	Appendix 1 – Draft statement of principles Appendix 2 – Consultation document Appendix 3 – List of substantial deletion/insertions
Contact for Further Information:	Emma Phasey Trading Standards and Licensing Manager <a href="mailto:Emma.phasey@barnet.gov.uk">Emma.phasey@barnet.gov.uk</a>

## **1. RECOMMENDATIONS**

- 1.1 That the draft **Gambling Statement of Principles** be approved for consultation and that the **Officers** be instructed to report to the **November 2012 meeting on the outcome for recommendation to Council.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Decision on 15 December 2009 by council on recommendation of Licensing Committee, to adopt the current licensing policy and also that the resolution not to license casinos be reaffirmed and adopted as policy.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 Under the Licensing Act 2003 there are three statutory objectives to be met through licensing:
- (1) Preventing gambling from being a source of crime, being associated with crime or being used to support crime
  - (2) Ensuring that gambling is conducted in a fair and open way
  - (3) Protecting children and other vulnerable persons from being harmed or exploited by gambling
- 3.2 The Gambling Statement of Principles will support objectives contained within the corporate plan. In particular in relation to a “successful London suburb” by ensuring that only legal, well regulated gambling within the borough.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Failure to review and adopt a Gambling Statement of Principles would be in breach of a legislative requirement of the Gambling Act 2005 and would mean that decisions of the Licensing Committee would not be valid.
- 4.2 The adoption of an unsound policy may result in poor licensing decisions being taken and could cause difficulty to businesses, residents and responsible authorities. This would leave the authority open to challenge by way of Judicial Review in relation to the Statement of Principles and/or appeal of a Licensing Committee decision to the Magistrates’ Court. This would adversely affect the Councils reputation..

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The Council has a legal obligation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
- 5.2 When considering gambling applications and representations, only issues provided for in the Gambling Act 2005 and associated Guidance, in addition to the licensing authority’s Statement of Gambling Principles will

be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

- 5.3 The community in Barnet has a richness of diversity with a broad range of cultural activities and entertainments. Applications will be dealt with in accordance with the Act. Guidance will only be issued and conditions will only be imposed that are reasonable, proportionate and strictly necessary for the promotion of the four licensing objectives.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 Administration and enforcement of the Gambling Act will be carried out by the Licensing team, together with support from Legal Services and from Governance Services, when arranging and co-ordinating arrangements for hearings where there are objections.

- 6.2 The setting of fees is dealt with separately to the Statement of Principles and fees are reviewed every 12 months..

- 6.3 Any expenditure will be contained within the Environment, Planning and Regeneration budgets.

## **7. LEGAL ISSUES**

- 7.1 It is mandatory under the Gambling Act 2005 for the statement of principles to be reviewed and updated.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

- 8.1 Constitution Part 3, Section 2, details the functions of the Licensing Committee including “all functions under the ...Gambling Act 2005, associated Regulations, not otherwise delegated to the Licensing Sub-Committee”.

- 8.2 The statutory and regulatory provisions reserve to full Council the decision to approve the draft Gambling Statement of Principles and also to resolve whether to license casinos and it will therefore be necessary for the Committee to make a recommendation to the Council meeting on December 2012 in order to meet the statutory deadline for publication which is January 2013 .

## **9. BACKGROUND INFORMATION**

- 9.1 The Gambling Act 2005 makes the Council the licensing authority for gambling premises in the Borough. It requires that a licensing authority should aim to permit the use of premises for gambling in so far as it thinks it is:

- a) in accordance with any relevant code of practice or any guidance from the Gambling Commission;
  - b) reasonably consistent with the licensing objectives; and
  - c) in accordance with its gambling licensing policy.
- 9.2 The Council has a number of important regulatory functions in relation to gambling. These include licensing premises, regulating gaming and gaming machines in clubs, granting permits to what the Guidance refers to as 'family entertainment centres' for the use of certain lower stake gaming machines, regulating gaming and gaming machines on alcohol licensed premises, granting permits for prize gaming, and registering small society lotteries.
- 9.3 There are currently 72 gambling premises licences in the borough.
- 9.4 In accordance with the Act, the Council must prepare, consult on and publish a Statement of Principles which it proposes to apply when exercising relevant functions. In exercising their functions, licensing authorities must have regard to the statutory guidance issued by the Gambling Commission.
- 9.5 If approved by the Committee, the Statement of Principles will be submitted for consultation with all relevant stakeholders during the next 12 weeks, in accordance with best practice. All replies will be taken into account and the Statement of Principles, revised as necessary, will be submitted to this Committee for final approval at its meeting in November 2012. The Committee will then be asked to recommend that the Statement of Principles be adopted at a meeting of the full Council in December 2012 before being published in January 2013.
- 9.6 The Statement of Principles may be changed at any time after adoption (after further consultation), and must be renewed at intervals of not less than three years.
- 9.7 The proposed draft Statement of Principles for agreement prior to formal consultation can be found in Appendix 1. A list of the substantial changes to the document can be found in Appendix 3.
- 9.8 Very few amendments have been made to the current policy, mostly the changes are spelling and grammar errors.
- 9.9 The consultation document must be sent to the Police, trade associations for gambling businesses, and residents groups. It will also be sent to councillors, responsible authorities, sample gambling businesses in our area, faith groups, voluntary organisations, community organisations working with children and young people and organisations working with problem gambling.
- 9.10 In so far as possible, the consultation document will be emailed to the relevant consultees, or a hard copy sent, where this is not appropriate. All of the consultation documents will also be published on the Council's website.

- 9.11 A specific consultation response document has also been produced. This can be found in Appendix 2 and this will be sent out with the consultation.
- 9.12 Responses will need to be considered carefully by the Licensing Committee as to whether they should be taken into account and to what extent. The Committee is only able to consider matters that are within the scope of the Guidance, Act and Codes of Practice..

## **10. LIST OF BACKGROUND PAPERS**

- 10.1 Guidance to licensing authorities on the Gambling Act 2005 issued by the Gambling Commission, May 2009
- 10.2 Draft Guidance to licensing authorities on the Gambling Act 2005 issued by the Gambling Commission, 2012

**London Borough of Barnet**

**Statement of  
Principles**

**Gambling Act 2005**

**2013-2016**



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## 1. Introduction

1.1 The London Borough of Barnet here sets out a statement of principles that it will apply when carrying out its functions as a licensing authority in accordance with the Gambling Act 2005.

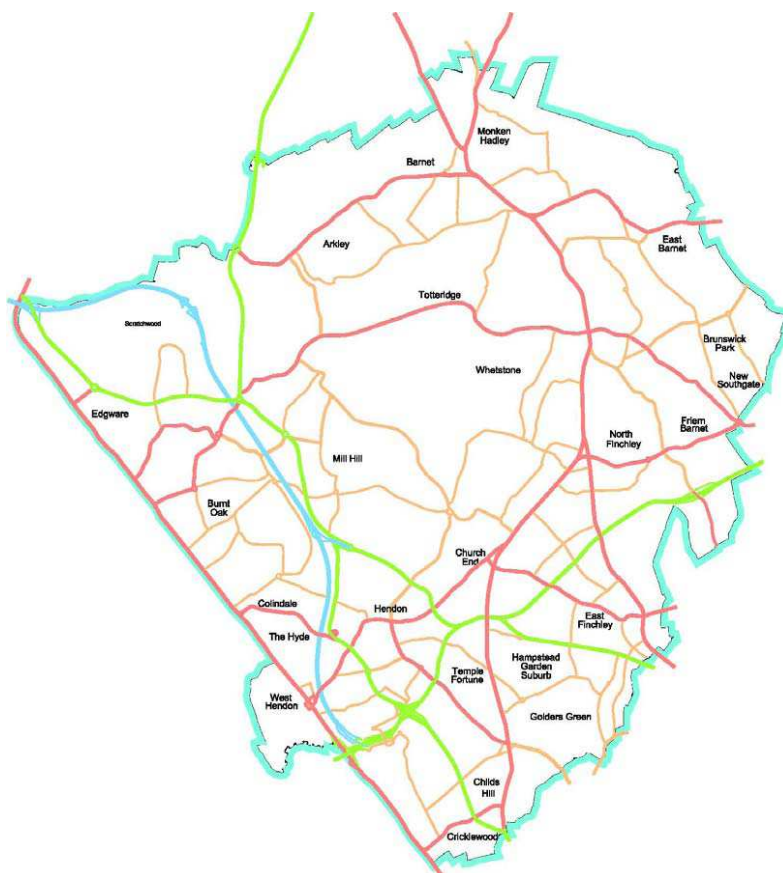
1.2 The London Borough of Barnet is situated in North London. Barnet's overall population in 2011 was projected to be 353,900, the largest population of the 32 London boroughs. In terms of area it is the fourth largest. 36% of the borough is undeveloped, being green belt (28%) and metropolitan open land (8%). The rest of the borough is made up of densely populated suburban areas, 20 town centres and the transport network. For more information of the demographics of the London Borough of Barnet please refer to the State of The Borough Report or 2011.

[http://www.barnet.gov.uk/downloads/download/352/state\\_of\\_the\\_borough](http://www.barnet.gov.uk/downloads/download/352/state_of_the_borough)

[2011](#)

1.3 The Borough is shown in the map below and in detail at

<http://maps.barnet.gov.uk/>



1.4 Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they propose to apply when exercising their functions under the Act. This statement must be published at least every three years and must also be reviewed from “time to time”. Any amendments must be consulted upon and the statement published before giving it effect.

1.5 In preparing a statement, the Act requires licensing Authorities to consult the following:

- The Chief Officer of Police;
- 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 under the Gambling Act 2005.

1.6 The Council has consulted widely upon this statement in accordance with the Act. A list of the groups consulted upon is provided below:

- The Metropolitan Police Service
- Social Services
- Trade associations
- Resident associations
- Responsible authorities
- Councillors
- Faith Groups
- Voluntary Groups

A full copy of the individuals and groups consulted can be found in appendix 1

1.7 The consultation took place between 12 July 2012 and 4<sup>th</sup> October 2012 in accordance with the HM Government Code of Practice on Consultation (published July 2008), which is available at: <http://www.berr.gov.uk/files/file47158.pdf>

1.8 This Statement of Principles was approved at a meeting of the Full Council on <DATE> and was published on [Date to be inserted following approval process].

1.9 It should be noted that this Statement of Principles will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and in accordance with the statutory requirements of the Gambling Act 2005.

## 2. The licensing objectives

- 2.1 In exercising functions under the Gambling Act 2005 licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:
- Preventing gambling 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.
- 2.2 The Council of the London Borough of Barnet as the relevant licensing authority accepts that the term “vulnerable person” is not defined. It may for example include people who gamble more than they want to, or beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs. The Council as the relevant licensing authority will consider this objective on a case by case basis and will not interpret the term narrowly.
- 2.3 It should be noted that the Gambling Commission has stated: “The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling”
- 2.4 It should be noted that this statement of licensing principles will not override the right of any person to make an application, make representations about an application, or apply to review a licence as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

## 3. Declaration

- 3.1 In preparing this Statement of Principles, the licensing authority has had regard to the licensing objectives of the Act, and the Guidance to Licensing Authorities issued by the Gambling Commission and any responses from those consulted on this Statement of Principles.

## 4. Responsible authorities

- 4.1 The responsible authorities with respect to licensing premises in Barnet are:
- The Gambling Commission
  - The Metropolitan Police Service
  - The Council’s Planning Service
  - The London Fire and Emergency Planning Authority
  - The Safeguarding Children Board
  - HM Revenue and Customs
  - The Council itself as the licensing authority

- 4.2 The Licensing authority are required by regulations to state the principles it will apply in exercising its powers under Section 157 of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:
- The need for the body to be responsible for an area covering the whole of the licensing authorities are and
  - The need for the body to be answerable to the democratically elected persons rather than any particular vested interest group
- 4.3 In accordance with the suggestion in the Gambling Commission Guidance to Local Authorities the London Borough of Barnet designates the local safeguarding childrens board for this purpose.
- 4.4 In selecting the Safeguarding Children Board as the body competent to advise about the protection of children from harm, the London Borough of Barnet took into account the following points:
- The Safeguarding Children Board has a responsibility under the Children Act 2004 to promote the welfare and safety of children and young people in the London Borough of Barnet
  - The Board includes a variety of professionals with skills and experiences directly relevant to the need to protect children from being harmed or exploited by gambling
  - The Board is answerable to democratically elected persons and does not represent any particular interest group
  - The Board is the responsible authority for the purposes of the Licensing Act 2003 and has experience of the licensing process
  - The Board works in partnership with other local authority services and other organisations to make Barnet a safer place for children
  - The Board is able to provide advice about protecting children and guidance in accessing appropriate training
  - The Board works within the wider pan London framework of child protection so as to promote a consistent approach across London
- 4.3 Responsible authorities have the right to make representations in connection to an application, or to ask for a review of an existing licence. Any such representation must be relevant to the application.

## 5. Interested parties

- 5.1 Interested parties are defined in Section 158 of the Act as follows:

“A person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person;

Lives sufficiently close to the premises to be likely to be affected by the authorised activities

Has business interests that might be affected by the authorised activities  
Represents persons who satisfy paragraph a) or b)”

5.2 Interested Parties have the right to make representations in connection to an application, or to ask for a review of an existing licence. Any such representation must be relevant to the application.

To enable the licensing authority to decide whether a person is an interested party it will expect any person making a representation to give their name and address and explain how they or their business interests would be affected by the authorised activities. If this information is not provided then the representation will not be accepted by the Licensing authority.

5.3 In considering whether an interested party lives or has business interests sufficiently close to the premises certain factors will be taken into account including:

- The size of the premises
- The nature of the premises
- The distance of the premises from the habitual residence or workplace of the person making the representation
- The potential impact of the premises (number of customers, routes likely to be taken when visiting the premises)
- The circumstances of the complainants and their interest that may be relevant to the distance from the premises

5.4 In determining whether a person or organisation has “business interests” the authority will adopt the widest possible interpretation and may recognise certain groups which include but are not limited to; trade unions, partnerships, charities, faith groups, residents and tenants associations and medical practices.

5.5 If the representation is from an association or any other body then these will only be accepted provided that they have at least one member who is an interested party.

5.6 Unless the person making the representation is a locally elected councillor or member of parliament the licensing authority may require written evidence that they represent identified interested parties. A letter from one of these persons will be sufficient.

5.7 If individuals wish to approach locally elected councillors to ask them to represent their views then those councillors cannot sit on a licensing committee that meets to determine the licence application.

5.8 To be deemed relevant a representation must relate to the licensing objectives or raise issues under the policy or the Gambling Commissions guidance or codes or practice.

5.9 In deciding whether to treat a representation as frivolous or vexatious the following will be taken into account

- Who is making the representation and whether that person has a history of making representation that are not relevant
- Whether or not it raises a relevant issue
- Whether it raises issues specifically to do with the premises which are the subject of the application

5.11 The validity of each representation will be decided upon its merits. This authority will not apply a rigid rule to its decision making. It will consider the examples of considerations provided in the Gambling Commission's Guidance to Licensing Authorities at paragraphs 8.11 to 8.18.

## 6. Exchange of Information

- 6.1 The licensing authority will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information with the Gambling Commission and other persons listed in Schedule 6 to the Act. This includes the provision that the Data Protection Act 1998 will not be contravened.
- 6.2 The licensing authority will also have regard to any guidance issued to local authorities by the Gambling Commission on this matter, as well as any relevant regulations issued by the Secretary of State under powers provided in the Act.
- 6.3 The licensing authority will seek to establish information exchange protocols with the responsible authorities and will make these available.

## 7. Inspection and Enforcement

- 7.1 A licensing authority is required to state the principles to be applied by the authority in exercising its functions under Part 15 of the Act with respect to the inspection of premises; and the powers under Section 346 of the Act to institute criminal proceedings in respect of the offences specified.
- 7.2 The licensing authority's principles are that it will be guided by the Gambling Commissions Guidance for Local Authorities and in doing so will endeavour to be:
- Proportionate -The licensing authority will only intervene when necessary; remedies will be appropriate to the risks posed and costs identified and minimised
  - Accountable - the licensing authority must be able to justify decisions and will be subject to public scrutiny
  - Consistent - rules and standards will be implemented fairly
  - Transparent -the licensing authority will be open and do its best to keep things simple and user friendly
  - Targeted – the licensing authority will focus on the problem and do its best to minimise side effects.
- 7.3 Any enforcement action will be in accordance with the relevant enforcement policy.



- 7.4 The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 is to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission is the enforcement body for the operating and personal licences. It is also worth noting that concerns about manufacture, supply or repair of gaming machines are not dealt with by the licensing authority but should be notified to the Gambling Commission.
- 7.5 This licensing authority also keeps itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities. The Better Regulation Executive is a government agency which aims to achieve more effective regulation and reduce existing regulatory burdens affecting business, the third sector and frontline staff in the public sector.
- 7.6 The London Borough of Barnet's licensing officers will monitor ongoing compliance with licence conditions. They may carry out inspections without prior notice to the occupier or licensee.
- 7.7 As per the Gambling Commission's Guidance to Licensing Authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.
- 7.8 Planned enforcement activity will be prioritised according to assessed risk (the potential for harm to the licensing objectives). This licensing authority has adopted and implemented a risk-based inspection programme, based on:
- The licensing objectives
  - Relevant codes of practice
  - Guidance issued by the Gambling Commission, in particular at Part 36
  - The principles set out in this statement of licensing policy
- 7.9 When assessing risk, the licensing authority may take into account the following matters:
- The type of gambling and its potential to result in harm
  - The size of the premises and the number of patrons
  - The standard of compliance with licence conditions
  - Officers' confidence in the ability and intention of the management of the premises to maintain good standards of compliance with licence conditions
  - Relevant information from other agencies.
- 7.10 The risk rating for each premises will be kept under constant review and may change at any time.
- 7.11 The licensing authority is prepared to receive complaints about licensed premises and, with the agreement of the complainant, deal with them

informally with the aim of securing improvement if necessary without the need for a formal review of the licence.

7.12 The licensing authority will not tolerate non-compliance with licence conditions or licensable activity at unlicensed premises except in accordance with a Temporary Use Notice.

## **8. Licensing Authority's Functions**

8.1 Licensing authorities are required under the Act to assume responsibility for;

- Licensing premises where gambling activities are to take place by issuing premises licences
- Issuing provisional statements
- Regulation of members clubs and miners welfare institutes who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issuing Club Machine Permits to Commercial clubs
- Granting permits for the use of certain lower stake gaming machines at unlicensed family entertainment centres
- Receiving notifications from alcohol licensed premise (Under the Licensing Act 2003) for the use of two or fewer gaming machines
- Issuing Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines.
- Registration of small society lotteries below the prescribed thresholds
- Issuing Prize Gaming Permits
- Receiving and endorsing Temporary Use Notices
- Receiving Occasional Use Notices
- Providing information to the Gambling Commission regarding details of licensing issues
- Maintaining registers of the permits and licences that are issued under these functions.

8.2 It should be noted that local licensing authorities are not involved in licensing remote gambling at all. This falls within the remit of the Gambling Commission via operating licences. Remote gambling is defined as "gambling in which persons participate by the use of remote communication" namely, the internet, telephone, television, radio or "any other kind of electronic or other technology for facilitating communication".

## **9. Applications: General Principles**

9.1 The licensing authority has no rigid rules about the acceptability of applications and will consider each on its merits.

9.2 The matters that it will generally take into account when considering applications for permits and licences and when reviewing a licence are set out below:

- The type and nature of the gambling activity.

- The proximity of the gambling premises to sensitive premises such as schools or centres for vulnerable adults, or to residential areas where there may be a high concentration of families with children, and the likelihood that children or vulnerable adults will enter the premises.
- Where permits or licences are sought for use at premises that may attract children, or where children may be present, the licensing authority will give particular weight to child protection issues. The licensing authority is aware that children may be harmed not only by taking part in gambling, but also if they are able to watch it taking place. This concern may be particularly relevant at premises where there are multiple licences, where only part of a premises is licensed or where permits are to be used in part of a premises only.
- The adequacy of any proposed measures to prevent crime connected with gambling.
- The adequacy of any proposed steps to prevent access by children and vulnerable adults, or to prevent such people from seeing gambling taking place.
- The public availability at the premises of information about organisations that can provide advice and support in relation to gambling and debt, for example GamCare, Gamblers Anonymous, the Gordon House Association, the National Debtline and local Citizens Advice Bureaux and other relevant advice agencies.
- The existence of crime and disorder (particularly if it has required police intervention) or actual harm to children or vulnerable adults, where these are connected to gambling at the premises.

9.3 It will assist the sub-committee in contested cases if applicants, responsible authorities and interested parties address these matters.

9.4 When considering applications, sub-committees will decide matters of fact on the balance of probabilities.

9.5 The licensing authority will place information about licence applications on its web site, and will notify ward councillors when applications are received.

## 10. Premises Licences

### 10.1 General

10.1.1 A premises licence may authorise:

- the operation of a casino
- the provision of facilities for playing bingo
- Adult Gaming Centres
- Licensed Family Entertainment Centres
- The provision of facilities for betting.

10.1.2 Premises licences are subject to the requirements as set out in the Act and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State.

Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

10.1.3 The licensing authority recognises that every application and representation made in connection with premises licences, with the exception of applications for a casino licence, must be treated on its merits.

10.1.4 The licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of licensing policy.

10.1.5 It is appreciated that as stated in the Gambling Commission's Guidance to Licensing Authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" and also that unmet demand is not a criterion for a licensing authority.

10.1.6 Premises licences that are granted must be consistent with the licensing objectives. In consideration of the Gambling Commission's Guidance to Licensing Authorities the following comments are made:

- This licensing authority is aware that the Gambling Commission takes a lead role in preventing gambling from being a source of crime. However, the guidance does envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective.
- This licensing authority has noted that the Gambling Commission states it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences.
- This licensing authority has noted that Gambling Commissions Guidance on protecting children from being harmed or exploited by gambling means preventing children from taking part in gambling as well as restriction of advertising so that gambling products are not aimed at or are particularly attractive to children.

## 10.2 Definition of "Premises"

10.2.2 10.2.1 In the Act, "premises" is defined as including "any place". Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being

different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place.

10.2.3 However, the licensing authority will pay particular attention if there are issues about sub-divisions of a single building or plot and will ensure that mandatory conditions relating to access between premises are observed.

10.2.4 In most cases the expectation is that a single building or plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer.

10.2.5 The licensing authority does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.

10.2.6 This licensing authority will take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non gambling) purposes. In particular, the attention of applicants is drawn to the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.
- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not “drift” into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activity named on the premises licence.

10.2.7 Other factors which the licensing authority may consider are:

- Do the premises have a separate registration for business rates?
- Are the neighbouring premises owned by the same person or someone else?
- Can each of the premises be accessed from the street or a public passageway?

- Can the premises only be accessed from any other gambling premises

This authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

10.2.8 The Gambling Commission's relevant access provisions for each premises type are reproduced below:

#### Adult Gaming Centre

- No customer must be able to access the premises directly from any other licensed gambling premises

#### Betting Shops

- Access must be from a street (as per paragraph 7.26 Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.

#### Tracks

No customer should be able to access the premises directly from:

- a casino
- an adult gaming centre

#### Bingo Premises

No customer must be able to access the premise directly from:

- a casino
- an adult gaming centre
- a betting premises, other than a track

#### Family Entertainment Centre

No customer must be able to access the premises directly from:

- a casino
- an adult gaming centre
- a betting premises, other than a track

10.2.9 Part 7 of the Gambling Commission's Guidance to Licensing Authorities contains further guidance on this issue, which this authority will also take into account in its decision-making.

### 10.3 Location

10.3.1 The licensing authority will take into account the location of premises in the context of the crime prevention objective. For example, if an application for a licence or permit is received in relation to premises that

are in an area noted for particular problems with organised crime, the licensing authority will consider what, if any, controls might be appropriate to prevent those premises becoming a source of crime. These might include conditions being put on the licence, such as a requirement for door supervisors. The licensing authority has not identified any such areas, but will be receptive to advice from the Police when considering applications.

10.3.2 As stated in the Gambling Commissions Guidance to Licensing Authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling. Applications for granting licences in respect of gambling premises that are in close proximity to locations for such vulnerable persons for example schools, centres for gambling addicts, hostels, centres catering for people with mental disabilities or learning difficulties or those with drug or alcohol abuse problems, will receive very careful consideration.

10.3.3 Should any policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. Again it should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

#### 10.4 Premises “ready for gambling”

10.4.1 The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

10.4.2 If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

10.4.3 In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this licensing authority will determine applications on their merits, applying a two stage consideration process;

- First, whether the premises ought to be permitted to be used for gambling
- Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

10.4.4 Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

## 10.5 Duplication with Other Regimes

- 10.5.1 This licensing authority seeks to avoid any duplication with other statutory / regulatory systems where possible, including planning. This licensing authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.
- 10.5.2 When dealing with a premises licence application for finished buildings, this authority will not take into account whether those buildings have to comply with the necessary planning or buildings consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning control, building control and other regulations and must not form part of the consideration for the premises licence.
- 10.5.3 The licensing authority wishes to reconcile planning, building control and licensing considerations whenever possible. However, it should be noted that licensing decisions will not over-rule planning or building control decisions, as the legal framework for each is different.
- 10.5.4 Licensable activities cannot lawfully be carried on at premises unless there is a premises licence or permit (other than in accordance with a Temporary or Occasional Use Notice) and any necessary planning permission and building regulation approval. A licence will not remove the need for planning permission or building regulation approval, should these be necessary. The onus is on the licence holder or applicant to ensure that these permissions exist.
- 10.5.5 The licensing authority has a duty to take into consideration all relevant matters and not to take into consideration irrelevant matters ie those not related to gambling and licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their application
- 10.5.6 The licensing authority will take into account any concerns about conditions that are not able to be met by licence holders due to planning restrictions

## 10.6 Licensing Objectives

Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commissions Guidance to licensing authorities and some comments are made below.

### 10.6.1 Preventing Gambling from being a source of crime and disorder or being associated with crime and disorder or being used to support crime

The licensing authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The Gambling Commissions guidance does however envisage that licensing



authorities should pay attentions to the proposed location of gambling premises in terms of this objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors (for example whether police assistance was required and how threatening the behaviour was to those who could see it) so as to make that distinction.

#### 10.6.2 Ensuring that gambling is conducted in a fair and open way

This licensing authority has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. For Local Authorities with tracks: There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section– see page 14).

#### 10.6.3 Protecting children and other vulnerable persons from being harmed or exploited by gambling

This licensing authority has noted the Gambling Commission's Guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). The licensing authority will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.

10.6.4 This licensing authority is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.

### 10.7 Adult Gaming Centres

10.7.1 The licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that those who are aged under 18 years old are not attracted to or gain access to the premises.

10.7.2 The licensing authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours

- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

10.7.3 The licensing authority will have particular regard to the location and management of entrances to adult gaming centres. It will wish to see that the opportunities for children to gain access are minimised. This will be of particular importance if young people are likely to be unsupervised and the gaming centre is in a complex, such as a shopping centre.

## 10.8 Licensed Family Entertainment Centres

10.8.1 Gaming machines are a form of gambling which is attractive to children and Licensed Family Entertainment Centres will contain machines of the Category D machine types on which they are allowed to play. Because gaming machines provide opportunities for solitary play and for immediate payouts, they are likely to engender repetitive and excessive play. In considering applications the licensing authority will have regard to the need to protect children and vulnerable people from harm or being exploited by gambling and will expect the applicant to satisfy the licensing authority, for example, that those aged under 18 years old do not have access to the adult only gaming machine areas.

10.8.2 The London Borough of Barnet may consider measures to meet the licensing objectives such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.
- Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

10.8.3 The licensing authority will refer to the Gambling Commission's website from time to time to ascertain any conditions that may apply to operating licences regulating the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

## 10.9 Tracks

10.9.1 Licensing authorities have a power under the Gambling Act 2005 to restrict the number of betting machines, their nature and the circumstances in which they are made available, by attaching a licence condition to a betting premises licence. The licensing authority has no special policy on these issues, but will take into account the size of the track and associated area and the ability of staff to monitor the use of the machines by children and vulnerable people when determining the number of machines permitted.

10.8.1 10.9.2 The licensing authority will normally attach a condition to track premises licences requiring the track operator to ensure that the rules are prominently displayed in or near the betting areas, or that other measures are taken to ensure that they are made available to the public.

## 10.10 Casinos

10.10.1 The licensing authority has resolved not to license casinos, with immediate effect. Any applications received will be returned with a notification that a 'no-casino' resolution is in place.

## 10.11 Bingo

10.11.1 The licensing authority will need to be satisfied that appropriate conditions exist for bingo to be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

10.11.2 This authority also notes the Gambling Commission's Guidance at paragraph 18.8 regarding the unusual circumstances in which the splitting of a pre-existing premises into two adjacent premises might be permitted, and in particular that it is not permissible to locate sixteen category B3 gaming machines in one of the resulting premises, as the gaming machine entitlement for that premises would be exceeded.

10.11.3 Children and young people are allowed into bingo premises. However, they are not permitted to participate in the playing of bingo and if category B or C machines are made available for use, then these must be separated from areas where children and young people are allowed.

## 10.12 Betting premises

10.12.1 The licensing authority is aware that there is a trend to enlarge betting offices and that this can result in improved customer facilities. The licensing authority will look favourably on applications to improve customer facilities by enlarging or relocating existing premises, provided this does not entail risk to the licensing objectives.

10.12.2 The licensing authority recognises that certain bookmakers have a number of premises within its area. In order to ensure compliance and that issues are recognised and resolved at the earliest stage, operators are requested to give the licensing authority a single named point of contact, who should be a senior individual, and whom the licensing authority will contact first should any compliance queries or issues arise.

10.12.3 Betting machines - This licensing authority will take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons or by vulnerable people, when considering the number, nature and circumstances of betting machines an operator wants to offer.

### 10.13 Provisional Statements

10.13.1 Developers may wish to apply to this licensing authority for provisional statements before entering into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.

10.13.2 S204 of the Gambling Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that he or she:

- expects to be constructed;
- expects to be altered; or
- expects to acquire a right to occupy.

10.13.3 The process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.

10.13.4 The holder of a provisional statement may then apply for a premises licence once the premises are constructed, altered or acquired. The licensing authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:

- they concern matters which could not have been addressed at the provisional statement stage,
- they reflect a change in the applicant's circumstances.

10.13.5 In addition, the licensing authority may refuse the premises licence or grant it on terms different to those attached to the provisional statement only by reference to matters:

- which could not have been raised by objectors at the provisional statement stage;
- which in the licensing authority's opinion reflect a change in the operator's circumstances;
- where the premises has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and this licensing authority notes that it can discuss any concerns it has with the applicant before making a decision.

## 10.14 Licence Conditions

10.14.1 Premises licences will be subject to the permissions and restrictions set out in the Gambling Act 2005 and Regulations, as well as specific mandatory and default conditions detailed in regulations. It is expected that in most cases the mandatory and default conditions will be appropriate and sufficient but the licensing authority is able to exclude default conditions and also attach others. The licensing authority will be concerned to ensure that appropriate conditions are attached to licences and if it believes that the mandatory and default conditions will not be appropriate or sufficient in a particular case, it will be minded to impose others. Similarly, it may be prepared to remove or amend default conditions if satisfied that to do so would not harm the licensing objectives.

10.14.2 The London Borough of Barnet accepts that conditions, other than mandatory ones, must be tailored to the individual style and characteristics of the premises concerned. Apart from the mandatory conditions, the London Borough of Barnet will not apply conditions from a standard list without regard to the particular circumstances of the application. It will only apply conditions if they are:

- Relevant to the need to make the proposed building suitable as a gambling facility, or
- Directly related to the type of licence applied for
- Relevant to one or more of the licensing objectives
- Fairly and reasonably related to the scale and type of premises
- Reasonable in all other respects.

In this way, unnecessary or disproportionate conditions will be avoided.

10.14.3 Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own

suggestions as to ways in which the licensing objectives can be met effectively.

10.14.4 This licensing authority will also consider specific measures which may be required for buildings that are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives.

10.14.5 This authority believes that children should not normally be permitted access to premises or parts of premises where gambling takes place.

10.14.6 The authority will 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 which is 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;
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18 years of age.
- Ages of younger patrons are checked

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

10.14.7 This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. This licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

10.14.8 If there is justified concern about serious, disruptive or threatening disorder, particularly if Police intervention has been necessary, suitable licence conditions such as door supervision or the use of CCTV will normally be appropriate.

10.14.9 Licence conditions may be imposed if there is justified concern about burglary targeted at gaming machines or the use of gaming machines by children.

10.14.10 If the licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence condition to this effect.

10.14.11 Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be Security Industries Act licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per the Gambling Commission's Guidance, Part 33).

10.14.12 When considering whether to impose a licence condition to restrict the number of betting machines in particular premises, the licensing authority will take into account the size of the premises, the number of counter positions available for person to person transactions, and the ability of staff to monitor the use of the machines by children and young persons or by vulnerable persons.

10.14.13 It is noted that there are conditions which the licensing authority cannot attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
- conditions in relation to stakes, fees, winning or prizes

10.14.14 The fairness and openness of gambling are primarily matters for the Gambling Commission, which has the power to impose relevant conditions on operating and personal licences. The licensing authority will not impose conditions on premises licences in connection with this objective except in the case of track licences, where the track operator may not have an operating licence.

## 10.15 Reviews

10.15.1 Requests for a review of a premises licence can be made by interested parties or responsible authorities. However, it is for the licensing authority to decide whether the review is to be carried out. This decision will be made on the basis of whether the request for the review is relevant to the matters listed below but the licensing authority will not review a licence if it considers the request to be frivolous, vexatious or repetitious, or that a review will certainly not cause the licensing authority to alter, revoke or suspend the licence, or the request is substantially the same as previous representations or requests for review. The holding of a review must be:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- consistent with the licensing objectives and
- in accordance with the authority's statement of principles.

10.15.2 The licensing authority can itself initiate a review of a licence and may do so if it appears to its officers that the licensing objectives are being harmed. It is open to any officers of the London Borough of Barnet authorised to do so to initiate a review in the London Borough of Barnet's name but it is expected that in most cases licensing officers will take the lead.

10.15.3 The licensing authority does not wish its licensing officers to take on the initiation of a review that could otherwise be requested by another responsible authority or an interested party. Where evidence of harm to the licensing objectives is provided by either a responsible authority or interested party wanting a review to take place, the licensing authority expects that they, not the licensing officers, will normally initiate the review.

10.15.4 Once a valid application for a review has been received by the licensing authority, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by the licensing authority, who will publish notice of the application within 7 days of receipt. The licensing authority must carry out the review as soon as possible after the 28 day period for making representations has passed.

10.15.5 The purpose of the review will be to determine whether the licensing authority should take any action in relation to the licence. If action is justified, the options open to the licensing authority are;

- (a) add, remove or amend a licence condition imposed by the licensing authority;
- (b) exclude a default condition imposed by the Secretary of State or remove or amend such an exclusion;
- (c) suspend the premises licence for a period not exceeding three months; and
- (d) revoke the premises licence.

10.15.6 In determining what action, if any, should be taken following a review, the licensing authority will have regard to the principles set out in section 153 of the Act, as well as any relevant representations. In particular, the licensing authority may also initiate a review of a premises licence on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.



10.15.7 Once the review has been completed, the licensing authority must, as soon as possible, notify its decision to:

- the licence holder
- the applicant for review (if any)
- the Gambling Commission
- any person who made representations
- the chief officer of police or chief constable; and
- Her Majesty's Commissioners for Revenue and Customs

## 11. Permits

### 11.1 General

11.1.1 The licensing authority believes that gambling, including the use of category D gaming machines, is harmful to children. The licensing authority believes that the use of gaming machines by children is not consistent with the third licensing objective.

11.1.2 The licensing authority will not grant permits for any category of gaming machines where it considers that they are likely to be used or easily accessed, by children. Permits may be granted if adequate precautions are offered by the applicant. These could include, for example, steps to prevent access to the machines by children, and training for staff with respect to suspected truants and unsupervised very young children on the premises.

11.1.3 This licensing authority is concerned about burglary targeted at gaming machines. The authority considers that this is relevant to the first licensing objective.

11.1.4 Precautions to reduce the risk of burglary or theft from the machines may include:

- good security to deter break-ins
- machines monitored by overt CCTV systems of an adequate standard to meet Police recommendations
- machines to be of substantial construction to resist damage
- emptying machines of cash nightly, and displaying a notice stating that this is done
- siting machines where they can be observed by staff or the licence holder to deter theft when the premises are open
- providing adequate secure cash storage facilities to Police recommendations.

11.1.5 The licensing authority recommends that applicants consult the Police, including the local Safer Neighbourhood Team, at an early stage, to obtain advice about crime prevention measures.

11.1.6 When considering an application for a permit, the licensing authority will take into account the applicant's suitability (including whether they have a conviction for any relevant offence).

## 11.2 Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7)

11.2.1 Where a premise does not hold a premises licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use.

11.2.2 An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an Unlicensed Family Entertainment Centre (UFEC) and if the chief officer of police has been consulted on the application.

11.2.3 This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures including training for staff as regards suspected truant school children on the premises, measures including training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on or around the premises.

11.2.4 The licensing authority will expect applications to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- that the applicant has no relevant convictions
- that staff are trained to have a full understanding of the maximum stakes and prizes.

11.2.5 It should be noted that a licensing authority cannot attach conditions to this type of permit.

## 11.3 Alcohol Licensed Premises Gaming Machine Permits (Schedule 13 paragraph 4(1)) Automatic entitlement: 2 machines

11.3.1 There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority.

11.3.2 The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;

- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

#### 11.4.1 Alcohol Licensed Premises Gaming Machine Permits Permit: 3 or More Machines

11.4.2 If a premises wishes to have more than 2 machines, then it needs to apply for a permit. The licensing authority will consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and any other matters that it may think relevant.

11.4.2 This licensing authority considers that such matters will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harmed or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that those aged under 18 years old do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18 years. Notices and signage may also help. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

11.4.3 It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would most likely need to be applied for, and dealt with as an Adult Gaming Centre premises licence.

11.4.4 It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions other than these cannot be attached.

11.4.5 It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

## 11.5 Prize Gaming Permits

11.5.1 Gaming is prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming.

11.5.2 This licensing authority has prepared a statement of principles which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:

- that they understand the limits to stakes and prizes that are set out in Regulations;
- that the gaming offered is within the law
- Clear policies that outline the steps to be taken to protect children from harm.

11.5.3 In making its decision on an application for this permit the licensing authority does not need to but may have regard to the licensing objectives. However, it must have regard to any Gambling Commission guidance.

11.5.4 It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;
- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations if a money prize, or the prescribed value if non-monetary prize;
- participation in the gaming must not entitle the player to take part in any other gambling.

11.5.5 The licensing authority may not impose any further conditions

## 11.6 Club Gaming and Club Machine Permits

11.6.1 Members clubs and miners' welfare institutes but not commercial clubs may apply for a club gaming permit. The club gaming permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set out in regulations.

11.6.2 Members clubs, miner's welfare institutes and commercial clubs may apply for a club machine permit. A club machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D). It should be noted that commercial clubs may not site category B3A gaming machines offering lottery games in their club.

11.6.3 Members clubs must have at least 25 members and be established and conducted wholly or mainly for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made regulations and these cover bridge and whist clubs, which replicates the position under the Gaming Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations.

11.6.4 Licensing authorities may refuse an application on the grounds that:

- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- (b) the applicant's premises are used wholly or mainly by children and/or young persons;
- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- (d) a permit held by the applicant has been cancelled in the previous ten years;
- (e) an objection has been lodged by the Gambling Commission or the Police.

11.6.5 There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003. Under the fast-track procedure there is no opportunity for objections to be made by the Gambling Commission or the Police and the grounds on which an application under the process may be refused are:

- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
- (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

11.6.6 There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

## 11.7 Temporary Use Notices

11.7.1 Temporary Use Notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a Temporary Use Notice would include hotels, conference centres and sporting venues.

11.7.2 The licensing authority can only grant a Temporary Use Notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.

11.7.3 The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices, and at the time of writing this Statement the relevant regulations (SI no 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that Temporary Use Notices can only be used to permit the provision of facilities or equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

11.7.4 There are a number of statutory limits as regards Temporary Use Notices. The meaning of "premises" in Part 8 of the Act is discussed in Part 7 of the Gambling Commission Guidance to Licensing Authorities. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place". In considering whether a place falls within the definition of "a set of premises", the licensing authority needs to look at, amongst other things, the ownership/occupation and control of the premises.

11.7.5 This licensing authority expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Gambling Commission's Guidance to Licensing Authorities.

#### 11.8.1 Occasional Use Notices

11.8.2 The licensing authority has very little discretion as regards occasional use notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

## 12. Travelling Fairs

12.1 This licensing authority is responsible for deciding whether, where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

12.2 The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

12.3 It is noted that the 27-day statutory maximum for the land being used as a fair applies on a per calendar year basis, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land.

12.4 This licensing authority will work with its neighbouring authorities to ensure that land that crosses our boundaries is monitored so that the statutory limits are not exceeded.

## 13. Small Society Lotteries

- 13.1 Registration of non-commercial society lotteries may be refused if it appears that the applicant is a commercial society, and the licensing authority will therefore expect full details to be provided of the purpose for which the society is established. The licensing authority may make enquiries to satisfy itself on this point.
- 13.2 If the licensing authority is minded to refuse to register a lottery, or to revoke a registration, it will inform the applicant, stating the reasons, and the applicant will have the right to make representations. Any such representations will be heard by a sub-committee of the Licensing Committee.
- 13.3 The London Borough of Barnet does not currently possess an operating licence in its own name for the purposes of promoting a lottery for the benefit of the community.

## 14. Integration of licensing with other strategies

- 14.1 The licensing authority will ensure, so far as is consistent with the Act and Guidance, that action taken under this policy supports and does not conflict with strategies for local crime prevention and community safety, planning, equality, tourism and cultural issues, including in particular:

- The Cultural Strategy for London  
[http://www.cityoflondon.gov.uk/NR/rdonlyres/DC8388C6-A0B8-4BFE-9EBD-D7A4D5361E23/0/DP\\_PL\\_CulturalStrategydocument17Feb.pdf](http://www.cityoflondon.gov.uk/NR/rdonlyres/DC8388C6-A0B8-4BFE-9EBD-D7A4D5361E23/0/DP_PL_CulturalStrategydocument17Feb.pdf)
- The objectives of the Security Industry Authority  
<http://www.sia.homeoffice.gov.uk/Pages/home.aspx>
- The Safer Communities Strategy  
[http://www.barnet.gov.uk/downloads/download/116/safer\\_communities\\_partnership\\_strategy\\_2011-2014](http://www.barnet.gov.uk/downloads/download/116/safer_communities_partnership_strategy_2011-2014)
- The Sustainable Communities Strategy  
[http://www.barnet.gov.uk/downloads/file/125/one\\_barnet\\_a\\_sustainable\\_community\\_strategy\\_for\\_barnet\\_2010-2020](http://www.barnet.gov.uk/downloads/file/125/one_barnet_a_sustainable_community_strategy_for_barnet_2010-2020)
- Barnet's Equalities policy  
[http://www.barnet.gov.uk/downloads/200041/equality\\_and\\_diversity](http://www.barnet.gov.uk/downloads/200041/equality_and_diversity)

## 15. Tourism and employment

- 15.1 The licensing authority recognises the relevance of licensed premises to tourism and employment in the borough. The Licensing Committee will receive reports from any body that it considers appropriate on the needs of the local cultural strategy, and tourist economy, including the employment situation in the area and the need for new investment and employment. These issues will be taken into account so far as the Gambling Act permits when making licensing decisions.

## 16. Promotion of equality

- 16.1 The licensing authority encourages the provision of proper facilities for disabled people at licensed premises, and will offer advice and information where necessary to assist applicants
- 16.2 The licensing authority is obliged to have due regard to the need to eliminate unlawful discrimination, for example on the grounds of race, gender, disability, sexual orientation or religion, and to promote equality of opportunity and good relations between persons of different groups. When considering applications and representations, the licensing authority will treat all parties equally. However, it can take into account only the issues provided for in the Gambling Act.

## 17 Licensing Register

- 17.1 The licensing authority will establish and maintain a Licensing Register containing the information required by statute, and keep it available for inspection. It can be seen on request to the Licensing Team, telephone 0208 359 7443.

## 18. Relevant documents

- The Enforcement Concordat  
<http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file10150.pdf>
- The Regulators' Compliance Code <http://www.berr.gov.uk/files/file45019.pdf>
- The Human Rights Act 1998  
<http://www.legislation.gov.uk/ukpga/1998/42/contents>
- Crime and Disorder Act 1998  
<http://www.legislation.gov.uk/ukpga/1998/37/contents>
- Disability Discrimination Act 1995  
[www.hms0.gov.uk/acts/acts1995/Ukpga\\_19950050\\_en\\_1.htm](http://www.hms0.gov.uk/acts/acts1995/Ukpga_19950050_en_1.htm)

Guidance issued by the Gambling Commission under section 25 of the Gambling Act 2005  
[http://www.gamblingcommission.gov.uk/licensing\\_authorities/information\\_for\\_licensing\\_auth/guidance\\_to\\_las.aspx](http://www.gamblingcommission.gov.uk/licensing_authorities/information_for_licensing_auth/guidance_to_las.aspx)

## 19. Complaints about the Licensing Service

- 19.1 The licensing authority will investigate any complaint about the way it deals with a licensing issue and will inform the complainant of the outcome. If the complaint is justified, it will put the problem right if possible. The Council has a formal complaints procedure. For information see [www.barnet.gov.uk/contact-us.htm](http://www.barnet.gov.uk/contact-us.htm)



## 20. Further information

20.1 Information about applications, fees, how to make a representation, details of the responsible authorities and the licensing register, see [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk) or contact the Licensing Team on 020 8359 7443, [licensingadmin@barnet.gov.uk](mailto:licensingadmin@barnet.gov.uk) or see the council's website, [www.barnet.gov.uk](http://www.barnet.gov.uk)

## 21. Commencement and Review

21.1 This policy will come into effect on (date) It will be kept under review and the Council may make changes after consultation. It will be renewed every three years. The council will be pleased to receive the views of responsible authorities, individuals or organisations at any time

Matter to be dealt with	Full Council	Licensing Committee	Licensing sub committee	10.2.9.1.1.1 Officers
Final approval of the Licensing Authority Statement of Policy	X			
Policy not to permit casinos	X			
Application for premises licence			Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application to vary premises licence			Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for transfer of a licence			Where representations have been received from the Commission	Where no representations have been received from the Commission
Application for provisional statement			Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises licence			All cases	
Application for club gaming/club machine permits			Where objections have been made (and not withdrawn)	Where no objections have been made/objections have been withdrawn
Cancellation of club gaming/club machine permits			All cases	
Applications for other permits				All cases
Cancellation of licensed premises gaming machine permits				All cases
Consideration of temporary use notice				All cases
Decision to give a counter notice to a temporary use notice			All cases	
Decision to reject a representation on the grounds that it is not from an interested party				All cases
Initiation of review of a premises licence by the				All cases

council in its capacity as licensing authority		
Fee setting (when appropriate)	Normal budget-setting arrangements	
Consideration of representations when the council is minded to refuse to register a lottery or to revoke a lottery registration		All cases

# List of Consultees

## **All responsible authorities**

## **All councillors**

## **Main Trade Associations:**

- British Casino Association, 28 Grosvenor Gardens, London SW1W 0EB
- BACTA, Alders House, 13 Aldergate St, London , EC1A 4JA
- Association of British Bookmakers, Norris House, 4 Norris Street, London SW1y 4RJ
- Business in Sport and Leisure, 17a Chartfield Avenue, Putney, London SW15 6DX
- BALPA, Suite 12, 37 Tanner Street, London SE1 3LF

## **Residents Groups**

- Church Gate Residents Association Whetstone Ltd, 3 Tudor Grove Church Crescent, London, N20 0JW
- Alan Lodge Residents Ltd, Flat 3 Alan Lodge, Nether Street, London, N3 1QH
- Hendon Avenue Residents Ltd , 9 Hendon Avenue, London, N3 1UL
- Barnet Residents Association, Melvyn Sears 71 Byng Road Barnet EN5
- North West Two Residents Association [group@northwesttwo.co.uk](mailto:group@northwesttwo.co.uk)
- Hampstead Garden Suburb Residents Association [chairman@hgs.org.uk](mailto:chairman@hgs.org.uk)
- Sunnyhill Residents Association (Hendon) [daniel@sunnyhill-residents.co.uk](mailto:daniel@sunnyhill-residents.co.uk)

## **Sample Gambling Businesses in our Area**

- 10% of each type of business directly contacted:

## **Faith Groups**

- Hindu Cultural Society , 321 Colney Hatch Lane, London, N11 3DH

## **Voluntary Organisations**

CAB's

- [newbarnet@barnetcab.org.uk](mailto:newbarnet@barnetcab.org.uk)
- [finchley@barnetcab.org.uk](mailto:finchley@barnetcab.org.uk)
- Hendon, 40-42 Church End Hendon, London, NW4 4JT
- Grahame Park, The Concourse  
Grahame Park, London,  
NW9 5XA

## **Community Organisations Working With Children and Young People**

- Organisations Working With Problem Gambling
- GamCare [info@gamcare.org.uk](mailto:info@gamcare.org.uk)
- Christian Centre for Problem gambling [admin@ccgr.org.uk](mailto:admin@ccgr.org.uk)
- Empowering Communities, Riverside Business Centre, Riverside Road, Lowestoft, NR33 0TQ [info@empowering-communities.org](mailto:info@empowering-communities.org)

## Appendix 2

# London Borough of Barnet

## GAMBLING ACT 2005

### FORMAL CONSULTATION: COMMENTS ON OUR DRAFT GAMBLING POLICY

When you have completed this form please return to [licensingadmin@barnet.gov.uk](mailto:licensingadmin@barnet.gov.uk) or by letter, addressed to  
Emma Phasey, Trading Standards and Licensing Manager,  
London Borough of Barnet, Building 4,  
North London Business Park,  
Oakleigh Road South,  
London,  
N11 1NP

**Name:**

**Organisation or capacity (if applicable):**

**Address:**

**E-mail:**

**Telephone Number:**

**Paragraph No.  
COMMENTS**

**Paragraph No.  
COMMENTS**

Please add further rows if you wish

**In addition I wish to make the following general comments:**

***Declaration:***

***I am happy for this Response to be made public OR  
I do not wish this Response to be made public***

***Failure to complete the above Declaration will result in your Response being made public.***

Signature: ..... Date: .....

Name: ..... *(Please print)*

## Appendix 3

Number	Insertion deletion	or Text
2.5	Insertion	It should be noted that this statement of licensing principles will not override the right of any person to make an application, make representations about an application, or apply to review a licence as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.
2.5	Deletion (repeated elsewhere)	<p>This licensing authority is aware that, as per Section 153, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it:</p> <p>in accordance with any relevant code of practice issued by the Gambling Commission;</p> <p>in accordance with any relevant guidance issued by the Gambling Commission; reasonably consistent with the licensing objectives;</p> <p>and</p> <p>in accordance with the authority's statement of licensing policy.</p>
4.2 - 4.3	insertion	<p>The Licensing authority are required by regulations to state the principles it will apply in exercising its powers under Section 157 of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:</p> <p>The need for the body to be responsible for an area covering the whole of the licensing authorities are and</p>



		<p>The need for the body to be answerable to the democratically elected persons rather than any particular vested interest group</p> <p>In accordance with the suggestion in the Gambling Commission Guidance to Local Authorities the London Borough of Barnet designates the local safeguarding children's board for this purpose.</p>
4.4	Deletion (repeated elsewhere)	<p>The Gambling Commission has a number of important functions in the regulation of gambling. In particular it issues operating and personal licences, and deals with internet gambling. These matters are not within the Council's remit. For information see <a href="http://www.gamblingcommission.gov.uk">www.gamblingcommission.gov.uk</a></p>
10.5.5	deletion	<p>Where there is no relevant planning permission or building regulation approval, or where there are planning conditions that conflict with the licence application, the licensing authority recommends applicants to submit a planning application or building regulation approval application as early as possible in order to regularise the position.</p>
10.5.5	Insertion (to replace above)	<p>The licensing authority has a duty to take into consideration all relevant matters and not to take into considerations irrelevant matters ie those nor related to gambling and licensing objectives. One example of a irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their application</p>
10.6	insertion	<p>Licensing Objectives Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commissions Guidance to licensing authorities and some comments are made below.</p> <p>Preventing Gambling from being a</p>

		<p>source of crime and disorder or being associated with crime and disorder or being used to support crime</p> <p>The licensing authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The Gambling Commission's guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors (for example whether police assistance was required and how threatening the behaviour was to those who could see it) so as to make that distinction.</p> <p>Ensuring that gambling is conducted in a fair and open way</p> <p>This licensing authority has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. For Local Authorities with tracks: There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section– see page 14).</p> <p>Protecting children and other vulnerable persons from being harmed or exploited by gambling</p>
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		<p>This licensing authority has noted the Gambling Commission's Guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). The licensing authority will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.</p> <p>This licensing authority is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.</p>
11.4.5	insertion	The licensing authority may not impose any further conditions

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Meeting	Licensing Committee
Date	11 July 2012
<b>Subject</b>	<b>Sex Entertainment Venue Licensing</b>
Report of	Interim Director of Environment, Planning and Regeneration
Summary	Section 27 of the Policing and Crime Act 2009 introduce a licensing regime for “Sexual Entertainment Venues”. The authority must consult with local residents and business as to whether to adopt this provision. This is a report on this new regime and the consultation that is needed.

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Officer Contributors	Emma Phasey, Trading Standards and Licensing Manger
Status (public or exempt)	Public
Wards Affected	All
Key Decision	N/A
Reason for urgency / exemption from call-in	N/A
Function of	Council
Enclosures	Appendix 1 – proposed consultation document
Contact for Further Information:	Emma Phasey Trading Standards and Licensing Manager <a href="mailto:Emma.phasey@barnet.gov.uk">Emma.phasey@barnet.gov.uk</a>

## **1. RECOMMENDATIONS**

- 1.1 That the Interim Director of Environment Planning and Regeneration be instructed to consult with local people in relation adoption of section 27 of the Policing and Crime Act 2009**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Decision by council on to move the sex establishment functions to the Licensing Committee

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The regulation of sex entertainment venues is important in relation to the prevention of crime and disorder, public nuisance, protecting the vulnerable and public safety, these contribute to the corporate priority of 'A Successful London Suburb' as they are meeting the strategic objective to "ensure that our town centres are vibrant places where business can thrive" thereby helping ensure that the Borough is a prosperous place where people want to live and ensuring it remains clean and safe.
- 3.2 The policy will support objectives contained within the Local Area Agreement and the Sustainable Community Strategy

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Paragraph 2.17 of the Home Office Guidance on Sexual Entertainment Venues (March 2010) states:

*"2.17 If a local authority has not made a resolution to adopt the provisions introduced by section 27 within one year of it coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution"*

The London Borough of Barnet has not yet made a resolution therefore it is important we consult in relation to this as soon as possible.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 When considering applications and representations, only issues provided for in the Local Government (Miscellaneous Provisions) Act 1982 in addition to the authorities policy will be taken into account. This will ensure a consistent approach is adopted. Every application under the terms of the policy will be considered on its own merits regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 Lap dancing venues are currently licensed under the provisions of the Licensing Act 2003 and as such fees are set by statute. If the Council adopts the provisions to licence Sexual entertainment venues fees will be set by the

Council having regard to the cost of implementation, administration and enforcement of the legal requirements. The fee will be set by Council as part of the annual fees setting process.

## **7. LEGAL ISSUES**

- 7.1 This Authority has adopted the provision of Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (Licensing of sex shops and sex cinemas)
- 7.2 Section 27 of the Policing and Crime Act 2009 makes amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the Council should now consider adopting the amendments to Schedule 3 of that Act.
- 7.3 Section 2 of Part II of the 1982 Act provides for the adoption of the provisions contained in schedule 3, which allows the Council to control, by way of a licensing regime, sex establishments in their area.
- 7.4 Where a local Authority does not make a resolution under section 2 within the period of 1 year beginning with the coming into force of the legislation the Local Authority must, as soon as is reasonably practicable, consult local people about whether the local authority should make such a resolution. If the Local Authority does not make a resolution to adopt the new provisions then sexual entertainment venues would be able to operate without the requirement for any kind of Sexual Entertainment Licence.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

- 8.1 Constitution, Part 3 – Responsibility for Functions, Section 2 Responsibility for Council Functions.

## **9. BACKGROUND INFORMATION**

- 9.1 The increase nationally in the number of lap dancing clubs since the implementation of the Licensing Act 2003 has become a concern for many local communities. Under this licensing regime any representations made against premises licence applications for venues providing lap dancing and similar entertainment can only be based on the four licensing objectives, namely:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance
- The protection of children from harm.

As a result, licensing authorities can not consider any objections made by local people and businesses that are based on matters outside the scope of the four objectives noted above, for example, such as whether a lap dancing club would be appropriate given the character and locality of the area in which it is proposed to be situated.

- 9.2 Sex shops, in contrast, are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives the Licensing

Authority a wider discretion in determining whether to grant or refuse licences (including the statutory grounds for refusal), a power to set a limit on the number of premises that may be suitable for a particular locality, greater flexibility on applying licence conditions and the ability to accept representations from a wider scope of the community. Sex shop licences are only valid for up to a year at a time, meaning there is scope for regular review

- 9.3 Currently there are no sex shops or sex cinemas in the London Borough of Barnet and there have not had any application for premises licences for venues to provide lap dancing or similar entertainment
- 9.4 The Local Government (Miscellaneous Provisions) Act 1982 was amended through the police and crime act 2009 so as to create a new category of “sex establishment venue” (SEV) licence that would include lap table and pole dancing. This allowed local authorities to have more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area
- 9.5 Section 27 of the Policing and Crime Act came into effect on 6<sup>th</sup> April 2010. Following this date Local Authorities had 1 year to resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area. Where a local Authority does not make a resolution within the period of 1 year the Local Authority must, as soon as is reasonably practicable, consult local people about whether the local authority should make such a resolution.
- 9.6 Local authorities may now resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area. Although the London Borough of Barnet has already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions introduced by Section 27 Policing and Crime Act 2009 will have effect in this area.
- 9.7 In summary the amendments to Schedule 3 to the 1982 Act will, in particular:
- allow local people to oppose an application for a Sex Establishment licence if they have legitimate concerns that a Sexual Entertainment Venue (SEV) would be inappropriate given the character of an area, for example, if the area was primarily residential.
  - require licences to be renewed at least annually, at which point local people will have the opportunity to raise objections (if any) with their local authority.
  - allow a local authority to reject a licence application if they believe that to grant a licence for a SEV (including a lap dancing club) would be inappropriate given the character of a particular area.
  - allow a local authority to set a limit on the number of SEVs that they think is appropriate for a particular area.
  - allow a local authority to impose a wider range of conditions or to refuse an application on wider grounds than they are currently able to under the Licensing Act 2003.



- 9.8 However, although the legislation gives more control on the granting and refusing of a licence it is very important to note that simply by adopting Section 27, every premises within the borough will be granted the automatic right to provide 'relevant entertainment' for up to 24 hours, on up to 11 separate occasions a year without the need for any licence or authorisation under the Local Government (Miscellaneous Provisions) Act 1982. Premises would however require an authorisation under the Licensing Act 2003.
- 9.9 'Relevant entertainment' is:  
"any live performance or live display of nudity which is of such a nature that, *ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).*"
- 9.10 Unlike the Licensing Act 2003, there is no prescribed application procedure for sex establishments and sex entertainment venues other than advertising the application in a local newspaper, copying the application to the Chief Officer of police within 7 days, and displaying a site notice for 21 days from submitting the application to the council.
- 9.11 Objections may be accepted within 28 days on relevant grounds (purely moral objections cannot be taken into account). Objections will be considered by the Regulatory and Appeals Committee.
- 9.12 SEV licences may be granted for a period of up to one year and renewal procedures are on the same basis as for the grant of a licence.
- 9.13 The Licensing Authority may impose reasonably necessary and proportionate conditions on the new SEV licences. Standard conditions will form part of the policy for dealing with SEVs.
- 9.14 Appeals against a refusal to grant a licence or against the imposition of licence conditions are made to the magistrates' court. There is no right of appeal where the refusal is based on the character of the locality at the time the application is made or the layout, character or condition of the proposed premises, other than by way of judicial review if the decision is made without regard to the normal principles of administrative decision making.
- 9.15 Appendix B shows the proposed consultation document. The consultation will take place during the next 12 weeks, in accordance with best practice.
- 9.16 The 2009 Act is not prescriptive about how local authorities should consult with local people in order to comply with this duty.

It is therefore proposed that copies of the consultations will be sent to

- The Chief Officer of Police
- The Fire Authority
- Environmental Health
- Trading Standards
- Elected Members
- Safeguarding Children Board

The consultation document will also be placed on the London Borough of Barnet's website.

- 9.17 Following the completion of the public consultation, a further report will be brought before committee detailing the response to the consultation. Members will then need to consider whether they wish to recommend adoption of section 27 and, if they do, will need to recommend a date for the provisions to come into force taking account of the statutory advertising process. This will then need to be approved by full council.

## **10. LIST OF BACKGROUND PAPERS**

- 10.1 Sexual Entertainment Venues, Guidance for England and Wales  
Home Office – March 2010

# Appendix 1 – proposed consultation document

## Sexual Entertainment Venues

### Consultation Document

#### Introduction

Following a consultation exercise, which highlighted concerns that existing legislation did not give communities sufficient powers to control Lap dancing clubs and similar premises. The Government introduced section 27 of the Policing and Crime Act 2009, which reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

These new powers are not mandatory and only apply where they have been adopted by the Local Authority.

If adopted the new provisions will allow an authority to consider a wider range of matters than currently permitted under the four Licensing objectives of the Licensing Act 2003. The provision of other forms of Licensable activities, such as the sale of alcohol, late night refreshment and regulated entertainment at such premises will still be regulated under the Licensing Act 2003.

The London Borough of Barnet has previously adopted the provisions of schedule 3 of the Local Government (Miscellaneous provisions) Act 1982 for the control of Sex Establishments, such as Sex Shops.

Now the London Borough of Barnet must decide whether it wishes to adopt the additional Sexual Entertainment venue provisions.

#### Definitions

A sexual entertainment venue is defined as *“any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.”*

The meaning of ‘relevant entertainment’ is *“any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”* An audience can consist of just one person (e.g. where the entertainment takes place in private booths).

## **Current Position**

Currently there are no premises offering this type of entertainment within the London Borough of Barnet.

Should an application be received for a premises licence to provide lap dancing and similar entertainment representations could only be accepted based on the four licensing objectives, namely:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance
- The protection of children from harm.

As a result, the licensing department can not consider any objections made by local people and businesses that are based on matters outside the scope of the four objectives noted above, for example, such as whether a lap dancing club would be appropriate given the character and locality of the area in which it is proposed to be situated.

## **Adopting section 27 of the Policing and Crime Act 2009**

If adopted the amendments will, in particular:

- allow local people to oppose an application for a Sex Establishment licence if they have legitimate concerns that a Sexual Entertainment Venue (SEV) would be inappropriate given the character of an area, for example, if the area was primarily residential.
- require licences to be renewed at least annually, at which point local people will have the opportunity to raise objections (if any) with their local authority.
- allow a local authority to reject a licence application if they believe that to grant a licence for a SEV (including a lap dancing club) would be inappropriate given the character of a particular area.
- allow a local authority to set a limit on the number of SEVs that they think is appropriate for a particular area.
- allow a local authority to impose a wider range of conditions or to refuse an application on wider grounds than they are currently able to under the Licensing Act 2003.

However, although the legislation gives more control on the granting and refusing of a licence it is very important to note that simply by adopting Section 27, every premises within the borough will be granted the automatic right to provide 'relevant entertainment' for up to 24 hours, on up to 11 separate occasions a year without the need for any licence or authorisation under the Local Government (Miscellaneous Provisions) Act 1982. Premises would however require an authorisation under the Licensing Act 2003.

Although a premises can currently apply for an authorisation to hold such entertainment under a temporary event notice and only the police or the noise nuisance team could object and only in relation to one of the four licensing objectives. Furthermore currently premises can hold up to 12 such temporary events lasting for up to 168 hours.

### **Consultation**

The London Borough of Barnet is required to consult local people before deciding whether or not to adopt the new powers.

This consultation is an opportunity for local residents, businesses and their representatives to formally comment on the proposal and provide feedback to the Authority.

The consultation commences on the 12<sup>th</sup> July 2012 and finishes on the 4<sup>th</sup> October 2012.

Further ,more detailed, information regarding the effect of the legislation can be found in the Home Office guidance titled "Sexual Entertainment Venues"

The council has identified people and organisations that may be interested in responding to this consultation. However, the council would welcome the views of any interested parties and recipients should feel free to draw the attention of this paper to others who might be interested in responding to the consultation.

In order to comment on the Proposal, respondents may first wish to refer to the guidance issued by the Home Office.

## **Responding to the Consultation**

When responding to this consultation please address the following questions:

- 1. Are you in favour of adoption of section 27 of the Policing and Crime Act 2009?**
- 2. Please give full reasons for your answer above.**

All consultation responses will be taken into account when the authority considers whether or not to adopt the new provisions. Unfortunately it will not be possible to reply in detail to each consultation response.

Please include in your response your name, address and contact telephone number. If you are responding on behalf of an organisation please give the name of the organisation along with details of whom it represents.

The consultation responses are likely to be made public. If you do not wish your identity to be divulged, please make this clear in your response.

Your response should be sent to:

**Trading Standards and Licensing Manager  
Licensing Department  
London Borough of Barnet  
North London Business Park  
Oakleigh Road South  
London  
N11 1NP**

**Or by e-mail to:**

**Licensingadmin@barnet.gov.uk**

**Thank you for taking time to respond to this consultation.**

If you require any further information regarding the consultation document, please contact the licensing department at the address above.

## AGENDA ITEM 8

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Meeting	Licensing Committee
Date	11 July 2012
<b>Subject</b>	<b>Licensing Authority – volumes of applications 2011-12</b>
Report of	Interim Director of Environment, Planning and Regeneration
Summary	This is a report on the volumes of applications that have been received into the Licensing Department in 2011-2012 as compared to 2010-2011

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Officer Contributors	Emma Phasey, Trading Standards and Licensing Manager
Status (public or exempt)	Public
Wards Affected	All
Key Decision	N/A
Reason for urgency / exemption from call-in	N/A
Function of	Council
Enclosures	Appendix 1 – Report on the work flows of the Licensing Authority.
Contact for Further Information:	Emma Phasey Trading Standards and Licensing Manager <a href="mailto:Emma.phasey@barnet.gov.uk">Emma.phasey@barnet.gov.uk</a>

## **1. RECOMMENDATIONS**

- 1.1 That the Licensing committee consider and note the following report on the volumes of work into the licensing department in relation to applications for 2011-2012.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Council decision of the 14/12/2010 to adopt the current Licensing Policy and the associated scheme of delegation.
- 2.2 Decision on 15 December 2009 by Council on recommendation of Licensing Committee, to adopt the current Gambling Policy and associated scheme of delegation.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 Timely legal and fair decisions support objectives contained within the Corporate Plan. In particular in relation to a “successful London suburb” by ensuring that only legal, well regulated licensable activity occurs within the borough.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 It is prudent to monitor performance to ensure that the Licensing function is delivered efficiently and effectively.
- 4.2 In particular it is important for the Licensing Authority to monitor the number of appeals made against decisions and the outcomes of these appeals. Low levels of appeals and instances of the Courts upholding the Licensing Authorities decisions are good indicators that the Licensing Authority is making made legal and fair decisions within statutory timescales

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The Council has a legal obligation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
- 5.2 When considering applications and representations, only issues provided for in the relevant legislation and associated Guidance, in addition to the licensing authority’s policy will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.
- 5.3 The community in Barnet has a richness of diversity with a broad range of cultural activities and entertainments. Applications will be dealt with in accordance with the Act. Guidance will only be issued and conditions will



only be imposed that are reasonable, proportionate and strictly necessary for the promotion of the four licensing objectives.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

6.1 Administration and enforcement of the relevant Acts are carried out by the Licensing team, together with support from Legal Services and from Governance Services, when arranging and co-ordinating arrangements for hearings where there are objections. The costs associated with this work are met within existing budgets.

## **7. LEGAL ISSUES**

7.1 The Licensing Act 2003 placed the responsibility for making local licensing policies and considering applications for licenses on local authorities acting as licensing authorities. The Gambling Act 2005 performed a similar role in respect of gambling premises.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

8.1 The Council's constitution Part 3 "Responsibility for Functions" Section 2 "Responsibility for Council Functions" delegates to the Licensing Committee:

- All functions under the Licensing Act 2003 and the Gambling Act 2005 associated Regulations, not otherwise delegated to the Licensing Sub-Committee.
- Agreeing increases to fees and charges for licence applications under the Gambling Act 2005.
- Applications and appeals and revocations relating to Sex Shops, Sex Cinemas and Sex Encounter Establishments
- Applications, appeals and revocations relating to Special Treatment Licenses.
- Application for film classification for films shown within the Borough
- Gaming, entertainment, food and miscellaneous licensing including functions relating to:
  - street trading including the designation of permanent pitches for street trading
  - Safety at sports ground certification.

## **9. BACKGROUND INFORMATION**

9.1 The Licensing Act 2003 makes the Council the Licensing Authority for licensing the sale of alcohol, the provision of regulated entertainment and late night refreshment in pubs, off-licences, clubs and restaurants in the Borough. There are approximately 1,000 licensed premises within the London Borough of Barnet.

- 9.2 The Gambling Act 2005 makes the Council the licensing authority for gambling premises in the Borough. The Council has a number of important regulatory functions in relation to gambling. These include licensing premises, regulating gaming and gaming machines in clubs, granting permits to what the Guidance refers to as 'family entertainment centres' for the use of certain lower stake gaming machines, regulating gaming and gaming machines on alcohol licensed premises, granting permits for prize gaming, and registering small society lotteries.
- 9.4 There are currently 72 gambling premise licences in the borough. There are approximately 34 permits and 75 Small Society Lottery registrations
- 9.5 Attached at Appendix 1 is information on the volumes of work undertaken in relation to applications by the Licensing Authority in 2011-2012.
- 9.6 A comparison of the work flow in 2010-2011 and 2011-2012 shows that the volume of work remains fairly static.
- 9.7 There has been a slight increase in the number of Temporary Event Notices. This has been a trend over the past few years and is likely a result of more premises becoming aware of the existence of TENs and the fact they can be used to cut "red tape" for one off activities. They are also often used by premises to "test the water" in relation to an extension in hours/activities or by premises to authorise activities pending the grant of a licence.
- 9.8 The data indicates that there has been a slight decrease in the number of sub committees held and also an increase in the number of applications withdrawn prior to a hearing. This is a reflection of the work that the Licensing team and the responsible authorities have been actively undertaking to resolve many of the issues at officer level prior to the sub committee hearing. This partnership working will continue into 2012-2013.
- 9.9 In relation to appeals of decisions there was a slight decrease in the number of requested appeals in 2011-2012. It is important to note that in relation to all appeals during the past 2 years the court has either upheld the licensing sub committee decision or accepted the settlement agreed by the Licensing Authority prior to the court hearing.

## **Appendix 1**

Report on the work flows of the Licensing Authority.

### **Licensing Department**

The licensing team received the following applications in the past 2 years:

#### **Premises licences (Licensing Act):**

	<b>Apr 10 - Mar 11</b>	<b>Apr 11 - Mar 12</b>
NEW PREMISES LICENCES	53	54
VARIATIONS TO PREMISES LICENCE	16	14
TRANSFER OF PREMISES LICENCE	69	59
DPS VARIATION	148	154
MINOR VARIATION	19	16
DUPLICATE/CHANGE OF DETAILS	61	50
NOTIFICATION OF INTEREST	7	6
REVIEW	5	3

#### **Temporary Events:**

	<b>Apr 10 - Mar 11</b>	<b>Apr 11 - Mar 12</b>
TENS	440	500

#### **Personal Licences (Licensing Act)**

	<b>Apr 10 - Mar 11</b>	<b>Apr 11 - Mar 12</b>
NEW PERSONAL LICENCES	286	263
CHANGE ADDRESS/DETAILS PERSONAL LICENCE	56	51
DUPLICATE	22	20

#### **Premises Licences (Gambling Act):**

	<b>Apr 10 - Mar 11</b>	<b>Apr 11 - Mar 12</b>
NEW PREMISES LICENCE	1	4
VARIATION	1	4
TRANSFER	5	3
DUPLICATION	4	0
REINSTATEMENT	1	0
PROVISIONAL STATEMENTS	0	0
CHANGE ADDRESS/DETAILS	0	0

#### **Permits (Gambling Act):**

	<b>Apr 10 - Mar 11</b>	<b>Apr 11 - Mar 12</b>
NOTIFICATION OF TWO MACHINES(LICENSED PREMISES)	11	5
PERMIT NEW	7	1
PERMIT VARIATION	1	0
PERMIT – CHANGE OF DETAILS	1	0
PERMIT TRANSFER	1	0
LOTTERIES NEW	12	16

## Street Trading

	Apr 10 - Mar 11	Apr 11 - Mar 12
TEMPORARY STREET TRADING	65	173
INVALID/PENDING STREET TRADING LICENCES	25	20
TEMPORARY MARKETS	1	7
PERMANANT PITCH LICENCES	6	5

## Licensing Sub Committee

In 2011-12 the following sub committee hearings have taken place.

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR
LICENSING ACT HEARINGS	3	0	1	0	0	0	2	0	1	2	2	0
LICENSING ACT REVIEW HEARINGS	1	0	0	1	0	0	1	0	0	0	0	0
GAMBLING ACT HEARINGS	0	0	0	0	0	0	0	0	0	0	0	0
GAMBLING ACT REVIEW HEARINGS	0	0	0	0	0	0	0	0	0	0	0	0

In 2010/11 the following sub committee hearings have taken place.

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR
LICENSING ACT HEARINGS	3	1	1	1	1	0	1	0	4	2	0	1
LICENSING ACT REVIEW HEARINGS	0	0	0	0	1	0	0	0	1	1	0	2
GAMBLING ACT HEARINGS	0	0	0	0	0	0	0	0	0	0	0	0
GAMBLING ACT REVIEW HEARINGS	0	0	0	0	0	0	0	0	0	0	0	0

	Apr 10 - Mar 11	Apr 11 - Mar 12
LA03 - Premises – sub committee hearings	15	10
LA03 - TENs – sub committee hearings	0	1
Hearing cancelled - inquorate	0	1
Hearing cancelled - adjourned	1	0
Hearing cancelled – application withdrawn	1	4
Reviews	4	3
Appeals	2	1
Appeal result – upheld Committee decision	1	1
Appeal result – upheld Licensing authority settlement	1	0

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Meeting	Licensing Committee
Date	11 July 2012
<b>Subject</b>	<b>Delegation of Powers – Licensing Act 2003</b>
Report of	Interim Director for Environment, Planning and Regeneration
Summary	To seek to approve and adopt the delegation to officers for decisions in respect of Minor Variations and also to designate an officer to act on the Council's behalf as a responsible authority under the Licensing Act 2003, as amended by the Police Reform and Social Responsibility Act 2011

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Officer Contributors	Emma Phasey, Trading Standards and Licensing Manager
Status (public or exempt)	Public
Wards Affected	All wards
Key Decision	N/A
Reason for urgency / exemption from call-in	N/A
Function of	Council
Enclosures	Appendix A - Police Reform and Social Responsibility Act 2011 Appendix B – Table of Delegations
Contact for Further Information:	Emma Phasey, Trading Standards and Licensing Manager, Emma.Phasey@barnet.gov.uk

## **1. RECOMMENDATIONS**

- 1.1 That the committee delegate authority to the Senior Licensing Officer to act on the Council's behalf as a responsible authority under the Licensing Act 2003 (as amended).**
- 1.2 That the Committee approve and adopt the delegation to officers for decisions in respect of Minor Variations as provided in section 41A – 41D of the Licensing Act 2003**
- 1.3 That the Committee approve and adopt the revised scheme of delegation in appendix B.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Council decision of the 14/12/2010 to adopt the current Licensing Policy and the scheme of delegation that was attached to it.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The objectives of the policy as determined by the Licensing Act 2003 are the prevention of crime and disorder, public nuisance, protecting children from harm and public safety, these contribute to the corporate priority of 'A successful London suburb' as they are meeting the strategic objective to "ensure that our town centres are vibrant places where business can thrive" thereby helping ensure that the Borough is a prosperous place where people want to live and ensuring it remains clean and safe.
- 3.2 The delegation of these powers will help support objectives contained within the corporate plan in relation to a "successful London suburb" in particular ensuring we maintain an efficient council with services designed to meet the changing needs of residents

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Failure to review and adopt the delegations would mean that these roles would have to be undertaken by the committee rather than the licensing department which would mean the Council, as the licensing authority, would find it exceptionally difficult to perform these licensing functions as each minor variation application would need a full licensing sub committee to determine the decision. Failure to adopt correctly the responsible authority delegation could lead to a conflict of interest between the decision maker and the responsible authority allowing for potential legal challenge.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 All decisions will be taken objectively and each application considered on its merits. All decisions must be taken in line with the Licensing Act 2003, the

statutory guidance and the London Borough of Barnet's licensing policy. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 There are no specific financial implications. There are no adverse costs associated with adoption of the scheme of delegation. However not to agree to a scheme of delegation would create great difficulties for the licensing authority to carry out its functions within statutory time periods and thereby run the risk of appeals to the magistrate's court and possible cost orders.

## **7. LEGAL ISSUES**

- 7.1 All local authorities need to put in place appropriate arrangements to enable them to fulfil their obligations under the Licensing Act 2003 (as amended) as a responsible authority. Ensuring an appropriate separation of responsibilities between the officer advising the licensing committee or sub-committee in its capacity as the licensing authority, and the officer acting for the Council as the responsible authority, decisions taken by the Licensing and Appeals Sub-Committee should not be open to challenge on grounds of there having been a conflict of interest.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

- 8.1 Constitution Part 3, Section 2, details the functions of the Licensing Committee including "All functions under the Licensing Act 2003"

## **9. BACKGROUND INFORMATION**

### **Licensing as a responsible authority**

- 9.1 There have been a number of changes to licensing legislation introduced by the Police Reform and Social Responsibility Act 2011. One of the changes, which has now taken effect, was to give licensing authorities greater powers and flexibility by making them responsible authorities in their own right under the Licensing Act 2003.
- 9.2 As a responsible authority the Council, as the licensing authority, may now submit representations and also seek a review of an existing licence without having to wait for the police or another responsible authority to make representations.
- 9.3 To enable the Council to fulfil this role as a responsible authority, the Committee is asked to delegate authority to an officer to act on its behalf.
- 9.4 The Committee should note that guidance issued by the Home Office states that licensing authorities are not expected to act as responsible authorities on behalf of other responsible authorities or other parties (for example, local

residents, local councillors or community groups) Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so.

- 9.5 However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority. The preliminary guidance issued by the Home Office on the Licensing Act 2003 ( as amended ) in so far as it refers to licensing authorities acting as responsible authorities is attached to this report as appendix A.
- 9.6 To ensure procedural fairness and eliminate conflicts of interest, the Council needs to ensure there is a separation of responsibilities within the Authority. It is therefore suggested the clearest way to separate the responsibilities is to delegate the power of responsible authority to the Senior Licensing Officer.
- 9.7 Currently all applications come into the department to be allocated by the Senior Licensing Officer. The senior officer will, upon receipt and prior to commencing any work on an application, assess as to whether they may need to utilise their responsible authority function. If they believe they will need to they will pass the unallocated application to the Trading Standards and Licensing Manager to allocate the application to another officer within the department. The Trading Standards and Licensing Manager will then act as line manager to this officer in respect of this application for the duration of the application process, thus maintaining a clear separation of responsibility and avoiding a conflict of interest.

#### **Minor variation**

- 9.8 The Licensing Act 2003 was amended to include a new Minor Variations procedure. This was created to speed up uncontested variations and to reduce costs to applicants and Licensing Authorities. A minor variation can only be used where the variations proposed would not have an adverse effect upon the promotion of the four licensing objectives set out in the 2003 Act (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm). The amendments are inserted into the Licensing Act 2003, as sections 41A, 41B, 41C and 41D.
- 9.9 The Minor Variation procedure requires that applications are made to the licensing authority on a prescribed Minor Variations form with a fee of £89. This is less than the cost of a full variation.
- 9.10 The application must be displayed by the applicant at the premises but the application does not need to be advertised in a local newspaper. The application is only served on the Licensing Authority. Responsible authorities are only involved when the Licensing Officer feels it is appropriate.
- 9.11 Interested Parties i.e. local residents/businesses can make representations based on the licensing objectives. But representations from Interested Parties to Minor Variations do not trigger the Licensing Authority holding a hearing, instead mean the Licensing Officer must take any representations into account when arriving at their decision. The applicant can propose voluntary conditions in relation to the representation.



- 9.12 A minor variation application must be rejected, which:
- substantially varies the premises layout,
  - changes the designated premises supervisor,
  - adds the supply of alcohol as an activity authorised by the licence,
  - authorises the supply of alcohol at any time between 11pm and 7am
  - increases the amount of time during which alcohol may be sold by retail or supplied, or
  - allows supply of alcohol to be made or authorised by a management committee alcohol from community premises instead of a designated premises supervisor.

Should at any time in the minor variation process an officer believe that the decision to grant will have an adverse effect on the licensing objectives then the officer can refuse the application on this grounds. However the applicant can then apply for a full variation and the £89 fee will be deducted from the cost of the full variation. This allows an officer to defer the decision making in these applications to the sub committee.

- 9.13 Effectively, the Government has passed the ability to vary Premises Licences in limited circumstances to Licensing Officers, provided the variation will not adversely effect the promotion of any of the licensing objectives. If the variation will have an adverse effect on the promotion of any of the licensing objectives, the Officer must refuse the application.
- 9.14 In accordance with section 7(1) of the Act, the functions of the Licensing Authority are to be taken and carried out by its Licensing Committee. The Licensing Committee may delegate these functions to sub-committees or in appropriate cases, to officers supporting the licensing authority (section 10 of the Act). The Licensing Authority (the Council) cannot make this delegation on behalf of the Licensing Committee. The Licensing Committee must formally delegate its powers to sub-committees or officers.
- 9.14 Under the current scheme of delegations in respect of the Licensing Act 2003 officers have no authority to refuse an application and when representations have been received applications are determined by the Licensing Sub Committee. Government recommends that decisions on minor variations should be delegated to licensing officers.. Members are requested therefore to consider delegating the power to determine such applications to the Licensing team and amending the Delegation of Licensing Function.
- 9.15 In the Guidance, the Secretary of State recommended a model scheme of delegation that this Authority has adopted in its current Statement of Licensing Policy. Appendix B shows the current scheme of delegation with the proposed delegations (in red) that will need to be added to the scheme of delegation.

## **APPENDIX A**

### **1. Police Reform and Social Responsibility Act 2011**

#### **Licensing authorities as responsible authorities (Home office Guidance)**

**Preliminary guidance: April 2012**

#### **Introduction**

The content of this document is provisional, and its publication at this stage is intended to assist licensing authorities in their preparation for changes to the Licensing Act 2003 being introduced by Part 2 of the Police and Social Responsibility Act 2011. The content of this document broadly reflects, but is not the statutory guidance (or a revised version of it) issued by the Secretary of State under section 182 of the Licensing Act 2003; as such, there should be no reliance upon it for any purpose. Revised statutory guidance will be laid in Parliament and available on the Home Office website on 25 April 2012, the date on it will come into force.

#### **What is the policy aim?**

The Police Reform and Social Responsibility Act 2011 added licensing authorities to the list of responsible authorities under the Licensing Act 2003. The aim of this policy is to ensure that licensing authorities are better able to respond quickly to the concerns of local residents and businesses by taking actions they consider appropriate to tackle irresponsible premises without having to wait for representations from other responsible authorities.

#### **What are the key changes being made to the Licensing Act 2003?**

Following the commencement of this measure, licensing authorities will be empowered to fulfil the same functions as other responsible authorities under the Licensing Act 2003 including:

- Making relevant representations relating to new licence applications and licence variations
- Requesting that the licensing authority review an existing licence
- Making representations regarding the potential cumulative impact of an application in an area where there is a special policy in place regarding cumulative impact.

## **2. How should licensing authorities prepare for these changes?**

From 25 April 2012, licensing authorities will be included in the list of responsible authorities under the Licensing Act 2003. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes.

It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these bodies have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.

It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.

The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other responsible authorities. For example, the licensing authority may (in a case where it has applied a cumulative impact policy) consider that granting a new licence application will add to the cumulative impact of licensed premises in its area and therefore decide to make representations to that effect, without waiting for any other person to do so.

In cases where a licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or sub committee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority. In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different individual to the officer who is acting for the responsible authority.

The officer acting for responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing. An *illustration* of how this delegation of responsibilities may occur is provided below. This is an example of how the process could work, but it is for the licensing authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities. This approach may not be appropriate for all licensing authorities and many authorities may already have processes in place to effectively achieve the same outcome.

*Demonstrating separation of roles - illustration:*

- At the outset, the licensing authority may decide to allocate the function of responsible authority to its corporate director, for example. The corporate director delegates this function to the licensing manager who allocates a principal licensing officer within the authority to exercise the function of responsible authority. The principal licensing officer is not involved in the application process but sets up a separate file to consider the application for the authority in its capacity as responsible authority, engaging with other responsible authorities where appropriate and determining whether the authority acting as a responsible authority wants to make a representation.
- A separate licensing officer will receive and process applications. Communication between the officer exercising the function of responsible authority and the officer processing the application should remain formal and consistent with how communications would be with other responsible authorities. At the hearing, to ensure that the public perception of a, and an actual, separation of roles, the officer acting as the responsible authority should be seated with the other responsible authorities.

For smaller licensing authorities, where such a separation of responsibilities is more difficult, the licensing authority may wish to involve officials from outside the licensing department to ensure a separation of responsibilities. However, these officials should still be officials employed by the authority.

**How should businesses prepare for these changes?**

Businesses should be aware of these forthcoming changes but do not need to do anything to prepare.

**How do these changes affect other parties?**

These changes should not affect other parties who will continue to fulfil their functions under the 2003 Act in the normal way. It is not expected that licensing authorities will normally act as responsible authorities upon request on behalf of other parties, such as local residents or community groups. These parties will be entitled to make relevant representations to the licensing authority in their own right if they have grounds to do so and it is reasonable that the licensing authority will expect these parties to make representations themselves where they are able to.

## APPENDIX B

### TABLE OF DELEGATED FUNCTIONS

<b>Matter to be dealt with</b>	<b>Licensing Committee</b>	<b>Licensing Sub-Committee</b>	<b>Officers</b>
Application for a personal licence		If a Police objection	
Application for a personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation made	If no representations made
Application for a provisional statement		If a representation made	If no representations made
Application to vary premises licence/club premises certificate		If a representation made	If no representations made
Application to vary designated premises supervisor		If a Police objection	All other cases
Request to be removed designated premises supervisor		All cases	
Application for transfer of premises licence		If a Police Objection	All other cases
Application for Interim Authorities		If a Police Objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc			All cases

Decision to object when a local authority is a consultee and not a relevant authority considering an application		All cases	
Determination of a police representation to a temporary event notice		All cases	
Minor Variation (section 41A – 41D Licensing Act 2003)			All cases – Officers may consult with Responsible authorities
Fulfil the function of the responsible authority for the Licensing Authority under the Licensing Act 2003			All cases