

Committee: Licensing Committee

Date: 25th October 2012

Wards: All

Agenda item: 4

Subject: Gambling Policy Review & Changes to the Licensing Act/Music Act 2012

Lead officer: Marc Dubet, EH (Pollution & Licensing) Manager

Lead member: Cllr Nick Draper, Cabinet Member for Community & Culture

Forward Plan reference number: 1209

Contact officer: Marc Dubet, EH (Pollution & Licensing) Manager, 020 8545 3955, licensing@merton.gov.uk

Recommendations:

- A. The committee approve the recommended amendments to the Gambling Policy and that it be placed before Full Council for adoption on 21 November 2012.
- B. The committee agree the renewal of the policy that no casinos be permitted in the London Borough of Merton and that it be placed before Full Council for adoption on 21 November 2012.
- C. The committee to note changes to the Licensing Act and Music Act.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. There is a statutory requirement under the Gambling Act 2005 that the council review its statement of gambling policy every 3 years

2 DETAILS

- 2.1. The current Gambling Policy, which was adopted by the council on 31 January 2010, is due to expire on 31 January 2013.
- 2.2. A full public consultation of the policy was undertaken between 16 July and 15 September 2012. All statutory bodies were consulted, all resident associations, councillors and the consultation was advertised on the Councils website.
- 2.3. There were 4 responses to the consultation, a summary of the responses are as follows, all are attached as Appendix 1:
 - Neighbourhood Watch coordinator in Mitcham raised concerns over the proliferations of betting shops, people outside drinking and smoking, late opening hours and recommended that no more planning applications should be given for these type of premises.
 - Councillor Simpson, Conservative Spokesman on Crime and Disorder fully supported the current policy particularly in relation to casino's and the general direction of travel of the current Policy. Strong concerns of

the proliferation of betting shops across the borough and has recommended that the local authority have a planning policy to require betting shops to apply for planning permission for change of use.

- A resident in Denham Crescent raised concerns over the proliferation of betting shops and that betting shops are too close to shops, which sell alcohol. Also concerned about people smoking / drinking outside and that betting shops should provide toilets.
- A Cricket Green resident, Mitcham, raised concern over the proliferation of betting shops.

2.4 Under the Gambling Act and statutory guidance & draft policy there are no powers to restrict the number of betting shops or to have cumulative impact areas, like there is in provisions under the Licensing Act. Furthermore, under the current national planning legislation, premises such as shops or financial and professional services business are permitted to change to a betting shop, without requiring formal planning permission for the change of use.

2.5 Betting shops are strictly regulated; the operator requires an operator's licence from the Gambling Commission and a licence from the local authority for the premises. There are mandatory conditions, which include no under 18's to be allowed in betting shops and no alcohol to be consumed on the premises.

2.6 Smoking outside these premises is a consequence of the smoking ban legislation. Problems with people, who drink outside these premises and cause disorder, are matters, which are dealt with by the Police. If there are crime and disorder issues directly associated with certain premises, the Police can call for a review of the licence. To date, no reviews of betting shops premises licences in the borough have been taken by the Police.

2.7 When the Gambling policy was adopted 3 years ago, members also adopted a resolution under S166 of the Act not to issue casino licences within Merton or to allow operators to make applications for premises licences for casinos.

2.8 It is recommended that this resolution be renewed and is reflected in para 4.5 of the policy.

2.9 No changes, apart from administrative ones have been made to the Gambling Policy. Councillor Simpson's recommendations for a change in planning policy have been referred to the Head of Planning and Public Protection Division for their consideration.

3 ALTERNATIVE OPTIONS

3.1. It is a statutory requirement to review this policy every 3 years and failure to do so will render the Council in breach of its statutory duty and any decisions made by a licensing sub-committee without a properly adopted policy would be unlawful.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. A full consultation of the existing policy was undertaken between 16 July and 15 September 2012.

5 TIMETABLE

- 5.1. 16 July – 15 September 2012 – Public consultation
- | | | |
|------------------|---|--|
| 25 October 2012 | - | Licensing Committee |
| 21 November 2012 | - | Full Council |
| 1 December 2012 | - | Proposed publication date |
| 4 January 2013 | - | Statutory requirement to publish policy
4 weeks before it comes into effect |
| 31 January 2013 | - | Deadline for Policy to come into force for a
further 3 years |

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The Proposed Policy can be met within the budget allocation for 2011/12 and subsequent years. The Services income streams being in relation to the consideration of applications for licences.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The Policy has been reviewed and approved by Legal Services. If the Policy is not adopted within the specified timescale, any decision made by a licensing sub-committee would be unlawful.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. These are statutory functions and are applied globally. An equalities impact assessment of the attached policy and other related functions of the Service are undertaken on a regular basis.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. The Service has a statutory duty to contribute to the reduction of crime and disorder in Merton under section 17 of the Crime and Disorder Act 1988. Furthermore the prevention of crime and disorder is also one of the objectives of the Council's statement of Gambling policy. In determining applications it will be the policy of the Service to consider the adequacy of measures proposed to deal with related crime and where appropriate it will attach conditions to permissions and licences to deter and prevent crime and disorder both inside and within the vicinity of the premises.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. All risk and health and safety implications have been considered in arriving at the final package of Service Plan measures. Risk ratings are determined for specific activities, including the delivery of outcomes, measures and targets in the Plan, and are included within the Councils corporate risk management strategy. Identified risks and actions to minimise them are assessed on an annual basis.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- **Appendix 1** - Replies to the public consultation

- **Appendix 2** - Amended Gambling Policy for approval
- **Appendix 3** Changes to the Licensing Act and Music Act

12 BACKGROUND PAPERS

12.1. The following documents have been relied upon in compiling this report and the policy but do not form part of this report

- The Gambling Act 2005 (As amended)
- The Gambling Commissions Guidance to Licensing Authorities 4th Edition (September 2012)

From: Licensing
Sent: 16 July 2012 08:05
To: Elizabeth Macdonald
Subject: FW: Gambling

-----Original Message-----

From:
Sent: 14 July 2012 10:02
To: Licensing
Cc: Councillor Agathe Alwayina; [redacted] and David Spicer (E-mail); Duncan Davidson (Duncan Davidson); Councillor Geraldine Stamford; Jan Locker (Jan Locker); Kevin Wilton (Kevin Wilton); Martin Hyde (Martin Hyde); Mike Smith (E-mail); Steve [redacted] (E-mail)
Subject: Gambling

Hi

My concerns are that due to the recent proliferation of Betting Shops on the Fair Green there has been a marked increase in people (usually men) hanging around. Generally they are outside of the Betting Shops because they cannot smoke inside. They are also invariably drinking alcohol. There can be as many as a dozen of them on the pavement and they are unlikely to move for pedestrians to walk by. Their behaviour is low level anti-social on most occasions but they can become loud, aggressive and argumentative. Spitting and street urination are common.

Because gambling is an 'all day' event now. The children at our local Primary schools are forced to witness this behaviour to and from school. Frankly this presents an appalling role model for them.

Additionally, one of the shops is open until very late in the evening - 10:00/11:00pm and older people are now very concerned about their safety as they walk home.

I believe that no more Planning Applications should be agreed for Betting Shops in the Town Centre and indeed, consideration should be given to the withdrawal of licences where there are problems - I have seen police cars sitting outside them on many occasions.

Montrose Gardens

Neighbourhood Watch Co-ordinator.

From: Licensing
Sent: 14 September 2012 08:19
To: Elizabeth Macdonald
Subject: FW: Gambling Policy Review - Conservative Group Submission

-----Original Message-----

From: Marc Dubet
Sent: 13 September 2012 17:14
To: Licensing
Subject: FW: Gambling Policy Review - Conservative Group Submission

Please register as rep to our Gambling policy review.

Thanks

Marc

-----Original Message-----

From: Councillor David Simpson
Sent: 13 September 2012 15:01
To: Marc Dubet
Cc: Councillor Deborah Shears; Tom Goose
Subject: Gambling Policy Review - Conservative Group Submission

Dear Marc

I would be grateful if you would accept the following submission from the Conservative Councillors Group LBM in relation to the above which closes on 15 September:-

"The Conservative Group recognises the statutory limitations of this particular review that is required to be conducted every 3 years.

We are fully supportive of the current policy particularly in relation to Casino's and the general direction of travel of the current policy.

We do however have very strong concerns about the proliferation of Betting Shops that has taken place in recent years in High Street locations right across the borough whether in Mitcham, Morden, Colliers Wood, Raynes Park or Wimbledon. To that end we would encourage the administration to seek to urgently change the local planning law such that it becomes necessary for Betting Shop owners to have to seek planning permission for change of use of any shop into a Betting Shop which currently they do not have to do"

Many thanks

David

Cllr David Simpson
Conservative Spokesman on Crime and Disorder

From: Licensing
Sent: 16 July 2012 08:06
To: Elizabeth Macdonald
Subject: FW: gambling policy

-----Original Message-----

From: i
Sent: 15 July 2012 08:44
To: Licensing
Cc:
Subject: gambling policy

Dear Sir & Madam,

Having lived in Cricket Green for more than 10 years, I am very sad to see our local shops are closing down but more and more betting shops or pawn shops are opening up- a sign of recession? The council has a duty to protect the town centre from degenerating into a crime spot and becoming an no-go area at night.

From: Licensing
Sent: 17 July 2012 08:15
To: Elizabeth Macdonald
Subject: FW: Gaming Policy Review Consultation

-----Original Message-----

From: ALAN
Sent: 16 July 2012 16:09
To: Licensing
Subject: Gaming Policy Review Consultation

To Whom it may concern.

My details are as follows:-

Denham Crecent
Mitcham

With reference to the Consultation Review of the Gaming Policy I would like to make the following comments.

I doubt if many or any actual contravene the current Gaming Policy, but having said that, I have lived in Mitcham and in particular the centre area for over 40 years and during that time have seen a decline in behaviour, attitude of people and cleanliness in this area.

Much of these issues are due to the fact that Betting Shops are far to frequent and and are in close location to fas too many 24/7 shops that sell alcohol.

It can be seen that many people who use the betting shops are also using the 24/7 shops for the purchase of alcohol as well for.

When not actually in the betting shops some are often outside them drinking and smoking for all to see, especially young children which can only be detrimental to the way they view some adults and is therefore not a good roll model for them.

The other problem that arises from this all is the fact that because Mitcham has no public conveniences, these people start to use side roads and alleys to urinate in and have sometimes been seen to actually do it almost in full public view that can be seen by not only children, but by women as well.

So just because someone applies for a betting shop licence and ticks all th e right boxes doesn't make it okay.

These things need to be looked at holistically within the immediate vacinity with certain criteria in mind.

1. If we already have a certain number of betting shops , why do we still need more.
2. Looked at in close relation to the other 24/7 outlets, should we be

encouraging the sort of people that use both into such a close area.

3. Perhaps both sort of outlets, betting shops and 24/7 shops need to be curtailed down to a reasonable number.

4. Also, perhaps betting shops should be made to have toilets within there premises to prevent the users from going outside to relieve themselves.

If while reviewing this gambling policy, the above holistic concept could be encompassed, then it would improve the borough considerably by taking some of the problems of the street and local areas, protect our children from what can at present be seen and I am sure would contribute to a cleaner area generally.

Regards

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London Borough of Merton

Statement of Gambling Policy

DRAFT JANUARY 2013

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1 STATEMENT OF LICENSING POLICY

Comment [gb1]: The Objectives should be placed in a section explaining their influence on decision making. See 1.6.

1.1 Introduction

London Borough Of Merton is the Licensing Authority under the Gambling Act 2005 and is responsible for granting premises licences in the Borough in respect of: -

- ❖ Casino premises;
- ❖ Bingo premises;
- ❖ Betting premises, including tracks;
- ❖ Adult Gaming Centres;
- ❖ Family Entertainment Centres.
- ❖ Club Gaming Permits
- ❖ Club Machine Permits
- ❖ Small Lotteries
- ❖ Temporary Use Notices
- ❖ Occasional Permissions

The Gambling Act 2005 requires the Licensing Authority to prepare and publish a “Statement of Licensing Policy” that sets out the policies that the Licensing Authority will generally apply to promote the Licensing Objectives when making decisions on applications made under the Act.

This “Statement of Licensing Policy” has been adopted having regard to the provisions of the revised Guidance issued by the Gambling Commission, responses from consultees and the licensing objectives of the Gambling Act 2005.

The formal Statement of Licensing Policy is available on Merton’s website at www.merton.gov.uk/licensing/Gambling

This policy came into effect on 31st January 2013 and has been reviewed in accordance with statute. The Policy will be reviewed as necessary, and at least every three years from the date of its adoption.

A consultation on this policy took place between 16th July 2012 to the 16th September 2012

The London Borough of Merton will aim to permit the use of premises for gambling as set out in the Act.

1.2 The London Borough of Merton

The London Borough of Merton is one of the metropolitan boroughs located in South West London and is predominantly urban in character. The Borough is composed principally of 5 town centres rather than a single, dominant centre and these form the basis of the Council’s community focus. The town centres are Wimbledon, Raynes Park, Mitcham, Colliers Wood and Morden.

At the last count the population of the borough was just under 200,000. As far as the economy is concerned, Merton is still heavily reliant on leisure and service industries, which form almost 60% of total employment within the borough.

Merton is also densely populated. In contrast, the Borough has one of the highest proportions of parks and open spaces within the London area, some one third of them being green field sites.

1.3 Glossary of Terms

Within this Statement of Policy, the following words and terms are defined as stated:

Licensing Objectives:	As defined in section 1.6 below
Licensing Authority:	London Borough Of Merton
Licences:	As stated in section 1.5 below
Applications:	Applications for licences and permits as defined in section 1.5 & 1.6 below
Notifications:	Means notification of temporary and occasional use notices
Act:	The Gambling Act 2005 (as amended)
Regulations:	Regulations made under the Gambling Act 2005
Premises:	Any place, including a vehicle, vessel or moveable structure
Code of Practice:	Means any relevant code of practice made under section 24 of the Gambling Act 2005
Mandatory Condition:	Means a specified condition provided by regulations to be attached to a licence
Default Condition:	Means a specified condition provided by regulations to be attached to a licence, unless excluded by the Council
Provisional Statement:	Means an application made prior to construction or extensive building work is undertaken to ascertain whether the grant of a licence is likely.
	For the purposes of this Act, the following are responsible authorities in relation to premises:
Responsible Authority:	1. The London Borough Of Merton
	2. The Gambling Commission

3. **Metropolitan Police at Wimbledon Police Station**
4. **Planning Department**
5. **Environmental Protection** (the authority which has functions in relation to pollution of the environment or harm to human health)
6. **Merton Local Safeguarding Children Board (LSCB) & LBM's Safeguarding Adults Service.**
7. **HM Customs and Excise**
8. **The London Fire and Emergency Planning Authority**
9. **Any other person prescribed in regulations made by the Secretary of State**

Interested Party:

For the purposes of this Act, a person is an interested party in relation to a premises licence if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, that person:

- a) **Lives sufficiently close to the premises to be likely to be affected by the authorised activities;**
- b) **Has business interests that might be affected by the authorised activities;**
- c) **Represents persons who satisfy a) or b) above.**

1.4 Types of Licence

This document sets out the policies that the Licensing Authority will apply when making decisions upon applications or notifications made for: -

1. Premises Licences;
2. Temporary Use Notices;
3. Permits as required under the Act;
4. Registrations as required under the Act.

1.5 Licensable Premises and Permits

This policy relates to all those licensable premises, notices, permits and registrations identified as falling within the provisions of the Act, namely: -

1. Casinos;
2. Bingo Premises;
3. Betting Premises;
4. Tracks;
5. Adult Gaming Centres;
6. Family Entertainment Centres;
7. Club Gaming Permits;
8. Prize Gaming Permits;
9. Occasional Use Notices
10. Temporary Use Notices;
11. Registration of small society lotteries.
12. Alcohol licensed premises

1.6 General Principles and Licensing Objectives

Section 153 of the Gambling Act 2005 governs how the Licensing Authority or Licensing Committees will consider and determine applications for Premises Licences applications and other applications under the Gambling Act 2005. A Licensing Authority or Committee will aim to permit the use of premises for gambling in so far as the authority think it in accordance with any relevant Code of Practice, any relevant Guidance issued by the Gambling Commission, reasonably consistent with the licensing objectives and in accordance with this statement. A Licensing Authority or Committee will not consider expected demand for the facilities being considered.

The Licensing Objectives are as follows:

- Preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

Nothing in this Statement of Policy will: -

1. Undermine the rights of any person to apply under the Act for a variety of permissions, other than casinos, and have the application considered on its individual merits in accordance with the Act; or
2. Override the right of any person to make representations on any application or seek a review of a licence or permit where they are permitted to do so under the Act.

The starting point in determining applications will be to grant the application without conditions, other than the mandatory conditions or default conditions laid down by the Secretary of State or reject the application. Conditions will only be considered where

they are meet the requirements of the licensing objectives and the criteria above in Section 153 of the Gambling Act 2005, and any conditions applied will be proportionate. Conditions will be considered unnecessary if they are already adequately covered by other legislation or in the Default or Mandatory Conditions.

When determining an application to grant a Premises Licence or review a Premises Licence, the Licensing Authority will have regard to the proximity of the premises to schools, vulnerable adult centres and residential areas where there may be a high concentration of families with children. The proximity of premises taken into consideration will vary depending on the size and scope of the gambling premises concerned. Each case will be considered on its merits, if an applicant can effectively demonstrate how they might promote licensing objective concerns, this will be taken into account.

Licensing is about the control of licensed premises and temporary use notices within the terms of the Act. Conditions may be attached to licences that will address matters that are within the control of individual licensees or their staff.

When considering any conditions to be attached to licences, the Licensing Authority will primarily focus on the impact of the authorised activities taking place at licensed premises on interested parties and/or in the context of the Licensing Objectives.

Interested Parties

The Licensing Authority will form an opinion as to whether a person is an Interested Party, based on whether that person represents those that have or lives sufficiently close to the premises to be likely to be affected by the authorised activities or has business interests that might be affected by the authorised activities. Factors the Licensing Authority may take into account to determine whether or not an interested party is within the proximity of the premises are as follows:

1. the nature of the activities
2. the size of the premises
3. the proposed hours of operation of the premises
4. the distance of the premises (eg town centre, residential, rural) from the location of the interested party making the representation.

This list is not exhaustive and the Licensing Authority may take into account any other factors that they consider to be relevant in deciding whether or not someone is an interested party.

In all cases, each application will be determined on its individual merits.

In determining any application the Licensing Authority may not have regard to the expected demand for the facilities, which it is proposed that the premises intend to provide.

The Licensing Authority recognises that, apart from the licensing function, there are a number of other mechanisms available for addressing issues that can occur away from licensed premises that may give rise to objections including:

1. Planning controls;
2. Ongoing measures to create a safe and clean environment in these areas in partnership with local businesses, transport operators and other Council departments;
3. Regular liaison with the Police on law enforcement issues regarding disorder and anti-social behaviour;
4. The power of the Police, other responsible authorities or local residents and businesses to seek a review of the licence.

Objectors will be required to relate their objection to one or more of the 3 Licensing Objectives for Gambling, listed at 1.6 above, before the Licensing Authority will be able to consider it. An application for a review of a licence must be made on the prescribed form but must also relate to the 3 Licensing Objectives for Gambling, listed at 1.6 above.

The Licensing Authority, in undertaking its licensing function, will have due regard to the need to eliminate unlawful discrimination and to promote equality and good relations between persons of different racial groups and to promote equality of opportunity for people with disabilities.

1.7 Consultees

The Statement of Licensing Policy has been subject to formal consultation with:

- The Borough Commander of the Metropolitan Police at Wimbledon Police Station;
- Persons who appear to the Authority to represent the interests of those carrying on gambling businesses in the authority's area
- Organisations named as Responsible Authorities in the Act
- Persons who appear to the Authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act; e.g. representatives of residents associations currently notified to the Licensing Authority, Wimbledon Civic Forum, Local Trade Associations etc
- Other organisations including faith groups, voluntary and community organisations working with children and young people, organisations working with people who are problem gamblers, medical practices or primary care trusts, and advocacy organisations (such as the Citizen's Advice Bureau and trade unions)

1.8 Information exchange

In fulfilling its functions and obligations under the Gambling Act 2005 the Licensing Authority will exchange relevant information with other regulatory bodies (like the Gambling Commission) and will consider the establishment of protocols where it considers this necessary. In exchanging such information, the Licensing Authority will conform to the requirements of Data Protection and Freedom of Information legislation in accordance with the Council's existing policies. The authority will act in accordance with the relevant legislation and guidance from the Gambling Commission and will adopt the principles of better regulation.

Details of those persons making representations will be made available to applicants and other interested parties, to allow for negotiation and in the event of a hearing will form part of a public document. Anyone making representations or applying for the review of a premises licence will be informed that their details will be disclosed.

2 LEGISLATION, POLICIES AND STRATEGIES

2.1 Legislation

In undertaking its licensing function under the Gambling Act 2005, the Licensing Authority should have regard to other legislation, like the Human Rights Act 1998.

However, the policy is not intended to duplicate existing legislation and regulation regimes that already place obligations on employers and operators and the licensing authority, like.

1. Health and Safety at Work Act 1974;
2. Section 17 of the Crime and Disorder Act 1988;
3. Environmental Protection Act 1990;
4. The Anti-Social Behaviour Act 2003; or
5. The Race Relations Act 1976 (as amended).

2.2 Relationship with Planning Policies

When determining an application, the Licensing Authority cannot take into account “irrelevant matters” such as the likelihood of the applicant obtaining planning permission or building control approval.

A decision by the licensing authority under this Act shall not constrain any later decision by the authority under the law relating to planning or building.

An applicant can apply for a “provisional statement” if the building is not complete or if he does not yet have a right to occupy it. Such an application is, however, a separate and distinct process to the granting of planning permission or building control approval.

2.3 National Strategies

The Licensing Authority will also seek to discharge its functions identified by other Government Strategies, in so far as they impact on the objectives of the licensing function.

2.4 Local Strategies and Policies

Where appropriate, the Licensing Authority will consider applications with reference to other adopted local strategies and policies.

2.5 Integrating Strategies

There are many stakeholders involved in the leisure industry and many are involved in the promotion of the licensing objectives. A number of stakeholders' plans and strategies deal with matters related to the licensing function. Where this is the case, the Licensing Authority will aim, as far as possible, to co-ordinate them.

The Licensing Authority recognises in particular the importance of the co-ordination and integration of the Gambling policy with other plans aimed at the management of town centres and the night-time economy.

Relevant plans and strategies include:

- ❖ Crime and Disorder Strategy – The Licensing Authority will fulfil its duty under section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the Borough. As far as possible, licensing decisions will aim to contribute to the targets set in the Crime and Disorder Strategy and conditions attached to licences and certificates will reflect local crime prevention strategies.
- ❖ Racial Equality – The Licensing Authority is required under race relations legislation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups. The Licensing Authority will undertake an impact assessment through consultation with the Joint Consultative Committee for Ethnic Minorities.
- ❖ Human Rights – The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a Convention right. The Licensing Authority will have particular regard to the following provisions of the European Convention on Human Rights, in particular: -
 - Article 6 that in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
 - Article 8 that everyone has the right to respect for his home and private and family life;
 - Article 1 of the First Protocol that every person is entitled to the peaceful enjoyment of his or her possessions, including for example the possession of a licence.
- ❖ Proper integration will be assured by the Licensing Authority's Licensing Committee providing reports, when appropriate, to the Planning Committee on the situation regarding licensed premises in the area, including the general

impact of gambling related crime and disorder, to enable the Planning Committee to have regard to such matters when taking its decisions.

- ❖ Tourism and Town Centre Management – The Licensing Authority aims to promote a high quality thriving nighttime economy.
- ❖ The Licensing Authority will ensure that the Licensing Committee receives reports, when appropriate, on the needs of the local tourist economy to ensure that these are reflected in their considerations.
- ❖ Economic Strategies – The Licensing Authority will ensure that the Licensing Committee is appraised of the employment situation in the area and the need for new investment and employment where appropriate.
- ❖ Enforcement Policy – All licensing enforcement will be conducted in accordance with the regulatory compliance code.

In order to avoid duplication with other statutory regimes, the Licensing Authority will not attach conditions to a licence unless they are considered necessary for the promotion of the licensing objectives. Conditions will generally be considered unnecessary if they are already adequately covered by other legislation.

3 DECISION MAKING

3.1 Terms of Reference

A Licensing Sub-Committee of three Councillors will sit to hear applications where representations have been received from interested parties and/or responsible authorities.

A clear statement of the reasons for the decision shall accompany every determination of a licensing decision by the Licensing Sub-Committee. The decision and the reasons for that decision will be sent to the applicant and those who have made relevant representations as soon as practicable in the form of a Notice of Determination. Such Notices of Determination shall also be posted on the Licensing Authority's website as soon as possible after the decision has been confirmed.

The Council's Licensing Officers will deal with all other licensing applications where either no representations have been received, or where representations have been received and it is agreed by the parties that a hearing is not necessary.

Decisions as to whether representations are irrelevant, frivolous or vexatious will be made by Licensing Officers, who will make the decisions on whether representations or applications for licence reviews should be referred to the Licensing Sub-Committee. Where representations are rejected, the person making that representation will be given written reasons as to why that is the case. The Gambling Act 2005 provides no right of appeal in these circumstances, although other avenues of legal challenge, for example Judicial Review, may be available.

3.2 Allocation of Decision Making Responsibilities

The Licensing Authority has established a Licensing Committee to discharge all Licensing functions.

The Licensing Committee has delegated responsibilities for determining certain administrative functions in respect of the Licensing Authority's approach to this Policy. Therefore the Licensing Committee may decide to adopt the following:

- Regulators Compliance Code
- Information Sharing Protocol
- Charges for Pre-application Advice
- Other matters relating to the administration of the Licensing Authority's functions under this Act

The Committee has delegated certain decisions and functions and has established a Sub-Committee to deal with them.

Many of the decisions and functions will be purely administrative in nature and the grant of non-contentious applications, including for example those licences and permits where no representations have been made, will be delegated to the Head of Environment & Regeneration.

Appendix A sets out a table showing the agreed delegation of functions & decisions in respect of the full Council, Sub-Committee and Officers.

Such delegation does not preclude Officers from referring any application to the Licensing Sub-Committee if they consider it appropriate.

3.3 Licensing Reviews and Applications

Regulations have been made by the Secretary of State under Section 160 of the Act that will require applicants for premises licences to notify the responsible authorities and other persons.

Whilst these authorities will have legitimate interests in aspects of the application, the Licensing Authority must ensure that it does not take into account concerns from these bodies if they are not relevant to the application for a premises licence under the Act.

Examples of representations from such bodies that may not be taken into account are as follows (but these examples are not exhaustive):

- There are already too many gambling premises in the locality
- The proposed premises are a fire risk
- The location of the premises is likely to lead to traffic congestion

The Licensing Authority will carry out a review of a premises licence where it has received a formal application for review in accordance with the Act that is relevant to one or more of the Licensing Objectives.

Due consideration will be given to all relevant representations unless they fit the following:

- a) The grounds are frivolous
- b) The grounds are vexatious
- c) The grounds are irrelevant
- d) The grounds will not cause the Licensing Authority to revoke or suspend a licence or to remove, amend or attach conditions on the premises licence
- e) The grounds are substantially the same as the grounds cited in a previous application relating to the same premises
- f) The grounds are substantially the same as representations made at the time the application for a premises licence was considered and there has been no change in the circumstances.

The Act permits the Licensing Authority to review a premises licence if it considers it appropriate.

Representations may include issues relating to the following:

1. Use of licensed premises for the sale and distribution of class A drugs and/or the laundering of the proceeds of drugs crimes;
2. Use of licensed premises for the sale and distribution of illegal firearms;
3. Use of licensed premises for prostitution or the sale of unlawful pornography;
4. Use of licensed premises as a base for organised crime activity;
5. Use of licensed premises for the organisation of racist, homophobic or sexual abuse or attacks;
6. Use of licensed premises for the sale of smuggled tobacco or goods;
7. Use of licensed premises for the sale of stolen goods;
8. Children and/or vulnerable persons being put at risk.

4 LOCAL STANDARDS

4.1 Applications

An application for a premises licence can only be made by a person who either holds an operating licence authorising him to carry on the activity in respect of which a premises licence is sought, or, has made an application for an operating licence which

has not yet been determined, or, in the case of an application for a track betting licence the applicant may not be required to have an operators licence.

The applicant may ask the Licensing Authority for advice as to the scope of information to be provided. The Licensing Authority may levy a charge where more in depth or complex advice and assistance is requested.

The level of detail to be provided will be advised by the Licensing Authority and will be proportional to the scale and nature of the application made.

Definitions of "Responsible Authorities" and "Interested Parties" who are able to make representations under this Act can be found in the glossary of terms in section 1.3.

4.2 Assessment of Need

Unmet demand for gambling establishments or facilities is not a criterion that will be taken into consideration when determining an application for a Premises Licence under the Gambling Act 2005. Demand is specifically precluded within the Act. There is no legal obligation to demonstrate that any demand exists.

4.3 Conditions

Conditions will only be applied to licences that are proportionate and appropriate to the business, organisation or individual concerned. The Licensing Authority will draw upon the advice issued by the Gambling Commission and attach conditions relative and proportionate to the given circumstances of each individual case.

4.4 Enforcement

The Licensing Authority intends to use appropriate enforcement to promote the licensing objectives. Once licensed, it is essential that premises be monitored to ensure that they are run in accordance with their operating schedules, in compliance with the specific requirements of the Act and in compliance with any licence conditions. It will also be important to monitor the Borough for unlicensed premises.

The Licensing Authority will seek to work actively with the Police in enforcing licensing legislation and intends to establish protocols with the Metropolitan Police on enforcement issues to ensure an efficient deployment of police and council officers.

Such protocols will be agreed by the Licensing Committee.

4.5 Casinos

There are currently no casinos operating within the Borough.

On 21 November 2012 Merton re-adopted a resolution under Section 166 of the Act not to issue casino licences within Merton or allow operators to make applications for premises licences for casinos.

4.6 Bingo

The Licensing Authority may issue a Bingo premises licence, which will authorise the following gaming machines:

- 1 20% of the total number of gaming machine of Category B3 or B4 machines
- 2 An unlimited number of Category C & D machines

4.7 Betting Offices

The Licensing Authority may issue a premises licence to Betting Offices, which will authorise the following gaming machines:

- 1 A maximum of 4 machines of Category B, C or D

4.8 Family Entertainment Centres (Licensed)

The Licensing Authority may issue a premises licence to Family Entertainment Centres which will authorise the following gaming machines:

- 1 An unlimited number of Category C & D machines
- 2 Category C machines must be located in an adult area only

4.9 Family Entertainment Centres (Unlicensed)

It should be noted that the term “unlicensed” in this definition means premises that do not require an operators licence to be granted by the Gaming Commission.

The Licensing Authority may issue a premises licence, which will authorise the following gaming machines: -

- 1 Unlimited numbers of Category D machines

5 PREVENTION OF CRIME AND DISORDER OBJECTIVE

Merton's Licensing Authority places considerable importance on the prevention of crime and disorder, and will fulfil its duty under s17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the Borough. A high standard of control is expected to be exercised over licensed premises.

Merton's Licensing Authority will, when determining applications, consider whether the grant of a Premises Licence will result in an increase in crime and disorder.

Applicants are encouraged to discuss the crime prevention procedures in their premises with the Council's Licensing Officers and The Licensing Sergeant at Wimbledon Police Station before making a formal application.

In considering licence applications, the Licensing Authority will particularly take into account the following: -

1. The design and layout of the premises
2. The training given to staff in crime prevention measures appropriate to those premises
3. Physical security features installed in the premises. This may include matters such as the position of cash registers or the standard of CCTV that is installed
4. Where premises are subject to age restrictions, the procedures in place to conduct age verification checks
5. The likelihood of any violence, public order or policing problem if the licence is granted

6 ENSURING THAT GAMBLING IS CONDUCTED IN A FAIR AND OPEN WAY OBJECTIVE

Generally, the Commission would not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way, as this will be a matter for either the management of the gambling business (and therefore relevant to the Operating Licence), or will be in relation to the suitability and actions of an individual (and therefore relevant to the Personal Licence). As the Gambling Commission grants Personal Licences and Operating Licences, enforcement of these matters is the responsibility of the Gambling Commission.

7 PROTECTION OF CHILDREN AND OTHER VULNERABLE PERSONS OBJECTIVE

7.1 Access to Licensed Premises

With limited exceptions, the access of children and young persons to those gambling premises, which are adult only environments, will not be permitted.

The principle used to designate the following bodies to advise the Authority on the protection of children and vulnerable persons from harm is that they are the acknowledged experts in this specialised field within this Authority.

The Licensing Authority formally recognises Merton's Local Safeguarding Children Board and Community Care Services as the proper agencies in respect of the protection of children and vulnerable persons from being harmed or exploited by gambling.

The Licensing Sub-committee will judge the merits of each individual application before deciding whether to impose conditions to protect children and vulnerable persons on particular categories of premises. This may include such requirements as: -

1. Supervision of entrances;
2. Segregation of gambling areas from areas frequented by children;
3. Supervision of gaming machines in non-adult gambling specific premises.

The 2005 Act provides for a Code of Practice on access to Casino premises by children and young persons but Merton has adopted a policy not to permit casinos in the Borough.

7.2 Vulnerable Persons

The Licensing Authority does not seek to prohibit particular groups of adults from gambling in the same way that it seeks to prohibit children, but it will follow the Gambling Commission's assumption that for regulatory purposes, "vulnerable persons" include:

1. People who gamble more than they want to;
2. People who gamble beyond their means;
3. People who may not be able to make an informed or balanced decision about gambling due to a mental impairment, alcohol or drugs.

In addition to the responsible authorities and specifically with regard to the protection of vulnerable persons from being harmed or exploited by gambling, the Licensing Authority will consult with Community Care Services via a joint arrangement with the Merton Local Safeguarding Children Board & Safeguarding Adults Service.

9 COMPLAINTS AGAINST LICENSED PREMISES

The Licensing Authority will investigate complaints against licensed premises in relation to matters relating to the licensing objectives for which it has responsibility. In the first instance, complainants are encouraged to raise the complaint directly with the licence holder or business concerned to seek a local resolution.

Where an interested party has made either a valid representation about licensed premises or a valid application for a licence to be reviewed, the Licensing Authority may initially arrange a conciliation meeting to address and clarify the issues of concern.

This process will not override the right of any interested party to ask that the licensing committee consider their valid objections, or for any licence holder to decline to participate in a conciliation meeting.

Due consideration will be given to all relevant representations unless they fit the exceptions in 3.3 sub-paragraphs A – F.

FURTHER INFORMATION

Further information about the Gambling Act 2005, this Statement of Licensing Policy or the application process can be obtained from: -

Licensing Team
London Borough Of Merton
Civic Centre
London Road
Morden
SM4 5DX

Tel: 020 8545 3969
E-mail: licensing@merton.gov.uk

Gambling Commission
Victoria Square House
Victoria Square
Birmingham
B2 4BP

website: www.gamblingcommission.gov.uk

Tel: 020 7306 6219

Appendix A

DELEGATION OF LICENSING FUNCTIONS

MATTER TO BE DEALT WITH	FULL COUNCIL	SUB-COMMITTEE	HEAD OF PLANNING & PUBLIC PROTECTION	HEAD OF CIVIC & LEGAL SERVICES
Three year Licensing Policy	X			
Policy not to Permit Casinos	X			
Validity of Applications or Representations			X	
Representations made by Licensing Authority			X	
Determination of Applications		X	When no hearing is required	
Dispensing with Hearings		Where all parties agree		Where all parties agree prior to hearing
Extending Times Limits		X		Where there is a need prior to hearing (consult with Licensing Committee Chair)
Consideration of Representations (opposing or supporting) and Notices (temporary use / occasional use)		X	X	
Procedure and Conduct of Hearings		X		
Issue of Notice of Hearing				X
Determining Relevance of Information		X		
Determination of Premises Licence Fees		X		

Appendix B

GAMING MACHINE CATEGORIES

Category of Machine	Maximum Stake	Maximum Prize
A	Unlimited	Unlimited
B1	£2	£4,000
B2 <i>** See below for definition</i>	£100	£500
B3	£2	£500
B4	£1	£250
C	£1	£70
D	30p or £1 when non-monetary prize	£8 cash or 50 non-monetary prize

*** These machines are “Fixed odds betting terminals (FOBTs)”*

The government is satisfied that FOBTs should comprise a separate sub-category (B2) of gaming machine offering a maximum prize of £500 with a maximum stake of £100 per game (£15 per chip) and that they should only be available in Casinos and Licensed Betting Offices.

The Government remains concerned about a possible connection between FOBTs and problem gambling.

However a report on 6 July 2009 from the Gambling Commission has recommended that no immediate action be taken. It suggests that further research into regulatory measures need to be part of a wider prevention and harm mitigation framework which addresses risk mitigation in the context of machine and other gambling more generally. The Government continues to keep the matter under review.

Appendix C

REGULATORS COMPLIANCE CODE & ENFORCEMENT POLICY

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures.

This document can be accessed by the following web link:

http://www.merton.gov.uk/working/tradingstandards/enforcement_policy-4.pdf

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APPENDIX 3

This report informs Members of the Licensing Committee of forthcoming changes to legislation brought into being by the Police Reform and Social Responsibility Act 2011 and the Live Music Act 2012.

It informs members of the Licensing Committee of important changes and the availability of two new tools in the licensing suite of controls namely Early Morning Restriction Orders and Late Night Levies which are designed to give local people a greater influence over the type and number of licensed premises in their communities. It also provides an outline of the provisions of the Live Music Act and their effect on the deregulation of some regulated activities, notably the provision of live music.

EARLY MORNING RESTRICTION ORDERS AND LATE NIGHT LEVIES

Outline

From the 31 October 2012, under the amendments to the Licensing Act 2003, local authorities will have the power to make Early Morning Restriction Orders and impose Late Night Levies.

Both Early Morning Restriction Orders (EMROs) and the Late Night Levies (LNL) apply only to premises selling alcohol by retail between the hours of midnight and 6am and can only apply if formally adopted by the authority. If adopted, EMROs can be applied to certain areas within the borough, whereas the LNL applies borough wide.

Early Morning Restriction Orders

If the Council decides to make use of the new legislation, the power will be available to make EMROs if it is considered appropriate for the promotion of licensing objectives, rather than necessary. EMROs are being introduced alongside various other measures aimed at rebalancing the Licensing Act 2003 in favour of local communities, and to increase the tools and powers available to licensing authorities and the police to tackle alcohol-related problems in local areas.

If the Licensing Authority introduces an EMRO, it will apply to premises licences, club premises certificates and temporary event notices that operate within the specified EMRO period. Licensing authorities will be required to advertise the proposal to make the EMRO and demonstrate that they have evidence to justify doing so, as well as considering representations, before its introduction.

Central Government has announced that in relation to EMROs there will be no exemptions for types of premises. However the provision of alcohol to residents through mini-bars and room service in premises with overnight accommodation would be exempt and in recognition of New Year Eve's celebration status EMROs should not apply on the 31 of December. EMROs will be a simple, pre-packaged tool for licensing authorities to use to readjust the focus of their night-time economy away from problem drinking, if such a measure would promote the licensing objectives. The effective use of EMROs may make it unnecessary for the Council to consider the use of Cumulative Impact Zones in parts of its area, if it is established that the issues undermining the licensing objectives that necessitated the introduction of those zones would be negated by the introduction of an EMRO.

Draft secondary legislation, which is anticipated will come into effect on or about 31 October 2012, will add further detail to the EMRO provisions.

Late Night Levies

The Late Night Levy will permit the council to charge more for late night licences to pay for additional policing. It is believed to be right that businesses that profit by selling alcohol in the night-time economy should contribute towards these costs, rather than relying on other taxpayers in the community to bear the full costs.

The Late Night Levy will be a local power that the Licensing Authority can choose whether or not to exercise. It must cover the whole of the Licensing Authority's area. However, the Licensing Authority will also be able to choose the period during which the levy applies every night, between midnight and 6am, and decide what exemptions and reductions should apply from a list set out in regulations.

If the Licensing Authority chooses to introduce the levy in their area, all licensed premises which are authorised to supply alcohol in the levy period will be affected. Premises that do not wish to operate in the levy period will be able to make a free minor variation to their licence before the levy is introduced.

It is likely that the licensing authority will have the discretion to offer an exemption from the levy to the following categories of premises and schemes although at the time of writing this report the draft regulations listing the exemptions are still outstanding:

1. Premises with overnight accommodation B Theatres and cinemas
2. Bingo halls
3. Community Amateur Sports Clubs ('CASCs') B Community premises
4. Country village pubs
5. Business Improvement Districts ('BIDs')

The amount of the Levy has been confirmed as follows, based upon the Non- domestic Rateable Value of the relevant premises:

Band Rateable Value Levy Amount:

A - No rateable value to £4,300	Levy Amount = £299.00
B - £4,301 to £33,000	Levy Amount = £768.00
C - £33,001 to £87,000	Levy Amount = £1,259.00
D - £87,001 to £125,000	Levy Amount = £1,365.00
E - Greater than £125,000	Levy Amount = £1,493.00

In addition to the above, premises liable to pay £1,365 or £1,493 (Bands D and E) will, if they are used exclusively or primarily for the supply of alcohol for consumption on the premises, be required to pay a higher levy amount of £2,730 and £4,440 per year respectively. The Licensing Authority has the power to suspend licences for non-payment of the annual fee and the levy.

If the Licensing Authority chooses to implement the Late Night Levy, 30% of the net income can be retained by the Council. However, this income must be used for the reduction or prevention of crime and disorder; the promotion of Public Safety; the reduction or prevention of Public Nuisance and/or the cleaning of any relevant highway or relevant land.

The Police Authority must receive 70% of the net income and will have the right to use it for any purpose. It is, therefore, anticipated that the majority of Police Authorities will strongly encourage Licensing Authorities to implement the Late Night Levy in their areas.

THE LIVE MUSIC ACT 2012

The Live Music Act 2012 (the Act) will come into force on 01 October 2012 and has changed the function of the Licensing Act 2003 by removing the licensing requirements for some activities to be licensed as regulated entertainment.

The Act means that the majority of venues in England and Wales with a capacity of under 200 people will no longer need local authority permission to hold performances of live amplified music between the hours of 8am-11pm (i.e. such performances will no longer be licensable). It also removes audience limitations for performances of un-amplified live music within those times.

In Alcohol Licensed Premises

Live music will cease to be regulated entertainment in venues licensed for the sale of alcohol for consumption on the premises in the following situations:

when it is un-amplified and takes place between 8am and 11pm; and

when it is amplified and takes place in the presence of an

audience of 200 persons or less and is provided between 8am and 11pm.

The premises must be open for the sale of alcohol during the time that the amplified live music is provided for the exemption/s to take effect.

Any condition attached to the premises licence relating to live music ceases to have effect in respect of the live music, unless the Licensing Authority states otherwise on the licence pursuant to a Licensing Sub-Committee Review hearing.

In Non Alcohol Licensed Premises

For all venues, the Act states that live music is not regulated entertainment when it is un-amplified and takes place between 8am and 11pm.

The Act also removes the licensing requirement for amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons in workplaces.

The definition of a workplace is that given in Regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 – basically a workplace is any premises (or part of premises) which are not domestic premises and which are made available to any person as a place of work.

Provision of facilities for making music and dancing

The Act has also removed the provision of facilities for making music (e.g. the provision of a piano in a bar) as a licensable activity. Basically, venues providing an unlicensed piano (or other instruments or equipment) for use in performances will no longer be committing a potential criminal offence.

Amplified Live Music (over 200 persons):

Amplified live music in venues, with a capacity exceeding 200, will continue to require formal authorisation from the Licensing Authority, such as a premises licence or Temporary Event Notice (TEN). Similarly any live music, whether amplified or un-amplified, provided outside the times stipulated in the Act will also require formal authorisation.