

# REVIEW OF LICENSING POLICIES

<b>Cabinet Member</b>	Councillor Jonathan Bianco
<b>Cabinet Portfolio</b>	Finance, Property and Business Services
<b>Officer Contact</b>	Claire Freeman, Stephanie Waterford - Residents Services
<b>Papers with report</b>	<b>Appendix 1</b> - Summary consultations responses on all policies  <b>CIRCULATED SEPARATELY:</b> <b>Appendix 2</b> - Proposed Street Trading Policy <b>Appendix 3</b> - Proposed Markets Policy <b>Appendix 4</b> - Proposed Statement of Licensing Policy <b>Appendix 5</b> - Proposed Gambling Policy

## 1.0 HEADLINE INFORMATION

<b>Summary</b>	<p>Four key licensing policies have been reviewed, in accordance with legislative requirements and the Council's objectives. The four policies are:</p> <ol style="list-style-type: none"><li>1. Street Trading Policy;</li><li>2. Market Policy;</li><li>3. Statement of Licensing Policy (policy framework);</li><li>4. Statement of Gambling Policy (policy framework).</li></ol> <p>This report seeks approval of the Street Trading Policy and the Markets Policy and seeks for a recommendation to be made to full Council for the adoption of the Statement of Licensing Policy and the Gambling Policy, which are deemed as 'Policy Framework'.</p>
<b>Putting our Residents First</b>	These policies contribute to the Council's key objectives of: <i>Our People; Our Built Environment; Our Heritage and Civic Pride.</i>
<b>Financial Cost</b>	There are no additional costs to the Council in respect of approving the Licensing Policies
<b>Relevant Policy Overview Committee</b>	Residents and Environmental Services Policy Overview Committee
<b>Ward(s) affected</b>	All Wards

## **2.0 RECOMMENDATIONS**

### **2.1 Following consultation, that Cabinet:**

- 1. Approves the proposed Street Trading Policy;**
- 2. Approves the proposed Markets Policy;**
- 3. Recommends to Full Council the approval of the Statement of Licensing Policy;**
- 4. Recommends to Full Council the approval of the Gambling Policy.**

#### **Reasons for recommendations**

- 2.2 Relevant stakeholders have been consulted and feedback has been incorporated in the attached proposed versions of the policies.

#### **Alternative options considered / risk management**

- 2.3 To not approve the Street Trading Policy and Markets Policy or not to make a recommendation to full Council for adoption of the Statement of Licensing Policy and Gambling Policy, the Council would not be able to meet its statutory obligations and legal challenges may follow.

## **3.0 INFORMATION**

#### **Supporting Information**

- 3.1 The Council is required to review its licensing policies at regular intervals to ensure that it is carrying out licensing functions in accordance with current legislation. During this review, consideration has been given to how changes might improve the way in which services are being delivered, to make them more efficient and customer friendly.
- 3.2 Draft policies have been produced for key pieces of licensing legislation. These have all been consulted upon and the consultation has now closed. Consultation responses have been summarised and appear in the appendices to this report.

A number of typographical errors have been identified during the consultation. These have been amended and any proposed amendments resulting from the consultation to the draft policies have been included in the appendices.

Appendices to this report are;

**Appendix 1** - Summary consultations responses on all policies

#### **CIRCULATED SEPARATELY:**

**Appendix 2** - Proposed Street Trading Policy

**Appendix 3** - Proposed Markets Policy

**Appendix 4** - Proposed Statement of Licensing Policy

**Appendix 5** - Proposed Gambling Policy

#### **4.0 EFFECT ON RESIDENTS, SERVICE USERS AND COMMUNITIES**

- 4.1 The revised policies have been drafted to include updates in legislation and reflect current working practices. This will provide residents and service users with up to date and fit for purpose policy documents.

##### **Consultation Carried Out or Required**

- 4.2 The public consultation was carried out between 5<sup>th</sup> October to 20<sup>th</sup> November 2015.

The consultees included statutory consultees, partner authorities and agencies, residents and businesses. The consultation was also featured on the Council's website.

A total of six responses were received from;

<b>Consultee</b>	<b>Response relating to;</b>
Coral Racing Ltd	Gambling Policy
Association of British Bookmakers	Gambling Policy
Uxbridge Station Flowers	Street Trading Policy
Food Health & Safety Team, LBH	Street Trading Policy Markets Policy
Environmental Protection Unit	Statement of Licensing Policy
Metropolitan Police Service	Statement of Licensing Policy

These responses have been summarised in the preceding Appendix to each policy.

##### **Policy Overview Committee comments**

- 4.3 In accordance with the Council's Constitution, the two policy framework documents (Statements and Licensing and Gambling policies) and the updated Street Trading and new Markets policies were considered by the Residents' & Environmental Services Policy Overview Committee on 15 October 2015. Members noted the policies.

##### **Comments from the Licensing Committee - 15 October 2015**

- 4.4 Street Trading Policy & Markets Policy

The Committee welcomed the separation of the policies, which had previously been together, in order to improve clarity for those applying to trade.

Members supported the proposal for a more permanent one year licence for regular traders (rather than the current 6 month renewal) which they believed would make it more business-friendly for traders and efficient for the Council. Importantly, the Committee felt that more permanent licences would also give the Council scope for

improved enforcement action, if required. It was noted that temporary licences would still be issued for short-term trading.

The proposal to move all public notifications and consultation on any street trading and market applications to the Council's website was not welcomed by the Committee in the strongest possible terms. The Committee requested that the Public Notice requirement of the consultation process should be reinstated.

Members expressed the importance for residents, Ward Councillors and other nearby traders to see any potential application visibly on the street. The Committee considered this particularly crucial in high density areas, e.g. Hayes Town Centre. Additionally, it was noted that some residents may not be able to access the Council's website.

The Committee welcomed the proposed addition of delineating trading areas. Members felt this would:

- a) assist the trader to keep within the agreed boundary;
- b) provide clarity to other traders and;
- c) aid any enforcement activity, if required.

In this endeavour, the Committee asked that Council officers explore using suitable markings placed on the highway showing the delineated area to trade that would fully complement the attractiveness of the street or pavement and surrounding area.

The Committee endorsed improved clarity in the policies that any payment of fees should be upfront, before the licence is granted.

The importance of traders abiding by the Council's waste, cleaning and refuse conditions was highlighted along with the need for the Council to fully enforce any contraventions using the range of powers available to it.

It was further noted by Members present that the Street Trading policy under review still included the former RAF Uxbridge site (St. Andrew's development) as an area where mobile or itinerant ice cream trading was prohibited.

#### 4.5 Statement of Licensing Policy

The Committee noted that little change had been made to this policy overall, but suggested that it should include an expectation that new applicants will promote the 'Challenge 25' age verification scheme as part of their operating schedules. It was noted that this would also be a potential recommendation from the External Services Scrutiny Committee Working Group's review into alcohol related admissions to hospital of under 18s.

#### 4.6 Statement of Gambling Policy

The Committee noted that little change had been made to this policy, but acknowledged the upcoming changes in regulation in 2016.

Members were aware that these changes would require gambling operators to prepare a local area risk assessment to demonstrate the effect of a premises on the surrounding area. The Licensing Authority would be empowered by the legislation to set local area profiles which operators have to address in their risk assessments. It was noted that the

profiles could include measures to address anti-social behaviour and the protection of vulnerable people. However, the Committee expressed caution that areas with such profiles could also gain a negative association.

#### 4.7 All policies

The Committee acknowledged the important role of ward councillors in licensing matters and suggested further clarity of the process relating to making representations with a specific section added to each policy in this regard. Officers indicated that additional guidance would also be supplemented by briefing notes.

The Committee suggested that in each of the policies, further clarity be given to designate the actual officer post that makes any decision to reject a representation or objection received before it goes to a sub-committee, e.g. who decides a representation is 'vexatious'. The Committee considered it beneficial for the Public and Members to know where the responsibility lies.

Note: In response to the final point by the Committee, Officers have updated the policies to include a paragraph to clarify officer delegations.

#### **Comments from the External Services Scrutiny Committee**

- 4.8 The Statement of Licensing Policy was considered by the External Services Scrutiny Committee as part of their review into alcohol related admissions amongst children under 18 years. These comments have been summarised and included within the consultation response table of the proposed Statement of Licensing Policy.

#### **Financial Implications**

- 4.9 There are no direct financial implications arising from the recommendations in this report and no impact on existing licensing fees.

#### **Democratic Services comments**

- 4.10 The proposed Street Trading and Markets policies require approval from either the Cabinet or the Leader of the Council and relevant Cabinet Member.
- 4.11 The proposed Statements of Licensing and Gambling policies are both policy framework documents under the Council's Constitution. Cabinet is required to consider the responses of the consultation before deciding whether or not to recommend them to full Council for adoption.

### **5.0 CORPORATE IMPLICATIONS**

#### **5.1 Corporate Finance**

Corporate Finance has reviewed this report and notes that there are no material financial implications associated with implementation of the revised licensing policies attached to this report. No amendments to the cost of licences for individual businesses or the overall income receivable by the Council are expected to arise from these amended policies.

## **5.2 Legal**

- 5.3 In accordance with the requirements of the relevant legislation and as previously authorised by the Cabinet on 24 September 2015, the Council conducted consultation exercises for each draft policy, as detailed in the body of this report.
- 5.4 Decision makers must ensure there is full consideration of all consultation responses including those which do not accord with the draft policies proposed by officers. Cabinet Members must be satisfied that responses from consultees are conscientiously taken into account when approving policies or recommending policies to full Council for adoption (as applicable).
- 5.5 Legal Services have reviewed the revisions to the draft policies as detailed in the report and appendices and there are no legal implications that need to be brought to the specific attention of the Cabinet.
- 5.6 The Council has a statutory duty under Section 5 of the Licensing Act 2003 to review and republish its Statement of Licensing Policy every 5 years. Further, the Council has a statutory duty under Section 349 of the Gambling Act 2005 to review and republish its Statement of Gambling Policy every 3 years. Pursuant to those statutory timeframes, the Cabinet is advised that the current Statements of Licensing and Gambling Policy expire in January 2016.

## **6.0 BACKGROUND PAPERS**

Report to Cabinet - 24<sup>th</sup> September 2015  
Current Street Trading and Markets Policy  
LA03 Statement of Licensing Policy  
GA05 Statement of Gambling Policy

# Appendix 1

## Street Trading Policy and Market Policy - Consultation Response Summary

Response received from Hillingdon Food, Health & Safety Team	
Comments	Outcome & Proposed Amendment
<p>Appendix 3 of the Street Trading Policy - Terms &amp; Conditions for Street Traders, should be altered to include the following conditions which are currently proposed in the Markets Policy only;</p> <ul style="list-style-type: none"> <li>- Condition 6 of Appendix 1 of the Markets Policy relating to the use of portable generators</li> <li>- Condition 16 of Appendix 1 of the Markets Policy relating to employed assistants</li> <li>- Condition 18 of Appendix 1 of the Markets Policy relating to assistance to Council Officers</li> <li>- Condition 20 of Appendix 1 of the Markets Policy relating to food related trading</li> <li>- Condition 4 of the standard conditions for Market Traders relating to the use of gas cylinders</li> </ul>	Proposed changes included and conditions added.
<p>An amendment is proposed to condition 8d of Appendix 4 of the Street Trading Policy to include 'cooked meat and cooking of any kind'</p>	Proposed change included
<p><u>Charity and Community Markets</u></p> <p>Para 5.1.e - Delete. "that they have the required food hygiene training and registration certificates."</p> <p>Replace with "and are food registered where appropriate."</p>	Proposed change included
<p><u>Information and documents as part of an application</u></p> <p>Para 7.2h - add a requirement for the trading name of the operator, the name of the stall, business address and telephone number and the name of the authority that they are food registered with as appropriate</p>	Proposed change included - new lines inserted at 7.2i and 7.2j

<p>APPENDIX 1 - 9. <u>Safety of equipment</u></p> <p>Delete "Electrical equipment must be approved by the Council before being used on a trading pitch. We would not be in a position to approve electrical equipment so unless there is someone else in the council who is competent to do so and able to respond I recommend that this is deleted,</p> <p>Replace with:- Electrical equipment should, be tested by a competent person at intervals recommended by the competent person. Records should be kept of all inspections and tests together with any defects and / or remedial works, so as to demonstrate compliance.</p>	<p>Proposed change included</p>
<p>GENERAL AND STANDARD CONDITIONS</p> <p>It is noted that general and standard conditions limit petrol generators but that is not mentioned in Appendix 1 these conditions could be merged or mentioned earlier in Appendix 1 under the appropriate headings.</p>	<p>The conditions listed in Appendix 1 have been merged with the standard conditions for Market operators and any duplicated or contrary conditions have been removed</p>
<p>TERMS AND CONDITION FOR MARKET LICENCES</p> <p>20. <u>Food Related Trading</u></p> <p>Proposed alternative wording as follows:</p> <p>Food traders shall ensure that their home authority has up to date registration information as may be necessary (occasional trading is exempt.) Traders subject to routine food hygiene inspections shall meet Food Hygiene Rating equivalent of 3 "Generally Satisfactory" as a minimum requirement</p>	<p>Proposed change included</p>

<b>Response received from the Licensing Committee</b>	
<b>Comments</b>	<b>Outcome &amp; Proposed Amendment</b>
<p>The Committee welcomed the separation of the policies, which had previously been together, in order to improve clarity for those applying to trade.</p>	<p>No changes proposed</p>

<p>Members supported the proposal for a more permanent one year license for regular traders (rather than the current 6 month renewal) which they believed would make it more business friendly for traders and efficient for the Council. Importantly, the Committee felt that more permanent licenses would also give the Council scope for improved enforcement action, if required. It was noted that temporary licenses would still be issued for short term trading.</p>	<p>No changes proposed</p>
<p>The proposal to move all public notifications and consultation on any street trading and market applications to the Council's website was not welcomed by the Committee in the strongest possible terms. The Committee requested that the Public Notice requirement of the consultation process should be reinstated.</p> <p>Members expressed the importance for residents, Ward Councillors and other nearby traders to see any potential application visibly on the street. The Committee considered this particularly crucial in high density areas, e.g. Hayes Town Centre. Additionally, it was noted that some residents may not be able to access the Council's website.</p>	<p>To reinstate the requirement for a poster to be displayed upon application. - This has been reflected in Section 6 - Application requirements and Section 19 - Renewals</p>
<p>The Committee welcomed the proposed addition of delineating trading areas.</p> <p>Members felt this would:</p> <ul style="list-style-type: none"> <li>a) assist the trader to keep within the agreed boundary;</li> <li>b) provide clarity to other traders and;</li> <li>c) aid any enforcement activity, if required.</li> </ul> <p>In this endeavour, the Committee asked that Council officers explore using suitable markings placed on the highway showing the delineated area to trade that would fully complement the attractiveness of the street or pavement and surrounding area.</p>	<p>No changes proposed</p>
<p>The Committee endorsed improved clarity in the policies that any payment of fees should be upfront, before the licence is granted.</p>	<p>No changes proposed</p>
<p>The importance of traders abiding by the Council's waste, cleaning and refuse conditions was highlighted along with the need for the Council to fully enforce any contraventions using the range of powers available to it.</p>	<p>No changes proposed</p>

<p>It was further noted by Members present that the Street Trading policy under review still included the former RAF Uxbridge site (St. Andrew's development) as an area where mobile or itinerant ice cream trading was prohibited.</p>	<p>No changes proposed  <i>Nb - upon completion of the works at the St Andrew's site, the restricted areas can be reviewed and a new area defined by Cabinet</i></p>
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<b>Response received from Uxbridge Station Flowers - Licensed Street Trader</b>	
<b>Comments</b>	<b>Outcome &amp; Proposed Amendment</b>
<p>After looking through the amended street trading and market licensing policies we were very pleased to see that it has gone back to the simple yet effective structure it was some time ago.</p> <p>The extra alterations and added details will help outline any possible issues which may be raised which will make it easier for the applicant and Council alike as it's all clearly stated in black and white.</p> <p>We are also glad that the asking of local businesses for input on the application has been dropped. We felt that this could be used against an applicant for possible personal reasons or prejudice.</p> <p>These changes should also make it easier for the enforcement team to understand what grounds a person/company can be chastised for should they not comply to these terms.</p> <p>Hopefully this will also give enough reason to increase the days and time the enforcement team spend in the town centre.</p>	<p>No changes proposed</p>

## Statement of Licensing Policy - Consultation Response Summary

<b>Response received from Environmental Protection Unit - Responsible Authority for the prevention of public nuisance</b>	
<b>Comments</b>	<b>Outcome &amp; Proposed Amendment</b>
'Para 3.1 - EPU to be included as one of the consultees'	Change included
'Para 9.11 - add 'EPU Officers' after 'The Councils Licensing Officers'	Change included
'Appendix D - Updated British Standards and Codes of Practice'	Change included
Section 13 - Giving a clearer explanation of the different types of Temporary Event Notice	No change proposed as explanation is contained within legislation

<b>Comments Response received from Metropolitan Police Service - Responsible Authority for the prevention of crime and disorder</b>	
<b>Comments</b>	<b>Outcome &amp; Proposed Amendment</b>
Para 4.4 - We would suggest an alteration to the wording of this paragraph to relate better to antisocial behavior taking place in and around licensed premises, rather than 'emanating from' licensed premises.	Change included
Section 7 - We would like a new paragraph added here to reflect the Police's expectation that licence holders will participate in their local Pub Watch scheme. Given recent events around the borough, a directive has been issued by the Borough Commander to re-launch Pub Watch and work with licence holders to ensure that these schemes are properly supported by Police. Reference to Pub Watch schemes should also be referenced in Appendix B.	Change included
Para 7.7 - The Metropolitan Police have general licensing powers relating to all licensing objectives, not just the prevention of crime and disorder, and these powers should be accurately reflected in this paragraph.	Change included
Para 10.5 - We feel that these measures should be listed within Appendix E as these are measures which licence holders and/or the licensing authority may wish to consider when making/granting applications and these would mirror the other appendices where similar suggestions are made for the other licensing objectives.	Change included

Appendix B - This currently refers to capacity limits under public safety. This should be updated in line with the Regulatory Reform (Fire Safety) Order 2005 to accurately reflect the powers relating to setting capacity limits. These should be referred to on a crime and disorder basis only.	Change included
Appendix F - Update Responsible Authority contact details as the details for the Police have changed.	Change included

<b>Comments Response received from Licensing Committee</b>	
<b>Comments</b>	<b>Outcome &amp; Proposed Amendment</b>
The Committee noted that little change had been made to this policy overall, but suggested that it should include an expectation that new applicants will promote the 'Challenge 25' age verification scheme as part of their operating schedules.	New para inserted at 10.5

<b>Comments Response received from External Services Scrutiny Committee</b>	
<b>Comments</b>	<b>Outcome &amp; Proposed Amendment</b>
The Report of The Working Group into Alcohol Related Admissions Amongst Under 18's, makes the following recommendation to Cabinet for inclusion in the final policy;  'To encourage the adoption of a Challenge 25 Policy by all alcohol licensed premises in the Borough.'	New para inserted at 10.5

## Gambling Policy - Consultation Response Summary

<b>Comments/Response received from Coral Racing Limited</b>	
<b>Comments</b>	<b>Outcome &amp; Proposed Amendment</b>
<p>We do wish to politely highlight that Coral knows of no evidence that the location of a licensed betting office within proximity of schools and similar locations mentioned in the statement (section 2.24) causes harm to the licensing objectives. We do appreciate that such locations are included within the Gambling Commission guidance to Councils.</p> <p>Coral's general experience, in common with other bookmakers, is that children are not interested in betting, and in any case the 'Think 21' policy operated by Coral is adequate to ensure that under-age gambling does not occur in their premises. There are very many examples of betting offices sited immediately next to schools and colleges as well as being within residential areas and no evidence whatsoever that they cause problems. We do appreciate that the licensing board have flexibility in this regard when granting licences but caution against an inference of a link between schools and problem gambling.</p>	<p>Whilst the introduction of local area profiles under the Gambling Act is awaited (scheduled for April 16), no amendment to section 2.24 is proposed as it corresponds with the Gambling Commission Guidance which states at Para 6.33;</p> <p><i>'The statement of policy should set out what factors it is likely to take into account when considering applications for premises licences, permits and other permissions, and when determining whether to review a licence. This may be informed by the licensing authority's local area profile and will include considerations such as the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children.'</i></p>

<b>Comments/Response received from Gosschalks Solicitors on behalf of the Association of British Bookmakers</b>	
<b>Comments</b>	<b>Outcome &amp; Proposed Amendment</b>
<p>Paragraph 2.6 of Part 2 contains a typographical error in the first sentence. When this paragraph is amended, it is respectfully submitted that the paragraph should make it clear that issues of nuisance are not relevant considerations under the Gambling Act 2005.</p>	<p>The typographical error amended however no further revision is proposed to alter the meaning of the paragraph.</p>

<p>Paragraph 2.14 suggests that there may be restrictions on advertising so that Gambling products are not aimed at children or advertised in such a way that makes them particularly attractive to children. The statement of principles would be assisted if this paragraph was re-drafted to remove any suggestion that such restrictions on advertising should be dealt with by the Licensing Committee. The regulation of advertising of gambling premises is already heavily regulated and covered by the LCCP. Ordinary Code Provision 5.1.6 requires socially responsible advertising, compliance with CAP and the Gambling Industry Code for Socially Responsible Advertising. The paragraph should be clear that the advertising of gambling premises is not an issue for consideration by the Licensing Authority.</p>	<p>Paragraph 2.14 altered to reflect that the control of advertisements relating to gambling, is controlled by the Gambling Commission</p>
<p>Paragraph 2.24 indicates that in certain circumstances the Licensing Authority will consider very carefully a number of factors when considering applications for premises licenses. One of the factors is proximity of premises to local schools. The Statement of Gambling Policy should be clear that there is no higher evidential burden where a proposed gambling premises is in close proximity to a local school and that the overriding principle remains that the Licensing Authority will aim to permit the use of premises for gambling.</p> <p>The proximity of schools/centres for vulnerable people will be relevant considerations under local area risk assessments which need to be submitted after 6<sup>th</sup> April 2016 and through those risk assessments, operators will demonstrate that they are aware of the risks and demonstrate policies and procedures in place to mitigate any risk to the licensing objectives caused by the operation of their gambling premises.</p>	<p>Whilst the introduction of local area profiles under the Gambling Act is awaited (scheduled for April 16), no amendment to section 2.24 is proposed as it corresponds with the Gambling Commission Guidance which states at Para 6.33;</p> <p><i>'The statement of policy should set out what factors it is likely to take into account when considering applications for premises licences, permits and other permissions, and when determining whether to review a licence. This may be informed by the licensing authority's local area profile and will include considerations such as the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children.'</i></p>

<p>Paragraph 5.21 causes the ABB significant concern. Any policy that a specific area is an area where gambling premises should not be located may be unlawful. Such a policy would be contrary to the overriding principle of “aim to permit” contained within Section 153 Gambling Act 2005. Similarly the reversal of the burden of proof in the final sentence that requires the applicant to demonstrate why an application should be granted is contrary to that principle. It is respectfully submitted that this paragraph be deleted and replaced with a straight forward reiteration of the principle earlier in the policy that each case will be determined on its merits.</p>	<p>No change proposed. Any cumulative impact/saturation policy proposed will be distinctly separate from the main policy and will be considered in line with current laws and case law.</p>
<p>Paragraphs 5.24 to 5.29 explain the Licensing Authority’s approach to the imposition of conditions. The statement of principles would be assisted by an indication that the starting point for consideration of any application is that it will be granted subject only to the mandatory and default conditions as these are usually sufficient to ensure operation that is reasonably consistent with the licensing objectives. The policy should make it clear that additional conditions will only be imposed where there is evidence of a risk to the licensing objectives that requires that the mandatory and default conditions be supplemented. The policy should be clear that conditions will only be imposed where there is evidence of a need to impose such conditions and that conditions will not be imposed where there is a simply “perceived need” as suggested in paragraph 5.28.</p>	<p>No change proposed.</p>