

Improved coordination between gambling licensing and planning could save all time and money

The Gambling Business Group's **Charlotte Meller** sets out ways officials in the gambling and licensing sectors could work more closely together, to everyone's benefit

The House of Lords Select Committee's 2017 post legislative scrutiny report on the Licensing Act 2003 and its subsequent follow up report in July 2022 were critical of several areas of the implementation of the Licensing Act including the lack of coordination of the licensing and planning systems. The follow up report was frustrated by the lack of progress to address the "continued inconsistency and a lack of joined-up decision-making" and called on the Government to "work with key stakeholders to establish a clear mechanism for the licensing and planning systems to work together and communicate successfully."

The Government responded, agreeing that while coordination was important "the systems are separate, with two very different and distinct objectives and approaches".

These observations from the Select Committee and Government could equally apply to the relationship between licensing and planning under the Gambling Act 2005, and this has been borne out by recent examples of costly and time-consuming appeals to gambling and planning applications.

Relationship between gambling licensing and planning

The 2005 Act and the Gambling Commission's *Guidance to Licensing Authorities* (GLA) sets out the framework for how these two regimes should work:

With regards to planning permission, s 210 of the Act states:

(1) In making a decision in respect of an application under this Part a licensing authority shall not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building.

(2) A decision by a licensing authority under this Part shall not constrain any later decision by the authority under the law relating to planning or building.

Part 7 of the Gambling Commission's GLA provides more detailed guidance on the topic of consideration of planning permission and building regulations as part of the premises licensing process:

7.65. When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have to comply with the necessary planning or building consents. Nor should fire or health and safety risks be taken into account. Those matters should be dealt with under relevant planning control, building and other regulations, and must not form part of the consideration for the premises licence.

Section 204 of the 2005 Act sets out how a potential operator can apply for a provisional statement if construction of the premises is not yet complete, or they need alteration, or he does not yet have a right to occupy them.

This is supported by a 2008 case *The Queen (on the application of) Betting Shop Services Limited v Southend-on-Sea Borough Council* [2008] EWHC 105 (Admin), which found that operators can apply for a premises licence in respect of premises which have still to be constructed or altered, and licensing authorities are required to determine any such applications on their merits.

Section 157 of the Act lists the responsible authorities that must be notified of applications and which are entitled to make representations to the licensing authority on gambling premises applications. The authorities include in England and Wales, the local planning authority; and in Scotland, the planning authority.

Decreasing numbers of gambling premises

The number of gambling premises in Great Britain has substantially decreased over the past 10 years as the land-based sector has been impacted by changes to stakes and

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prizes in betting shops, planning use changes, the impact of Covid on businesses and the growth in online gambling.

	Year to March 2013	Year to March 2023
Betting shops	9100	5955
Adult gaming centres	1671	1348
Bingo	680	650
Family entertainment centres	362	164
Casinos	144	144
Total	11957	8261

Gambling Commission Industry statistics November 2023

While the previously frequently cited description of “proliferation” of gambling premises doesn’t hold true given the ever-decreasing premises, some councils and their communities have concerns about “clustering” of premises particularly in areas of deprivation.

Options for refusing applications for gambling premises

Councils have powers under both gambling and planning regimes to refuse applications within their respective regimes.

Gambling Act

Section 153 of the Gambling Act states that the licensing authority shall 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 issued by the Commission.
- b. In accordance with any relevant guidance issued by the Commission.
- c. Reasonably consistent with the licensing objectives (subject to a and b above).
- d. In accordance with the licensing authority’s statement of licensing policy (subject to a to c above).

The GLA (part 1.26) states:

The ‘aim to permit’ framework provides wide scope for licensing authorities to impose conditions on a premises licence, reject, review or revoke premises licences where there is an inherent conflict with the relevant codes of practice, relevant guidance issued by the Commission, the licensing objectives or the licensing authorities own

policy statement.

Part 5.34 of the GLA makes it clear that moral or ethical objections to gambling are not a valid reason to reject applications for premises licences.

Section 153 of the Act highlights the importance of licensing authorities having a current licensing policy statement which reflects the authority’s priorities and objectives on gambling – taking into account issues and risks for the local area.

Unfortunately these policy statements are often underutilised as a tool. The current policy statements should cover the three years between 31 January 2022 – 2025, irrespective of any interim reviews. An exercise conducted by the Gambling Business Group in December 2023 found nearly 50 councils did not have a current policy statement, with one council confirming that its 2007-2010 policy is its most current.

Gambling White Paper

The Local Government Association (LGA) has called for “more powers” for local licensing authorities citing that the statutory aim to permit licence applications makes it “difficult to refuse new licence applications, even in locations which the council and local residents believe are inappropriate”.

The Department for Media Culture and Sport’s *High stakes gambling reform for the digital age* White Paper published in April 2023 stated “licensing authorities have a wide range of powers under the 2005 Act to refuse or place conditions on applications for gambling premises licences where there is cause for concern, and we fully support use of these powers”.

However, it has proposed, following calls from the Gambling Commission and the LGA, to introduce Cumulative Impact Assessments (CIAs) to complement existing powers. As CIAs require primary legislation changes, DCMS encourages local authorities to make full use of their existing powers and update their policy statements in the interim of finding suitable Parliamentary time.

DCMS does not intend to remove the “aim to permit” requirement when CIAs are introduced and has made it clear that there will be an onus on local authorities to capture and regularly review a wide range of evidence to support the CIA; that each application must be assessed on a case-by-case basis; and that blanket refusals will not be permitted.

Planning legislation

Since 2015, betting shops in England have been classed as *sui generis* (a use that does not fall within any use class), so any new betting shop must apply for full planning permission.

However, if a new betting shop tenant moves into a unit where the last known use was as a betting shop, the new tenant can operate under the previous user's planning use class.

Even with this use class change, to refuse a planning application for a betting shop, the council's local plan, approved by the national planning inspectorate, would need to include a strong evidence base as to why it has restricted betting shops.

Some councils have considered whether and how planning policies for gambling can be reflected in local plans, such as Knowsley's 2022 Town Centre Uses Supplementary Planning document which states that "planning permission for a pay day loan shop, pawnbrokers or gambling use within a retail centre will not be granted if it causes an unacceptable grouping of uses which would have a negative impact on the character of the centre", and goes on to set out what it deems unacceptable groupings and states that a "proliferation of these uses can be detrimental to the principle of supporting vibrant retail centre".

In February 2023, Westminster Council's Planning Committee refused permission for a new adult gaming centre (AGC) on Oxford Street London because the business would undermine the street as a globally recognised shopping district. The decision was appealed and in November planning permission was granted for the AGC. The Planning Inspectorate's report was clear about the boundaries between planning and licensing and whether a gambling premises would be detrimental to the area. It stated:

The focus of planning policies and decisions should be on whether the proposed development is an acceptable use of land in land use terms, and the impacts of those uses, rather than the control processes or issues that are subject to approvals under other regimes such as licensing.

And it added that:

There is no compelling evidence that a single AGC would be inappropriate or harmful to the character or function of the area as a whole.

Engage with your gambling premises

Gambling premises are one of the most highly regulated businesses on the high street – with a dual licensing system, extensive requirements around anti-money laundering and preventing crime, with protecting consumers at the heart of everything they do.

Visitors to gambling premises will rarely go just to the betting shop or arcade: there will be visits, before or afterwards, to other venues on the high street, increasing the footfall to those premises. Gambling premises contribute to the diversification of the offerings on the high street and provide employment opportunities.

The money invested in security in gambling premises means they are safe spaces as highlighted in Bradford where casinos and AGCs are amongst the businesses recognised as "safe havens" on the WalkSafe+ app, which also highlights safer walking routes.

According to the Commission's Licensing Authority Statistics 2022-2023, only 1,582 visits to licensed gambling premises were undertaken by 350 licensing authorities (with another 808 visits to other premises- predominantly pubs to look at gaming machines).

The LGA and the IoL have recently launched a training standard for licensing committee members setting out basic requirements and additional development opportunities for those considering licensing applications. It suggests stakeholder engagement including occasionally participating in visits with licensing officers in the nighttime economy, and meeting with local licenses to understand the challenges they face.

While planning and licensing should not exceed boundaries between their respective regimes, it would be beneficial for members of planning committees to equally consider the stakeholder engagement suggested by the LGA and the IoL. And (gambling) licensing and planning officers should build working relationships and communication channels, if not already in place, to share information about gambling premises.

The LGA and IoL commented: "Such engagement would address the small but increasing number of "inconsistent and a lack of joined-up decision-making". Additionally, being more familiar with how high street gambling business operate could allay planning or licensing concerns at an early stage, saving councils money and resources on appeals.

The Gambling Business Group continues to extend its offer to officers and committee members to facilitate familiarisation visits to gambling premises in your local area, building on training provided for the Metropolitan Police in a London AGC and visits for licensing officers to Motorway Service Areas.

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