

<b>Item No.</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 1 June 2017	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Revocation of Trading Licence	
<b>Ward(s) or groups affected:</b>		None	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the market trader's temporary market licence (number 2680 15) be revoked.

## BACKGROUND INFORMATION

2. Markets established under Section 50 of the Food Act 1984, applicable to all markets listed in the schedule of market locations contained at Appendix A, operate under agreed byelaws for markets and under standard licence conditions.
3. Paragraph 8 of the Food Act, temporary trader standard licence conditions state 'If the council considers that a serious breach of a licence condition has occurred, the licence holder responsible for the alleged breach may be required to attend a hearing, regardless of the penalty point system.' The list of licence breaches also state that under BLC3 abusive or racist behaviour has a penalty of court proceedings, which could result in a prosecution for public order offences and/or an injunction. A copy of the standard temporary licence conditions is attached at Appendix B. For completeness, a copy of the council's byelaws for markets is attached at Appendix C.
4. The sub-committee can decide to:
  - a) Revoke the licence
  - b) Not revoke the licence.
5. A 'temporary licence' as defined in the standard licence conditions granted under the Act and valid for a single day to six months or as specified on the traders licence. A temporary trader is subject to an allocations process each trading day as the available stalls are allocated on the basis of seniority.
6. Traders trading on markets which are governed under the Food Act 1984 do not have a right of appeal at the magistrates' court.
7. If a street trading licence is revoked, the resultant vacancy will be advertised and the licence granted in accordance with council policy. Once the vacancy is filled then any revenue generated will be paid into the markets and street trading account.

## KEY ISSUES FOR CONSIDERATION

### Licence history

8. Trader A has held a licence as a street trader since 18 December 1986, during this period Trader A was a permanent licence holder. In December 2014 Trader A fully surrendered his permanent licence. It is important to note that at this point any seniority Trader A had accumulated ended with his licence surrender.

## Details of the grant of licence number 2680 15

9. Trader A became a temporary trader in 28 January 2015 and traded on and off until 22 July 2016.
10. On 9 June Trader A requested special dispensation in regards to the allocation process. This request was declined by the street trading manager as it would have unduly given preferential treatment to Trader A over other traders who had more seniority. It was established that Trader A could attend allocations without any special arrangements.
11. On 16 July 2016, a serious incident occurred in which derogatory and offensive remarks were made of the market and street trading manager. Following the incident, on 20 July 2016 Trader A was advised by a market officer not to return to the market on account of his behaviour which was deemed wholly unacceptable. The officer advised Trader A that any issues should be addressed to the Market and Street Trading Manager. To this Trader A stated that he wanted nothing to do with The Markets and Street Trading Manager, nor did he have any intention of resolving his problem with them. Trader A was emailed and advised that he had been reported for a BLC3 offence for using abusive language towards the Markets Manager and advised not to return to the market.
12. On the 2 September 2016 a letter was sent to the markets and street trading manager, from Trader A's solicitor advising that he wished to challenge the decision taken and asserting that the behaviour of the trader was acceptable.
13. On 14 October 2016 the decision to revoke Trader A's licence was reviewed by the senior markets officer who concluded that Trader A's abusive language was a serious breach of the licence and that his licence remained revoked
14. Trader A's Solicitors emailed the senior markets officer directly on the 21 November, and again on 5 December. A formal response from the markets department was sent on 9 December 2016 advising that the decision to revoke the licence had been reviewed by the business unit manager who agreed with the decision.
15. On 12 December 2016 a stage one complaint was received. However, because the decision had already been reviewed and advice had already been provided from the markets and street trading team that the matter be escalated to a stage two complaint.
16. On 19 January 2017 the complaint was reviewed by Southwark's customer resolution team who accepted whilst there had been delays dealing with the matter, the substantive issue, concerning the licence revocation remained unchanged. The decision of temporary licences have always been made at officer level and that the standard conditions on the temporary street trading licence was incorrect, and that the council's constitution didn't address this anomaly.
17. On 30 January 2017 the business unit manager for markets and street trading further considered the licence revocation who also concluded that the incident warranted the revocation of Trader A's licence.
18. On 31 March 2017 Trader A's solicitor requested a review of the decision to revoke his temporary licence. It was clarified that the correct procedure was followed in accordance with the Food Act, but it was also accepted that in terms of the conditions detailed in the licence, the incorrect procedure was followed, in that the licence would need to be determined by the licensing committee. It was also confirmed that temporary traders licence conditions would need to be updated to make clear there was no recourse to appeal, in addition to the council's constitution. In view of this

Trader A could have the matter determined by the licensing sub-committee (as per the incorrect conditions in the temporary licence).

19. On 31 March a response to as stage 2 complaint was made concerning the decision to revoke Trader A's temporary licence. It was clarified that the correct procedure was followed in accordance with the Food Act, but it was also accepted that in terms of the conditions detailed in the licence, the incorrect procedure was followed, in that the licence would need to be determined by the licensing sub-committee. It was also confirmed that temporary traders licence conditions would need to be updated to make clear there was no recourse to appeal, in addition to the council's constitution. In view of this Trader A was given the option of having the matter determined by the licensing sub-committee (as per the incorrect conditions in the temporary licence).

#### **Details of penalty points and warnings awarded to Trader A**

<b>Verbal warnings;</b>			
18/05/13	BLC24		Failure to produce valid pitch plate when requested.
10/11/06	BLC18		Oversized trading
14/11/06	BLC 18		Oversized trading
23/11/00	5.1		Oversized trading
23/10/96	10.1		Vehicle left on Market
10/11/94	6.1		goods extending pitch area
<b>Penalty points;</b>			
17/01/09	BLC17		Vehicle left on market (5 points issued)
<b>Fixed penalty notice issued</b>			
FPN 25/11/06	8906	Depositing litter on East street market	£75 charge.

#### **Inconsistencies of licence conditions, constitution and Food Act**

20. It is acknowledged that the temporary licence conditions at the time contained a clerical error in that some rights that are only afforded to a permanent licence were also afforded to temporary traders who signed those conditions. The policy and procedures for temporary and permanent traders have been followed correctly throughout our dealings with this trader and as a result of this matter the licence conditions have now been corrected and updated.

#### **London Borough of Southwark policy**

21. To advise the committee of trader's non-compliance with his trading licence conditions, and to seek the committee's authority to revoke his street trading licence.

#### **Resource implications**

22. There is no fee for this application and the cost is to be met by the service.

#### **Community impact statement**

23. his decision has been judged to have no impact on local people and communities.

## SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

### Director of Law and Democracy

24. Under part 3 of the council's constitution, decisions on the council's licensing policies and registration are reserved to licensing committee.
25. Markets established under section 50 of the Food Act 1984, operate under agreed byelaws for markets, and under standard licence conditions. A copy of the standard licence conditions are annexed at Appendix B. A copy of the byelaws for markets is at Appendix C.
26. Appendix 1 of the standard licence conditions provides that "If the council considers that a serious breach of a licence condition has occurred, the licence holder responsible for the alleged breach may be required to attend a hearing, regardless of the penalty point system.
27. The sub-committee must also be satisfied that the trader has been given 21 days notice in writing of the hearing, and take into account any representations received.
28. The sub-committee can decide to:
  - a. Revoke the licence
  - b. Not revoke the licence.
29. Traders trading on markets which are governed under the Food Act 1984 do not have a right of appeal at the magistrate's court.
30. The council must have due regard to its public sector equality duty ("PSED") under the Equality Act 2010 ("the 2010 Act"), in particular the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity for those with protected characteristics and foster good relations between those with and without such characteristics. The list of protected characteristics is set out in the 2010 Act.

### Strategic Director of Finance and Governance

31. It is noted that replacement casual traders should ensure no overall loss of income to the street trading account. Any variances will be identified during budget monitoring and action will need to be taken as appropriate.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Food Act 1984	Street Trading Section SAST House Dawes Street London SE17 1EL	Lisa York 020 7525 6000
Byelaws	As above	As above
Standard licence conditions	As above	As above

## APPENDICES

No	Title
Appendix A	Markets' schedule
Appendix B	Food Act 1984 Standard licence conditions
Appendix C	Byelaws

## AUDIT TRAIL

<b>Lead Officer</b>	Nicky Costin, Road Network and Parking Business Manager	
<b>Report Author</b>	Hannah Lilley, Senior Market Officer	
<b>Version</b>	Final	
<b>Dated</b>	16 May 2017	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		22 May 2017