

Item No. 6.	Classification: Open	Date: 19 November 2018	Meeting Name: Licensing Sub-Committee
Report title:		Revocation of Trading Licence	
Ward(s) or groups affected:		East Walworth	
From:		Director of Environment	

RECOMMENDATION

- That following market traders licences be revoked:
 Trader A - licence Number 183BE
 Trader B - licence Number 137BE

BACKGROUND INFORMATION

- Markets established under Section 50 of the Food Act 1984, applicable to all markets listed in the schedule of market locations, operate under agreed byelaws for markets contained at Appendix A, and under standard licence conditions.
- The fourth paragraph on page 28 of the Food Act 1984 Market Trading Licence conditions state *'Where the council considers that a serious breach of the licence condition has occurred, the trader responsible for the alleged breach is liable to be required to attend the committee hearing notwithstanding the above penalty point system'*.
- The list of licence breaches on page 27 of the Food Act 1984 Market Trading Licence conditions also state that under BLC3 Abusive or racist behaviour has a penalty of Court proceedings, which could be a prosecution for public order offences and/or an injunction. A copy of the Market Trading licence conditions is attached at Appendix B.
- The sub-committee can decide to:
 - Revoke the licence
 - Not revoke the licence.
- A 'Market Trading licence' as defined in the standard licence conditions granted under the Act and valid for a period as specified under the Act and valid for at least six months and not more than 3 years.
- Traders on markets governed under the Food Act 1984 do not have a right of appeal at the Magistrates' Court but may challenge the licensing sub-committee's decision by way of Judicial Review in the High Court.
- If a market 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

9. Trader A has held a licence as a street trader since 31 October 2000 during this period he became a permanent licence holder in March 2005.
10. Trader B has held a licence as a Market Trader since November 2016 during this period he was a permanent licence holder.

Details of the breach of Licences by Trader A and Trader B

11. On 14 September 2018, an incident occurred where a car belonging to Trader A and Trader B parked in the entrance to the market barrow yard at the rear of SAST House. Parking in the barrow yard is not permitted for anyone other than the leaseholder. Any vehicles parked there are likely to receive a fine for unauthorised parking. Vehicles are permitted to access the containers at the far end of the yard to load and unload stock only. Trader A and Trader B pay a fee to Southwark to keep containers for their stock in the yard. On this occasion the car was parked in a narrow access away from the containers and very close to the entrance to the barrow yard, see photographs attached as Appendix C. This is not an area used for parking at anytime. Another trader's assistant approached the entrance at some speed with a heavily loaded barrow, there is an incline to the yard and some speed is required to pull a heavy barrow into this location. Due to Trader A and Trader B's car being located in such a position at the entrance to the yard, the assistant pulling the barrow was unable to stop the barrow in time before the barrow hit the car. The assistant sustained a bruise to his body before he was able to move out of the way. There were reports that some damage was sustained to the front of the car bumper.
12. Market Officers have observed CCTV footage of the incident and believe the accident would not have happened if the car had not been parked in the space and that Trader A and Trader B are at fault for leaving their vehicle in such a hazardous and illegal position. The CCTV footage will be available to licensing sub-committee to view if required.
13. On 15 September 2018 Market Officer, Elvis Meshack became aware of a commotion coming from the barrow yard at SAST House. There was an altercation between Trader A, Trader B with two traders about the incident involving the car the previous day. Mr Meshack was required to physically intervene.
14. On Monday 17 September 2018 formal complaints were received by the markets manager, Lisa York from several traders regarding the threatening and abusive behaviour of Trader A and Trader B towards several other traders on the market as a result of the incident involving the car. All of the traders have requested anonymity as they fear reprisals from Trader A and Trader B. Trader A was advised by the market's manager that due to the serious allegations received an investigation into the matter would be undertaken.
15. On Tuesday 18 September 2018 several interviews were held and statements submitted to the markets office advising of serious breaches of licence conditions by Trader A and Trader B. Trader A also submitted a statement which can be found as Appendix G (of the closed report). Statements from market officer, Elvis Meshack and markets manager, Lisa York can be found as Appendix K (of the closed report).
16. On 20 September 2018 Trader A and Trader B had their licences suspended pending an investigation and a licensing sub-committee hearing which was scheduled for the 19 November 2018

17. Trader A requested that another family member operate their stall whilst the investigation and licensing sub-committee hearing took place and this was accepted by the market's manager, Lisa York so that the trader's livelihoods was not adversely affected.
18. The Markets Team are also aware of historical incidents of similar behaviour from Trader A and Trader B.
19. The Markets Team are also in receipt of complaints from several other traders who have subsequently declined to make a formal complaint for fear of verbal and physical abuse from Trader A and Trader B.

Resource implications

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

Community impact statement

21. This decision has been assessed to have no impact on local people and communities.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

22. Under part 3 of the council's constitution, decisions on the council's licensing policies and registration are reserved to licensing committee.
23. 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 A.
24. The fourth paragraph on page 28 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."
25. 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.
26. The sub-committee can decide to:
 - a. revoke the licence
 - b. not revoke the licence.
27. Traders trading on markets which are governed under the Food Act 1984 do not have a right of appeal at the Magistrates Court, but may challenge a decision of the licensing sub-committee in the High (Administrative) Court.
28. 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

29. 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 0207 525 6000
Byelaws	As above	As above
Standard licence conditions	As above	As above

APPENDICES

No	Title
Appendix A	Bye laws and Markets' schedule
Appendix B	Food Act 1984 Standard licence conditions
Appendix C	Location Map

AUDIT TRAIL

Lead Officer	Lisa York, Markets and Street Trading Manager	
Report Author	Hannah Lilley, Market Team leader	
Version	Final	
Dated	9 November 2018	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	12 November 2018	