

Item No. 6.2	Classification: Open	Date: 14/09/05	Meeting Name: Council Assembly
Report title:		Street Trading Officer Panel	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION(S)

1. That, pursuant to the recommendations of the Standards and Licensing Committees, a Street Trading Officer Panel be established to deal with street trading licensing issues.
2. That the terms of reference for the panel should be as set out in appendix A.
3. That the Part 3G of the Constitution (Matters Reserved) be amended as set out in appendix B
4. That officers be authorized to make any consequential amendments to the constitution.
5. That the draft procedures for Street Trading Officer Panel hearings at Appendix C be noted.

BACKGROUND INFORMATION

6. Constitutional amendments relating to street trading were considered by both the licensing committee on the November 11 2004 and the standards committee on the November 18 2004. The licensing committee recommended that all street trading functions be delegated to an officer panel. This covered both functions previously exercised by members acting through the licensing committee and those personally exercised by the head of street trading.
7. However, the standards committee agreed to recommend the proposal for the licensing officer panel to deal with street trading matters, but in respect of the issue of revocations recommended that there be a right of appeal to members which would have been additional to the statutory right of appeal to the magistrates' court.
8. At council assembly on December 8 2004 the recommendations of the standards committee were presented to members. At that meeting an amendment was made asking the standards committee to, in consultation with the Director of Environment and Leisure, further review all constitutional changes regarding street trading issues.

9. At its meeting on January 31 2005, the standards committee further reviewed all constitutional changes regarding street trading issues. The standards committee after seeking advice from the strategic director of environment and leisure and borough solicitor, agreed to recommend to council assembly the proposal for the licensing officer panel to deal with street trading matters.
10. At present the licensing committee has responsibility for all street trading licence revocations. The findings of the bench marking exercise carried out by the street trading section in August 2004 showed that the common practice amongst other London Boroughs (i. e. Camden and Westminster) is to leave such responsibilities to an officer panel. The procedure set out in the recommendations reflects the good practice highlighted in these boroughs.
11. In view of the new responsibilities that the committee will be taking on with the implementation of the Licensing Act 2003 it is proposed that a street trading officer panel is created in order to relieve the licensing committee of their duties in dealing with street trading licences revocations. This panel will also deal with street trading licences grants, refusals, and variations, which at present are dealt with by the manager of the street trading section.
12. At the same time an officer panel would ensure that the decisions relating to street trading licences; first time grants, refusal and variations are dealt with by consensus of authorised officers rather than the decision of an individual person in this case the street trading manager. A full list of the matters to be reserved to the proposed street trading officer panel are set out in appendix A. The relevant constitutional changes to Part 3G of the constitution are set out in appendix B.
13. The licensing committee would still be responsible to deal with any matter that requires statutory formal consultation i.e. designation of new sites and variation of standard licence conditions. The approval of fees and charges will remain an executive function.
14. It is proposed that the officer panel is formed by at least three officers chosen from the list authorised by the director of environment and leisure. The client and enforcement business unit manager will chair the panel. An independent business unit manager from within environment and leisure and a fourth tier officer from within the waste management division will complete the panel.
15. The proposed officer panel will be a quasi-judicial function and it will follow rules of natural justice. The draft procedure for the panel are attached for information in Appendix C.

KEY ISSUES FOR CONSIDERATION

Policy implications

16. This proposal comes in line with Southwark's corporate priority of driving down debt. Arrears matters would be addressed in a prompt and quicker way, which will help reducing the existing £90,000 deficit in the street trading account.
17. This proposal also recognizes the customer focus corporate priority. The proposed officer panel will efficiently deal with breach of licence conditions by traders. This is urgently needed at sites such as East Street where numerous complaints from

residents are received everyday about stallholders over sizing, causing noise nuisance, littering and not containing waste, etc.

Effect of proposed changes on those affected

18. An officer panel together with a penalty point system to monitor breach of licence conditions by traders will enable better controls and improve enforcement of pedestrian footways, fire paths between stalls, containing waste, etc. This will assist pedestrians including elderly persons, people with disabilities, and shoppers who are carers with young children.
19. About an 80% of registered street traders are from ethnic minorities or ethnic minorities background. In order to reflect the ethnic diversity in the market, it would be desirable for the Officer Panel should also reflect this cultural diversity, where possible.

Resource implications

20. Traders will be charge an admin fee of £20 per application dealt with by the officer panel, this includes licence variations, transfers, change of commodity, etc. This fee will contribute towards the admin costs and the issuing of the resulting new licence.
21. Traders are charged £21 for every arrears letter sent to them, this is current practice. Traders will also be charged £21 for a notification of revocation sent in order to contribute towards the costs of the preparation of the revocation reports.
22. There is no special staff resource implications. The officer panel will be formed by existing members of staff.

Consultation

23. The Southwark Street Trading Association has consulted on the setting up of a street trading officer panel. The Southwark Association of Street Traders was provided with a copy of the benchmarking report on the 8 November 2004 and were requested to provide written comments by 6 December 2004. The report contained a number of new ideas to improve the performance and viability of the street trading business unit, including the introduction of an officer panel.
24. The Southwark Association of Street Traders was unable to meet the deadline and was given a further 5 weeks to provide written comments on the benchmarking report.
25. The Chair of the Southwark Association of Street Traders Consultative Forum, Councillor Linda Manchester, requested officers to carryout further consultation with the Southwark Association of Street Traders in an attempt to obtain their support for the proposals contained in the benchmarking report, including the introduction of an officer panel.
26. Councillor Linda Manchester held two meetings at Inspire in Walworth Road. The first meeting was an all day event held on the 9 February 2005 and a follow up meeting held on the 16 March 2005. Unfortunately, the Southwark Association of Street Traders and the Council could not reach an agreement on the issue of the implementation of an officer panel.

27. This is a constitutional matter and no formal consultation is required by the Act.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Borough Solicitor

28. The proposals accord with the aim of the Local Government Act 2000 to promote, transparency, efficiency and accountability in decision-making. The panel will have a clear procedure, it will be clear who takes the decision and when. Introducing a second tier appeal to members would adversely affect the efficiency of the process and undermine the authority of the panel.
29. The London Local Authorities Act 1990 sets out a clear procedure for appeals against decisions to revoke licences. Traders have a right to appeal within 21 days of the date they are notified of the revocation. Introducing an additional tier of appeal would be inconsistent with the framework in the Act and impracticable given the limited timeframe for appeal to the magistrates court.
30. The proposal that decisions formerly taken by an individual officer in future be made by the panel should support probity in decision-making. A panel would be, and be seen to be, less likely than an individual officer to be subject to undue pressures or to allegations of undue influence. This is of particular note in an area, street trading, where the decisions to be taken by the panel can have considerable financial impact.
31. Draft procedures for the panel are attached for members information. They have been revised to reflect comments of the standards committee, in particular to allow a ward councillor to make representations. Further revisions may be made from time to time, with the approval of the borough solicitor, to ensure that the procedures accord with statute, as it varies from time to time, natural justice, and the principles of decision making in the constitution.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Council Assembly agenda papers December 8 2004 Licensing committee agenda papers November 18 2004	Town Hall, Peckham Road, London, SE5 8UB	Kevin Flaherty 0207 525 7236
Standards Committee Agenda papers November 18 2004 and January 31 2005	Town Hall, Peckham Road, London, SE5 8UB	Paula Thornton 0207 525 4395
Southwark Constitution 2004/2005	Town Hall, Peckham Road, London, SE5 8UB	Ian Millichap 0207 525 7225

APPENDICES

Appendix No	Title
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Appendix A	Draft terms of reference and matters reserved for the proposed street trading officer panel
Appendix B	Constitutional Amendment
Appendix C	Draft street trading officer panel procedures

AUDIT TRAIL

Lead Officer	Simon Baxter, Client & Enforcement Manager	
Report Author	Eva Gomez, Street Care Enforcement Officer	
Version	Final	
Dated	02.09.05	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor	Yes	Yes
Chief Finance Officer	Yes	No comments made
Executive Member	Yes/No	Yes/No
Date final report sent to Constitutional Support Services	02.09.05	

APPENDIX A

Draft Terms of Reference for the Street Trading Officer Panel

Matters Reserved to the Head of Service and considered by the Street Trading Officer Panel

The panel to make recommendations to the Head of Service on the following matters:

1. To hear cases where street trading licence holders are in arrears or have breached licence conditions, and consider the revocation or non-renewal of a licence
2. To consider first time grants and allocations
3. To consider applications for the change of commodities for miscellaneous sites
4. Adjustments of commodities for market traders
5. Pitch allocation and transfers for market traders
6. The approval/interviews of proposed licencees for newly designated sites

Membership

The officer panel shall comprise of at least three officers chosen from a list authorised and maintained by the strategic director of environment and leisure. The panel will include the following:

- The client and enforcement business unit manager who will chair the panel
- An independent business unit manager from within environment and leisure department
- A fourth tier officer from within the waste management division

Quorum

The quorum is three

Constitutional Amendment

Note: Any deletions are denoted by a strikethrough of the relevant text. Additions are denoted in bold/italics.

PART 3G: MATTERS RESERVED TO THE LICENSING COMMITTEE, AND THE HEAD OF SERVICE AND OFFICER PANEL EXERCISING LICENSING FUNCTIONS

Licensing committee to

1. Approve the council's policies in respect of all licensing and registration matters, except the licensing statement¹.
2. To establish policies and procedures for considering and determining additional licensing functions conferred on the authority by statute.

The Licensing Committee and the sub-committees appointed by it to exercise licensing functions to consider:

1. any application for the grant, renewal, variation or transfer of any General Safety Certificate in respect of Sports Stadium or Regulated Stands;
2. any application for a personal licence which is the subject of a police objection.
3. any application for a personal licence by a person with unspent criminal convictions.
4. any application for a premises licence or a club premises certificate which is the subject of a relevant representation
5. any application for a provisional statement which is the subject of a relevant representation
6. any application to vary a premises licence or club premises certificate which is the subject of a relevant representation
7. any application to vary a designated premises supervisor which is the subject of a police objection.
8. any application for a transfer of a premises licence which is the subject of a police objection.

¹ The approval of the licensing statement is a matter reserved to council assembly.

9. any applications for interim authorities which are the subject of a police objection.
10. any application to review a premises licence or club premises certificate.
11. any decision to object when the local authority is a consultee and not the relevant authority considering the application.
12. any determination of a police objection to a temporary event notice.
13. any application for the grant of new amusement arcade/prize bingo permits.
14. any application for the grant, renewal, variation or transfer of any sex establishment license.
15. new designations for sites for street trading.
- ~~16. revocation of street trading licenses.~~

16.17. to consider and determine the following applications in accordance with the London Government Act 1963 and associated legislation:²

1. any opposed application for the grant, renewal, transfer or variation of annual public entertainment's or night café licence where there is evidence which gives rise to consideration of whether the applicant is a fit and proper person;
2. any opposed application for the new annual grant of a public entertainment's licence in respect of any premises capable of accommodating 150 or more persons;
3. any opposed application for either the new annual grant of a public entertainment's licence or application for the variation of an existing licence which seeks hours of operation beyond the latest hour permitted for the sale of alcohol under a Justices special hours certificate (i.e. 2 am weekdays and 12 midnight on Sunday);
4. the revocation of any licence following the successful prosecution of the holder for breach of licence terms, conditions and restrictions;
5. the non-renewal of any licence following concerns raised by officers regarding the manner of operation of the premises under its licence;
6. any application for consent to provide striptease or hypnotism or like entertainment.
7. applications made in respect of occasional licenses over 28 days in any 12 month period.

Matters Delegated to the Head of Service

² Either the licensing committee or community councils previously considered these applications. The functions have now been returned to the licensing committee with effect from February 7 2004.

1. any application for a personal licence which is without police objection.
2. any application for a premises licence or a club premises certificate if no relevant representation has been made.
3. any application for a provisional statement if no relevant representation has been made.
4. any application to vary a premises licence or club premises certificate if no relevant representation has been made.
5. any application to vary a designated premises supervisor which is without police objection.
6. any request to be removed as a designated premises supervisor.
7. any application for a transfer of a premises licence which is without police objection.
8. any applications for interim authorities which are without police objection.
9. any decision on whether a complaint is irrelevant frivolous or vexatious.

Matters Delegated to the Head of Service and considered by the Licensing Officer Panel

The Panel to make recommendations to the Head of Service on the following matters:

1. any opposed application for the grant, renewal, transfer or variation of annual public entertainments or night café licenses which:
 - (i) relates to a venue capable of accommodating fewer than 150 persons; or
 - (ii) relates to an application made for operating hours within the terminal hours under a Justices Special Hours Certificate; or
 - (iii) where consideration of whether the applicant is a fit and proper person is not an issue;
2. any opposed application for the grant of any occasional licence;
3. any application for waiver of any part of the Council's Technical Regulations or for any waiver of the Council's Rules of Management;
4. any application for renewal of provisional licences where specified public safety and / or acoustic sound insulation works have not been undertaken in the previous licence term;
5. consideration of all issues relating to the grant, renewal, or revocation of door supervisors registrations; (*Note this function is to be transferred to the Securities Industry Authority from April 2005*).
6. all films submitted for local classification under the Cinemas Act 1985.

7. any opposed application for the grant, renewal or transfer of a special treatments license.

Matters Reserved to the Head of Service and considered by the Street Trading Officer Panel

The panel to make recommendations to the Head of Service on the following matters:

- 1. To hear cases where street trading licence holders are in arrears or have breached licence conditions, and consider the revocation or non-renewal of a licence.***
- 2. To consider first time grants and allocations***
- 3. To consider applications for the change of commodities for miscellaneous sites***
- 4. Adjustments of commodities for market traders***
- 5. Pitch allocation and transfers for market traders***
- 6. The approval/interviews of proposed licencees for newly designated sites***

NOTES

1. All matters not reserved as above are delegated to the appropriate Chief Officer, Head of Service or Business Unit Manager, except that authority to initiate prosecutions is delegated to:

Licensing

- Strategic Director of Environment and Leisure
- Head of Streetscene and Public Protection
- Head of Waste Management
- Environmental Health and Trading Standards Manager

Street Trading

- Strategic Director of Environment and Leisure
- Head of Streetscene and Public Protection
- Head of Waste Management
- Client and Enforcement Manager, Waste Management Division
- Environmental Health and Trading Standards Manager

(All matters reserved to the Licensing Officer Panel **or the Street Trading Officer** Panel can always be decided by the Licensing Committee.)

2. Each Chief Officer and/or Head of Service in making decisions under the above

scheme is required to do so within the internal scheme of management for their own department. This will include appropriate monitoring arrangements, and dissemination of information both internally and externally to the Council.

Draft Procedures for Street Trading Officer Panel Hearings

Pre and post hearing procedures for licensing/variations

1. All applications or requests will have to be received 2 weeks prior to hearing. If no admin fee is received with the application/request a letter will be sent by the Admin Officer to trader explaining that the matter cannot be considered until the fee is received.
2. All applications received after closing date will not be considered until the next panel hearing, which are held on a two monthly basis.
3. The Admin Officer will compile a list of applications including full details of the pitch, applicant and date of application. Applications will be grouped by individual market and in sequence of pitch number.
4. The list of applications and requests will be circulated immediately after the closing date for comments of street trading officers and other traders by Admin Officer.
5. All such comments will be received at least 3 days prior to panel hearing. The Senior Street Trading Officer will be present at panel hearing
6. The minutes of panel hearing will include officers present and their role, date, venue, matters arising from last panel hearing, panel decisions on requests being heard in market and date of receipt, any other business, date and venue of next meeting.
7. The minutes of panel will be circulated to all street trading officers within 3 days of the panel hearing by the Admin Officer.
8. All decisions of panel will be notified to traders by letter within 3 days of the panel hearing by the Chair of the Panel.
9. For variation hearings, a copy of offer/change of commodity etc will be sent out with letter and returned signed and dated by trader as acceptance within 14 days of date of letter. A copy will be placed on traders file by the Admin Officer.
10. For first time grant hearings, after 14 days if an offer of a pitch has not been accepted in writing the pitch will be made vacant and may be offered to another applicant from that panel hearing. An Admin Officer will inform panel members of such an occurrence.
11. Ward Councillors may attend meetings either to represent the licence holder (if requested to do so), or as representative of their Ward.

Procedure for hearings re arrears

12. Under section 29(1) of the London Local Authorities Act 1990, street trading licence holders will be given at least 21 days written notice of the officer panel hearing. The notice will invite the licence holder to attend the hearing and will state the grounds on which the decision will be based (i.e. the amount of arrears). The notice will also state that if the licence holder does not attend a decision will be made in their absence. The Admin Officer will send out this letter.

13. The Chair of the panel will introduce the panel and the Council officers advising it, and will note the name of the licence holder, the Ward Councillor if present, and any representatives. The Chair will then outline the reason for the trader being called to panel.

14. The licence holder, their representative (if present) and the ward Councillor (if attending), will then be allowed to state their case. The panel members will be given a chance to question the licence holder, representative and Councillor.

15. The licence holder (if present) will be allowed to make closing remarks.

16. The panel members will then adjourn to discuss and agree their decision in private. The decision will be minuted. The Chair of the panel will inform the licence holder of the result and their rights of appeal in writing within 3 days of the date of the meeting.

17. Under section 30(1) of the London Local Authorities Act 1990, a licence holder aggrieved by the revocation of the licence may appeal to the Magistrates Court, within 21 days of notification in writing of the decision. In order to exercise their right to trade during the appeal period, any aggrieved licence holder must furnish the Council with written confirmation from the Magistrates Court showing that an appeal has been lodged with the Court and if available the time and date of the appeal hearing.

Procedure for breach of licence condition panel hearings

18. Under section 29(1) of the London Local Authorities Act 1990, street trading licence holders will be given at least 21 days written notice of the officer panel hearing. The notice will invite the licence holder to attend the hearing and will state the grounds on which the decision will be based (i.e. the breach of conditions). The notice will also state that if the licence holder does not attend a decision will be made in their absence. The Admin Officer will send out this letter.

19. The Chair of the panel will introduce the panel and the Council officers advising it, and will note the name of the licence holder, the ward councillor if present, and any representatives.

20. Witness(es) will then be called, where available, or statements of witness(es) introduced. Where witness(es) is present, after giving their evidence, the licence holder will be given an opportunity to question the evidence. The panel members will then be allowed to question the witness(es).

21. The licence holder or their representative (if present) and the ward councillor (if attending), will then be allowed to state their case. The panel members will be given a chance to question the licence holder, representative and Councillor.

22. The licence holder (if present) will be allowed to make closing remarks.

15. The panel members will then adjourn to discuss and agree their decision. The decision will be minuted.

16. The Chair of the panel will inform the licence holder of the result and their rights of appeal in writing within 3 days of the date of the meeting.

25. Under section 30(1) of the London Local Authorities Act 1990, a licence holder aggrieved by the decision of the officer panel may appeal to the Magistrates Court, within 21 days of notification in writing of the decision. In order to exercise their right to trade during the appeal period, any aggrieved licence holder must furnish the Council with written confirmation from Magistrates Court showing that an appeal has been lodged with the Court and if available the time and date of the appeal hearing.