

Item No. 5.	Classification: Open	Date: 15 November 2022	Meeting Name: Licensing Sub-Committee
Report title:		Revocation of permanent trading license at Pitch 14 East Street market, London SE17	
Ward(s) or groups affected:		North Walworth	
From:		Director of Environment	

RECOMMENDATION

- That the Licensing sub-committee approves the revocation of the following two market traders licenses:
 - Permanent Licence Number 29733
 - Temporary Licence Number 35704

BACKGROUND INFORMATION

Current Licences

- Trader (SF) has held a Permanent Licence for pitch 14 since 1 April 2015 to sell Denim wear (Ladies' and Children's).
- SF also holds a Temporary Traders' Licence since 8 June 2022 and is able to sell Ladies' wear.
- There have been breaches of the permanent licence Number 29733 including serious incidents on four occasions, on 21 May 2022, 6 August 2022, 27 August 2022 and 7 September 2022 in respect of both the permanent licence and temporary licence number 35704.

KEY ISSUES FOR CONSIDERATION – Standard Licence Conditions

Permanent Licence

- Markets established under Section 50 of the Food Act 1984 are applicable to all markets listed in the schedule of market locations, operate under agreed byelaws for markets contained in **Appendix A** and under standard licence conditions in **Appendix B**.
- Paragraph 16 of **Appendix B** (page 15) of the Food Act 1984 Market Trading Licence conditions (Permanent) state that '*Traders holding a Permanent trading licence shall be allocated a fixed permanent pitch from which to trade subject to the agreed clashing rule*'. A 'four away' clashing rule is observed at East Street Market, meaning that traders with the same commodity cannot be located within four pitches of each side and adjacent areas of the trading pitch.

7. SF has 10 Points on permanent Licence number 29733.
8. The fourth paragraph on page 28 of the Food Act 1984 Market Trading Licence conditions (Permanent) 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*'.
9. The list of licence breaches on page 27 and 28 of **Appendix B** also states 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.

Temporary Licence

10. The ninth Paragraph on page 4 of the Food Act 1984 Market Trading Licence conditions (temporary) states "The licence holder responsible for a serious breach will lose their licence to attend a hearing with the council, regardless of the penalty point system."
11. The list of licence breaches on page 4 of the Food Act 1984 Market Trading Licence conditions (temporary) state that under BLC3 abusive or racist behaviour has a penalty of licence invalidated. A copy of the Market Trading licence conditions is attached **Appendix C**.

Licence History and Details of the Breach of Licences

12. The original permanent trader licence was transferred to SF through a next of kin transfer on 31 March 2015. SF was the Licence holders' assistant before 2015.
13. In January 2012 the original trader applied for a variation to change commodity from Ladies' Jeans to Denim-wear (Ladies' and Children's).
14. In November 2013 following a Member's enquiry from SF, a response from the Markets and Street Trading Team reiterated that 'only items that were ladies and children's clothes made entirely from 'Denim' fabric should be sold from the stall'.
15. The Markets and Street Trading team have endeavored to support SF as a trader who was unable to trade for long periods of time during the pandemic as they were considered a 'non-essential' trader.
16. In 2021 SF requested that the Street Trading Manager allow SF to sell a line of non-denim stock, this was allowed on the basis that once the 'non denim' stock was sold SF would continue to sell the licensed commodity.
17. The below Breaches of licence were witnessed when SF continued to display and sell commodities other than those on the permanent licence number 29733:

Date	BLIC Code	Action
22/03/22	BLIC7 - Displaying commodities other than those on licence being sold	Verbal warning

Date	BLC Code	Action
21/05/22	BLC7 - Displaying commodities other than those on licence being sold	Verbal Warning
07/06/22	BLC7 - Displaying commodities other than those on licence being sold	Verbal Warning
11/06/22	BLC7 - Displaying commodities other than those on licence being sold	10 points issued

18. Serious breaches of both the permanent and temporary licences were also witnessed when SF used abusive behaviour towards Council staff on the following occasions;

Date	BLC code	Action
21/05/22	BLC3 Abusive or racist behaviour	Verbal warning
06/08/22	BLC3 Abusive or racist behaviour	Verbal warning (withheld)
27/08/22	BLC3 Abusive or racist behaviour	Trader Suspended
07/09/22	BLC3 Abusive or racist behaviour	Trader Suspended

19. The markets team have addressed SF's ongoing concerns verbally, by email and through the formal channels of complaint. The issues raised were investigated and not upheld.
20. The markets team offered SF an opportunity to relocate the pitch and extend the licence commodity to help the trader to continue to trade. Legally there was no obligation to do this.
21. SF refused the relocation and variation offer and requested the matter to be presented before licensing committee.

Representations from other persons

22. There are two representations from other Licensed Traders on East Street Market alongside Witness statements from Markets and Street Trading team.

London Borough of Southwark Markets policy

23. The Markets and Street Trading Markets Policy was adopted by the Licensing Committee on 20 June 2017.
24. Southwark Council ("the Council") recognises the important contribution that markets make to the local economy and the character of the area. They remain an important Council service and contribute in a number of ways to the local communities they serve.

25. The Council's markets (which are described in more detail in Section 4 of this markets policy) represent an important investment by the Council in delivering economic regeneration and town center vitality.
26. The Council is committed to maintaining the balance of markets throughout Southwark and ensuring there is consistency in the way markets are operated.
27. The markets Policy is available at [Southwark markets - Southwark Council](#).

Climate change implications

28. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
29. Climate change is not a legal factor in the consideration of a grant of a Street Trading or Markets Licence under the current licensing objectives, however members can make enquiries and request an agreement from applicants to promote the reduction of the impact of climate change that may be caused by street trading.
30. Examples of such agreements may be:
 - Request that single use plastics, such as disposable plastic bags are not used when selling goods.
 - Traders can commit to using sustainable/ recycled packaging for products
 - Traders can reduce food waste by being encouraged to donate food near expiry to food bank/charities.
31. The council's climate change strategy is available at:

<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

Community, equalities (including socio-economic) and health impacts

Community impact statement

32. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

Equalities (including socio-economic) impact statement

33. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the council to consider all individuals when carrying out its functions.

34. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.

Health impact statement

35. Health impacts cannot be considered by law when making decisions under the Food Act 1984 Part III.

Resource implications

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

37. Under part 3 of the council's constitution, decisions on the council's licensing policies and registration are reserved to licensing committee.
38. 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 byelaws for markets is at **Appendix A**. A copy of the standard licence conditions are annexed at **Appendix B**.
39. 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."
40. 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.
41. In respect of the permanent licence the Licensing Sub-Committee can decide to:
 - a. revoke the licence
 - b. whether special conditions should be attached to the licence
 - c. not revoke the licence.
42. Concerning temporary licences, the ninth Paragraph on page 4 of the Food Act 1984 Market Trading Licence conditions (temporary) states "The licence holder responsible for a serious breach will lose their licence to attend a hearing with the council, regardless of the penalty point system"

43. Part 4G of the Constitution provides the revocation of temporary street trading licences under the Food Act 1984 and the London Local Authorities Act 1990 (as amended) are delegated to the head of service. In view of this contradiction with the condition in the temporary licence, to assist the trader, it is felt that the determination of the temporary licence should be left to the Licensing Sub-Committee.
44. In respect of the temporary licence the Licensing Sub-Committee can decide to:
- Invalidate the licence
 - Not to invalidate the licence.
45. 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 the decision of the Licensing Sub-Committee in the High (Administrative) Court by way of a judicial review.
46. 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
47. 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

48. It is noted that replacement of 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	Byelaws and Markets' schedule
Appendix B	Food Act 1984 Standard licence conditions (Permanent)
Appendix C	Food Act 1984 Standard licence conditions (Temporary)

AUDIT TRAIL

Lead Officer	John Wade, Head of Traded Services	
Report Author	Hannah Lilley, Market Team leader	
Version	Final	
Dated	3 November 2022	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	3 November 2022	