

Committee: <b>Licensing Sub-Committee</b>	Date: 19 March 2019	Classification: UNRESTRICTED	Report No.	Agenda Item No.
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Report of: <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>  Originating Officer: <b>Lavine Miller-Johnson</b> <b>Principal Licensing Officer</b>	Title: <b>Licensing Act 2003</b>  <b>Application to Review the Premises Licence for TSB News 77 Vallance Road London E1 5BS</b>  Ward affected: <b>Spitalfields &amp; Banglatown</b>
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## 1.0 Summary

Name and Address of premises:	<b>TSB News 77 Vallance Road London E1 5BS</b>
Licence under review:	<b>Licensing Act 2003 – Premises Licence</b> • <b>Sale by retail of alcohol</b>
Review triggered by:	<b>Metropolitan Police</b>
Representations by:	<b>Licensing Authority Trading Standards</b>

## 2.0 Recommendations

- 2.1 That the Licensing Committee considers the application for review and then adjudicates accordingly.

**LOCAL GOVERNMENT 2000 (Section 97)**  
**LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

Brief description of "background paper"	Tick if copy supplied for register	If not supplied, name and telephone number of holder
<ul style="list-style-type: none"> <li>Guidance Issued under Section 182 of the Licensing Act 2003</li> <li>Tower Hamlets Licensing Policy</li> <li>File</li> </ul>		Lavine Miller-Johnson 020 7364 2665

### 3.0 **Review Application**

3.1 This is an application for a review of the premises licence for TSB NEWS, 77 Vallance Road London E1 5BS. The review was triggered by Metropolitan Police.

3.2 A copy of the review application and statements are attached in **Appendix 1**.

### 4.0 **The Premises**

4.1 The premises licence was issued on **28<sup>th</sup> September 2005**. A minor variation of the Premises Licence was made on 31st January 2017 to add conditions. A copy of the current licence is contained in **Appendix 2**.

4.2 Maps showing the premises and surrounding area are included in **Appendix 3**.

### 5.0 **Representations**

5.1 This hearing is required by the Licensing Act 2003, because a review has been triggered by: Metropolitan Police.

5.2 Only representations that relate to the following licensing objectives are relevant:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

5.3 In the view of the interested party and the responsible authorities it is necessary to achieve the licensing objectives of the prevention of crime & disorder and the protection of children from harm.

### 6.0 **Review Explained**

6.1 The Licensing Act 2003 was described by the Government at the time as “light touch” but as Baroness Blackstone stated in the Lords at the time of the second reading (26 Nov 2002) “Local residents and businesses as well as expert bodies, will have the power to request that the licensing authority review existing licences where problems arise. Such a review could result in the modification of the licence, its suspension, or ultimately, revocation.”

6.2 The Home Office has issued guidance under Section 182 of the Licensing Act 2003 in relation to reviews and that is contained in **Appendix 6**. It is available on the Government’s website, [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk). It was last revised in April 2018.

- 6.3 Members are particularly asked to note the comments in relation Crime and Disorder. In particular the home office advice is that “The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted.”
- 6.4 In relation to its advice on representations the home office has also advised that “there is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations.” It has also issued revised guidance about Crime and Disorder. **See Appendix 7.**
- 6.5 Members should also note the Council’s Licensing Policy in relation to Crime and Disorder, the relevant parts of which are contained in **Appendix 8.**
- 6.6 The Home Office has issued guidance in relation to Protection of Children from Harm see **Appendix 9.**
- 6.7 The Councils Licensing Policy in relation to the Protection of Children from Harm is shown in **Appendix 10.**
- 6.8 The Home Office has advised that in relation to reviews “Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation. ”
- 6.9 An interested party or a responsible authority can trigger a review at any time, but the grounds must be relevant to the licensing objectives. The form of the application, and the advertisement of the review are the subject of regulations (The Licensing Act 2003 (Premises Licences and Club Premises Certificate) Regulations 2005). In addition, the licensing authority has to satisfy itself of certain matters in relation to the Licensing Act 2003. The Licensing & Safety Team Leader is the delegated officer who deals with this on behalf of the Licensing Authority. All the matters stated in 5.0 were considered before any representations were accepted for inclusion in this report.
- 6.10 The Licensing Act 2003 requires that the Licensing Authority satisfies itself that it should reject the grounds for a review because:
- The ground is not relevant to one or more of the licensing objectives
  - In the case of an application by a local resident that the application is frivolous, vexatious or repetitious.

## 7.0 Review Advertisement

- 7.1 The review was advertised by a blue poster, next to the premises, by the Licensing Section. This was periodically monitored by the Section to ensure it was on continuous display, and replaced as necessary. It was also advertised at Mulberry Place, 5 Clove Crescent, London E14 2BG.
- 7.2 The party that triggers the review must notify the licence holder and responsible authorities. The review documents were sent to the licence holders.
- 7.3 The procedure for a review can be summarised as follows:
- A review is triggered by a responsible authority or interested party
  - Consultation is conducted for 28 full days
  - Other responsible authorities or interested parties may join in the review
  - Members conduct a hearing
  - Members make a determination
  - All the parties to the review have the right of appeal to the magistrates court (i.e. the licence holder, the person who triggered the review and those who have made a representation).

## 8.0 Licensing Officer Comments

- 8.1 The question arises here where the review has been withdrawn by the applicant. Members should decide how they wish to proceed, Pattersons Edition provide a view in circumstances of where agreement has been made prior to review or has been withdrawn:

Agreement prior to Review: The question often arises as to whether such a hearing must take place where an agreement is reached between the applicant for the review and the holder of the premises licence prior to the hearing? Once the licensing authority is seised of the application may it be withdrawn? A number of possibilities arise:

- (a) Representations arise as a consequence of the notification and advertisement of the application. Clearly in such a case we suggest (although it is not entirely beyond doubt), the authority must proceed with the review of the licence, even if the applicant has (for whatever reason) decided not to pursue the original application;
- (b) The applicant for review and the holder of the premises licence arrive at an agreement regarding the steps which should be taken by the latter to address the concerns which gave rise to the application for review. Generally in such cases the matter will proceed to a hearing where, if there have been no additional representations, the licensing authority will be content to give effect to such agreement, by the imposition of the 'agreed' conditions, a

period of closure, or as may be. However, the committee is not *bound* to follow that course and has the power to impose any sanction available to it under s 52(4);

- (c) The applicant for a review decides that, for whatever reason, the circumstances giving rise to the application no longer obtain and that it should therefore be withdrawn. What is the position where, perhaps, such a decision is made shortly before the review hearing and following advertisement and notification of the application, which has resulted in no additional representations? The obligation on the part of the licensing authority is to hold a hearing. However, if neither the applicant nor any responsible authority or interested party appear to make 'relevant representations' then it would seem that the authority will have no option but to abandon the hearing without determination.

8.2 The Government's advice in relation to reviews is contained in **Appendix 6**. Members must consider all the evidence and then decide from the following alternatives:

- Take no further action as they do not consider it proportionate to do so
- Impose conditions (including altering existing permissions) that relate to problems which they consider have been identified and which are necessary and proportionate to ensure that the licensing objectives are met
- Suspend the licence for a period
- Revoke the licence completely

8.3 The licence should only be suspended or revoked if Members believe that alterations to the existing licence, including imposing new conditions does not have a reasonable prospect of ensuring that the licensing objectives are met.

8.4 Members should bear in mind that conditions may not be imposed for any purpose other than to meet the licensing objectives.

8.5 In all cases the Members should make their decision on the civil burden of proof that is "the balance of probability."

8.6 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.

## 9.0 Legal Comments

9.1 The Council's legal officer will give advice at the hearing.

## 10.0 Finance Comments

10.1 There are no financial implications in this report.

## 11.0 Appendices

<b>Appendix 1</b>	Copy of the review application
<b>Appendix 2</b>	Current Premises Licence
<b>Appendix 3</b>	Maps of the premises and surrounding area
<b>Appendix 4</b>	Representations from Licensing Authority
<b>Appendix 5</b>	Representations from Trading Standards
<b>Appendix 6</b>	Guidance issued under Section 182 by the Home Office for reviews
<b>Appendix 7</b>	Guidance Issued by the Home Office concerning Crime and Disorder
<b>Appendix 8</b>	Licensing Policy in relation to the prevention of Crime and Disorder
<b>Appendix 9</b>	Guidance Issued by the Home Office concerning Protection of Children from Harm
<b>Appendix 10</b>	Licensing Policy in relation to the Protection of Children from