

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Committee	10 March 2015	Unclassified	LC 09/145	

Report of Consumer and Business Regulations	Title Touting – Brick Lane Area
Originating Officer: David Tolley – Head of Consumer and Business Regulations	Wards affected: Spitalfields and Banglatown

1 SUMMARY

- 1.1 At the Licensing Committee on the 9thDecember 2014, it was requested that an update was provided on the enforcement of touting within the Brick Lane area to ensure that it was fair and comprehensive.

2. RECOMMENDATIONS

- 2.1 To note the activity that has been undertaken with regards to touting in the Brick Lane area.
- 2.2 To make recommendations on any further activities on touting.

3. BACKGROUND

- 3.1 There has been a long-standing practice within Brick Lane whereby the restaurants engage touts to engage with visitors to the area, offering discounted prices on food and drink to attract customers. The practice is used due to the highly competitive business environment in that particular visitor attraction within the Borough.
- 3.2 Touting has caused problems for the trading and general environment in that:
- a) Touts, due to their persistent and aggressive behaviour either obstruct the footpath or cause annoyance to the public.
 - b) Touts are known to entice potential customers by using false and misleading claims of either free or discounted food or drink.
 - c) Touting has caused some inter-business tension.

- 3.3 It is generally accepted that touting is not desirable, the Licensing Team do receive a number of complaints each year from members of the public expressing their concerns, although these are now reducing in number.
- 3.4 The table below shows the number of complaints received by the Licensing Team across the calendar year, with the highest number of complaints against the same premises.

Calendar year	Complaints	Highest recorded against single premises	Premises type
2012	221	20	Restaurant
2013	33	5	Off- licence
2014	11	1	restaurant

- 3.5 In order to deal with the issue of touting within Brick Lane, the following actions have been undertaken over the years.
- a) Licence holders were encouraged to voluntarily have a licence condition imposed on their licence to support anti-touting in the area.
 - b) Premises licences were reviewed, where touting was identified, to enable the Licensing Sub-committee to impose the ant-touting condition on the licence.
 - c) Licence holders that continued to breach this condition were brought back to the Licensing Sub- committee and a number of licences were suspended.
 - d) Prosecutions were also taken against licence holders who continued to refuse to prevent touting.
 - e) Several meetings were held with the Brick Lane Restaurant Association, who developed a 'Meeters and Greeters' Policy, to overcome touting – the promotion and adherence to the Policy is governed by the Brick Lane Restaurant Association.
 - f) In 2012-13, a number of directed surveillance authorisations were granted to enable test purchases to be undertaken using 'body cameras'. The later authorisations were given judicial authorisation as in the summer of 2013, Local Authorities were required to gain Magistrates approval for directed surveillance. The last directed surveillance was carried out in October 2013.
 - g) Licensing Police Officers have recently provided evidence of touting occurring in Brick Lane and these matters are either taken to the Licensing Sub-committee or to Court, depending on previous actions taken. The Police

determine if the matter is referred as a prosecution file or if a review is triggered from their interventions.

- 3.6 Litigation is pursued only after dialogue with the businesses and /or voluntary agreements have failed to secure behaviour change. Every effort is made to achieve the required cessation of touting behaviour without the need for litigation. During 2014, there have been 10 prosecution cases that have been referred to Legal Services with arecommendation for prosecution. Eight of these cases were referred by the Police Licensing Officers, this resulted in three successful prosecutions, one case revoked and six cases currently pending. All cases would be reviewed in light of the Councils Enforcement Policy.
- 3.7 In addition there were four Licensing Sub-committee reviews in 2014, three triggered by the Police and one by Trading Standards. The Licensing Sub-committee issued two licence suspensions, one had extra conditions added and the other was withdrawn. Trading Standards have written to all the Brick Lane restaurants advising them that they must provide itemised bills to customers at the end of a meal; otherwise they would breach unfair commercial practices rules, and commit criminal offences under the Consumer Protection from Unfair Trading Regulations 2008.
- 3.8 To ensure that a balanced approach is taken to the enforcement, the following controls are in place:
- a) Directed surveillance is now approved by the Magistrates Courts and suitable evidence needs to be provided to satisfy their scrutiny.
 - b) The Council's Enforcement Policy and the Code of Crown Prosecutors tests must be satisfied before Legal Officers commence proceedings.
 - c) The Licensing Sub-committee act in a quasi-judicial manner in determining the outcome of the hearing.
- 3.9 The number of complaints has reduced in 2014 and consequently so has the activity undertaken by the Council. However, the Police consider that there is merit in bringing these issues to the Courts and Sub-Committee's attention due the breach of licensing conditions. The Police have evidence of violence and disorder at a number of restaurants in the area involving touts and restaurant staff. In addition, the Police have reported that the businesses fail to comply with licensing conditions about maintaining CCTV operation and storing footage.

4. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 4.1 There are no specific financial implications emanating within this report which provides an update regarding the touting in the Brick Lane area.

5 CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 5.1 The Regulation of Investigatory Powers Act 2000 is the framework in which a public authority may use covert investigation for the purposes of preventing or detecting crime or preventing disorder.
- 5.2 The Council's priorities for using RIPA, are specified in its policies and they include touting.
- 5.3 The Council may use covert investigation for the purpose of serious offences. This includes an offence punishable by a maximum term of at least 6 months of imprisonment. This would include breaches of licence conditions – including touting.
- 5.4 An authorisation for surveillance by the Council should not take effect until the relevant judicial authority has made an order approving the grant of the authorisation.

With regards to touting, Section 136 of the Licensing Act 2003 states that A person commits an offence if— .

- (a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or .
- (b) he knowingly allows a licensable activity to be so carried on.....

- 5.5 A person guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or both.
- 5.6 Touting in breach of a condition in a premises licence can be classed as carrying out a licensing activity otherwise than in accordance with an authorisation.
- 5.7 The Code for Crown Prosecutors applies to all public prosecutors and the Local Authority Prosecutors must also have regards to the Code, which imposes two tests. The first is the Evidential Test and this provides that the Prosecutor must be satisfied that there is enough evidence to provide a realistic prospect of a conviction. This is an objective test and the Prosecutor must be more satisfied than not that the Magistrates will convict if properly directed.
- 5.8 In having regard to this test, consideration is given to what the defence case may be; the reliability of the evidence; the credibility of any witness; and the admissibility of the evidence. The second test is the Public Interest test. Is it in

the public interest to prosecute. Both tests must be passed for the case to proceed.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 No adverse impacts have been identified

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

7.1 There are no adverse impacts identified.

8. RISK MANAGEMENT IMPLICATIONS

8.1 The Council will be at risk of legal challenge if its decision making process do not conform to the Council's Enforcement Policy or the terms of reference of the Licensing Committee.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

9.1 One of the key licensing objectives is to prevent licensed premises from being a source of crime and disorder. The enforcement of the licensing conditions by the Licensing Sub-committee and the Magistrates Court assists with this.

10. EFFICIENCY STATEMENT

10.1 There are no efficiency elements to this report.

11. APPENDICES

None

**Local Government Act, 1972 Section 100D (As amended)
List of "Background Papers" used in the preparation of this report**

Brief description of "background papers"	Name and telephone number of holder and address where open to inspection.
None	N/A