

Non-Executive Report of the: Licensing Committee 14 th December 2017	
Report of: David Tolley, Head of Environmental Health and Trading Standards Directorate of Place	Classification: Unrestricted
Night time Economy visits and Enforcement Update	

Originating Officer(s)	Damian Doherty, Licensing Officer
Wards affected	All wards

Summary

This is a report on the results of late night inspections undertaken by the Environmental Health and Trading Standards Service. The objective was to carry out late night visits to premises where intelligence received alleged a contravention of the Licensing Act 2003. It was led by a Licensing Officer and utilised Officers from across Environmental Health and Trading Standards. Many of the enforcement visits include test purchasing to investigate compliance.

The operation was run on Friday and Saturday nights between the hours of 22:00 and 03:00 hours.

These late night visits investigated a variety of alleged issues relating to licensed premises, such as:-

- premises undertaking licensable activities without a Licence.
- premises not complying with conditions and restrictions detailed in their licence.
- licensed premises that have failed to pay the annual Licence fee and under have had their Licence suspended but are still carrying out licensable activities.
- premises undermining the one or more of the Licensing Objectives

This report is concerned with the enforcement visits undertaken in 2016/17 and 2017/18 (to date) and the achievements of these visits.

Recommendations

The Licensing Committee is asked to:

1. Note the activity that has been undertaken by the Environmental Health and Trading Standards Service with regards to regulating Late Night Licensed Premises.

1. REASONS FOR THE DECISIONS

- 1.1 This is a noting report to advise the Licensing Committee of the outcome of the inspections and no decision is required.

2. ALTERNATIVE OPTIONS

- 2.1 This is a noting report.

3. DETAILS OF REPORT

- 3.1 There are approximately 1,145 licensed premises within the Tower Hamlets, which includes bars, pubs, clubs, restaurants, off licenses, late night takeaway, and café type premises. Premises undertaking licensable activities must have a licence under the Licensing Act 2003 authorising them to carry out one or more licensable activities. The licence will state the times they are allowed to carry out these licensable activities and may also have additional conditions specific to the premises. All such matters detailed on the licence are to ensure the promotion of the 4 Licensing Objectives. The late night visits are to check on compliance with the Licensing Act 2003, in respect of premises where intelligence received suggests non-compliance.

- 3.2 Where non-compliance is witnessed and a breach of the Licensing Act 2003 is established, such as carrying out one or more licensing activities, either without a licence or contrary to licence conditions or restrictions (e.g. provision of hot food or drink beyond the hours detailed in the Premises Licence), appropriate and proportionate action is taken in line with the Council's Enforcement Policy. This action can include:

- Warning Letters,
- Application to review of premises licence,
- Investigation for referral for prosecution.

- 3.3 Such formal action is a graduated approach and the type of action will depend on such matters as compliance history of the premises, attitude of Licensee, extent and seriousness of the breach.

Late Night visits outcomes

- 3.4 A total of 230 inspections were undertaken with 24 premises receiving warning letters for non-compliance, i.e. only 10% of the premises visited. There were 6 successful prosecutions and 1 unsuccessful prosecution in 2016/17. When taking a graduated approach to enforcement, where a business had been sent a warning letter within 2 years of the offence being witnessed the matter would normally be referred to the Council's Legal Team for consideration for prosecution. Appendix 1 provides a breakdown of the actions taken by ward.

- 3.5 The compliance rate for 17/18 (to date) has demonstrated a drastic downturn with 28 premises being non-compliant from 130 inspections this year so far.

This equates to a 21% non-compliance rate. The breakdown by ward is shown in Appendix 2.

- 3.6 The probable reason for this downturn between 2016/17 and 01/04/17 to 05/11/17 is due to the intelligence used for the inspections in 2016/17 was relatively old. Furthermore as the operation has continued Licensing Officers have been able to identify further non-compliant premises whilst undertaking late night visits to other premises. Premises that have had their licenses suspended for non-payment of their Annual Licence fees have also been visited during this year's operation, whereas in the previous year these premises were not visited as part of this operation.
- 3.3 Appendix 3 demonstrates the number of prosecutions and outcomes as a result of the late night inspections.
- 3.4 Appendix 4 shows the current prosecutions that are being worked through in relation to recent late night inspection non compliances.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report provides an update on the activity of the Environmental Health and Trading Standards Service. The budgeted resources that support the service are managed within the £4.5m net budget envelope for the Environmental and Regulatory Service. There are no direct financial implications emanating from the recommendation in this report.

5. LEGAL COMMENTS

- 5.1 The Licensing Act 2003 ('the 2003 Act') established a single integrated system for licensing premises that are used for alcohol, entertainment and late night refreshment. Under this legislation, each local authority is known as the 'licensing authority' and is responsible for licensing alcohol, entertainment and late night refreshment in its geographical area.
- 5.2 The London Borough of Tower Hamlets is a Licensing Authority and amongst its functions it is required to ensure compliance with conditions imposed on Premises Licences; take action against unlicensed premises; and act as a respondent on Appeals against decisions of the Licensing Sub-committee in respect of applications that come before it.
- 5.3 Section 4 of the 2003 Act requires the Council to carry out its licensing functions with a view to promoting the licensing objectives. Such functions include the carrying out of enforcement functions. In carrying out such functions, regard must also be had to the Council's own statement of licensing policy and the licensing guidance issued by the Secretary of State.
- 5.4 Where the Council takes enforcement action then it also has to do so in accordance with the Council's Enforcement Policy. The Enforcement Policy

provides that the Council's approach to enforcement is founded on firm but fair regulation, around the principles of:

- **raising awareness** of the law and its requirements;
- **proportionality** in applying the law and securing compliance;
- **consistency** of approach;
- **transparency** about the actions of the Council and its officers; and
- **targeting** of enforcement action.

5.5 When making decisions, the Council must have due regard to the need to eliminate unlawful, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). This includes when taking decisions regarding enforcement including enforcement visits. It is recognised that enforcement action may lead to indirect discrimination in limited circumstances. An equality analysis should be conducted prior to any enforcement operation being undertaken.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 These late night inspections will ensure:

- That Tower Hamlets remains a safe and cohesive Community and a great place to live by dealing accordingly with offending premises and ensuring compliance.
- It ensures it's a fair and prosperous community by ensuring unlicensed premises are dealt with accordingly and that licensed premises prosper within their permissions granted.

7. BEST VALUE (BV) IMPLICATIONS

7.1 This work will ensure that licence fees that are due to the Council under the Licensing Act 2003 are received. Those businesses that do not submit their licensing fees will have their licences suspended.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no adverse impacts identified.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 The Council will be at risk of legal challenge if its decision making process on formal action is not transparent and evidentially based in relation to non-compliance of licence conditions.
- 9.2 The impact of business operating without a licence has a potential impact on the local community.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The enforcement of licence conditions and prosecution of offending businesses both licensed and unlicensed. The assists with the reduction of anti-social behaviour and controls the inappropriate use of alcohol sales and consumption, in addition to identifying localised disturbances around late night refreshment premises.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

Appendix One: 2016/17 Visits per ward and outcomes

Appendix Two: 2017 to date visits per ward and outcomes

Appendix Three: Prosecution outcomes

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE.

Officer contact details for documents:

- N/A

Appendix 1

Inspections 2016/17	
Ward	No. Visits
Blackwall and Cubitt Town	17
Bethnal Green	15
Bromley North	3
Bromley South	2
Bow East	5
Bow West	11
Canary Wharf	1
Island Gardens	7
Lansbury	13
Limehouse	3
Mile End	10
MILLWALL	2
St. Dunstan's	14
Shadwell	6
St. Katherine's and Wapping	1
Spitalfields and Banglatown	42
St. Peter's	27
Stepney Green	3
Whitechapel	22
Weavers	26
Grand Total	230

2016/17	
Ward	No. Warning Letters Sent
Bethnal Green	4
Blackwall and Cubitt Town	1
Bow East	1
Bow West	0
Bromley North	1
Lansbury	1
Mile End	1
Poplar	0
St. Dunstan's	2
Shadwell	0
St. Katherine's and Wapping	0
Spitalfields and Banglatown	6
St. Peter's	2
Stepney Green	1
Whitechapel	3
Weavers	0
Grand Total	24

Appendix 2

1st April 2017 to 5th November 2017

Inspections 2017/to date	
Ward	No. Visits
Blackwall and Cubitt Town	1
Bethnal Green	10
Bow East	8
Bow West	1
Lansbury	4
Mile End	22
Poplar	2
St. Dunstan's	1
Shadwell	9
St. Katherine's and Wapping	4
Spitalfields and Banglatown	26
St. Peter's	14
Stepney Green	5
Whitechapel	10
Weavers	13
Grand Total	130

Dymock 2017/to date	
Ward	No. Warning Letters sent
Bethnal Green	1
Bow East	2
Mile End	4
Poplar	2
Shadwell	1
Spitalfields and Banglatown	6
St. Katherine's and Wapping	1
St. Peter's	5
Weavers	1
Whitechapel	5
Grand Total	28

Appendix 3

Premises Prosecuted for breach of Licensing Act 2003:

1. Cost Price, 41 Brick Lane

Breach of Licensing Act 2003 - Section 136(1)(b)

The reason for this breach was because Cost Price failed to comply with the conditions of their Premises Licence on two separate occasions where the Licensee knowingly allowed the breach of licence conditions. Namely the breach of the following condition attached to the Licence:

The premises will not sell any beer, larger or cider that exceeds the strength of 5.6% abv or higher unless 3 or more bottles/cans are purchased together.

Officers were able to purchase on one enforcement visit 2 bottles of cider exceeding 5.6% abv and on another separate enforcement visit Officers were able to purchase a can of cider again exceeding 5.6% abv.

Result:

Licensee was sentenced as follows:

Fine: £250.00

Costs: £150.00

Victim Surcharge: £30.00

2. Real Taste 212 Mile End Road

Breach of Licensing Act 2003 - Section 136(1)

The reason for this breach was because Real Taste's Licence holder knowingly allowed the provision of late night refreshment (provision of hot food or drink between 23:00 and 05:00 hours) outside of his licensable hours.

The provision of hot food was made on a number of occasions by Mr Islam (not the Licence holder) and this was despite of a number of previous warnings for the same offence.

Both the Licensee and Mr Islam made the sale of hot food beyond the licensable hours were prosecuted for making the sale and knowingly allowing it.

Result:

Licensee was sentenced as follows:

Fine: £200.00

Costs: £ 550.00

Victim Surcharge: £30.00

Member of staff who made the sale sentenced as follows:

Fine: £400.00 (£100.00 for each offence)

Costs: £1,000.00

Victim Surcharge: £30.00

3. On the Grill 89 Roman Road

Breach of Licensing Act 2003 - Section 136(1)

The reason for this breach was because On the Grill did not hold a Premises Licence and yet despite previous warnings made the provision of late night refreshment (provision of hot food or drink between 23:00 and 05:00 hours) without a licence.

Both the person who made the sale of hot food after 23:00 hours and the company were prosecuted.

Result:

Salesperson and E2 (London) Ltd were sentenced as follows:

2 x Guilty Pleas

Fine £400 each

£ 40 victim surcharge each

Costs contribution of £450 each

Credit for guilty plea BUT both defendants viewed as having flagrant disregard for the law

Company £800 total owed. 28 days to pay in full. Collection order made. owner £800 owed.

4. Shahi Karahi, 22 Osborn Street

Breach of Licnesing Act 2003 – Section 57 and 136(1)

The reason for these breaches was because the Licensee allowed the provision of late night refreshment (provision of hot food or drink between 23:00 and 05:00 hours) outside of his licensable hours.

He also failed to keep a certified copy of the Licence at the premises

Result:

Licensee was sentenced as follows:

Fine: £200.00. There was no separate fine for the offence for not displaying the Licence.

Costs: £912.00

Victim Surcharge: £30.00

A collection order was made.

5. Flavas Pizza 612 Roman Road

Breach of Licensing Act 2003 Section 136(1)(a)

The reason for this breach is because the premises had failed to pay its annual fee for the Licence. Therefore the licence had been suspended meaning that they were not licensed for the provision of late night refreshments (provision of hot food or drink between 23:00 and 05:00 hours).

Despite this they continued to provide hot food beyond 23:00 hours and Licensing Officer witnessed the Licence Holder doing this.

Result:

Licensee was sentenced as follows:

Fine: £440

Costs: £675 (as applied)

Victim Surcharge: £44

This totals £1,159. A collection order was made.

6. HFC 127 Whitechapel Road

Breach of Licensing Act 2003 – Section 136(1)(a)

The reason for this breach was because On the HFC did not hold a Premises Licence and yet despite previous warnings made the provision of late night refreshment (provision of hot food or drink between 23:00 and 05:00 hours) without a licence.

Result:

Business owner was sentenced as follows:

Fine: £100

Costs: £600

Victim Surcharge: £30

Appendix 4

Total pending potential prosecutions:

Ward	Ongoing Investigations for Breach of Potential Licensing Act 2003
Bow East	1
Limehouse	1
Mile End	1
Shadwell	1
Spitalfields/Banglatown	1
Stepney Green	1
Weavers	2
Grand Total	8