

Non-Executive Report of the: Licensing Committee 13 th December 2018	
Report of: David Tolley, Head of Environmental Health and Trading Standards Directorate of Place	Classification: [Unrestricted or Exempt]
Night time Economy visits and Enforcement Update	

Originating Officer(s)	Damian Doherty, Licensing Officer – Licensing and Safety
Wards affected	Whole Borough

1. Summary

- 1.1 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 included test purchasing to investigate compliance.
- 1.2 The operation was run on Friday and Saturday nights between the hours of 22:00 and 03:00 hours.
- 1.3 These late night visits investigated a variety of alleged issues relating to licensed premises, such as:-
- premises undertaking licensable activities without a Licence.
 - premises alleged to be breaching conditions and restrictions detailed in their licence.
 - licensed premises that have failed to pay the annual Licence fee and/or Late Night Levy Charge and have had their Licence suspended yet have been identified as continuing to carrying out licensable activities.
 - premises alleged to undermining the one or more of the Licensing Objectives
- 1.4 This report is concerned with the enforcement visits undertaken in 2017/18 and 2018 to date (6th November 2018) and the achievements of these visits.

2. Recommendations:

The Licensing Committee is recommended to:-

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

3. Background

- 3.1 There are approximately 1,145 licensed premises within the London Borough of Tower Hamlets. Licensed premises include 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 permitted to carry out these licensable activities and may also have conditions, in addition to the mandatory conditions, specific to the individual premises. All such matters detailed on the licence are to ensure the promotion of the four 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, 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.
- 3.4 As well as formal action as highlighted above these visits have provided evidence to the Licensing Authority (Acting as a Responsible Authority) to make representations against the granting of applications in respect of the Licensing Act 2003.
- 3.5 Late Night visits outcomes

A total of 254 inspections were undertaken with 28 premises receiving warning letters for non-compliance. Therefore 11% of the premises visited were non-compliant. There were three successful prosecutions in 2017/18. 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. A Decision to review the licence of an off-licence in Brick Lane has been taken as it was previously prosecuted (and will be heard 22nd November 2018). Appendix 1 provides a breakdown of visits and warning letter sent by ward.

- 3.6 The compliance rate for 2018/19 to date (6th November 2018) is 13% with 16 premises being non-compliant out of 118 inspections. Appendix 2 provides a breakdown of visits and warning letters sent per ward.
- 3.7 As can be seen there is an increase, though very small, in the number of non-compliant premises found during these late night enforcement visits between 2017/18 and this current year (2018/19). Furthermore as there are approximately 5 months left of 2018/19 this percentage could increase. It is estimated that this increase could be due to more premises having their licences suspended due to non-payment of the annual fee and/or Late Night Levy charge (if applicable). There have also been some premises looked at in regards to unlicensed Gambling that could be a cause for this increase.
- 3.8 The intelligence gathered as an outcome of these visits has also resulted in two reviews of premises licences, one of which resulted in the revocation of a licence connected with the Sale of Nitrous Oxide (Laughing Gas) for consumption. The intelligence gathered has also given clearer evidence in respect of representations against the granting of certain applications.
- 3.9 Appendix 3 demonstrates the number of prosecutions and outcomes as a result of the late night inspections.
- 3.10 Appendix 4 shows the current prosecutions that are being worked through in relation to recent late night inspection non compliances.

4 REASONS FOR THE DECISIONS

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

5 ALTERNATIVE OPTIONS

- 5.1 This is a noting report

6 EQUALITIES IMPLICATIONS

- 6.1 There are no equalities implications.

7 OTHER STATUTORY IMPLICATIONS

- 7.1 Best Value implications: There are no best value implications
- 7.2 Environmental considerations: There are no environmental implications
- 7.3 Crime reduction: One of the key licensing objectives of the Council ensure that it does not licence premises that are liable to be a source of crime and disorder. The Council supports and assists with crime and disorder reduction by controlling those who manage premises open to members of the public and imposing conditions on relevant premises licences. Illegal activity has been proven to occur at the premises.

- 7.4 Safeguarding: There are no proven safeguarding impacts; however premises that are managed in this way may employ underage persons or vulnerable adults. Therefore there may be a positive safeguarding impact.
- 7.5 Risk Management: The Council will be at risk of legal challenge if its processes are not transparent and evidentially based.

8 COMMENTS OF THE CHIEF FINANCE OFFICER

- 8.1 This report provides an update on the results of the late night inspections of premises including the current of prosecutions for the period 2017/18 to 6th November 2018.
- 8.2 All costs are expected to be contained within the existing budget envelope for the Environmental Health and Trading Standards service and remains cost neutral to the authority. The income generated from the licence fees for the Late Night Levy will offset the costs of inspections and enforcement action.

9 LEGAL COMMENTS

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.

- 9.5 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.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

Appendix 1: 2017/18 Visits and warning letters per ward

Appendix 2: 2018/19 to date (6th November 2018) visits and warning letters per ward

Appendix 3: Successful Prosecutions and outcomes

Appendix 4: Ongoing investigations per Ward

Appendix 1

2017/18

Inspections 2017/18	
Ward	No. Visits
Blackwall and Cubitt Town	4
Bethnal Green	16
Bromley North	0
Bromley South	0
Bow East	22
Bow West	4
Canary Wharf	4
Island Gardens	1
Lansbury	9
Limehouse	5
Mile End	26
St. Dunstan's	2
Shadwell	15
St. Katherine's and Wapping	10
Spitalfields and Banglatown	47
St. Peter's	26
Stepney Green	7
Whitechapel	20
Weavers	31
Grand Total	254

2017/18	
Ward	No. Warning Letters Sent
Bethnal Green	4
Blackwall and Cubitt Town	0
Bow East	2
Bow West	0
Bromley North	0
Lansbury	1
Mile End	3
Poplar	1
St. Dunstan's	0
Shadwell	2
St. Katherine's and Wapping	0
Spitalfields and Banglatown	6
St. Peter's	4
Stepney Green	0
Whitechapel	5
Weavers	0
Grand Total	28

Appendix 2

2018/19 to date (6th November 2018)

Inspections 2018 to date	
Ward	No. Visits
Blackwall and Cubitt Town	3
Bethnal Green	12
Bow East	12
Bow West	8
Canary Wharf	3
Lansbury	3
Limehouse	3
Mile End	2
Poplar	1
St. Dunstan's	5
Shadwell	6
St. Katherine's and Wapping	4
Spitalfields and Banglatown	16
St. Peter's	11
Stepney Green	3
Whitechapel	5
Weavers	21
Grand Total	118

2018/to date	
Ward	No. Warning Letters sent
Bethnal Green	4
Bow East	1
Bow West	1
Mile End	1
Poplar	1
St Dunstan's	2
Spitalfields and Banglatown	1
St. Peter's	3
Whitechapel	1
Weavers	1
Grand Total	16

Appendix 3

Premises Prosecuted for breach of Licensing Act 2003:

1. Lime Grill, 332 Burdett Road

Offence dated: 31st March 2017

Lime Grill Limited:

Breach of Licensing Act 2003 - Section 136(1)(a) and 136(4)

Director who provided the hot food:

Breach of Licensing Act 2003 – Section 187(1)

The reason for this breach was because Lime 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 (the business owner) after 23:00 hours and the company were prosecuted.

Result:

Director and Ltd company were sentenced on 10th May 2018 as follows:

Fine: £233.00 each

Costs: £350.00 each

Victim Surcharge: £30.00 each

2. Jannah Grill, 352 Bethnal Green Road

Offence Date: 29th October 2017

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

The reason for this breach was because Jannah 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.

The person who made the sale of hot food after 23:00 hours (the business owner) was prosecuted.

Result:

Business owner was sentenced on 31st October 2018 as follows:

Fine: £220.00

Costs: £150.00

Victim Surcharge: £30.00

3. Singh Supermarket 37 Roman Road

Date of Offence: 5th May 2018

Breach of Licensing Act 2003 – Sections 136(1) and Section 137(1)

There is a licence in place that allows off sales at the following times:

Sale of alcohol

- *Monday to Saturday until 01:00 hours the following day*

- *Sunday until 22:30 hours*

Salesperson sold alcohol after the terminal hour at 01:56 and was asked and failed to produce a copy of the licence. Further Offences under Licencing Act 2003 section 137 'Alcohol still being on display for sale after the terminal hour'.

Result:

Salesperson sentenced on 23rd August 2018 as follows:

Fine: £440.00

Costs: £400.00

Victim Surcharge: £40.00

A Fine Collection Order was also imposed.

Nb: The Premises Licence Holder and Limited Company (VKS Supermarkets Ltd) pled not guilty to various charges and case will be heard at Stratford Magistrates on 14th November 2018.

Appendix 4

Total pending potential prosecutions per Ward:

Ward	Ongoing Investigations for Breach of Potential Licensing Act 2003
Bethnal Green	2
Bow West	1
Spitalfields & Banglatown	4
St Dunstan's	1
St Katherine's & Wapping	1
St Peter's	2
Grand Total	11