

Non-Executive Report of the: Licensing Committee 15 th March 2022	 TOWER HAMLETS
Report of: Director Legal & Monitoring Officer- Governance	Classification: Unrestricted
Update in relation to Prosecutions and Appeals – Quarter 4 2020/2021 Quarters 1-3 2021/2022	

Originating Officer(s)	Jonathan Melnick – Principal Lawyer – Enforcement
Wards affected	All wards

Summary

- 1.1 At its meeting on 4th June 2013, the Licensing Committee requested that regular reports should be prepared for the Licensing Committee giving details of licensing enforcement activity and specifically as to outcomes of prosecutions and appeals.
- 1.2 This report provides details of completed licensing related prosecutions and appeals for **Quarter 4 2020 to 2021 (January to March 2021 and Quarters 1 – 3 2021 (April to June 2021, July to September 2021 and October to December 2021).**

Recommendations:

The Licensing Committee is recommended to:

1. Consider and comment upon the information provided in the report.

1. REASONS FOR THE DECISIONS

- 1.1 This report is for the information of the Committee and no specific decisions are required.

2. ALTERNATIVE OPTIONS

- 2.1 N/A

3. DETAILS OF REPORT

- 3.1 The London Borough of Tower Hamlets is a Licensing Authority and amongst its functions are a requirement to: ensure compliance with conditions imposed on the licences that it grants; take action against unlicensed premises; and will be the respondent to any appeal against a decision of the Licensing Committee or its Sub-Committee.
- 3.2 Where the Council takes enforcement action to ensure compliance with conditions etc. then it does 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
 - targeting of enforcement action.
- 3.3 Further, as a Licensing Authority the Council has a duty under section 4 of the Licensing Act 2003 to carry out its licensing functions with a view to promoting the licensing objectives and in carrying out such functions must also have regard to its own statement of licensing policy and the statutory guidance issued pursuant to section 182 of the Licensing Act 2003.
- 3.4 This report does not deal only with Licensing Act 2003 matters but also those under the Gambling Act 2005 and Special Treatment Licences granted under the London Local Authorities Act 1990.

Prosecutions

- 3.4 During **Quarter 4 2020/2021 and Quarters 1-3 2021/2022** the following prosecutions were concluded:

	Quarter 4 20/21	Outcome:
1	Madiha Catering Ltd.(Halal Fried Chicken) Provision of unauthorised late night refreshment Abdul Aziz Abdul Hye	Fine £200.00 Costs £468.00 Victim surcharge £34.00 Fine £200.00 Costs £468.00 Victim surcharge £34.00 Fine £100.00

	Date of hearing: 25 th January 2021	Costs £468.00 Victim surcharge £34.00
2	A Portuguese Love Affair Deli Café Ltd. Unauthorised sale of alcohol Date of hearing: 25 th January 2021	Summons withdrawn following dissolution of company.
3	Mohammed Abdul Hafiz (B2B Café) Provision of unauthorised late night refreshment Date of hearing: 22 nd March 2021	Fined £200.00 Costs £2,772.76 Victim surcharge £34.00
4	Jerrin Store Ltd. (All in One) Sale of tobacco to a person aged under eighteen Mohammed Shilu Chowdhury Failure to keep licence on premises, failure to produce premises licence, carrying on unauthorised licensable activity, Shak Kamruzzaman Sale of tobacco to a person aged under eighteen Date of hearing: 22 nd March 2021	Fined £500.00 Costs £500.00 Fined £750.00 (charge 1) and £250.00 (charge 3). Charge 2 withdrawn Costs £500.00 Victim surcharge £75.00 Fined £250.00 Costs £203.29 Victim surcharge £32.00
	Quarter 1 21/22	No licensing proceedings concluded in this period. This can be partly attributed to the Covid-19 pandemic.
	Quarter 2 21/22	Outcome
1	New Deal Trading Ltd. (New Road Off-licence) Underage sale of alcohol, display of tobacco products to a person aged under eighteen Abdul Halim Underage sale of alcohol, display of tobacco products to a person aged under eighteen	Fined £500.00 for underage sale. No separate penalty for tobacco offence Costs £500.00 Victim surcharge £50.00 Fined £161.00 for underage sale. No separate penalty for tobacco offence Costs £400.00 Victim surcharge £32.00

	<p>Mohammed Abdul Khan Underage sale of alcohol</p> <p>Date of hearing: 2nd August 2021</p>	<p>Fined £80.00 Costs £100.00 Victim surcharge £32.00</p>
	Quarter 3 21/22	Outcome
1	<p>Anamul Islam (La Cucina) Provision of unauthorised late night refreshment</p> <p>Date of hearing: 4th October 2021</p> <p>Mohammed Suzon Provision of unauthorised late night refreshment</p> <p>Date of hearing: 1st November 2021</p>	<p>Fined £50.00 Costs £730.20 Victim surcharge £35.00</p> <p>Fined £500.00 Costs £730.20 Victim surcharge £50.00</p>
2	<p>Patrick Walsh Carrying on unauthorised licensable activity x2</p> <p>Date of hearing: 1st November 2021</p>	<p>Mr. Walsh had initially been dealt with in his absence on 5th March 2020 and fined £7,500.00 per offence and ordered to pay costs £1,971.53 and the victim surcharge of £170.00. He subsequently made a statutory declaration and the case was re-opened:</p> <p>Fined £3,000.00 (charge 1). Charge 2 withdrawn Costs £1,971.53 Victim surcharge £170</p>
3	<p>Saban Bozkurt Underage sale of alcohol</p> <p>Yusef Alma Underage sale of alcohol</p> <p>Date of hearing: 8th December 2021</p>	<p>Fined £440.00 Costs £454.66 Victim surcharge £44.00</p> <p>Fined £660.00 Costs £454.66 Victim surcharge £66.00</p>

Appeals

During Quarter 4 20/21 no appeals were concluded.

During Quarters 1, 2 & 3 21/22, eight (8) appeals were concluded.

The outcome of the appeals are as follows:

No	Case Details	Outcome
	Quarter 4 2020/21	Outcome
1		No appeals were concluded in this quarter. This is likely to be attributable to the pandemic.
	Quarter 1 21/22	Outcome
1	East London Pub Co. Ltd. The Gun 54 Brushfield Street London, E16AG Appeal against decision to grant variation of licence in part	Appeal withdrawn on 7 th June 2021
	Quarter 2 21/22	Outcome
1	Noodle and Beer Ltd. Unit 6, 31 Bell Lane London, E1 7LA Appeal against refusal of premises licence	Appeal dismissed on 5 th July 2021 due to appellant's failure to attend court
2	Ash Store Ltd. 141 Commercial Road London, E1 1PX Appeal against revocation of premises licence	Appeal dismissed on 5 th July 2021 due to appellant's failure to attend court. Further hearing on 15 th December 2021 for application to set aside decision of 5 th July 2021. Dismissed due to appellant's failure to attend court.
3	Steven Fairman The Queen's Head 8 Flamborough Street London, E14 7LS Appeal against revocation of premises licence	Appeal settled by consent on 23 rd August 2021 and revocation to take effect 31 st August 2021. Appellant to pay Council costs of £720.00
4	Future Leisure Ltd. 10 Brick Lane London, E1 6RF Appeal against refusal of premises	Appeal allowed on 15 th September 2021. LBTH to pay Appellant's costs of £27,000.00 plus VAT

	licence under the Gambling Act 2005	
5	Wombats London Ltd. Wombats City Hostel 7 Dock Street London, E1 8LL Appeal against decision to refuse variation of licence and the imposition of conditions	Appeal settled by consent and variation granted in part on 23 rd August 2021 No order as to costs.
	Quarter 3 21/22	Outcome
1	Suryakani Patel TSB News 77 Vallance Road London, E1	Appeal dismissed 29 th November 2021. Appellant to pay costs of £895.00
2	Boxpark Ltd. Boxpark Shoreditch 2-10 Bethnal Green Road London E1 6GY Appeal against refusal to grant provisional statement	Appeal allowed by consent 17 th December 2021 No order as to costs.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report describes the Council's licensing enforcement activity and the outcomes of prosecutions and appeals for Quarter 4 of 2020/21 and Quarters 1 to 3 of 2021/22.
- 4.2 The revenue realised from the imposition of costs by the court is received by the Council in order to offset the costs incurred in bringing and defending prosecutions. However, it should be noted that costs are at the discretion of the court and full costs recovery orders may not always be made.

5. COMMENTS OF LEGAL SERVICES

- 5.1 Any legal implications are addressed in the body of the report.
- 5.2 At the time of the last report (18th March 2021), the coronavirus pandemic had had a significant impact on the court process. Only the most urgent work was being conducted by the magistrates' courts (where these appeals are heard and all criminal proceedings are started) in the first six months of the pandemic. This led to huge backlogs. Many local authorities did not start having cases listed for hearing in court until around January 2021. That led to licensing prosecutions and appeals being significantly

delayed and listed for hearings months ahead. That backlog has reduced significantly, especially in respect of prosecutions.

- 5.3 Licensing appeals, however, are often not dealt with as a priority by the courts and pre-pandemic it was not unusual to wait several months after an appeal had been lodged to have the first hearing date. It was similarly not uncommon for the court to advise that an appeal had not been lodged, only to inform the Council months (or, as in two cases in the above list, years) later, that an appeal had in fact been lodged. That remains the case.

6. **ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 Enforcement action that complies with the five principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.
- 6.2 The enforcement policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Community Plan and other key documents such as the local area agreement and the Local Development Framework. For example, one of the key Community Plan themes is A Great Place to Live. Within this theme there are objectives such as reducing graffiti and litter. The enforcement policy makes clear the need to target enforcement action towards such perceived problems. At the same time, the enforcement policy should discourage enforcement action that is inconsistent with the Council's objectives.
- 6.3 The exercise of the Council's various enforcement functions consistent with the enforcement policy and its principles should also help achieve the following key Community Plan themes-
- A Safe and Cohesive Community. This means a safer place where feel safer, get on better together and difference is not seen as a threat but a core strength of the borough.
 - A Great Place to Live. This reflects the aspiration that Tower Hamlets will be a place where people live in quality affordable housing, located in clean and safe neighbourhoods served by well-connected and easy to access services and community facilities.
 - A Prosperous Community. This encompasses the objective that Tower Hamlets will be a place where everyone, regardless of their background and circumstances, has the aspiration and opportunity to achieve their full potential.
- 6.4 An equality analysis was conducted prior to approval of the revised enforcement policy by Cabinet on 3 October 2012. A further equality analysis was done on 16th September 2011 in relation to touting prosecutions. It is recognised that Enforcement action may lead to indirect discrimination in limited circumstances but prior to taking any proceedings, an assessment as to whether the case meets the two stages in the Code for Crown Prosecutors is undertaken so that there is both a realistic

prospect of a conviction and that it is in the public interest to prosecute. Further, proceedings are kept under review once initiated.

7. BEST VALUE (BV) IMPLICATIONS

7.1 There are no specific best value implications arising from this noting report

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 The enforcement policy seeks to target the Council's enforcement action in accordance with the Community Plan. The Community Plan contains the Council's sustainable community strategy for promoting or improving the economic, social and environmental well-being of Tower Hamlets and contributing to the achievement of sustainable development in the United Kingdom. To the extent that the enforcement policy aligns enforcement action with the Community Plan it will tend to promote sustainable action for a greener environment. [

9. RISK MANAGEMENT IMPLICATIONS

9.1 Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that proper adherence to the Council's policies, the Licensing Objectives, the Council's Statement of Licensing Policy and the section 182 guidance will ensure that risks are properly managed.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 One (1) of the four (4) Licensing Objectives is Crime and Disorder and enforcement promotes that Licensing Objective. Enforcement will also play its part in helping to drive down crime and which in turn will reduce fear of crime and ASB levels helping to promote a healthier, happier and more cohesive community. This will have efficiency benefits for adult social care and public health costs by keeping people healthier and more active for longer.

Linked Reports, Appendices and Background Documents

Linked Report

- **None**

Appendices

- **None**
- **None**

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