

Committee: Licensing Committee	Date: 15 th July 2014	Classification: Unrestricted	Report No: LC 04/145	Agenda Item:
Report of: Service Head - Legal Services Originating officer(s) Paul Greeno Senior Advocate		Title: Update in relation to Prosecutions and Appeals - 2013/2014 Wards Affected: All		

1. **SUMMARY**

- 1.1 At its meeting on 4th June 2013, the Licensing Committee requested if regular reports could be brought giving details of licensing enforcement activity and specifically as to outcomes of prosecutions and appeals.
- 1.2 This report and gives details of completed licensing related prosecutions and appeals for 2013/2014.

2. **RECOMMENDATIONS**

The Licensing Committee is recommended to:-

- 2.1 Consider and comment upon the information provided in the report.

3. **BACKGROUND**

3.1 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.

3.2 Where the Licensing Authority takes enforcement action to ensure compliance with conditions etc. then it does so in accordance with the Council's has in place an 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 as 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 Licensing Guidance issued pursuant to section 182 of the Licensing Act 2003.

4. **BODY OF REPORT**

Prosecutions

4.1 In 2013/2014, there were proceedings taken against twenty-one (21) individuals and one (1) Company in respect of nineteen (19) businesses. Eleven (11) of the business were in the Brick Lane area and eight (8) of the Prosecutions related to breach of the "no touting" condition; one (1) was a prosecution against the tout for breach of the "touting" byelaw; one (1) related to selling alcohol without a licence; and one (1) related to operating as a late night refreshment establishment without a Premises Licence.

4.2 In respect of the remaining eight (8) businesses:

one (1) was a take-away restaurant in the Limehouse area and which was operating as a late night refreshment establishment without a Premises Licence;

one (1) was a pub in the Limehouse area and related to being open beyond the prescribed hours;

two (2) related to premises in the Aldgate/ Whitechapel area and related to selling alcohol beyond the prescribed hours;
 one (1) was in the Bethnal Green area and related to the selling of counterfeit alcohol;
 one (1) was also in the Bethnal Green area and related to the sale of tobacco to a person aged under 18;
 one (1) was in the Whitechapel area and related to the sale of tobacco to a person aged under 18; and
 one (1) was a pub in the Poplar area and related to being open beyond the prescribed hours.

4.3 The results of the Prosecutions are as set out below:

No.	Offences	Outcome
1.	s.136(1)(a) Licensing Act 2003 (Breach of condition 10 in Annex 2)	Guilty – Fine, costs etc. £764
2.	s.136(1)(a) Licensing Act 2003 (Breach of condition 1 in Annex 3)	Withdrawn following representations from defendant
3.	s.136(1)(a) Licensing Act 2003 (Breach of condition 5 in Annex 2)	Guilty – Fine, costs etc. £565
4.	s.136(1)(a) Licensing Act 2003 (Breach of condition 1 in Annex 3)	Guilty – Fine, costs etc. £465
5.	s.136(1)(a) Licensing Act 2003 (Breach of condition 10 in Annex 2)	Guilty – Fine, costs etc. £764
6.	s.136(1)(b) Licensing Act 2003 (Breach of condition 1 in Annex 2)	Guilty – Fine, costs etc. £420
7.	s.136(1)(a) Licensing Act 2003	Guilty – Fine, costs etc. £1,515

8.	<p>s.57(7) & (8) Licensing Act 2003 (failure to produce Premises Licence)</p> <p>s.136(1)(b) Licensing Act 2003 (Breach of condition 1 in Annex 2)</p>	<p>Guilty – sentence</p> <p>12 month Conditional Discharge</p> <p>Costs £300</p> <p>Acquitted of breach of Premises Licence</p>
9.	<p>s.136(1)(a) Licensing Act 2003 (Breach of condition 10 in Annex 2)</p>	<p>Guilty – Fine, costs etc.</p> <p>£6.295</p> <p>Offender’s Personal Licence also suspended for 6 months</p>
10.	<p>s.136(1)(b) Licensing Act 2003 (Breach of condition 1 in Annex 3)</p> <p>s.57(7) Licensing Act 2003 (failure to produce Premises Licence)</p>	<p>Guilty – Fine, costs etc.</p> <p>£470</p>
11.	<p>s.136(1)(b) Licensing Act 2003 (Breach of condition 1 in Annex 3) (x2)</p>	<p>Guilty – Fine, costs etc.</p> <p>£695</p>
12.	<p>s.237 Local Government Act 1972 (Breach of Byelaw 5 of London Borough of Tower Hamlets Byelaws for Good Rule & Government)</p>	<p>Guilty – Fine, costs etc.</p> <p>£470</p>

13.	s.92(1)(b) Trade Marks Act 1994	Guilty – Fine, costs etc. £2,991.19 Offender's Personal Licence also suspended for 6 months
14.	s.136(1)(b) Licensing Act 2003	Guilty – Fine, costs etc. £385 Offender's Personal Licence also suspended for 1 month
15.	s.136(1)(a) Licensing Act 2003 s.137(1) Licensing Act 2003	Guilty – Fine, costs etc. £570 Offender's Personal Licence also suspended for 1 month
16.	s.136(1)(a) Licensing Act 2003	Withdrawn as Simple Caution administered
17.	s.136(1)(a) Licensing Act 2003 s.137(1) Licensing Act 2003	Guilty – Fine, costs etc. £1,400
18.	s.136(1)(a) Licensing Act 2003 s.137(1) Licensing Act 2003	Guilty – Fine, costs etc. £370
19.	s.136(1)(b) Licensing Act 2003 (x2)	Guilty – 6 month Conditional Discharge – Costs etc. £415
20.	s.7(1) Children and Young Persons Act 1933	Guilty – Fine, costs etc. £1,120
21.	s.7(1) Children and Young Persons Act 1933	Guilty – Fine, costs etc. £1,552.17
22.	s.136(1)(a) Licensing Act 2003	Withdrawn as Simple Caution administered

Appeals

4.4 During quarters 2013/2014, there were six (6) Appeals that were concluded.

Three (3) were in respect of reviews: one (1) a section 53A summary review triggered by the Police and two (2) normal reviews triggered by Trading Standards for breach of Touting Condition/ operating during a suspension of the licence;

Two (2) were in respect of Appeals in relation to the granting of Premises Licences: one (1) by the applicant in respect of conditions and one (1) by residents appealing the grant of a licence.

The final appeal was against the refusal to grant a Temporary Event Notice (TEN).

4.5 The outcomes of the Appeals are as set out below:

No.	Outcome
1.	Appeal settled by agreement – Police settled matter with Premises Licence holder and we therefore had no grounds for continuing to contest appeal
2.	Appeal withdrawn by Premises Licence holder and original decision by Sub-committee to suspend Premises Licence and remove DPS stands
3.	Appeal withdrawn by Premises Licence holder and original decision by Sub-committee to revoke the Premises Licence stands
4.	Appeal settled by agreement – This was a technical appeal regarding the wording of conditions and whether certain conditions were actually enforceable. Certain conditions were varied and certain conditions were deleted. There was no change to the hours of operation or the nature of the operation
5.	The Appeal was won as the Appellants withdrew the Appeal
6.	There were technically three (3) Appeals in 1 all in relation to refusals to grant TENs for 3 consecutive weekends. The Appeal was successful. The Court noted that the sale was for hot food and hot drink only and that there was no alcohol or other entertainment and accepted the argument advanced on behalf of the Appellant the the sale of hot food and hot drink was likely to reduce the problems caused by those who consume alcohol, not worsen it

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 5.1 This report describes the Council's licensing enforcement activity and the outcomes of prosecutions and appeals for 2013/2014.
- 5.2 There are no financial implications arising from the recommendations in this report.

6. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 6.1 Any legal implications are addressed in the body of the report.

7. ONE TOWER HAMLETS CONSIDERATIONS

- 7.1 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.
- 7.2 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.
- 7.3 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.

- 7.4 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.

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.

11. EFFICIENCY STATEMENT

11.1 The report does not propose any direct expenditure. Rather, it is concerned with advises as to outcomes in areas in which the Council is already active. The enforcement policy seeks to ensure that enforcement action is targeted to the Council's policy objectives. This is more likely to lead to efficient enforcement action than a less-controlled enforcement effort.

12. 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