



Report of: Service Director (Public Protection)

Meeting of:	Date	Agenda item	Ward(s)
Licensing Regulatory	6 October 2009	B1	Bunhill

Delete as appropriate		Non Exempt
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SUBJECT: LONDON LOCAL AUTHORITIES ACT 1990 (AS AMENDED) SECTION 28 (1) BREACH OF STREET TRADING CONDITIONS – MR JOHN TAYLOR, PITCH 46 AND 48, WHITECROSS STREET MARKET

1. Synopsis

- 1.1 This report looks at the alleged breach of Street Trading conditions by Mr Taylor, considers the current relevance of an additional street trading condition applied to Mr Taylor's licence by Licensing Regulatory Committee in 2002 and looks for possible solutions for the future.

2. Recommendation

- 2.1 To agree one of the following options;
- The replacement of the current condition relating to noise with a condition that prevents a nuisance being caused by this stall.
 - The replacement of the current condition relating to noise with a condition that prevents music being played from the stall.
 - The revocation of the street trading licence of Mr Taylor pitch 46 and 48 in Whitecross Street

3. Background

- 3.1 On 28 January 2002, the Licensing Committee considered a report regarding the renewal of a Street Trading Licence held by Mr John Taylor. The Committee had been asked to consider the renewal of this licence after complaints had been received from local residents about music noise levels emanating from Mr Taylor's stall.

- 3.2 The Committee agreed to renew the licence but imposed an additional condition aimed at ensuring that any music played from the stall would not cause a nuisance to residents. The additional condition stated "Any amplified sound associated with the use of the pitch no's 46 and 48 shall be inaudible one metre from the nearest noise sensitive façade, Block T of the Peabody Whitecross Street Estate"
- 3.3 Since the condition was imposed in 2002 we have received information indicating that the licence condition has been breached on 22 occasions. This information has mainly come from one resident living on the Peabody Estate. We have also recently received an enquiry from Councillor Foxsmith on behalf of one of the complainants. A response to this enquiry is attached as Appendix 1.
- 3.4 Whenever complaints are received they are investigated. It has however quite often been difficult to substantiate the complaint as the alleged breach has not been witnessed by a Market Inspector. Mr Taylor has been warned on a number of occasions that he could face losing his licence if he continues to breach his condition. Normally after a warning has been given we do not receive any further complaints in that year.
- 3.5 In order to deal with complaints the Council has set up daily monitoring of the noise from the stall and have also engaged the services of our Noise Team, both to monitor the noise from the stall and also to offer advice on how to resolve the problem.
- 3.6 The results from the most recent monitoring exercise carried out by the Noise Team indicate that it is possible for Mr Taylor to play music that is audible at the reference point, and therefore in breach of his condition, but at the same time is not deemed as loud or excessive and therefore does not constitute a statutory noise nuisance.
- 3.7 Following the most recent spate of complaints, Mr Taylor was called to an Officers Panel on 10 August 2009 where we discussed the problem and looked at various options and outcomes. A copy of a letter sent to Mr Taylor summarising the meeting is attached as Appendix 2.
- 3.8 Following the Officers Panel, the Noise Team have visited Mr Taylor and discussed with him options that may be available to help restrict the noise levels coming from the stall. There is a possibility of installing some form of noise limiter, but it is the opinion of the Noise Team that this is not a practical solution based on the cost of installing a limiter.
- 3.9 The Noise Team have suggested that a more general condition (similar to those applied to licensed premises) may be a way forward in this matter. Officers are currently considering possible alternative conditions and these will be discussed in more detail at the Committee meeting.

4. Implications

4.1 Financial implications

- 4.2 The current combined rental for both pitches is £78.00 per week. If the licence was revoked there would be a loss to the account of £4056.00 per annum.

4.3 Legal implications

- 4.4 Section 27(3) of the London Local Authorities Act 1990 (as amended) provides that a borough council may make regulations prescribing standard Conditions, which they may attach to the Licence on the occasion of its grant or renewal.

- 4.5 Section 27(8) of the London Local Authorities Act 1990 (as amended) provides that without prejudice to the standard Conditions, the borough council may in addition attach to a licence such further Condition as appear to them to be reasonable in any individual case
- 4.6 Section 28 (1) of the London Local Authorities Act 1990 (as amended) provides that a borough council may at any time revoke a licence if they are satisfied that:
- (c) the licence holder is an individual who has without reasonable excuse personally failed fully to avail him/herself of his licence
 - (e) that since the grant or renewal of the licence, the licence holder has for a period of four weeks or more failed to pay fees or charges due to the borough council in connection with the street trading licence he licence holder has persistently failed to comply with any condition of her licence.
 - (h) that the licence holder has persistently failed to comply with any condition of his/her licence

- 4.7 In determining each case, the Council should act reasonably taking into account all relevant factors and ignoring all irrelevant factors.

The Human Rights Act 1998 makes it unlawful for the Council to act in a manner incompatible with Convention Rights. Convention Rights include the right to peaceful enjoyment of possessions (a licence has been held to be a person's possession). The licensee has the right to a fair hearing within a reasonable time by an independent and impartial tribunal. The actions of the Committee in attaching a condition to a licence must be based on the principle of proportionality and reasons should be given not only on refusing a licence but also on granting it.

- 4.8 If a licence is revoked, the trader has a right of appeal to the magistrate's court. Any appeal must be made in writing within 21 days of receiving written notice of the revocation

4.9 Equality impact assessment

- 5.0 An equalities impact assessment (EIA) on this proposal has been carried out. The EIA identified that there would be no differential impacts on different groups in Islington and no negative consequences for community cohesion. This conclusion was drawn because this report is dealing with a particular individual who has breached the street taking conditions and no policy has been changed

6 Conclusion and reasons for recommendation

- 6.1 Revoking a street trading licence should only be considered as a last resort. Evidence has shown that the current additional licence condition relating to noise is impracticable to enforce, and if adhered to strictly could effectively mean that no music can be played from the stall. Consideration of a new condition that brought any breach within the parameters of noise legislation would be desirable. If noise levels and frequency of incidents constituted a Statutory Nuisance then, subject to sufficient evidence being gathered, action could be taken by any complainants as well as the Council.

Background papers:

Committee Report 28/01/2002
Current Street Trading Conditions which came in force January 2008
Equalities Impact Assessment
London Local Authorities Act 1990 (as amended)
Noise Monitoring Records
Complaints received

Final report clearance:

Signed by:

Received by: Assistant Director – Public Protection Date

Head of Democratic Services Date

Report Author: David Fordham
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Dear Mr ,

Thank you for your e-mail.

I have now had the opportunity to speak to the Service Director, Jan Hart about this matter.

Mr Fordham is currently working with the trader and the Council's noise team in order to try and find a resolution to this matter. It is a big step to revoke a trader's licence, and the Council would not wish to go down this route until all other options had been exhausted.

Mr Fordham's team have been monitoring the noise over recent months and also the Noise Team monitored the levels between 4 and 7 August this year. Whilst the Noise Team confirmed that the condition was being breached, it was their opinion that the noise levels were not excessive and music could only be heard when the other noise levels dropped in the market. It is their opinion that this condition is not reasonable, and given the levels of noise they heard, they would not consider this to be a statutory nuisance.

Mr Fordham is quite aware of his responsibilities and does believe that from time to time the trader plays his noise excessively loud. Unfortunately, when this is alleged to have happened, the noise level has not been witnessed by a market inspector.

It would be helpful if when you witness excessive noise you ring either Ms Dervish or Mr Richards, the Market Managers, on their mobile numbers in order for them to act upon the complaint immediately. I understand you have the numbers but please let me know if not. Unfortunately, e-mails cannot always be picked up and acted on as immediately as phonecalls.

I also understand that Mr Fordham is willing to meet with you and the Service Director to explore other options, including a visit from the Noise Team.

Mr Fordham is going to refer Mr Taylor to the next Licensing Regulatory Committee (date to be confirmed) to look at possible options around Mr Taylor's licence. Daily records are being kept of noise monitoring carried out by market inspectors, and these will show not only whether the condition has been breached, but also whether they consider the noise level to be excessive. The Council's Noise Team will also carry out further monitoring, and be advising Mr Taylor on ways in which he can prevent causing a nuisance.

The Committee will have the option to revoke the licence if they feel that not only has the licence condition been breached, but also if they feel that Mr Taylor has been causing a nuisance. The other option open to the Committee will be for them to review the current condition in line with recommendations made by the Noise Team.

If you witness excessive noise from this stall during the period up to the date of the Committee, you are strongly advised to telephone the market managers to report it. It would also add weight to your argument if you were willing to attend Committee to give evidence of how this problem is affecting you.

Mr Fordham will be writing to you to advise you of the date of the Committee hearing.

Yours sincerely,

Personal Assistant to
Cllr Greg Foxsmith, Executive Member for the Environment Cllr Paula
Belford, Executive Member for Children & Young People

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Our ref:

Your ref:

Date: 28 September, 2009

Mr John Kidd Taylor
[REDACTED]
[REDACTED]
[REDACTED]

This matter is being dealt with by:

Houriye Dervish

Dear Mr Taylor,

LICENCE NO. 546 WHITECROSS STREET MARKET

Thank you for attending the Street Trading Officers panel on Monday 10th August.

The reason for the panel meeting was to discuss the ongoing complaints that the Council is receiving about excessive music noise from your stall.

You were made aware that your noise levels had been monitored independently by our Noise Team on the 5th -7th August. Their findings were as follows;

'the stallholder is consistently playing amplified music at his stall and that it is audible at the nearest residential property but this is only when there is a lull in other competing noises from the market'

Mr Fordham pointed out that whilst he accepted that the noise levels when monitored by the noise team were not excessive, they still indicated that they breached the licence condition. Mr Fordham further stated that he did believe that there had been occasions when the noise levels had been excessive, and this was born out by the complaints received.

The Panel listened to your representation, and in particular your undertaking to reduce the volume level on your stall to the lowest level.

Having considered all the relevant facts, the Panel decided to refer the matter to a future Licensing Committee to consider the following;

- Reviewing your current licence condition to take into account that whilst the music level is audible at the reference point, it is not necessarily being played at an excessive level.
- Whether since the panel meeting there had been any proven breaches of the condition that had also resulted in the noise level rising to an excessive level, and if this had been the case, whether it was necessary to revoke your licence.



Mr Fordham stressed the importance of ensuring that you keep the noise level to its lowest setting, and that you also ensured that your son, and any other persons on the stall, were aware of the implications of allowing the music to be played above this minimum level.

Mr Fordham undertook on behalf of the Council, to arrange a visit from the Noise Team, to see if they could offer you any practical advise on ensuring that music levels did not become excessive, and also whether they could offer suggestions as to a suitable condition that would meet both your and the residents needs.

In the meantime we will continue to monitor the situation. You will be informed of any complaints as soon as possible between now and when your case is heard. I will let you know the date of the committee as soon as this is confirmed.

It is not in the Street Trading Sections interest to revoke a licence from an established trader who brings vibrancy and tradition to the market and is respected by many unless we have exhausted all avenues of compromise.

Yours sincerely

Houriye Dervish
Street Trading Manager