

Report of: **Service Director (Public Protection)**

Meeting of:	Date	Agenda item	Ward(s)
Licensing Regulatory	4 July 2018		Bunhill ward

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 MATTEO BOREA - LICENCE 564 WHITECROSS STREET**

**1. Synopsis**

- 1.1 This report relates to the persistent breaches of street trading conditions by a licensed trader, Mr Matteo Borea; on pitch 64 in Whitecross Street Market, *see appendix 1*
- 1.2 The breaches related to this report are as stipulated under Section 28 (1) (c), (d) and (h) in the London Local Authorities Act 1990 (as amended)

**2. Recommendation**

- 2.1 To revoke the street trading licence of Mr Matteo Borea, licensed trader on pitch 64 in Whitecross Street Market to trade on Thursday & Fridays.

**3. Background**

- 3.1 The authority regulates all street trading activities in the borough and is responsible for issuing licenses and ensuring that rules and regulations are adhered to. Such rules and regulations are governed by the London Local Authorities Act 1990 (as amended) (LLA Act).
- 3.1 The LLA Act Section 28 states that a licenced may be revoked if inter alia:
  - (c) the applicant is an individual who has without reasonable excuse failed personally to avail himself fully of his licence
  - (d) the licence holder is on account of misconduct or for any other sufficient reason unsuitable to hold the licence;

(h) the licence holder has persistently failed to comply with any condition of his licence

3.2 Section 27(3) of the London Local Authorities Act 1994 states, the borough council may make regulations prescribing standard conditions which they may attach to the licence on the occasion of its grant or renewal. The current Street Trading Conditions were approved by the Licensing Regulatory Committee in July 2016. The conditions related to this report are detailed below:

Clause 2: 'The Council reserves the right to suspend any licence on account of failure to comply with these conditions'

Clause 4 of the Street trading conditions states:

'The business activity of the stall shall be undertaken in compliance with other legislation enforced by the Council or other Agencies, e.g. Environmental Health, Health and Safety, Food Safety, Trading Standards, Fire Prevention, Waste Management and Highways Regulations.

Clause 11 of the Street trading conditions states:

'if a nominated assistant is trading in the absence of the licensee, they must display their stall card'

Clause 66 of the Street trading conditions states:

'All licensed food traders shall achieve and maintain for the duration of their licence a Food Hygiene Rating Standard of 3 or higher.'

- 3.3 Mr Matteo Borea "licensee" has been licenced to sell Mature Cheeses, Cured Meats and Hot & Cold sandwiches in on pitch 64 in Whitecross Street Market for approximately 7 years
- 3.4 Georgette Toska, one of the Councils Environmental Health Officers (EH officer), inspected Mr Matteo's pitch on 14 March 2017 and reported back that she had awarded the business a food and hygiene a score rating of '1'. This score meant 'major improvement' was needed. As the licensee was not present Ms Toska immediately emailed him and the street trading team, her findings, **see appendix 2 (a), (b) and (c) and responses (d) and (e).**
- 3.5 This matter was brought to the immediate attention of David Fordham, Service Manager for Street Trading, who on 15 March 2017, after careful consideration, suspended Mr Matteo's street trading licence with immediate effect, **see appendix 3.**
- 3.6 After a series of emails and a meeting with the council's street trading panel, Mr Borea was able to satisfy the council that he had made the necessary improvements and that his practices were now acceptable. As a result, on 10 April 2017 Mr Borea's licence was reinstated with a warning that his practices would continue to be monitored. He was also advised of the likely consequences if there were further concerns regarding health and safety, **see appendix 4.**
- 3.7 There were further communications in May 2017 clarifying Mr Borea's responsibilities with reference to having assistants on the stall, **see appendix 5 (a) (b) and (c)**
- 3.8 In August 2017 the licensee informed the council of a new assistant, Thomas Genti, **see appendix 6**
- 3.9 On the 1 August 2017 the council received an email from 'Jacopa Lonardi' requesting to vary the said licence to allow the sale of hot foods claiming that he was working with the licensee. As this person was not known to the council the request was rejected. The licensee followed up the request for the variation but it was again rejected on the grounds that
- the council was not allowing further hot food stalls in the market (there was, and still is, a waiting list)
  - the licensee could not confirm that he was able to personally avail himself of the licence

- 3.10 On the 8 March 2018 there was another inspection of the Mr Borea's pitch. Once again, major concerns were highlighted. Neither the licensee nor the nominated assistant, Thomas Genti were present. Street trading received an email by the investigating officer Georgette Toska, **see appendix 7.**
- 3.11 On 9 March Mr Borea's licence was again suspended. Mr Borea was informed of this decision by email, **see appendix 8**
- 3.12 On the 12 March Street trading received a further email from the Ms Toska (EH officer) who confirmed that suspending the licence was the correct thing to do under the circumstances, especially as neither of the two traders present were authorised assistants and Mr Matteo was not present to oversee.
- 3.13 On 22 March, following a series of telephone conversations between the licensee and the street trading manager; the licensee was advised by the street trading manager that as the matter was a public concern, the suspension of the licence would not be rescinded until the matter could be heard at the next meeting of the Licensing Regulatory Committee; where a report recommending the revocation of the licence would be submitted. This was confirmed in an email to the licensee, **see appendix 9.**
- 3.14 A recent survey of the Whitecross Street register revealed that since 1 September 2017, Mr Borea has personally traded on only 4 occasions.
- 3.15 In an email dated 15 May 2018 the licensee confirmed that he would be attending the meeting scheduled for 12 June 2018, to present his case.
- 3.16 On 4 April 2018 a letter outlining the details of the Licensing Regulatory Committee meeting and giving the licensee the opportunity to attend was posted to the licensee, **see appendix 10.**

## **4 Implications**

### **4.1 Financial implications**

The current rental for this pitch is £26.00 per week. If the licence is revoked there would be a loss to the account of £1352.00 per annum. However, with current demand for pitches for the sale of take away type foods this pitch could be re assigned to another trader.

### **4.2 Legal implications**

4.3 Section 28 (1) of the London Local Authorities Act 1990 (as amended) ("the Act") sets out the grounds on which the Council may at any time revoke a licence. These grounds include if the Council is satisfied that:

(c) the licence holder is an individual who has without reasonable excuse personally failed fully to avail himself of his licence;

(d) the licence holder is on account of misconduct or for any other sufficient reason unsuitable to hold the licence; or

(h) that the licence holder has persistently failed to comply with any condition of his/her licence

The Act requires the Council to give the licence holder not less than 21 days' previous notice in writing that revocation is proposed and give the licence holder the opportunity to appear before the committee determining the matter.

4.4 The committee must consider any representations made by the licence holder. 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 decision of the Committee must be based on the principle of proportionality and reasons for the decision should be given.

- 4.5 Section 28(2) of the Act provides that the Council may instead of revoking a licence, vary its conditions by attaching further conditions (a) reducing the number of days in any week or the period in any one week during which the licence holder is permitted to trade;(b) specifying a different licence street or position or place at which the licence holder may trade;(c) restricting the items which the licence holder is permitted to sell.

If a licence is revoked or varied, the licence holder has a right of appeal to a magistrates' court. Any appeal must be made by the licence holder within 21 days of receiving written notice of the committee's decision.

## 5 Conclusion

- 5.1 A report recommending the revocation of a licence is never taken lightly. The Street Trading Team always seek to try and resolve issues and work with traders to find solutions prior to referring the case to Licensing Regulatory Committee.

The sale of foods in the market are under heavy scrutiny from residents and members of the public, who on occasions challenge the standards accepted by street vendors compared to premises. In the past few years the Environmental health teams have worked very closely with the street traders giving them all the necessary advice to ensure high standards are maintained. A protocol has been agreed between the Environmental Health team and Street trading so each are immediately notified of any issues and concerns and action is taken without delay so that that the health of members of the public is not put at risk. This has worked extremely well with raising standards.

In reference to this case the serious issues raised have included:

- the sale of items that have not been vetted or approved by Street Trading or EH Officers
- a history of noncompliance of hygiene matters (including a Food Hygiene rating of 1 – major improvement needed), despite all the advice being given.
- unauthorized assistants left on the pitch as witnessed by the EH officer, see 3.10
- licensee not present to oversee operation, see 3.14

Both Environmental Health Officers and Street Trading Officers have attempted to resolve the issues outlined in the report over a lengthy period of time with Mr Borea but these efforts have, unfortunately, proved to be unsuccessful.

### Background papers:

Standard Street Trading Conditions  
Letters/emails kept on file  
London Local Authorities Act 1990 (as amended)

Final report clearance:

Signed by:



Service Director – Public Protection

Date 1st June 2018

Received by:

Head of Democratic Services

Date

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Legal Implications

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