

Report of: **Jan Hart - Service Director - Public Protection**

Meeting of:	Date	Agenda item	Ward(s)
Licensing Regulatory Committee	02 Sept 2014		Bunhill

Delete as appropriate		Non-exempt
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SUBJECT:

**London Local Authorities Act 1994 (As Amended) Section 27 (1)
Application to vary a Condition attached to a Street Trading Licence
Mr Peter Holmes Licence Numbers 570 & 572**

1. Synopsis

- 1.1 This report relates to an application from a licensed trader in Whitecross Street market to vary the condition on his licenses regarding setting up times (appendix 1).

2. Recommendations

- 2.1 To consider to grant the application or refuse it.

3. Background

- 3.1 The authority runs 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 set out in the Street Trading Conditions.
- 3.2 The standard condition attached to all licences issued in Whitecross Street market state "Stalls shall not be put out prior to 8.00 a.m. on any day". However there are some exceptions, see below.
- 3.3 Mr Holmes has held licence number 570 in Roscoe Street (part of Whitecross Street market) since March 2011 to trade as a butcher. In October 2012 due to the expansion of his operation which now includes the preparation and sale of cooked pies and mash; Mr Holmes applied for a second licence which was granted (licence number 572).
- 3.4 Both licences were granted with standard conditions stating the hours of operation and setting up times. The hours of operation that apply to these licences are 10am - 5pm. Setting up times that apply to both licences restricts them from setting up earlier than 8am.
- 3.5 During 2013 Mr Bursey a resident in Roscoe Street close to Mr Holme's pitch complained to the Council about the noise nuisance which he was experiencing; he alleged that Mr Holmes was setting up his pitches before 7am.
- 3.6 An officer investigated the complaint; an agreement was reached whereby a 7:30 am set up time was accepted by both parties.
- 3.7 In March 2014 Mr Bursey contacted the council again alleging that Mr Holmes was setting up earlier than 7:30 am, contrary to agreement with the council. The street trading team contacted Mr Holmes and

- advised him not to set up his stall prior to 7:30 am. Mr Holmes was advised to make an application for a variation of his licence condition to allow him to set up at 7:00 am.
- 3.8 Mr Holmes was advised not to set up prior to 8am until his application could be considered by the councils Licensing Regulatory Committee. He was told that the Committee would not be meeting for a few months. Mr Holmes then decided not to pursue the application and informed the council that with minor adjustments he would be able to keep to the agreement of the setting up time of 7:30am.
- 3.9 On 27 June the complainant contacted the council alleging that Mr Holmes was setting up before the agreed time of 7:30am. Mr Holmes now feels that he is unable to be prepared for customers unless he sets up before 7:30am and is now proceeding with his application to allow him to set up his stall at 7am.
- 3.10 In consideration of this application the committee is asked to note that: In July 2010 eight traders in Whitecross Street were brought to Committee for breaching the condition relating to setting up times. All were setting up their stalls before 8am. On hearing evidence from the traders, complainants and the noise team the Committee decided a 7am setting up time was reasonable. In the case of each of these traders the setting up time was varied to allow each of them to set up at 7am The Committee minutes state:
'.....because of the nature of the business and the preparation involved and having been told that the setting up of the stall is done by a single individual, the variation to setting up times to 7.00am was appropriate in order for the licence holder not to breach the general conditions of the licence in respect of setting up times in Whitecross Market. The Committee is keen to see Whitecross Street market continue to flourish but must balance the rights of nearby residents not to have to put up with noise in the early hours, with those of the street traders to earn their living and would encourage market traders to keep noise levels to a minimum.'
- 3.11 The complainant, Mr Bursey has been informed of this application and was invited to attend, should he wish to object. He has informed the council that due to work commitments he will be unable to attend but has promised to forward a statement for consideration of the Committee. At the date of writing this report this statement has not been received. If the statement is received it will be circulated to members in advance or on the day of the meeting.
- 3.12 The council noise team was asked to monitor the noise levels in the market around setting up times. The team have provided feedback on two occasions. On one occasion there were some noise issues documented (see appendix 2).

4. Implications

4.1 Financial implications:

There are no financial implications should this application be granted.

4.2 Legal Implications:

Section 27(1) of the London Local Authorities Act 1994 (as amended) provides, inter-alia, that:

- A licence granted under this Act shall....specify the conditionsand on any occasion of the renewal of the licence, or at 1st January in any year during the currency thereof, (whether on application by the licence holder or otherwise) or at any time on application by the licence holder, the borough council may vary the conditions.

Section 27(8) of the London Local Authorities Act 1994 (as amended) provides that:

- without prejudice to the standard conditions, the borough council may in addition attach to a licence such further conditions as appear to them to be reasonable in any individual case.

5. Conclusion and reasons for recommendations

- 5.1 The street trading team know of no reason why this application should not be granted in line with the other traders (see 3.10).

Appendices

Appendix 1 Application for variation

Appendix 2 Noise Teams email

Background papers:

London Local Authorities Act 1990 as amended

Street Trading Conditions 2007

Final report clearance:

Signed by:



Service Director – Public Protection

Date

22/8/14

Received by:

Head of Democratic Services

Date

Report Author: Houriyeh Dervish
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Email: Houriyeh.dervish@islington.gov.uk

Dervish, Houriyeh

From: peter holmes <[REDACTED]>
Sent: 08 August 2014 15:55
To: Dervish, Houriyeh

Hi Houriyeh. Hope all is well

My phone is playing up at the moment. I'm just sending the email to put in writing that I want the 07:00 set up to go to committee in September.

It is very stressful setting up at 07:30. We keep our noise to a minimum in the morning and the rest of the market around us are setting up at this time.

We are also losing custom as we cannot prepare our food in time for service at 12:00.

Regards

Peter [REDACTED]

Sent from my iPhone

-----Original Message-----

From: Fuller, Andrew
Sent: Tuesday, August 12, 2014 08:30 AM GMT Standard Time
To: Issues, NP; Hornsey, Kevin
Subject: Whitecross street

Checked with cctv and saw the fruit and veg stall setting up @ 0705 vste

0720 found homebake stall @ end of ruscoe street setting up chucking metal plates about lots of banging and crashing of metal part of the stall. Most of the food stalls in between ruscoe street and fortune street were setting up but no issues of note from these.....

-----Original Message-----

From: Savurur, Nurten
Sent: 20 August 2014 08:45
To: Issues, NP; Hornsey, Kevin; Campbell, Sonya; Sears, Zoya; Stephenson, Mark
Subject: Whitecross Street Market

Arrived at 07:25 and saw

Brazil Flavour was setting up in front of 209 Whitecross Street.

At 07:30 a food double stall was setting up on Roscoe Street at the corner of Whitecross Street. They have a big white van plate number was FD58LHY. The company name was Holmesbake.....

We also saw the stalls that were allowed to set up before 8am there was no excessive noise witnessed.....

