

**REPORT OF THE DIRECTOR OF PUBLIC REALM TO THE GROUP DIRECTOR, NEIGHBOURHOODS AND HOUSING**

<p><b>DELEGATED AUTHORITY REPORT</b></p> <p><b>OFFICER LICENCING PANEL - REVISED PROCEDURES FOR DECIDING STREET TRADING LICENCES, ALTERATIONS TO THOSE LICENCES, REVOCATION OF SUCH LICENCES AND GRANTING OF PERMANENT STREET/SHOP FRONT LICENCES FROM APRIL 2020.</b></p> <p><i>10<sup>th</sup> Of February 2020</i></p>	<p><b>Classification</b></p> <p><b>Open</b></p>	<p><b>Enclosures</b></p> <p><b>Appendices x 4</b></p> <p><b>Appendix 1:</b> Officer Licencing Panel procedure and current terms of reference.</p> <p><b>Appendix 2:</b> Revised procedure for considering street trader applications for permanent licenses, renewals of permanent licences, varying licences and revoking licenses, and the Officer Licencing Panel (including revised terms of reference).</p> <p><b>Appendix 3:</b> Equality Impact Assessment.</p> <p><b>Appendix 4</b> Schedule for Implementation.</p> <p><b>Note:</b> The London Local Authorities Act is available to view at: <a href="http://www.legislation.gov.uk/ukla/1990/7/pdfs/ukla_19900007_en.pdf">http://www.legislation.gov.uk/ukla/1990/7/pdfs/ukla_19900007_en.pdf</a></p>
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## **1. SUMMARY**

1.1 This report recommends that the Group Director; Neighbourhoods and Housing approves the revised procedure for determining applications for street trading licences (“permanent licence”), alterations to those licences, revocation of such licences.

1.2 Hackney Market traders can apply for permanent licenses (first applications or renewals). It is proposed that the Officer Licencing Panel continue to meet on a monthly basis to consider applications for the above licences.

1.3 Additionally all traders licences can apply to change the commodities they trade in, seek to move location, or request other changes to their licence.

1.4 The Markets Team may also recommend to the Officer Licencing Panel that a trader’s permanent or temporary licence should be revoked.

1.5 A review of the procedure was recently undertaken by the Markets and Street Trading Service Area Manager resulting in recommending a number of changes to the current procedure to align it correctly to the legislation and update the panel to reflect the roles and responsibilities within the service.

## **2. RECOMMENDATION(S)**

2.1 The Group Director; Neighbourhoods and Housing is recommended to:

2.1.1 Approve the revised Officer Licencing Panel (OLP) procedure for determining applications for and variations to street trading licences in Hackney, including the revocation of such licences, set out in Appendix 2; and,

2.1.2 Approve the revised terms of reference for the Officer Licencing Panel set out in Appendix 2 which includes providing delegated authority to the Head of Service of Markets and Street Trading and Service Area Manager for Markets & Street Trading to take decisions in respect of applications for, revocations and variations to street trading licences; and,

2.1.3 Approve Delegated Authority to Heads of Services Within the Public Realm Directorate to take decisions in respect of any appeals/

internal review upon written request from the applicant or trader relating to decisions made by the OLP Panel.

2.1.4 Authorise the Head of Service of Markets and Street Trading and to make the final decision on whether to make any necessary amendments to the proposed revised OLP procedure for determining applications for and variations to street trading licences in Hackney, including the revocation of such licences.

### **3. BACKGROUND**

3.1 Anyone wishing to become a street trader in the London Borough of Hackney must first apply for a temporary licence through the Markets Team. This entitles the trader to attend the market on market day and seek a vacant pitch. If they are offered a vacant pitch they pay for the day and then set up and trade from that pitch.

3.2 After six months of satisfactory trading under a temporary licence, traders may apply for a permanent licence. Applications for permanent licences are considered by the Officer Licencing Panel (OLP).

3.3 If a trader is successful they are issued with a permanent licence which states their commodities they are permitted to sell at the market.

3.4 If a trader wishes to change the commodity they sell, they may need to apply to the Council to make that change provided their application complies with the Commodity Regulations. These regulations specify the number and type of commodities that can be sold by traders at the market and are underpinned by the legislation.

3.5 Traders cannot apply to the Council for a permanent licence if they have not held a temporary licence for six months, have had disciplinary issues, or failed to trade on a regular basis. Traders also cannot apply to vary a permanent license if they have been in arrears with fees owed to the Council during the previous 6 months.

3.6 Additionally, if there have been problems with traders; either through non-compliance with the Council's Traders Standard Street Trading Licence Conditions or arrears of fees, and all processes to resolve matters have been exhausted then market officers can recommend to the OLP that a trader's permanent or temporary licence should be revoked.

3.7 There have been a number of recent concerns and objections raised by traders challenging the Council's decisions in respect of applications for permanent or variations to licences due to the ability of a Traders Associations to have a say and make recommendations that can influence the decision making process which was passed in the previous OLP revisions in 2016. The process approved in 2016 is in direct contravention of the legislation that underpins the licencing process and was not reviewed at the time. Accordingly after taking legal advice in August 2017, which highlighted that;

*“ Part III of the LLA 1990 Act does not expressly grant any power to local authorities to delegate the street trading licensing function to any party outside the council. There is no legal basis that permits the Council to delegate to a third party”*

3.8 As a result the Markets Service Area Manager has subsequently reviewed the operation of the OLP and recommended that the revised procedure be approved as shown in Appendix 2.

#### **4. LONDON LOCAL AUTHORITIES ACT 1990**

4.1 Street trading in Hackney is regulated under the London Local Authorities Act 1990 (as amended).

4.1.1 Section 25 covers applications for street trading licences

4.1.2 Section 26 covers the rules for succession (where a trader wishes a person nominated by them to be able to apply for a licence for for their pitch following their death, retirement or that they are unable to continue to trade due to ill-health)

4.1.3 Section 27 covers conditions on street trading licences

4.1.4 Section 28 covers the revocation of of a street trading licence

4.1.5 Section 29 sets out provisions relating to the grant, renewal or revocation of street trading licences.

4.2 In relation to the refusal to grant or renew or revoke or vary a street trading licence, Section 29 states:

'(1) A borough council shall not-

A. Refuse to grant or renew a licence on any of the grounds mentioned in subsection (6) of section 25 (Application of street trading licences) of this Act;

Or

B. Revoke or vary a licence under section 28 (Revocation or variation of licences under Part III) of this act;

Or

C. Vary a licence under subsection (1) of section 27 (Conditions of street trading licences) of this Act; unless they shall have been given to the applicant or licence holder not less than 21 days' previous notice in writing that objection has been or will be taken to such grant or renewal or that such revocation or variation is proposed, specifying the ground or grounds on which their decision would be based and giving him an opportunity to appear before the committee, sub-committee or officer determining the matter.

(2) A borough council shall not proceed to determine any of the matters referred to in subsection (1) above until after the expiry of the period specified in the notice given under that subsection; and in determining any of the matters referred to, they shall consider any representations made by an applicant or licence holder in respect of that matter.'

4.3 Additionally, the licencing of traders under the London Local Authorities Act 1990 is an authorisation scheme within the scope of the EU Services Directive (2006/123/EC). This was transposed into UK law by the Provision of Services Regulations 2009 as amended by the 2018 Regulations. These Regulations provide that:

4.3.1 Applications must be processed as quickly as possible and in any event, within a reasonable time period running from the time when all documentation has been submitted.

4.3.2 The period for dealing with applications must be fixed and made public in advance.

4.3.3 When justified by the complexity of the issue, the period may be extended once, by a local for a limited time.

4.3.4 Any extension and its duration must be notified to the applicant, with reasons, before the original period has expired.

## **5. CURRENT OFFICER LICENCING PANEL PROCEDURE**

5.1 OLP meetings are held monthly, as the legislation states that once applications are made the Council has a duty to decide within a reasonable timescale whether to grant the application or not. 28 days is viewed legally as a reasonable timeframe.

5.2 At present on the application form traders are asked for reasons for seeking a variation to their licence. This is then added to the google application form. The application form itself captures information such when the trader is requesting a permanent licence for the first time or for a renewal of their licence, and when they are seeking a variation to an existing licence (for a change of commodity or change of pitch).

5.3 The form also captures information such as length of licence held, whether trader is clear of arrears in last 6 months, any disciplinary issues, if any assistants have been employed for over seven (7) years for any licence succession decisions and when the trader previously made an OLP request as they are only allowed to make two (2) requests in a calendar 12 months. This ensures informed decisions can be made in line with the rules and regulations and minimises opportunities for decision made in error.

5.4 The Markets and Street Trading Operations Manager advertises the monthly closing date for applications and available pitches. Once the closing date is reached currently they have to send a copy of each application in a particular market to the respective Trader Association for their comments and decision irrespective of whether said trader has given consent or is a member of said Traders Association. They then provide comments and their decision in writing as previously authorised in 2016, which is a breach of the legislation and GDPR data protection guidelines. In addition to contacting the respective association regarding applications, Environmental Health and Trading Standards sections of the Council are contacted regarding any application where their advice/approval is required.

5.5 At present traders are not invited to the OLP to make representations if their application is likely to be authorised. If a decision on a traders request is likely to be refused they are invited to the OLP to make personal representations, to ensure we are making decisions in accordance with the legislation. If the Manager or the Association recommend refusal of an application then the trader is formally written to with the reasons for the recommendation to refuse and invited to attend the OLP if they so wish and

make their own case to the OLP. They are given three weeks' notice of the date of the OLP.

5.6 Additionally, if the Markets and Street Trading Operations Manager is recommending the revocation of a licence, the trader is formally written to with the reasons for the recommendation to revoke their licence and invited to attend the OLP if they so wish and make their own case to the OLP. They are then given three weeks' notice of the date of the OLP.

5.7 The Markets and Street Trading Operations Manager prepares a full report of all the applications for the OLP along with their recommendations and any form from the respective Association or other consulted departments (e.g. Trading Standards).

5.8 Where two or more permanent traders apply to change to the same vacant pitch all those applications are considered at the OLP. Where the trader's length of service and the commodity mix will also be taken into account to ensure a fair and consistent decision is made.

5.9 The current decision-making process in the Officer Licencing Panel is delegated to the Head of Service for Parking and Markets Services assisted by up to two other Heads of Service inclusive of the Service Area Manager who also presents the proposals from the Markets & Street Trading Operations Manager to the panel.

## **6. RECOMMENDATIONS FROM REVIEW**

6.1 The outcomes of the review are:

6.1.1 OLP meetings should continue to be held monthly, as the legislation states that once applications are made the Council has a duty to decide within a reasonable timescale whether to grant the application or not. 28 days is viewed legally as a reasonable timeframe.

6.1.2 All Trader applications process and revised forms should continue to operate as they do now with no recommended changes to this aspect of the process.

6.1.3 It is recommended that the Markets and Street Trading Operations Manager should use more than one platform to advertise the monthly closing date for applications and available pitches as used. It is recommended that the vacant pitches are advertised in multiple points in the market not just at the markets office and an email is sent to all traders advertising the monthly OLP and closing date with a link to the application process. This will ensure all traders are communicated to effectively and given a fair opportunity to apply if they so wish. This approach will also create a more open and transparent process than previously perceived by traders.

6.1.4 The current procedure of copies of the traders applications being shared to give an opportunity for respective traders associations to provide comments and decisions on other traders applications shall cease. This will ensure the council has acted on legal advice provided and realigned this process in accordance with the LLA 1990. It will also remove the risk of the council breaching GDPR data protection guidelines by sharing personal information and facts to traders to unauthorised third parties. The Markets Team should continue to contact and seek comments from respective services such as Environmental Health and Trading Standards regarding any application where their advice/approval is required.

6.1.5 The continuance of the current process for trader representation at the OLP is recommended as this is a robust and legally compliant with the legislation aspect of the current OLP process and should remain in place. Additionally the three week (3) notice period of the date of OLP when representation is required shall also remain in place.

6.1.6 Where the current decision making process , that was previously adopted, where two or more permanent traders apply to change to the same vacant pitch is recommended to retain this OLP process.

6.1.7 It is proposed that the Delegated Authority for decision-making for the Officer Licencing Panel be transferred from the Head of Service for Parking and Markets Services and in their absence to the Service Area Manager for Markets & Street Trading. The Head of Service for Parking and Markets Services who is to be assisted by the Service Area Manager for Markets and Street Trading ,Markets and Street Trading Operations Manager and Shop Fronts Team Leader who will form a panel of senior officers to make decisions on traders applications to

issue, renew or vary a street trading licence and any traders licensing issues that may arise.

6.1.8 It is proposed that rather than inform traders of any right of appeal to the council's decision to refuse to issue, renew or revoke a current permanent/temporary licence through the OLP is to be made to the Magistrates Court. It is recommended that we adopt an appeal/review process to be heard in person by an Independent Head of Service within 28 days of receipt of the review request of the OLP decision. The written request from the trader must be made within 21 days of the date of OLP decision to refuse the application. This will not affect the traders statutory right to lodge an appeal with the Magistrates court after an internal appeal/review is heard but will provide the council an additional layer to reduce risk or reputational damage if we have to defend a decision in court.

## **7. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

7.1 Alternative options were discussed in the process of the review of the current OLP procedure. As a result of those deliberations one set of recommendations have been drawn up to ensure the Council undertakes licencing of street trading to the highest professional standards within the letter and spirit of current legislation. The alternative option of doing nothing was rejected as the current OLP procedure does not comply with all legislative requirements.

## **8. POLICY CONTEXT**

8.1 None.

## **9. EQUALITY IMPACT ASSESSMENT**

9.1 The council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.

9.2 This will ensure a Consistent approach is adopted. Under terms of the policy, every market traders application and/or issue that comes to the OLP panel will be considered on its own merits.

9.3 The council has carried out an Equality Impact Assessment to identify if any of the recommendations made have an adverse effect on the market traders needs. Please see Appendix 3 for details of the equality impact assessment carried out.

## **10. SUSTAINABILITY**

10.1 The on-going sustainability of markets and street trading within Hackney is dependent on the ability to gain and retain good quality traders who become well established, offer a high quality product, are well presented and able to operate a profitable business model.

10.2 The London Borough of Hackney's markets operate in a very competitive environment. Whilst there is continuing demand from people to become traders (many for the first time), and markets in London are retaining their popularity and role for customers, there is much competition from other markets to attract traders. Operating a timely and transparent procedure for permanent licencing supports the provision of a good quality service to Market Traders, so retaining them on Hackney's markets.

10.3 Despite a declining highstreet, Hackney's Markets Service has continued to grow both its trader base and pitch occupancy over the last two years. The changes to this process will support the service to continue to develop and grow these important drivers to a financially sustainable service that supports the local economy and local employment opportunities.

## **11. RISK ASSESSMENT**

11.1 The main risks pertaining to licencing permanent traders is the loss of traders through not operating a timely and professional process with permanent street trading licencing. Secondly there is a risk of legal challenge if the procedures do not operate in accordance with the London Local Authorities Act 1990.

11.2 By revising the procedures both of the risks identified are mitigated.

## **12. COMMENTS OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES**

12.1 This report seeks approval to adopt the revised procedure for determining street licences and a revised terms of reference for officer licencing panel highlighted in paragraph 2 and detailed in Appendix 2.

12.2 This change has arisen due to a legal compliance requirement and there are no direct financial implications emanating from this report, albeit that it could lead to improved cash flows due to the more efficient issue of licences.

## **13. COMMENTS OF THE CORPORATE DIRECTOR OF LEGAL, HR AND REGULATORY SERVICES**

13.1 Street trading in the Borough is controlled under the provisions of the London Local Authorities Act 1990 (“the 1990 Act”).

13.2 Section 25(3B) of the 1990 Act provides that a Council may make regulations prescribing the procedure for determining applications.

13.3 Before such procedures can be made, a Council must (1) consult with anyone representing licence holders and (2) consider any representations received relating to the proposed procedure.

13.4 The Council is under no obligation to notify licence holders or body/bodies representing them that regulations prescribing the procedure for determining applications have been made though this is advisable.

### *Authority to make procedures for determining applications*

13.5 The licencing of market and street trading under the 1990 Act is a Council function which has been delegated under the Council’s Constitution to the Group Director of Neighbourhoods and Housing Services to exercise and so the Group Director can make the regulations attached to this report Appendix 2.

## APPENDICES.

**Appendix 1.** Revised Officer Licencing Panel procedure and current terms of reference.

**Appendix 2.** Revised procedure for considering street trader applications for permanent licenses, renewals of permanent licences, varying licences and revoking licenses, and the Officer Licencing Panel (including revised terms of reference).

**Appendix 3.** Equality Impact Assessment.

**Appendix 4.** Schedule for Implementation.

Note: The London Local Authorities Act is available to view at:

[http://www.legislation.gov.uk/ukla/1990/7/pdfs/ukla\\_19900007\\_en.pdf](http://www.legislation.gov.uk/ukla/1990/7/pdfs/ukla_19900007_en.pdf)

## BACKGROUND PAPERS

**In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required**

There are no background papers. Background papers that are not publicly available have been relied on to when preparing this report.

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**AUTHORISATION**

**Authorisation of the Group Director, Neighbourhoods and Housing**

**Name:** Ajman Ali

A handwritten signature in black ink, appearing to be 'Ajman Ali', written in a cursive style.

**Signature:**

**Date:** 13.02.20

**Authorisation of Director, Public Realm**

**Name:** Aled Richards

A handwritten signature in black ink, appearing to be 'Aled Richards', written in a cursive style.

**Signature:**

**Date:** 17/02/2020

## **APPENDIX 1: Officer Licencing Panel - Current terms of reference**

*This copy is from an old PDF of the terms of reference*

### **Terms of Reference for the Markets and Street Trading Officer Licencing Panel**

#### **Introduction**

The Chair of the Officer Licencing Panel will have the responsibility for those functions under the London Local Authorities Act 1990 (as amended) as set out below.

#### **Functions**

1. To determine first time grants of permanent street trading licences, including for both street trading and shop front trading.
2. To determine whether to grant or renew an application for a street trading licence or revoke a licence.
3. To determine whether to vary a licence including but without limitation:
  - 3.1 To consider applications for a change of commodities for licenced street traders.
  - 3.2 To change pitch allocation.
  - 3.3 Transfers for permanent licence street traders.
4. Any other street trading licence matter which the Service Area Manager for Markets and Street Trading or Markets and Street Trading Team Manager consider should be determined by the Officer Licencing Panel.

#### **Panel Members**

The Officer Licencing Panel shall be made up of three Senior Managers of the Council, at Head of Service level. The Head of Service for Parking and Markets shall chair the meetings of the Officer Licencing Panel and exercise the functions listed above, in consultation with the other members of the panel.

In the event that the Head of Service for Parking and Markets is unavailable to chair a meeting of the Officer Licencing Panel, they can delegate their authority to another Head of Service.

## **Quorum**

The quorum of the Officer Licencing Panel shall be a minimum of two Heads of Service.

## **STREET TRADING AND SHOP FRONTS PROCEDURE FOR CONSIDERING APPLICATIONS FOR PERMANENT STREET TRADING LICENCES, RENEWALS, LICENCE VARIATIONS, AND APPLICATIONS FOR PERMANENT SHOP FRONT LICENCES OR RENEWALS.**

### **Introduction**

This procedure describes how traders and shop front owners can apply for permanent licences, the renewal of those licences or any variations to those licences, and the Markets Team can recommend that a trader's licence can be revoked.

### **Applications covered**

- First time grants for Permanent Street trading licences, this includes licences for both market stalls and shop front trading. Traders can apply for a permanent licence after holding a temporary licence for a minimum of six months.
- To grant or renew a licence.
- To vary a licence:
  - For a change of commodities for licenced street traders.
  - To change pitch allocation.
  - Transfer for permanent licenced street traders.
- Recommendations by the Markets and Street Trading Team Manager to revoke a trader's Licence.
- Any other street trading licence matter which the Service Area Manager for Markets and Street Trading or Markets and Street Trading Team Manager consider should be determined by the Officer Licencing Panel.

### **Application Process**

The Officer Licencing Panel (OLP) is held every month. The Markets and Street Trading Team Manager will advertise the closing date of applications at least 3 weeks prior to the closing date.

Applications for a licence can be made 5-8 weeks prior to the meeting of the OLP. Monthly closing dates 5 weeks prior to the monthly OLPs are issued by the Markets Team and available from the Markets Office.

Applications are by traders are made using the Council application form, which includes details of the application and if it is a variation the reasons for applying for the variation.

## **Officer Licencing Panel**

Once the closing date for applications for a meeting of the OLP is reached the Markets and Street Trading Team Manager collates all the applications and sends information to the respective Traders Association (for the market the trader is applying about), trading standards and environmental health, requesting any written comments within seven days.

The Markets and Street Trading Team Manager prepares a report for the OLP with their recommendations about whether to support or reject an application. If an application is not being supported by the Team Manager the trader is written to, stating the reasons their application is not supported, and asking if they wish to make representations to the panel in person and giving them a minimum of 21 days' notice of the panel date.

If the Markets and Street Trading Team Manager is recommending revoking a licence then the trader should also be written to, stating the reasons that revocation is being recommended and asked if they wish to make representations to the panel in person and giving them a minimum of 21 days' notice of the panel date.

The Markets and Street Trading Team manager prepares a full report of all the applications for the OLP, along with their recommendations and any from the respective Association or other consulted departments (e.g. Trading Standards).

Where two or more permanent traders apply to change to the same vacant pitch, all those applications should be considered at the OLP.

The Officers Licencing Panel considers each application and any representations made by traders. Decisions of the panel are recorded and traders informed in writing. If a licence application is refused or revoked the trader is informed of their right to appeal against the decision to the Magistrates Court.

## **APPENDIX 2:**

### **PROPOSED STREET TRADING AND SHOP FRONTS PROCEDURE FOR CONSIDERING APPLICATIONS FOR PERMANENT STREET TRADING LICENCES, RENEWALS, LICENCE VARIATIONS, AND APPLICATIONS FOR PERMANENT SHOP FRONT LICENCES OR RENEWALS FROM APRIL 2020**

#### **Introduction**

This procedure describes how traders and shop front licence holders can apply for a permanent trading licence, the renewal of those licences or any variations to both temporary and permanent licences, and where the Markets Service can recommend that a licence holders licence be revoked.

#### **Applications covered**

- First time grants for permanent street trading licences, this includes licences for both market & street trading and shop front trading. Traders can apply for a permanent licence after holding a temporary licence for a minimum of six months.
- To grant or renew a licence.
- To vary a licence:
  - For a change of commodities for licenced market/street and shop front traders.
  - To request a change to permanent pitch allocation.
  - Transfer from a temporary to a permanent market/street or shop front licence.
  - To request for Succession of permanent licence to a specified individual as set out in the rights of succession.
- To recommend a refusal to grant a licence/request or revocation of a licence:
  - For a member of the panel to present a recommendation of revocation of a licence to the OLP.
  - Trader to make representations to the panel within 21 days notice of intention to revoke licence.
  - For the panel to make an independent and impartial decision on a case by case basis
- Any other street trading licence matter which the Service Area Manager for Markets and Street Trading or Markets and Street Trading Operations Manager consider should be determined by the Officer Licencing Panel.

## **Application Process**

The Officer Licencing Panel (OLP) is held every month. The Markets and Street Trading Team Manager will advertise the date of the OLP meeting and issue a reminder of the closing date of applications at least 2 weeks prior to the closing date.

Applications for a licence can be made upto 4 weeks prior to the meeting of the OLP. Applications for a variation or permanent licence must be made in writing and the relevant forms completed and associated fees paid for in advance of the OLP hearing.

Applications by licence holders are made using the Council's application form which is available online and from the Markets Service office, which includes details of the application process and allows for the licence holder to express the reasons for requested change and/or variation.

All forms are issued by the Markets Team and available from the Markets Office.

## **Officer Licencing Panel**

Once the closing date for applications for a meeting of the OLP is reached the Licensing & Development manager collates all the applications and sends information to the respective chair and panel members (Head of Markets and Street Trading Service, Service Area Manager, Markets & Street Trading Operations Manager, Shop Fronts Team Leader) and request in advance of the panel meeting to submit recommendations about whether to support or reject an application via the OLP form. They will also notify trading standards and environmental health, requesting any written comments within seven days where applicable to do so.

The Licensing & Development Manager prepares the report form for the OLP with their recommendations about whether to support or reject an application. If an application is not being supported by the panel members, the trader is written to, stating the reasons their application is not supported, and asking if they wish to make representations to the panel in person and giving them a minimum of 21 days' notice of the panel date.

If the panel members are recommending revoking a licence then the trader should also be written to, stating the reasons that revocation is being recommended and asked if they wish to make representations to the panel in person and giving them a minimum of 21 days' notice of the panel date.

The Licensing & Development manager prepares a full report of all the applications for the OLP, along with their recommendations and any from the respective panel members or other consulted departments (e.g. Trading Standards).

Where two or more permanent traders apply to change to the same vacant pitch, all those applications should be considered at the OLP on a case by case basis taking into

consideration the length of time a trader has held licence, the needs of the market , commodity mix and customer offering when making a decision.

The Officers Licencing Panel considers each application and any representations made by traders. Decisions of the panel are recorded and traders informed in writing. If a licence application is refused or revoked the trader is informed of their right to a review of the decision internally which will be heard by an independant Head of Service.

Requests for a decision to be reviewed are to be received in writing within 21 days of decision received. The decision from the Head of Service is final. The trader does then have the right to make an appeal to the Magistrates Court for a case to be heard if they believe they do not agree with the decision of the panel setting out their reasons for appeal.

# **PROPOSED NEW TERMS OF REFERENCE OF THE MARKETS AND STREET TRADING OFFICER LICENCING PANEL**

## **Introduction**

The Chair of the Officer Licencing Panel will have the responsibility for those functions under the London Local Authorities Act 1990 (as amended) as set out below.

## **Functions**

1. To determine first time grants of permanent street trading licences, including for both market/street trading and shop front trading.
2. To determine whether to grant or renew an application for a market/street trading licence or revoke a licence.
3. To determine whether to vary a licence including but without limitation:
  - 3.1 To consider applications for a change of commodities for licenced street traders.
  - 3.2 To change pitch allocation.
  - 3.3 Transfer to a permanent licence.
4. Attach additional conditions prior to the grant or renewal of an application for a market/street or shop front trading licence.
5. Any other street trading licence matter which the Markets, Shop Fronts & Street Trading Management consider should be determined by the Officer Licencing Panel.

## **Panel Members**

The Officer Licencing Panel shall be made up of a Chair and a panel of up to three managers of the Markets, Shop Fronts and Street Trading Service. This consists of :

- The Head of Markets and Street Trading Service (Chair)
- The Service Area Manager
- The Markets & Street Trading Operations Manager
- The Shop Fronts Team Leader

The Head of Service for Markets and Street Trading shall chair the meetings of the Officer Licencing Panel and exercise the functions listed above in consultation with the other members of the panel.

In the event that the Head of Service for Markets and Street Trading is unavailable to chair a meeting of the Officer Licencing Panel, they can delegate their authority to the Service Area Manager for Markets, Shop Fronts & Street Trading.

## **Appeals**

Where the Officer Licensing Panel takes a decision to vary, revoke or not to grant a permanent licence, the permanent licence holder may appeal against this decision. Any appeal must be put in writing within 21 days of the date in which they were notified of the original decision by the panel.

Temporary traders do not enjoy a statutory right to appeal a decision to vary, revoke or not to grant a temporary licence. A temporary trader may instead apply for the judicial review of such a decision.

The appeal review shall be heard by an independent Head of Service. This Head of Service will hear the applicants representation which should clarify exactly why the appeal is being made and what was considered to be wrong about the original decision. They will also hear representations from the officer licensing panel specifying the grounds on which the original decision to vary, revoke or not to grant a permanent or temporary street trading licence application was based.

The independent Head of Service may come to the same decision or a different one but whatever decision made during the appeal review is final. This decision does not affect the applicants statutory right to make a further appeal to the magistrate's court.

If the applicant is aggrieved by the appeal review decision they can exercise this statutory right to lodge a further appeal to the magistrates Court and thereafter to the crown court for a hearing. The licence holder is entitled to continue trading until such time as any such appeal has been determined.

**APPENDIX 3:**

## **London Borough of Hackney Equality Impact Assessment Form**

The Equality Impact Assessment Form is a public document which the Council uses to demonstrate that it has complied with Equalities Duty when making and implementing decisions which affect the way the Council works.

The form collates and summarises information which has been used to inform the planning and decision making process.

**All the information needed in this form should have already been considered and should be included in the documentation supporting the decision or initiative, e.g. the delegate powers report, saving template, business case etc.**

Equality Impact Assessments are public documents: remember to use at least 12 point Arial font and plain English.

The form must be reviewed and agreed by the relevant Assistant Director, who is responsible for ensuring it is made publically available and is in line with guidance. Guidance on completing this form is available on the intranet.

<http://staffroom.hackney.gov.uk/equalities-based-planning-and-decision-making>

**Title and purpose of this Equality Impact Assessment:**

Officer Licencing Panel - Revised procedure for deciding on permanent & temporary street trading licences, alterations to those licences, revocation of such licences and permanent shop front licences.
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**Purpose of this Equality Impact Assessment:**

To determine the impact of proposed changes in the Officer Licencing Panel process.
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**Officer Responsible: *(to be completed by the report author)***

<b>Name:</b> Dan O'Sullivan	<b>Ext:</b> 5981
<b>Directorate:</b> Neighbourhoods and Housing	<b>Department/Division:</b> Parking, Markets & Street Trading

- 1. Please summarise the service, function, policy, initiative or saving.** Describe the key objectives and outcomes you expect. Make sure you highlight any proposed changes.

To update the Officer Licencing Panel process to ensure it meets both the letter and spirit of the current legislation regarding street trading, and to delegate the decision making in line with the revised management structure.

- 2. Who are the main people that will be affected?** Consider staff, residents, and other external stakeholders.

Street traders and Council staff who are accountable and responsible for the running of the service and delivering this process and procedure.

- 3. What research or consultation(s) have been carried out?** Please provide details, together with a summary of what you learned.

A full review of the existing procedure was undertaken in conjunction with the council's legal department, arising from legal advice received at the services request in regards to the current OLP procedure. Following the recommendations received to revise the procedure after recent court cases and concerns raised on the integrity of the process following the inclusion of Traders associations such as the RRMTA provided with the opportunity to provide comments and decisions of traders licence applications which is in direct contravention of the legislation and puts the council at risk of legal challenge.

#### **4. Equalities Impacts**

This section requires you to set out the positive and negative impacts that this decision or initiative will have on equalities.

Detailed information on how to consider the impacts on equalities is included in 'Guidance on equalities based planning and decision making' which can be downloaded from the intranet here.

**4(a) What positive impact could there be overall, on different equality groups and on cohesion and good relations?**

Overall:

A fairer, more transparent and more responsive system for traders. No differential impact was found on other specific groups.

Markets/Street Traders:

All market/street traders are governed by the London Local Authorities Act 1990 (as amended), which specifies how and on what basis their street trading licences may be changed. The revisions recommended speeding up the process for traders to apply and receive a decision as the Panel will change to sit monthly instead of quarterly, and thus traders' opportunities to change are improved. The recommendations additionally aim to be more transparent and open with traders about changes.

However it is important to note that traders will continue to be charged to cover the costs of running the process and to defer frivolous applications for change.

There are no perceived specific equality impacts on different equality groups.

**4(b) What negative impact could there be overall, on different equality groups, and on cohesion and good relations?**

Where you identify potential negative impacts, you must explain how these are justified and/or what actions will be taken to eliminate or mitigate them. These actions should be included in the action plan.

Market/Street Traders:

Fees to make an application for changes in the licence could deter some traders, however the main fees are not being changed in this review, so there is no difference to the fees traders already pay. They are planned to change in a minor way in 2020 if the recent consultation on new fees and charges lead to the proposed fees being implemented.

Hackney markets continue to thrive with new traders seeking to be approved to trade all the time and traders are enthusiastic about developing their businesses so there are numerous applications regarding licences at each panel.

If the process were to be made more complicated or cumbersome this could deter traders from applying and this would damage the offering of good quality affordable food and products to local people. This revised process will actually be quicker and more responsive to traders' needs.

## 5. Equality and Cohesion Action Planning

Please list specific actions which set out how you will address equality and cohesion issues identified by this assessment. For example,

- Steps/actions you will take to enhance positive impacts identified in section 4 (a)
- Steps/actions you will take to mitigate the negative impacts identified in section 4 (b)
- Steps/actions you will take to improve information and evidence about a specific client group, e.g. at a service level and/or at a Council level by informing the policy team ([equality.diversity@hackney.gov.uk](mailto:equality.diversity@hackney.gov.uk))

All actions should have been identified already and should be included in any action plan connected to the supporting documentation, such as the delegated powers report, saving template or business case. You need to identify how they will be monitored. The Assistant Director is responsible for their implementation.

No	Objective	Actions	Outcomes highlighting how these will be monitored	Timescales / Milestones	Lead Officers
4	Gather more equalities information of traders and their applications to the Officer Licencing Panel	Monitor equalities information for permanent and temporary traders in applications to the Officer Licencing Panel	Better understanding of potential impacts to specific groups that might be affected by changes to the Officer Licencing Panel process	2020/21	Matt Steele, Tahara Munshi and Derek Fergus

#### APPENDIX 4:

**Implementation of Officer Licencing Panel - Revised procedure for deciding on permanent street trading licences, alteration to those licences, revocation of such licences and permanent shop front licences.**

<b>Summarised Project Milestones / Stages</b>	<b>Estimated number of weeks to complete</b>	<b>Completion Date</b>
Delegated Report drafted and approved by Legal and finance; requires Assistant Directors and Corporate Director	2 weeks	28th February 2020
Earliest date for revised OLP process	Process begins with traders informed by 30th March 2020, process changes from 1st April 2020 and first Officer Licencing Panel under revised process in April 2020.	