Committee:	Date:	Classification:	Report No.	Agenda Item No.
Licensing Sub-Committee	24 January 2012	UNRESTRICTED	LSC 68/112	

Report of: **Colin Perrins** **Head of Commercial Services** Originating Officer: **Nick Kemp - Licensing Officer**	Title: **Licensing Act 2003** **Application to Review the Premises Licence for Papadoms, 94 Brick Lane, London E1 6RL** Ward affected: **Spitalfields & Banglatown**

1.0 Summary

Name and Address of premises:	**Papadoms** **94 Brick Lane, London E1 6RL.**
Licence under review:	**Licensing Act 2003 – Premises Licence** § **Sale by retail of alcohol** § **Regulated entertainment** § **Late night refreshment**
Representations:	**Local Weights and Measures Authority** **Metropolitan Police**

2.0 Recommendations

2.1 That the Licensing Committee considers the application for review and then adjudicates accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"	Tick if copy supplied for register	If not supplied, name and telephone number of holder
• Guidance Issued under Section 182 of the Licensing Act 2003 • Tower Hamlets Licensing Policy • File		Nick Kemp 020 7364 7446

3.0 Review Application

3.1 This is an application for a review of the premises licence for **Papadoms, 94 Brick Lane, London E1 6RL.** The review was triggered by London Borough of Tower Hamlets Weights and Measures Authority and supported by the Metropolitan Police.

3.2 This review is one of a number of reviews triggered during Operation Creek, a joint partnership operation tackle the problem of touting in the Brick Lane area. This includes compliance with the local touting byelaw, conditions of premises licences preventing the use of touts, the activities and behaviour of touts also the offers being given to customers.

3.3 A copy of the application for the review is contained in **Appendix 1**

4.0 The Premises

4.1 The premises licence was issued on 10th July 2008. A copy of the current licence is contained in **Appendix 2**.

4.2 **The premises licence was previously reviewed on 11th January 2011 following another test purchase under Operation Creek. On this occasion a condition was added to the licence of:**

"No person shall be employed to solicit for custom or be permitted to solicit for custom for business for the premises in any public place within a 500 metres radius of the premises".

There was no suspension of the licence or other sanction.

The existing licence holder, Mr Saidur Rahman, has been the licence holder since 10th July 2008.

4.3 Maps showing the premises and the surrounding areas are included in **Appendix 3**.

5.0 Representations

5.1 This hearing is required by the Licensing Act 2003, because a review has been triggered by London Borough of Tower Hamlets Trading Standards the local Weights and Measures Authority.

5.2 The review is further supported by Metropolitan Police. Please see **Appendix 4.**

5.3 Only representations that relate to the following licensing objectives are relevant:

- the prevention of crime and disorder

- public safety
- the prevention of public nuisance
- the protection of children from harm

5.4 In the view of the interested party and the responsible authorities it is necessary to achieve the licensing objectives of the:
- prevention of public nuisance and
- prevention of crime & disorder.

6.0 Review Explained

6.1 The Licensing Act 2003 was described by the Government at the time as "light touch" but as Baroness Blackstone stated in the Lords at the time of the second reading (26 Nov 2002) "Local residents and businesses as well as expert bodies, will have the power to request that the licensing authority review existing licences where problems arise. Such a review could result in the modification of the licence, its suspension, or ultimately, revocation."

6.2 The Home Office has issued guidance under Section 182 of the Licensing Act 2003 in relation to reviews and that is contained in **Appendix 5.** It is available on the Government's website, www.homeoffice.gov.uk. It was last revised in October 2010.

6.3 Members are particularly asked to note the comments in relation Crime and Disorder. In particular the home office advice is that "The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted."

6.4 In relation to its advice on representations the Home Office has also advised that "there is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations." It has also issued revised guidance about Crime and Disorder, and the pool of conditions which might be considered in relation to any identified problems. see **Appendix 6**.

6.5 Members should also note the Council's Licensing Policy in relation to Crime and Disorder, the relevant parts of which are contained in **Appendix 7**. The Pool Conditions in the Policy are the same as the Government's.

6.6 The Home Office has also issued guidance about the prevention of public nuisance and the pool of conditions which might be considered in relation to any identified problems is contained in **Appendix 8.**

6.7 The Council's Licensing Policy in relation to Public Nuisance is contained in **Appendix 9**.

6.8 The Home Office has advised that in relation to reviews "It is important to recognise that the promotion of licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between those groups in a way that would undermine the benefits of co-operation. It would be good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review."

6.9 The licensing authority itself cannot trigger a review; that can only be done by a responsible authority or an interested party (local resident or business).

6.10 An interested party or a responsible authority can trigger a review at any time, but the grounds must be relevant to the licensing objectives. The form of the application, and the advertisement of the review are the subject of regulations (The Licensing Act 2003 (Premises Licences and Club Premises Certificate) Regulations 2005). In addition, the licensing authority has to satisfy itself of certain matters in relation to the Licensing Act 2003. The Licensing Services Manager Ms Jacqueline Randall is the delegated officer who deals with this on behalf of the licensing authority. All the matters stated in *5.0* were considered before any representations were accepted for inclusion in this report.

6.11 The Licensing Act 2003 requires that the Licensing Authority satisfies itself that it should reject the grounds for a review because:

- The ground is not relevant to one or more of the licensing objectives
- In the case of an application by a local resident that the application is frivolous, vexatious or repetitious.

7.0 Review Advertisement

7.1 The review was advertised by a blue poster, next to the premises, by the Licensing Section. This was periodically monitored by the Section to ensure it was on continuous display, and replaced as necessary. It was also advertised at Mulberry Place, 5 Clove Crescent, London E14 2BG.

7.2 The party that triggers the review must notify the licence holder and responsible authorities. The review documents were sent to the licence holders.

7.3 The procedure for a review can be summarised as follows:

- A review is triggered by a responsible authority or interested party
- Consultation is conducted for 28 full days
- Other responsible authorities or interested parties may join in the review
- Members conduct a hearing
- Members make a determination
- All the parties to the review have the right of appeal to the magistrates court (i.e. the licence holder, the person who triggered the review and those who have made a representation).

8.0 Licensing Officer Comments

8.1 The Governments advice in relation to reviews is contained in **Appendix 5.** Members must consider all the evidence and then decide from the following alternatives:

- Take no further action as they do not consider it proportionate to do so.
- Impose conditions (including altering existing permissions) that relate to problems which they consider have been identified and which are necessary and proportionate to ensure that the licensing objectives are met.
- Suspend the licence for a period.
- Revoke the licence completely

8.2 The licence should only be suspended or revoked if Members believe that alterations to the existing licence, including imposing new conditions does not have a reasonable prospect of ensuring that the licensing objectives are met.

8.3 Members should bear in mind that conditions may not be imposed for any purpose other than to meet the licensing objectives.

8.4 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.”

8.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.

9.0 Legal Comments

9.1 The Council's legal officer will give advice at the hearing.

10.0 Finance Comments

10.1 There are no financial implications in this report.

11.0 Appendices

Appendix 1	Copy of the review application
Appendix 2	Current Premises Licence
Appendix 3	Maps of the premises and surrounding area
Appendix 4	Representations from Police
Appendix 5	Guidance issued under Section 182 by the Home Office for reviews
Appendix 6	Guidance Issued by the Home Office under Section 182 of the Licensing Act 2003 concerning Crime and Disorder
Appendix 7	London Borough of Tower Hamlets Licensing Policy in relation to the prevention of Crime and Disorder
Appendix 8	Guidance Issued by the Home Office under Section 182 of the Licensing Act 2003 concerning Public Nuisance
Appendix 9	London Borough of Tower Hamlets Policy in relation to the prevention of Public Nuisance