

<b>Committee(s):</b>	<b>Date(s):</b>
Markets	8 <sup>th</sup> May 2013
<b>Subject:</b> Market Byelaws Working Party – Final Report	<b>Public</b>
<b>Report of:</b> Director of Markets & Consumer Protection	<b>For Decision</b>
<p><b>Summary</b></p> <p>During the process that led to the previous byelaws being revoked in January 2012, the City committed to look at whether there was a need for a new set of byelaws.</p> <p>A working party comprising the three Market Superintendents and Comptroller &amp; City Solicitor(C&amp;CS) colleagues was set up to review whether there was such a need. All three tenants associations, recognised tenants staff trade unions, and the City management at each Market have been consulted as part of this review process.</p> <p>Were byelaws to have fixed penalty remedies, instead of the current court process, they would provide more effective and efficient enforcement and possibly be an attractive option but no such fixed penalty powers exist. Following discussions with C&amp;CS colleagues, the Market Superintendents now have a greater depth of knowledge on the alternative powers that are available to them such as enforcing the terms of tenants leases, the recovery of charges, and excluding people who misbehave from site. The Market Superintendents wish to manage Market behaviour through these existing alternative powers, and monitor their effectiveness for the time being and do not recommend at this stage that byelaws be introduced.</p> <p style="text-align: center;"><b>Recommendation</b></p> <p>It is recommended that new byelaws are not sought for the Markets at present but that the position be monitored and, if existing remedies prove ineffective, the issue be reviewed, particularly if Fixed Penalty Notices become available as penalties under byelaws in the future.</p>	
<p><b><u>Main Report</u></b></p> <p><b>Background</b></p> <p>1. As part of the process that led to all previous market byelaws being revoked in January 2012, the City made a commitment that they would subsequently consider whether a new set of byelaws would be appropriate. A working party comprising the three Market Superintendents and colleagues from the</p>	

Comptroller & City Solicitor(C&CS) department were asked to examine whether there was a need for new byelaws. As part of this work the working party have consulted tenants associations at each Market, recognised tenants staff trade unions and the COL management teams at each Market.

### Consultation Exercise Summary by Market

2. **Billingsgate:** The tenants association and also local COL management are united against the return of any byelaws to Billingsgate. The tenants association had written in support of the revocation of all previous byelaws. The conduct issues that have been identified during this new byelaws consultation process per **Appendix 1** are in essence the same as were covered by the now revoked set of byelaws which had not been used for at least the previous 15 years. During these 15 years and since, behavioural issues have continued to be managed without the need for byelaws and both parties are of the view that this can continue into the future. At Billingsgate neither the management nor the Tenants Association sees any need for the re-introduction of byelaws.
3. **Spitalfields:** Although the local management did confirm that all previous byelaws were redundant and could be revoked, that exercise had been carried out by the previous Superintendent. The current Superintendent and his staff feel that there are conduct issues for which the availability of byelaws or some other lower level sanctions would be useful. The tenants association who did not object to the previous revocation have reviewed the Spitalfields Appendix 1 issues; they object to some of the issues being controlled by byelaws but are relaxed about new byelaws being in place to manage the remaining issues. The Trade Union, Unite, were supportive of new byelaws being introduced.
4. **Smithfield:** The tenants association (SMTA) wrote objecting to the previous byelaws being revoked and have during this consultation process written proposing new byelaws they would wish to see being introduced. Their proposed new byelaws are mainly a mixture of some of the revoked byelaws and some others from the Department of Community and Local Government (DCLG) model byelaws. The local management were broadly in support of the tenants' position. The Trade Union, Unite, have also submitted some issues that they would wish to be covered by new byelaws. The issues raised by the SMTA and Unite are included within **Appendix 1**.

### Current Position

5. Although some of the issues flagged up in **Appendix 1** are common to each Market there is a significant variation in the frequency and severity with which these issues occur at each Market; the continuing adverse impact at each Market caused by these issues differs greatly. Billingsgate would appear to suffer the least and Spitalfields the most.

6. Many businesses in the country function without byelaws, including businesses where similar to Markets there are multi tenanted facilities and significant customer traffic, such as shopping centres. These largely rely on alternative legal remedies such as lease terms. Byelaw infringements need to be prosecuted through the courts and if successful the penalty to the offender in respect of local byelaw breaches is usually a maximum of £500 although the offender may additionally have legal costs to bear. If there were fixed penalty powers available for byelaws, they could be enforced more effectively but at present there are no such fixed penalty remedies.
7. There is very little history of byelaw prosecutions being undertaken in the Markets, and it is considered that the resources needed to prosecute byelaw offences are normally disproportionate to the penalty. When proposing the revocation of the previous byelaws the City had concluded that those byelaws all contained issues that were either obsolete or adequately covered by national legislation and the terms of tenant leases. It is said that although they were not being actively used that the existence of byelaws acted as a deterrent on bad behaviour but now one year on from revocation and with no byelaws operating at the Market there is no evidence to suggest that behaviour has worsened.
8. During this current new byelaws consultation process discussions have taken place with New Covent Garden and although they have byelaws and for deterrent purposes prefer to maintain them, they also have no history of prosecuting for byelaw offences. The New Covent Garden byelaws are not impacting their business so for them byelaws is a dormant subject.
9. The matter that needs to be addressed is how best to manage the behaviour issues raised in **Appendix 1**. One of the main outcomes of the working party discussions with C&CS colleagues that took place following the consultation responses, was the clarification provided of alternative powers; it was clear that these other powers were not being used to their full extent. These already available alternative powers that can be used to manage behaviour are shown against the specific issues in the far right column of **Appendix 1**.
10. There are specific road traffic powers available to Billingsgate and Smithfield and in view of its location within the City, the Smithfield constabulary have delegated authority to issue fixed penalty notices for littering and smoking offences. Billingsgate has a code of practice agreement with the tenants, compliance to which is included as a specific term in tenant's leases. Although the code is initially concerned with food hygiene issues, in consultation with the tenants association it is planned to develop this code so that it covers a full range of specific tenant conduct issues. Smithfield has a food hygiene orientated "working manual" agreement with their tenants.
11. In general for managing tenant's behaviour, enforcing the terms of a tenants lease should be the preferred option. The terms of a tenants lease will require the tenant to be compliant with statutory legislation and also with specific local conduct matters; as a "catch all" there is a requirement within the lease terms to follow the reasonable instructions of the Superintendent. For minor

breaches of the lease a tenant could be written to stating that they were in breach of the terms of the lease and that persistent repetition of such behaviour could result in the lease being forfeited. As the tenant's business is at stake such letter/s should result in improved behaviour from prudent tenants wishing to retain their business. In the case of recurring bad behaviour the City would have to be prepared to follow through and take lease forfeiture action.

12. Under the City of London (Various Powers) Act 1963 the City can impose such charges as they may prescribe in respect of the use of the market or services provided by the City subject to appropriate consultation and notice of relevant instructions. The cost of resources used to address issues such as waste dumping or depositing product that is causing an obstruction can be recharged to the offending tenant. (e.g. the Spitalfields overtrading notice and associated charges). This is not only fair in that the offender should be bearing the costs relating to their action but it could act as a deterrent against future offending. There is also potential to call upon the tenant's rent deposit monies to settle unpaid charges.

13. In the case of bad behaviour by persons other than tenants they can simply be asked to leave site. If they were to refuse the police could be called in for a breach of the peace.

### **Consultation**

The Comptroller & City Solicitor's staff were fully involved in this review and their comments are fully reflected in this report.

### **Conclusions**

14. The City will continue to try to foster good relations with its tenants and other users of the Market and that for most cases of wrong behaviour a quiet word will resolve the issue. If new byelaws were to be proposed it is clear from the consultation exercise that as previously, byelaws would need to operate on a Market by Market basis. Billingsgate in particular would not wish to see the return of any byelaws.

15. It is likely that DCLG would question why so soon after the City had stated that previous byelaws were redundant and then revoked, similar new byelaws were now being proposed particularly when the previous byelaws were not actively used. Were fixed penalty powers to become available at a future stage for byelaw offences, byelaws could be a more useful option.

16. The City would appear to have alternative powers at its disposal. This working party exercise has usefully clarified these other powers available to manage market behaviour and they are summarised below.

- The enforcement of tenant lease terms including the use of Code of Practice or Working Manuals to manage tenant behaviour.
- Specific fixed penalty powers at Smithfield for waste and smoking issues.

- Road traffic powers at Billingsgate and Smithfield.
- The raising of charges to tenants under the powers granted within the City of London (Various Powers) Act 1963.
- Removing other Market users from site.

17. Following the working party discussions the Superintendents have concluded that, at least for the short to medium term, they would wish to use the alternative powers and monitor their effectiveness, Therefore at this stage they do not propose that new byelaws be introduced.

**Appendices:**

- Appendix 1 – Consultation Response Summary

**Background Papers:**

- Markets Committee November 2010
- Markets Committee September 2012

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