

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Business Management (Miscellaneous appeals) Sub-Committee
Report of:	Amanda Prosser-Davies, Operations Manager – Bull Ring Markets
Date of Meeting:	12 October 2015
Subject:	The Appeal Hearing in accordance with the Judgment of the High Court made on 17th March 2015 against the decision taken by Mr Mark Croxford to terminate the Markets Licence of Mr Qasim Aryubi and Mr Saber Nazary on 14th February 2014.
Licenced traders:	Mr Qasim Aryubi Mr Saber Nazary
Operations affected:	Bull Ring Open Market
Contact Officer:	Amanda Prosser-Davies, 0121 303 7788, Amanda.prosser-davies@birmingham.gov.uk

1. Purpose of report:

To consider an appeal against a decision made by Mr Mark Croxford to terminate the Markets Licences of both Mr Aryubi and Mr Nazary.

2. Recommendation:

To consider and determine the outcome of the appeal.

3. Brief Summary of Report:

This report provides a summary of the decision made by Mr Croxford on 14 February 2014, including the events which preceded it and those which have followed the decision, resulting in the current appeal.

On 14 February 2014 Mr Croxford made a decision to terminate two licenses to trade, in respect of the Birmingham Open Market ("the Market"), granted to Mr Aryubi and Mr Nazary respectively.

The decision of Mr Croxford was subject to an earlier appeal heard by Ms Jacqui Kennedy on 1st April 2014. Upon hearing that appeal, Ms Kennedy's decision was also to terminate the licenses of both Mr Aryubi and Mr Nazary.

The decision of Ms Kennedy was then subject to Judicial Review proceedings. A decision was made by the Honorable Mr Justice Hickinbottom on 17th March 2015 that the appeal decision of Ms Kennedy should be quashed.

The Judgment in those proceedings states that the decision made by Ms Kennedy should be "remitted to the Council" and referred to the appropriate appeal body, namely the Business Management (Miscellaneous appeals) Sub-Committee ("the Committee").

The appeal follows the procedure detailed in the Markets Rules and Regulations (2006) for the operation of the retail markets. The Committee also operates under its own 2015 procedural rules document.

Under those procedures, Mr Aryubi and Mr Nazary are appealing the decision made by Mr Croxford on the 14th February 2014 to terminate their Licenses to trade on the Bull Ring Open Market.

4. Compliance Issues:

4.1 Consistency with relevant Council Policies, Plans or Strategies:

The report complies with the City Council's Rules and regulations (2006) for the operation of the retail markets.

5. Relevant background/chronology of key events:

1. On 24th January 2014 officers from West Midlands Police ("WMP") carried out an operation at the Market where they arrested a number of foreign nationals on suspicion that they were not entitled to live (and work) in the UK.
2. The department (Markets) was informed by WMP that 7 foreign nationals (total) had been removed from stalls B9 & B11 (operated as a single stall under trade licence by Mr Aryubi) and stall B22 (operated under trade licence by Mr Nazary), or from the vicinity of those stalls, and arrested.
3. The department was later informed by the UK Border Agency that each of the 7 persons arrested, were confirmed to have no entitlement to live or work in the UK.
4. On the 14th February 2014 Mr Croxford met with Mr Aryubi and Mr Nazary to inquire about the arrests that had been made at, or around, the stalls which they licence. In particular to inquire about the persons they employ, as 6 of the 7 people arrested were believed to have been working at stalls B9 & B11 and B22 at the time of their arrest.
5. Following the meeting, Mr Croxford concluded that Mr Aryubi and Mr Nazary had, on balance, failed to comply with the terms of their licence in particular Regulation 2(k) and 2 (L). Therefore he decided to terminate their licences forthwith under the provision of part 10.3.3 of the Markets Rules and Regulations 2006.

6. List of background documents:

The following documents will be available to assist the Committee in reaching its decision:

1. Copy of an Open Market Licence;
2. Markets Rules & Regulations 2006;
3. Order of the High Court;
4. Judgment Transcript;
5. Letters to Mr Aryubi and Mr Nazary (invitation to meeting with Mr Croxford);
6. Decision Letter of Mr Croxford;
7. Statement(s) from Mr Croxford;
8. Statement from Dave Corner;
9. Statement(s) from West Midlands Police;
10. Statement from UK Border Agency;

Additional documents may be presented to the Committee by Mr Aryubi or Mr Nazary, in accordance with the Committee procedure.

7. Options available

Under part 11 of the Birmingham City Council Markets Rules and Regulations 2006 document, the Committee shall either:

1. Allow the stallholder's appeal;
2. Suspend the stallholder preventing him/her from trading from the retail markets for a period not exceeding twelve months, or;
3. Terminate the stallholder's licence.