

MINUTES OF MEETING LICENSING SUB COMMITTEE B HELD ON TUESDAY, 27TH AUGUST, 2019, 7.00 - 9.30 PM

PRESENT: Councillors Gina Adamou (Chair), Dhiren Basu and Viv Ross

ALSO ATTENDING:

17. FILMING AT MEETINGS

Noted.

18. APOLOGIES FOR ABSENCE

There were no apologies for absence.

19. URGENT BUSINESS

There were no items of urgent business.

20. DECLARATIONS OF INTEREST

No declarations of interest were made.

21. MINUTES

Resolved

That the minutes of the meeting held on the 1st August 2019 be approved as a correct record of the meeting.

22. SUMMARY OF PROCEDURE

The Chair outlined the summary of procedure.

23. APPLICATION FOR A NEW PREMISES LICENCE 4 MEVSIM LTD, 640-642 LORDSHIP LANE LONDON N22 5JH

Licensing Officer

The Licensing Officer introduced the application which had been submitted by Mr Huseyin Sesen for a new licence to allow licensable activity namely, the sale of alcohol at the retail unit. The premises holds an existing licence for 642 Lordship Lane but the application before the LSC was for a new licence seeking to incorporate an additional shop unit.

Representations against the application had been received from residents, the local ward councillors, as well as Public Health and Licensing Authority Responsible Authorities.

Following a question from the Committee regarding page 51, the Licensing Officer confirmed that the restriction of the 'sale of strong beer/lager and cider' should be 6.5%, and not 5.5% as erroneously stated in that email.

Ward councillors

Councillor Peter Mitchell spoke on behalf of the ward councillors. The ward councillors received a number of complaints relating to the area in which the premises was located along Lordship Lane. It was highlighted that complaints included:

- Groups of men hanging around drinking and/or smoking, particularly around betting shops. It was noted the premises in the application was next door to a betting shop.
- Street drinkers made Lordship Lane an unpleasant area for locals.

Councillor Mitchell stated the Council should be supporting The Friends of Chapman's Green and claimed local residents did not feel safe in Chapman's Green, due to the congregation of gangs of men drinking, smoking, littering and urinating in the Green. The Councillor claimed that premises, such as the one in question, with 24 hour operating licenses exacerbated the problems which included 18 harassments being reported to the Metropolitan Police in July 2019 alone.

The Committee were reminded by the Councillor that Haringey Council policy stated that where any residential area was adversely affected by drinking, there was an assumption that premises in that area would have supply of alcohol limited to between 8am to 11pm Sunday to Thursday, and between 8am to 12am on Friday and Saturday.

Following a question by the Committee, the Licensing Officer noted that Lordship Lane to Chapman's Green had issues with street drinking. An action plan had been put in place address the issue of street drinking along Lordship Lane but the Licensing Officer noted that Chapman's Green was not included in any street drinking zone. The issue of drinking in Chapman's Green was an issue that had come to light following that action plan being created, but it was being addressed.

Following a question by the Committee, Councillor Mitchell confirmed that the ward councillor's objection was to the application for 24 hour supply of alcohol. He noted that summer was a particularly difficult time for residents around Chapman's Green with drinking in the park at its worse during that period, due to the park rangers not being able to close the Green.

In response to a question on the absence of any representations from the Metropolitan Police, Councillor Mitchell noted disappointment that they had not made any submissions to the Committee. He noted that a recent walkabout with senior council officers included the Metropolitan Police and there was a collective effort to address the antisocial behaviour issues in Chapman's Green and around Lordship

Lane. He also noted that the option of looking at increasing police operations in the area, such as through a Public Space Protection Order (PSPO) was being explored.

Public Health RA

The representative for Public Health referred the Committee to the written submissions at pages 53 to 57. It was highlighted that Public Health's principal concerns were:

- The particular area had a high concentration of similar premises and the granting of this application would likely increase therefore risk of antisocial behaviour in the area.
- The particular area contained a number of schools and children centres within a small radius. In the mornings and afternoons, there was a risk that children could see antisocial behaviour from those men congregating in the area, buying and then drinking alcohol on the street surrounding the premises. This worked against the Council's Borough Plan which sought children to have the best start in life.
- There was a high number of ambulance call outs in the area, creating a challenging atmosphere for residents.
- The sale of high strength alcohol increased the ease of availability of the most harmful alcohol products, usually at a cheap price.
- The Borough Plan stated the importance of protecting and improving green space and parks. This was difficult to achieve in areas such as Chapman's Green where there were concerns over groups of men drinking in that space. It also meant that others in the community were not able to use that space as they felt intimidated.

Public Health noted that if the Committee were to grant the application, it would like to see the conditions suggested at page 56 imposed on the Premises License.

Applicant

The Applicant was represented by Mr Stephen McCaffrey, Barrister.

Mr McCaffrey noted the application was being sought due to the increase in size at the premises meant that it had to be approved by the Licensing Committee. He stressed the premises already had 24-hour supply of alcohol on its premises license and had never previously had a review of its license. If the Committee did not approve the application, then the premises would still have the 24-hour supply of alcohol on the existing premises license.

Mr McCaffrey submitted the witness statement of the License Holder (contained in the supplementary pack) demonstrated a genuine willingness to address the issues that had been raised in the course of the application. Whilst Mr McCaffrey acknowledged the valid concerns raised by local residents and the RA's, he submitted there was an absence of any direct link between those concerns and the premises. He noted the only change that was taking place was the expansion of the premises, which was addressed by just one of the representations submitted.

Mr McCaffrey acknowledged there was a concern that expanding the premises meant there would be more alcohol on sale but informed the Committee that the primary intention for the expansion was to include a butcher and a bakery at the premises.

Mr McCaffrey challenged the suggestion that there was a link between the premises and antisocial behaviour in Chapman's Green. He accepted that there were local issues but these would not be addressed by restricting the supply of alcohol from the premises. He highlighted that no submissions had been made by the Metropolitan Police.

Mr McCaffrey closed by reminding the Committee the License holder had committed no previous breaches and was open to co-operating on issues raised, as demonstrated by the witness statement. He invited the Committee to support the License Holder and to approve this application, noting that the imposition of any new conditions on the premises would be disproportionate, given there had been no previous concerns and no previous review of the premises license.

In response to questions from the Committee, the following was noted:

- Due to the size of the floor plan expanding, Mr McCaffrey stated the law required a new application needed to be approved by the Licensing Committee.
- Mr McCaffrey claimed it was unfair to blame the premises for wider issues in the area.
- The Licensing Officer informed that all businesses in the area had been written to highlighting the concerns about street drinking. The businesses were reminded of the requirement to retail alcohol responsibly and that their premises license would be reviewed if they failed to retail alcohol responsibly.
- The Licensing Officer confirmed that there was one other premises within a 500m radius which was also able to supply alcohol 24/7.

Closing submissions were provided by:

Ward Councillors - Councillor Mitchell emphasised the ongoing issue of street drinking, antisocial behaviour, litter and urination in public from street drinkers.

The Chair thanked all parties for their participation and informed that a decision would be circulated within 5 working days.

DECISION

The Committee carefully considered the application for a new premises licence in respect of 4 Mevsim Limited, 640-642 Lordship Lane, London N22 5JH.

In considering the application the Committee took into account the London Borough of Haringey's Licensing Policy 2016-2021, the Licensing Act 2003, The Licensing Act 2003 section 182 Guidance, the contents of the report pack, the representations made by residents, Cllr Mitchell and the ward councillors, representations by Public Health and the Licensing Authority and the representations made by and/or on behalf of the applicant in person and via his legal representative.

Having heard from all of the parties the Committee decided to grant the application with the additional conditions as set out below:

Supply of Alcohol

Monday to Sunday 06.00 to 00.00

The conditions set out in the operating schedule to be added to the licence in addition to the following conditions:

1. There be no stock or supply of beer, larger or ciders above 6.5% ABV at the premises
2. There be no sale of single cans or bottles of beer, larger or cider from the premises
3. Outside of the hours authorised for the sale of alcohol, all alcohol within the trading area is to be secured behind locked grills/screens or secured behind locked cabinet doors.

Reasons

The Committee accepted the evidence from Public Health, the residents and Ward Councillors that the premises is in a mainly residential area where there is a problem with street drinking in the near vicinity and in Chapman's Green in particular. The evidence of high incidents of drinking related anti-social behaviour (ASB) and crime which is affecting residents was not disputed.

The Committee felt it safe to assume that the alcohol is being purchased locally by street drinkers therefore all premises in the area selling alcohol, particularly those selling it for consumption off the premises, are contributing to the issues in the area, including the applicant's premises at 642 Lordship Lane which currently has a 24 hour licence for the sale of alcohol for consumption off the premises.

The Committee is entitled to have regard to Haringey's Statement of Licensing Policy 2016 – 2021 when considering new applications. In accordance with that policy and in light of the current problems in the area the Committee concluded that granting this licence for the sale of alcohol for 24 hours would undermine the licensing objectives of the prevention of public nuisance and crime and disorder.

Although Haringey's Statement of Licensing Policy 2016-2021 presumes that the permitted hours for the sale of alcohol would be from 8 a.m. to midnight Friday and Saturday and from 8 a.m. to 11.30 Sunday to Thursday, the Committee agreed to extend those hours slightly to 6 a.m. to midnight every day in recognition that the premise is operating 24 hours as a supermarket.

The Committee did not consider that the expansion of the premises would lead to more alcohol being sold and is not imposing conditions that require the licence holder to manage behaviour once beyond the premises. However, it is satisfied that to grant a licence that enables the premises to sell high strength beers in single cans in an area where street drinking is a significant problem would undermine the licensing objective of the prevention of crime and disorder and public nuisance. The additional conditions above are therefore considered appropriate and proportionate.

Appeal Rights

This decision is open to appeal to the Magistrates Court within the period of 21 days beginning on the day upon which the appellant is notified of the decision. This decision does not take effect until the end of the appeal period or, in the event that an appeal has been lodged, until the appeal is dispensed with.

24. SUMMARY OF PROCEDURE

The Chair outlined the summary of procedure.

25. REVIEW OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003

Preliminary Matter

It was raised by Mr Robert Sutherland, lawyer representing the License Holder, that the License Holder would have his son interpret for him and requested all parties take this into consideration when speaking. All parties agreed to pause to allow the License Holder's son time to interpret for his father.

Licensing Officer

The Licensing Officer introduced the application for the review of the Premises Licence for Tilson Stores, 40 Tilson Road London N17 9UY - held by Zeynel Gunduz, which was received by the Licensing Authority on 25th June 2019. The applicant of the review was The Trading Standards RA, who cited the reason for the review was due to the operation of the premises failing to uphold the licensing conditions and licensing objective of (1) The prevention of crime and disorder and (2) The prevention of children from harm. The applicant spoke to ongoing concerns regarding operational failures to comply with ensuring duty paid products are stocked and the fact that illicit tobacco was found on the premises following previous action taken to work with the licence holder

The Trading Standards RA

The Officer representing the Trading Standards RA highlighted their detailed findings of the issues and concerns at the premises at pages 69 to 80. The Trading Standards had found the premises to be dealing in smuggled alcohol and tobacco which had no documentation or invoices to show their origins. The Trading Standards noted that such illicit goods were often smuggled into the country by criminal gangs.

The Committee were invited to revoke the License as the Trading Standards had no confidence the existing License Holder would change their behaviour.

Following a question from the License Holder's legal representative, Trading Standards confirmed there was no suggestion that the illegal items sold at the premises were counterfeit.

Public Health RA

Concerns were raised by Public Health regarding the licensing objectives on crime and disorder, and the protection of children from harm. It was highlighted that:

- the premises had been supplying alcohol at a cheap price, which did not help to prevent antisocial behaviour and street drinking in the area.
- the failure of the premises to maintain a refusal log meant Public Health had a serious concern about the safeguarding of children as it was unknown whether the premises had refused to serve underage children.
- there was a children centre and academy in close proximity to the premises. This meant children could witness anti-social behaviour, which failed the Borough Plan to ensure that every child had the best start in life.

Public Health had no confidence the license holder would uphold the licensing objectives and invited the Committee to revoke the license. If the Committee were not minded to do so, Public Health invited it to impose their suggested conditions at page 101.

Premises

Mr Robert Sutherland, the lawyer representing the premises, started by noting the family who ran the premises wished to apologise to the Committee for this review as a consequence of the premises past failings.

In discussing how the business was to resolve and move forward, Mr Sutherland informed that Mr Zeynel Gunduz would not be involved with the running of the business. It was the intention to remove Mr Gunduz as the licence holder and for this to be transferred to his wife, Mrs Hatice Gunduz. It was also intended that the DPS be transferred to Mr Metin Arda, from Mr Gunduz. Mr Sutherland invited the Committee, if it considered it appropriate, to impose a condition requiring Mr Gunduz not be involved in any licensable activities at the business. With those mitigating actions in place, it was submitted that the Committee could be assured that the licensing objectives would be promoted and that it could have confidence that the licensing terms and conditions would be followed.

Regarding record keeping for training of staff, Mr Sutherland informed the Committee refresher training would be provided and recorded on a 6 monthly basis.

Regarding compliance, Mr Sutherland informed that Mrs Gunduz would ensure that Mr Gunduz did not return to the business. The intention was for Mrs Gunduz to be present at the store daily for 2 to 3 hours. When Mrs Gunduz was not at the business, Mr Arda would be present and ensure Mr Gunduz did not return. Mr Arda was under instructions to notify Mrs Gunduz if Mr Gunduz returned to the premises, and she would instruct Mr Gunduz to leave. Mr Gunduz's son would also be at the business when not undertaking his studies. Mrs Gunduz confirmed to the Committee that Mr Gunduz would not be involved with the business. Mrs Gunduz gave assurances that she would comply with the premises licence and that she, along with Mr Arda, would take responsibility for the business.

Mr Sutherland submitted that, whilst no refusal log was kept, there was no evidence before the Committee to suggest that a child underage had purchased alcohol at the premises.

Following questions to the Applicant, it was noted:

- Regarding the experience of the proposed DPS, Mr Sutherland confirmed Mr Ardah had held a personal license for the previous 6 months and had been involved in the running of the store. Prior to working at the premises, Mr Ardah had worked at a similar establishment for 10 years. Mr Sutherland confirmed that Mr Ardah was present at the premises on 1st April, when Trading Standards visited the premises and found it to be dealing in smuggled goods.
- Regarding Mrs Gunduz experience, Mr Sutherland confirmed that she had worked at another establishment on a part time basis. Mr Sutherland stated she had the required knowledge to take over and would ensure that the conditions on the premises license would be complied with. Mr Gunduz confirmed this for the record.
- Trading Standards confirmed that it would inform a business if it were unsuccessful in tests which checked to see if it was compliant with not selling alcohol to underage persons.
- Mr Sutherland noted that the purpose of including the letter dated 6th March in the supplementary pack was to highlight that the purchase of the stock from 75 Thackeray Avenue, predated 1st April. However, Mr Sutherland confirmed that his client had not completed the purchase of the shop. The stock had been sold to Mr Gunduz in a separate deal to the purchase of the shop, but Mr Sutherland accepted there did not exist a full stock take or complete documentation to support this.
- Mr Sutherland noted there was a condition on the Premises License which required Mr Gunduz to invoice all acquisition of alcohol. However, he claimed Mr Gunduz had not applied his mind to this and misunderstood the condition. As a result, this condition had not been fully complied with.
- Regarding not checking the stock to ensure it was legal, Mr Sutherland noted that Mr Gunduz's defence to the court had been that someone else had checked the stock.
- Trading Standards was unable to confirm whether there was an ongoing court case or whether there would be a new court case against Mr Gunduz.

Closing submissions were provided by:

Trading Standards - It was highlighted by Trading Standards that there had been a number of issues at the premises since 2015, which included selling illegal alcohol and tobacco. Whilst the premises had signed up to the scheme to be a responsible retailer, it had continually failed to comply with those conditions. The continued issues demonstrated a continual failure by the premises to rectify its behaviour.

Premises - Mr Sutherland, representing the premises, stated it was correct that Mr Gunduz had been afforded opportunities in the past but had not availed himself of those opportunities. The proposal was to remove Mr Gunduz from the business

completely. It was proposed that the licence be transferred to his wife, Mrs Hatice Gunduz, and she would ensure that the business would be compliant with the conditions on the premise licence. Mr Gunduz would also be replaced as the DPS by Mr Arda. Mr Sutherland reiterated that, despite Mr Arda working at the premises on 1st April, there had been no suggestion he was involved in any acquisition of illegal items. Mr Arda would be responsible, alongside Mrs Gunduz, in acquiring new items, such as alcohol, from appropriate sources and records would be maintained and kept. If the Committee were not minded to revoke the licence, Mr Sutherland invited the imposition of the conditions suggested, as well as the condition set out by Public Health RA (page 113), if the Committee deemed those appropriate. If the Committee were minded to suspend the license, Mr Sutherland requested this be for as short term as possible.

The Chair thanked all parties for their participation and informed that a decision would be circulated within 5 working days.

DECISION

The Committee carefully considered the application for a review of the premises licence, the representations of Trading Standards, Public Health and the licence holder, the Council's Statement of Licensing Policy and the Licensing Act 2003 s182 guidance.

Having had regard to all of the representations, the Committee decided it necessary for the promotion of the licensing objectives to revoke the premises Licence.

Reasons

The Committee considered that having been convicted of offences relating to non duty paid alcohol and tobacco in 2016, and having agreed to a minor variation to his licence conditions to add specific conditions about the purchasing of alcohol from legitimate sources, obtaining receipts and making those receipts available to the local authority, the licence holder Mr Zeynel Gunduz (ZG) would have been in no doubt in April 2019 that the sale of illicit alcohol was an offence and that such an offence would have put his licence at risk.

The Committee noted that the premises had also been unable to produce invoices for Polish beer found at the premises in September 2018 but no action was taken.

The Committee was unconvinced by the explanation given about the source of the alcohol seized on 1st April 2019 and no documentary evidence was provided that the seized alcohol had been purchased from Dem's shop/Cansu. It also took a dim view of the fact that when first asked ZG was not honest regarding the availability and whereabouts of the receipts for the alcohol, albeit that he was dealing with a personal issue at the time.

Even if on the explanation of the source of the alcohol that was seized on 1st April is as given by ZG, he would have been aware that the alcohol was acquired in breach of his licensing conditions as he had received no proper invoices or receipts.

It is clear from the evidence from the HMRC and Trading standards that the non duty paid alcohol found on the premises on 1st April 2019 represented a total disregard by ZG of the need to promote the licensing objectives. Given the potential risks posed by non duty paid alcohol because of the harm it can cause to others and link with crime and antisocial behaviour, the Committee had to consider the interests of the wider community in coming to its decision.

The failure to keep a refusals register in January 2019 in breach of the licence conditions had undermined the licensing objective of protecting children from harm.

The Committee was satisfied on all of the evidence including ZG's representations that there had been a breakdown in due diligence in respect of sourcing legitimate products to be sold by the business and a general lack of adherence to the licence conditions. The Committee was satisfied that this was as a result of both poor management by ZG the licence holder and DPS, but also poor company practice/policy over a number of years.

The Committee noted that the premises are currently keeping a refusals register, had passed a test purchase on 23rd July 2019 and that staff had undertaken training, but this was no more than would be expected of a responsible licence holder.

The proposal that ZG no longer be involved with the licensable activities at the business and that he be replaced as the licence holder by his wife, Mrs Hatice Gunduz (HG) was considered by the Committee. The Committee was also invited, if it considered it appropriate, to impose a condition requiring ZG to no longer be involved in any licensable activities at the business.

The Committee concluded that given that this was a family business that ZG owned, it was not credible that ZG would be removed from the business completely and ZG himself had given no such assurances. The fact that it was suggested that HG and Mr Martin Arda (MA), the proposed new DPS would have to have a process in place to ensure that ZG was kept away, suggested that ZG would continue to seek to have some involvement in the running of the business and the licensable activities. The sourcing of goods for sale is not in any event something that would require ZG's physical presence at the premises. Furthermore, as this is a family run business and HG is ZG's wife, she was not sufficiently distanced from the poor management of the business to satisfy the Committee that the licensing objectives would be upheld if she was the licence holder.

The Committee did not consider that the assurances given were credible or that it would be able to monitor a condition that ZG not be involved in the running of the business. It therefore concluded that continuing the licence with HG as licence holder and a condition that ZG have no involvement in the licensable activities, would not prevent the licensing objectives from being undermined.

The Committee considered whether to remove ZG as DPS and the proposal to replace him with MA. However, it was noted that MA was an employee of the business who was present at the premises on 1st April 2019 when the alcohol was seized and would have probably known that he was selling non priced, non duty paid alcohol. He was not therefore untainted by transgressions that had led to the review

and as an employee in ZG's business the committee doubted that MA would be able to exercise his duties as DPS autonomously.

The mitigating actions proposed by the licence holder did not therefore assure the Committee that the licensing objectives would be promoted or that the licensing terms and conditions would be adhered to.

In coming to its decision the Committee had careful regard to the fact that criminal activity had taken place at the premises of a type which paragraph 11.27 of the statutory guidance advises should be treated particularly seriously i.e. the sale or storage of smuggled tobacco and alcohol.

The Committee considered suspending the licence as a deterrent to the licence holder and to others to prevent the future use of the premises for criminal activity, whilst recognising that a suspension of the licence could have a serious financial impact on the licence holder's business. However, it concluded that as ZG's previous conviction had not acted as a deterrent to him and ZG had demonstrated on no less than 3 occasions non compliance with the law and his obligations as a licence holder, suspension would not be sufficient to promote the licensing objectives.

The Committee decided that revocation, whilst not being imposed as a punishment, was the only appropriate and proportionate response to the issues giving rise to the need to review the licence, that would promote the licensing objectives.

Appeal Rights

This decision is open to appeal to the Magistrates Court within the period of 21 days beginning on the day upon which the appellant is notified of the decision. This decision does not take effect until the end of the appeal period or, in the event that an appeal has been lodged, until the appeal is dispensed with.

26. ITEMS OF URGENT BUSINESS

N/A.

CHAIR: Councillor Gina Adamou

Signed by Chair

Date