

# **MINUTES OF MEETING LICENSING SUB COMMITTEE B HELD ON MONDAY, 25TH NOVEMBER, 2019, TIMES NOT SPECIFIED**

## **PRESENT:**

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

## **ALSO ATTENDING:**

### **27. FILMING AT MEETINGS**

Noted.

### **28. APOLOGIES FOR ABSENCE**

There were no apologies for absence.

### **29. URGENT BUSINESS**

There were no new items of urgent business.

### **30. DECLARATIONS OF INTEREST**

No declarations of interest were made.

### **31. MINUTES**

#### **RESOLVED**

That the minutes of the meeting held on the 29th August 2019 be approved as a correct record of the meeting.

### **32. SUMMARY OF PROCEDURE**

Noted.

### **33. APPLICATION FOR A NEW PREMISES LICENCE AT TILSON STORES- 40 TILSON ROAD, LONDON N8**

*(Clerk note – a translator was present for the duration of the hearing for Mr Mahir Arda)*

Licensing Officer

The Licensing Officer introduced the application which had been submitted by Mr Mahir Arda for a new premises license at Tilson Stores, 40 Tilson Road, N17. Mr Arda had previously been under the employment of the current licence holder Mr Zeynel Gunduz. The Committee in August determined to revoke the licence held by Mr Gunduz who had since appealed that decision and the matter was due to be heard in Court in the new year. However, Mr Arda (the employee) had submitted this new application and the Committee was asked to consider whether Mr Arda was suitable to hold a licence on the merits of the application and evidence heard.

In answering questions from the Panel, the Licensing Officer provided the following information:

- Tilson Stores was in N17 and not N8 as stated in the title of the report.
- 'October 2019' in paragraph 1.2 should read 'August 2019'.
- There was documentation that showed Mr Arda had some involvement in the running of the store from April 2019.

Prior to moving onto the submissions of the Responsible Authorities, Mr Robert Sutherland, Lawyer representing the Applicant, informed the Committee that his client was willing to accept the proposed conditions by Trading Standards contained at pages 45 to 47, and Public Health at pages 52 to 53.

#### Trading Standards

Trading Standards welcomed the decision of the Applicant to accept the conditions proposed but raised concern over Mr Arda's previous involvement at the premises. Mr Arda had been present on the two occasions where the premises had been inspected by HMRC and Trading Standards when contraband was seized, namely alcohol and cigarettes.

Trading Standards referred the Committee to page 57 of the report pack, which showed a draft License to Assign and Authorised Guarantee Agreement (the Agreement). As this had not been signed and completed, there was concern that Mr Gunduz could return to run the business if the deal for Mr Arda to take over the running of the premises failed to materialise.

In answering questions from the Panel, the Trading Standards Officer provided the following information:

- It was understood that Mr Arda would take over the tenancy for the premises from Mr Gunduz.
- Within the documentation, there was only one Mr Arda.
- When Trading Standards visited the premises in April 2019, Mr Arda presented a personal license and appeared to have seniority at the premises.

#### Public Health

Public Health raised concerns over two of the licensing objectives, (1) prevention of crime and disorder and (2) the protection of children from harm.

It was highlighted that on Tilson Road, there were 31 crimes in the past year (June 18 to May 2019), of which 12 (39%) were violent or sexual offences and 3 (10%) were anti-social behaviour.

There was concern that the premises was situated within a busy residential area with two schools located nearby, including a children's centre and primary school (4 min walk away). Hartington park was located 0.2 miles from the premises and was popular among school children but concerns had been raised over individuals using the park to consume alcohol.

There was also concern over the history of the premises and Public Health questioned whether the Committee could have any confidence in Mr Arda taking over the premises, given his previous involvement at the store.

In answering questions from the Panel, the Public Health Officer provided the following information:

- Parents were concerned over the safety of young children in Hartington park.
- If the Committee were to grant the application, Public Health sought a condition restricting the sale of High strength alcohol, where no spirits shall be sold with an ABV (alcohol by volume) greater than 65%, no super-strength beer, lagers or ciders of 6.5% ABV or above shall be sold at the premises.

#### Applicant

Mr Robert Sutherland reiterated the acceptance of all the conditions proposed by Trading Standards and the Public Health Responsible Authorities.

Mr Sutherland accepted the primary concern of parties was who would be running the business, with it being suggested Mr Gunduz could still be involved in the operations of the premises. The Committee were referred to page 57 - the Agreement. The Committee were assured the Agreement was ready but awaiting signatures. Mr Sutherland claimed the intention had been to present a signed version of the Agreement to the Committee but did not have enough time to do this. Once the Agreement had the signatures of the parties named in the document, it would become enforceable and the lease would change from Mr Gunduz to Mr Arda. Following that changeover, the lease would not be able to revert back to Mr Gunduz.

Regarding the scenario where the Agreement failed to be signed, the Committee were referred to paragraph 6.1, which stated '*the Landlord may terminate this Licence by written notice to the Tenant if the Assignment Date has not occurred within the period of three months starting on the date of this Licence*'. If the Committee were still not satisfied with that provision and sought to see the completed signed Agreement before deciding on the Application, Mr Sutherland invited the hearing to be adjourned for a number of weeks to allow time for the signed Agreement to be produced and submitted.

Mr Sutherland took the Committee through the documentation in the supplementary report pack which contained a number of documents submitted by the Applicant. This included:

- Certificate of Incorporation of a Private Limited Company which Mr Arda had set up to run the premises.
- Documents which demonstrated Mr Arda was in the process of transferring the business to himself from Mr Gunduz, such as taking on the responsibility of paying the electricity bills.
- Pages 10 and 11 detailed the personal loan Mr Arda had obtained from TSB in order to apply for the transfer of the lease into his name.

Mr Sutherland submitted that the documentation submitted demonstrated a genuine attempt at an acquisition of premises by Mr Arda. Mr Gunduz was not to be involved with the business and signing of the Agreement would formally pass the business over to Mr Arda. The License would then be in Mr Arda's name who confirmed he would comply with the conditions on the premises license and those proposed by the responsible authorities.

Mr Sutherland further submitted two new conditions to the Committee. Firstly, the Committee were invited to impose a condition which stipulated Mr Gunduz could not be involved in the running of the business and, secondly, Mr Gunduz could not be permitted to enter the premises during licensable activities. Mr Sutherland submitted those two conditions on the premises license would prevent Mr Gunduz having any involvement at the premises and, if they were not upheld, Mr Arda could be fined or imprisoned. Regarding the enforcement of those conditions, there was CCTV available at the premises (required to be retained for one month) which would record if Mr Gunduz returning to the premises. The CCTV would be available for authorities to inspect.

Regarding Mr Arda's previous involvement at the premises, Mr Sutherland confirmed he had been employed on a part time basis. Mr Arda was also involved with a cash and carry for vegetable provision. That same cash and carry provided Tilson store with vegetables which Mr Arda would deliver. Mr Sutherland submitted it would not be unusual for Mr Arda to be present at Tilson store when the authorities inspected the premises.

Mr Sutherland submitted that Mr Gunduz was known to Mr Arda and that the acquisition of the store had been in process since May 2019. He submitted that Mr Arda had no previous criminal convictions in relation to any matter and that Mr Arda had not been involved in the acquisition of any of the items for sale at the store – except for the vegetables.

Mr Sutherland questioned Mr Arda and the following information was provided:

- He worked at the Tilson store occasionally. This included stacking the shelves and bringing over vegetables.
- He did not have any managerial status at the premises.
- He had work at the premises for longer hours when Mr Gunduz had been on holiday.
- He had not been involved in the sale of alcohol at the property.

- When Trading Standards inspected the store, he was not able to show them where the invoices were as he did not know where they were kept. His involvement at the store involved stacking the shelves and the vegetables.
- He alone would run the premises in the future and not allow Mr Gunduz to have any further role in the premises moving forward. If Mr Gunduz were to return to the premises, Mr Arda would seek to prevent his entry and, if that failed, alert the appropriate authorities.
- He asked the Committee to grant his application and to give him a chance. He reiterated that he had no prior convictions and had quit his other part time job on 25<sup>th</sup> September 2019 in order to pursue the purchase of Tilson store when Mr Gunduz offered it to him at a discounted rate. Mr Arda had then taken out a personal loan to cover the costs of purchasing the lease from Mr Gunduz.

### Questions to the Applicant

In answering questions from the parties present, the Applicant provided the following information:

- Public Health queried whether Mr Arda was aware the premises was part of the Responsible Retailers Scheme and that all employees had to receive training in relation to it. Mr Arda confirmed that he was not aware of it previously when he was a part time employee but had since received the training.
- Mr Arda had worked more hours at the store when Mr Gunduz had been away on holiday but there were two other employees present at the store on those occasions and one of them would have been in charge, not Mr Arda. However, Trading Standards interjected that when it visited the premises on April 2019 and queried who was responsible for the alcohol sales given Mr Gunduz was not present, Mr Arda said he could do this as he held a personal license.
- There was further confusion as to the level of Mr Arda's involvement at the premises as the Licensing Officer drew the Committees attention to the minutes of its previous meeting on 27<sup>th</sup> August 2019, in which it was stated: *"Regarding the experience of the proposed DPS, Mr Sutherland confirmed Mr Arda had held a personal license for the previous 6 months and had been involved in the running of the store."*
- Public Health raised concern over the condition proposed by Mr Sutherland that Mr Gunduz not be allowed on the premises during the hours of licensable activities only. Mr Sutherland accepted those concerns and agreed with Public Health's suggestion that this be changed to 'completely' banned from the premises at all times.
- The Licensing Officer noted that the current license was subject to an appeal and therefore the business was able to trade and sell alcohol until the appeal concluded. Mr Sutherland confirmed that if Mr Arda was successful in getting the premises license, then the appeal by Mr Gunduz against the revocation of his premises license would end.
- Mr Sutherland again invited the Committee to adjourn the hearing if it had reservations approving the application before the Agreement had been signed and completed.

- There was confusion as the living address of Mr Arda with the supporting documentation submitted in the supplementary pack listing four different addresses. Mr Arda suggested these were mistakes and that he was not aware how the errors had occurred. However, the Committee queried how it was possible that for one of the addresses in which Mr Arda said was an error, he had clearly received the document and submitted it for this hearing. Mr Sutherland noted that one of the other addresses, Langham Road, belonged to Mr Arda's accountant.
- Regarding page 1 of the supplementary pack, the Certificate of Incorporation of a Private Limited Company, it was confirmed that Mr Arda had set this up and was listed as the sole director.
- Mr Arda did not attempt to attain a business loan as he was not confident that would be approved. He therefore took out a personal loan with TSB.
- Mr Arda claimed there was 7 to 8 years left on the lease of the premises and that it was an open-ended contract. Responding to Mr Sutherland, Mr Arda confirmed he was not aware it was a protected lease.

### Closing Submissions

*Trading Standards* – Welcomed the condition proposed by Mr Sutherland that Mr Gunduz not be allowed to enter the premises. However, Trading Standards had serious concerns over the unsigned Agreement and the potential consequence of the application being granted but the Agreement remaining unsigned.

*Applicant* – Mr Sutherland assured the Committee that the Agreement would be signed and completed. He also highlighted the two proposed conditions regarding Mr Gunduz (with the amendment proposed above by Public Health accepted).

*(It was queried at this point whether Mr Arda's translator, the daughter of Mr Gunduz, had a conflict of interest at the hearing. Mr Sutherland reminded the Committee that Licensing Sub Committee hearings were informal by their nature and that he did not consider this to be a conflict of interest, which was uncontested by the legal officer.)*

## **DECISION**

The Committee carefully considered the application for a new premises licence, the representations of Trading Standards, Public Health and the applicant 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 not to grant the premises licence.

## **Reasons**

The Committee had revoked the licence for Tilson Stores at its meeting on 29<sup>th</sup> August 2019 following a review prompted by the discovery of the sale of illicit alcohol at an inspection by HMRC and Trading Standards on 1<sup>st</sup> April 2019. The licence holder at the time was Mr Zeynel Gunduz (ZG) who had previously been convicted of a similar

offence. The applicant for the new premises licence being considered by the Committee, Mr Mahir Arda (MA), was an employee of the business and was present on 1<sup>st</sup> April 2019 and previously, when illicit tobacco and alcohol were found at the premises.

Representations have been made by Trading Standards that given MA's pre-existing association with the premises, the licensing objective of the prevention of crime and disorder is likely to be undermined by him due to his continuation of previous poor practices or under the direction of ZG.

Now that MA is applying for a new premises licence in his own right, he sought to convince the Committee that he had a very limited and junior role in ZG's business and that once he has taken over he will run the business autonomously.

MA submitted that he has been in the process of taking over the premises for several months, since at least May 2019 when he registered the Company Tilson Store Limited of which he is the sole director. He provided evidence of this transfer in the form of Certificate of Incorporation dated 17<sup>th</sup> May 2019, letters transferring the utilities, transfer of agency for oyster card, pay point and the card provider, an unsigned Licence to Assign and Deed.

At the hearing in August the Committee was informed that MA was involved in the running of the business and that was consistent with his conduct at the inspections with HMRC when he took charge and dealt with the authorities in the absence of the licence holder. On 1<sup>st</sup> April 2019 MA offered to act as DPS and be in charge of sales in ZG's absence. The Committee therefore found his assertion now that he was only a part time employee and shelf stacker was not credible. MA's further evidence now that he has only recently obtained his licence was also not considered credible when at the August hearing it was asserted that he had held a personal licence for the preceding 6 months. The previous assertion was consistent with his offer to be in charge of alcohol sales in April 2019 which would have required a personal licence.

The Committee was also not convinced that the transfer to MA was genuine because the Deed and Licence to Assign submitted as evidence of the transfer were unexecuted, despite the transfer of the business allegedly having been months in the making. The Committee were also not convinced that these agreements were not a ruse to avoid the previous revocation of the licence. A transfer to MA was inconsistent with the evidence put to the Committee in August which was that Mrs Hatice Gunduz was taking over the running of the business.

The Committee noted with surprise that MA had used 3 different personal addresses on the documentation provided as evidence of him taking over the business and his licence application form.

ZG's daughter attended the hearing to translate for MA and from their interactions there appeared to be some level of suggestion and coercion in the answers being given to the Committee on MA's behalf. This again suggested to the Committee that MA would not be running the business autonomously.

The Committee considered the conditions being proposed including the condition that ZG have no involvement in the MA's business and be excluded from the premises. The fact this was being proposed suggested that there was an issue and in any event the Committee did not feel that it would be appropriate to grant the licence with conditions given all of its other concerns about MA's suitability to be the licence holder.

Given MA's lack of credibility the Committee determined that the transfer of the business was likely to be a ruse to avoid the revocation of ZG's licence with ZG retaining some involvement in the running of the business. Alternatively, if the Committee was wrong and MA was genuinely taking over the business, he was tainted by the previous transgressions that lead to the licence being revoked because he was involved in the running of the business at the time. The Committee concluded that it would undermine the prevention of crime and disorder licensing objective and bring the licensing regime into disrepute if ZG and MA were able to avoid the consequences of selling illicit alcohol i.e. the revocation of the licence, by the transfer of the business to MA and the Committee then granting MA a new licence.

For the reasons given above the licence application was refused.

#### 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.

### **34. ITEMS OF URGENT BUSINESS**

N/A.

CHAIR: Councillor Gina Adamou

Signed by Chair .....

Date .....