

Report for: **Licensing Sub Committee 27th August 2019**

Title: **Review of a Premises Licence under the Licensing Act 2003.**

Report

authorised by : **Daliah Barrett-Licensing Team Leader – Regulatory Services.**

Ward(s) affected **TH**

Report for Key/

Non Key Decision: Not applicable

1. Describe the issue under consideration

- 1.1 An application for the review of the Premises Licence for Tilson Stores, 40 Tilson Road London N17 9UY-held by Zeynel Gunduz was received by the Licensing Authority on 25th June 2019. A copy of the application form is attached to this report at **Appendix 1**.
- 1.2 The applicants of the review are The Trading Standards RA and have cited their reason for the review due to the operation of the premises has failed to uphold the licensing conditions and licensing objective of:
- The prevention of crime and disorder
 - The prevention of children from harm
- 1.3 The applicants speak to ongoing concerns relating to 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.

2 Licensing history of the premises

- 2.1 The premises was granted a licence on 11th November 2010, Mr Gunduz transferred the licence in October 2013 and also became the DPS. Haringey Trading Standards officers supported by colleagues from Islington had visited Tilson Stores at 40 Tilson Road N17 on 25th November 2015 with Sniffer Dogs as part of Operation Henry 2 a National operation to crack down on the supply of illicit tobacco and alcohol.

Officers assisted by the dogs discovered 5,000 foreign cigarettes and fifty 50g pouches of hand rolling tobacco which were not Duty Paid and had incorrect foreign language health warnings on them. The tobacco was found underneath the counter with further stocks discovered in a room at the back of the premises.

A further search revealed 9 bottles of High Commissioner Whisky which officers discovered had fake rear labels with fake UK Duty Stamps applied to them giving the impression that the products were legal to sell in the UK when they were not.

Zeynel Gunduz pleaded guilty to three offences at Tottenham Magistrates Court, two under the Consumer Protection Act 1987 for which he was fined £1,500 each and one under the Consumer Protection From Unfair Trading Regulations 2008 for which he was fined £3,000. He was also asked to pay the councils full costs of £894.80 and £120 Victim Surcharge.

Mr Gunduz was ordered on 8th June 2016 to pay £6,000 and ordered to pay costs of £890 by Haringey Magistrates for stocking illicit tobacco and alcohol at his Tottenham Off Licence in a case brought by Haringey Trading Standards.

Mr Gunduz the Director and Premises Licence Holder told the Court that he accepted the responsibility as the owner of the shop for what had gone on there. He stated that an employee bought the alcohol from a local cash and carry but had not checked the stock properly.

2.2 The Trading Standards RA then asked Mr Gunduz to submit a Minor Variation application in order for changes to be made to the Premises Licence. The additional conditions requested by Trading Standards are shown at Appendix 2. Appendix 2A is a copy of the current licence.

2.3 Drinkaware's Chief Medical Advisor has advised that fake alcoholic drinks can be produced using other cheaper types of alcohol which can have serious adverse effects on ones health. Commonly used substitutes for ethanol include chemicals used in cleaning fluids, nail polish remover and automobile screen wash, as well as methanol and isopropanol which are used in antifreeze and some fuels. These other types of alcohol can produce similar effects to ethanol in terms of making you feel tipsy. But they are also potentially very dangerous.

Drinking alcohol containing these chemicals can cause nausea and vomiting, abdominal pain, drowsiness and dizziness. It can also lead to kidney or liver problems and even coma. Methanol, a substance which can be used in fake vodka, may cause permanent blindness.

2.4 A further visit to the premises in 2019 revealed an ongoing behaviour of receiving and dealing in smuggled goods, namely non duty paid alcohol and illicit tobacco. It is as a result of this visit in April 2019 that the Trading Standards officer is now seeking the revocation of the licence.

2.5 **Supporting representations**

Representations were received in support of this review application from The Public Health RA. Mike Squires Trading Standards officer has also added supporting documentation for the review.

The Trading Standards application is supported and ask the committee to consider revocation due to the serious criminal nature, the breached licence conditions and the sale of illicit alcohol and tobacco.

3 **Other considerations**

A number of reviews may arise in connection with crime that is not directly

connected with licensable activities. For example, reviews may arise because of drugs problems at the premises: money laundering by criminal gangs, the sale of contraband or stolen goods, or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The Licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to go beyond any findings by the courts, which should be treated as a matter of undisputed evidence before them.

3.1 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The Licensing Authority's duty is to take steps with a view to the promotion of the licensing objectives in the interest of the wider community and not those of the individual licence holder.

3.2 Options

The Committee must, have regard to the application and the representations, take such steps (if any), as it considers appropriate for the promotion of the licensing objectives. The options are:

- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the designated premises supervisor
- To suspend the licence for a period not exceeding three months
- To revoke the licence
- To take no action.

3.3 The Sub-Committee must ensure that all licensing decisions have:

- a direct relationship to the promotion of one or more of the 4 licensing objectives;
- regard to the Council's statement of Licensing Policy;
- regard to the Secretary of State's National Guidance.

Where the authority modifies the conditions or excludes a licensable activity from the scope of the licence it may determine that the modification or exclusion is to have effect permanently or for a period not exceeding 3 months.

3.4 The Licensing Authority's determination of this application does not have effect until the 21 days appeal period has expired or if the decision is appealed, the date the appeal is determined and or disposed of.

3.5 Section 182 Guidance – relevant sections.

The most recent statutory guidance was Issued in April 2018 and applies to this application.

3.6 The following provisions of the Secretary of State's guidance (2018) apply to this application:

Chapter 11-this chapter gives guidance around the review process and determining an application for a review.

3.7 Guidance issued under section 182 of the Licensing Act 2003 (para 11.2) states that at any stage following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

3.8 In accordance with section 52(2) of the Act, the Licensing authority must hold a hearing to consider the application and any relevant representations.

3.9 Section 17 of the Crime and Disorder Act 1998 states:

"Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that is reasonable to prevent crime and disorder in its area".

3.10 Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life.
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to a fair hearing.
- Article 10 – Freedom of Expression

4 Use of Appendices

Appendix 1- Application form review

Appendix 1a – HMRC Statement

Appendix 1b – Photos

Appendix 1c – Letter Regarding Refusal Register

Appendix 1d – Court Hearing Report

Appendix 2 – Copy of conditions made for Minor Variation in 2016

Appendix 2a- Copy of current licence

Appendix 3 – Copy of Public Health representation

**Background papers: Licensing Act 2003
Section 182 Guidance
Haringey Statement of Licensing policy
Report Pack**