

**Report for:** Licensing Sub Committee 25th November 2019

**Title:** Application for a New Premises Licence at Tilson Stores- 40 Tilson Road, London N8

**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 a new premises has been submitted by Mr Arda a person previously under the employment of the current licence holder Mr Zeynel Gunduz.
- 1.2 Mr Gunduz was previously before the Licensing Sub Committee in October 2019 in relation to a Review application against him by Trading Standards due to having been found to be stocking and selling illicit tobacco and alcohol as well as non duty paid. Mr Gunduz had previously been found to have been operating in this way and was prosecuted at the time. This was the second time the Trading Standard officers had found illicit and non duty paid goods within the premises and they also interacted with Mr Arda (the proposed new licence holder) onsite during the visits.
- 1.3 The LSC determined to revoke the licence held by Mr Gunduz and this matter is due to be heard in Court in the new year. However Mr Arda the employee has submitted this new application and Members will need to consider if Mr Arda is suitable to hold a licence on the merits of the case.

- 1.2 The applicant is seeking the following hours:

**Supply of Alcohol**

Monday to Sunday 0700 to 2300 hours

**Hours Open to Public:**

Monday to Sunday 0700 to 2300 hours

For consumption **OFF** the premises

- 1.4 Representations have been received against this application by Trading Standards and Public Health as Responsible Authorities.
- 1.4 As such, in accordance with the legislation the Licensing Authority must hold a hearing to consider the application and any relevant representations.

1.5 **Representations**

The Trading Standards representation can be found at Appendix 2.  
The Public Health Representation – can be found at App 3

2 **Background**

- 2.1 The premises was granted a licence on 11<sup>th</sup> 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
- 2.3 In April 2019 a further inspection at the premises found the above operational practices to have continued unhindered by the prosecution or changes made to the licence under the Minor Variation. At the time of the inspection Mr Arda was in situ and had put himself forward as the manager of the premises in Mr Gunduz' absence.
- 2.4 During the consultation process The Licensing Authority made enquiries with Mr Arda to request proof of purchase of the business from Mr Gunduz. The documents provided are shown at Appendix 4 but cannot be taken as proof that there is intended to be no involvement with the business by the current licence holder Mr Gunduz.
- 2.5 Council officers are satisfied that the application has been made and advertised correctly.

### **3 Relevant Representations**

- 3.1 All representations have to meet a basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person or body sending the representation must be written and an explanation for rejection given in writing.

- 3.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 3.3 All representations must be “about the likely effect of the grant of the premises licence on the promotion of the licensing objectives” Likely means something that will probably happen, i.e on balance more likely than not.
- 3.4 Representations from responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 4 All the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
  - The Metropolitan Police
  - The London Fire and Emergency Planning Authority
  - Planning
  - Health and Safety (includes Building Control)
  - Noise Environmental Health
  - Food Environmental Health
  - Trading Standards
  - Child protection
  - Public Health.

## **6 Licensing Officer comments**

- 6.1 The following information is intended to advise Members of the relevant aspects of the Statement of Licensing Policy, guidance issued by the Secretary of State, legislation and good practice. Members may depart from the Council's Policy and or Section 182 Guidance provided they consider it appropriate to do so and provide clear reasons for their decision.
- 6.2 Committee will also wish to be aware of the guidance issued under section 182 of the Licensing Act 2003. Licensing is about regulating the provision of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Licensing Act 2003. The terms and conditions attached to various permissions are focused on matters which are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places.
- 6.3 The objective of the licensing process is to allow for the carrying on of retail sales of alcohol and the prevention of public nuisance, prevention of crime and disorder, public safety and protection of children from harm. It is the Licensing Authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 6.4 In considering licence applications, where relevant representations are made, this Licensing Authority will consider the adequacy of measures proposed to deal with the potential for public nuisance and/or public disorder having regard to all the circumstances of the case.
- 6.5 Also The Licensing Authority may not impose conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of the hearing that it is appropriate to impose conditions to promote one or more of the four licensing objectives. Therefore conditions may not be imposed for the purpose other than

promoting the licensing objectives and in some cases no additional conditions will be required.

- 6.6 In cases Members should make their decisions on the civil burden of proof, that is the balance of probability.
- 6.7 Members should consider in all cases whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 6.9 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff.  
The Councils Licensing policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

## **7 Options:**

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

In determining this application the Sub-Committee may take any of the following steps as it considers appropriate for the promotion of the licensing objectives, namely:

- To grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as the authority considers appropriate for the promotion of the licensing objectives.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premises supervisor.
- To reject the application.

For the purposes of the Licensing Act 2003 the conditions of the licence are modified if any of them are altered or omitted or a new condition added.

- 8 The licensing authority's determination of this application is subject to a 21 day appeal period or if the decision is appealed the date of the appeal is determined and /or disposed of.

## **9. Other considerations**

**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 it reasonably can to prevent crime and disorder in its area".

### **9.1 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

## **10 Use of Appendices**

**Appendix 1 – Application document**

**Appendix 2 – Representations from Trading Standards**

**Appendix 3 – Representation from Public Health**

**Appendix 4 – Documents supporting Mr Ardas case.**

**Background papers: Section 82 Guidance**

**Haringey Statement of Licensing policy**