

Report for: Licensing Sub Committee 7th January 2020

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

Report

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

Ward(s) affected Bounds Green

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 Oz Foods, 467-469 High Road London N17-held by Bruce Grove Food Store – Mr Capbar Temur was received by the Licensing Authority on 14th November 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 protection 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 issued under Grandfather rights in November 2005 to Mrs Mukadees Temur. The DPS was Fehmi Ozdile. This person stopped being the DPS in November 2007, the new DPS was Mrs M Temur. The license was the subject to further changes:
It was then transferred to Bruce Grove Food Store Ltd on 8th May 2019 – the DPS remained Mrs M Temur. Haringey Trading Standards officers along with HMRC carried out an inspection on 9th October 2019. Non duty paid tobacco was removed from the premises. European wines and high strength beers were also observed.
The operation of the business had previously yielded several bottles of spirits with fraudulent duty stamps affixed in October 2017. A further visit on 27th March 2019 a large quantity of alcohol to have not been duty paid stored on site.
- 2.4 The Trading Standards documents show a pattern of of this ongoing behaviour of receiving and dealing in smuggled goods, namely non duty paid alcohol and illicit tobacco.

It is as a result of a third incident of the is nature at the premises the Trading Standards officers now bring this review before the LSC.

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 appropriate action due to the serious criminal nature found to be inbedded in the operation of the premises.

3 Other considerations

A number of reviews may arise in connection with crime that is not directly connected with licesable 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 not have the power to judge the criminality or otherwise of any issue. This is 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, 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 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 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