

Report for: Special Licensing Sub-Committee – 19th April 2021

**Title: Review of a Premises Licence under the Licensing Act 2003
Atakan Supermarkets 315-321 WEST GREEN ROAD N15**

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

Ward(s) affected: ST ANNS

**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 Atakan Supermarket, 315-321 West Green Road N15-held by Mr **Metin KARTAL and Savas AKSU**.
- 1.2 The review is submitted by The Haringey Trading Standards Team. A copy of the application form is attached to this report at **Appendix 1**.
- 1.3 The applicants have cited their reason for the review due to the operation of the premises failing to uphold the licensing conditions and licensing objective of:
 - The prevention of crime and disorder
 - The protection of children from harm
- 1.4 The 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, a responsible authority, such as the Police or the Environmental Health Service, or any other person who can seek a review, may ask the Licensing Authority to review the premises licence because of a matter arising at the premises in connection with any of the four licensing objectives.
- 1.5 As such, in accordance with section 52(2) of the above-mentioned Act, the Licensing Authority must hold a hearing to consider the application and any relevant representations.

2. Licensing history of the premises

- 2.1 The premises was issued with a New Premises Licence in November 2005 under Grandfathered rights. The named DPS Mr M Kartal.
- 2.2 The current licence permits:

Supply of Alcohol on a 24 hour basis.

Supply of alcohol for consumption **OFF** the premises only. A copy of the licence is at Appendix 2.

- 2.3 The reason for review specifically concerns two incidents which took place at the premises, most recently on 20th January 2021 and a prior incident on 3rd November 2020. On both occasions' seizures of Non-Duty Paid and incorrectly labelled cigarettes and tobacco were made. The earlier seizure also included a large quantity of nitrous oxide canisters. (Psychoactive Substances)

3 Other considerations

- 3.1 Section 51 of the Licensing Act 2003 makes provision for a responsible authority or any other person to apply to the Licensing Authority for a review of the premises licence. As one of its functions, The Trading Standards Service enforces legislation applicable to the possession for sale and sale of "illegal tobacco" products. This term "illegal tobacco" is given to tobacco products (cigarettes and loose tobacco) that cannot lawfully be sold because it breaches certain legislation:
- 3.2 The Tobacco and Related Products Regulations 2016. These regulations require that tobacco products must bear certain information and health warnings. Cigarettes and tobacco must bear a "combined health warning". Products for sale in the UK must be labelled in English. The seriousness of these regulations is demonstrated by the penalty on conviction for an offence. On summary conviction, the penalty is a fine and/or 3 months imprisonment. On conviction on indictment, the penalty is a fine and/or 2 years imprisonment.
- 3.3 The Standardised Packaging of Tobacco Products Regulations 2015. These regulations deal with so called plain packaging. Their purpose is to remove all branding, motifs and logos from tobacco to stop tobacco packaging from being eye catching especially to younger people. Only the manufacturer's name and variant can appear on the pack and this has to be in standardised format. These regulations only apply to the UK. The seriousness of these regulations is demonstrated by the penalty on conviction for an offence. On summary conviction, the penalty is a fine and/or 3 months imprisonment. On conviction on indictment, the penalty is a fine and/or 2 years imprisonment.
- 3.4 The Tobacco Products Duty Act 1979. This states that tobacco should carry the fiscal mark indicating that the correct level of duty has been paid. This mark is "UK DUTY PAID". Illegal tobacco has not had the required duty paid which consequently makes it far cheaper than legal tobacco.
- 3.5 The General Product Safety Regulations 2005. This requires that consumer goods are reasonably safe. In the case of cigarettes, these should meet reduced ignition propensity requirements which means they should self-extinguish if not actively smoked. Illegal tobacco is a serious problem in Haringey. there have been a number of prosecutions brought by the Trading Standards Service against shop owners.
- 3.6 Haringey Council has enforcement obligations under the Psychoactive Substances Act 2016. This regulates those substances previously referred to as "legal highs". In an effort to control such substances, the Act regulates the effect rather than the substance. The Act defines a psychoactive substance by its effect, namely stimulating or depressing the person's central nervous system such to affect the person's mental functioning or emotional state. A Government document titled "Psychoactive Substances Act 2016: guidance for retailers" states at paragraph 3 "The act captures psychoactive substances that aren't covered by the existing misuse of drugs framework, e.g. nitrous oxide". Paragraph 3.3 states "Nitrous oxide is a colourless sweet-tasting gas often referred to as laughing gas. Nitrous oxide has several legitimate uses in medicine and dentistry. It is also used as a fuel additive and as a component of rocket fuel and is sold as an aerosol spray propellant within whipped cream canisters.

Products include small canisters in large packs, each enough for a recreational dose. These dispense the gas from canisters into balloons, which are used to inhale gas. It is an offence to possess a psychoactive substance for supply with the intention of supplying it for consumption. Having both nitrous oxide canisters and a creamer unit in possession would indicate the intention of supplying the nitrous oxide for consumption.

- 3.7 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.
- 3.8 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.
- 3.9 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.

4 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.

4.1 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.

4.2 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.

4.3 **Section 182 Guidance – relevant sections.**

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

4.4 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.

4.5 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.

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

4.7 Section 11.27 -There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

4.8 **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".

4.9 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

5 Use of Appendices

Appendix 1- Application review form

Appendix 2 – Copy of current licence.

Background papers: **Licensing Act 2003**

Section 182 Guidance

Haringey Statement of Licensing policy

Report Pack

