

Report for: Licensing Sub Committee – 25th April 2023

Title: Application for a Review of a Premises Licence –Maxxi Food & Wine 42 Topsfield Parade. London N8

Report authorised by: Daliah Barrett, Licensing Team Leader, Regulatory Services

Ward(s) affected: Crouch End

Report for Key/

Non Key Decision: Not applicable

1. Describe the issue under consideration.

- 1.1 This matter was originally scheduled for a hearing on 04th April 2023 but was adjourned for a later hearing date on request from Mr Sutherland the legal representative acting for Maxxi Food & Wine.
- 1.2 On 17th March 2023 an application to review the licence was submitted by Trading Standards. The current Premises Licence LN/200600265 permits:
Hours the premises are open to the public: 06:30 to 23:00 daily.
Supply of alcohol (off supplies only): 06:30 to 23:00 daily.
A copy of the current premises licence LN/000008708 is attached to the review application at Appendix 1.
- 1.3 Trading Standards have cited the reasons for the review as:

THE OPERATION OF THE PREMISES HAS FAILED TO UPHOLD THE LICENSING CONDITIONS OF:

THE PREVENTION OF CRIME AND DISORDER
THE PROTECTION OF CHILDREN FROM HARM

In this regard the premises was found to be stocking for sale controlled medication and non-compliant E cigarettes. Also, NOS gas being sold to customers who then consumed the substance outside the premises which then led to nuisance and anti-social behaviour. and the objective of the prevent crime and disorder being impacted. The application is set out in **Appendix 1** of the report. It should be noted that failure to promote the 'Prevention of Public nuisance' is also added to the review due to the anti- social behaviour that resulted from the operation of the premises. As is the 'Public Safety' objective due to the illicit goods being harmful to health.

- 1.4 The Appendices to support the Trading Standards review are produced in Appendix 1 as listed below:
- Annex 1: Code B Notice
 - Annex 2: Photographs Taken During Trading Standards Visit on 11th January 2023
 - Annex 3: Letter to DPS 12th January 2023
 - Annex 4: Reply form DPS 14th January 2023
 - Annex 5: Photographs taken from visit of 24th January 2023
 - Annex 6: Code B Notice 24/1/2023
 - Annex 7: Receipt 24/1/2023

- Annex 8: Letter to DPS 25 /1/23
- Annex 9: Reply received From DPS 03/2/2023.
- Annex 10: Photographs taken by public and Member of the Council
- Annex 11: Web capture TikTok Page
 - Annex 12: Video from TikTok page
 - Annex 13: Video from TikTok page
 - Annex 14 Companies House Document
 - Annex 15: Companies House Document
 - Annex 16: Companies House Document

1.5 The review application has been submitted as Trading Standards believes that Mrs Aylin Yengin is not promoting the prevention of crime and disorder licensing objective. A wide range of unlawful activity has taken place whilst Mrs Aylin Yengin has been the premises licence holder, despite advice to prevent such activity having been provided by the Council previously. The unlawful activity includes:

- illicit tobacco has been seized from the premises.
- breaches of licence conditions.
- selling non-compliant vapes and e-cigarettes.
- selling Viagra and Sildenafil without a medical registration from Medicines and Healthcare products Regulatory Agency MHRA;
- selling drug paraphernalia.
- selling nitrous oxide (known as NOx).

1.6 The review application sought to request the LSC to consider a suspension of the licence and addition of further conditions. Ms Yengin and those associated with the business have sought to break the law without regard over a period of time, including from other premises they operate in Enfield. Furthermore, Mrs Aylin Yengin's husband is now known to be Mr Kemal (Uygar) Altun who has a history of selling illicit tobacco/ alcohol and other non-duty paid items. Their operation mainly family operated with licences being transferred amongst family and associates when issues arise. Mr Kemal ALTUN had changed his name by deed poll to Mr Uygar ALTUN in 2014.

1.7 The review application was advertised in accordance with the requirements of the Licensing Act 2003.

1.8 Each of the Responsible Authorities were consulted in respect of the application.

2.0 Relevant Representations

2.1 **Metropolitan Police** – Representation was made in support of the review and provides additional information that Mrs Aylin Yengin, the premises licence holder, does not uphold the prevention of crime and disorder licensing objective as she is linked to other premises in Enfield that have had their licences reviewed for similar reasons. A copy of the Police representation can be seen in Appendix 2.

2.2 **Licensing Authority** – Representation was made in support of the review and highlighted the history of the operational style of the parties concerned in not upholding the licensing objectives. Officers request revocation of the licence. App 3

2.3 **Public Health** – Representation in support of the review and highlighted the health harm impacts from the illicit drugs and vapes. Officers are requesting revocation of the licence. Appendix 4

2.4 **Noise RA** – Representation speaks to the engagement with the business relating to anti-social behaviour arising from the sale of NOS gas from the premises. Appendix 5.

- 2.5 **Other Parties** – Representations have been made by the three Crouch End ward councillors in support the review, as they believe the review application demonstrates that Mrs Aylin Yengin, the premises licence holder does not support any of the four licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance and protection of children from harm. A copy of the ward councillors representation can be seen in Appendix 6.
- 2.6 **Other persons**- residents directly impacted by the poor management and sale of NOS gas which is then consumed by people using balloons late in the evening and the associated anti-social behaviour has led to the licensing objectives being ignored by the business. Appendix 7
- 2.7 **Premises Licence Holder** – No representation has been made by Mrs Aylin Yengin in response to this review application at the time the report was prepared.

3.0 Licensing history

- 3.1 The premises has been previously known as Tops Newsagent before being taken over and re-named Maxxi Food & Wine.
- 3.2 The operators first came to the attention of the Licensing Authority on 28th September 2022. Cllr Cawley-Harrison submitted a complaint on behalf of residents due to the significant change in anti-social behaviour that was being experienced in the location. On checking our records, it became apparent that the named licence holder had left the premises but had failed to notify the Licensing Authority. The new occupiers had also failed to transfer the Premises License and assign a new designated premises supervisor.
- 3.3 The records held by ASB Enforcement Team also shows a complaint made at 3am on 27th September relating to noise and anti-social behaviour taking place in the location. There was no officer on duty at the time, so the complaint was just logged.
- 3.4 On 28th September following on from Cllr Cawley -Harrison complaint the Licensing Team requested a visit be made by the ASB Team. The ASB Officer attended and observed alcohol on display. He requested CCTV footage from the trader. A warning letter was also handed to the trader requiring them to stop all alcohol sales and cover over all alcohol display.
- 3.5 On 29th September the transfer and DPS application was submitted. The transfer application, which was not subject to any representations, was granted by officers in accordance with delegated powers, naming Ms Aylin Yengin as the Premises Licence Holder (PLH) and became the DPS. The Business Rates Team have advised that Aylin Yengin registered as the ratepayer and has been liable since 1/12/21. Their most recent contact with her was February 2023.
- 3.6 Complaints of nuisance and selling alcohol beyond permitted times have continued. Ms Yengin has not been the main point of communication for the business. Her husband Mr Uygur (Kemal) Altun has been the main point of contact.
- 3.7 A number of emails/warnings were sent to both parties asking them to stop selling the NOS gas due to the problems that were arising in the area. The parties failed to comply and Mr Altun responded to say he was selling to caterers only.
- 3.8 Mr Altun and Ms Yengin have other premises that have been subject of reviews and or prosecutions for stocking and selling illicit goods.

4.0 History:

- 4.1 In 2006 Mr Altun operated from **495 Hertford Rd Enfield** – he was prosecuted in 2009 for selling illicit Vodka that contained dangerous levels of methane. In 2012, Mr Altun was permitted to make a Minor Variation to add conditions to the licence following the discovery of counterfeit alcohol. The licence was subsequently revoked in 2015 on the ground of the Prevention of Crime and Disorder as the premises had been found to be selling non duty paid tobacco and alcohol and licence conditions were being breached.
- 4.2 An associate of Mr Altun a Mr Ali Riza Tulu applied for a new licence for 495 Hertford Road 2015. In 2020 Enfield Council's Trading Standards inspected the premises and found illicit goods as well as licence breaches. Ms Aylin Yengin was onsite at the time and spoken to by the officers. A review was submitted, and the licence subsequently revoked.
- 4.3 We are aware that Mr Aydin Yengin (the father of Ms Aylin Yengin/Altun) has applied for a New Premises Licence for 495 Hertford Rd, the consultation finished on 17th Feb 2023 but the application is subject to a LSC hearing by Enfield Licensing Authority.

5.0 Maxi Food & Wine - 38 Chase Side:

- 5.1 On 7 June 2021, a transfer application which was not subject to any representations, was granted by officers in accordance with delegated powers, naming Mrs Aylin Yengin as the Premises Licence Holder (PLH), and also became the DPS.

A licence review in relation to that premises was submitted by Trading Standards at the end of 2022 and was heard in January 2023. The review sought to revoke the premises licence. A wide range of unlawful activity had taken place whilst Ms Aylin Yengin had been the premises licence holder, despite advice to prevent such activity having been provided by the Council previously. The unlawful activity included:

- illicit tobacco being seized from the premises;
- breaches of licence conditions;
- selling non-compliant vapes and e-cigarettes;
- selling Viagra and Sildenafil without a medical registration from MHRA;
- selling drug paraphernalia.
- selling nitrous oxide (known as NOx).

- 5.2 Whilst that review was waiting to go to a hearing a Transfer and Vary DPS application was submitted. The named person apparently being Mr Altun's sister. – Nuray Ozdemir. This a step that is taken in an attempt to void the review process being concluded. However, considering the history of the premises and the family connection of the new licence holder the licence review application was still deemed relevant and was still put before the Licensing Sub Committee. The premises licence was suspended for three months and the licence conditions were strengthened by Enfield LSC.
- 5.3 Mr Sutherland the legal representative spoke with Ms Barrett – Haringey Licensing Team Leader on the morning of 05th April 2023 following the adjourned hearing, where he stated The paragraph above at 5.2 was wholly incorrect and denied that the application was made at the time to Enfield Council in this matter to void the review process. A copy of the Enfield LSC minutes that took place on 4th January 2023 is attached at Appendix 9.
- 5.4 Mr Sutherland also advised that in the coming days an application will be made to Haringey to vary the DPS at 42 Topsfield Parade and potentially an application for the transfer of the licence. Mr Sutherland advised that his client had now contracted Atlas

Licensing who would be submitting the application/s. It was stated to Mr Sutherland that neither actions would impact the current review process as the matter still needed to be determined. Mr Sutherland agreed that to be the case and for all parties to be heard on the issues. Mr Sutherland was asked to ensure that he state his clients name and position (in the company/Premises Licence) when responding to confirming attendance for the rearranged hearing as it was noted that Ms Yengin the PLH and DPS was not present on the Teams meeting but her husband Mr K Altun was present.

- 5.5. It should be noted that Ms Aylin Yengin applied to be the PLH and DPS at 42 Topsfield Parade at a time when the existing premises under her responsibility was being investigated. That being said, that fact or knowing of the previous mis-steps did not deter or enable Ms Aylin to reconsider how she would manage the Topsfield Parade operation differently to break the cycle of non compliance.
- 5.6 The Licensing Authority has had very little contact with Ms Aylin. Mr Altun her husband did say at one point that she was not at the premises due to having had a baby and it was his intention that a new DPS be assigned. This has not been acted upon to date. Mr Altun also stated this to be the case for his wife's absence and inability to attend a PACE interview in December 2022 at Enfield in relation to the review that was initiated in relation to 38 Chase Side.
- 5.7 It should be noted that the substances such as Kamegra Gel is not permitted to be sold in the UK. The erectile dysfunction drugs should only be sold under licence from the Medical and Healthcare products Regulatory Agency. The products seized have been notified to them and a Compliance notice has been issued against the business operator by the MHRA.
- 5.8 Both Ms Yengin and Mr Altun have continued to operate their businesses with little or no regard to the law.
- 5.9 The Government has recently announced that NOS gas will be banned. Under the plans, possession of laughing gas, also known as nitrous oxide, will be made a criminal offence for the first time, and tighter controls on retailers will be introduced to prevent the supply of the gas for misuse.

6.0 PROPOSED LICENCE CONDITIONS:

- 6.1 If the Licensing Committee is not minded to revoke the licence in its entirety, Trading Standards have proposed additional conditions be added to the premises licence as have Public Health.
- 6.2 The Licensing Authority was informed by the Trading Standards Officer Mr Squires that Mr Sutherland had indicated in a telephone call on 4th April 2023 that his client was accepting all the conditions. A copy of the email detailing the conversation with Mr Sutherland is attached at Appendix 10.
- 6.3 A copy of the proposed conditions arising from the review application can be seen in App 8.

7.0 RELEVANT LAW, GUIDANCE & POLICIES:

- 7.1 The paragraphs below are extracted from either :
- the Licensing Act 2003 ('Act'); or
 - the Guidance issued by the Secretary of State to the Home Office of April 2018 ('Guid'); or

- the London Borough of Enfield's Licensing Policy Statement of January 2021 ('Pol').

8.0 General Principles :

8.1 The Licensing Sub-Committee must carry out its functions with a view to promoting the licensing objectives [Act s.4(1)].

8.2 The licensing objectives are :

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; &
- the protection of children from harm [Act s.4(2)].

8.3 In carrying out its functions, the Sub-Committee must also have regard to :

8.4 the Council's licensing policy statement; &

8.5 guidance issued by the Secretary of State [Act s.4(3)].

9.0 Review:

9.1 In reviewing a licence the Licensing Sub-Committee will consider, and take into account, the complaints history of the premises and all other relevant information [Pol s.16.10].

9.2 A number of reviews may arise in connection with crime that is not directly connected with licensable activities, for example the sale of contraband goods. (Pol s.19.8) The Sub-Committee does not have the power to judge the criminality or otherwise of any issue. The Sub-Committee's role is to ensure the promotion of the crime prevention objective [Guid s.11.24].

9.3 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These include the use of the premises for the sale or storage of smuggled tobacco and alcohol [Guid s.11.27].

9.4 Where reviews arise in respect of these criminal activities and the Sub-Committee determines that the crime prevention objective is being undermined, it is expected that revocation of the licence – even in the first instance – should be seriously considered [Guid s.11.28].

9.5 Applications for transfer of a premises licence following application for a review
This Authority is concerned over the frequently observed practice of an application for a transfer of a premises licence being made following an application for a review of that same licence being lodged. Where, such applications are made, this Authority will require documented proof of transfer of the business / lawful occupancy of the premises (such as a lease), to the new proposed licence holder to support the contention that the business is now under new management control. (Pol s16.6)

10. Decision:

10.1 Having heard all the representations (from all parties) the Licensing Sub-Committee must take such steps as it considers appropriate for the promotion of the licensing objectives. The steps 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 [Act s.52].

10.2 In deciding which of these powers to invoke, the Sub-Committee should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be an appropriate and proportionate response to address the causes of concern that instigated the review. [Guid s.11.20].

11.0 Other considerations

11.1 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'.

11.2 Human Rights

11.3 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.

12. Use of Appendices

Appendix 1 – Review Application Form and copy of current licence
Supporting documents - Annex 1-16.

Appendix 2- Met Police representation

Appendix 3- Licensing Authority Representation

Appendix 4- Public Health Representation

Appendix 5- ASB Noise Representation

Appendix 6- Ward Councillors representation

Appendix 7- Residents representations (a-g as listed)

Appendix 8- Offered conditions for ease of reference.

Appendix 9- Minutes of Enfield LSC held 4th Jan 2023 relating to 38 Chase Road.

Appendix 10 - Email setting out conversation with Mr Sutherland

Background papers

Section 82 Guidance

Haringey Statement of Licensing Policy

Background Papers :

None other than any identified within the report.