

LICENSING SUB-COMMITTEE - 8.4.2020

**MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE
HELD ON WEDNESDAY, 8 APRIL 2020**

COUNCILLORS

PRESENT (Chair) Mahmut Aksanoglu, Vicki Pite and Maria Alexandrou

ABSENT

OFFICERS: Ellie Green (Principal Licensing Officer), Amanda Butler (Senior Fair Trading Officer), PC Karen Staff (Metropolitan Police), Catriona McFarlane (Legal Adviser), Jane Creer (Democratic Services)

Also Attending: Duncan Craig, Barrister, on behalf of Maxi Wine Centre

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WELCOME AND APOLOGIES FOR ABSENCE

NOTED

1. Councillor Aksanoglu as Chair welcomed all those present and explained the order of the meeting.
2. Councillor Pite had replaced Councillor Levy on the panel.
3. Due to the coronavirus crisis, the hearing was run remotely via Skype, in compliance with the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority, Police and Crime meetings) (England and Wales) Regulations 2020. The Chair requested attendees to let him know of any issues with connection so that necessary action could be taken.

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DECLARATION OF INTERESTS

NOTED there were no declarations of interest in respect of any item on the agenda.

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**MAXI WINE CENTRE, 495 HERTFORD ROAD, ENFIELD EN3 5XH
(REPORT NO. 243)**

RECEIVED the application made by Trading Standards for a review of the Premises Licence (LN/201500460) held by Mr Ali Riza Tulu at the premises known as and situated at Maxi Wine Centre, 495 Hertford Road, Enfield, EN3 5XH.

NOTED

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1. The introduction by Ellie Green, Principal Licensing Officer, including:
 - a. This was a review of the licence of Maxi Wine Centre. This licence was previously reviewed in 2015 following repeated breaches of conditions, and illicit tobacco being found on the premises. The premises licence holder at that time was Mr Uygar Altun.
 - b. On 26 August 2015, a new premises licence was granted to Mr Ali Riza Tulu, specifically including a condition that Mr Altun was not to be connected with the business.
 - c. The licence permitted off-sales of alcohol from 10:00 to 00:00 daily. The premises licence holder and the Designated Premises Supervisor (DPS) was Ali Riza Tulu.
 - d. On 24 January 2020, Enfield Council's Trading Standards submitted a review application in relation to the prevention of crime and disorder licensing objective, and seeking revocation of the premises licence in its entirety.
 - e. Smuggled goods had been found on the premises for a second time ie. non-duty paid cigarettes. Breaches of licence conditions had also been witnessed.
 - f. The full review application was set out in Annex 2 of the officers' report. The report was an attachment in this Skype meeting.
 - g. There was a representation from the Metropolitan Police, supporting this review application and also seeking revocation of the premises licence, based on the prevention of crime and disorder licensing objective, and attached as Annex 3 of the report.
 - h. There had been no written response received from the premises licence holder.
 - i. If the Licensing Sub-Committee (LSC) was minded not to revoke the licence, Trading Standards asked that the licence be suspended until full compliance with the licence conditions had been demonstrated and to consider adding two conditions, as set out in Annex 4.
 - j. This review application was due to be determined on 18 March 2020, but an adjournment request was permitted from that hearing.
 - k. At the hearing, Trading Standards were represented by Amanda Butler, Senior Fair Trading Officer, the Metropolitan Police were represented by PC Karen Staff, and Maxi Wine Centre was represented by Duncan Craig, Barrister, Citadel Chambers. Due to remote hearings being so new, the hearing was also being observed online by three external persons.

2. The statement on behalf of Trading Standards, including:

- a. The review application was based on the crime and disorder licensing objective; as a result of non-duty paid tobacco being found at the premises.
- b. On 28 October 2019, officers from Trading Standards and Licensing Enforcement, the Police Licensing Officer, and a dog handler and dogs from Wagtail International carried out a day of unannounced visits to shops in LB Enfield, including a visit to Maxi Wine Centre. The premises was searched and 221 packets equivalent to 4,420 individual cigarettes, and 5 x 50g packets of hand rolling tobacco non-duty paid items with foreign labelling were found

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and seized. Also during the inspection, illicit drug paraphernalia were seen displayed for sale behind the shop counter.

c. The owner and DPS, Mr Tulu, was not on the premises at the time of the inspection. The sales assistant Ms Eilem Kilic who was on the premises spoke little English and had to make a phone call to a male, Mr Dervish Kilik, who explained that he was the business partner of the premises licence holder. Mr Tulu and Ms Kilic were invited to attend a tape-recorded interview on 10 December 2019 under the provisions of the Police and Criminal Evidence Act 1984. They did not attend this interview.

d. A report was referred to LB Enfield Legal Department. Home Office guidance s.11.24 was highlighted in respect of the Sub-Committee's role.

e. A number of breaches of conditions were reported, as set out in Annex 2.

f. Condition 14 stated that a personal licence holder was to be present on the premises throughout the permitted hours for sale of alcohol; but there had been no personal licence holder on site at the time of the inspection.

g. Condition 16 stated that Mr Altun shall not be involved in any way in the operation and / or management of the business. However, the enforcement team and police observed a white bipper van parked directly outside the premises and identified Mr Altun as the registered keeper. The keys to the van were identified inside the premises on 15 August 2019 next to a packet of non-duty paid cigarettes.

h. Condition 10 stated that only the premises licence holder or DPS shall purchase alcohol and cigarette stock. However, during the inspection on 5 July 2019, invoices were produced which stated the suppliers of alcohol and tobacco and which were addressed to 'Potters Mart Ltd', 75 Darkes Lane. The company director of Potters Mart Ltd had been identified to be Mr Usman Kaleen and the premises licence holder as a Mr Dervis Altun, who was not the premises licence holder for Asya Wine Centre or Maxi Wine Centre.

i. The Secretary of State guidance took smuggled tobacco very seriously, and the undermining of the prevention of crime and disorder licensing objective. Licence revocation should be seriously considered, even in the first instance. Enfield Trading Standards were of the opinion that this licence should be revoked in entirety because of the large amount of tobacco seized and the previous history of the premises, and breaches of Conditions 4, 5, 6, 7, 11, 14, 16, 17 and 18. The tobacco seized was in a cardboard box separated into sections, indicating a degree of organisation.

j. If the LSC was minded not to revoke, Trading Standards requested suspension until full compliance with the licence conditions was demonstrated; and the additional conditions that non-duty paid tobacco or alcohol must not be stored or sold from the premises or from any vehicle, and that there will be no drug related paraphernalia in the shop or being displayed for sale.

3. Questions were responded to by Amanda Butler, including:

a. In response to Mr Craig's query in respect of staff seen on the premises on 28 October 2019, it was confirmed that no-one else was seen in the shop except Ms Eilem Kilic, and that she had identified herself as a sales assistant.

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- b. In response to Mr Craig's queries relating to emails from Mr Tulu regarding the PACE interview and confusion over times, it was confirmed that a letter was sent to Mr Tulu in November 2019 and he responded and rescheduled the interview to 15 January 2020. Emails were exchanged on that date as set out in Appendix 5, and a manager advised Mr Tulu that the room and personnel were booked in advance; 1.30pm would be too late given the room was booked until 2.00pm and 30 minutes would not be sufficient to conduct the interview.
- c. In response to Mr Craig's queries regarding non-duty paid tobacco found in the premises, it was confirmed that illicit tobacco was found only at the visit on 28 October 2019.

4. The statement of PC Karen Staff, on behalf of Metropolitan Police, including:

- a. As Police Licensing Officer for Enfield, she confirmed that Metropolitan Police supported the review application brought by Trading Standards under the prevention of crime and disorder licensing objective.
- b. This venue had a long history of being involved in criminal activity associated with either counterfeit or illicit goods since 2009.
- c. Mr Altun was prosecuted for selling counterfeit alcohol. Despite variation of the licence, non-duty paid goods were found again and the licence was revoked in 2015.
- d. Due to concerns, a condition was put onto the current licence that Mr Altun should have no part in the running or control of the business. This condition was agreed by Mr Tulu, who stated that he did not know Mr Altun.
- e. Intelligence reports to police led to licensing visits to the premises in 2018 and 2019. Mr Altun's name was mentioned by staff, but Mr Tulu continued to refute that Mr Altun was involved in the business. Reports were received in respect of two vans parked outside the shop. Staff denied they had anything to do with the business. Computer checks found that both vans were registered to Mr Altun even though he did not live near the venue. A search of the silver van found nothing of note. From then on the silver van did not park outside the shop. On the visit in August 2019, the white van was parked outside the shop and next to a packet of illegal cigarettes on the shelf behind the counter was a key. The staff member was asked about the key and denied it opened the van, but refused to prove this by testing it, but made a phone call. A male turned up, took the cigarettes and the key which he used to get in the van, and drove away refusing to speak with the officer. Since then the white van had not been seen outside the shop.
- f. During the operation on 28 October 2019, a substantial amount of non-duty paid tobacco was found at the premises, and a considerable amount of drug paraphernalia which was not illegal to sell but encouraged disregard to the law.
- g. The onus was on Mr Tulu to promote the licensing objectives, and he had failed to do so. The police did not believe Mr Tulu to be a fit and proper person to hold a premises licence. The council had given him the opportunity to

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explain himself in an interview and he had failed to appear. The police supported the review application.

5. PC Staff responded to a question from Mr Craig in respect of the search of the silver van, advising that the date of that search was not written in her notes, but that it would have been prior to the visit when the illicit cigarettes were found.

6. The statement of Mr Duncan Craig, barrister on behalf of the licence holder, including:

- a. Mr Tulu was not in attendance in person, but he had been instructed to make representations on his behalf.
- b. In respect of the two vans, silver and white, which had been seen parked outside the shop, Mr Tulu knew nothing about them at all. He robustly stated that Mr Altun had nothing to do with the management or operation of the business. He refuted any allegations in respect of breach of Condition 16.
- c. There was some confusion in respect of the inspection visit on 17 June 2019. There was a suggestion that the member of staff when questioned identified the owner of the business as Kemal then denied this subsequently. He would make the point that there was no evidence of Mr Altun being at the premises whatsoever. There was no reason to dispute the vans were registered in Mr Altun's name, but Mr Tulu had no idea about those.
- d. In respect of visits on 17 June and 15 August 2019, no illicit tobacco was found on those occasions. In respect of the 28 October visit, Mr Tulu has no knowledge of the illicit tobacco found. He said there was a member of staff conducting activities which they should not. He did not have a name of that member of staff.
- e. There was a suggestion within the Trading Standards' representation, that if LSC were not minded to revoke the licence, then two additional conditions were suggested. It was confirmed that those conditions were agreed to by Mr Tulu. Mention was also made of a licence suspension. It was denied by Mr Tulu that there was a breach of Condition 16 but he acknowledged there were breaches of other conditions. A licence suspension of three months was felt to be appropriate and proportionate. This was the statutory maximum and it would enable him to refocus his efforts and get his house in order in respect of full compliance with the licence. The two additional conditions would add a further layer of structure, and going forward Mr Tulu could promote the licensing objectives.
- f. During the current difficult times such a shop was an important facility and a service to the local community.
- g. Guidance was highlighted at s11.20 and that steps taken should be proportionate. Mr Tulu would utilise a suspension period purposefully.
- h. On other visits no illicit alcohol or tobacco was found. Mr Tulu knew that the cans of beer over 6.5% ABV were in breach of Condition 20, but felt that a three month suspension was appropriate. A revocation of the licence would go beyond what was appropriate.

7. Mr Craig responded to questions, including:

- a. In response to the Chair's queries about the vans parked outside the shop, it was clarified that Mr Tulu simply did not know anything about the vans. Mr Tulu was not present at any of the officer visits. He had no answer as he had no knowledge of what purpose they were serving.
- b. In response to further queries about the key to the white van found near the counter, it was advised that Mr Tulu did not know anything about that, and as premises licence holder could not have controlled where a key was.
- c. In response to queries about why Mr Tulu did not attend the interview or provide written representations or attend the hearing, it was advised that Mr Tulu got confused about the time of the interview, but that he did make some effort to be available but that was not able to be accommodated. He made no written submissions as he was not legally represented at the time. He had engaged legal representation since March. If he had engaged a lawyer earlier the legal implications would have been explained, but at the time Mr Tulu did not have advice.
- d. In response to questions about how often Mr Tulu was at the premises, it was confirmed that he did visit, but no specific instruction had been provided about how often. Mr Tulu had been asked if he went there regularly and said that he did. There was no requirement for the premises licence holder and DPS to be there at all times. Mr Tulu understood he needed to dedicate more time to the business and promote the licensing objectives more purposefully going forward.
- e. In response to Councillor Pite's requests for evidence to provide reassurance that Mr Tulu could manage and supervise staff appropriately, it was advised that three months' suspension would give a significant amount of time to make improvements and that there would be no issue with a compliance visit at the end of that period. Mr Tulu had undertaken to get external trainers. Mr Tulu had been the premises licence holder since 2015, and while there had been visits more recently which raised legitimate concerns in respect of compliance with conditions there had been nothing prior to that. There was no evidence of issues before June last year and that should be taken into account when evaluating whether Mr Tulu was capable of promoting the licensing objectives.
- f. In response to further requests for reassurance around the specific outstanding condition breaches, it was highlighted that it would not be proportionate if a licence was revoked just because the licence holder was not complying with conditions. It was also reiterated that a breach of Condition 16 was denied. It was a fact that non-compliance with licence conditions was unsatisfactory, and the review process should be used to improve compliance. If there was a three month suspension and then subsequent breaches, LSC would have little option but to revoke if there was failure to comply. It was accepted that this would be the last chance for this licence holder. Mr Tulu acknowledged the compliance had been unsatisfactory, and was asking for a final chance. If he failed that would be the end of his licence and there would be no-one to blame but himself.

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- g. The Chair asked about what the licence holder knew about storage of illicit tobacco and storage of drug paraphernalia. It was confirmed that Mr Tulu knew about the drug paraphernalia, and that it was quite common for these items to be sold in privately owned convenience stores: he was doing nothing unlawful, though perhaps it was unedifying and would be re-considered by Mr Tulu. He had agreed to the additional condition that there would be no drug related paraphernalia in the shop or being displayed for sale. In respect of the illicit tobacco, Mr Tulu did not know about it. It was acknowledged there was a significant quantity and number of products found, giving rise that someone on the premises had been engaging in activities that were unlawful and not promoting the licensing objectives. From Mr Tulu's point of view, a licence suspension and spending more time at the shop would allow focus on compliance with conditions and the business being more lawful in its approach to the Licensing Act and more vigilant generally.
- h. In response to a further query how often Mr Tulu was at the store, nothing more had been specified by him other than that he was there regularly. It was not known at what hours.
- i. In response to Councillor Alexandrou's queries whether it was responsible to display drug paraphernalia in a place where children could enter, it was advised that the items were not unlawful, though it was something Mr Tulu had reflected on and he was content for it not to be the case going forward, having reviewed what he could do better. This was accepted by virtue of agreeing to the additional conditions.
- j. In response to Councillor Pite's queries regarding compliance with the requirement for a personal licence holder to be present at all times alcohol was being sold, it was confirmed that Mr Tulu was a personal licence holder himself, and would address the requirement by spending more time at the premises. In addition to using external trainers, Mr Tulu would also enlist two members of staff on a course to apply to be personal licence holders. That would be a central part of his undertaking to reach compliance.
- k. In response to requests for clarification from the Legal representative, it was confirmed that there was no detail provided from Mr Tulu other than 'more' hours would be spent at the shop. It was also advised that following the seizure of illicit tobacco, there had been an investigation and a member of staff had been dismissed, but the staff member's name had not been provided. In terms of steps to be taken so that staff could not deceive him in future, Mr Tulu would make regular checks of the premises and compliance with conditions regarding storage and display of tobacco products. It was asserted he must have been complying up to June 2019 as there were no concerns about the business up to that point. No further instruction had been provided by Mr Tulu relating to the shop staff.
- l. In response to queries from the Trading Standards representative, it was advised that staff were not believed to have informed Mr Tulu of the visit by enforcement officers in June 2019. Mr Tulu was aware of the October visit that gave rise to the seizure. He did not know how many packets of illicit tobacco had been sold from the premises.

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8. The summary statement by Ellie Green, Principal Licensing Officer, that having heard the representations from all parties, it was for the LSC to consider the steps appropriate in support of the licensing objectives, and highlighting the relevant policy and guidance, in particular s.11.27 and s.11.28.
9. The summary statement on behalf of Trading Standards, highlighting the information provided by Mr Tulu's representative that he did not know about the vans outside the premises and did not know about the illicit tobacco. The authority did promote businesses to behave responsibly when selling goods and a licence holder should know what was going on in his business premises and should adhere to licensing conditions and ensure they are being met. It was Trading Standards' opinion this licence should be revoked because of the large amount of tobacco seized and the organised manner those tobacco products were stored behind the counter. If Mr Tulu visited regularly he would be aware of the box behind the counter, its organisation, and the sales, and if he was not aware of that he was not a fit and proper person to be a licence holder.
10. The summary statement of PC Karen Staff, on behalf of Metropolitan Police, that after hearing from Mr Tulu's representative she still did not have any confidence in Mr Tulu to hold a licence. He had numerous opportunities to comply with the licence, but breaches were discovered on a number of occasions. It was strange that since the vans stopped parking outside, illicit cigarettes were found inside the shop, and it seemed that the van was where they were stored originally. In conclusion, Mr Tulu not knowing what staff were doing was unsatisfactory, and it was not clear what would change during a short licence suspension. Police still had no confidence in Mr Tulu's behaviour or his understanding of his obligations as a licence holder and considered there was no alternative but to revoke the licence.
11. The summary statement of Duncan Craig, on behalf of the licence holder, highlighting that there had been a number of visits to the premises that had led to no illicit tobacco being discovered. Even when vans were linked it was usually experienced that illicit tobacco was found on premises in reasonable quantities. That had not occurred at this shop on those occasions. Previous searches must have been thorough, but the only illicit tobacco was found on the single occasion in October 2019. Mr Tulu was not present at the time. This was not Mr Tulu wilfully engaging with the activity, but a failure to concentrate on the business; an occasion when someone had fallen short. It had to be asked if there were alternative courses of action: there were and it had been suggested for a suspension of the licence for a maximum period and the addition of further conditions. This would enable the licence holder to focus his mind on promotion of the licensing objectives going forward. A suspension was suggested in the circumstances as a proportionate step, given how long Mr Tulu had held the licence, and the number of visits where nothing was found.

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RESOLVED that

1. In accordance with the principles of Section 100(a) of the Local Government Act 1972 to exclude the press and public from the meeting for this item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A to the Act.

The Panel retired, with the legal representative and committee administrator, to consider the application further and then a decision announcement meeting reconvened.

2. The Chairman made the following statement:

"Having read and listened attentively to the written and oral representations, the Licensing Sub-Committee (LSC) has resolved that the appropriate step to be taken to support the promotion of the licensing objectives is to revoke the licence held by **MR ALI RIZA TULU** at the premises known as and situated at **MAXI WINE CENTRE, 495 HERTFORD ROAD, ENFIELD, EN3 5XH**.

The LSC takes into consideration the guidance of s.11.28 and considers this is the appropriate and proportionate course of action that is required to address the concern that the presence of smuggled goods gives rise to, in the light of the licensing objective of crime and disorder.

In light of guidance at s.11.27 and s.11.28 given the seriousness of the criminal activity, this course is appropriate even in the circumstances where this is the first instance of the storage of smuggled goods at the premises.

The LSC noted that the licence holder's representative, Mr Craig, did not know how many hours the licence holder already spent in the business, he could only say it would be a non-specific amount of "more" in the future.

Mr Craig did acknowledge that his client seemed to be unaware of what his staff were doing at his premises and could not advise of what steps he had been taking to supervise them.

The LSC noted that several breaches of the current licence conditions were taking place on the multiple visits made by officers to the premises, especially the CCTV condition which did not appear to have ever been complied with.

There is little evidence that Mr Tulu was actively involved in the business. His staff mentioned other people being in charge, there is evidence of vehicles owned by someone who is prohibited from involvement in the business regularly parking them outside and even keeping their keys inside the premises.

There is no evidence of Mr Tulu or his staff actively co-operating with officers.

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Mr Craig acknowledged and confirmed that all but one condition (condition 16) had been breached.

In light of these factors the LSC felt the application for review made by the Trading Standards and supported by the Metropolitan Police had been met and that the only appropriate action was to revoke the licence.”

3. The Licensing Sub-Committee resolved to revoke the licence.