

Merton Council
Licensing Sub-Committee
17 December 2018
Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 20 December 2018

Subject: Counter Notice Following Police Objection to A Temporary Event Notice:
Ambaal Store, 173 Streatham Road, Mitcham, Surrey, CR4 2AG

Having considered relevant applications, notices and representations together with any other relevant information submitted to any Hearing held on this matter the Licensing Authority has made the determination set out in Annex A. Reasons for the determination are also set out in Annex A.

Parties to hearings have the right to appeal against decisions of the Licensing Authority. These rights are set out in Schedule 5 of the Licensing Act 2003 and Chapter 12 of the Amended Guidance issued by the Home Secretary (April 2018). Chapter 12 of the guidance is attached as Annex B to this notice.

For enquiries about this matter please contact

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Useful documents:

Licensing Act 2003

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

Guidance issued by the Home Secretary

<http://www.homeoffice.gov.uk/>

Regulations issued by the Secretary of State for Culture, Media and Sport

http://www.culture.gov.uk/alcohol_and_entertainment/lic_act_reg.htm

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing>

Annex A

Determination

The premises user, Mr Vaseekaran Sathyaseelan, submitted a Temporary Event Notice (TEN) to inform the Licensing Authority, Metropolitan Police and Environmental Health that he proposed to use the premises, “Ambaal Store” at 173 Streatham Road, Mitcham CR4 2AG, for the licensable activity of the retail sale of alcohol pursuant to section 100A of the licensing Act 2003. The Late TEN was proposing the opening of the premises as follows:

23.00 - 02.00 Friday 21st December 2018 to Wednesday 26th December inclusive
23.00 - 02.00 Friday 28th December 2018 to Wednesday 2nd January 2019 inclusive.

The Metropolitan Police issued an Objection Notice against the Temporary Event Notice under section 104 and 105 of the Licensing Act 2003 requiring a hearing before the Licensing Sub-Committee to consider the objection notice and whether it was appropriate for the promotion of the licensing objectives to give the premises user a Counter Notice to prevent the premises opening for these hours.

The Licensing Sub-Committee considered that it was appropriate in order to promote the Licensing Objectives of the Prevention of Crime and Disorder, and Prevention of Public Nuisance, and having regard to the Police Objection Notice, to give the applicant a Counter Notice under section 105 of the Licensing Act 2003.

Therefore, the premises does not have authority under the Licensing Act 2003 to be open between times and dates set out above. A Police officer or Council officer have rights of entry under sections 179 and 180 of the Licensing Act 2003 to investigate unauthorised licensable activities or to investigate offences under the Licensing Act 2003.

Reasons

The Licensing Sub-Committee looked carefully at the application for a Temporary Event Notice, the objection notice received from the Metropolitan Police contained in the agenda papers and the oral evidence submitted at the hearing by the parties in attendance.

PC Russ Stevens, objecting to the application, stated that:

- 1) PC Stevens confirmed that he was strongly opposed to the application on the basis of the licensing objectives for the prevention of crime and disorder and the prevention of public nuisance.
- 2) There was an issue with Anti-Social Behaviour and Crime, mainly from street drinkers in the area near to the premises; it should be noted that the premises backed onto two residential streets. It was observed that the Christmas and the New Year period would involve more people being in the area and drinking whether on the street or nearby or at home.
- 3) The Police received regular complaints from residents and the Police had documented 15 incidents of alcohol-related crime in the last 12 months in the area.
- 4) The premises is located with 8 other off-licence premises in the same parade of shops, the vast majority of which close at 23.00. In these 8 premises, there had been 7 alcohol thefts since July 2018.
- 5) There was recently a public meeting with the community and the local MP Siobhain McDonagh, which was very well attended and was to discuss anti-social behaviour in the Mitcham area due to resident's strong concerns.
- 6) PC Stevens felt that the application was unacceptable for residents and that should the Temporary Event Notice be issued, there would be a proportionate increase in alcohol-related anti-social behaviour.
- 7) There had been no other Temporary Event Notices granted in the area in the last 12-18 months.
- 8) PC Stevens stated that the ongoing issues had been slowly improving following the introduction of the Cumulative Impact Policy, including a number of recent licence applications being refused and this had improved the quality of residents lives.
- 9) There had been a couple of incidents recently involving street drinkers assaulting other street drinkers and/or residents, including an incidence of ABH outside 173 or 175 Streatham Road, with Ambaal being located at 173.

Mr Nira Suresh, the applicant's representative stated that following receipt of the objections and having heard the Police Representations that he was amending the Temporary Event Notice to cease at midnight on each date rather than 02.00. Mr Nira Suresh, the applicant's representative, responded to PC Russ Stevens submissions as follows:

- 1) Mr Suresh felt that none of the Police evidence related to that specific premises and questioned whether three hours for ten days would add to the issues in the area, noting that crime happens for many reasons.
- 2) Mr Suresh felt that if there were any link from the premises to any issues this would prevent the premises from applying for further Temporary Event Notices or any Licence variation application in the future.

- 3) Mr Suresh felt that the process should be balanced and fair and that the premises should not be penalised for crime in the area, and that the hours offered had been reduced to reflect their understanding of the concerns raised by the Police.

The Licensing Sub-Committee gave the following reasons under Section 105 (3)(b) for their decision:

- 1) There was direct evidence from the Police of problems with street drinking and saturation of premises offering off-sales in the area around the premises and in the area nearby. The Licensing Sub-Committee were aware that there was a Cumulative Impact Policy in place for this area in Streatham Road in Mitcham.
- 2) The reduction in hours offered would not address the fundamental problems with street drinking and crime and disorder in that area.

A Counter Notice was therefore issued.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2018).

13. Appeals

13.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

General

13.2 With the exception of appeals in relation to closure orders, an appeal may be made to any magistrates' court in England or Wales but it is expected that applicants would bring an appeal in a magistrates' court in the area in which they or the premises are situated.

13.3 An appeal has to be commenced by the appellant giving a notice of appeal to the designated officer for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.

13.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant, licence holder, club or premises user against the representations of a responsible authority or any other person, or the objections of the chief officer of police, the Home Office (Immigration Enforcement), or local authority exercising environmental health functions, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal, and the person who made the relevant representation or gave the objection will be the appellants.

13.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as a witness a responsible authority or any other person who made representations against the application, if it chooses to do so. For this reason, the licensing authority should consider keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.

13.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

13.7 On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or

- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

All parties should be aware that the court may make an order for one party to pay another party's costs.

On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

Licensing policy statements and Section 182 guidance

13.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case. In other words, while the court will normally consider the matter as if it were "standing in the shoes" of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.

13.9 In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

Giving reasons for decisions

13.10 It is important that a licensing authority gives comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

13.11 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

Implementing the determination of the magistrates' courts

13.12 As soon as the decision of the magistrates' court has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, appropriate action should be taken immediately unless ordered by the magistrates' court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

Provisional statements

13.13 To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be appropriate for the promotion of the licensing objectives when, and if, an application were made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.

13.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

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