

Merton Council

Licensing sub-committee held on 29 April 2014

Decision Notice -

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Just Drinks, 15-17 Leopold Road, London SW19 7BB

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 30th April 2014

Subject: Just Drinks, 15-17 Leopold Road, London SW19 7BB

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 2012). Chapter 12 of the guidance is attached as Annex B to this notice.

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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 Licensing Sub Committee determined that the application for the new Premises Licence for Just Drinks, 15-17 Leopold Road, be refused.

Reasons

The Licensing Sub Committee gave careful consideration to the application made by the Applicant, Universal Liquormart Limited (represented by Mr Jordan), and the representations made by Metropolitan Police as a responsible authority, (represented by Sgt Sparham), the Wimbledon E Hillside Residents' Association and 20 individual local residents.

The Licensing Sub-Committee had to have regard to the Licensing Act 2003, its Regulations, the new Home Office Guidance dated June 2013, the Council's Statement of Licensing Policy, and parameters provided by relevant case law, whilst considering the application based on the licensing objectives.

The Licensing Sub Committee were concerned at the evidence provided to it that there was a street drinking problem in the Leopold Road area, that was outlined by the Police and some residents, including evidence of vandalism and damage to property and problems with local youths. Members, having read and listened to all the representations, were not persuaded to grant the application especially as the area was located within an alcohol controlled drinking zone and had a history of street drinking and increasing crime as a result.

The Licensing Sub Committee acknowledged that it must make a decision that is proportionate and appropriate and balances the evidence it hears from the applicant, responsible authorities and local residents and residents associations, with the aim of promoting the licensing objectives.

The Licensing Sub-Committee accepted that in certain circumstances where they are concerned that they would not be promoting the licensing objectives if the application were granted, they could impose conditions which may achieve that result. However, Members concluded that the imposition of conditions would not be sufficient to further the licensing objectives. The granting of the licence would undermine the promotion of the licensing objectives by reason of the added access to alcohol, in an area that was already experiencing instances of crime and disorder and public nuisance and that already required an alcohol Controlled Drinking Zone. The Licensing Sub Committee felt that the grant of this application would not address the problems in this area.

There was evidence of street drinking problems from the Police and residents in their oral evidence and representation evidence. The Committee noted the Police evidence related to 14 incidents in the last year, and noted that there was further evidence from the SNT team provided to Sgt Sparham. Leopold Road was experiencing increasing crime (14 offences committed in the road in the last year involving burglaries of commercial premises and domestic incidents connected with alcohol consumption) and

linked to the 11 premises offering alcohol in a road of only 26 premises. Premises which carried out 'off' sales contributed to the issues to be found within the area. The Police reported that the area was subject to a Controlled Drinking Zone. This had been introduced with a view towards combatting problems relating to street drinking. Alcohol consumed in this way was bought cheaply from local supermarkets and off licences.

The Licensing Sub Committee had carefully considered the position in terms of evidence. The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008 was considered during deliberations and the Committee felt that there was proper evidence presented or amongst the representations and evidence presented to the Licensing Sub-Committee by the Police and Interested Parties. Case law states that decision making in licensing applications must be reasonable, proportionate and evidence-based, not speculative. The Committee also had analogous regard to the case of Luminar Leisure Ltd v Wakefield Magistrates' Court, Brooke Leisure Ltd, Classic Properties Ltd, Wakefield MDC 2008 since the alcohol only off licence proposed would have an effect on the local street scene.

With regard to the erroneous reference to 'need' for licensed premises, the Committee had regard to paragraph 13.18 of the Home Office Amended Guidance issued under Section 182 of the Licensing Act 2003, stated: "There can be confusion about the difference between "need" for the premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy". The Committee did not consider 'need' in its deliberations.

The proposed premises for Just Drink were situated in a busy street known for both its shopping and night time economy. The area was a Conservation Area and within a Controlled Drinking Zone.

The Home Office Amended Guidance issued under Section 182 of the Licensing Act 2003 dated June 2013 states that every application should be considered individually and that proper regard should be given to those differences and the differing impact they have on the promotion of the licensing objectives.

Members found that the applicant had not sufficiently demonstrated that if the licence was granted, there would be no added crime and disorder and public nuisance, especially from a premises that just sells alcohol.

Members considered that the concerns raised by the Police and Residents and Residents Associations were on balance, not disproportionate or unreasonable. However, the Committee did consider that some points raised did not address the licensing objectives.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2012).

12.Appeals

12.1 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

12.2 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.

12.3 An appeal has to be commenced by the appellant giving of 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.

12.4 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 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.

12.5 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.

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

12.7 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.

LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE

12.8 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.

12.9 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

12.10 It is important that a licensing authority should give 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.

IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES' COURTS

12.11 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

12.12 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.