

# **Merton Council**

## **Licensing sub-committee**

**31 July 2014**

### **Supplementary agenda**

4. Notice of Determination KC Stores

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London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 1<sup>st</sup> August 2014

**Subject:** KC Stores, 115 Merton Road, SW19 1ED

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.

### **For enquiries about this matter please contact**

Democratic Services  
Civic Centre  
London Road  
Morden  
Surrey  
SM4 5DX

**Telephone:** 020 8545 3616

**Fax:** 020 8545 3226 (**Please telephone 020 8545 3616 to notify faxes sent**)

**Email:** [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk)

### **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](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 considered the application of KC Stores Ltd for a premises licence for 115 Merton Road, Wimbledon SW19 1ED for to permit the retail sale of alcohol (off sales only). The Police representation meant that the Licensing Sub-Committee had to consider the application against all the licensing objectives, although the licensing objectives of the prevention of crime and disorder and prevention of public nuisance appeared to be the main issues raised by the Police objection.

The Cumulative Impact Policy applied to these particular premises, as it was just located within CIP zone of Wimbledon Town, although the Licensing Sub Committee recognised that these premises had held a licence before and it could be argued that this was a 'like for like' replacement.

The Premises Licence was **granted**, subject to the conditions sought by the Metropolitan Police (as set out in paragraphs 2-7 of Sgt Sparham's letter, page 32-33 in the agenda papers) as follows:

- 1) The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or an authorised council officer throughout the preceding 31 day period. The CCTV system should be updated and maintained according to Police recommendations.
- 2) A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
- 3) No super-strength beer, lagers or ciders of 5.5%ABV (alcohol by volume) or above shall be sold at the premises.
- 4) A proof of age scheme, such as Challenge (21/25) shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport / holographically marked PASS scheme identification cards.
- 5) A log shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by the Police or an authorised Council officer at all times whilst the premise is open.

6) An incident log shall be kept at the premises, and made available on request to an authorised Council officer or Police, which will record the following:

- All crimes reported to the venue
- All ejections of patrons
- Any complaints received
- Any incidents of disorder
- Any faults in the CCTV system or searching equipment or scanning equipment
- Any refusal of the sale of alcohol
- Any visit by a relevant authority or emergency service.

## **Reasons**

The Licensing Sub-Committee considered all of the relevant evidence made available to it and in doing so has taken into account the Licensing Act 2003, the Guidance under section 182 of the Licensing Act 2003, its Regulations, case law, and Merton Council's Licensing Policy.

The Licensing Sub-Committee took into account its special policy on cumulative impact and the presumption that new applications will normally be refused unless the Applicant can show that their proposals will not add to the cumulative impact already being experienced. However, the policy is not absolute and the circumstances of each case need to be considered taking into account the application, the proposed conditions and the premises' style and characteristics.

The Applicant was reminded that it would still have to comply with its planning permission or conditions, notwithstanding the grant of the Premises Licence.

The reasons for the decision were as follows:

### Reasons

The Licensing Sub-Committee recognised that the premises had previously held a licence to supply alcohol, which had been revoked circa 18 months ago, due to the previous operator selling alcohol to those underage.

The Licensing Sub Committee noted that the closing time of the business was earlier than other licensed premises in the area, and would not add to public nuisance.

The Licensing Sub-Committee was satisfied that the conditions imposed were appropriate and proportionate to meet the licensing objectives.

The Committee was satisfied that the presumption against refusal had been rebutted by the Applicant.

## **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.