

Merton Council

Licensing sub-committee

2 October 2014

Notice of Determination

4 Notice of Determination - 26 Eveline Road, CR4 3LE

1 - 6

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 8th October 2014

Subject: 26 Eveline Road, Mitcham Surrey CR4 3LE

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

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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

Mr Leon Thompson for 26 Eveline Road, Mitcham applied for a Premises Licence for retail sale of alcohol (off sales only) between 00.00 and 05.00 Monday to Sundays. The Licensing Sub-Committee decided to **reject** the application.

Reasons

The Licensing Sub-Committee must consider this Premises Licence application pursuant to the Licensing Act 2003 and its Regulations, may have regard to the updated Home Office Guidance dated June 2014, may have regard to the Council's Statement of Licensing Policy, and pursuant to the parameters provided by relevant case law, whilst with a view to promoting the licensing objectives, making a decision that is appropriate ([section 18\(3\) of the Licensing Act 2003](#)) and proportionate after weighing the considerations from the Application and Representations on its merits, holding a fair hearing and deciding what the public interest requires.

The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008 considered during deliberations in relation to the evidence provided by the Police to the Licensing Sub-Committee, which felt that there was sufficient "real evidence" presented by the Police as Responsible Authority.

The Licensing Sub-Committee was aware from evidence that planning permission may not have been granted yet in relation to the premises. It was not for the Licensing Sub-Committee to examine whether a proposed application for a premises licence or conditions or operation required planning consent (R (on the application of Blackwood) v Birmingham Magistrates, Birmingham City Council & Mitchells & Butler Leisure Retail Ltd 2006 (The 'Blackwood' Case)) and that was not in the mind of the Committee when considering this licensing application.

The Licensing Sub-Committee felt that the application invited the consumption of alcohol at times of the night when other licensed premises would have often ceased to trade, thus elongating the potential hours of drinking in residential premises. In this regard, the Licensing Sub-Committee noted the concerns in respect of crime and disorder raised by the Police. Further, the £25 minimum spend condition would only serve to increase the consumption of alcohol to a greater degree by customers that may have consumed alcohol already. The terminal hours of premises throughout the borough provided a matrix of times when the consumption of alcohol would cease, whereas this application sought to allow alcohol to be readily available outside times that can be managed and in situations that would fuel already intoxicated customers. This gave rise to concerns related to the licensable objective of crime and disorder, public nuisance, and public safety.

The Licensing Sub-Committee noted the crime reports from the Metropolitan Police over the last six months for Eveline Road, Mitcham recorded a number of incidents in the road at the location of the premises and crucially they felt it was proper evidence

that influenced their decision, in promoting the licensing objectives in respect of crime and disorder raised by the Police. The Guidance (1.8 and 2.1) indicates that the Licensing Sub-Committee should place some reliance in representations made by the Police in respect of crime and disorder.

The Licensing Sub-Committee considered that the hours of business, including the use of vehicle(s) both at the premises in Eveline Road (notwithstanding the proposed condition on loading) and in the area where deliveries will be made would inevitably result in public nuisance at such late hours (especially where there are no food sales taking place). The times of deliveries, especially during the working week, would give rise to public nuisance by residents preparing for the next day of the working week. This gave rise to concerns related to the licensable objective of public nuisance.

The Licensing Sub-Committee also felt that (whilst the LFEPA had not provided a Representation) that there was still a fire risk in the use of a wooden shed at the property, giving rise to concerns about the issue of public safety in a residential area with industrial units close by.

The Licensing Sub-Committee can sometimes grant an application with modifying conditions in a way it considers appropriate for the promotion of the licensing objectives. However, Members concluded that the imposition of conditions and those offered would not be sufficient to further the licensing objectives in this application.

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.