

Merton Council
Licensing sub-committee
2 February 2016
Supplementary agenda

5 Notice of Determination – Ambaal Foods

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 5 February 2016

Subject: Review of Premises Licence – Ambaal Foods, 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 to the Licensing Act 2003 and Chapter 12 of the Amended Guidance issued by the Home Secretary (March 2015). Relevant extracts from Schedule 5 to the Licensing Act 2003 and Chapter 12 of the Guidance are attached as Annex B to this notice.

In accordance with Section 53C(11)(a) of the Licensing Act, this decision does not take effect until the end of the 21-day period given for appeals against the decision.

In the event of an appeal, and in accordance with Section 53C(11)(b) of the Licensing Act 2003, the decision of the Sub Committee does not take effect until the time the appeal is disposed of.

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Useful documents:

Licensing Act 2003

<http://www.hmsso.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 considered an application made by the Metropolitan Police for the Premises Licence Review of Ambaal Foods, Streatham Road, Mitcham, Surrey, CR4 2AG

Application

The Premises Licence Review arose from a Metropolitan Police test purchase, where a plain clothes officer was able to purchase four cans of Kronenbourg Lager at 23.37 on Friday 6 November. The premises Licence for this shop does not allow for alcohol to be sold after 23:00 on a Friday night.

Local Residents have made numerous complaints to the Police, Ward Councillor and MP regarding groups of males congregating at night on the corner of Garden Avenue and Streatham Road, near to Ambaal Stores, behaving in a loud, disruptive, anti-social and threatening way. Anti-social behaviour included littering, urinating in the street and racing cars. Residents believe that the after hours sales of alcohol by Ambaal stores contribute to this anti-social behaviour.

The Police were supported in their Review by the LBM Licensing Authority and by LBM Public Health. The Ward Councillor, an Interested Party, attended and spoke about Residents' concerns.

Process

In discharging its functions in respect of this Review, the Licensing Sub-Committee had to take such steps as it considered appropriate and proportionate for the promotion of the licensing objectives, pursuant to section 52 of the Licensing Act 2003. The relevant objectives here were the Prevention of Crime and Disorder and the Prevention of Public Nuisance.

In reaching its decision, the Licensing Sub Committee considered the Council's Statement of Licensing Policy, the Licensing Act 2003 (as amended), and where applicable, the relevant Licensing Act 2003 Regulations and the revised Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.

The Licensing Sub-Committee considered written and oral evidence given by the Police, Responsible Authorities and Interested Parties, and the submissions given by the Premises Licence Holder's agent about the management of the premises.

The Licensing Sub-Committee were provided with legal advice in deliberations, this included reference to the Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 Chapter 11 that deals with Reviews. In particular, paragraph 11.20:

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

And paragraph 11.23, in particular:

Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives.

However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises.

Decision

1. The Licensing Sub-Committee decided to suspend the premises licence for a period of 3 months and to modify the premises licence by imposing 14 additional Conditions onto the Licence as set out below.

Conditions to be Added to Licence

1. The Premises holder shall ensure that notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
2. The premises licence holder shall take all reasonable steps to encourage that any persons loitering outside the premises disperse quickly and do not congregate.
3. The premises licence holder shall ensure that staff shall be vigilant in relation to litter issues, routinely check the premises during operating hours to ensure they are clean and tidy and to ensure the frontage of the premises is swept at least once each trading day.
4. The premises licence holder shall ensure that reasonable and adequate staff training shall be carried out and properly documented in relation to dealing with incidents and prevention of crime and disorder; sale of alcohol (to underage, persons over 18 purchasing for underage, drunks etc.) prior to being allowed to sell alcohol. Refresher training to be held at intervals of no more than 6 months.
5. The premises Licence holder shall ensure that all training records shall be retained and made available to police and local authority officers upon reasonable request
6. The premises licence holder shall ensure that the premises shall install and maintain a comprehensive closed circuit television (CCTV) system, in compliance with police requirements.
7. The premises licence holder shall ensure that the CCTV system shall continually record whilst the premises is open for licensable activities

and during all times when customers remain on the premises and signage to this effect is to be displayed.

8. The premises licence holder shall ensure that all CCTV recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available following the reasonable request of Police or Authorised officer throughout the preceding 31 day period.
9. The premises licence holder shall ensure that 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 are open to the public.
10. The premises licence holder shall ensure that the CCTV equipment is checked regularly and if there is a malfunction, the DPS or deputy shall inform the Licensing Authority and the Police as soon as is reasonably practicable, record this matter in the incident book and have the fault repaired as soon as is reasonably practicable. Once the fault is rectified, the Licensing Authority and the Police are to be informed.
11. The Premises licence holder shall operate a 'Challenge 25', or similar, scheme at the premises whereby anyone who appears to be under the age of 25 shall be asked to provide proof of age that he or she is over 18. Proof of age shall only comprise of a passport, a photo-card driving licence or an industry approved proof of age identity card.
12. The Premises licence holder shall ensure that notices shall be prominently displayed in the premises to advise patrons and staff that a 'Challenge 25', or similar scheme operates in the premises.
13. The premises licence holder shall ensure that any refusals of sale of age related products are recorded in a refusals log as soon as it is reasonably practicable after the sale is refused. The log should show the date and time of the event; the product(s) sought, the gender and approximate age of the customer together with a description of the customer. The refusals log shall be checked and signed monthly by the designated premises supervisor. The refusals log shall be made available for inspection by the licensing team, police or trading standards.
14. An incident log shall be kept at the premises and made available on request to an authorised officer of the Council or the Police, which will record the following:
 - a. All crimes reported to the venue
 - b. All ejections of patrons
 - c. Any complaints received
 - d. Any incidents of disorder
 - e. Any faults in the CCTV system or searching equipment or scanning equipment

- f. Any refusal of the sale of alcohol
- g. Any visit by a relevant authority or emergency service

Reasons

1. The Sub-Committee noted evidence of numerous incidents of Anti-Social Behaviour perpetrated by predominantly males in the vicinity of the shop, over a long period of time as reported by residents to the Ward Councillor, the Police and LBM licensing authority. One resident had provided a statement to police; others had provided emails which the Ward Councillor had enclosed her written representation, anonymised for fear of reprisals. It was reported that part of the reasons why the males were attracted to the area was because the store was opening and selling alcohol beyond its permitted hours.
2. The Licence Holder failed to respond to warnings from the Police and Licensing Authority. Following the complaints made, the Police had visited and warned the store on 16 April 2015. The Licensing Authority had visited the shop on 29 October 2015 and subsequently spoken to the Premises Licence Holder by telephone who assured LBM's Licensing Manager that the store did not open or sell alcohol beyond its permitted hours.
3. The Residents had reported numerous examples of alcohol sales outside of Licensing Hours. The Police, therefore, conducted a test purchase operation at 23:37 on Friday 6 November 2015 when they were able to purchase 4 cans of Lager. This is a serious breach of the Premises Licence which only permits the sale of alcohol from 0800 to 2300 hours Monday to Saturday (10:00 to 23:30 on Sundays) and a criminal offence under section 136 of the Licensing Act 2003.
4. The Sub-Committee was satisfied that their decision was an appropriate and proportionate response to uphold the licensing objectives

Annex B

Relevant Sections of the Licensing Act 2003

Schedule 5, Part 1 – Appeals

Review of premises licence

Paragraph 8

- (1) This paragraph applies where an application for a review of a premises licence is decided under section 52.
- (2) An appeal may be made against that decision by--
 - (a) the applicant for the review,
 - (b) the holder of the premises licence, or
 - (c) any other person who made relevant representations in relation to the application.

- (3) In sub-paragraph (2) "relevant representations" has the meaning given in section 52(7).

General provision about appeals under this Part

Paragraph 9

- (1) An appeal under this Part must be made to [a magistrates' court].
- (2) An appeal under this Part must be commenced by notice of appeal given by the appellant to the [designated officer] for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.
- (3) On an appeal under paragraph 2(3), 3(2)(b), 4(3), 5(2), 6(2) or 8(2)(a) or (c), the holder of the premises licence is to be the respondent in addition to the licensing authority.
- (4) On an appeal under paragraph 7(3), the person who gave the interim authority notice is to be the respondent in addition to the licensing authority.

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (March 2015).

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.

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

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.