

Merton Council

Licensing sub-committee

Membership

Councillors:

Tobin Byers

Pauline Cowper

John Sargeant

Philip Jones (Substitute)

A meeting of the Licensing sub-committee will be held on:

Date: 31 July 2014

Time: 10:30

**Venue: Council chamber - Merton Civic Centre, London Road, Morden
SM4 5DX**

Agenda for this meeting

1. Appointment of Chair
2. Declarations of Pecuniary Interest
3. KC Stores, 115 Merton Road, SW19 1ED

1 - 34

Note on declarations of interest

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. If members consider they should not participate because of a non-pecuniary interest which may give rise to a perception of bias, they should declare this, withdraw and not participate in consideration of the item. For further advice please speak with the Assistant Director of Corporate Governance.

This is a public meeting and attendance by the public is encouraged and welcomed. For more information about the agenda and the decision making process contact democratic.services@merton.gov.uk or telephone 020 8545 3616.

Press enquiries: press@merton.gov.uk or telephone 020 8545 3181

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Summary of procedure

1. Declarations of Interest
 2. Welcome by Chair – remind parties that the hearing is being recorded
 3. Chair asks parties if they accept the accuracy of the Notice of Hearing and that all relevant Notices, Applications and representations have been included.
 4. Chair asks the parties if they have, since the issue of the notice, resolved any of the issues and if so to outline their proposed solution. If all issues are covered by this solution then go to stage 10, otherwise use the following procedure to address the remaining points.
 5. Chair outlines procedure as follows:
 6. Applicant
 - Applicant's brief statement clarifying their application and addressing any points of clarification raised in the Notice of Hearing
 - Applicants witnesses (if any) to speak on points of clarification raised in the Notice of Hearing.
 - Questioning of the applicant by other parties
 - ⁽¹⁾ Questioning of the applicant by members
 7. Other parties (It is suggested that responsible authorities are taken first and then public representations)
 - Party's brief statement clarifying their representation and addressing any points of clarification raised in the Notice of Hearing.
 - Party's witnesses (if any) to speak on points of clarification raised in the Notice of Hearing
 - Questioning of the party by the applicant
 - If the party is a responsible authority then questioning of the party by other parties may be appropriate.
 - ⁽¹⁾ Questioning of the party by members
 8. Other parties summarise their points
 9. Applicant summarises their points
 10. ⁽²⁾ Legal Officer asked for any comments
 11. ⁽²⁾ Licensing Officer asked for any comments
 12. Chair advises parties that the sub-committee will retire to consider the issues and take legal advice after which the public session will be resumed.
 13. Sub-committee retires to consider the issues and take legal advice
 14. Sub-committee reconvenes
 15. Legal advice given in private session repeated in public by legal officer
 16. Decision of sub-committee given – parties advised that a Notice of Determination will be sent to them – **OR** – parties advised of the date when a determination will be made.
 17. Close of hearing
- ⁽¹⁾ *Members can ask any question of any party at any time but should normally try to do so at these points.*
- ⁽²⁾ *Legal and Licensing Officers should be involved at any stage where members feel they can be of assistance but a particular point should be made of asking for their comments at this stage*

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Licensing sub-committee Report

Subject of hearing: **KC Stores**

Date: **31st July 2014**

Time: **10.30am**

Venue: **Council Chamber**

Merton Civic Centre, London Road, Morden, Surrey, SM4 5DX

Date of issue of this notice:

1. Special Policy Area (premises licences and club certificates)

1.1 The premises are in the special policy area. Accordingly the relevant section of Merton's Licensing Policy is particularly relevant to this application though committee is to have regard to the policy as a whole.

2. Type of hearing and powers of the sub-committee

2.1 The sub-committee is required to determine the application by taking such of the steps set out below (if any) as it considers necessary for the promotion of the licensing objectives.

2.2 In making their determination the sub-committee must have regard to the Licensing Act 2003, the licensing objectives, guidance issued by the Secretary of State and Merton's Licensing Policy.

2.3 New premises licence: s18

(i) To grant the licence subject to conditions

(ii) To exclude from the scope of the licence any of the licensable activities to which the application relates

(iii) To refuse to specify a person in the license as the premises supervisor

(iv) To reject the application

3. Hearing papers

3.1 The applications, notices and representations for determination by the sub-committee are contained in the hearing bundle (attached) together with any relevant existing licence. This includes any documents which must be sent to any of the parties to the hearing under Regulation 7(2) and Schedule 3 of The Licensing Act 2003 (Hearings) Regulations 2005. This bundle has been issued to all parties to the hearing and forms part of this report.

4. Legal advice to the sub-committee

4.1 A legal officer appointed by the Head of Civic and Legal Services will attend the hearing to advise the sub-committee on statutory provision and legal matters.

5. Licensing Officer Comments

5.1 This matter arises from an application for a new premises license.

5.2 The sale by retail of alcohol (for consumption off the premises) is the sole regulated activity applied for.

5.3 The hours applied for are as follows:

Hours for Regulated Activities

Sunday to Thursday: 12:00 to 23:00

Friday & Saturday: 12:00 to 00:00

Opening Hours

Sunday to Thursday: 09:00 to 23:00

Friday & Saturday: 09:00 to 00:00

5.4 One representation has been received from the Metropolitan Police.

5.5 The following responsible authorities have replied to this application but not made a representation: Health and Safety, the London Fire Brigade, Environmental health, the Merton Safeguarding Children Board.

For enquiries about this hearing please contact

Democratic Services

Civic Centre

London Road

Morden

SM4 5DX

Telephone: 020 8545 3616

Email: democratic.services@merton.gov.uk

Parties to the hearing

This document forms part of the notice of hearing.

The following are parties to the hearing having submitted relevant applications, notices or representations under the statutory provisions indicated:

Applicant:	
KC Stores Ltd	
Statutory Authorities	
Metropolitan Police	
Premises license holder	
Kylezoltan Tverdon	

Rights of parties to the hearing

This document forms part of the Notice of Hearing.

The hearing will be conducted by a three member sub-committee of Merton's Licensing Committee.

You have the right to attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified. You should notify us if you wish to be represented or assisted in this way on the accompanying response form.

You may also request that other persons be permitted to appear at the hearing to assist the sub-committee on particular points relating to the matter under consideration. You should notify us of any persons you wish to attend on the accompanying response form.

At the hearing you are entitled to:

- a) respond to any points of clarification detailed in the Notice of Hearing;
- b) if given permission by the sub-committee hearing this matter, ask questions of other parties; and
- c) address the sub-committee.

If you do not attend the hearing the sub-committee may proceed in your absence or it may adjourn to another specified date and time. If the hearing proceeds in your absence any application, notice or representation you have made will be considered by the sub-committee. It would be helpful if you could notify us as soon as possible if you are not going to attend the hearing.

Please complete and return the accompanying response form by the response date shown on the Notice of Hearing. Alternatively you can send an email to democratic.services@merton.gov.uk with the relevant information.

A copy of the procedure to be followed at the hearing is attached.

A guide to licensing hearings in Merton is attached

Procedure to be followed at the hearing

This document forms part of the notice of hearing

Regulations referred to in this procedure are reproduced under Note ⁽³⁾ at the end of the procedure

1. Declarations of interest.
2. Welcome by Chair of the licensing sub-committee and outline of the order of proceedings.
3. The Chair will advise parties⁽¹⁾ that the proceedings are being recorded.
4. The papers before the sub-committee comprise this Notice of Hearing and any applications, notices or representations and include:
 - The application
 - Representations and notices
 - List of parties to the hearing.
5. Points which the authority has raised in the Notice of Hearing as points on which it will be seeking clarification
6. Comments of Licensing officers on any factual or technical aspects of the application, notices or representations
7. Any other relevant matters and requirements
8. The Chair will ask parties if they are satisfied with the accuracy of the papers issued and the sub-committee will resolve any issues on this point.
9. The Chair will ask officers and parties if there are any other procedural points to deal with and these will be resolved before proceeding.
10. The Licensing officer will advise the hearing if any representations or notices have been withdrawn since the issue of the Notice of Hearing.
11. The Chair will advise parties that if they introduce new documentary or other information in support of their application, notice or representation the consent of other parties to the consideration by the sub-committee of such information will be sought.
12. The sub-committee will consider, under regulation 22, requests from parties made under Regulation 8(2) for other persons to be permitted to appear before the hearing.
13. The sub-committee will determine the order in which parties (other than the applicant) will be heard and so advise those present.
14. The Chair will advise the parties that they have no rights to question persons appearing under the provisions of regulations 8(2) and 22 and that their right to question other parties can only be exercised with the permission of the sub-committee. The Chair will also advise the parties that under regulation 23 cross-examination is not allowed unless the sub-committee feels that this is required for it to consider the matters before it. If parties wish to put questions to other parties or persons appearing under the provisions of regulations 8(2) or 22 they should seek the permission of the sub-committee and direct such questioning via the chair.

15. Applicant
 - i) The applicant will be asked if there is anything they wish to add to or clarify about their application
 - ii) The applicant will address the points for clarification raised by the authority in the Notice of Hearing
 - iii) Persons appearing under regulations 8(2) and 22 as notified by the applicant will address the hearing
 - iv) If the sub-committee considers it necessary it may allow other parties to put questions to the applicant and persons appearing under the provisions of regulations 8(2) and 22 notified by the applicant who have addressed the hearing
 - v) The sub-committee members will put any questions to the applicant and persons appearing under the provisions of regulations 8(2) and 22 notified by the applicant who have addressed the hearing
 - vi) The applicant will be asked if they have any further points arising from points raised in questioning
16. Other parties⁽²⁾
 - i) The party (party A) will be asked if there is anything they wish to add to or clarify about their representation or notice
 - ii) Party A will address the points for clarification raised by the authority in the Notice of Hearing
 - iii) Persons appearing under regulations 8(2) and 22 as notified by the Party A to address the hearing
 - iv) If the sub-committee considers it necessary it may allow the applicant to put questions to Party A and persons appearing under the provisions of regulations 8(2) and 22 notified by Party A who have addressed the hearing
 - v) If the sub-committee considers it necessary it may allow other parties to put questions to Party A and persons appearing under the provisions of regulations 8(2) and 22 notified by Party A who have addressed the hearing
 - vi) The sub-committee members will put any questions to Party A and persons appearing under the provisions of regulations 8(2) and 22 notified by Party A who have addressed the hearing
 - vii) Party A will be asked if they have any further points arising from points raised in questioning
17. Repeat above stage for each subsequent party.
18. Licensing officer to be asked if they have any comments
19. Other parties close by summarising their points.
20. Applicant closes by summarising their points.
21. The Chair will then ask the sub-committee's licensing and legal adviser if there are any further matters to be considered prior to a determination being made. If there are such other matters they will then be disposed of as appropriate.

22. If the sub-committee is not going to determine the application at the conclusion of the hearing it will so advise those present and inform them of the date and time that their determination will be made in public. Determinations must be made in accordance with the provisions of regulation 26.
23. If the sub-committee feels that it needs to go into private session to discuss any issues with its legal adviser it will advise those present that it will resume in public session at the conclusion of any such discussion when the advice it has received from its legal adviser will be read into the public record of the meeting.
24. At the conclusion of any private session the sub-committee will return to public session and the legal adviser will inform the hearing of any advice given in private session.
25. In cases where the sub-committee is not going to make its determination at the conclusion of the hearing it will then adjourn the meeting to a specified date and time. In all other cases it will discuss and determine the matter before it.
26. The Chair will advise parties to the hearing that they will be notified in writing of the determination, thank the parties for their attendance and close the meeting.

Where this procedure is silent the sub-committee may make such arrangements as necessary to ensure the rights of parties to hearings and for the proper discharge of its duties under the Licensing Act 2003 and any guidance or regulations issued by the Secretary of State.

Notes

¹ Regulation 15 allows parties to be represented or assisted at the hearing by any person whether or not that person is legally qualified. Any reference to a party in this order of procedure should be taken to include a reference to a person assisting or representing a party.

² Similar objections will be grouped together as far as possible and a common spokesperson sought. The regulations treat each objector as a party in their own right. If they do not agree to being grouped they will be treated as an individual party.

³Extracts from the regulations:

- 8.(1) A party shall give to the authority within the period of time provided for in the following provisions of this regulation a notice stating:
 - (a) whether he intends to attend or be represented at the hearing;
 - (b) whether he considers a hearing to be unnecessary.
8. (2) In a case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice referred to in paragraph (1) shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, representations or notice of the party making the request.
22. At the beginning of the hearing, the authority shall explain to the parties the procedure which it proposes to follow at the hearing and shall consider any request made by a party under regulation 8(2) for permission for another person to appear at the hearing, such permission shall not be unreasonably withheld.

23. A hearing shall take the form of a discussion led by the authority and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

26.(1) In the case of a hearing under:

(c) section 105(2)(a) (counter notice following police objection to temporary event notice),

(d) section 167(5)(a) (review of premises licence following closure order),
the authority must make its determination at the conclusion of the hearing.

26.(2) In any other case the authority must make its determination within the period of five working days beginning with the day or the last day on which the hearing was held.

London Borough of Merton



**LICENSING COMMITTEE HEARINGS
A BRIEF GUIDE**

Merton Civic & Legal Services
October 2005

Introduction

The following pages of this booklet contain guidance on hearings of Licensing Applications by the Council's Licensing Sub-Committee. It is a guide only and not a statement of the law.

The law is to be found in:

- 1 Licensing Act 2003
- 2 The Licensing Act 2003 (Hearings) Regulations 2005
- 3 Guidance issued under Section 182 of the Licensing Act 2003.

Notice of Hearing

This booklet normally accompanies a "Notice of Hearing" as we are required by law to give you certain information with the Notice of Hearing.

Timing of Hearing

On arrival you may find that you may have to wait until the committee can deal with the application you are interested in. This is because the committee may have to deal with other applications on the same day. The committee is called to sit at the published time. There are different applications or items on the committee agenda. The committee may take the items in the order that is most efficient for managing that day's applications. You should therefore ensure that you are there in time for the beginning of the committee meeting as published.

The committee meeting is a public meeting. You are therefore entitled to remain in the committee room when other applications are being dealt with. If you remain you will see other parties participating in the hearing. Unless it is a hearing that you are interested in, you may not participate although you may feel that you can contribute in that application as well. You can only participate in the hearing if you are a "party".

The Licensing Sub-Committee

Licensing Hearings take place before a licensing sub-committee of the Council. There are three members of the sub-committee, a chairperson and two others. Also sitting with the Committee (but not part of the committee) will be the committee clerk and a Legal officer who advises the committee on legal issues. Only these two and any trainees are allowed to adjourn with the committee.

Various persons may also be in the committee room in an official capacity. Where the police have submitted representations they will be in the room as a party. They are not part of the committee. Where the Council's Environmental Health service have submitted representations they will be in the room but as a party not as part of the committee. Finally an officer from the Council's Children, Schools and Families Department may be present. They will not be part of the committee either.

A Licensing officer is usually present. The Licensing officer would have received the application and processed it to ensure that fees have been paid and that it was properly advertised. The Licensing officer is also the officer that receives representations and decides if they are in order. The Licensing officer may be asked to speak at the committee. The Licensing officer is not part of the committee and will not retire with the committee.

Attending a Licensing Hearing

Your Rights as a “Party”

You have the right:

- To attend the hearing
- To be assisted or represented by any person (whether or not the person is legally qualified)
- To address the sub-committee
- To question any party to the hearing (with the permission of the sub-committee)
- To give clarification of any issue on which advance notice of the need for clarification has been given
- To bring a witness or witnesses.

Attending the Hearing (Parties)

You do not have to attend the hearing. Where in response to the Notice of Hearing you have informed us that you do not intend to attend the hearing, then the hearing may proceed in your absence.

Where in response to the notice of hearing you say nothing about attending and you do not attend or are not represented the committee may do one of the following:

- hold the hearing in your absence
- adjourn the hearing to a specified date but only where the committee consider it to be in the public interest.

Procedure to be followed at the Hearing

The hearing will take place in public. This means that anyone whether or not they are parties to the hearing are entitled to be at the meeting and to hear all the information. The committee is allowed to exclude the public from all or part of a hearing. This will be where the committee considers that the public interest in excluding the public outweighs the public interest in the hearing taking part in public. If you believe that this exception to public hearing applies to you, you may ask the committee to consider exercising this power.

The committee will explain the procedure but a written version is included with the Notice of Hearing. Unless required by law to do it differently the committee is allowed to devise its own procedures.

The Hearing as a Discussion

The hearing is intended to be a discussion between the committee and all the parties. In order to make it an orderly discussion some element of formality exists. Consequently there will be an order in which the hearing will follow. The committee Chair will explain the order.

During the hearing the procedure is controlled by the Chair. Whilst the Chair will ensure that parties observe the procedure he or she may have to be firm in moving the hearing on to ensure that it proceeds at a pace that enables it to be dealt with within the time allocated. In particular the Chair may have to be strict in respect of ensuring that questions to witnesses keep to the issues. The committee may also put reasonable time limits on submissions.

When an application is received by us a number of persons are allowed to make “representations”. This includes residents, the police, the Environmental Health service and the Local Safeguarding Children Board. Those who have made representations are called “parties”.

The Law allows the applicant (the person applying for the licence) to have discussions with any of these parties before the hearing – this can lead to an agreed way of dealing with concerns relevant to the parties. (For instance, if Environmental Health is concerned about noise the applicant may offer to fit a noise limiter).

When you attend the hearing you may therefore find that some representations have been withdrawn. Where representations are withdrawn this will usually be because the person making the representations has been given satisfaction about how their concerns will be dealt with. For instance the Local Safeguarding Children Board may have concerns about the welfare of children. The applicant may then agree to accept a condition to the licence dealing with this concern and this may lead to a withdrawal of that representation.

The first thing that the committee will do is to find out what representations have been withdrawn so that the committee only concentrates on outstanding issues.

You must remember that as far as the law is concerned the applicant is entitled to do what they want with their business from a licensing point of view unless their business will offend against the four “licensing objectives” of:

- Prevention of Public Nuisance
- Prevention of Crime and Disorder
- Protection of Children from Harm
- Promotion of Public Safety

Although these objectives are intended for the benefits of residents and businesses, various statutory bodies are given responsibility for those objectives and it is expected that they will make representations if those objectives are under threat. These statutory bodies are called “Responsible Authorities”.

The Responsible Authorities are as follows:

- The Chief Officer of Police
- The Local Fire Authority
- The Local Enforcement Agency for Health & Safety At Work Act 1974
- The Local Authority with Responsibility for Environmental Health
- The Local Planning Authority
- Another Licensing Authority
- A body representing those interested in the protection of children and recognised by the council (Local Safeguarding Children Board).

The guidance issued by central government advises that as a matter of practice the committee should seek to focus the hearing on the steps needed to promote the licensing objective which gave rise to the hearing. If your representations or application does not show how these four licensing objectives are affected, promoted or effected, then it is not likely to persuade the committee.

The hearing will probably be in two distinct parts. The first part is where the application and representations are made. The first part ends when the committee retires to consider the evidence.

The second part of the hearing is when the committee returns. The main purpose of the second part is to allow the parties to be told what legal advice (if any) has been received during the deliberations in private. The committee will then announce their decision.

This is then the end of the hearing. The decision will be communicated to the parties in writing.

The committee will then move on to consider the next application (if any).

Appeal

There is a right of appeal to the Magistrates Court. You need to take legal advice on which Magistrates Court to go to. The appeal has to be lodged with the Magistrates Court within a period of 21 days beginning on the day you were notified by the Council of the decision appealed against.

Conclusion

This is necessarily a brief guide. It is not a Statement of Law. For this you will need to take legal advice.

Contacts

- (i) Licensing team:
 - email: licensing@merton.gov.uk
 - Tel: 020 8545 4005/3929
- (ii) Meeting arrangements - Democratic Services:
 - email: democratic.services@merton.gov.uk
 - Tel: 020 8545 3616
- (iii) All press contacts - Merton's Press office:
 - email: press@merton.gov.uk
 - Tel: 020 8545 3181
- (iv) London Borough of Merton:
 - Address: Civic Centre, London Road, Morden, SM4 5DX
 - Tel: 020 8274 4901

Useful links

- Merton Council's Web site: <http://www.merton.gov.uk>
- Licensing Act 2003
<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>
- Guidance issued by the secretary of State for Culture Media and Sport
http://www.culture.gov.uk/Reference_library/Publications/archive_2004/guidance_issued_under_section_182_of_the_licensing_act_2003.htm
- Regulations issued by the Secretary of State for Culture, Media and Sport
http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/lic_act_reg.htm
- Merton's Statement of Licensing policy
<http://www.merton.gov.uk/licensing/>
- Readers should note the terms of the legal information (disclaimer) regarding information on Merton Council's and third party linked websites.
- <http://www.merton.gov.uk/legal.htm>
- This disclaimer also applies to any links provided here.

WK/201402059

Application for a premises licence to be granted under the Licensing Act 2003



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We KC STORES LTD

(Insert name(s) of applicant)

apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003

Part 1 - Premises Details

Postal address of premises or, if none, ordnance survey map reference or description
115 MERTON ROAD
WIMBLEDON
Post town LONDON Postcode SW19 1ED
Telephone number at premises (if any) 0208 543 2510
Non-domestic rateable value of premises £ 4500

Part 2 - Applicant Details

Please state whether you are applying for a premises licence as

Please tick as appropriate

- a) an individual or individuals * [] please complete section (A)
b) a person other than an individual *
i. as a limited company [x] please complete section (B)
ii. as a partnership [] please complete section (B)
iii. as an unincorporated association or [] please complete section (B)
iv. other (for example a statutory corporation) [] please complete section (B)
c) a recognised club [] please complete section (B)
d) a charity [] please complete section (B)
e) the proprietor of an educational establishment [] please complete section (B)
f) a health service body [] please complete section (B)

- g) a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales please complete section (B)
- ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England please complete section (B)
- h) the chief officer of police of a police force in England and Wales please complete section (B)

* If you are applying as a person described in (a) or (b) please confirm:

Please tick yes

I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or

I am making the application pursuant to a

statutory function or

a function discharged by virtue of Her Majesty's prerogative

(A) INDIVIDUAL APPLICANTS (fill in as applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
I am 18 years old or over				<input type="checkbox"/>	Please tick yes
Current postal address if different from premises address					
Post town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					

SECOND INDIVIDUAL APPLICANT (if applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
I am 18 years old or over				<input type="checkbox"/> Please tick yes	
Current postal address if different from premises address					
Post town		Postcode			
Daytime contact telephone number					
E-mail address (optional)					

(B) OTHER APPLICANTS

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name	KC STORES LTD	
Address	115 MERTON ROAD WIMBLEDON LONDON SW19 1ED	-(This is the registered address of the company, the same as the address of the premises)
Registered number (where applicable)	8697264	
Description of applicant (for example, partnership, company, unincorporated association etc.)	LIMITED COMPANY	
Telephone number (if any)	0208 543 2510	
E-mail address (optional)	kcstores@hotmail.co.uk	

Part 3 Operating Schedule

When do you want the premises licence to start?

DD	MM	YYYY
08	07	2014

If you wish the licence to be valid only for a limited period, when do you want it to end?

DD	MM	YYYY

Please give a general description of the premises (please read guidance note 1)

SMALL OFF LICENCE TYPE STORE SITUATED ON THE CORNER OF MERTON ROAD AND THE BROADWAY IN BETWEEN WIMBLEDON TOWN CENTER AND SOUTH WIMBLEDON TUBE STATION

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

What licensable activities do you intend to carry on from the premises?

(Please see sections 1 and 14 of the Licensing Act 2003 and Schedules 1 and 2 to the Licensing Act 2003)

- | Provision of regulated entertainment | Please tick any that apply |
|---|-------------------------------------|
| a) plays (if ticking yes, fill in box A) | <input type="checkbox"/> |
| b) films (if ticking yes, fill in box B) | <input type="checkbox"/> |
| c) indoor sporting events (if ticking yes, fill in box C) | <input type="checkbox"/> |
| d) boxing or wrestling entertainment (if ticking yes, fill in box D) | <input type="checkbox"/> |
| e) live music (if ticking yes, fill in box E) | <input type="checkbox"/> |
| f) recorded music (if ticking yes, fill in box F) | <input type="checkbox"/> |
| g) performances of dance (if ticking yes, fill in box G) | <input type="checkbox"/> |
| h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H) | <input type="checkbox"/> |
| Provision of late night refreshment (if ticking yes, fill in box I) | <input type="checkbox"/> |
| Supply of alcohol (if ticking yes, fill in box J) | <input checked="" type="checkbox"/> |

In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 6)			<u>Will the performance of a play take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>			
				Outdoors	<input type="checkbox"/>			
				Both	<input type="checkbox"/>			
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)					
Mon								
Tue								
Wed						<u>State any seasonal variations for performing plays</u> (please read guidance note 4)		
Thur								
Fri						<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat								
Sun								

B

Films Standard days and timings (please read guidance note 6)			<u>Will the exhibition of films take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>			
				Outdoors	<input type="checkbox"/>			
				Both	<input type="checkbox"/>			
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)					
Mon								
Tue								
Wed						<u>State any seasonal variations for the exhibition of films</u> (please read guidance note 4)		
Thur								
Fri						<u>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat								
Sun								

C

Indoor sporting events Standard days and timings (please read guidance note 6)			<u>Please give further details</u> (please read guidance note 3)
Day	Start	Finish	
Mon			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 4)
Tue			
Wed			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 5)
Thur			
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 6)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	
Day	Start	Finish	Indoors	<input type="checkbox"/>
Mon			Outdoors	<input type="checkbox"/>
Tue			Both	<input type="checkbox"/>
Wed			<u>Please give further details here</u> (please read guidance note 3)	
Thur			<u>State any seasonal variations for boxing or wrestling entertainment</u> (please read guidance note 4)	
Fri			<u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</u> (please read guidance note 5)	
Sat				
Sun				

E

Live music Standard days and timings (please read guidance note 6)			Will the performance of live music take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>			
				Outdoors	<input type="checkbox"/>			
				Both	<input type="checkbox"/>			
Day	Start	Finish	Please give further details here (please read guidance note 3)					
Mon								
Tue								
Wed						State any seasonal variations for the performance of live music (please read guidance note 4)		
Thur								
Fri						Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sat								
Sun								

F

Recorded music Standard days and timings (please read guidance note 6)			Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>			
				Outdoors	<input type="checkbox"/>			
				Both	<input type="checkbox"/>			
Day	Start	Finish	Please give further details here (please read guidance note 3)					
Mon								
Tue								
Wed						State any seasonal variations for the playing of recorded music (please read guidance note 4)		
Thur								
Fri						Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sat								
Sun								

G

Performances of dance Standard days and timings (please read guidance note 6)			<u>Will the performance of dance take place indoors or outdoors or both – please tick</u> (please read guidance note 2)		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)			
Mon						
Tue			<u>State any seasonal variations for the performance of dance</u> (please read guidance note 4)			
Wed						
Thur			<u>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</u> (please read guidance note 5)			
Fri						
Sat						
Sun						

H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 6)			Please give a description of the type of entertainment you will be providing			
Day	Start	Finish	<u>Will this entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 2)		Indoors	<input type="checkbox"/>
Mon					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Tue			<u>Please give further details here</u> (please read guidance note 3)			
Wed						
Thur			<u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 4)			
Fri						
Sat			<u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u> (please read guidance note 5)			
Sun						

I

Late night refreshment Standard days and timings (please read guidance note 6)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
Day	Start	Finish	Both <input type="checkbox"/>		
Mon			<u>Please give further details here</u> (please read guidance note 3)		
Tue					
Wed			<u>State any seasonal variations for the provision of late night refreshment</u> (please read guidance note 4)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat					
Sun					

J

Supply of alcohol Standard days and timings (please read guidance note 6)			<u>Will the supply of alcohol be for consumption – please tick</u> (please read guidance note 7)	On the premises	<input type="checkbox"/>
				Off the premises	<input checked="" type="checkbox"/>
Day	Start	Finish	Both <input type="checkbox"/>		
Mon	12:00	23:00	<u>State any seasonal variations for the supply of alcohol</u> (please read guidance note 4)		
Tue	12:00	23:00			
Wed	12:00	23:00			
Thur	12:00	23:00	<u>Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Fri	12:00	24:00			
Sat	12:00	24:00			
Sun	12:00	23:00			

State the name and details of the individual whom you wish to specify on the licence as designated premises supervisor:

Name	KYLE ZOLTAN TVERDON
Address	174 QUEENS ROAD WIMBLEDON LONDON
Postcode	SW19 6LX
Personal licence number (if known)	LN 2014 3019
Issuing licensing authority (if known)	ENVIRONMENTAL HEALTH, TRADING STANDARDS LICENSING, MERTON COUNCIL - LONDON BOROUGH OF MERTON

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 8).

L

Hours premises are open to the public Standard days and timings (please read guidance note 6)			State any seasonal variations (please read guidance note 4)
Day	Start	Finish	
Mon	04:00	23:00	Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 5)
Tue	09:00	23:00	
Wed	09:00	23:00	
Thur	09:00	23:00	
Fri	09:00	24:00	
Sat	09:00	24:00	
Sun	10:00	23:00	

M Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 9)

We will ensure we fully promote all four licensing objectives through the steps outlined below, furthermore these steps will be monitored and reviewed to ensure their effectiveness.

b) The prevention of crime and disorder

The type of operation at these premises is designed to minimise the risk of crime + disorder. We will achieve this by having CCTV on the premises and retaining footage for a minimum of 31 days. We will operate a challenge 21 policy as a minimum to ensure that liquor is only ever sold to those of a lawful age - if a customer appears under 21 we would ask them to prove they are of a lawful age of 18 or over. All staff will be aware of the licensing objectives and company policy - this will ensure full compliance with the law.

c) Public safety

The premises is to comply with all Health + Safety legislation + current legal requirements, we will ensure adequate lighting is in place and in the unlikely case we were to become over crowded ask people to leave safely + securely.

d) The prevention of public nuisance

These premises are proposed to be licensed for consumption of liquor off the premises only, there will be no entertainment or consumption on the premises. We would ensure that no persons thought to be intoxicated would be sold liquor - all staff made aware through training. We would welcome communication with any local persons in relation to any issues which arise concerning the operation of these premises. Also fridges where beer/sides is kept would be locked. Outside of the hours we are allowed to sell it.

e) The protection of children from harm

We will operate a challenge 21 policy whereby any person thought to be under 21 will have to prove they are over 18, for the purpose of sale of alcohol. We would only accept the following IDs: Ten year passport, photocard driving licence, PASS loan proof of age card. The company will operate a due diligence policy with the challenge 21, training for staff + a refusal log book. The store will have a fully recordable CCTV system. We will also refuse to sell to anyone we suspect of buying for under 18's. The store will have prominent signage confirming the minimum age to purchase alcohol.

Checklist:


Please tick to indicate agreement

- I have made or enclosed payment of the fee.
- I have enclosed the plan of the premises.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable.
- I understand that I must now advertise my application.
- I understand that if I do not comply with the above requirements my application will be rejected.

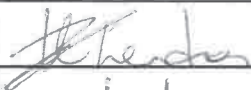
IT IS AN OFFENCE, LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION.

Part 4 – Signatures (please read guidance note 10)

Signature of applicant or applicant’s solicitor or other duly authorised agent (see guidance note 11).
If signing on behalf of the applicant, please state in what capacity.

Signature	
Date	10/6/14
Capacity	DIRECTOR OF KC STORES LTD

For joint applications, signature of 2nd applicant or 2nd applicant’s solicitor or other authorised agent (please read guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	10/6/14
Capacity	DIRECTOR OF KC STORES LTD

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 13)			
Post town		Postcode	
Telephone number (if any)			
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)			

SCHEDULE 11
PART A

London Borough of Merton
Merton Civic Centre, London Road, Morden SM4 5DX



Consent of individual to being specified as premises supervisor

I KYLE ZOLTAN TVERDON.....of
[full name of prospective premises supervisor]
174 QUEENS ROAD, WIMBLEDON, LONDON
[home address of prospective premises supervisor]
SW19 8LX

hereby confirm that I give my consent to be specified as the designated premises supervisor in
relation to the application for SUPPLY OF ALCOHOL BY RETAIL
[type of application]
by KC STORES LTD
[name of applicant]
relating to a premises licencefor
[number of existing licence, if any]
[name and address of premises to which the application relates]

and any premises licence to be granted or varied in respect of this application made by
KC STORES LTD
[name of applicant]
concerning the supply of alcohol at KC STORES, 115 MERTON ROAD
[name and address of premises to which application relates]
WIMBLEDON, LONDON, SW19 1ED

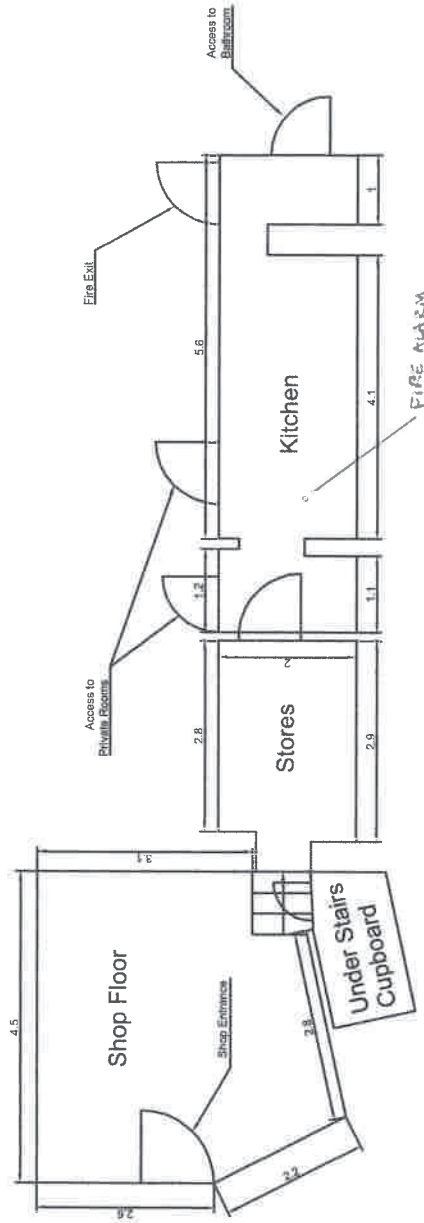
I also confirm that I am applying for, intend to apply for, currently hold a personal licence,
details of which I set out below. Personal licence number LN 2014 3019
[insert personal licence number, if any]
Personal licence issuing authority ENVIRONMENTAL HEALTH, TRADING
[insert name and address and telephone number of personal licence issuing authority, if any]
STANDARDS AND LICENSING, LONDON BOROUGH OF MERTON,
MERTON CIVIC CENTRE MORDEN, SURREY, SM4 5DX 0208 5453969

Signed [Signature]
Name KYLE ZOLTAN TVERDON
[please print]
Dated 10/6/14

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Indicative Only



Merton Road (A219)

KC Stores Ltd

Floor Plan

Scale 1:100 at A4

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The Licensing Department
London Borough of Merton
Civic Centre
London Road
Morden
SM4 5DX

VW - Merton Borough
VW - Wimbledon Police Station

Wimbledon Police Station
15-23 Queens Road
London
SW19 8NN

Telephone: 07795665925
Facsimile:
Email:
Peter.Sparham@met.pnn.police.uk
www.met.police.uk

Your ref:
Our ref:
7th July 2014

Dear Sir

Re:- Application for a Premises Licence under the Licensing Act 2003 - KC Stores, 115 Merton Road, Wimbledon. SW19 1ED

On 11th June 2014 an application was received from KC Stores Ltd for a premises licence under the Licensing Act 2003. The application seeks the following:-

Supply of Alcohol	Sunday to Thursday 1200-2300 Friday/Saturday 1200-0000
Hours premises open to the public	Sunday to Thursday 0900-2300 Friday/Saturday 0900-0000

Police wish to make representations to this application on two of the four licensing objectives namely:-

**The Prevention of Crime and Disorder
Public Nuisance**

This premise is a very small convenience store situated on the edge of the Cumulative Impact Zone (CIZ) which governs the Wimbledon Broadway area.

Section 7.8 of the London Borough of Merton Licensing Policy states the following :-

The Council considers that it is appropriate and necessary to continue a special policy within the designated cumulative impact zones. Where relevant representations have been received the policy will affect applications for new premises' licences or club premises' certificates or variations of existing licences or certificates. It will be for the applicants to show in their operating schedules that their proposals will not add to the cumulative impact already being experienced. Responsible authorities and/or interested parties will need to see the steps proposed by an applicant in order to decide whether to submit representations. The presumption will be that where proposed operations are material to the policy they will normally be refused, however, the process allows applicants to rebut the presumption in their applications, and to make the case

before a licensing sub-committee. Where an application is material to the special policy the burden of proof lies on the applicant to rebut the presumption.

This application fails to address the Merton Licensing Policy.

Wimbledon Town Centre has the highest concentration of retail outlets and licensed premises in Merton Borough as such it is and is likely to remain a “hot spot” in terms of Crime and Disorder. The addition of another licensed premise particularly in this location is likely to add to these problems unless appropriate precautions are put in place.

Conclusion

These premises are untested, although under previous ownership held a premises licence which was revoked by the Licensing Sub-Committee from the London Borough of Merton. A number of options are therefore suggested as follows:-

1. Refuse the application

If the licence is granted a number of conditions are suggested:-

2. 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 authorized officer throughout the preceding 31 day period. The CCTV system should be updated and maintained according to police recommendations.

3. 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 premise is open to the public. This staff member must be able to show a Police or authorized council officer recent data or footage with the absolute minimum of delay when requested.

4. No super-strength beer, lagers or ciders of 5.5% ABV (alcohol by volume) or above shall be sold at the premises.

5. 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).

6. 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 officer of the Council at all times whilst the premise is open.

7. 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.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'PS10/r', written over a horizontal line.

Peter Sparham

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 1st 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

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 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.