

LICENSING SUB-COMMITTEE

22 JANUARY 2015

(10.30 - 11.30)

PRESENT: Councillor Pauline Cowper, Councillor John Sargeant and
Councillor Linda Taylor (in the Chair)

Also present:

Guy Bishop; Legal Advisor

Elizabeth Macdonald, Licensing Officer

Hilary Gullen, Democratic Services Officer

Mr V Senthoooran, Applicant

Sgt Peter Sparham, Metropolitan Police

1 APPOINTMENT OF CHAIR (Agenda Item 1)

Councillor Linda Taylor was appointed Chair.

2 DECLARATIONS OF INTEREST (Agenda Item 2)

None.

3 GROVE MINI MART (Agenda Item 3)

The Agenda paperwork and statutory notices were agreed as satisfactory and compliant. The Parties had not reached a resolution prior to hearing.

Applicant made his application, detailing hours of opening and steps to be taken to ensure compliance with the licensing objectives (as set out on page 27 of the agenda pack).

Questions were raised and a discussion took place about the reasoning behind the opening hours starting so early, how many staff would be involved and concerns regarding noise from the shutters, litter in front of the shop and in the alleyway. The applicant stated that night shift workers liked to be able to buy alcohol early to have a drink before going to bed sometimes after breakfast, and that elderly customers would like to buy alcohol with their morning paper to save a second journey. The applicant offered to place a bin at the front of the shop and to clean up the frontage regularly and to use quieter possibly, electric operated shutters.

Sgt Sparham provided the Metropolitan Police objection to the Application, explaining that the hours were over and above the appropriate opening hours in this small parade of shops, and that the later closing time would result in discord in the parade of shops or with residents. The premises were on a main road near residential houses. The Police submitted that the applicant had failed to address the issue of crime and disorder, and suggested that the Committee impose a number of conditions. Principle Police concerns were that the premises were untested, there

were particular concerns regarding anti-social behaviour, that no single cans should be sold nor alcohol above 5.5% ABV, that hazardous drinking should be discouraged.

In response to Committee members' questions, Sgt Sparham said there had been 60 incidents recorded in the postcode area over the last year, when he looked at the papers at the time of issue of the application. Sgt Sparham also confirmed that there had only been one incident reported in this parade of shops over the last year.. In response to the Legal Advisor's question, Sgt Sparham said there had been no street drinking reported in the parade of shops.

The Licensing Officer reminded the panel of the difference between shop opening hours and licensable activity hours, and that they needed specifying separately.

The hearing went into closed session 11am. At 11.25 the panel returned to give their decision. The Licensing Sub-Committee decided to grant the application, reducing the hours for the licensable activity of retail sale of alcohol (9am and 10pm only), permitting opening hours of 5.30am – 00.00am, subject to the seven Metropolitan Police conditions and a condition on litter control.

The Licensing Sub-Committee also imposed two recommendations:

- That the applicant co-ordinate with shop keepers in the parade to keep the parade and alleyway clear of litter, which would generate goodwill in the local community.
- That 'quiet' electric or manual shutters be installed that do not disturb local residents.

The Legal Advisor gave advice to the panel in closed session on making sure their decision was appropriate and proportionate.

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 28th January 2015

Subject: Grove Mini-Mart, 372 Grove Road, Mitcham, CR4 1AB

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.hms.o.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 Verasingam Senthooan for Grove Mini Mart, 372 Grove Road, Mitcham, CR4 1AB for a new premises licence permitting the retail sale of alcohol (off sales only) from 5.30am to 00.00 midnight Mondays to Sundays for Grove Mini Mart, 372 Grove Road, Mitcham, CR4 1AB. The proposed Opening Hours were also from 5.30am to 00.00 midnight Mondays to Sundays.

The Licensing Sub-Committee decided to grant the Premises Licence but amended the hours for the sale of alcohol to be from 09.00am to 22.00pm Mondays to Sundays, with opening hours from 5.30am to 00.00 midnight subject to the following seven Metropolitan Police conditions and an additional condition as detailed below:

Police Conditions

- 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 items 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 authorised officer throughout the preceding 31 day period. The CCTV system should be updated and maintained according to police recommendations.
- 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 authorised council officer recent data or footage with the absolute minimum of delay when requested.
- No super-strength beer, larger or ciders of 5.5% ABV (alcohol by volume) or above shall be sold at the premises.
- No single cans of beer or cider shall be sold.
- 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 or holographically marked PASS scheme identification cards.
- 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 at the Council at all times whilst the premise is open.
- 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

Imposed Condition

8. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.

The Licensing Sub-Committee also made two recommendations:

- That the applicant co-ordinates with shop keepers in the parade to keep the parade and alleyway clear, which would help good relationships with the local residents. The use of a bin had been adopted by the Applicant so far, and it was suggested that a litter 'pick' or clean up take place during the day and at the end of the day..
- That 'quiet' use of or electric shutters be installed to avoid noise waking residents on opening at 5.30am.

Reasons

The Licensing Sub Committee considered the relevant evidence made available to it and made the decision based on the requirements under the Licensing Act 2003, its Regulations, case law, and had regard to the Guidance under section 182 of the Licensing Act 2003 and Merton Council's Licensing Policy.

The Licensing Sub Committee acknowledged that the Metropolitan Police did not have direct evidence of street drinking in the area sharing the premises' postcode.

Residents complained of litter problems with the parade as the main issue and so the Licensing Sub Committee decided to impose a condition to deal with litter issues.

The Licensing Sub Committee decided that it was totally inappropriate to sell alcohol at 5.30am in this highly residential area and on the Police recommendation granted the Premises Licence with a 9am start. The Licensing Sub Committee decided that a closure time of 10pm for sale of alcohol was appropriate for the residential area local to the premises.

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.