

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 8 September 2016 (revised 17.11.16)

Subject: Co-op, 85 Ridgway, London, SW19 4ST

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 (March 2015). 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
SM4 5DX

Telephone: 020 8545 3616

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/>

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing/>

Annex A

Determination

That the application is granted for the following:

- Hours of opening: 07:00 to 22:00 Monday to Sunday
- Supply of alcohol: 07:00 to 21:00 Monday to Sunday

Subject to the following conditions, offered by the applicant:

1. All staff will be trained in law and their responsibility in selling, and written records shall be kept of all training and refresher training.
2. CCTV will be provided within the store.
3. A refusal log will be maintained.
4. A Challenge 25 policy will be adopted.

And the following conditions agreed with LB Merton's Public Health Team:

1. No super –strength beer, lager or ciders, or spirit mixtures of 6.5% abv, with the exception of premium products, independently brewed, shall be sold at the premises.
2. Drinkaware will be promoted through the business website, and drinking sensibly and appropriately will feature in marketing literature.
3. Any promotional material online or elsewhere will adhere to the Portman Group Code of Practice.
4. Refusals of alcohol sales shall be recorded in a log and made available for inspection by an authorised officer of the Council or Police when requested.
5. A proof of age policy such as Challenge 25 shall be operated at the premises whereby an individual suspected to be underage will be required to provide a recognised form of photographic identification.
6. The premises licence holder shall ensure that refresher training is provided at least every six months to new and existing staff on the law relating to underage sales.
7. The premises licence holder shall keep records of the training provided on the law relating to underage sales of alcohol. Training records shall be maintained for a minimum of two years and produced on request to an authorised officer of the Council or Police Officer.
8. No more than 15% of the sales area shall be used at any one time for the sale, exposure for sale or display of alcohol.
9. No single cans of beer, lager, cider or spirit mixtures shall be sold at the premises.
10. No miniature bottles of 20cl or below shall be sold at the premises.

Reasons

The Sub-Committee carefully considered the representations contained in the agenda papers and those submitted to it in the meeting.

The Sub-Committee had regard to Merton's Statement of Licensing Policy, and in particular to section 7 which deals with cumulative impact which applied to these premises as it was located within the Wimbledon Village Cumulative Impact Zone. The Sub-Committee noted paragraph 7.10 which outlines their duty to consider the circumstances of each application on its own individual merits.

In making their decision, the Sub-Committee took advice from the Legal Officer regarding the first instance decision in *Brewdog Bars Limited v Leeds City Council* (6 September 2012, unreported) and how an application for a new premises licence in a cumulative impact zone may be considered.

Legal advice was given to the Sub-Committee on the following case law: Thwaites (Evidence), Somerfield (Conditions), Blackwood (Planning) Hope and Glory (Appeals) and Ealing (Reasons for Decision).

First and foremost the Sub-Committee took note of the highly residential nature of this area, with a lot of families and children in the area, which they considered a special area in that sense. They were concerned about the potential for people in pubs or other licensed premises to be able to continue drinking later into the evening when residents were going to sleep, resulting in noise disturbance and crime and disorder.

The Sub-Committee were also mindful of the potential for cumulative impact from late night revellers from Wimbledon Village, as well as the potential for youths to repair to Wimbledon Common due to its proximity, with alcoholic drinks they may have purchased at the premises.

The Sub-Committee were concerned about the ability for late night sales to occur, inevitably resulting in cumulative impact.

The Sub-Committee were concerned about Wimbledon Village customers walking back from Wimbledon town, or the tube and the train station, buying more alcohol on the way home and thus stopping in this area, resulting in them continuing to drink at home or on the street.

The Sub-Committee noted the two schools in the vicinity.

The Sub-Committee noted the petition submitted.

On Appeal, further evidence was provided to the Licensing Sub-Committee as follows:

- Planning Permission operational hours were granted of 07.00 – 22.00.
- Licensing Officer documents showed that licensed premises on Ridgway with off licences closed at circa 23.00 whilst on licence premises closed later than 23.00;
- Documents submitted indicated that local shops had privately agreed to close at 21.00.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (June 2014).

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.