

London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 20<sup>th</sup> August 2014

**Subject:** Khanage Indian Restaurant, 108 Broadway, SW19 1RH

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.

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### **Useful documents:**

#### **Licensing Act 2003**

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

#### **Guidance issued by the Home Secretary**

<http://www.homeoffice.gov.uk/>

#### **Regulations issued by the Secretary of State for Culture, Media and Sport**

[http://www.culture.gov.uk/alcohol\\_and\\_entertainment/lic\\_act\\_reg.htm](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 determined that the application by Anwar Sheikh and Sonia Patel for a new Premises Licence for “Khanage Indian Restaurant” at 108 Broadway, SW19 1RH be granted with the following Licensable Activities, Hours and Conditions:

### Late Night Refreshment

23.00 – 00.00 Monday to Sunday

### Sale by Retail of Alcohol (On Sales Only)

12.00 – 00.00 Monday to Sunday

### Opening Hours

12.00 – 00.00 Monday to Sunday

The Premises Licence is subject to the following conditions (from the offered conditions page 22 – 24 in the agenda pack):

1. Alcohol sales will be ancillary to the service of food and will be restricted to wines and/or beers only. There will be no sale of alcohol without the purchase of a substantial meal and no vertical drinking on the premises.
2. A CCTV camera system shall be installed and maintained as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry and exit points will be covered enabling identification of persons entering in any light condition.
3. The licences shall ensure that the CCTV is maintained in working order to the satisfaction of the Police and Local Authority and be in operation when the premises is open to the public. CCTV recordings shall be retained for a minimum period of 31 days with date and time stamping. Records will be made immediately available on request by the Police or an authorised council officer.
4. A member of staff conversant with operation of the CCTV system will be on the premises at all times during the operating hours in order to provide Police or an authorised council officer with recent footage with a minimum of delay.
5. If the CCTV becomes inoperative, the Police and Local Authority will be informed as soon as practically possible and immediate steps will be taken to put the equipment back into action.
6. No customers carrying open or sealed bottles or glasses will be admitted to the premises at any time.
7. No customers will be permitted to take open containers of alcoholic or soft drinks from the premises.
8. The premises shall keep an incident book and record details of all instances of public disorder, to be made available to the Licensing Authority or police upon request.
9. Staff shall implement a dispersal policy outside the premises within the area under the

applicants' direct control.

10. The applicants shall conduct regular risk assessments on noise levels outside the premises.
11. Staff shall implement a litter clearing policy immediately outside the premises.
12. A suitable receptacle will be provided for cigarette litter directly outside the premises.
13. Notices shall be displayed reminding customers to keep noise levels to a minimum and to respect neighbours when leaving the premises.
14. A challenge 25 policy will be employed whereby those who appear to be under the age of 25 are attempting to purchase alcohol will be asked to provide identification. The only type of identification that will be accepted is a photo driving licence, passport, PASS (Proof of Age Standards Scheme) or accredited Military identification cards. Staff will be trained in this policy and records of training will be kept.
15. A refusals book, or similar record, shall be kept at the premises in which must be recorded the date and time and circumstances under which any attempted purchase by a young customer has been refused. This book, or other form of record, shall be made available for inspection by any police officer, community support officer, or authorised person upon demand.
16. Children under the age of 16 may be present in the restaurant with an accompanying adult but otherwise are not permitted beyond 19:00.

## 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 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 premises' style and characteristics.

The Licensing Sub-Committee considered whether this application will add to the cumulative impact of the number of licensed premises in this area. In view of the nature of the proposed operation and the enforceable conditions offered by the applicant, the Licensing Sub-committee did not believe this to be the case.

The Licensing Sub-Committee was satisfied that the presumption against refusal had been rebutted by the Applicant.

The Licensing Sub-Committee was satisfied that the conditions imposed were appropriate and proportionate to promote the licensing objectives in the Licensing Act 2003.



## **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.

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