

London Borough of Merton

Licensing Act 2003 Notice of Determination

Date of issue of this notice: 24 May 2024

Subject: Robert Fruit & Veg, 2 Upper Green East, CR4 2PA

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 2018). 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

Merton's Statement of Licensing policy

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

Annex A

Determination

The Licensing Authority received an application from Arumugathevan Nanthakumar for a new Premises Licence for the premises known as Robert Fruit & Veg, 2 Upper Green East, CR4 2PA

The applicant applied:

- to supply of alcohol for consumption off the premises, Monday to Sunday – 06:00 to 23:00.
- The opening hours are stated in the application as Monday to Sunday 06:00 to 23:00.

The Premises Licence was refused, as detailed below in this notice.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, the agenda papers and the oral evidence submitted at the hearing by the parties present.

Arka Licensing, representing the applicant, set out the application and explained that the offered conditions would promote the licensing objectives and reflected similar conditions applied to other premises in the area. Undesirable customers did not come to this store.

The applicant has nearly 25 years' experience in the area and was part of the community, competing businesses in the area had reduced income at the business and it was necessary to expand the offering to support the business and existing customers.

The shop is far from the green where street-drinkers are a problem. There are three supermarkets and 2 off licences with easily shoplift-able items closer to the green. Further to this, the applicant will keep all alcohol behind the till.

The police report refers to known shoplifters and street-drinkers, the premises would combat this by keeping alcohol behind the till.

Some of the crimes referred to by the police were unrelated to the sale of alcohol. Of the 11 crimes listed, over a six month period, only four would be street-drinking or shoplifting related that would be relevant to this application. This would be prevented at this premises by keeping the alcohol behind the counter.

The applicant would not be selling high strength beers, single cans or miniature bottles of spirits.

The applicant had originally applied for supply of alcohol from 6am until 11pm, but would like to reduce those hours to 10am until 8pm, within the current opening hours. And for clarification can confirm that condition 5H can be removed, to make it clear that alcohol will not be served on the shop floor.

In response to questions it was confirmed that:

- The shop already sells soft drinks, alcohol would be kept behind the till.
- Customers do not congregate outside the store, there are no new street-drinkers in the area, these are all known people who have been around for some time
- The shop is currently open from 9am until 9pm, when originally applying there was an intention to consider increasing trading hours, but the applicant is content to stick with the current hours to address any concerns

The Licensing Sub-Committee also heard from the Metropolitan Police.

The Metropolitan Police acknowledged that the applicant did not intend to sell high strength beers or miniature spirits, and this was normally a welcome condition, but Mitcham Town Centre does not need another venue for supply of alcohol off the premises.

This premises is open fronted, there is no counter service, it is not clear where the alcohol could be stored and sold – the till is rested upon a box with a staff member on a chair alongside, not behind a physical counter. There is no obvious place to securely store alcohol

Hospital admissions and incidences of crime relating to alcohol from this area are the highest in Merton. The current Cumulative Impact Policy restrictions are in place until 2026, and resident surveys continue to say that there are ongoing concerns about alcohol related Anti Social Behaviour.

Sgt Jones' statement refers to action being taken to improve the area, and also the proximity of the premises to a rehab facility where people suffering substance abuse are housed and treated. The application would undermine these efforts and the Metropolitan Police request that the Licensing Sub-Committee refuse the application in its entirety.

In response to questions the Licensing Sub-Committee was informed that:

- There were no acceptable conditions that could satisfy the Metropolitan Police, while the offered restrictions were normally sufficient, in this area it was clear that that was not the case, any alcohol was attractive to the street-drinkers, and it was clear that there were no conditions that would mitigate against cumulative impact
- There have been a few street markets taking place without issues reported, if another place selling alcohol was introduced into the area, it would be attractive to people who had been barred from other premises – a new venue for them to visit
- There is a problem with street-drinking in Mitcham that extends beyond typical habits.
- Operation Hamblin has been running for some time, with a lot of police investment, with officers taken off other duties to assist with the operation. Another venue selling alcohol in the area would inevitably increase the volume of work for the police.

In closing, the Metropolitan Police confirmed their view that the application should not be granted as it would contribute to existing problems

In closing, Arka Licensing informed the Licensing Sub-Committee that the police submission was speculation, the conditions offered would support the licensing objectives, the police had not shown that the premises would contribute to further problems. Refusing the application would penalise a business that has been operating for 25 years and wished to expand its offer to its customers. The conditions would be sufficient and could be reviewed should that be proven otherwise. The premises would be renovated and changes to the layout made before any sale of alcohol commenced.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to refuse the application.

Reasons

The Licensing Sub-Committee carefully considered the evidence presented in the agenda papers and the submissions made to the Licensing Sub-Committee at the meeting (Thwaites).

It was apparent that the business was in a precarious financial position and it was likely that this was the motivation for the application.

The applicant had not made a strong case, including contradictory conditions in the original application, a change of offered hours while in the hearing and these hours would be outside the core hours for off-licences and would not deter street-drinking, especially at weekends.

The Licensing Sub-Committee were concerned about the arrangements for the till, the secure storage of alcohol, and the ability for the staff to adequately deal with street-drinkers.

The Cumulative Impact Zone had been an area of great concern for quite some time, there was still significant anti-social behaviour, and the addition of later hours for an off-licence would only aggravate the problem and undermine work done and any progress achieved so far.

There was no evidence in the application to support the statistics presented by the applicant's agent in the meeting, and in any case, if data did support the view of a decrease in crime, this would likely be attributable to the Cumulative Impact Policy, and would not therefore support a reduction in the application of the policy.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2018).

13. Appeals

13.1 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

13.2 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.

13.3 An appeal has to be commenced by the appellant giving 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.

13.4 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, the Home Office (Immigration Enforcement), 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.

13.5 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.

13.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

13.7 On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or
- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

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

On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

Licensing policy statements and Section 182 guidance

13.8 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.

13.9 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

13.10 It is important that a licensing authority gives 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.

13.11 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

Implementing the determination of the magistrates' courts

13.12 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

13.13 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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