

# **Merton Council**

## **Licensing Sub-Committee**

**17 August 2021**

### **Notice of Determination**

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** As amended 6 September 2021

**Subject:** Tesco Stores Limited, Sandham House, Boundary Business Court, Church Road, Mitcham CR4 3TD

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.

**For enquiries about this matter please contact**

Democratic Services  
Civic Centre  
London Road  
Morden  
Surrey  
SM4 5DX

**Telephone:** 020 8545 3357

**Email:** [democratic.services@merton.gov.uk](mailto: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](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 Tesco Stores Limited for a new premises licence for a premises to be located at Sandham House, Boundary Business Court, Church Road, Mitcham CR4 3TD.

The application sought the following Licensable Activities and times:

- Retail Sale of Alcohol (for consumption off the premises)  
06.00 – midnight Monday to Sunday
- Provision of Late Night Refreshment (for consumption off the premises)  
23.00 – 00.00 midnight Monday to Sunday
- Opening Hours  
06.00 – 00.00 midnight Monday to Sunday

24 representations were received in relation to the application, including from the London Borough of Merton Council Trading Standards. 15 of these were submitted together from local businesses within the Boundary Business Court. Following agreement of conditions prior to the hearing, the representation from Trading Standards was withdrawn. Agreement was also reached on a number of conditions with the Metropolitan Police who therefore did not submit a representation.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, comply with the Licensing Act 2003 and its regulations, have regard to the current Home Office Section 182 Guidance and have regard to the London Borough of Merton Council's Statement of Licensing Policy, and comply with any relevant case law.

The Premises Licence was granted as sought with conditions as agreed with the London Borough of Merton Council Trading Standards and the Metropolitan Police as well as two conditions imposed by the Licensing Sub-Committee, which are detailed at the end of this notice.

## Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, its' supporting agenda papers, supplemental agendas and the oral evidence submitted at the hearing by all parties present.

Christopher Rees-Gay, Legal representative for Tesco (the Applicant), presented the application:

- Tesco are a national operator with over 3000 stores with premises licences and over 2000 Tesco Express stores being the format of the premises that is the subject of this application.
- Tesco have 300,000 members of staff who sell alcohol in store and all undertake extensive training on Licensing policies and processes with Tesco undertaking approximately half a billion alcohol transactions each year, with between 7% to 15% of individual stores turnover being alcohol sales.
- Tesco have formal and written training programmes in place for staff when they are inducted, as well as regular refresher training at least twice yearly.
- Mr Rees-Gay referenced section 142 of the Licensing Act (not to serve alcohol to persons who are drunk) and advised that Tesco provided training on this as well as extensive training on underage sales, also reinforced by the conditions agreed with Trading Standards.
- Tesco also have a "you say no, we say no" policy whereby if a junior member of staff refuses a sale of alcohol, management on the premises will support that refusal.
- This premises being an Express store are designed as local stores, for local people, with both local customers and staff.
- The DPS was yet to be chosen but the area store manager (who had held a personal licence for 15 years) was experienced and had local knowledge of the area having been a store manager for 14 years, worked for Tesco for 21 years and having lived in the local area (Colliers Wood) for a number of years.
- The hours applied for were the standard hours for the express format.
- Mr Rees-Gay referenced Paragraph 10.15 of the Section 182 Home Office Guidance as well as the LB Merton Statement of Licensing Policy which state that alcohol should normally be available to purchase during premises opening times unless there are specific licensing reasons for restricting those hours.
- Conditions had been agreed with the Metropolitan Police.
- The store was a convenience store, not an off-licence with 7%-15% of sales being alcohol related.
- Referencing the contents of some of the 24 representations received, Mr Rees-Gay responded that "need" / there already being a number of other premises selling alcohol in the area, was not a consideration for the Licensing Sub-Committee (as per para 9.11 of the statement of the Council's Licensing Policy). Mr Rees-Gay submitted that in relation to crime and disorder there was no evidence of this proposed premises would result in increased crime and disorder and drew the Licensing Sub-Committee's attention to the absence of any representation from the Metropolitan Police.
- There were two Planning applications currently awaiting determination but this was separate to the Licensing application and any breach would be subject to planning law, as would any concerns related to parking.

- In relation to noise pollution, no representation had been received from Environmental Health and there was no evidence to suggest there would be noise.
- Tesco would undertake their own litter sweep every morning and would also have a litter bin outside the store.
- Tesco would be a sealed unit and therefore customers or others wouldn't be able to access to Boundary Business Court or other locations through the site.
- A store manager would ordinarily be on site all times that the premises was open as well as a number of shift managers.
- If any issues did occur Tesco would work with the local residents and Responsible Authorities to resolve them.
- Mr Rees-Gay referred to the videos submitted, and stated that there was no link between these and the store, reminding the Licensing Sub-Committee that each application should be considered on its' own merits.
- Mr Rees-Gay noted that residents, ward councillors, or Responsible Authorities had the ability to request a Review of the Premises Licence, should issues occur.

In response to questions from the interested parties and the Licensing Sub-Committee, the Applicant responded:

- Tesco were aware of the CIA relating to the area where the premises is located, and had agreed a number of conditions with the Police to mitigate them, such as CCTV. With these agreed conditions, the training and procedures in place and the proposed operating schedule, Tesco suggested that they would not be adding to cumulative impact in the area.
- Tescos are known for their premium offering and alcohol forms part of that offering of goods and services and enables customers to purchase items in one place rather than making multiple trips.
- In relation to protection of children from harm, there would be signage throughout the store explaining that persons must be 18 years of age or over to purchase alcohol and think 25 would then be applied at the till, noting that Tesco had the training, resources and till systems in place to ensure no underage sales took place.
- Once the gate to the area is closed (and this would be closed unless there were deliveries) the unit would then be sealed. The intention would be to push back the gate to the end of the parking spaces, pending planning permission. Access would be through the other entrance.

Frances Healy, speaking to her representation stated:

- In respect of the Licensing Objectives of the protection of public safety and the protection of children from harm, the volume of traffic would be increased and the location was inappropriate with a number of places where it would be possible to drink or take drugs out of sight.
- The current problems with alcohol and drinking within the local area would be exacerbated by the granting of the application.
- Think 25 is not a strong enough deterrent for underage drinking.
- There was already sufficient places to buy alcohol in the area.

Mr William Knapman (barrister), speaking on behalf of Mr Sunny Singh and to his representation stated:

- The Merton Licensing documents stated that there were current issues with alcohol within Merton and the CCTV and refusals register were not adequate to address this.
- The premises was inappropriate for the location, noting the number of alleyways within the location.
- Mr Knapman submitted that Tesco would add to cumulative impact in the area and that the standard hours applied for should be amended given the number of and nature of objections.

Mr Vicky Singh, speaking on behalf of Baskaran Mukunthan stated:

- It was noted that 17 out of the 23 businesses within the court had objected to the application.
- The sale of alcohol in this locality would have a detrimental impact and was not an appropriate site for the premises, with a number of security weak spots in the immediate vicinity of the premises.
- Children use a local swimming school near the location and the premises would deter children and parents from using this facility.
- CCTV would not prohibit crime and disorder.

Carole Mauger, speaking on behalf of the representation from Mitcham Village Residents Association stated:

- reiterated the concerns regarding the layout of the location and
- that CCTV would not prevent anti-social behaviour.

Mrs Bickel, speaking as a witness for Mr Sunny Singh, recounted a recent incident involving her child near to the location.

Mr Masood, speaking on behalf of Thiliebhan Samuelratnam reiterated concerns about the problems of alcohol in the area and the effect of the premises on local families, noting the premises was located close to a number of schools. Mr Masood stated that various businesses require access and therefore he thought the gate would not be a sufficient resolution to this issue.

Mr Rees-Gay, summing up on behalf of the Applicant, requested that information not related to Licensing or not contained within the pack be disregarded. Mr Rees-Gay advised that Tesco would work with the local residents and Responsible Authorities should any issues occur, although he expected that no issues would arise. He closed by saying that Tesco were a premium operator, well able to promote the licensing objectives, and noted that there had been no representation from the Metropolitan Police and there was no evidence to support the allegations of crime and disorder relating to the premises.

## **The Decision of the Licensing Sub-Committee**

The Licensing Sub-Committee decided to grant the application as sought with the following Licensable Activities and times:

- Retail Sale of Alcohol (for consumption off the premises)  
06.00 – midnight Monday to Sunday
  
- Provision of Late Night Refreshment (for consumption off the premises)  
23.00 – 00.00 midnight Monday to Sunday
  
- Opening Hours  
06.00 – 00.00 midnight Monday to Sunday

The Licensing Sub-Committee decided to with two additional conditions those being:

- 1) The gate between the Tesco car park next to the premises and Boundary Business Court shall remain closed, no Tesco deliveries will take place through that gate, with access only in emergency and/or with the agreement of the freeholder.
  
- 2) No waste collection from or deliveries to the premises shall take place between the hours of 22.00 and 06.00 the following day. Deliveries will be delivered through to the rear of the premises and the delivery shall come in through an entrance other than the gated car park to Boundary Business Court so as not to cause a public nuisance to residential properties.

The Licensing Sub-Committee also imposed the conditions already agreed with Trading Standards and the Police as follows:

### Conditions Agreed with the Metropolitan Police

1. A closed-circuit television (CCTV) system shall be installed at the premises. The CCTV system installed at the premises shall be maintained in effective working order. All recordings made by the CCTV system shall be retained and stored in a suitable and secure manner for a maximum of 31 days, and shall be made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities. The digital CCTV system shall cover areas of the shop floor, including the main area which will be used for display of alcohol
2. A log shall be kept at the premises and made available on request to Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must record the following:
  - A) All crimes reported to the premises.
  - B) All complaints regarding crime and disorder.
  - C) Any faults with the CCTV system.



D) Any visit by a relevant authority in relation to complaints.

### Conditions agreed with Trading Standards

1. The premises licence holder shall ensure that anyone utilised by them for the role of delivering alcohol orders ensures that the alcohol is delivered to the client who ordered the alcohol, or ensures that any 'safe place' as designated by the client where the delivery can be left must be in an area not visible to the general public and not where any minor can access the delivery.
2. Think 25 signage shall be displayed in prominent positions in the premises.
3. A refusal system shall be operated at the premises. When alcohol is scanned through the checkout, a prompt will alert the cashier asking the cashier to Think 25 and ask for ID if the customer looks under 25 years old.
4. All staff that undertake the sale or supply of alcohol shall receive appropriate refresher training in relation to undertaking appropriate age checks on such, at least twice a year.
5. Records of all staff training, relating to the sale or supply of alcohol (and any other age-restricted product), along with any training material used, will be kept and maintained by the Premises Licence Holder.
6. Records of all staff training, relating to the sale or supply of alcohol shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.

Offered conditions extracted from the Operating Schedule not set out above:

The age at which the age verification policy required by the mandatory condition attached to this Premises Licence is set, shall be 25 years of age (Think 25 policy), in that anyone who appears to be aged 25 years or under shall be required to produce appropriate evidence as stated in the policy to prove they are 18 years of age or over.

The checkouts shall be programmed to prompt the checkout assistant when an alcohol product is scanned at the till to follow the age verification policy (Think 25 policy).

### **Reasons**

The Licensing Sub-Committee gave the following reasons for their decision:

- 1) The Licensing Sub-Committee noted that there had been no representations maintained by the Council's Trading Standards team and no representation received from the Metropolitan Police. No other Responsible Authorities had submitted a representation and it appears that they do not have concerns about the application.

- 2) The Licensing Sub-Committee felt that the conditions proposed by Tesco mitigated the concerns raised and were offered, imposed or agreed by Responsible Authorities to prevent any addition to cumulative impact.
- 3) Boundary Business Court was already a 'fluid' estate in terms of access, routes into and out of it (such that drink and potentially drugs were likely to get in there already). The gate to be placed at the end of the car park to keep the Boundary Business Court and the Tesco car park separate, (and owned and erected by the freeholder) would have a positive effect on this former access point, as a natural barrier, closed to through traffic.
- 4) The business park does not have any delivery restrictions and is a 24 hour operation, with tenants having vehicle deliveries overnight.
- 5) The Licensing Sub-Committee noted that Tesco was a nationwide responsible operator who had demonstrated the level of training and policies and procedures in place to comply with the licensing objectives in this instance.

#### Legal Advice to the Licensing sub-Committee

The Legal Advisor to the Licensing Sub-Committee referred to relevant case law whilst the Licensing Sub-Committee were in deliberations and these were applied during decision-making. These being:

*Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008* - Councillors made their decision based on the evidence provided aided by some level of local knowledge.

*Luminar Leisure Ltd v Wakefield Magistrates' Court & Brooke Leisure Ltd, Classic Properties Ltd, Wakefield MDC 2008* – Councillors could only consider the area outside and that may be affected by the operation of the premises.

*(R (on the application of Bristol City Council) v Bristol Magistrates Court and Somerfield Stores [2009] EWHC 625 (Admin))* – Councillors could only consider issues raised within the Licensing Act 2003, other issues that fell within other legislation or legislative regimes, must be enforced under those provisions.

*R (on the application of Blackwood) (Claimant) v Birmingham Magistrates, Birmingham City Council (Defendants) & Mitchells & Butler Leisure Retail Ltd (Interested Party) (2006)* - it was not for a Licensing Sub-Committee to examine whether a proposed application required planning consent.

## **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.

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.

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