

Merton Council
Licensing Sub-Committee
8 February 2022
Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 11 February 2022

Subject: Hakkamoon, 185 Streatham Road, Mitcham, CR4 2AG

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

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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 Ms Siew Ngik Yong for a new premises licence for 'Hakkamoon' a premises located at 185 Streatham Road, Mitcham, CR4 2AG.

The application sought the following Licensable Activities and hours:

- The retail supply of alcohol (on sales only) Monday to Sunday from 11:00 to 23:00
- An additional hour during British Summer Time (23.00 – 00.00 midnight for retail supply of alcohol (on sales only))

The premises Opening Hours sought were 10:00 to 23:00 Monday to Sunday.

One representation was received in relation to the application from a local resident. Agreement was also reached on a number of conditions with the Council's Trading Standards Officer, who therefore withdrew their representation prior to the Licensing Sub-Committee meeting.

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 Application was granted as sought with the conditions agreed with Trading Standards and the Metropolitan Police imposed as detailed at the end of this notice.

Licensing Sub-Committee Hearing

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

The Licensing Manager gave a brief overview of the Application and noted that the Cumulative Impact Area does not apply to this application, as the application does not include the sale of alcohol for consumption off the premises or thereby to street drinkers.

Mr Leo Charalambides, barrister representing the Applicant, presented the application:

- The premises was opened in September 2021. The restaurant is a small business, with a maximum of 30 covers.
- The Applicant was very experienced with over 30 years experience and the DPS had over 20 years experience.
- It was noted that there were no objections from Responsible Authorities. The Metropolitan Police had been consulted by the applicant prior to the application and no concerns were raised. Trading Standards were also content subject to the agreed conditions.
- It is a community restaurant, for the local community, not a destination restaurant attracting customers from a wider catchment area. It is in the interest of the applicant to avoid disruption to the community from litter, smells, and anti-social behaviour.
- The restaurant has been operating as a 'bring your own' venue but which means that customers could front-load their alcohol purchases, so the licence to supply alcohol on the premises allows the applicant to limit and control purchase and consumption of alcohol on the premises.
- The representation was a general concern without any evidence provided of the issues occurring from the premises.

The Chair announced that the Licensing Sub-Committee would retire to closed session and make their decision.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the application as sought with the following conditions imposed:

- 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, and shall be in operation at all times the premises is open to the public. All recordings made by the CCTV system shall be retained and stored in a suitable and secure manner for a minimum of 31 days, and shall be made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities. At all times the premises is open to the public a minimum of one member of staff on duty will be able to operate the CCTV system.
2. The supply of alcohol at the premises shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.
3. Notwithstanding condition 2, customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

4. The supply of alcohol shall be by waiter or waitress service only
5. An incident log shall be kept at the premises and made available on request to Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must be completed within 24 hours of the incident and will record the following; (a) All crimes reported to the venue. (b) All ejections of patrons. (c) All complaints received concerning crime and disorder. (d) Any incidents of disorder. (e) All seizures of drugs or offensive weapons. (f) Any faults in the CCTV system. (g) Any visit by a relevant authority in relation to service (H) Any refusals of alcohol - every instance that a sale of alcohol (and any other age-restricted product) is refused on the premises must be recorded, indicating the date and time the refusal was made, and the member of staff making the refusal
6. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
7. An effective visual (and/or aural) reminder shall be in place at all points of sale to ensure staff undertake appropriate age checks on potential sales of alcohol (and any other age-restricted product).
8. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
9. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
10. All staff that undertake the sale or supply of alcohol (and any other age-restricted product) shall receive appropriate training in relation to undertaking appropriate age checks on such, before being allowed to sell or supply any alcohol (and any other age-restricted product). Refresher training will be carried out at least every three months.
- 11 . 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 Designated Premises Supervisor or the Premises Licence Holder.
12. Staff training records shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.

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

1. The Licensing Sub-Committee felt that the conditions offered by the Applicant, and agreed with the Responsible Authorities, addressed any concerns raised within the Representation.
2. The Representation referred to concerns about “street drinking” that were not relevant to this premises as it sought ‘on sales’ only. The Representation referred to the risk of “sound and noxious smells” and “disorderly behaviour” from service of alcohol, without explaining how that would arise or whether it had arisen whilst the restaurant premises traded without a premises licence. The Representation referred to the risk of “anti-social behaviour” and the premises being “a magnet for unruly behaviour” from those in the premises and those leaving the premises (possibly including those hanging around outside afterwards), without explaining how that would arise or whether it had arisen whilst the restaurant premises traded without a premises licence. The Conditions proposed appeared designed to prevent problems from happening (Thwaites applied).

3. The Licensing Sub-Committee were not able to consider any matters which did not relate to the Licensing Objectives. The application as sought and conditions proposed would promote the Licensing Objectives.
4. A Review application (and/or a referral to the Licensing Authority or Trading Standards or the Noise Pollution team) would be available if the concerns were experienced, should there be breach of the conditions imposed on the Premises Licence or any issues as outlined above.

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.