

Merton Council

Licensing Sub-Committee

11 April 2022

Supplementary Agenda 1

- 6 Supplementary Information: 1 - 18
 Response from Licence Holder
 Further response from Metropolitan Police
 Determination notice from previous Licensing Sub-Committee

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Agenda Item 6

From: North South <

Sent: 08 April 2022 13:42

To: Amy Dumitrescu <Amy.Dumitrescu@merton.gov.uk>; Licensing <Licensing@merton.gov.uk>;

Caroline Sharkey <Caroline.Sharkey@merton.gov.uk>; Anthony Hawkes

<Anthony.Hawkes@merton.gov.uk>; Richard.O.J.Compton; Avril.O'Brien; flintbishop;

Subject: Re: Hearing Papers - The Vale, Lilian Road

Dear Amy and Whom Ever it may concern,

Thank you for your invite to the licensing hearing for The Vale, SW16 5HN next week.

Please note, I will not be attending the hearing, nor will any representative of North & South Leisure, this is at the express request of Star Pubs & Bars. This is because we have agreed a transfer of the Premises Licence back to Star Pub and Bars and we are negotiating the end of our tenancy at this site. However, I do wish to submit and record to the hearing the following;

First and foremost, these are horrible incidents and we wholly condemn the actions of the culprit(s) and, in the second incident, the subsequent violence that ensued.

- There has been suggestion that the issues at the pub are the responsibility of North & South Leisure Ltd, we contest this in the strongest possible terms and if required, without prejudice, are prepared to defend our broader reputation on the back of this matter
- That said, we do understand the best solution for the Vale ongoing is for a complete change and a fresh start, hence our reason for being prepared to surrender our tenancy
- I was the DPS at these premises at the express request, in 2019, of PC Russ Stevens, the previous Police Licensing Officer. Russ requested this as he knew my business partners and I to be responsible pub operators.
- All DPS authorisation forms for the sale of alcohol in my absence and the Licensing obligations were trained to the site Publicans, and their staff.
- We would also like to reassure the hearing that we accept there are learnings for our business and we have already undertaken a review to help prevent any future issues in our business. Namely; we have undertaken Conflict Management Training using National Pub Watch support tools, we already operate the 'Ask for Angela' campaign and have refreshed training on this, we already operate a Challenge 25 policy, we have refreshed and re-trained the Licensing Obligations and advised Publicans to call the Police for support at the earliest opportunity if there is any risk of the obligations not being upheld.

Regarding the recent incidents at The Vale;

- There's a suggestion in this report that I stated that I couldn't download the CCTV footage as I "had another meeting to go to", this is incorrect and implies that I was dismissive of the seriousness of the incident, I simply stated I didn't have the means to download the footage (as I did not have a USB stick with me), but that I could obtain one, the officers present then arranged for a CCTV operative to be present anyway, who incidentally was there within 15 minutes, so the need for me to download the footage was no longer required. The 'other' meeting I had to attend was for the Ukrainian Humanitarian crisis!
- I refer to Annex G Page 31 of the hearing Documents, this the awful image of the injuries to There are a few matters here that I would like to point out specifically. 1. [REDACTED] was badly assaulted in his efforts to up-hold Licencing objectives two and three, Public Safety and the prevention of a public nuisance, the customers in the pub that night weren't just "arm wrestling" as captured in this report, they were being a public nuisance and [REDACTED] efforts to

challenge their behaviour led to him being punched in the face. 2. This image was provided to the Police by me! in my efforts to bring about a prosecution of the culprit and my request that suitable follow up actions be undertaken by the Police, including a meeting and increased patrols. The Police failed to respond or acknowledge my requests

- I strongly believe that if the Police had responded appropriately and proportionally to the incident in December this second incident in March could have been avoided

In defence of our wider business and our Individual Directors;

- Regarding this site specifically, I would like to state that despite these recent incidents, local residents have defended our time and efforts at the pub. Mr [REDACTED] a resident of Lilian Road for 45 years, a member of the Residents Association and also [REDACTED] states "I have never known the pub to be kept so clean and so well run during your tenure in all the years living locally and frequenting the pub. This incident is due ". Other members of the Residents Association have thanked me for taking the time to speak with them since the latest incident occurred
- We have had no other incidents of violence or even mild disturbance at any of our other sites since inception in May 2017. We wholly understand the direct correlation between trouble free/ incident free sites and our sustainability, this is our livelihood and we operate all sites as responsibly as possible.
- We are listed in the Good Pub Guide and the Good Beer Guide at two of our remaining 6 sites, we are 'Horsham in Bloom', 'Pembury in Bloom' and 'Tunbridge Wells in Bloom' Champions, we have Won CAMRA Awards, been 'Outstanding Contribution' Publican Awards finalists (partly in response to our Community Support during Covid-19 and our direct support to the nurses and staff at Pembury Hospital). During the Covid crisis one of our Directors, [REDACTED], re-joined the Metropolitan Police, based out of Croydon as a Detective Sergeant to assist with the crisis (both Covid and Staff crisis) and I undertook over 150 hours of voluntary work at Covid Vaccination Centres and I'm still listed with the Royal Voluntary Service as a 'Good Neighbours' Volunteer. Our business has raised over £30,000 for Charity since 2019, including over £10k for the Poppy Appeal and, just in the last month, over £8k for the Ukraine Humanitarian Crisis (directly delivering 2 van loads of aid to Lublin in Poland just last week) Furthermore, we are members of the BII, UK Hospitality, the Licensees Association, and are invited guests of the UK's All Parliamentary Beer Group
- This is to say we are good people and responsible business operators, the culprits of this awful violence are the bad guys here, not us!

The Future of the Vale;

- We have agreed to step aside, despite the challenges we have faced with the Vale we do believe that Star Pubs and Bars can take the pub to a new, trouble free chapter. I have personally seen dozens of examples where Star Pubs & Bars investment, recruitment and training plans have taken previously difficult sites to be well run, well supported pubs that add to the area in which they operate (unfortunately we don't have the investment capabilities or recruitment and training budgets of Star Pubs, hence another reason for us stepping aside)

There are learnings for all of us in this, but my last plea to the panel is please do not allow two abhorrent individuals to tarnish the decent hard-working law abiding majority, be that our business, ourselves personally, or the decent patrons that have and will support a pub where the Vale is located.

Thank you in advance for allowing me to address the hearing remotely.

Regards,

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Summary Review Hearing Supplementary Information

**The Vale, The Vale At Streatham, 1A
Lilian Road, London SW16 5HN**

Dear Licensing Authority,

I write with reference to the Review Hearing that is due to take place on Monday 11/04/2022 at 2.30pm in relation to The Vale, The Vale at Streatham, 1A Lilian Road, London, SW16 5HN and wish for the following to be added to the agenda.

I have been informed by the Solicitor, [REDACTED] for the Landlord of the pub, Star Pubs, that he has submitted a premises licence transfer to have the licence transferred from North & Star Leisure to Star Pubs. This transfer should take immediate effect which would result in Star Pubs being the Premises Licence Holder for the hearing on Monday. [REDACTED] also stated that they have also submitted a DPS application to remove [REDACTED] as the DPS and leave this blank until they get a new tenant for the pub. I anticipate that Star Pubs will then blame North & Star Leisure and [REDACTED] for all the problems at the pub.

I have made enquiries with the Licensing Authority which shows that Star Pubs were previously the Premises Licence Holders of the pub from 1st August 2013 to 26th April 2018. The pub was known as the Mitcham Mint.

Research on police indices shows that there was as many problems at the pub back then when Star Pubs were the licence holder.

18/06/2015 at 19.20 hours Crime Report [REDACTED] for Common Assault

[REDACTED] gave an account, stating that he was stabbed by [REDACTED] boyfriend at an argument 8 days before. He was stabbed in the left cheek and pointed to a scar on his cheek. He states that [REDACTED] is nasty and horrible and was making him do it. He has known [REDACTED] from around the area for forty years.

On the 18th June he went into the pub, he had been to another pub before and had been drinking a little. On a scale of 0 (sober) to 10 (passing out drunk) he says he was about 5. He entered the Mitcham Mint and spoke to a man called [REDACTED] about his child and another female said that [REDACTED] was in the pub. He then went out to the garden area to see if she was here. He saw her and she started talking loudly and gesturing at him. He cannot remember what she said or whether she was drunk but says that she is a drinker. there was no physical contact between them. She did not threaten

or provoke him. He just told her to [REDACTED] off and turned around and left the pub. He has not seen her since. He says that he did not assault her in any way. He did not punch her or spit at her.

The only witnesses were two [REDACTED] girls who do not like her anyway, full details unknown.

He thinks she reported this to police as she was scared that he had reported her and her boyfriend for stabbing him 8 days earlier. He does not wish to report this incident.

17/05/2016 at 20.59 hours Crime Report [REDACTED] for Sec 4 Public Order

Police were called to THE MITCHAM MINT PUBLIC HOUSE, by susp, Mr [REDACTED], who stated that he was being attacked by 15 males. On Police arrival, [REDACTED], was standing outside the pub, with another male, [REDACTED]. Both were very intoxicated, and stated that they had been attacked by a large number of males, some of which were in the pub. Slight bruising could be seen to the left cheek of [REDACTED]. Police made enquires inside the pub, and spoke to the landlady, [REDACTED], who stated that the two males standing outside, had come in at 1200hrs, (MIDDAY), and became a general nuisance, and became verbally abusive towards local customers, in particular to the Barmaid [REDACTED], who then refused to serve them any more alcohol, due to their behaviour.

Police spoke to Barmaid, [REDACTED], who stated that she started her shift at 1800hrs, where both males had said, [REDACTED] you [REDACTED] when drinks were refused. They also said, "what do you think your doing [REDACTED].

[REDACTED], and several local customers, all stated that the two males had become very drunk, and causing a general disturbance. [REDACTED], stated that the males were ejected due to their behaviour, and were not aware that a large number of males were fighting outside.

[REDACTED], did not want to prosecute, and was happy for the males to receive words of advice from Police, and for them to leave the area. A signed pocket book entry to reflect this, in [REDACTED] [REDACTED], book, page 12. Males left the scene during Police reporting.

14/04/2015 at 20.00 hours Crime Report [REDACTED] for GBH/Serious Wounding

Police were called by [REDACTED] who stated that on TUESDAY 14TH APRIL 2015 he was a victim of an unprovoked attack in a pub. The suspects hit him in the face causing injuries.

Police attended the victims home address. Ambulance were already on scene and victim was about to leave for ST GEORGES HOSPITAL to get checked out as a precaution.

Police followed the victim to the hospital and obtained an MG11 statement in the waiting room.

[REDACTED] said that on TUESDAY at 2000 hours he went to the MITCHAM MINT pub which is situated on GREYHOUND TERRACE junction with LILLIAN ROAD, MITCHAM, CR4. He had two beers and two whiskeys. As he was about to leave Suspect1 stood in his way. Suspect1 asked [REDACTED] where he was from. [REDACTED] stated that he was British. Suspect1 replied that he was Irish. They then shook hands and bought drinks. Suspect1 invited [REDACTED] to the beer garden at the pub. In the beer garden was Suspect1 and Suspect2 as well as several other females.

[REDACTED] said that one of the females was the [REDACTED] who sometimes works behind the bar at the venue. She recognised him and is someone he has known when she was little. They engaged in conversation about the past. Suddenly the [REDACTED] started accusing [REDACTED] of saying bad things to her. She began telling Suspect1 and Suspect2 that [REDACTED] was saying bad things to her. Suspect1 then told [REDACTED] to leave the pub.

Suspect1 grabbed [REDACTED]s left hand and twisted it behind [REDACTED] back. He also grabbed [REDACTED] by the back of the neck around his t-shirt collar.

[REDACTED] turned his head to the right to speak with Suspect1. Suspect2 then headbutted [REDACTED] on the left side of his face. [REDACTED] dropped to the ground and believes he went unconscious for around 40 seconds. [REDACTED] states he came to and was very dizzy, confused and disorientated.

[REDACTED] was helped to his feet by a customer called [REDACTED]. [REDACTED] told the suspects to stay away and not to touch [REDACTED]. He helped [REDACTED] to his feet and [REDACTED] left the pub.

[REDACTED] has a swelling under his right eye. He has swelling to the left side of his face. He also has grazes on both knees, scratches on his left forearm and complained of pain in the upper torso, right ribs and back. He believes he was assaulted while on the ground.

██████ had waited to report as he was unsure he should do it. He was afraid of potential repercussions as he lives in the area.

31/01/2017 at 17.30 hours Crime Report ████████ for ABH

police were called to an unrelated incident at tVIW1 hostile. Staff had called police stating there was a female at the location who had been banned.

Staff gave her name as ████████ and stated that her partner lived in room ████████ Staff stated that ████████ was in the unit with her partner, VIW1.

Police attended VIW1's unit and eventually he opened the door. He stated that ████████ wasn't there, further stating that he wouldn't have let her in as she had attacked him earlier that day. VIW1 then proceeded to show police several scratches to his left ear and cheek. the scratches were deep enough to cause bleeding.

VIW1 stated that Suspect had called him numerous times that day, he felt sorry for her and agreed to meet her at The MITCHAM MINT PH. VIW1 states that Susp1 was very drunk and they got into an argument because Suspect blames VIW1 for the fact that she had been banned from the unit.

VIW1 further states that suspect started punching out at him and scratched his face causing his face and ear to bleed. VIW1 said he pushed Suspect away and walked off towards LENARD ROAD SW16

VIW1 told police that ████████ was in another unit down the corridor. Police then attended this unit and found a very inebriated Female. she identified herself as ████████

I returned to ████████ an spoke with VIW1 I asked him if he wanted to report the incident and asked that he provided a statement. He replied that he would attend a police station tomorrow 1st FEB17). I informed him that the statement had to be taken immediately. Suspect supplied a short statement.

19/05/2016 at 23.00 hours Crime Report ████████ for GBH with Intent

This is a case of a homophobic hate crime whereby the victim was called a homophobic slur then attacked by the suspects.

Police spoke to ████████ and ████████ when reporting.

████████ stated himself and ████████ went to the MITCHAM MINT Public house on THURSDAY 19 MAY 2016 at approx 2100.

Whilst at the location ████████ drank 4 pints of beer, he state he was a bit tipsy however 4 pints is normal consumption for him.

████████ states he had 3 pints which again is normal for him.

Whilst at the location ████████ stated he played a few games of snooker with ████████ stated ████████ was friendly towards him. ████████ stated he only knew suspect name because it was written on a blackboard that shows who is playing the next game of snooker.

AT approx 2300 hours ████████ was sitting alone at a table while ████████ was using the bathroom.

████████ stated SUS1 came up to him and said "YOU'RE A ████████ AREN'T YOU"

he replied "NO - IT WOULDNT MATTER IF I WAS"

████████ then punched ████████ in the face. The next thing ████████ remembers is being in the bathroom with ████████ being given ice for his burises by ████████.

████████ stated he came out of the bathroom and could hear the barmaid shouting. He approached the barmaid whom said to him that his friend is being attacked. The barmaid then warned ████████ not to go around to where his friend was. As he walked around the bar, he saw a group of males attacking ████████ He said he saw SUS1 throw a snooker ball at ████████ then hit him with a chair to the face.

As ████████ came closer the his ████████ the group of males directed their attention towards him and started to attacked him, he stated all the males hit him several times and then ran out of the pub.

████████ stated ██████████ took them into the bathroom and gave them ice for the bruises.

Another male called ██████████ drove both victims home after the incident. ██████████ stated to the victim that the group of males have been in the pub before and caused problems to the bar staff.

The following day ██████████ went to ST GEORGES hospital A and E for treatment. The doctors stated he had a strained jaw. He did not have any visible injuries when officers attended.

████████ and minor bruising under his left eye and bruising on his back.

24/02/2017 at 17.00 hours Crime Report ██████████ for Sec 4 Public Order

On FRIDAY 24th FEBRUARY 2017 VIW1, ██████████ contacted police to report an incident in THE MINT PUBLIC HOUSE MITCHAM.

████████ told the operator "A MALE AT THE PUB BECAME ABUSIVE TOWARDS ME AND TOLD ME "GET THE ██████████ OUT YOU ██████████

████████ offered no other details and declined to see police stating that he just wanted the male spoken to, when informed that we would need to get further details from him before talking to the male, ██████████ stated he "COULDNT BE BOTHERED AND DIDNT WANT TO REPORT IT".

22/03/2016 at 22.00 hours Crime Report ██████████ for Common Assault

Police were called by the victim , ██████████, who was visibly intoxicated, he stated that he and a friend were walking past the Mitcham Mint pub, when he peered inside the pub and was watching a group playing pool.

he states that a female in the pub took offence to this and asked him what he wanted.

He then told her to ██████████ off, and apparently she came outside in company with another female and an argument ensued. The victim states that the female who he described as IC1 female, wearing a white jumper, had slapped him across the face, then went back inside the pub.

he then called police.

Police attended and spoke to ██████████ at his home address not far from the venue, he stated that he would point out the female to us and was willing to give a statement.

Police took him to the venue, and made enquiries with the landlady about the female. She stated that she was aware of a female having an altercation with a male outside the pub, but she doesn't know who the female is , as the female and her friend have not been there before.

She stated that they have no CCTV in the pub.

Police passed this information to ██████████, he wasn't happy that the female was not present and decided that he no longer wanted to assist police with any details, even refusing to give his date of birth or postcode.

he also refused to sign a pocketbook entry to this effect.

The offence amounts to common assault

The above clearly shows that Star Pubs have not been able to manage this pub without incident so the I have no confidence that there will be any change in the way crime emanates from The Vale Public House.

Merton Police seek REVOCATION of the Premises Licence.

Yours sincerely,

Merton Council
Licensing Sub-Committee
6 August 2018
Notice of Determination

6 Notice of Determination - Mitcham Mint

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 16 August 2018

Subject: Mitcham Mint, 1A Lilian Road, Streatham, SW16 5HN

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
Surrey
SM4 5DX

Telephone: 020 8545 3616

Fax: 020 8545 3226 **(Please telephone 020 8545 3616 to notify faxes sent)**

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/>

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 Sub-Committee considered an application by North and South Leisure Limited for a variation of the Premises Licence for “Mitcham Mint” at 1A Lilian Road, Streatham, SW16 5HN.

The Premises Licence holder applied to vary the Licence as follows:

- To amend the opening hours of the premises from 08:00, to 07:00 daily, for the provision of non-licensable activities before the usual licensable activities start at 10.00am Mondays-Saturdays or 12.00 on Sundays;
- To amend the terminal Licensing hours for the sale of alcohol to midnight on Fridays and Saturdays with the premises closing 30 minutes thereafter adding an extra hours in the weekends
- To amend condition 3 annex 3 to state “no bottles or glasses to be taken out of the internal area of the premises save for consumption in any external area provided”
- To remove the last sentence of condition 10 in annex 3. The Premises Licence holder stated that regular meetings had been held and no local residents or businesses had been attending and so they wanted to dispense with the need for such meetings.

Representations were received from 2 local residents, who wanted to maintain their anonymity in the application process and did not attend to avoid being identified.

The variation of the Premises Licence was granted in part as follows:

- The opening hours were amended to allow the premises to open from 07:00 as sought for the provision of non-licensable activities
- The terminal licensing hour for sale of alcohol to midnight on Friday and Saturday was granted as sought, with the premises to close 30 minutes thereafter.
- Condition 3 annex 3 was amended as sought to state “no bottles or glasses shall be taken out of the internal area of the premises save for consumption in any external area provided”.
- The request to remove condition 10 in annex 3 was not granted and will therefore remain on the Premises Licence.

Reasons

The Licensing Sub-Committee carefully considered the Agenda and Supplemental Agenda (including the application and all of the Representations) and the oral evidence submitted at the hearing by the Premises Licence holder.

The Premises Licence holder stated that:

- The Premises Licence holder's director had been a licensee for 20 years and had set up a business that involved running and managing 6 public houses together with two business partners who managed 25 public houses between them and were experienced operators.
- The Premises Licence holder had taken over the premises in May 2017 and had made investments in the premises with the aim to make it a more family friendly and to improve the appearance of the premises. The aim was to make it a more sustainable business. The Premises Licence holder was shortly due to sign a 5 year lease for the premises and was planning a £50,000 investment in the premises.
- The 7am opening hour requested in the application reflected the success of the earlier opening time (where the opening time had reduced from 10am to 8am at a previous application last year) and allowed the premises to be used as a community meeting space and allowed for breakfast and café sales.
- The Premises Licence holder had received 2 letters of support, one of which was included in the Supplemental Agenda.
- The premises had run 7-8 Temporary Event Notices over the preceding 8-12 months and had not received any complaints about the later hours.
- The Premises Licence holder did not wish to remove any of the restrictions on the outside area, only to be able to use glasses in the outside area, as currently only plastic glasses were used and their clientele wished to use glasses rather than plastic containers.
- There had been no representations received from any of the Responsible Authorities.

The main objections raised by residents in their representations were as follows:

- There was ongoing noise nuisance caused by patrons leaving the premises late at night and from their cars left running outside the premises.
- The premises is located in a residential area (with a nursery on the same road) that is noise sensitive.

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

- The Licensing Sub-Committee felt that residents needed to have an opportunity available to meet with the Premises Licence holder and discuss any issues or concerns and therefore condition 10 should remain on the licence unamended.
- The sale of hot food and hot drinks does not require a Premises Licence unless it were to take place between 23.00 to 05.00. the earlier opening would not affect residents and would not include alcohol sales.
- Having considered all the evidence, there was not enough evidence to refuse the application in regards to the increase in the terminal hour for the sale of alcohol (the *Thwaites* case applied).
- The Licensing Sub-Committee acknowledged that the Temporary Event Notices had taken place without incident and also acknowledged that the operators of the premises had stated they have extensive experience.

- There remains the opportunity available to any party to apply for a Review of the Licence should any issues occur or to refer them to the Licensing Authority or the Environmental Health team for investigation and if necessary Review of the Premises Licence.

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.

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