

Merton Council
Licensing Sub-Committee
11 April 2022
Supplementary Agenda

7 Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 20 April 2022

Subject: The Vale, The Vale at Streatham, 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 (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

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 the Metropolitan Police for a Review of the Premises Licence for The Vale Public House (formerly known as the “Mitcham Mint”) at Streatham, 1A Lilian Road, Streatham, SW16 5HN. This Review followed a Summary Review or Expedited Review, submitted by the Police Superintendent of the Metropolitan Police which the Licensing Sub-Committee determined on 17 March 2022 under section 53C of the Licensing Act 2003, granting Interim Steps pending this determination, suspending the Premises Licence pending this determination. Under section 53C, following a Summary Review, the Licensing Sub-Committee is required to undertake a full Review hearing; this is the determination which thereby follows.

In discharging its functions in respect of this Review, the Licensing Sub-Committee had to take such steps that promoted the Licensing Objectives and that were appropriate and proportionate, pursuant to section 52 of the Licensing Act 2003.

In determining the review, the options available to the Licensing Sub-Committee were as follows:

- To modify the conditions of the Premises Licence
- To exclude a licensable activity from the scope of the Premises Licence
- To remove the designated premises supervisor
- To suspend the Premises Licence for a period not exceeding three months
- To revoke the Premises Licence.

The Licensing Sub-Committee decided to Revoke the Premises Licence held by Star Pubs and Bars for the premises at The Vale public house, at 1A Lilian Road, Streatham, SW16 5HN. The reasons for this decision can be found at the end of this notice.

Licensing Sub-Committee Hearing

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

The Premises Licence Holder at the time of the incidents which had led to the Review was not present at the meeting, as a Licence transfer application had taken place the week prior to the Licensing Sub-Committee Review hearing meeting and therefore the Premises Licence had effectively now been transferred back to the Landlord, Star Pubs and Bars Plc.

Jeremy Phillips QC representing the Applicant (the Metropolitan Police) advised that Police officers had attended The Vale Public House on 13 March 2022 following reports of a disturbance which had started in the pub and continued down the road. When the Police attended they had found smashed glass and blood on the ground and windows. It was noted that there was no record of any call being made to the Police from the pub or staff on duty. Evidence had been submitted by the Metropolitan Police in regards to this incident. The Metropolitan Police had then brought Summary Review proceedings and the Licensing Sub-Committee had made a decision shortly after on the 17th March 2022 to suspend the Premises licence pending this hearing.

A resident (Resident 1 within the representations submitted) spoke to their representation:

- The incident which had led to the Review was a snapshot of what usually occurred at the Premises, which had been causing issues for years for local residents
- The Resident described a number of issues relating to the Premises including; the beer garden at the premises being used for smoking and taking drugs, residents felt threatened when walking past the premises and had been harassed by patrons, residents felt unsafe within their homes in the vicinity of the premises, vehicles in the road had been damaged as had front gardens and residents felt that the premises was not a family-friendly pub.
- The pub was frequented by those who left intoxicated, shouting and fighting.
- The resident had contacted Star Pubs and Bars following incidents and had been told they would get back to them, however no response had ever been received.
- The Premises is located within a residential road where a number of elderly people and families with young children reside. The Premises is also located opposite a nursery.
- The Premises had been causing issues for many years despite several different sub-tenants running the premises between 2013 – 2018 (when Star Pubs and Bars Limited was previously the Premises Licence holder) and thereafter from 2018 onwards whilst North & South Leisure Ltd operated the premises.

George Domleo, representing the Premises Licence Holder Star Pubs and Bars Limited, spoke to provide some background of the Premises and to respond to the application:

- The Premises had previously been named the Mitcham Mint and there had been a public house on the site since 1969 with the current Premises Licence being in force since 2005. The Premises Licence Holder (PLH) acquired the pub in 2013 and remained the PLH until 2018. At this point the PLH then transferred to the tenant who had been in place when the most recent incident occurred.
- Star Pubs and Bars Limited applied on behalf of that tenant for a Premises Licence variation in June 2018. 2 representations were received to this application from residents and no representations were received from the Responsible Authorities. This variation was granted in part along with extending the terminal hour for sale of alcohol.
- The PLH noted that the 7 incidents listed in the Supplemental Agenda by the Metropolitan Police happened prior to the Licence Variation submitted in 2018. The Applicant noted that the Police did not object to this application.
- In relation to the most recent incident in March 2022, the PLH had been made aware of the incident on the 15 March and had emailed the Police on 16 March who had then responded to advise they had applied for a Summary Review. Since this correspondence the PLH has been in regular communication with the Police. The previous Licence Holder had since been removed as Designated Premises Supervisor and a Transfer request for the Premises Licence had also taken place the week prior to the hearing with immediate effect. The PLH submitted that these steps taken within a short period showed that the PLH was a responsible operator.
- Star Pubs and Bars Limited have circa 2500 premises and the majority of these are operated on their arms-length tenanted model. Where premises have issues, some of these are converted to the "Just Add Talent" model whereby they are a directly managed site and this could be looked at as an option for The Vale site.
- The PLH stated that 7 incidents within 5 years was not a lot and a number of those listed were allegations. The Applicant noted that the Police could have submitted an application for a Review of the Premises Licence previously but had not done so.
- The PLH did not condone the recent incidents and were in negotiations with the previous tenant to end their tenancy.
- The PLH stated that 8 out of the 10 representations submitted by residents were identical and were all submitted on the same date.
- The PLH was willing to share their contact details with residents so they could update them on progress on finding a new operator.

In response to questions from the Parties present and the Licensing Sub-Committee, Mr Domleo stated that Star Pubs and Bars limited were made aware of a complaint on 13th March 2022 following that they then contacted the Local Authority and PC McGann to find out further information. However, they had not been made aware of the incident prior to that or made aware of the incident in December 2021. The PLH had owned the freehold since 2013 and had not been made aware of the issues

happening at the premises. However the PLH had taken action once they had been made aware in March 2022.

In response to further questions, Mr Dolmeo responded that the premises had been a pub since 1969 and it had not always been an issue. However it appeared over the last few years something seemed to have gone wrong. The PLH wanted to attract a new operator with a change of concept and to continue dialogue with the residents and the Responsible Authorities to find the right concept and operator for the premises. The conditions on the Premises Licence would need updating in any event. However it would be about finding the right operator for the premises.

Samantha Kain, Business Development Manager for the PLH, spoke to apologise to residents for the lack of response to their complaints and stated that the PLH did not wish for these issues to occur.

In response to questions from the Metropolitan Police, Mr Domleo stated that he didn't know why the previous tenant (and PLH at the time) hadn't made Star Pubs and Bars Limited aware of the previous incidents at the premises .

In their closing statement, the resident spoke to sum up their concerns:

- The resident stated that 7 incidents are 7 too many and they felt that the PLH hadn't addressed anything to make residents feel safer or give confidence. The resident queried how the PLH hadn't been aware that the premises had been closed for 6-8 weeks in December 2021 when a previous incident had occurred.

George Domleo, summing up for the PLH stated:

- The PLH could not condone the incidents. Star Pubs and Bars Limited wanted a reputation for well run pubs and it was of concern to them that The Vale had deteriorated as it had done. The PLH had taken the action to remove the tenant and close the pub and it would remain closed for the foreseeable future. However, the PLH would need a Premises Licence in force to find the right operator and concept for the premises. The PLH had communicated with Police throughout and would continue to do so.

Jeremy Phillips spoke to make closing statements for the Applicant:

- Police only have to intervene when the situation gets out of hand. However, residents were dealing with these issues on a daily basis.
- The only intervention from the PLH in recent years was to confirm the previous tenant as the tenant for the premises.
- Mr Phillips reminded the Licensing Sub-Committee of all the evidence they had seen in relation to the incidents.
- The Police's view was that there was nothing short of revocation which could keep the standards that the Authority have set within their Licensing Policy.
- If in the future the PLH wished to return with the concept, pricing structure, plans and operator following consultation with residents and Responsible Authorities then it would be for the Licensing Sub-Committee at that stage to consider that application. However until then the Police were of the view that there was nothing that had been heard during the meeting that would convince the Police that the licensing Sub-Committee should stop short of the most extreme sanction available to them.

Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to revoke the Premises Licence.

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

1. There were no proposals provided by the Premises Licence Holder in terms of conditions or other operational changes that would address, curtail or stop incidents like those which had been brought to the Licensing Sub-Committee's attention occurring in the future.
2. A Premises Licence can be applied for when a proper working proposal is found to address the issues which have occurred at the Premises within the last 9 years. The Licensing Sub-Committee did note that if there were to be a future application this would need to reflect the needs of the local area
3. A number of serious issues had occurred at the Premises whilst the Premises Licence Holder had been the Landlord of the Premises between 2013 – 2018 itself. The Metropolitan Police had listed these within their evidence as follows:

14/4/2015 – GBH/Serious Wounding
18/6/2015 – Common Assault
22/3/2016 – Common Assault
17/5/2016 – Public Order Offence
19/5/2016 – GBH with Intent
31/1/2017 - ABH
24/2/2017 – Public Order Offence
4. The Licensing Sub-Committee did consider the option of suspension of the Licence for a period not exceeding three months. However the Licensing Sub-Committee did not consider that this would be a proportionate and appropriate response when taking into account the severity of the issues which had occurred at the premises and the effect that this had had on local residents, as well as operational steps to address issues once the Premises Licence resumed being operational.
5. Considering the reputation of the premises, whereby residents had described drug taking, damage to vehicles, intimidation to women and girls and to the local nursery, it was determined that revocation was the only option in the absence of any other real proposals on ongoing use and management of the premises.
6. The Licensing Sub-Committee did consider each of the options for modification of the premises licence (steps) in section 53C of the LA 2003, in escalating steps of consideration. However, none of these options were considered appropriate when considering all of the evidence before the Licensing Sub-Committee. The operation of the premises would present a risk to the public in terms of each of

the Licensing Objectives, but especially Crime and Disorder, Public Nuisance and Public Safety.

Under 53D of the Licensing Act 2003, the Interim Steps currently in place at the premises and attached to the current Premises Licence would end and be replaced by the Revocation on determination. The Premises would therefore be without a Premises Licence and a new Premises Licence application (which would include the statutory 28-day notice period for any representations to be submitted) will be required for the Premises to re-commence any licensable activities. Should the PLH Appeal, then the Interim Steps will remain in force pending that determination.

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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