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Merton Council

Licensing Sub-Committee

13 April 2022

Supplementary agenda

5 Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 14 April 2022

Subject: Helen's Jolly Shop, 70 Gorringe Park Avenue, Mitcham, CR4 2DG

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 Sai Ram Trading Ltd for a new Premises Licence for "Helen's Jolly Shop" located at 70 Gorringe Park Avenue, Mitcham, CR4 2DG.

The application sought the following Licensable Activities and hours:

The supply of alcohol (Off Sales)
Monday to Sunday from 09:00 to 22:00

Opening Hours
Monday to Sunday from 06:30 to 22:00

One representation was received in relation to the application from a Borough Councillor, Councillor Kirby. Agreement was also reached on a number of conditions with the Metropolitan Police, 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, 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 offered in the application's Operating Schedule and agreed with Responsible Authorities. The conditions as agreed with the Metropolitan Police were 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 premises was located in the Cumulative Impact Assessment Area, which meant that the usual approach of the Licensing Sub-Committee would be to refuse this application, unless there were an exception and the premises would not cause increased cumulative impact from its operation. The CIA provided evidenced of the issue of street drinking in the area due to the saturation of premises with premises licences that permit off sales of alcohol.

Mr Frank Fender, representing the Applicant, presented the application:

- The application is made in tandem with the proposal to surrender the Premises License for a neighbouring shop also owned by the applicant's aunt;
- The neighbouring shop has been converted to a residential property and will not be repurposed back to being a shop;
- The premises license holder has several years experience in multiple stores in retailing alcohol;
- The applicant has voluntarily offered strict conditions which have been accepted by the Metropolitan Police, including amending the sale of alcohol times from 6.30am to 10pm to 9am to 10pm;
- The applicant is aware that the premises is in a special conditions area, and is committed to ensuring the agreed conditions serve the Licensing Objectives and do not exacerbate problems in the Cumulative Impact Area.
- The agreed conditions preclude the sale of drinks that are most commonly purchased by street drinkers, such as single cans, strong strength beers and ciders and miniature spirits.
- The application adopts stricter conditions and permits the sale of alcohol for fewer hours than the Premises Licence for the neighbouring shop.

Councillor Kirby raised concerns about the scale and rise of street drinking within the ward and noted that she generally objected to all applications for new Premises Licenses, due to the saturation of off-licences in this area and this was not a concern specific to this application. She confirmed that the previously neighbouring shop had been closed for some time.

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:

- Conditions that could be extracted from the operating schedule in the Application

1. Staff engaged in the sale of alcohol will be trained in respect of their legal and social responsibilities when doing so. They will also be trained in respect of the premises licence and any conditions contained therein. The premises licence

holder shall maintain a record of all staff training at the premises and shall produce such records for inspection by the police or authorised officers of the licensing authority upon request.

2. CCTV shall be in operation whenever the premises are open to the public.
3. A member of staff who is capable of downloading images for the police or authorised officers of the licensing authority shall be on duty at all times the premises are open to the public.
4. Notices shall be displayed in a prominent position at the premises, advising customers that CCTV is in use.
5. The premises licence holder, DPS, a personal licence holder or a fully trained member of staff authorised in writing by the DPS shall be present at the premises at all times during the permitted hours for the sale of alcohol.
6. The premises licence holder shall ensure that a CCTV system is installed in the premises of a standard acceptable to the Metropolitan Police Service. The system shall be maintained in good working order & fully operational covering all internal areas of the premises to which the public have access and also the area immediately outside the premises. All entry and exit points shall be covered enabling frontal identification (full head and shoulders images), of every person entering the premises in any light condition to an evidential standard.
7. All staff will be fully trained in the operation of the CCTV system including the ability to download screenshots and images for Police or Authorised Officers on request. A minimum of one such member of staff fully trained in the operation of the CCTV system shall be on duty at all times that the premises are open to the public.
8. The CCTV system will have the capability to download footage onto a disk or memory stick. The footage of the CCTV system will be retained for a minimum period of 31 days before re-writing itself with the correct date and time showing. Screenshots and CCTV footage will be made available to Police or Authorised Officers immediately upon request.
9. If the CCTV system is broken the premises licence holder shall notify the Licensing Authority and Police Licensing Team as soon as possible and get the fault rectified as soon as practicable.
10. The premises licence holder shall ensure that a log is kept in the Incident Book with the details of the dates of all work / repairs carried out on the CCTV system including the name and phone number of the engineer.
11. An Incident Book shall be kept at the premises and made available to the Police or Authorised Officers, which will record the following:
 - a. All crimes reported;
 - b. Lost property;

- c. All ejections of customers;
 - d. Any complaints received and the outcome;
 - e. Any incidents of disorder;
 - f. Any faults in the CCTV;
 - g. Any refusal in the sale of alcohol;
 - h. Any visit by a relevant authority or emergency service.
12. Whenever Police are called a CAD number shall be obtained and recorded in the Incident Book.
13. Appropriate notices shall be clearly displayed by the entry / exit door and behind the counter advising customers:
- 1) That CCTV and the Challenge 25 proof of age policy are in operation;
 - 2) Of the provisions of the Licensing Act 2003 regarding underage or proxy sales;
 - 3) That no single cans or bottles of beer, lager or cider may be sold in a single transaction;
 - 4) Of the permitted (licensed) hours for the sale of alcohol and the opening hours of the shop;
 - 5) Asking customers to respect residents, to leave the shop and area quietly, not to loiter or drink outside the shop and to dispose of litter legally;
 - 6) That customers may not drink alcohol in the premises;
 - 7) That the shop does not buy alcohol or tobacco goods from unsolicited (cold) callers to the premises at any time and that details of any such unsolicited (cold) callers including CCTV images will be passed to the Police.
14. There shall be no supply of alcohol for consumption off the premises except in sealed containers.
15. No beers, lagers or ciders above 6% ABV (alcohol by volume) shall be sold at the premises.
16. No single cans or bottles of beer, lager or cider shall be sold at the premises.
17. No spirits shall be sold in bottles of less than 20cl (centilitres).
18. All spirits must be displayed behind the counter and all other alcohol must be displayed in clear line of sight of the counter.
19. All displays of alcohol must be specifically covered by CCTV at all times.
20. A maximum of 20% of the retail display space may be used for the display of alcohol at any time.
21. All alcohol not on display will be stored in a lockable store.
22. The premises will actively engage with and work with the local Police Team and the Police and Council Licensing Teams.

23. Invoices or copies of all invoices relating to all alcohol and tobacco goods shall be kept on the premises for at least a year after the date of purchase. Alcohol and tobacco must never be purchased from a cold caller to the shop.
24. The shop will operate a clear window policy.
25. Staff will be trained in respect of the fire risk assessment, evacuation procedures, and the requirements of relevant health and safety legislation.
26. First aid facilities will be maintained at the premises
27. A notice will be displayed in a prominent position at the exit of the premises, asking customers to respect nearby residents and to leave quietly, not to loiter outside the premises and not to drink alcohol products in the street.
28. Management and staff will proactively discourage persons from drinking or loitering outside the shop both by monitoring the CCTV system & physical checks.
29. The area immediately in front of the premises shall be kept clean and tidy at all times the premises are open to the public and shall be swept at close
30. No deliveries will be received or removal of rubbish especially glass take place between 20.00 and 08.00 daily.

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

- a) The conditions as amended addressed the concerns the Licensing Sub-Committee had as raised within the representation and arising from the evidence based Cumulative Impact Assessment, to address potential street drinkers resorting to the premises.
- b) The Licensing Sub-Committee had to make a decision that promoted the Licensing Objectives that was appropriate and proportionate. The conditions imposed addressed those concerns.
- c) The Licensing Sub-Committee had to make a decision on the application based on its own merits
- d) The Licensing Sub-Committee considered that the revised hours and conditions offered, along with the surrender of the existing Premises Licence for the neighbouring property, satisfactorily addressed concerns about cumulative impact from this premises.
- e) As a new Premises Licence, the Premises Licence could be Reviewed by the Licensing Sub-Committee for breaches of the conditions or its authorisation.

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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