

Merton Council
Licensing Sub-Committee
12 October 2023
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: 23 October 2023

Subject: McDonalds, Unit 11, The Tandem Centre, Tandem Way, Colliers Wood, London, SW19 2TY

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 3616

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 Authority received an application from McDonalds Restaurants Limited for a “McDonalds” at Unit 11, The Tandem Centre, Tandem Way, Colliers Wood, London, SW19 2TY for a new Premises Licence.

The applicant applied for:

- Late Night Refreshment inside and outside the premises
23.00 and 23.30 Monday – Saturday.
- The Opening Hours of the premises
07.00 – 23.30 Monday to Saturday and
07.00 – 22.30 Sunday.

The Premises Licence was granted with the imposition of the offered, agreed and imposed conditions, as detailed below in this notice.

Licensing Sub-Committee Hearing

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

Ms Sarah Clover, representing the applicant, set out the application and noted that the concerns presented by Interested Parties were not universally licensing matters and there had been no representations made by Responsible Authorities. Although McDonald’s was an international brand, the individual restaurants were usually local franchises, as in this case. The manager had another restaurant, in Tunbridge Wells, and built up experience over the 8 years, employing 178 people. The manager looked forward to contributing to the local economy in Merton.

Of the concerns raised by Interested Parties, Ms Clover reminded the Licensing Sub-Committee that issues such as impact on other local businesses and health of the population were not criteria for a Licensing Sub-Committee to consider. There were no concerns around trading until 11pm with regard to traffic, noise or other similar impacts, and therefore no reason to think additional problems would arise between 11 and 11.30pm. These would be matters for Planning, addressed in a different process.

Issues around the neighbouring Nandos restaurant were a concern for Nandos not a new premises, there were no shared facilities, such as extractors, McDonalds did not sell items in bottles or other noisy containers.

The Operating Schedule set out proposed conditions intended to address concerns. They were standard conditions offered by all McDonald’s franchisees. All shift managers received conflict management training, the restaurant worked closely with local services, such as fire, police and environmental health.

Concern had been raised around the issue of litter. McDonald’s were flagbearers for litter control, with comprehensive policies for dealing with litter. The Manager was a

leader in this area, having won awards in Tunbridge Wells from the local authority for litter control. All litter in the vicinity of that restaurant was collected over the course of the day and at closing and the same approach would be used here. The manager had also been involved in various local community projects in Tunbridge Wells and hoped to replicate those efforts in Merton.

Ms Clover also asked the Licensing Sub-Committee to remember that licences were subject to review, should any commitments not be upheld or matters arise which impact on the licensing objectives.

In response to questions, Ms Clover informed the Licensing Sub-Committee that:

- The restaurant is due to open soon, once matters such as licensing had been resolved
- There is a commitment to litter picking, including a final litter pick at the close of business.
- Issues can arise at any time, not just after 11pm, and the experts on this are the police, the police have not objected to the application, or suggested a problem is expected with the extended operational hours. The representations received did not suggest a problem existed that would be exacerbated by the opening of the restaurant until 11.30pm, but rather a concern that a problem could develop. A review of the licence would be possible, should their concerns be proven.
- The measures put in place by the restaurant management typically reduce anti-social behaviour, light frontage, CCTV, and trained staff, are all disincentives to such disorder.

The Legal Advisor reviewed and agreed proposed conditions based upon the operating schedule with Ms Clover agreeing those conditions.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the application with the following licensable activities and opening hours:

- late night refreshment inside and outside the premises
23.00 and 23.30 Monday – Saturday.
- The opening hours of the premises
07.00 – 23.30 Monday to Saturday and
07.00 – 22.30 Sunday.

The Licensing Sub-Committee imposed the conditions extracted from the Operating Schedule in the Application as follows:

1. Notices shall be displayed advising customers to leave the premises quietly.
2. CCTV shall be maintained in effective working order and shall be in use at all times that the premises are open to the public. All recordings shall be retained

for 31 days and stored securely and shall be made available on request to the metropolitan police and other authorised officers.

3. A Staffsafe™ system with both audio and visual monitoring capability shall be installed in the restaurant and be activated by either fixed or mobile panic buttons.
4. Signage shall be displayed advising customers that a CCTV system is in operation at the premises.
5. All shift managers shall have safety and security training, including Maybo SIA accredited Conflict Management Training.
6. Regular litter patrols shall be in place to address litter created by customers from the premises, with a final litter patrol on closing.
7. Staff shall be trained to promote the four licensing objectives.
8. The store shall comply with its "No Open Alcohol Containers" policy to prevent persons carrying open alcohol into the in-store area.

Reasons

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

- 1) The Licensing Sub-Committee considered that the hours authorised and the conditions proposed and imposed, would not add to cumulative impact and in making their decision sought to promote the Licensing Objectives. The Licensing Sub-Committee considered the enclosed nature of the premises and parking area.
- 2) The Licensing Sub-Committee considered that the conditions acknowledged the adjoining residential areas, and sought to mitigate impact on residents (*Thwaites* considered), whilst it considered that other issues raised were not relevant to licensing (*Somerfield* applied).
- 3) The residents were able to seek a Review of the Premises Licence should they experience breaches of the conditions or public nuisance arising from the operation of the premises.

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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