

Merton Council
Licensing Sub-Committee
30 April 2024
Supplementary agenda

5 Notice of Determination – Nisa Local

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London Borough of Merton

Licensing Act 2003 Notice of Determination

Date of issue of this notice: 10 May 2024

Subject: Nisa Local, 23 Durnsford Road, Wimbledon Park, London, SW19 8GY

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 Tusharkumar Arvindbhai Patel for a variation to the Premises Licence for the premises known as Nisa Local, 23 Durnsford Road, Wimbledon Park, London, SW19 8GY

The applicant applied:

- To extend the hours that alcohol can be supplied to 24 hours
- add late night refreshments from 23:00 to 05:00 for hot drinks only
- add conditions that are listed in the application operating schedule and vary the plan that the premises must conform to. They have stated they wish to vary the layout to show a night service hatch.

The Premises Licence was granted with some limitation on the extension of hours that alcohol can be supplied and the imposition of the offered, agreed and further 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.

The applicant set out the application and explained that customers had been requesting a 24 hour service, and that there are no other 24 hour options nearby.

When the applicant took over the shop, there had been some issues with shoplifting. Over three or four months, the issue had been largely resolved. The applicant and their staff know the people in the area, and know who cause problems for the business. There would be a hatch installed to serve deliveries to customers after 11pm.

The request for the variation is to support the customers, more than to support the business.

In response to questions it was confirmed that:

- the applicant could accept a limitation on sale of alcohol until 2 or 3 am.

The Licensing Sub-Committee also heard from Cllr Hall.

Cllr Hall informed the Licensing Sub-Committee that she had been a councillor for two years, the premises were located in the most problematic area of the ward. 90-80% of discussions at police panels were focused on that area, and the possibility of adding 24 hour alcohol sales was not appealing and would add to issues in that area.

There was a concern that proxy sales could be used to by-pass the best intentions of the applicant and their staff. There were already reports of attacks, arson, theft of motorcycles, damage to flat doors and windows and intimidation of residents.

The concerns were not specific to the shop itself, and that in principle there are no problems with sale of alcohol until midnight, or with the sale of hot food and drink through the hatch as they do at all-night garages. However, young people in the area have a history of inviting outsiders from as far afield as Croydon to join in their antisocial behaviour.

Cllr Hall recognised that Mr Patel was a responsible manager, and lots of shift workers in the area might prefer grocery shopping late at night. However, providing alcohol for 24 hours was not a good idea and risked exacerbating existing issues.

In response to questions the Licensing Sub-Committee was informed that:

- The shop has a good relationship with its customers, the local trouble makers know that they won't be served alcohol at the shop
- The shop does ID customers, but is unable to police what they do with their purchases away from the premises
- The estate manager has sent footage of anti-social behaviour to the police, but so far no action has been brought against them, it is unclear why that would be the case.

The Legal Officer informed the participants that the Licensing Sub-Committee was required to make sure decisions were proportionate and appropriate, that promoted the Licensing Objectives, taking into consideration both written and verbal evidence (Thwaites licensing case applied).

In closing, Cllr Hall reiterated the desire to limit the possibility of an increase in anti-social behaviour.

The Decision of the Licensing Sub-Committee

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

Sale of alcohol for consumption off premises

Hours:

Sunday to Thursday until midnight

Friday and Saturday until 2am

Conditions that could be extracted from the application operating schedule

1. All customer purchases made between 2300hrs and 0600hrs shall be via a secure Night Service Hatch.
2. Any supply of Late Night Refreshment shall be drinks only. There shall be no supply of hot food between 2300hrs and 0500hrs.
3. Members of the public shall not be permitted entry to the shop premises between 2300hrs and 0600hrs.
4. All entrances to the Premises shall be locked and secure between 2300hrs and 0600hrs.
5. There shall be no sale of alcohol for consumption within any area of pavement or open Space adjacent to the premises.
6. There shall be no sale of alcohol from the Night Service Hatch at any time that persons can be seen drinking alcohol within any area of pavement or open space adjacent to the premises.

Conditions agreed with the Metropolitan Police

Security Incidents

1. An incident log shall be kept at the premises and made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must be completed within 24 hours of the incident and will record the following;
 - a) All crimes reported at the venue
 - b) All ejections of patrons
 - c) All complaints received concerning crime and disorder
 - d) Any incidents of disorder
 - e) Any faults in the CCTV system.
 - f) Any visit by a relevant authority or in relation to service.

Closed-circuit television

2. The premises shall install and maintain a comprehensive closed-circuit television system (CCTV). All recordings shall be stored for a minimum of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
3. The digital CCTV will cover all areas to where public have access.
4. CCTV will be recording at all times when premises is open, and the recordings will be of evidential quality in all lighting conditions and be of a sufficient quality to produce in court of hearing.
5. All images downloaded from the CCTV must be provided in a format which can be viewed on regularly available equipment without the need for specialist software.
6. At all times the premises is open to the public a minimum of one member of staff on duty will be able to operate the CCTV.
7. The CCTV system shall be maintained in effective working order.
8. Suitable signage shall be displayed at the premises in a prominent position as customers enter the premises stating that CCTV is in operation.

Conditions currently on the premises licence that the Sub-Committee may consider removing or rewording with offered and agreed conditions.

1. The premises shall maintain a CCTV system which gives coverage of all entry and exit points. The system shall continually record whilst the premises are open and conducting licensable activities. All recordings shall be stored for a minimum period of 28 days and shall be capable of being easily downloaded. Recordings shall be made available upon the receipt of a request by an authorised Officer of the Police or the Local Authority.
2. There shall be "CCTV in Operation" signs prominently displayed at the premises.
3. An incident log (whether kept in a written or electronic form) shall be retained at the premises and made available to an authorised Officer of the Police or the Local Authority.

Reasons

The Licensing Sub-Committee carefully considered the evidence presented in the agenda papers and the submissions made to the Licensing Sub-Committee at the meeting (Thwaites).

The Licensing Sub-Committee considered the concerns of objectors to the application but had to make a decision that was appropriate and proportionate.

The Licensing Sub-Committee considered that the conditions proposed along with a more limited licence to sell alcohol after 11pm addressed their main concerns.

The Licensing Sub-Committee was especially aware that any breach of the conditions or any public nuisance could result in the Licensing Sub-Committee having to Review the Premises Licence.

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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