

Merton Council

Licensing sub-committee

17 July 2014

Supplementary agenda

4. Notice of Determination - Nishile Newsagent

1 - 6

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 21 July 2014

Subject: Nishile Newsagent, 39 High Street, Colliers Wood, SW19 2JE

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 2012). 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 Sub-Committee reviewed the Premises Licence (LN/00000954) held by Pooja Foods Limited for “Nishile Newsagents” of 39 High Street, Colliers Wood SW19 2JE. The Licensing Sub-Committee determined that the Premises Licence should have conditions added to it. Some were conditions proposed by the Trading Standard Officers and some were volunteered by the Premises Licence Holder. No other action was taken by the Licensing Sub-Committee.

The conditions imposed onto the Premises Licence and recommendations made were as follows: Conditions:

1. Age verification policy of 25 years old. A “Challenge 25” proof of age policy shall be operated at the premises at all times. All checkout/till/serving staff shall check proof of age documents of all persons who appear to be under 25 years old. This check shall be made by examining either a passport, photographic driving licence, a PASS approved proof of age card or other appropriate card with a photo and holographic mark. No other form of identification shall be accepted.
2. Publicity materials informing customers of the operation of the “Challenge 25” scheme shall be displayed at the premises, including a “Challenge 25” sign of at least A5 size on the customer side at each till/point of sale. “Challenge 25” signs of at least A4 size are to be displayed on the premises including on the entrance door so as to be both visible to customers entering the premises.
3. The Premises Licence Holder shall operate and maintain an up-to-date Refusals Register for the Sale of Alcohol, indicating the date, time and reason for refusal as well as sufficient details to enable the sales person to be identified. The Register shall be checked and signed by the DPS on a weekly basis.
4. The up-to-date Refusals Register for the Sale of Alcohol register shall be kept on the licensed premises and shall be made available for inspection by Authorised Officers and Police officers on request.
5. The DPS or any personal licence holder employed at the premises shall make and keep a record, at the shop premises, of all persons authorised to sell alcohol. This record shall contain all training records for those persons and a copy of the authorisation (which must be given by the DPS) to sell. These records shall be available for inspection by Police officers and Authorised Officers on request.
6. All staff at the premises are to undertake a recognised and documented training course with an accredited provider covering the law relating to under age sales within one month of the review. Non-accredited refresher training shall take place on 3 monthly intervals. Such non-accredited refresher training shall be recorded and signed off by the DPS, Premises Licence holder or the Personal Licence holder.

Recommendations

- i. A second personal licence holder should be trained and on the premises.
- ii. A till prompt should be utilised.

Reasons

The Licensing Sub-Committee considered all of the relevant evidence made available to it and in doing so has taken into account the Licensing Act 2003, the Guidance under section 182 of the Licensing Act 2003, its Regulations, case law, and Merton Council's Licensing Policy. The reasons for the decision were as follows:

Reasons

- a) The Licensing Sub-Committee had concerns about the quality of the internal training.
- b) The Licensing Sub-Committee had regard to the Home Office Guidance (noting paragraphs 11.20, 11.26, 11.27, and especially 11.28).
- c) The Licensing Sub-Committee took note of the 9 month delay before this hearing from the single test purchase failure on 14 October 2013 [17.25] and the subsequent successful test purchase.

The Licensing Sub-Committee was satisfied that the conditions imposed were appropriate and proportionate to meet the licensing objectives.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2012).

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.