

# **Merton Council**

## **Licensing sub-committee**

**25 June 2015**

### **Notices of Determination**

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London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 1<sup>st</sup> July 2015

**Subject:** Eastern European Food, 51 London Road, Tooting, SW17 9JR

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.

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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](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 DG E GD Limited for a premises licence for the supply of alcohol (off sales only) and opening hours from 09.00 – 22.00 Mondays to Sundays for its premises known as “Eastern European Food” at 51 London Road, Tooting, SW17 9JR.

The Licensing Sub-Committee in reaching its decision had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, that complied with the Licensing Act 2003, its Regulations, had regard to the current Secretary of States’ Home Office section 182 Guidance, had regard to the Council’s Statement of Licensing Policy, and complied with parameters provided by relevant case law. The Licensing Sub-Committee had regard to paragraphs 9.12 and 9.41-9.43 of the Guidance.

The decision of the Licensing Sub-Committee was to refuse the application and not grant the Premises Licence.

## Reasons

The Licensing Sub-Committee provided the following reasons in deciding to refuse this premises licence application:

- There were serious concerns over crime and disorder and antisocial behaviour in the postcode as listed in the Metropolitan Police written representation (page 31 of the agenda pack). The Licensing Sub-Committee had to consider the representation from the Metropolitan Police, showing that there was significant crime and disorder issues in the area around the premises which cited that there were 33 crime reports for this area for the period 21<sup>st</sup> May 2014 to 21<sup>st</sup> May 2015 alone, involving 8 theft related offences, 5 burglaries, 2 robberies, 3 public order offences, 1 racially aggravated public order offence, 6 assaults, 5 criminal damage offences, 1 racially aggravated harassment allegation, and 2 drug related offences.
- Licensing Sub-Committee was concerned with the Applicant’s response to questions, which indicated a lack of knowledge of the problems in this area.
- There was evidence from the Ward Councillor of alcohol related problems in the area involving street drinking and drinking debris.
- The Licensing Sub-Committee had noted the cumulative impact of another off licence in this area that had reached saturation point with the licensed outlets in the area.

From this evidence it was the Licensing Sub-Committee’s view that the granting of this application would exacerbate existing problems in the area and would not promote 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.

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London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 1<sup>st</sup> July 2015

**Subject:** FND Ltd, Unit 23, 55-59 Weir Road, SW19 8UG

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.

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# Annex A

## Determination

The Licensing Sub-Committee considered an application by FND Limited for a new premises licence for the supply of alcohol (off sales only) for deliveries of Chinese food with the business name of “Bamboo Baboom” and Mexican/Brazilian food with the business name of “Mexican Fresh” with deliveries originating from Unit 23, 55-59 Weir Road, SW19 8UG for the period 12.00-01.00 Mondays to Thursdays, and 12.00-03.00 Fridays to Sundays.

The Licensing Sub-Committee in reaching its decision had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, that complied with Licensing Act 2003, its Regulations, had regard to the current Secretary of State’s Home Office section 182 Guidance, had regard to the Council’s Statement of Licensing Policy, and complied with parameters provided by relevant case law. The Licensing Sub-Committee had regard to paragraphs 9.12 and 9.41-9.43 of the Guidance.

The Applicant informed the Licensing Sub-Committee that it had a Premises Licence permitting late night refreshment. However, on investigation, it was discovered that no such Premises Licence was in force. The Applicant explained that it had mistaken its Food Registration with a Premises Licence. The Licensing Sub-Committee in the absence of more information accepted that this is what the applicant had meant and done.

The Licensing Sub-Committee determined that the application for a new Premises Licence to FND Ltd **be granted** subject to conditions offered, the six conditions sought by the Metropolitan Police (with amendments to conditions 1 and 5) and further conditions imposed by the Licensing Sub-Committee. The Conditions are as follows:

### Extracted/Offered Conditions

1. There shall be no consumption of alcohol on the premises.
2. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
3. There shall only be deliveries of alcohol and food from the premise and no collections shall be permitted from the premises.
4. There shall be no public access to the premises.
5. There shall be no access by children to the premises.

### Metropolitan Police Conditions

1. Alcohol shall only be supplied if it is ancillary to food. The cost of alcohol is to be no more than double the cost of the food ordered.
2. All sales of alcohol for delivery must be paid for at the time of ordering.

3. A record of orders will be kept which will include the customer's full details and that the Challenge 25 policy was explained to them. This log will be made available to Police and Council Officers on request
4. The delivery of alcohol will only be made to a residential or business address. The delivery of alcohol shall not be made to a person in a public place.
5. The person taking the order and/or making the delivery must ensure that the recipient is 18 years of age. A check will be made by the delivery person to ensure the person accepting the delivery has the debit/credit card used for the purchase and if they appear to be under 25 years of age, photographic ID shall be required before the alcohol is handed over.
6. All staff will receive documented training in relation to the relevant sections of the Licensing Act 2003. This shall be repeated every 6 months. Records of training shall be kept and made available to the Police or Council Officers on request.

#### The Licensing Sub-Committee conditions

7. Alcohol sales shall be limited to wine and beers only.
8. There shall be no supply of alcohol after 23.00 on any day\*.
9. That no beer above 5.5% ABV is sold No beers or lagers of 5.5% ABV (alcohol by volume) or above shall be sold by the Premises Licence Holder.

\*This application did not include any application for late night refreshment, so food deliveries can only be provided up to 23.00 until a variation is granted to allow late night refreshment up to the end of the hours set out above. This means that due to the condition on food being ancillary to deliveries of alcohol this Premises Licence is only operational up to 23.00 until such variation is granted.

#### **Reasons**

The reasons for the decision were as follows:

- a) The Licensing Sub-Committee was particularly concerned for the safety of the delivery drivers and compliance with the Licensing Act 2003 in respect of deliveries and to avoid underage sales.
- b) The Licensing Sub-Committee was particularly concerned with the Licensing Objective of Protection of Children from Harm and had to impose conditions to prohibit underage sales of alcohol.
- c) The Licensing Sub-Committee was also very concerned to protect the public in promoting the Licensing Objectives of Public Safety, Preventing Crime and Disorder and Preventing Public Nuisance by not granting the sale of stronger spirits and strong beer.
- d) The Licensing Sub-Committee imposed the conditions above to ensure the premises licence promotes the objectives of the Licensing Act 2003, which it considered were appropriate and proportionate.

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