

Merton Council
Licensing Sub-Committee
22 October 2015
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: 28 October 2015

Subject: Motor Fuel Ltd, Convenience Store, 7 Rowan Road, Streatham, SW16 5JF

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

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing/>

Annex A

Determination

The Licensing Sub-Committee considered an application for a new Premises Licence from Motor Fuel Ltd for the garage and proposed convenience store at 7 Rowan Road, Streatham SW16 5JF. The Licensable Activities and opening hours applied for were as follows:

The sale by retail of alcohol (for consumption off the premises):

- Monday to Sunday: 06:00 to 23:00, and

Late Night Refreshment (indoors)

- Monday to Sunday 05.00 to 24.00

Opening Hours:

- 00.00 – 24.00

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 section 176 of the Licensing Act 2003.

The decision of the Licensing Sub-Committee was to refuse the application on the following grounds:

Alcohol & Primary Use: Based on the evidence put forward either from footfall or revenue, the committee is concerned that the primary use of the premises is as a garage at this time and therefore the retail sale of alcohol is prohibited by section 176 of the Licensing Act 2003 at this time.

Reasons

The Licensing Sub-Committee provided the following reasons in deciding to refuse a Premises Licence permitting the retail sale of alcohol (off sales only) in this application:

The application is premature as it has been submitted before the refurbishment of the premises to a convenience store with petrol sales operation, and does not have a track record of a convenience store operation as yet.

The licensing sub-committee was concerned that the initial data evidence was not related to this store but to other stores already run by the applicant. The new data evidence (page 9 supplemental agenda) shows footfall for retail at approximately 17%, whilst the prospective footfall data (page 42 original agenda) shows approximately 51% but the sales data is broadly comparable in both the new data and the proposed data at

only approximately 7% of sales.

Late Night Refreshment: The Licensing Sub-Committee considered the late night refreshment element of the application and decided if it could be granted notwithstanding a refusal of the alcohol element. However, even with the proposed conditions, the Licensing Sub-Committee felt that as a result of the use of the hatch, and with the slamming of car doors and car stereo music, with youths loitering at the forecourt etc based on the evidence of residents, showed that the premises is already noisy and causing a nuisance to residents, especially late at night. In promoting the licensing objectives Licensing Sub-Committee could not see that it would assist matters to grant that part of the application at this time.

From the evidence before the Licensing Sub-Committee, its view was that the granting of the Late Night Refreshment application would exacerbate existing problems in the area and would not serve to promote the licensing objectives.

The Licensing Sub-Committee fully accepted that this was a new operation, by new owners, that was progressing to a different arrangement involving a convenience store and a change in style of operation. It accepts that after a period of trading following the refit, the situation may be different and the application may well be considered very differently if the applicant re-applies - then supported with up to date primary use data and an incident free record of trading, without nuisance to residents, and anticipate that the residents may even then support the application.

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.