

Merton Council
Licensing Sub-Committee
7 August 2017
Supplementary Agenda

8 Notice of Determination - Mitcham Mint

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 8 August 2017

Subject: Mitcham Mint, 1A Lilian Road, Streatham, SW16 5HN

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 (March 2015). 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 by Star Pubs and Bars Limited for a variation to the Premises Licence at Mitcham Mint, 1A Lilian Road, Streatham, SW16 5HN.

The applicant applied to vary the Licence as follows:

- Amend the Licensing plan in accordance with the drawing attached to this application.
- Amend condition 3 of Annex 1 that reads, "No use shall be made of any external area of the premises", to state "no use shall be made of any external area of the premises save for between 10:00 and 23:00 Monday to Saturday and 10:00 and 22:30 on a Sunday for smoking and consumption of alcohol" whilst seeking for removal of Condition 9 of Annex 2 from the current Licence;
- Remove condition 5 of annex 1 that reads, "CCTV shall be installed, maintained and made available to Police & Council Officers", and replace with a condition that reads, "the premises shall install and maintain a good quality digital CCTV. Coverage will extend to all external areas. The CCTV system shall continually record whilst the premises is open. All recordings shall be stored for a minimum of 28 days with time and date stamp. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. The staff member must be able to show the police recent footage with the absolute minimum of delay when requested".
- Amend the opening times of the premises from 10.00 to 08:00 for the provision of non-licensable activities e.g. sale of tea, coffee, breakfast, food.
- Remove the non-standard hours for Good Friday and Christmas Day so that normal trading hours are permitted.

Representations were received from 3 local residents.

The variation of the Premises Licence was granted, subject to the following Hours and Conditions:

- 1) The variation of this premises licence will have no effect until the premises licence holder has submitted satisfactory plans (including the full layout of the front area and the rear yard) at which time this condition shall be removed from this licence by the licensing authority. These plans must be submitted to the Licensing Authority within 14 days.
- 2) Condition 3 is amended to read, "no use shall be made of any external area of the premises (being the front area or rear yard/side area) save for between 10:00 and 21:00 Sunday to Thursday and 10:00 and 22:00 Friday and Saturday for smoking and consumption of alcohol and/or food", subject to the use as follows:
Outside Front Area (as currently marked on Plan M2485/TIC/17)
 - Alcohol and/or food consumed outside the premises in this area shall only be consumed by patrons seated at tables.
 - Demarcation barriers shall be installed between the highway and the premises' land boundary.

Side Area (aka Rear yard)

- The existing seating provision shall remain but customers are not required to be seated, though it is preferred;
- Alcohol and/or food may be consumed outside the premises in this area.

Condition 9 is removed as the revised condition 3 addresses smoking;

- 3) Condition 5 amended as sought and will read, "The premises shall install and maintain a good quality digital CCTV system. Coverage will extend to all external areas. The CCTV system shall continually record whilst the premises is open. All recordings shall be stored for a minimum of 28 days with time and date stamp. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. The staff member must be able to show the police and/or licensing officer recent footage with the absolute minimum of delay when requested".
- 4) The opening hours are amended as sought and commence at 08.00.
- 5) Non-standard hours for Good Friday and Christmas Day are removed as sought, such that there are no seasonal hours for Good Friday and Christmas Day.
- 6) Condition 9 is removed as it has been addressed above by the amendment to condition 3;
- 7) The following condition was imposed by the committee, "A direct telephone number for the manager at the premises shall be publicly available at all times in case of emergency or complaint. This telephone number is to be made available to residents and businesses in the vicinity by display in the window of the premises such that they can view it from outside the premises. The Premises Licence holder and manager at the premises shall hold regular meetings with local residents or businesses to discuss any issues and to address complaints or concerns".

Recommendations

The Committee also recommended the following measures:

- The licence holder and manager at the premises shall ensure that the outside areas of the premises are orderly and supervised so as to ensure that there is no public nuisance or obstruction to the public highway.
- All drinking vessels used in the outside areas should remain polycarbonate.
- It is preferred that the rear yard is used for the consumption of alcohol and smoking during the hours proposed with the front area remaining more of a food led area for mainly family use albeit with alcohol available.
- Smoking shall only be allowed outside the front of the premises between the closing times of the outside area and the closing time of the premises to avoid smoking at the rear of the premises nearer to residential properties. The minimum amount of people shall be outside for smoking preferably at only 1 table near the rear yard entrance area.

Reasons

The Licensing Sub-Committee carefully considered the Agenda and Supplemental Agendas (including the application and all of the Representations) and the oral evidence submitted at the hearing by the Applicant.

The Applicant stated that:

- The reason for the application was that the new tenant wanted to improve and invest in the Premises including the outside areas with the addition of hanging baskets and barriers to make the outside area more attractive and comfortable for patrons and more attractive to residents looking at it or using it.
- The Applicant was in agreement with residents that the premises needed to change, and wanted to improve the premises for the whole community, and felt that in such a residential area, this should be more of a community pub and venue.
- There had been no representations received from any Responsible Authorities which the Applicant believed was significant.
- The CCTV condition had been proposed following consultation with the Police, that afforded additional security and detection to safeguard residents using the premises or nearby albeit through deterrence.
- The Application did not increase the hours when alcohol could be sold or consumed. The earlier opening hours did not include the sale of alcohol (being a period when hot and cold food could be provided lawfully by any premises in the UK without the need of a licence) and were to provide breakfasts/coffees etc so that the premises could be more community orientated and family-friendly. The Applicant was not applying for any extension to the closing time of the Premises.
- The Applicant was open to discussion on how to manage the outside area.
- The Applicant's area manager admitted that there had been 2 incidents in the last 18 months (under previous temporary management). However, there had been none since the new tenant took over in June 2017. The DPS and new Manager had already dealt with the regeneration of problem premises elsewhere in the Borough and had a track record of resolving any issues and wanted to do the same at this premises

The new Tenant stated that he had been a police officer for the Metropolitan Police for 30 years, and that he was very concerned that residents felt unable to discuss their concerns with the Premises operator. He stated his intention is to make contact with residents and if possible to engage with them.

The Licensing Sub-Committee throughout the hearing asked the Applicant (represented by the Premises Licence Holder's representative, area manager and new pub manager) to comment on or respond to the 3 Representations submitted. The Applicant stated that the residents representations referred to extension of hours which was not what the application sought to do (no change to alcohol hours was proposed). The Applicant was unsure why breakfast was controversial (the application explained why they want to serve breakfast, where such rights do not usually require inclusion within a Premises Licence under the Licensing Act 2003). The Applicant admitted there had been 2 incidents that took place within 18 months of the application. The Applicant's new site manager that has recently taken over the premises mentioned his concern about residents being afraid (the area manager thought this arose from temporary managers in the past not performing as the Applicant expected).

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

- The conditions dealt with the concerns of the Licensing Sub-Committee about the front area and its' management and use and the issue of public nuisance;
- Residents comments and concerns were considered and balanced with the proposals and ideas put forward by the Premises Licence Holder in terms of improving the area (e.g. serving coffee/breakfast, making the visual appearance of the premises more attractive, and the intention to make the premises more family friendly and community orientated);
- There would be no change in the hours of licensable activities at the premises; There was some standardisation of out of date conditions (from the Licensing Act 1964); and
- There had been enhancement of the security position through the increased CCTV provision.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (June 2014).

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.