

LICENSING SUB-COMMITTEE  
25 SEPTEMBER 2015

10.30am

PRESENT Councillor Linda Taylor (in the Chair),  
Councillor Tobin Byers and Councillor Philip Jones

ALSO PRESENT Elizabeth Macdonald, Licensing Officer  
Guy Bishop, Legal Adviser  
Hilary Gullen, Democratic Services Officer

For the applicant:  
Chris Mitchener

Responsible Authorities  
Sgt Peter Sparham, Metropolitan Police

Interested Parties:  
Mr A Braho  
Ms A Demirci

1 APPOINTMENT OF CHAIR (Agenda Item 1)

Cllr Taylor was appointed chair.

2 APOLOGIES FOR ABSENCE (Agenda Item 2)

There were no apologies for absence.

3 DECLARATIONS OF PECUNIARY INTEREST (Agenda Item 3)

There were no declarations of pecuniary interest.

4 MOTOR FUEL LTD, CONVENIENCE STORE, 7 ROWAN ROAD,  
STREATHAM, SW16 5JF (Agenda Item 4)

The chair introduced those present and gave information on the procedure.  
All paperwork had been received by all parties

Guy Bishop stated that a request for adjournment had been received. The panel decided to proceed with the hearing.

Guy Bishop explained that section 176 advice had been given in the pre-meeting, but proceeded to explain that an assessment of primary use was required in this application as this premises had or may be operating as a garage. The Licensing Sub-Committee invited Mr Mitchener to explain this during his presentation.

Chris Mitchener introduced the application, describing the sales pattern, stating fuel was not primary use, that the site was on a semi-arterial road, how some residents concerns had been addressed by additional outside bins, adjusting light pollution from the ATM, and that he was happy to agree the police conditions, but requested that the ABV limit was raised to 6%.

Licensing hours were discussed, including the reduction to 11pm from midnight in the application for sale of alcohol and use of the night hatch at all other times up to 6am.

Mr Braho suggested that crime and disorder issues would increase with 24 hour trading and that alcohol sales on the forecourt would lead to drink driving. Mr Mitchener stated there was no evidence to support this.

Ms Demirci stated that youths loitering caused problems for residents, given the proximity.

Mr Mitchener stated that there were no issues with the site, that signage was in place to ask patrons to leave quietly, and that Motor Fuels Ltd were clear about their responsibilities.

Discussion ensued on staff training, where Mr Mitchener described the training processes. In response to questions from the panel, Mr Mitchener confirmed that there were times when only one member of staff was on duty, and that anyone causing problems would be advised they would not be served in the future.

Cllr Byers questioned the figures given by the applicant on page 42 of the pack. Mr Mitchener explained these were generic figures, as Motor Fuel Ltd had only taken ownership of the premises in July 2015. The figures were from approximately 400 sites owned by the company throughout the UK and did not include this premises, and were anticipated figures, taking into account the forthcoming refurbishment of the convenience store.

Mr Mitchener referred to the *Murco* case to support the configuration of the figures given in the table on page 42.

Mr Mitchener accepted that any condition relating to the sale of hot food would be accepted, suggesting that the premises would only provide hot drink and not hot food after 11pm.

Maps supplied by Mr Mitchener were circulated, showing an aerial view of the premises. Mr Mitchener explained that the two pumps on site were shut off at night to prevent 'drive offs'.

In response to questions from residents, Mr Mitchener explained the CCTV recording system and incident book.

Sgt Sparham, in response to panel questions, stated that 2 of the assaults listed were related to the premises and that the indecent exposure offence was not related.

The residents presented their objections, including the nuisance due to petrol fumes, the car wash, the tyre pressure machine, noise from doors slamming and in car music systems, light pollution, people loitering and sitting on the boundary wall, and stated how this had caused anxiety for them.

Mr Mitchener gave more detail of the CCTV and refusal systems in place, and stated that an anti-seating device could be fitted to the wall.

The resident stated that Mr Redmond, who was not present, had raised frequent grievances about the site, especially when operated on a 24 hour basis.

In response to questions about statutory notices for the application, Mr Mitchener confirmed that he had placed more than the required number of notices on the premises, in various places to ensure they were seen.

Guy Bishop pointed out that late night refreshment depended on any planning permission, but it was acknowledged that this was a separate issue which was not in the gift of the panel. If the sale of alcohol were not to be permitted in this application, then it is still possible for the Premises Licence to be issued to permit Late Night Refreshment, should the Licensing Sub-Committee be so minded, subject to the Licensing Sub-Committee promoting the Licensing objectives and making a proportionate and appropriate decision based on the evidence before it. Late Night Refreshment is not excluded under section 176 of the Licensing Act 2003 if the premises trades as a garage.

Mr Mitchener submitted that the Licensing Sub-Committee could not consider the issue of whether the premises may be excluded from being granted a Premises Licence if it was primarily used as a garage, if primary use had not been raised by the Police or Interested Parties. The Legal Advisor to the Licensing Sub-Committee indicated that reading of section 176 of the Licensing Act 2003 and dicta in the *Murco* case allowed the Licensing Sub-Committee to consider this issue. *Murco* included dicta from other cases and included dicta on this point, where it read inter alia, ““However, it is clear from the judgment of MacPherson J (with whom Butler-Sloss LJ agreed) that there was nothing improper in the magistrates examining turnover figures to determine primary use”, “In my view it is a matter for each licensing authority to decide whether it will decide primary use on the basis of numbers or evidence of turnover”, and “If the Council was not satisfied by the evidence on primary use it should have refused to grant the licence.” A Licensing Authority has a duty to investigate the issue of primary use.

The panel went into closed session at 11.50am

On reopening the hearing, Guy Bishop explained he had given advice to the panel on the *Thwaites* case and provided information on the *Murco* case.

The chair gave the decision:

The Licensing Sub-Committee considered the application from Motor Fuel Ltd, Convenience Store, 7 Rowan Road, Streatham SW16 5JF. The Licensable Activities and opening hours applied for were as follows:

- The sale by retail of alcohol (off sales only):

Monday to Sunday: 06:00 to 23:00

Late Night Refreshment (indoors) Monday to Sunday 05.00 to 24.00

- Opening Hours:  
00.00 – 24-00

The Decision of the Licensing Sub-Committee was to postpone a decision on the application to Thursday, 22nd October 2015 at 10.30am

**The reasons were as follows:**

Under section 176 of the Licensing Act 2003, a Premises Licence cannot be granted if the premises is primarily used as a garage. In this context, the data provided in the application was insufficient because it was generic data for 400 other premises, as opposed to the specific premises at 7 Rowan Road.

Therefore the Licensing Sub-Committee requires the following data broken down by month for July/August/September 2015:

Total existing shop Sales:

- Shop sales in pounds
- Fuel sales in pounds

Total number of customers broken down into:

- Fuel customers
- Goods customers
- Dual customers

5 NOTICE OF DETERMINATION (Agenda Item )

**London Borough of Merton**

## **Licensing Act 2003**

Notice of Determination

**Date of issue of this notice: 30<sup>th</sup> September 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.

**For enquiries about this matter please contact**

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**Telephone:** 020 8545 3616

**Email:** [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk)

**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 for a new Premises Licence from Motor Fuel Ltd, Convenience Store, 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 Decision of the Licensing Sub-Committee was to postpone a decision on the application to Thursday, 22<sup>nd</sup> October 2015, 10.30am

### Reasons

Under section 176 of the Licensing Act 2003, a Premises Licence cannot be granted if this premises is primarily used as a garage. Data needs to be assessed as part of the application to make sure that this is not the case with this premises.

In this context, the data provided in the application was insufficient because it was generic data for 400 premises, as opposed to the specific premises on 7 Rowan Road.

Therefore the Licensing Sub-Committee requires the following data broken down by month for July / August / September 2015 in respect of 7 Rowan Road:

Total sales broken down into:

- Shop sales in £'s
- Fuel sales in £'s
- Dual sales in £'s

Total number of customers broken down into:

- Fuel customers
- Goods customers
- Dual customers

## **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.