

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 5 February 2016

**Subject:** Review of Premises Licence – S&M Food and Wine, 227 London Road, Mitcham, Surrey, CR4 3NH

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). Relevant extracts from Schedule 5 to the Licensing Act 2003 and Chapter 12 of the Guidance are attached as Annex B to this notice.

In accordance with Section 53C(11)(a) of the Licensing Act, this decision does not take effect until the end of the 21-day period given for appeals against the decision.

In the event of an appeal, and in accordance with Section 53C(11)(b) of the Licensing Act 2003, the decision of the Sub Committee does not take effect until the time the appeal is disposed of.

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### **Useful documents:**

#### **Licensing Act 2003**

<http://www.hms.o.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 made by the Metropolitan Police for the Premises Licence Review S&M Food and Wine, 227 London Road, Mitcham, Surrey, CR4 3NH

### Application

The Premises Licence Review arose from a Metropolitan Police test purchase, where a plain clothes officer was able to purchase two cans of Carlsberg Special Brew at 00:05 on Saturday 7 November. The premises Licence for this shop does not allow for alcohol to be sold after 23:00.

The Police were supported in their Review by LBM Public Health.

### Process

In discharging its functions in respect of this Review, the Licensing Sub-Committee had to take such steps as it considered appropriate and proportionate for the promotion of the licensing objectives, pursuant to section 52 of the Licensing Act 2003. The relevant objectives here were the Prevention of Crime, and Disorder and the Prevention of Public Nuisance. In reaching its decision, the Licensing Sub Committee considered the Council's Statement of Licensing Policy, the Licensing Act 2003 (as amended), and where applicable, the relevant Licensing Act 2003 Regulations, the revised Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.

The Licensing Sub-Committee considered Police evidence, Responsible Authorities, and the submissions, given by the Premises Licence holder's agent about the management of the premises.

The Licensing Sub-Committee were provided with legal advice in deliberations, this included reference to the revised Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 Chapter 11 that deals with Reviews. In particular:

Sections of Paragraph 11.7

*In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.*

Paragraph 11.17

*The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that*

warnings should be issued in writing to the Licence Holder

Paragraph 11.20

*In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.*

Sections of paragraph 11.23:

*Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives.*

And a section of Paragraph 13.37

*Special policies should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises.*

#### Decision

The Sub-Committee decided to issue a warning to the Licence Holder to adhere to all the terms of the Licence including the permitted hours.

The Sub-Committee was satisfied that their decision was an appropriate and proportionate response to uphold the licensing objectives

#### **Reasons**

1. The Sub-Committee considered the written and verbal evidence submitted by all parties, particularly taking account of the mitigating circumstances and the previous 10 year clean record of the Licence Holder.
2. The Sub-Committee noted that several previous test purchases at the shop had found no instances of underage sales.

## **Annex B**

### **Relevant Sections of the Licensing Act 2003**

#### **Schedule 5, Part 1 – Appeals**

#### ***Review of premises licence***

#### **Paragraph 8**

- (1) This paragraph applies where an application for a review of a premises licence is decided under section 52.
- (2) An appeal may be made against that decision by--
  - (a) the applicant for the review,
  - (b) the holder of the premises licence, or
  - (c) any other person who made relevant representations in relation to the application.
  
- (3) In sub-paragraph (2) "relevant representations" has the meaning given in section 52(7).

#### ***General provision about appeals under this Part***

#### **Paragraph 9**

- (1) An appeal under this Part must be made to [a magistrates' court].
- (2) An appeal under this Part must be commenced by notice of appeal given by the appellant to the [designated officer] for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.
- (3) On an appeal under paragraph 2(3), 3(2)(b), 4(3), 5(2), 6(2) or 8(2)(a) or (c), the holder of the premises licence is to be the respondent in addition to the licensing authority.
- (4) On an appeal under paragraph 7(3), the person who gave the interim authority notice is to be the respondent in addition to the licensing authority.

## **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.