

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 27 March 2018

**Subject:** Stateside Diner and Grill, 294 Haydons Road, London, SW19 8JZ

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](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 Fikria Skalli Lami for a new Premises Licence for “Stateside Diner and Grill” at 294 Haydons Road, South Wimbledon, London SW19 8JZ for the retail sale of alcohol (on and off the premises) 11:00-23:00 Monday to Saturday and 11:00-22:00 on Sundays. One representation was received from a local resident.

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

### Opening Hours

Premises opening hours 08:00-23:00 Monday to Saturday and 08:00-22:00 on Sunday.

### Licensable Activities

Retail sale of alcohol (on and off sales)

11:00-23:00 Monday to Saturday

11:00-22:00 on Sunday.

### Offered Conditions:

- Doors and windows shall be kept closed (except for ingress and egress) to reduce noise nuisance from the premises after 22.00.
- The premises will be properly vented.
- No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 22.00 hours and 08.00 hours on the following day.

### Imposed Conditions

#### **Front outside area**

- No use shall be made of the front outside area after 22:00 on any day (save for those smoking).
- The front outside area will be limited to the use of 2 tables and 4 chairs.

#### **Rear Garden Area**

- The rear garden area shall close to customers (including smokers) at 20:00 each night.
- Alcohol can only be consumed within the rear garden area by customers seated at tables taking a table meal and ancillary to that meal.
- No noise shall emanate from the rear garden so as to cause a nuisance to neighbouring residents.
- The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
- An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police.
- A notice shall be affixed to the rear garden door and in the seating area stating,

“This is a residential area please avoid nuisance to our neighbours”. Notices shall be prominently displayed at all exits stating, “Please respect the needs of local residents and leave the area quietly”.

### **Plans**

- 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). These plans must be submitted to the Licensing Authority within 14 days.

### **Police Conditions**

There were a number of conditions as agreed by the Applicant with the Metropolitan Police which were imposed by the Licensing Sub-Committee as follows:

1. For On Sales, alcohol will only be supplied to customers seated at a table taking a meal, and as ancillary to that meal.
2. The Premises will operate a “Challenge 25” policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age.
3. Suitable and sufficient signage advertising the “Challenge 25” policy will be displayed in prominent locations in the premises.
4. Alcohol will be sold for consumption off the premises only when delivered to the customer by an authorised food delivery company.
5. The Designated Premises Supervisor will ensure that the authorised food delivery company request necessary identification from the customer in accordance with their Challenge 25 Policy, and in the event that such identification cannot be produced, will return the alcohol to the premises.
6. Alcohol for consumption off the premises must only be purchased in addition to a meal.
7. A Personal Licence Holder will be present on the premises at all times that alcohol is available for purchase.

## Reasons

The Licensing Sub-Committee carefully considered the Agenda (including the application and the Representation) and the oral evidence submitted at the hearing by the Applicant.

The Applicant stated that:

- The premises was a small family restaurant (c.36 covers) which wanted to have an Premises Licence to be able to sell alcohol to compete with other restaurants in the local area.
- Although it was originally stated by the Applicant in the agenda papers that they would not be using the rear garden, they now wished to use the rear garden area. The Applicant was aware there had been previous issues with the garden being used late at night and so was open to conditions to limit the time during which it could be used and to carefully manage its use.
- The rear garden was immediately bordered by residential properties.
- The applicant was currently in the process of trying to recruit a personal licence holder to become a DPS or should the licence be granted, both the applicant and her partner would apply for their Personal Licences, and one of them would submit an application to become a DPS or would ask another operator to be a DPS and pending grant of a Personal Licence would then apply to become the DPS. However there was currently no one named DPS on the Premises Licence.
- The premises was located in a residential area but only one representation had been received from a local resident, which the Licensing Sub-Committee noted.
- The Applicant would manage the operation of the outside area to ensure no nuisance was created.

One representation was received from a local resident who was not present at the hearing. Their main objection related to the potential for disturbance from use of the rear garden, but did not demonstrate that they had experienced noise or nuisance personally.

The Licensing Sub-Committee noted the proximity to local residents and noted the concern that the premises is located in a residential area. The Licensing Sub-Committee had regard to the effect that the premises would have on the local area but considered that conditions were capable of addressing residents' concerns.

The Applicant was reminded that they would not be able to sell alcohol at the premises until there was a named Designated Premises Supervisor (who holds a Personal Licence) named on the Premises Licence.

## **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.

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