

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 3<sup>rd</sup> October 2018

**Subject:** Lidl UK GmbH, 23 Streatham Road, Mitcham, CR4 2AD

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.hmsso.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 by Lidl UK GmbH for a new Premises Licence at 23 Streatham Road, Mitcham, CR4 2AD to permit the licensable activity of the supply of alcohol (off sales only) from 07.00 to 23.00 Monday to Sunday and premises opening hours of 07:00 to 23:00 Monday to Sunday. The Applicant advised at the Licensing Sub-Committee meeting that following conversations with the Metropolitan Police and other interested parties, the hours for sale of alcohol had been amended to 09:00 to 23:00 Monday to Sunday.

Representations were received against the application from the Metropolitan Police, the Licensing Authority, Public Health, two ward Councillors and 8 residents. The premises was located within the Mitcham Cumulative Impact Zone and was subject to the Cumulative Impact Policy contained in the Council's Statement of Licensing Policy. The Cumulative Impact Policy required the applicant to overcome the rebuttable presumption that required refusal unless the applicant could show that there will be no increase in cumulative impact.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, that complied with the Licensing Act 2003 and its regulations and the licensing objectives, had regard to the current Home Office Section 182 Guidance, as well as to LB Merton's Statement of Licensing Policy, and complied with any parameters provided by relevant case law.

The application was refused.

## Reasons

The Committee looked carefully at the application, its supporting papers, the Representations contained in the agenda papers and supplementary agendas and the oral evidence submitted at the hearing by all parties.

Amanda Pillinger, the applicant's legal representative, stated that:

- a) Lidl are a national operator with stores in a wide variety of different locations, who have a good reputation and have various very strict and enforced policies and procedures in place.
- b) All staff are trained when they start working for Lidl and are given refresher training every 6 months, including information on under age sales, dealing with conflict and procedure to prohibit sales to street drinkers and those who may be under the influence of alcohol. Due to the smaller size of Lidl stores, staff are able to be supervised more closely.
- c) Lidl employ an external company who are instructed to undertake regular test purchases in store to ensure these policies and procedures relating to alcohol sales are adhered to.
- d) Alcohol is placed in the furthest aisle from the entrance/exit of the store and all stores have extensive CCTV coverage.
- e) Representatives had written to all parties who had made representations and also met with a number of them to discuss the application and had subsequently offered an additional condition regarding extensive security, a condition to provide litter bins and Lidl had also amended the alcohol sale start time as a result of these discussions.
- f) Lidl wanted to improve the area and could be a benchmark for what other operators in the area should aim for.
- g) Lidl wanted to work with the community and the Local Police to identify the issues in the area and to work together to not add to such issues.
- h) Lidl took a zero tolerance approach and would not permit street drinkers to buy alcohol.

The Metropolitan Police Borough Licensing Officer, PC Russ Stevens, objected to the application and sought the refusal of the application due to the saturation in the area of off licence premises pursuant to the Cumulative Impact Policy that applies to Mitcham and made the following representations:

- 1) The Police had no issue with the applicant as they were highly competent and responsible operators and had given PC Stevens the most positive response on other issues at another premises in the Borough compared to other chains.
- 2) However, the Police remained concerned due to proliferation of off licence premises in the location of the premises, which was a saturated area (there were 12 off licence premises immediately nearby). The Police and other authorities had identified a significant problem with street drinkers connected to Figges Marsh and the proliferation of off licence premises within the Mitcham area of the Borough and especially in the immediate area around this premises. The issue was well documented and there had already been the imposition of the Mitcham Town Centre Cumulative Impact Zone (CIZ) specifically for off sales and an application for a Public Space Protection Order (to deal specifically with Street Drinkers). Police have issued CPNs (Community Protection Notices) and seize alcohol regularly to try to manage the issue. However drinkers were

able to go and re-stock if their alcohol was confiscated due to the number of premises selling alcohol in the immediate vicinity. The Lidl premises would be located immediately over the road from Figges Marsh.

- 3) The current saturation of licensed premises in the immediate vicinity of the premises was a cause for great concern and if added to would result in increased cumulative impact, particularly a premises which focused on good value/low price products. The Police listed a number of crimes directly linked to alcohol which had occurred in the immediate vicinity over the last 12 months including or outside other retailers.
- 4) PC Stevens noted that the issue of street drinkers and anti-social behaviour had been evidenced by a recent review of 2 other premises locally which had experienced issues with street drinkers. Following the revocation of these licences, there had been some improvement but the area is still saturated and another off sales premises will have a negative effect on crime and disorder and anti-social behaviour in this area. The area had well documented issues with anti-social behaviour from street drinkers including noise and litter and PC Stevens advised this problem was deteriorating.
- 5) PC Stevens advised that even if the offered conditions were put on the licence, there would be some impact as it would be another premises selling alcohol. More people would access that facility and would repair to Figges Marsh, even if they were not street drinkers. When street drinkers are in need of a drink they will purchase any alcohol readily available. The convenience of this premises being nearby to where street drinkers tend to congregate would certainly add to the negative cumulative impact already being experienced in the Figges Marsh area. Whilst further conditions could be proposed, PC Stevens accepted these would be unworkable.
- 6) PC Stevens stated that the proposed conditions were not sufficient to prevent a proportionate increase to crime and anti-social behaviour based on the location.

Barry Croft, speaking on behalf of the Licensing Authority presented his representation advising that the conditions proposed were insufficient. Mr Croft explained that although the application was very detailed, it was too generic and although the information provided regarding training was welcome, there was nothing specific to address the issues in the specific area where the store was located or any possible control measures for that store provided. Mr Croft advised he had heard nothing that had convinced him that the cumulative impact policy could be departed from and therefore asked that the application be rejected.

As representatives of Public Health were not able to attend they had asked PC Russ Stevens to speak on behalf of Public Health, re-iterated the points raised within their written representation and highlighting the issues caused by alcohol.

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

- 1) The applicant had failed to sufficiently address the issue of problem drinkers in the proposed conditions;
- 2) The availability to all drinkers of off sales of alcohol so close to Figges Marsh as well as to street drinkers and the scale of the premises and offer in the proximity to Figges Marsh would add to cumulative impact;
- 3) The conditions could not address the issue with saturation and cumulative impact and the applicant failed to overcome the rebuttable presumption;
- 4) The saturation of the number of other premises close to Figges Marsh;

- 5) The crime and disorder data provided by the Metropolitan Police, not just in relation to street drinkers, relating to Figges Marsh was alarming and indicated the issues the Police were dealing with and the issues in the area.

The application was refused.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2018).**

#### **13. Appeals**

13.1 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**

13.2 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.

13.3 An appeal has to be commenced by the appellant giving 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.

13.4 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, the Home Office (Immigration Enforcement), 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.

13.5 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.

13.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

13.7 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.

All parties should be aware that the court may make an order for one party to pay another party's costs.

On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

## **Licensing policy statements and Section 182 guidance**

13.8 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.

13.9 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**

13.10 It is important that a licensing authority gives 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.

13.11 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

## **Implementing the determination of the magistrates' courts**

**13.12** 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**

**13.13** 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.

**13.1** 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.