

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 14 March 2022

Subject: Cost Savers, 25 Upper Green East, Mitcham, CR4 2PE

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 2018). Chapter 12 of the guidance is attached as Annex B to this notice.

For enquiries about this matter please contact

Democratic Services
Civic Centre
London Road
Morden
Surrey
SM4 5DX

Telephone: 020 8545 3616

Email: 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

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing>

Annex A

Determination

The Licensing Authority received an application from Mr Luxman Krunanth Mariyanayagam for a new Premises Licence for 'Cost Savers' located at 25 Upper Green East, Mitcham, CR4 2PE.

The application sought the following Licensable Activities and hours:

The supply of alcohol (Off Sales)
Monday to Sunday from 10:00 to 18:00

Opening Hours
Monday to Sunday from 05:30 to 21:00

One representation was received in relation to the application from a Borough Councillor. Agreement was also reached on a number of conditions with the Council's Trading Standards Officer, who therefore withdrew their representation prior to the Licensing Sub-Committee meeting. Some consultation took place with the Police.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, comply with the Licensing Act 2003 and its regulations, have regard to the current Home Office Section 182 Guidance and have regard to the London Borough of Merton Council's Statement of Licensing Policy, and comply with any relevant case law.

The Application was **granted** as sought with the conditions offered in the application's Operating Schedule and agreed with Responsible Authorities with a number of conditions imposed by the Licensing Sub-Committee. The conditions as agreed with Trading Standards and the Metropolitan Police were imposed as detailed at the end of this notice.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, its supporting agenda papers and the oral evidence submitted at the hearing by all parties present.

The Licensing Manager gave a brief overview of the Application and noted that the premises was located in the Cumulative Impact Assessment Area, which meant that the usual approach of the Licensing Sub-Committee would be to refuse this application, unless there were an exception and the premises would not cause increased cumulative impact from its operation. The CIA was in place to address the evidenced issue of street drinking in the area due to saturation of premises with premises licences that permit off sales of alcohol.

Mr Suresh Kanapathi, representing the Applicant, presented the application:

- The applicant has held ownership of this small community shop for 3 years;
- The applicant has voluntarily offered strict conditions which have been accepted by both the Metropolitan Police and Trading Standards;
- The applicant is seeking to provide a wider selection of goods to his customers beyond the newspapers and magazines which are the predominant reason for visiting the shop;
- Alcohol will not be self-service, it will be held behind the counter, and customers will need to request purchases
- The premises are in an open, public area, not hidden away - any problems will be easy to spot and report.

The Chair announced that the Licensing Sub-Committee would retire to closed session and make their decision.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the application as sought with the following conditions imposed:

- Conditions that could be extracted from the operating schedule in the Application

1. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Merton Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition of evidential quality. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and timestamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period. Signage shall be displayed at the premises advising customers and visitors to the premises that a CCTV system is in use.
2. 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. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

3. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
4. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
5. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises, except for premium beers and ciders supplied in glass bottles as per prior approval of the Police in writing.
6. No miniature bottles of spirits of 10 cl or below shall be sold from the premises.
7. No more than (10) % of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
8. All alcohol products will be displayed from behind the counter and there will be no self-service of alcohol product.
9. The shop will only sell a minimum of four cans of beer, lager or cider to any one customer at a time. There shall be no sale of less than four cans to any customer in any one transaction.
10. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
11. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be immediately available for inspection at the premises by the police or an authorised officer of the Council at all times whilst the premises is open.
12. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
13. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
14. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
15. The Premises Licence Holder shall ensure that all staff employed at the premises whose duties include the sale or supply of alcohol shall undertake and complete a relevant programme of internal training prior to them being authorised to sell or

supply alcohol. The premises licence guidance manual will be the basis of alcohol sales training. Records of the training programme shall be maintained and made available to authorised officers upon request.

16. Alcohol Refresher training shall be undertaken in writing at least at six monthly intervals.
17. As soon as possible, the premises shall join the local Pubwatch or other local crime reduction scheme approved by the police, and local radio scheme if available.
18. The Premises Licence Holder will liaise/write with the Local Police & appropriate support organisations as agreed with the council from time to time to ban named persons from using our shop to buy alcohol and would request photographs of banned persons so all premises staff are made aware who are banned persons. These records would be kept confidential.
19. An incident log shall be kept at the premises and made available on request to Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must be completed within 24 hours of the incident and will record the following;
 - (a) All crimes reported to the venue.
 - (b) All ejections of patrons.
 - (c) All complaints received concerning crime and disorder.
 - (d) Any incidents of disorder.
 - (e) All seizures of drugs or offensive weapons.
 - (f) Any faults in the CCTV system.
 - (g) Any visit by a relevant authority in relation to service
20. Alcohol shall be covered from public view outside of the licensable hours.

- Conditions agreed with Trading Standards

21. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
22. All staff that undertake the sale or supply of alcohol (and any other age-restricted product) shall receive appropriate refresher training in relation to undertaking appropriate age checks on such, at least every three months.
23. Records of all staff training, relating to the sale or supply of alcohol (and any other age-restricted product), along with any training material used, will be kept and maintained by the Designated Premises Supervisor or the Premises Licence Holder.

- Conditions imposed by the Licensing Sub-Committee

24. There shall be no sale of single cans of beer, lager or cider sold at the premises.

25. A personal licence holder will be on duty at the premises at all times that the premises is open to the public.
26. In the event that an employee suspects that a person attempting to purchase alcohol is a street drinker or is attempting a proxy purchase, they should make appropriate enquiries and determine whether the sale should be permitted.
27. The sale of alcohol will only be permitted in circumstances where the customer purchases a non-alcohol item in the same transaction.
28. Management & staff will actively discourage customers from loitering outside the premises.

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

- a) The conditions as amended addressed the concerns the Licensing Sub-Committee had as raised within the representation and arising from the evidence based Cumulative Impact Assessment, to address potential street drinkers resorting to the premises.
- b) The Licensing Sub-Committee had to make a decision that promoted the Licensing Objectives that was appropriate and proportionate. The conditions imposed addressed those concerns.

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.