

Merton Council

Licensing Sub-Committee

12 July 2018

Determination Notice

9 BP Oil UK Ltd - Wimbledon Chase SF Connect, Kingston
Road, Raynes Park, SW20 8LR

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 19 July 2018

Subject: BP Oil UK Limited, Wimbledon Chase SF Connect, 314 Kingston Road, Raynes Park, SW20 8LR

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.

For enquiries about this matter please contact

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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

Merton's Statement of Licensing policy

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

Annex A

Determination

The Licensing Sub-Committee considered an application by BP Oil UK Limited for variation to the Premises Licence at Wimbledon Chase SF Connect, 314 Kingston Road, Raynes Park, SW20 8LR to extend the sale of alcohol to 24 hours per day, 7 days per week.

A representation was received from 1 local resident.

The Premises Licence variation was granted as sought with the following conditions:

Conditions offered and imposed:

1. A digital CCTV system will be installed or the existing system maintained, such system to be fit for the purpose.
2. The CCTV system shall be capable of producing immediate copies on site. Copies of recordings will either be recorded digitally onto CD/DVD or other equivalent medium.
3. Any recording will be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the police for inspection on request.
4. The precise positions of the cameras may be agreed, subject to compliance with Data Protection legislation, with the police from time to time.
5. The system will display, on any recording, the correct time and date of the recording.
6. The CCTV system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.
7. The premises licence holder will at all times maintain adequate levels of staff. Such staff levels will be disclosed, on request, to the licensing authority and police.
8. Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises.
9. The premises licence holder will ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification being a passport or photocard driving licence bearing a holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence.

There were two further conditions imposed by the Licensing Sub-Committee regarding late night operational matters:

1. If there is only one member of staff on duty between 0000 and 0500, the entrance door to the shop will be closed to customers and any sales between these hours will be made through the night pay window.
2. Where there is more than one member of staff on duty between the hours of 0000 and 0500, a remote door lock facility will be in use for all admissions of customers entering the premises and all customers entering the premises will be monitored. Staff may decide to use the night pay window instead of admitting customers into the premises.

Reasons

The Licensing Sub-Committee carefully considered the Agenda and Supplemental Agenda (including the application and all of the Representations and additional comments) and the oral evidence submitted at the hearing by the Applicant.

The Applicant 's solicitor stated that:

- There were currently 152 stores with 24 hour licences throughout the country and other stores were being considered by BP to make the hours consistent across their stores.
- There had been no representations received from the Police or any Responsible Authorities.
- Referring to the representation received, the Applicant stated that whilst drink driving was a known social issue, this has been largely addressed in recent years, but was not a matter concerning this premises.
- The Applicant's solicitor had undertaken discussions with the manager of the store applying for the licence and had been informed there were no particular issues with street drinking or disorder at that location
- The whole store is open selling a range of items and currently could sell alcohol until 11pm, whilst it trades 24 hours already with Late Night Refreshment overnight
- There are at least 2 members of staff working at night in the store and the store doors have a remote lock which gives staff the option to lock the doors and open them when customers arrive. This prevents noise disturbance and the noise of the transaction is inside the store. When the store is single-manned transactions take place through the night-pay window, however this does not happen often.
- If any problems were to occur, alcohol sales could be suspended and the licence could be brought to the Licensing Sub-Committee for a Review.

The main concerns raised by the Local resident in their representation were as follows:

- The sale of alcohol in a petrol station would encourage drink-driving or street drinking
- There are already too many outlets which sell alcohol
- The resident could not see any "reasonable reason" for an ordinary person to buy alcohol in the early hours of the morning.

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

- There was no evidenced link between drink driving and sale of alcohol from this or any petrol stations;
- Need cannot be considered in such a decision.

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.