

**Merton Council**  
**Licensing Sub-Committee**  
**6 August 2018**  
**Notice of Determination**

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 16 August 2018

**Subject:** Mitcham Mint, 1A Lilian Road, Streatham, SW16 5HN

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 by North and South Leisure Limited for a variation of the Premises Licence for “Mitcham Mint” at 1A Lilian Road, Streatham, SW16 5HN.

The Premises Licence holder applied to vary the Licence as follows:

- To amend the opening hours of the premises from 08:00, to 07:00 daily, for the provision of non-licensable activities before the usual licensable activities start at 10.00am Mondays-Saturdays or 12.00 on Sundays;
- To amend the terminal Licensing hours for the sale of alcohol to midnight on Fridays and Saturdays with the premises closing 30 minutes thereafter adding an extra hours in the weekends
- To amend condition 3 annex 3 to state “no bottles or glasses to be taken out of the internal area of the premises save for consumption in any external area provided”
- To remove the last sentence of condition 10 in annex 3. The Premises Licence holder stated that regular meetings had been held and no local residents or businesses had been attending and so they wanted to dispense with the need for such meetings.

Representations were received from 2 local residents, who wanted to maintain their anonymity in the application process and did not attend to avoid being identified.

The variation of the Premises Licence was granted in part as follows:

- The opening hours were amended to allow the premises to open from 07:00 as sought for the provision of non-licensable activities
- The terminal licensing hour for sale of alcohol to midnight on Friday and Saturday was granted as sought, with the premises to close 30 minutes thereafter.
- Condition 3 annex 3 was amended as sought to state “no bottles or glasses shall be taken out of the internal area of the premises save for consumption in any external area provided”.
- The request to remove condition 10 in annex 3 was not granted and will therefore remain on the Premises Licence.

## Reasons

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

The Premises Licence holder stated that:

- The Premises Licence holder's director had been a licensee for 20 years and had set up a business that involved running and managing 6 public houses together with two business partners who managed 25 public houses between them and were experienced operators.
- The Premises Licence holder had taken over the premises in May 2017 and had made investments in the premises with the aim to make it a more family friendly and to improve the appearance of the premises. The aim was to make it a more sustainable business. The Premises Licence holder was shortly due to sign a 5 year lease for the premises and was planning a £50,000 investment in the premises.
- The 7am opening hour requested in the application reflected the success of the earlier opening time (where the opening time had reduced from 10am to 8am at a previous application last year) and allowed the premises to be used as a community meeting space and allowed for breakfast and café sales.
- The Premises Licence holder had received 2 letters of support, one of which was included in the Supplemental Agenda.
- The premises had run 7-8 Temporary Event Notices over the preceding 8-12 months and had not received any complaints about the later hours.
- The Premises Licence holder did not wish to remove any of the restrictions on the outside area, only to be able to use glasses in the outside area, as currently only plastic glasses were used and their clientele wished to use glasses rather than plastic containers.
- There had been no representations received from any of the Responsible Authorities.

The main objections raised by residents in their representations were as follows:

- There was ongoing noise nuisance caused by patrons leaving the premises late at night and from their cars left running outside the premises.
- The premises is located in a residential area (with a nursery on the same road) that is noise sensitive.

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

- The Licensing Sub-Committee felt that residents needed to have an opportunity available to meet with the Premises Licence holder and discuss any issues or concerns and therefore condition 10 should remain on the licence unamended.
- The sale of hot food and hot drinks does not require a Premises Licence unless it were to take place between 23.00 to 05.00. the earlier opening would not affect residents and would not include alcohol sales.
- Having considered all the evidence, there was not enough evidence to refuse the application in regards to the increase in the terminal hour for the sale of alcohol (the *Thwaites* case applied).
- The Licensing Sub-Committee acknowledged that the Temporary Event Notices had taken place without incident and also acknowledged that the operators of the premises had stated they have extensive experience.

- There remains the opportunity available to any party to apply for a Review of the Licence should any issues occur or to refer them to the Licensing Authority or the Environmental Health team for investigation and if necessary Review of 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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