

Merton Council
Licensing Sub-Committee
17 September 2018
Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 21 September 2018

Subject: Mitcham News, 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 (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

Merton's Statement of Licensing policy

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

Annex A

Determination

The Licensing Sub-Committee considered an application by Ms Inosha S D S Kaluwa Hande for a new Premises Licence for Mitcham News at 25 Upper Green East, Mitcham, CR4 2PE to permit the licensable activity of the supply of alcohol (off sales only) from 09.00 to 23.00 Monday to Sunday with opening hours from 06.00 to 23.00 Monday to Sunday .

Representations were received against the application from the Metropolitan Police, Licensing Authority, Public Health and a ward Councillor. The premises was located within the Mitcham Cumulative Impact Zone and was subject to the Cumulative Impact Policy contained in the Council's Licensing Policy. It 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 the oral evidence submitted at the hearing by all parties.

Mr Nira Suresh, the applicant's representative stated that:

- a) The applicant and their representative had consulted with the Metropolitan Police prior to submitting the application and had also spoken to local Councillors.
- b) The Applicant put forward 14 conditions to try and deter street drinkers.
- c) The Applicant was an experienced operator who had effectively managed previous premises in areas with similar issues to Mitcham.
- d) The premises would only be supplying high quality wines. When asked to elaborate, the applicant's representative stated the wines supplied would all be over £6.
- e) The premises would only be selling to their existing customers and therefore would not add to cumulative impact.

The applicant's representative stated that this premises could be the benchmark for other premises in the area and that they felt the applicant had proposed all possible conditions to minimise the increase to Cumulative Impact in the area. The applicant's representative also proposed an additional condition for the premises to use a marking scheme on all alcohol sold at the premises to help Police identify where any alcohol had been purchased from.

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 similar premises pursuant to the Cumulative Impact Policy for Mitcham and made the following representations:

- 1) The Police had no issue with the applicant as they appeared to be responsible operators.
- 2) However the Police remained concerned due to proliferation of off licence premises in the location of the premises, which was a saturated area. The Police and other authorities had identified a significant problem with street drinkers 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).
- 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. The Police listed a number of crimes directly linked to alcohol which had occurred in the immediate vicinity over the last 12 months.
- 4) PC Stevens noted that there were 12 premises within 300m of the applicants' premises selling alcohol and stated that the area could not cope with any more premises selling alcohol.
- 5) PC Stevens noted that the issue of street drinkers and loitering 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 on crime and disorder and anti-social behaviour in this area..

- 6) 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. When street drinkers are in need of a drink they will purchase any alcohol readily available to them and if necessary pool their resources and share it. The convenience of this premises being central to where street drinkers tend to congregate would certainly add to the negative cumulative impact already being experienced in Mitcham Town Centre.
- 7) The proposed condition regarding marking schemes would not prevent the issues occurring, and the CCTV could also identify where alcohol had been purchased from.

Barry Croft, speaking on behalf of the Licensing Authority presented his representation advising that the conditions proposed were insufficient and that 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.

PC Russ Stevens speaking on behalf of Public Health, re-iterated the points raised within their representation and highlighting the issues caused by alcohol.

The applicant Ms Hande stated that she was focusing on attracting good customers and she would not be selling any single or cheap cans and would focus on drinks costing over £5. Ms Hande advised that this was a family business and she was aware that if they were granted a licence that would need to be protected.

The Licensing Sub-Committee took into account the Cumulative Impact Policy for Mitcham Town Centre which covers off sales of alcohol only and considered that the conditions proposed could not adequately overcome the rebuttable presumption in the Cumulative Impact Policy. This particular location has specific issues with Cumulative Impact and proliferation of licensed premises.

The applicant had not demonstrated to the Licensing Sub-Committee's satisfaction that another premises selling alcohol for consumption off the premises would not have a negative cumulative impact on the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance such that it would be justified from departing from its Special Policy. Locating this shop in this proposed location available to those living or congregating in this area even with the conditions offered, did not provide the Licensing Sub-Committee with sufficient assurance that this premises would not add to the cumulative impact already being experienced

The application was therefore 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.

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