

**Merton Council**  
**Licensing Sub-Committee**  
**19 December 2019**  
**Notice of Determination**

6 Notice of Determination

1 - 8

This page is intentionally left blank

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 7th January 2020

**Subject** Lidl Great Britain Limited, 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 (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 3357

**Email:** [democratic.services@merton.gov.uk](mailto: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](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 Great Britain Limited for a variation to the existing Premises Licence located at 23 Streatham Road, Mitcham, CR4 2AD.

The variation sought to extend the hours of sale of alcohol (off-sales) from 09:00-23:00 Monday to Sunday to 08:00 – 23:00 Monday to Sunday and to remove the following two conditions from the premises licence:

- Annex 3, Condition 21: “The Sale of alcohol will not take place before 9.00am”
- Annex 3, Condition 24: “Any sale of alcohol must be made with a minimum of spend of £5 on non-alcohol products”.

Two representations were received objecting to the application from local residents. The interested parties were not present at the Licensing Sub-Committee meeting.

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 therefore promoted 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 extension to the hours on the Premises Licence is granted to allow the off-sale of alcohol from 08:00-23:00 Monday to Sunday.

For a period of 12 months from the date of this decision the two conditions at Annex 3, Condition 21 and 24 are suspended. At the conclusion of this period the two conditions will return in full force to the Premises Licence. Should the applicant wish to amend this in the future a new variation application would be required.

## Licensing Sub-Committee Hearing

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

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

- a) This application followed a previous application, which had been refused at a Licensing Sub-Committee in September 2018. Following its subsequent appeal in March 2019, the application had been granted with a number of additional conditions placed on to what became the Premises Licence. The premises had been trading since January 2019 without a Premises Licence and had then been permitted to trade with the authorisation that permitted the retail sale of alcohol since March 2019.
- b) The original 2018 application had received objections from the Metropolitan Police, Public Health, the Licensing Authority and a number of local residents. During that process, the Police Licensing Officer had advised that he objected to the grant of the Premises Licence regardless of any conditions proposed.
- c) Lidl had worked hard to ensure that the licensing objectives had been met since they began trading and had built relationships with the police and local residents and felt that the store was having a positive impact on the area.
- d) Prior to this application, Ms Pillinger had spoken to the Police Licensing Officer and had been advised that with the exception of some minor incidents, there had been no increase to issues in the area and therefore he had no objection to the current application to vary the licence. Ms Pillinger stated this to be a significant shift in the Police's position. There had been no representation received from the Police for this application.
- e) Lidl are a national operator with stores in a wide variety of different locations and have various very strict and enforced policies and procedures in place.
- f) All staff are trained when they start working for Lidl and this training is regularly updated, 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.
- g) Alcohol is placed in the furthest aisle from the entrance/exit of the store and all stores have extensive CCTV coverage.
- h) Lidl took a zero tolerance approach to the sale of alcohol.
- i) Lidl employ an external company 'serve legal' who are instructed to undertake regular test purchases in store to ensure these policies and procedures relating to alcohol sales are adhered to. There was an 100% pass rate for this store in 2019.
- j) Addressing the representations received, Ms Pillinger advised that staffing within the store is based on footfall and there are 22 staff at the store, with a typical number of staff present at 8am being 5 members of staff. It was expected that in the evening after 8pm there may only be 3 members of staff on site, with the addition of a security guard as stipulated within the conditions on the licence (which required at least one uniformed security guard to be on duty at the premises at all times that the premises was open to the public).
- k) Addressing other concerns raised by residents; the litter bin outside the store was emptied daily. In relation to the traffic and parking, Lidl acknowledged that this was an issue and had installed signage and yellow lines to assist with this.

Following questions from the Licensing Sub-Committee, the applicant's legal representative explained that:

- 1) The application was to enable Lidl to provide their full range of goods for as long as possible, though they did not expect a significant increase in sales of alcohol should the additional hour be granted, commensurate with other multiples.
- 2) There was no specific clientele the extension was aimed at, as there was a wide variation in clientele at all times. The additional hour would enable those doing their weekly shop early in the morning or shopping on the way to work to purchase alcohol.
- 3) Lidl understood concerns about increases in anti-social behaviour in the summer months including on Figges Marsh, but felt that although anticipated, the evidence was that there had been no increase in ASB during the summer. The store had not traded over the Christmas period yet but it was likely that there would be less people outside during the winter months, and the robust policies and procedures that Lidl had would remain in place.

### **Reasons**

The Licensing Sub-Committee decided to grant the Premises Licence variation relating to the removal of two conditions as sought for a temporary period of 12 months. The Licensing Sub-Committee granted the extension of hours for the sale of alcohol. The Licensing Sub-Committee gave the following reasons for their decision:

- a) Evidence within the representations show that there are still issues with crime and disorder and public nuisance and the effect of this on residents' lives.
- b) The Licensing Sub-Committee thought to a degree that the conditions that the applicant sought to remove were currently dealing with the particular problems that were of concern at and surrounding that premises.
- c) The premises is situated within a Cumulative Impact Zone, and the Licensing Sub-Committee remained concerned about issues arising on Figges Marsh as a result of the removal of the conditions, especially in the warmer months.
- d) The Licensing Sub-Committee felt that the decision was appropriate and proportionate and would enable the premises to trade with the amended licence for a period to assess whether this had any impact on issues in the area.

The case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008* was applied and considered during deliberations in relation to the representation.

## **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.

This page is intentionally left blank