

Merton Council
Licensing Sub-Committee
31 August 2021
Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 1 September 2021

Subject: La Farina (Il Noor Ltd Company), 183 Haydons Road, London, SW19 8TB

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

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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 Vijay K Valacha for a new premises licence for 'La Farina' a premises located at 183 Haydons Road, London, SW19 8TB.

The application sought the following Licensable Activities and hours:

- The provision of Late Night Refreshment
Monday to Sunday from 23:00 to 02:30 the following day
- The supply of alcohol for consumption off the premises
Monday to Sunday from 16:00 to 02:30 the following day

Opening Hours:

Monday to Sunday 16:00 to 02:30 the following day.

Prior to the hearing and following acceptance of conditions proposed by the Metropolitan Police, the Applicant had agreed to close the premises to the public at 23.00 each day, seeking deliveries only taking place until 02.30.

7 representations were received in relation to the application from local residents and one from a local ward Councillor. Agreement was also reached on a number of conditions with the Metropolitan Police and the Council's Trading Standards Officer, therefore neither submitted a representation to the application.

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 Premises Licence was granted with amended hours as follows:

- The provision of Late Night Refreshment
Thursday, Friday and Saturday only from 23:00 to 02:30 the following day
- The supply of Alcohol (off sales only) Deliveries: Thursday, Friday and Saturday only from 16:00 to 02:30 the following day.
Collections: Thursday, Friday and Saturday only from 16:00 to 23:00.
- The Supply of Alcohol (off sales)
- Deliveries / Collections: Sunday to Wednesday from 16:00 – 23:00

The conditions as agreed with the London Borough of Merton Council Trading Standards and the Metropolitan Police were imposed as well as a number of other conditions imposed by the Licensing Sub-Committee, which are 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.

Mr Rob Jephcote, agent representing the Applicant, presented the application:

- The premises was a Pizza and Pasta takeaway already trading until 11pm. The application was to serve alcohol for off sales with the ability to sell hot food after 11pm and a number of agreements had been made with the Responsible Authorities and comments from residents had been taken on board.
- With the ability to purchase alcohol the offering would be improved for residents and this would also strengthen the business.

In response to questions from the Interested Parties and the Licensing Sub-Committee, the Applicant and his agent, responded:

- The Application for extended hours had been submitted in response to the change in working habits of current clientele – with the shift to more flexible working hours, the Applicant stated his current peak hour had moved from 4 – 7pm to 8.30/9pm and on the previous day (a Bank Holiday Monday) prior to the hearing, the peak hour had been 9.45pm.
- Most orders were received through deliveries at 96-97% of the orders, with the rest being collections from the premises itself.
- The doors would be closed after 11pm with no walk-in customers after this time.
- All deliveries from the premises are and would continue to be made by the owner's own drivers, using their cars.
- Alcohol would be delivered in a separate bottle bag separate from the hot bags for pasta or pizza and ID would be sought and checked prior to handing over to the recipient.
- There were no walk-in customers to the premises after 9.30pm and the main clientele were families.
- Alcohol would have to be purchased with food and Mr Valacha stated that customers who wished to buy alcohol only would do so elsewhere where it could be sourced at a cheaper price.
- Mr Valacha stated that the road was a busy connection road and noise and vehicle traffic including deliveries were always present in that location including throughout the night.

Councillor Paul Kohler, spoke to his representation:

- Councillor Kohler expressed concern that there would be public disorder and nuisance issues with customers entering the premises and then leaving the premises and consuming their purchases on the street.
- Responding to comments from the Applicant, Councillor Kohler did not believe that customers would go and purchase their alcohol from another retailer when they could purchase food and alcohol in one place.
- Whilst Councillor Kohler was reassured that motorbikes would not be used for deliveries, deliveries would still cause noise and commotion.
- Councillor Kohler suggested that perhaps alcohol could be permitted until 11pm or deliveries allowed as sought without alcohol.

- Councillor Kohler requested that if minded to grant the application for deliveries, a condition be added that motorbikes and drivers from outside companies could not be used.

In response, Mr Jephcote stated that alcohol was a fundamental part of the application and did not believe the aim of the application was to change the demographic of the customers.

Mr Phil Ling spoke to his representation, stating:

- Whilst the road was busy, it was not always busy outside of rush hour and there was very little traffic after 9pm and Haydons Road would be quiet and peaceful after 11pm.
- There were residential properties both above the premises and next door and the area was all residential with no night-time economy.

Responding, Mr Valacha stated that whilst he didn't want to disturb residents or their sleep, businesses needed to recover following the Covid-19 pandemic and was requesting a small change to serve those customers working later into the night and early morning.

In response to further questions, Mr Valacha advised that there was a limited choice of alcohol with two Italian white wines, two Italian red wines and two Italian beers available to purchase. Mr Valacha advised he would be happy to accept a condition that no spirits be sold.

Mr Valacha then stated he would also be happy to accept a condition for only opening the extended hours on Thursday, Friday and Saturday.

Mr Robin Goodchild spoke to echo comments given by Councillor Kohler and Mr Ling and added that he was also concerned about nuisance in a residential area after 11pm.

In summing up, Mr Jephcote stated that the applicant had been very proactive and willing to take on additional conditions and that it should be noted that no comments had been raised by the Environmental Health Officer.

The Decision of the Licensing Sub-Committee

- The Licensing Sub-Committee decided to grant the application as sought with the following Licensable Activities and times: The provision of Late Night Refreshment
Thursday, Friday and Saturday only from 23:00 to 02:30 the following day
- The supply of Alcohol (off sales only) Deliveries: Thursday, Friday and Saturday only from 16:00 to 02:30 the following day.
Collections: Thursday, Friday and Saturday only from 16:00 to 23:00.
- The Supply of Alcohol (off sales)
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During the Licensing Sub-Committee hearing, the Applicant offered the following condition which was imposed by the Licensing Sub-Committee:

No spirits shall be sold with take away collections or be delivered to residential premises with deliveries.

The Licensing Sub-Committee decided to impose a number of additional conditions those being:

1. All shop front external illuminated signage will be switched off at 23.00 daily. Internal blinds to all areas of glazing on the shop front will be installed and lowered from 23.00 daily. The shop door shall be locked to public access by 23.00 hours daily.
2. Prominent signage will be displayed informing patrons to leave in a quiet and orderly manner so as to respect residents living in the immediate vicinity of the premises.
3. Deliveries will be made only by car, electric vehicle, bicycle or by foot to a customer's home address.
4. When deliveries are made by car, drivers will ensure that car doors are not slammed, horns are not sounded, engines are not left on idle, and no music will be played so as to reduce the impact of any noise on local residents.
5. Notification is required to the local Licensing Authority and Environmental Health if the premises enter into an agreement with any third party food delivery services, where the contract provides for them to deliver food or alcohol.
6. If a delivery staff member is carrying out their delivery using a bicycle or on foot, they must wait to collect any orders inside the premises and shall not loiter outside the premises.

7. A direct line telephone number for the duty manager must be prominently displayed where it can be conveniently read from the exterior of the premises by the public. The telephone number must be manned and answered at all times the premises is trading to address any concerns about public nuisance or crime and disorder.
8. Parking for collection and deliveries shall be away from the premises.

The Licensing Sub-Committee also imposed the conditions already agreed with Trading Standards and the Police as follows:

Conditions agreed with Trading Standards

1. Evidence of age in the form of photo identification shall be requested from any person appearing to those selling or supplying alcohol, to be under the age of 25 and attempting to buy alcohol. Examples of appropriate photo identification include a passport, driving licence, and the Proof of Age Standards Scheme (PASS) approved age card.
2. The premises licence holder shall ensure that anyone utilised by them for the role of delivering alcohol orders ensures that the alcohol is delivered to the client who ordered the alcohol, or ensures that any 'safe place' as designated by the client where the delivery can be left must be in an area not visible to the general public and not where any minor can access the delivery.
3. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
4. A record of refusals shall be maintained which documents every instance that a sale of alcohol (and any other age-restricted product) is refused on the premises, indicating the date and time the refusal was made, and the member of staff making the refusal.
5. The record of refusals shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.
6. An effective methodology shall be in place at all points of sale to ensure staff undertake appropriate age checks on potential sales of alcohol (and any other age-restricted product).
7. All staff that undertake the sale or supply of alcohol (and any other age restricted product) shall receive appropriate training in relation to undertaking appropriate age checks on such, before being allowed to sell or supply any alcohol (and any other age-restricted product). Refresher training will be carried out at least every three months.

8. 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.
9. Staff training records shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.

Conditions agreed with Metropolitan Police

Restaurant Conditions

The premises shall close to members of public at 2300 Monday to Sunday.
Alcohol shall only be sold as an ancillary to the purchase of a meal for consumption off the premises.

CCTV

A closed-circuit television (CCTV) system shall be installed at the premises. The CCTV system installed at the premises shall be maintained in effective working order, and shall be in operation at all times the premises is open to the public. All recordings made by the CCTV system shall be retained and stored in a suitable and secure manner for a minimum of 31 days, and shall be made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities. At all times the premises is open to the public a minimum of one member of staff on duty will be able to operate the CCTV system.

Security incidents

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;

- (i) All crimes reported to the venue.
- (ii) All ejections of patrons.
- (iii) All complaints received concerning crime and disorder.
- (iv) Any incidents of disorder.
- (v) Any faults in the CCTV system, searching equipment or scanning equipment.
- (vi) Any refusal of the sale of alcohol.
- (vii) Any visit by a relevant authority in relation to service

Conduct Of Premises

Clear legible notices are to be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.

1. All sales of alcohol arising from a [telephone/App/website] order for delivery must be paid for by debit or credit card. An alcohol verification sticker shall be applied to the delivery package so that alcohol can be easily retrieved by the delivery person to prevent an illegal sale. Details of the order (including the type, amount of alcohol, name, and address of the customer) must be included with the order. The details shall be shown on the printout receipt dispatched with the order. All delivery drivers and

riders must allow any Police Constable or Local Authority Officer to inspect any alcohol or order details on request.

2. Alcohol deliveries shall only to be made to business and/or private residences and not to any public/open spaces.

3. A 'Challenge 25' Policy shall be in force at the point of delivery of the alcohol. No delivery shall be made if the person seeking to accept delivery appears under 25 and is unable to provide proof of age. Examples of appropriate ID include a passport; photographic driving license; military ID; biometric residents permit and the Proof of Age Standards Scheme (PASS) approved age cards.

Further conditions extracted from the Operating Schedule

- Notices shall be displayed advising that CCTV has been installed on the premises so that they are clearly visible to the public within the licensed premises.
- The placing of bottles into receptacles outside the premises shall take place at times that will minimise disturbance to nearby properties.
- Litter from outside the front of premises shall be cleared, at a minimum, before start of business the next working day.
- During the hours of darkness, the outside of the premises and the premises car park shall be safely lit whilst licensable activities are taking place.

Reasons

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

- 1) The Licensing Sub-Committee noted that the premises was located in a highly residential area, including properties located directly above, adjoining and surrounding the premises. The Licensing Sub-Committee was therefore cautious in granting the licence and only granted the licence to limited hours and days and with a large number of conditions.
- 2) The Licensing Sub-Committee was assisted by the proposal put forward by the Application for a reduction in the days per week on which deliveries could take place until 02.30am.
- 3) It was noted that a review of the premises licence could be requested by any party at any time in the event that issues occurred.

Legal Advice to the Licensing Sub-Committee

The Legal Advisor to the Licensing Sub-Committee referred to relevant case law whilst the Licensing Sub-Committee were in deliberations and these were applied during decision-making. These being:

Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008 - Councillors made their decision based on the proper evidence provided aided by some level of local knowledge including undertaking visits to the premises prior to the hearing.

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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