

Merton Council
Licensing Sub-Committee
29 November 2017
Supplementary Agenda

5 Notice of Determination - Morden Food Centre

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 4th December 2017

Subject: Morden Food centre, 17 Morden Court Parade, London Road, Morden, SM4 5HJ

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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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 Sub-Committee considered an application made by Ismail Ulas for a variation of the Premises Licence held by Ismail Ulas in respect of Morden Food Centre at 17 Morden Court Parade, London Road, Morden, SM4 5HJ.

The application was for the extension of the licensable activity authorising the sale of alcohol (on and off sales) from 07:00 to 02.00 Monday to Thursday, 07:00-03:00 Friday and Saturday and 08:00-00:00 on Sundays (instead of 07.00 - 00.00 Monday to Saturday and 08:00-23:00 on Sundays on the existing Premises Licence).

At the start of the meeting the applicant amended his application to reduce the opening hours requested to be 07:00-01:00 Monday to Saturday and with no changes to the current hours on a Sunday (08:00-23:00).

Representations were received from the Metropolitan Police, the Licensing Authority, and Public Health as well as 1 resident against the application.

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, had regard to the current Home Office Section 182 Guidance and LB Merton's Statement of Licensing Policy, and complied with parameters provided by any relevant case law.

The amended application was granted subject to the imposition of 2 conditions as requested by the Metropolitan Police, with a slight amendment to read as follows:

1. There must be minimum of 2 members of staff on duty and present in the shop between Midnight and 1am Monday to Thursday and 3 members of staff from Midnight – 1am on Friday and Saturday.
2. There must be at least one Personal Licence holder on duty and present in the shop when the premises is open after Midnight.

The following condition was offered as part of the Operating Schedule:

3. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

Reasons

The Licensing Sub-Committee looked carefully at the application and its supporting papers, the representations contained in the agenda papers, and the oral evidence submitted at the hearing by all parties.

Ms Ozgur, the Applicants' Representative stated that:

- 1) The Applicant felt that amending the application from 3am to 1am was more appropriate at this time.
- 2) The Premises had been operating since 2013, where the Premises Licence holder had held a personal licence for 15 years and his partner had held a personal licence for 8 years, whilst working that the premises.
- 3) There were 7 staff in total working at the premises on a rotational basis.
- 4) There were always 3 members of staff on site at all times the premises was open.
- 5) The premises was operating well and had passed recent test purchases.
- 6) The Applicant and his staff took their roles very seriously.
- 7) The Applicant wanted to work together with the Responsible Authorities and the Local Authority.

PC Russ Stevens, Metropolitan Police presented his representation stating:

- 1) The Police had no issues with the premises and it was run responsibly.
- 2) The Police had concerns over a 3am closing time which would have made the premises the latest opening in Morden. However the 1am amended time would be less impactful.
- 3) If the application were to be accepted, the Police would request that the 2 conditions suggested in the Police representation would be imposed to ensure that sales could be refused when necessary.
- 4) PC Stevens expressed his frustration that there had been no opportunity to negotiate with the applicant prior to the meeting. When PC Stevens had visited the premises during the consultation period, the Applicant had been out of the country.

Barry Croft, Licensing Manager gave an overview of his representation stating:

- 1) The Licensing Authority welcomed the reduction in hours from 3am to 1am and agreed with the suggested Police conditions.
- 2) The remaining concern of the Licensing Authority would be the affect on the local residents as the premises is in a densely populated area.

Dr Omer, Public Health presented her representation and stated:

- 1) Public Health also welcomed the reduction in hours from the original application, and had visited the premises with no concerns.
- 2) Public Health remained concerned that alcohol related issues were already prevalent in the area and were worse on Friday and Saturdays and providing the option to drink would still be likely to have an impact even with the earlier time than originally requested.

Mr Galleymore, Local Resident was present but did not speak on his representation.

In closing, the Responsible Authorities were in agreement that the premises was operating responsibly and with the conditions suggested that the application was

satisfactory.

In closing, the Applicant advised that they would take the necessary measures and would accept the conditions which had been proposed.

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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