

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 24th June 2021

Subject: The Nine Simply Thai, Ground Floor, 18 Upper Green East, Mitcham, CR4 2PB

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.

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Useful documents:

Licensing Act 2003

<http://www.hms.o.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 Tharin and Nanthawan Trakulsawangpob for a Premises Licence for “The Nine Simply Thai” at Ground Floor, 18 Upper Green East, Mitcham, CR4 2PB. The application is for a new Premises Licence for the sale by retail of alcohol on and off the premises - from 12.00 noon to 21:30 Monday to Sunday. It was proposed to supply ‘take away’ food and drink for collection and consumption off the premises and also provide a food and drink delivery service.

Four representations were received against this application. . The premises was located within the Mitcham Cumulative Impact Zone and was subject to the Cumulative Impact Assessment contained in or attached to the Council’s Statement of Licensing Policy. The Cumulative Impact Assessment required the applicant to overcome the rebuttable presumption that required refusal unless the applicant could show that there would 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, comply with the Licensing Act 2003 and its regulations, have regard to the current Home Office Section 182 Guidance and LB Merton’s Statement of Licensing Policy, and comply with any relevant case law.

The Premises Licence application was GRANTED, subject to the Conditions requested by Trading Standards and the Metropolitan Police and three further conditions imposed by the Licensing Sub-Committee.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, its’ supporting agenda papers and the representations received from the Metropolitan Police and the oral evidence submitted at the hearing by the parties present.

The Applicants were present for the meeting but no-one that had submitted a representation were present at the meeting. The Licensing Sub-Committee considered all written representations received.

At the start of the hearing and at the invitation of the Chair, the Licensing Officer presented the report.

The Metropolitan Police had raised representation concerning CCTV installation use of a security incident log and alcohol deliveries restriction. On the 26th May 2021, the Applicant accepted the Metropolitan Police conditions put to them by the Metropolitan Police on 22nd May 2021. Representation was also received from Trading Standards concerning Challenge 25 Policy. The applicant agreed to include a condition in their operating schedule and therefore Trading Standards had withdrawn their representation.

There had been three further representations from local residents and a Ward Member who raised concerns in relation to crime and disorder, public nuisance and anti-social behaviour.

At the invitation of the Chair, the Applicants had presented their application and stated that the conditions imposed by the Metropolitan Police regarding CCTV system had already been put in place to reduce crime in the area. Furthermore, the conditions sought by Trading Standards were also applied.

In response to the Chair's question, the applicants advised that in addition to providing a take away/delivery service for food and alcohol, customers would also be able to order food and alcohol collecting it from the premise. However, within the Challenge 25 age restrictions those customers of 25 years and under would be required to provide proof of identity.

In summing up, the Applicant stated that all concerns expressed by representations relating to crime and disorder, public nuisance and anti-social behaviour had been or would be addressed.

The Decision of the Licensing Sub-Committee

Having considered the Licensing Officer's report, all representations, the applicant and the legal advice, the Licensing Sub-Committee was minded to grant the Premises Licence in respect of The Nine Simply Thai, Ground Floor, 18 Upper Green East, Mitcham, CR4 2PB.

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

- a) The Licensing Sub-Committee noted that the proposed operation of this premises was as a hot food take away with alcohol sales being ancillary to that operation and not as an off-licence to a convenience store. The Licensing Sub-Committee considered that it would not see an increase in cumulative impact and would not be a source of alcohol for those resorting to roads, parks or open spaces nearby to drink their alcohol purchase and would not be a source for street drinkers that the CIA applied to;
- b) Conditions were imposed to address the concerns outlined in a) above. The Licensing Sub-Committee remained concerned by street drinking and those taking alcohol to nearby area so imposed conditions to address that concern.

Premises Licence

Tharin and Nanthawan Trakulsawangpob
"The Nine Simply Thai", at Ground Floor, 18 Upper Green East, Mitcham,
CR4 2PB

Licensable Activities:

sale by retail of alcohol (on and off the premises)
12.00 noon to 21:30pm Monday to Sunday.

Opening Hours:

12.00 noon to 21:30pm Monday to Sunday.

Metropolitan Police Conditions (agreed with Premises Licence holder) were:

- a) CCTV - 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;
- b) Security Incidents - An incident log shall be kept at the premises and made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must be completed within 24 hours of the incident and will record the following: all crimes reported to the premises; All ejections of patrons; All complaints received concerning crime and disorder; Any incidents of disorder; All seizures of drugs or offensive weapons; Any faults in the CCTV system; Any refusal of the sale of alcohol; and Any visit by a relevant authority in relation to service.
- c) Delivery of Alcohol - The delivery of alcohol shall be made only to a residential or business address and the customer to be clearly resident inside the building. The delivery of alcohol will not be made or completed to a person in a public place (for example a street corner, park or bus stop).

Trading Standards Conditions (agreed with Premises Licence holder) were:

- a) 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. 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;

- b) Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children;
- c) 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;
- d) 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;
- e) 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);
- f) 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 shall be carried out at least every three months;
- g) 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;
- h) 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.

Licensing Sub-Committee Conditions (imposed on Premises Licence following a Licensing Sub-Committee hearing)

- a) Sales of alcohol for consumption off the premises shall only be supplied with, and ancillary to the delivery of a substantial meal;
- b) There shall be no off sales of alcohol ancillary to a take-away meal collected from the premises;
- c) All deliveries of alcohol to residential or business addresses will require age verification for delivery of such alcohol.

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.

14. General

14.1 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.

14.2 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.

14.3 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.

14.4 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.

14.5 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

14.6 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.

15. Licensing policy statements and Section 182 guidance

15.1 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.

15.2 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.

16. Giving reasons for decisions

16.1 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.

16.2 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.

17. Implementing the determination of the magistrates' courts

17.1 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.

18. Provisional statements

18.1 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.

18.2 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.