

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 19 May 2023

**Subject:** Pawelek Coffee Shop & Ice Cream Ltd, 335-335A London Road, Mitcham CR4 4BE

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.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 Authority received an application from Pawelek Coffee Shop & Ice Cream Ltd, 335-335A London Road, Mitcham CR4 4BE for a new premises licence.

The applicant applied for:

- the supply of alcohol (on sales only):  
Mondays to Saturdays 08:00 to 23:00 and  
Sundays from 09:00 to 21:00.
- opening hours:  
Monday to Saturday 08:00 to 23:00 and  
Sunday from 09:00 to 21:00

On 11 April 2023 the Licensing Authority received an email from the applicant's solicitor stating that the Applicant had agreed to adding two conditions, as requested by the Metropolitan Police, to their Operating Schedule, amending the supply of alcohol times to:

Monday to Saturday 11:00 – 22:30hrs and  
Sunday 11:00 – 20:30hrs

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 was granted to the reduced hours of opening offered ahead of the meeting with the imposition of the agreed conditions and additional conditions imposed by the Licensing Sub-Committee, as detailed below in this notice.

## Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, the agenda papers and the oral evidence submitted at the hearing by all parties present.

Mr Bernard Ralph, for the applicant, set out the application and noted the sole representation received did not raise issues specific to the applicant, whilst the Responsible Authorities were content with the application making no representation. The sale of alcohol would be limited to purchases ancillary to meals, with no vertical drinking on the premises and the applicant was content for a condition to allow alcohol to be sold and consumed within the licensed area, should the licence be granted. The offerings of wine and beer would be more expensive than average. There had been little engagement or issues raised directly from local residents, which indicated that the venue is not a problem for the area.

Councillor Manly spoke in favour of the application, noting that she had received many compliments about the venue and the applicant and requests to support the application. The applicant also operates the neighbouring shop, which is licensed for off sales, without any antisocial behaviour being attributed to the business, indicating that the applicant is a responsible licensee. Mitcham is bereft of similar establishments. Historically there had been three pubs in the area, the residents are used to such venues, and we should seek to support the success of local business.

In response to questions Mr Ralph confirmed:

- That the sale of alcohol would be indoors only, with no intention for alcohol to be sold for consumption off the premises.
- The applicant would accept a condition along those lines
- The applicant is keen to contain the impact of any alcohol sales inside the venue.

In closing, Mr Ralph noted that the objectors cannot veto an application for issues that have not occurred, the applicant is a responsible licensee as shown by their operation of the neighbouring shop, and desires to offer a responsibly run café offering alcohol.

### **The Decision of the Licensing Sub-Committee**

The Licensing Sub-Committee decided to grant the application with the following licencable activities and opening hours:

- Supply of alcohol on the premises  
Monday to Saturday 11:00 – 22:30, and  
Sunday 11:00 – 20:30.
- Opening hours for the premises  
Monday to Saturday 08:00 to 23:00, and  
Sunday 09:00 to 21:00

The Licensing Sub-Committee imposed further conditions as follows:

- No sale of alcohol for consumption outside the venue

The Licensing Sub-Committee imposed the conditions extracted from the Operating Schedule in the Application as follows:

1. A notice shall be displayed at every public exit reminding customers to leave the premises quietly.
2. 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.
3. 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.

4. 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.
5. 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, shall be kept and maintained by the Designated Premises Supervisor or the Premises Licence Holder.
6. 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.
7. 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.
8. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
9. An effective visual (and/or aural) reminder 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).
10. 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.
11. 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:
  - I. all crimes reported to the premises
  - 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
  - VI. any visit by a relevant authority.

12. The sale by retail of alcohol is restricted to persons taking table meals there and for consumption by such person as an ancillary to his/her meal.
13. There shall be no vertical drinking.

### **Reasons**

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

- 1) The Licensing Sub-Committee believed that the hours authorised and the conditions proposed and imposed, satisfied the Licensing Objectives and addressed the concerns of Interested Parties.
- 2) The residents were able to seek a Review of the Premises Licence should they experience breaches of the conditions or the hours of trading or public nuisance.

## **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.