

Licensing Act 2003 – responsible authority representation

This representation is made by the Licensing Authority for the London Borough of Havering concerning an application to vary a premises licence for the premises as detailed below.

Applicant: Marks & Spencer PLC
Premises: Marks & Spencer 37-43 South Street Romford RM1 1NT

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Objection summary:

The application is to permit the consumption of alcohol on the premises at a large outlet located within Havering's main cumulative impact zone, a premises which has previously supplied alcohol for consumption off the premises only. Although the premises is located in Havering's main cumulative impact zone the application makes no reference to Havering's cumulative impact policy and hence does not rebut the presumption of refusal inherent within the policy.

Policy considerations

Licensing Policy: Expectations of applicants

4.1 The licensing objectives are at the heart of the licensing regime. Applicants must demonstrate in their operating schedules as part of an application how they will address each objective. The Licensing Authority will make decisions about applications, variations and reviews based on the promotion of the same objectives. Those making representations to the licensing sub-committee must base them on the licensing objectives.

4.2 It is for these reasons that Havering expects detailed and meaningful operating schedules that will enable all parties to understand what is being sought by an application, and if granted how the premises will operate. In completing the operating schedule, applicants are expected to have regard to this Statement of Licensing Policy which sets out the expectations of the Authority as to the steps that are appropriate for the promotion of the licensing objectives.

4.3 The completion of a full and detailed operating schedule will give those reading the application greater confidence that the applicant seeks to make a positive contribution and is demonstrating a commitment to both those living in the vicinity and the licensing objectives.

4.4 Applicants are also expected to include positive proposals in their application as to how they will manage any potential risks.

4.5 Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to:

- Demonstrate an understanding of how the Policy impacts on their application,
- Identify any measures they will take to mitigate the impact, and
- Confirm why they consider their application should be an exception to the Policy.

4.9 **The failure by an applicant to clearly and fully demonstrate in the operating schedule that they have properly considered the promotion of the four licensing objectives is a legitimate concern should the application come before the licensing sub-committee.**

6.3 For areas where a cumulative impact policy is adopted, it creates a rebuttable presumption that applications for new premises licences, club premises certificates, or variation applications that will add to the existing cumulative impact, will normally be refused, unless the applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact and not impact adversely on the promotion of the licensing objectives. The exception to this policy may be for applications for restaurants where alcohol is sold ancillary to a table meal.

Representation

This full variation application was submitted to Havering's licensing authority on 2nd May 2023. The applicant's agent was contacted the same day advising that the licensing authority would not be able to support the application in its current state given the minimal entries in section M defining the additional steps the licence holder intends to take to promote the licensing objectives. The applicant's agent responded to the effect that the operating schedule as submitted should remain as it is.

The current version of the premises licence contains two conditions in Annex 2 in addition to the mandatory conditions further to alcohol off-supplies. The first Annex 2 condition was carried over from the former Justices Licence. It confirms that alcohol consumption may not occur on the premises. The application seeks the removal of this condition. The second current Annex 2 condition simply reconfirms the hours during which alcohol off-supplies may be made. The second condition is, therefore, essentially redundant as the alcohol supply hours are already defined in Part 1 of the licence. Two proposed conditions intend to be installed on the varied licence:

- Alcohol sold for consumption off the premises will not be sold in an open container.
- On sales will be restricted to the customer café.

These are the two additional steps the application suggests are sufficient to promote the licensing objectives at a premises which is located within the cumulative impact zone. The premises has sold alcohol for consumption off the premises since November 2005, but it has never sold alcohol for consumption on the premises. The Licensing Authority is of the view that selling alcohol for consumption *on* the premises is an entirely different beast to selling alcohol for consumption *off* the premises. We might have hoped that the licence holder would also recognise the difference between the two.

Contact with the licence holder's agent on 2nd May 2023 identified a number of areas of concern further to the application and how these concerns might be resolved. The areas which the Licensing Authority felt needed to be addressed were, and remain, as follows:

- Staff training in relation to alcohol supplies
- Child protection proposals, including training, and proof of age verification
- CCTV (assuming a CCTV system is present, which I believe it is)
- Emergency planning and fire risk assessment
- The presence of an incident book to record matters of concern associated with the supply of alcohol at the premises
- The presence of a condition(s) in relation to alcohol being ancillary to a table meal or to be served to seated patrons only
- If remote sales and/or deliveries of alcohol are to be made the presence of proposals to address this

These are basic and standard matters which all applicants should reasonably address in order to aid the promotion of the licensing objectives but which this application has apparently declined to consider. The application, as submitted, would permit vertical drinking, effectively creating the potential for a bar/public house environment to exist within the premises.

Havering's licensing policy is available on our website and by request from the licensing team. It is freely accessible to enable all applicants to understand what this Licensing Authority expects with regard to licence applications. The Licensing Authority is not convinced that its licensing policy has been addressed in any way by the licence holder. This apparent disregard undermines confidence in the operator's ability to successfully promote the licensing objectives when selling alcohol for consumption on the premises.

Havering's licensing policy makes clear the Licensing Authority's expectations of an applicant. These expectations provide an echo of those identified in the s.182 Guidance to the Act at paragraph 8.41 which includes the following provisions:

In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives.

Paragraph 4.1 of Havering's licensing policy as detailed above indicates that *applicants must demonstrate in their operating schedules... how they will address each objective.* It might appear reasonable to suggest that the applicant has not done so.

Paragraph 4.2 requires that *Havering expects detailed and meaningful operating schedules that will enable all parties to understand what is being sought by an application, and if granted how the premises will operate.* In addition, *applicants are expected to have regard to this Statement of Licensing Policy.* We might reasonably accept that the application does not have regard to Havering's licensing policy.

Paragraph 4.3 clarifies that *the completion of a full and detailed operating schedule will give those reading the application greater confidence that the applicant seeks to make a positive contribution and is demonstrating a commitment to both those living in the vicinity and the licensing objectives.* The absence of a full and detailed operating schedule, as seems apparent in this case, undermines the Licensing Authority's confidence in the applicant.

Paragraph 4.4 expects an applicant to *include positive proposals in their application as to how they will manage any potential risks.* Section M of the application appears not to identify any risks further to the consumption of alcohol on the premises. It is therefore difficult to assess whether the licence holder believes there are no risks involved or whether potential risks remain unrecognised.

Paragraph 4.5 expects an applicant to address any special policies which may be in place in the area in which the premises is located. As previously mentioned, the application makes no reference to Havering's cumulative impact policy. It is therefore not possible to assess whether the licence holder disregards the policy or whether the licence holder is unaware that a cumulative impact policy exists.

Paragraph 4.9 emphasises the importance of the preceding paragraphs and makes clear that a failure to address such matters is a significant subject for consideration:

The failure by an applicant to clearly and fully demonstrate in the operating schedule that they have properly considered the promotion of the four licensing objectives is a legitimate concern should the application come before the licensing sub-committee.

Finally, paragraph 6.3 defines the parameters of Havering's cumulative impact policy:

For areas where a cumulative impact policy is adopted, it creates a rebuttable presumption that applications for new premises licences, club premises certificates, or variation applications that will add to the existing cumulative impact, will normally be refused, unless the applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact and not impact adversely on the promotion of the licensing objectives. The exception to this policy may be for applications for restaurants where alcohol is sold ancillary to a table meal.

The Licensing Authority expects any and all applicants to address the provisions of its licensing policy, whether the applicant is an independent sole trader or a large multi-national conglomerate. The duty to promote the licensing objectives applies equally to every applicant. The application as submitted does not address Havering's cumulative impact policy in any way and appears to disregard the rest of the overall licensing policy. It may therefore be reasonably interpreted that the licence holder has not provided any form of rebuttal against the cumulative impact policy's presumption to refuse such an application. The Licensing Authority is not opposed to this premises selling alcohol for consumption on the premises in its café; it is, however, opposed to the application based upon the operating schedule. Given this, the provisions of the cumulative impact policy appear clear: the application should not be granted as submitted.

Complaint and inspection history (if applicable)

Not applicable

Other documents attached

Correspondence dated 2nd & 3rd May 2023 between the licensing authority and the applicant's representative.

Signed Paul Jones

Dated 26th May 2023