

LONDON BOROUGH OF MERTON

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) (NO. 3) REGULATIONS 2020 (S.I. No. 2020/750) REGULATION 4(1)

DIRECTION FOR THE CLOSURE OF SANTIAGO'S CAFE, 242-244 LONDON ROAD, MITCHAM, CR4 3HD

The London Borough of Merton (“the Council”) makes this Direction under the above Regulations to close the premises trading as “*Santiago's Cafe*”, from the ground floor of 242-244 London Road, Mitcham, CR4 3HD (“the Premises”).

This Direction comes into effect at 00:01 hours on 18th January 2021 and continues until 23:59 hours on 17th July 2021 when it will cease to have effect.

The Council gives this Direction being satisfied that a serious and imminent threat to public health exists relating to coronavirus transmission and the Direction responds to that threat. This is due to the person(s) carrying on the business from the Premises, and/or the owner or occupier of the Premises, having previously failed to comply with various restrictions imposed by Regulations to prevent the spread of coronavirus giving rise to the on-going risk of virus transmission.

The Council is satisfied that the Direction is necessary for the purpose of preventing, protecting against, controlling and/or providing a public health response to the incidence or spread of infection by coronavirus in the Council’s area.

The Council is satisfied that the prohibition imposed by the Direction is a proportionate means of achieving this purpose. In reaching this decision the Council has had due regard to its Public Sector Equality Duty.

Prior to giving this Direction, the Council consulted its Director of Public Health and had regard to their advice.

The Council considers that it is necessary and proportionate to make this Direction on the above grounds for the following reasons:

1. On 25th September 2020 the Premises was visited by Environmental Health Officers (EHOs) from the Council because of an on-going complaint regarding odour from Shisha and carbon monoxide affecting a flat above the Premises.
2. The Premises is located on the ground floor in a retail shop. Entering the Premises is by door entry system with camera which makes it difficult for enforcement officers to enter unannounced. A letter was hand delivered to the Premises and was accepted by Mr [REDACTED] who appeared to the

manager. The officers recognised Mr [REDACTED] from a previous inspection of another shisha bar which he had been managing.

3. The letter stated that no smoking of shisha may take place in substantially and fully enclosed public spaces or workplaces and details were given of the steps required to comply with the various Coronavirus restrictions imposed by the Coronavirus legislation including:
 - The completion of a COVID-19 risk assessment
 - The rules on gatherings
 - The requirement to display or make available a QR code for purposes of test and trace.
 - Face Coverings to be worn except when eating and drinking and that Shisha smoking is not included in the exemption and in any case should not be taking place indoors as per the requirements of the smoke free legislation.
 - Closing time to be 2200 hours and 0500 hours.

Details of where the business could get further information <https://www.gov.uk/coronavirus> was also included in the letter.

4. On 23rd October 2020 at 1930 hours, EHOs accompanied by Police Officers attended the Premises. Mr [REDACTED] opened the door and let the Officers enter the Premises but then immediately left the Premises.
5. On entry there did not appear to be anyone in charge and no person came forward to identify themselves as an employee to either the EHOs or the Police Officers. There were at least 40 customers inside the Premises who were mainly sat in groups of between 4 and 10 people and making no effort to socially distance themselves. Between the groups there were 17 hookah pipes being smoked. The EHOs also witnessed individuals sharing the same mouthpiece of a hookah pipe to inhale smoke. A poster displayed at the Premises appeared to condone the sharing of hookah pipes despite the obvious risk involved in doing so given the Coronavirus pandemic. The poster stated, *"Management house rules, must be over 18, no outside food or drinks, 1 shisha between 2 people"*.
6. At time of the visit London was in Tier 2 (High Alert) area for Covid-19 and consequently individuals should not have been mixing with anyone who they do not live (or had formed a support bubble) with. The Police Officers challenged a number of the groups to ascertain if they were from mixed households, however, the groups challenged refused to engage with the Police, or produce any identification to verify their names and addresses and that they were from the same household.
7. In the EHOs opinion, the ventilation within the Premises was inadequate. Photographs and videos taken inside the Premises which show that the air inside was thick and hazy with shisha tobacco smoke. The Premises was enclosed and should have been smoke free as per the requirements of Part 1 of the Health Act 2006. There was no mechanical ventilation inside the

Premises. Two circular windows on the right hand side of the Premises were only open approximately 2 inches (5 cm). At the back of the Premises there was fine mesh shutter which was pulled down restricting the flow of air and ventilation within the Premises.

8. None of the customers were wearing face coverings when the EHOs entered the Premises, and officers observed several customers walking around the Premises without face coverings. There was no food present at any of the tables. Some tables did have a coffee cup or a soft drink on them, but not enough for the number of customers sat around them. As per the restrictions face coverings should have been worn by customers accept when eating or drinking.
9. Inside the Premises amplified music was being played. The volume of the music was relatively loud and to such an extent that anyone would have to raise their voice to be heard clearly. This was a concern as in addition to the lack face coverings, raised voices increases the risk of aerosolising the virus.
10. There were test and trace QR posters around the Premises but as no one appeared to be in charge and the EHOs could not see any evidence of record keeping for customers who did not have the ability to scan the QR code. There appeared to be no staff or manager in control of the Premises to advise customers to scan in as part of the track and trace requirements.
11. There was no signage advising customers to social distance, nor was there any one-way system or flow routes around the Premises to facilitate social distancing when moving around the Premises. Social distancing is essential to stop the spread of the virus. The layout of the tables and chairs did not facilitate social distancing. Sofas positioned in a row along the right hand side wall, (were only around 12 inches/30 cms apart) and were being use by different groups. There were no physical barriers or screens between the sofas. The layout of the tables, chairs and sofas in the EHOs' opinion did not comply with The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020 (S.I. No. 2020/1008).
12. The acts and omissions carried on at the Premises demonstrated a flagrant disregard for the safety of employees and the public at a time when the London Borough of Merton, and London as a whole, was in the Tier 2 High Alert level due to the prevalence and increasing numbers of persons with Covid-19. Given this conduct, the EHOs and the Council had little confidence that the business would comply with necessary legal requirements to manage the risk of Covid-19 transmission.
13. The operation of the premises posed a serious and imminent risk to public health as there was lack of adequate measures in place to control the risk of transmission and infection of Covid-19. The business operator had failed to comply with the coronavirus restrictions and co-operate with the Council. The closure of the Premises was considered necessary for the purpose of

preventing, protecting against, controlling or providing public health response to the incidence or spread of the Covid-19 infection in the Council's area. Moreover, the Council considered that the closure was an proportionate means of achieving that purpose. . The Council gave a direction for the closure of the Premises on 2nd November 2020 (the First Direction).

14. Since giving the First Direction the Council has every 7 days reviewed whether the conditions justifying it in Regulation 2(1) of the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (the No.3 Regulations) continued to be met. To date no person has sought to engage with the Council, or provide any risk assessments or other information to outline how those responsible for the business trading from the Premises intend to operate in a Covid secure and compliant manner. Those responsible for the business have a poor track record of compliance with not just the coronavirus restrictions but other statutory requirements and have failed to identify themselves to the Council.

15. The First Direction expires at 2359 hours on 17th January 2021. The Council considers that if a further direction is not given those responsible for the business will not comply with the current coronavirus restrictions, including those imposed by the current national lockdown under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, as amended. Given the past acts and omissions of those responsible for the business the Council considers it highly likely that those involved in the management of the business will reopen the Premises and continue their activities in blatant disregard for the coronavirus restrictions in force as they did before the First Direction was given.

16. The Council considers that:

- a. the issue of the Direction responds to serious and imminent threat to public health generally at this time and specifically posed by those carrying business from the Premises since the Council considers there is a real risk the Premises will reopen and operate with a total disregard to the current restrictions;
- b. a further direction under Regulation 4(1) of the No. 3 Regulations is necessary for the purpose of preventing, protecting against, controlling or providing public health response to the incidence or spread of the Covid-19 infection in the Council's area; and
- c. that requiring the Premises to remain closed is a proportionate means of achieving the purpose

17. In reaching this conclusion the Council has had particular regard to :

- a. coronavirus infection rates in its area - for the period 6th to 13th January 2021 the rate was 923.8 per 100,000 in the London Borough of Merton. London as a whole was in covid alert level Tier 4 with

particularly high levels of a highly infectious, new variant of Sar-Cov-2 virus (B.1.1.7) London along with the whole country is subject to a third national lockdown and a second wave of Covid.

- b. the number of new cases by Demographic – infections are increasing fastest in the demographic between the ages 20-59 (*Source: London Covid-19 Daily LSAT*). The patrons of shisha bars are generally within this demographic.

Notice of Right of Appeal

You have the right to appeal against this Direction, or a subsequent determination by the Council not to revoke it following a 7-day review, (a “review determination”).

Any appeal must be made to the Magistrates’ Court by way of complaint for an order within the period of 28 days beginning—

- (a) in the case of an appeal against the direction, with the day on which the direction was issued;
- (b) in the case of an appeal against a review determination with the day on which the determination was made.

Any Summons/Appeal should be served on the Council’s legal advisers at:

South London Legal Partnership
Gifford House
67c St Helier Avenue
Morden SM4 6HY

Email to david.fellows@merton.gov.uk

Notice of Right to make representations to the Secretary of State

You also have the right to make representations about this Direction or a review determination to the Secretary of State. Such representations should be submitted via NHS Test and Trace, emailed to: directionnotification@dhsc.gov.uk

Any representations must be made to the Secretary of State within the period of 28 days beginning—

- (a) in the case of representations about the direction, with the day on which the direction was issued;

(b) in the case of representations about a review determination with the day on which the determination was made.

Any such representations should include:

- Details about the recipient of the Direction and how they have been impacted;
- Demonstrate of why the Direction or, as the case may be, the review determination, should not have been made and was not appropriate based on the conditions set out in Regulation 2(1) Health Protection (Coronavirus, Restrictions) (No.3) (England) Regulations 2020
- Any supporting evidence.
- What action they would like to be taken as a result.

The operation of this Direction is NOT suspended pending the outcome of any appeal to the magistrates' court against, or representations to the Secretary of State about, the Direction or a review determination.

Signature: 

Date: 15th January 2021

Name: Mr Ged Curran, Chief Executive

Duly authorised for and on behalf of the Council to give this Direction.

Enquiries about this Directions should be addressed to:
Mr Nick Steevens, Head of the Regulatory Services Partnership
Email: rsp@merton.gov.uk