

Merton Council

Licensing sub-committee

5 March 2015

Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 10th March 2015

Subject: Royal Surrey Snooker and Social Club Ltd, Upper Floor, 1-9 Abbotsbury Road, Morden, SM4 5LH

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 2012). Chapter 12 of the guidance is attached as Annex B to this notice.

For enquiries about this matter please contact

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Telephone: 020 8545 3616

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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

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing/>

Annex A

Determination

The Licensing Sub-Committee considered the application by the Royal Surrey Snooker and Social Club Ltd, of Upper Floor, 1-9 Abbotsbury road, Morden, SM4 5LH. The application sought to amend the licensing plans and vary the hours for Late Night Refreshment, Retail Sale of Alcohol (on sales only), and the Opening Hours, as follows:

Late Night Refreshment

The hours for Late Night Refreshment on Sundays shall be amended to 23.00 – 00.00.

Retail Sale of Alcohol (on sales only)

The hours for Retail Sale of Alcohol (on sales only) shall be amended to:

10.00 – 1.30 Mondays to Saturdays

10.00 – 23.00 Sundays

Opening Hours

The hours for Retail Sale of Alcohol (on sales only) shall be amended to:

10.00 – 2.00 Mondays to Saturdays

10.00 – 00.00 Sundays

The variation in the Premises Licence was granted subject to conditions offered in the operating schedule contained in the application, some conditions sought by the Police, some conditions sought by the Public Health authority, and conditions imposed by the Licensing Sub-Committee. The conditions are as follows:

1. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorized officer throughout the preceding 31 day period. The CCTV system should be updated and maintained according to police recommendations.
2. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premise is open to the public. This staff member must be able to show a Police or authorized council officer recent data or footage with the absolute minimum of delay when requested.
3. An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police, which will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons

- (c) any complaints received
 - (d) any incidents of disorder
 - (e) any faults in the CCTV system or searching equipment or scanning equipment
 - (f) any refusal of the sale of alcohol
 - (g) any visit by a relevant authority or emergency service.
4. No super-strength beer, lager or ciders, spirit mixtures of above 5.5% ABV will be sold on the premises, except for 'premium products' previously approved by the Police in writing.
 5. There will be no promotional sale of alcohol at prices near or below normal sale prices.
 6. A grill will be fitted around the bar area to prevent access by staff or customers outside of authorised hours and that any alcohol stored away from the Bar area will be in a locked store room.
 7. Children under the age of 14 years are only allowed in the premises when accompanied by a parent or guardian.
 8. The current entry system requiring electronic membership card entry or entry by entry phone for members (by authority of staff) shall be retained and maintained. (Entrance shall be permitted only through the membership scheme with photo membership cards on the computerised system).

Reasons

The Licensing Sub-Committee had to have regard to the Licensing Act 2003, its Regulations, the new Secretary of States' Home Office section 182 Guidance, the Council's Statement of Licensing Policy, and parameters provided by relevant case law. The Licensing Sub-Committee had to consider the application against the licensing objectives, taking into account the evidence of those making Representations against the application. Conditions were required to be evidence based and appropriate and proportionate to the aim of the Licensing Sub-Committee to promote the licensing objectives.

There was not sufficient evidence to justify refusing the application under the Licensing Act 2003. The evidence of potential breaches of the Gambling Act 2005 in respect of Poker had not resulted in any warning, prosecution or other sanction, so the Licensing Sub-Committee had to accept that there was not an issue of crime and disorder at the premises, despite anecdotal evidence in respect of poker limits. The Licensing Sub-Committee were also encouraged by the current entry phone / identification card system as a way of managing the premises.

The condition for children under the age of 14 years was imposed under the licensing objective of protecting children from harm, while they may be on the premises.

The Licensing Sub-Committee did not see any difference between the private room within the licenced area and the main licenced area. It was noted that CCTV and glass walls allowed it to be properly monitored.

The Licensing Sub-Committee was bound by the evidential requirements of the Thwaites Case, and the need to avoid duplication with other regimes arising from the Somerfield case.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2012).

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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