

Merton Council
Licensing sub-committee
3 June 2015
DETERMINATION NOTICE

4 Determination Notice For Morden Hall

1 - 8

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 9th June 2015

Subject: Morden Hall, 21 Morden Hall Road, Morden SM4 5JD

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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SM4 5DX

Telephone: 020 8545 3616

Fax: 020 8545 3226 **(Please telephone 020 8545 3616 to notify faxes sent)**

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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 from Morden Reality Management for a new premises licence for Morden Hall at 21 Morden Hall Road, Morden SM4 JD. The Licensable Activities and opening hours applied for were as follows:

The Sale by Retail of Alcohol (on and off):
Mondays to Sundays: 07:00 to 01:00

Late Night Refreshment (indoors)
Mondays to Sundays: 23:00 to 01:30

Recorded Music / Live Music / Performance of Dance / Anything of a Similar Description to live, recorded music or performance of dance (Indoors/Outdoors):
Mondays to Sundays: 08:00 to 01:00

Performance of Plays/ Showing of Films:
Monday to Saturday: 07:00 to 23:00
Sunday: 07:00 to 22:00

Premises Opening Hours:
Mondays to Sundays: 07:00 to 01:30

The request for seasonal variation for the performance of plays to 2am on New Years Eve was withdrawn.

The Premises Licence was **granted**, for the hours and licensable activities above, subject to the following conditions agreed and imposed by the Licensing Sub-Committee:

Conditions agreed with the London Borough of Merton Pollution Team:

1. Where activities are taking place that are likely to impact on local residents (i.e. involving live and recorded music), doors and windows shall be kept shut apart from access and egress
2. Where activities are taking place that are likely to impact on local residents (i.e. involving live and recorded music), patrols will take place on an hourly basis from 21.00 hours onwards at the perimeter of the property to ensure that there is no sound escape. Any sound escape from the property shall be addressed immediately and reduced to a level that is not audible at the nearest residential property.
3. After 23.00 patrols shall also address noisy patrons outside the premises. A logbook is to be kept to record such patrols and incidents and shall be made

available for inspection by Council or Police Officers.

4. Clear signs that are a minimum A4 size shall be placed at exit points stating "This is a residential area please leave quietly".
5. The loading and unloading of vehicles and the transfer of materials including refuse and bottle collection shall only take place between the hours of 07.00 and 10.00 pm Monday to Friday, 08.00 and 21.00 Saturday and 09.00 and 21.00 Sunday.
6. No live and recorded music (other than background music in the Marquee) shall take place outside the premises.

Conditions imposed by the Licensing Sub-Committee:

1. Loudspeakers shall not be located outside the premises building.
2. The number of persons accommodated at the premises (excluding staff) shall not exceed 350 at any time. The capacity of the function room is 200 and the capacity of the marquee is 350 persons.
3. The premises shall install and maintain a comprehensive CCTV system. 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. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
4. Suitable numbers of SIA licensed door supervisors shall be on duty at the premises at all times whilst it is open for business for pre-booked events (subject to risk assessment).
5. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
6. Admission of children to the premises shall only be permitted where they are accompanied by a parent or guardian.
7. There shall be a DPS or personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
8. A full Fire, Exit, Safety and dispersal plan shall be implemented. Staff selling alcohol shall be trained and records shall be kept and refreshed every 6 months. Staff will assist with prompt dispersal of customers in a quiet and thoughtful manner.
9. The site of or use of Marquees for pre-booked events shall be limited to the South Lawn.

10. Amplified music shall only be permitted Internally (or in the Marquee between 08.00 to 20.00 for pre-booked events).

Reasons

The Licensing Sub-Committee considered all of the relevant evidence made available to it and has complied with the Licensing Act 2003, its Regulations, and case law, and had regard to the Guidance under section 182 of the Licensing Act 2003 and Merton Council's Licensing Policy.

The reasons for the decision were as follows:

Reasons

The Licensing Sub-Committee felt that the conditions imposed would be sufficient to prevent public nuisance to local residents, to prevent crime and disorder, and to protect children from harm and were both proportionate and appropriate. The application as submitted appeared to permit live and recorded music in the outside areas of the property, which would impact on local residents.

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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