

Merton Council
Licensing sub-committee
3 June 2015
DETERMINATION NOTICE

4 Determination Notice for Cannizaro House

1 - 6

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 10th June 2015

Subject: Cannizaro House, 20 West Side Common, Wimbledon, Sw19 4UE

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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Useful documents:

Licensing Act 2003

<http://www.hms.o.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 Hotel Du Vin Trading Limited for a variation to the premises licence for Cannizaro House, 20 West Side Common, Wimbledon SW19 4UE. The proposed variations to the Licence were:

- A. Amendment to the Licensing Plans to include the following changes to the layout and licensed area:

Ground Floor:

Move wall back into back office area to create a larger space for reception desks;

To include the Orangerie within the Licensed Area;

To include the external areas to be used for the consumption of alcohol only:

To include a marquee erected from time to time on the front lawn to include sales of alcohol and regulated entertainment (NOTE: this variation was withdrawn prior to the meeting)

First Floor:

Oak Room: re model as bedroom and create an en-suite bathroom in place of existing storage area

Blue Room: remodel as bedroom, change partition wall to include the existing storage space and create an en-suite bathroom.

- B. Changes to the licensable activities and hours:

Licensable hours and provision of regulated entertainment, entertainment facilities and Late Night Refreshment;

Removal of embedded restrictions, in particular those restrictions relating to Christmas Day, Good Friday or New Year's Eve.

The Licensing Sub-Committee decided that it could not consider this variation application because the variation as proposed, by including the Orangerie into the Licensed area, would vary substantially the premises to which it relates. The changes proposed would have to be amended through an application for a new Premises Licence.

Reasons

The Licensing Sub-Committee considered all of the relevant evidence made available to it and in doing so has taken into account the Licensing Act 2003, the Guidance under section 182 of the Licensing Act 2003, its Regulations, case law, and Merton Council's Licensing Policy.

Reasons

The reasons for the decision were as follows:

Section 36.6 of the Licensing Act 2003 states:

A licence may not be varied under section 35 so as (b) to vary substantially the premises to which it relates.

The holders of premises licences are therefore required to submit applications for new premises licences only, where substantial changes are contemplated. This will be a question of fact in each case. It is noted that the s182 Guidance is largely silent on the point (see 8.68, 8.69, 8.56, 8.57). There is no case law that arises under the Licensing Act 2003. Some commentators suggest that cases under the Licensing Act 1964 may assist and refer to *R v Weston-super-Mare Licensing Justices, ex p Powell* [1939] 1 KB 700, [1939] 1 All ER 212, CA, suggesting a maximum percentage increase in trading area (typically 30–50%) beyond which they would generally wish to deal with the proposal by way of a new application. Cases under previous legislation (which must clearly be distinguished from the very different regime under the LA 2003) do not greatly assist the Licensing Authority. It therefore remains that the Licensing Sub-Committee or Licensing Authority is required to make a finding of fact.

Interested Parties represented that it was a further 294 covers and that existing covers were only 88. The Licensing Sub-Committee was more inclined to consider the size of the area than those submissions. It appeared to be half the size of the existing licensed premises and its inclusion must be substantial.

The addition of the Orangerie with its front terraces that were not licensed, in the view of the Licensing Sub-Committee, amounted to a substantial variation and for that reason the Licensing Sub-Committee could not hear the application for variation.

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.