

Merton Council
Licensing Sub-Committee
20 June 2017
Supplementary agenda

7 Notice of Determination - The Sampler

1 - 8

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 27 June 2017

Subject: The Sampler, 26 Leopold Road, Wimbledon, SW19 7BD

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 (March 2015). Chapter 12 of the guidance is attached as Annex B to this notice.

For enquiries about this matter please contact

Democratic Services
Civic Centre
London Road
Morden
Surrey
SM4 5DX

Telephone: 020 8545 3616

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

Email: democratic.services@merton.gov.uk

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 an application by The Sampler Ltd for a new Premises Licence for the retail sale of alcohol for consumption both on and off the premises, to be known as “The Sampler”, at 26 Leopold Road, Wimbledon, SW19 7BD from 09:00 to 23:00 Mondays to Saturdays and 09:00 to 21:00 on Sundays. A number of representations were received from local residents and traders.

The applicant had amended their operating schedule to add the following condition to their application to be imposed on the Premises Licence if granted, being, ‘No sale or display of beers or ciders over 5.5 ABV except for premium products i.e. craft beers’. This was agreed with the Police Licensing Officer..

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, that complied with the Licensing Act 2003 and its regulations, had regard to the current Home Office Section 182 Guidance, as well as to LB Merton’s Statement of Licensing Policy, and complied with parameters provided by relevant case law.

The Licence was granted with the following Licensable Activities and Opening Hours:

- The sale of alcohol (on and off the premises) shall be from 09:00 – 21:30 Mondays to Saturdays and 09:00 – 21:00 on Sundays.
- Seasonal Variation/Non-standard timings: On-Sales also permit one grower tasting event per month and a Spring, Summer and Christmas tasting event, that are for up to 10 customers only, between the hours of 09:00 and 23:00.
- On-sales of alcohol on the premises shall be limited to sales through the enomatic machines in 25ml, 50ml or 75ml measures only, for the purposes of tasting wines for prospective purchase.

The Applicant submitted a revised licensing plan which was substituted considered and approved by the Committee.

The Premises Licence is subject to the following conditions:

1. All sales for off premises consumption shall be sold in sealed containers only and shall not be consumed on the premises.
2. No sale or display of beers or ciders over 5.5% ABV is permitted except for premium products (i.e craft beers) approved in writing by the Police Licensing Officer.

The conditions offered in the Operating Schedule of the Application were imposed on the Premises Licence, where they were enforceable and/or did not arise from separate legislative enforcement regimes. They were as follows:

1. There shall be a personal licence holder and/or designated premises supervisor on duty on the premises at all times when the premises is authorised to sell alcohol.
2. A 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. Notices shall be displayed explaining that the Challenge 25 scheme is in operation at the premises.

3. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Police. 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 entire 31 day period. 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 premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
4. A clear and legible notice shall be displayed outside the premises indicating the normal opening hours under the terms of the premises licence during which licensable activities are permitted.
5. An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received concerning crime and disorder
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons
 - (f) any faults in the CCTV system, searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
6. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the Council at all times whilst the premises is open.
7. No collections of waste or recycling materials from the premises or deliveries shall take place between 23.00 and 8.00 on the following day.

Reasons

The Licensing Sub-Committee carefully considered the Agenda and Supplemental Agenda Report and papers (including the application, its supporting documents and the Representations) and the oral evidence submitted at the hearing by all parties.

The main objections and concerns raised by the local residents and traders were:

- If the business were not to be successful, the premises could then be used as a drinking establishment in the future;
- That there should be an earlier terminal hour, as 11pm was too late;
- The presence of a local girls school could involve pupils walking past the premises being exposed to its products;
- Residents raised concern as to whether procedures had been followed and adhered with the statutory procedures to advertise the application and post notices on or outside the premises. The Licensing Officer confirmed that these had all been adhered to;
- That residents and traders considered that there was already saturation of premises in this area, which is also within a highly residential area.

The Applicant stated that:

- They had been trading for 10 ½ years and that all their staff were fully trained.
- They had chosen Leopold Road for their next store as it had a vibrant mix of traditional high street premises and they wanted to be a positive draw to the road and its community.
- The average customer transaction in their stores was £28 with prices ranging from £8.90 to £3200 per bottle.
- Customers would sample different wines using the enomatic machines, which would dispense exact measures of wine to try and they could then make purchases to consume off the premises.
- They wished to put on tasting events throughout the year, and for this reason requested a later finishing time, as well as to allow the premises to have the flexibility to see how the business would best operate. Tastings would be ticketed only, and they did not feel that due to the size of the premises they would be able to accommodate many more than 10 people at each tasting.
- They appreciated the involvement of local residents and traders and wanted to work with them to be a productive part of the community.
- They would not be advertising in the windows apart from displaying opening hours and lit wine bottles.

The legal advisor advised the Committee on the Brewdog legislation which drew some parallels with the application presented, particularly with regard to the clientele to be drawn to the premises.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (June 2014).

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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