

Merton Council
Licensing Sub-Committee
20 June 2017
Supplementary agenda

8 Notice of Determination - Terrazzino Cafe

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: Terrazzino Cafe, Unit 1, 144 Central Road, Morden, SM4 5RL

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

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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 an application by Terrazzino Café Limited for a new Premises Licence to be known as “Terrazzino Cafe” at Unit 1, 144 Central Road, Morden, Surrey SM4 5RL.

The applicant applied for recorded music (from 08:00 to 24:00 Mondays to Sundays, and 23:00 to 01:30 on New Year’s Eve) and the retail sale of alcohol on and off the premises (from 08:00 to 23:30 Mondays to Sundays), but had amended their application to withdraw the provision of recorded music.

Representations were received from local residents and traders.

The Licence was granted subject to the following hours, licensable activities, and conditions:

Licensable Activities:

Retail Sale of Alcohol (on sales only (including the terrace)): 08:00 to 23:00 Mondays to Sundays

Opening Hours: 08:00 to 23:00 Mondays to Sundays

Offered Conditions:

1. Management supervision and staff training shall be provided in order to spot, stop and prevent any illegal or inappropriate behaviour.
2. Prominent clear and legible signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises,
3. Daily briefings shall be provided to ensure staff are kept up to date in respect of any incidents.
4. There shall be a personal licence holder or designated premises supervisor on duty on the premises at all times when the premises are authorised to sell alcohol.
5. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City 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. Drinkaware shall be promoted through the Premises Licence holder’s website. Drinking sensibly and appropriately shall feature on any menus and marketing features.
7. 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.

8. Notices shall be prominently displayed at all exits (including the outdoor terrace) requesting patrons to respect the needs of local residents and businesses and leave the premises and the area quietly.
9. No deliveries to the premises shall take place between 22.00 and 08.00 on the following day in such a manner to prevent nuisance e.g. engine to be turned off while unloading. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 22.00 hours and 08.00 hours on the following day.
10. Acoustic enclosures to be installed on all mechanical outdoor equipment.
11. There shall be no sales of alcohol for consumption off the premises in the Terrace after 22.00 on any evening. All outside tables and chairs shall be rendered unusable by 22.00 each day. This area shall not be used for smoking after 22.00 on any evening.
12. A log shall be kept at the premises and record all refused sales for reasons that the person is, appears to be, under 18 years of age or the person is intoxicated. The log shall record the date and the time of the refusal and the name of the member of staff who refused sale. The log will be made available on request by the Police or an authorised officer of the local authority
13. 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..
14. The Premise Licence Holder shall ensure that full training is provided to all staff on commencement of employment on the Challenge 25 policy and law relating to the sale of alcoholic products and any system or procedures that they are expected to follow in the course of dealing with these goods.

Imposed Conditions:

15. The supply of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.
16. No noise generated on the premises, or by its associated plant or equipment, shall

emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

17. Alcohol consumed outside the premises building on the Terrace shall only be consumed by patrons seated at tables.

Reasons

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

The Applicant stated that:

- The premises would be a new family run café / restaurant, serving food and alcohol with meals as well as serving drinks outside of main meal times.
- The Applicant had applied for recorded music but following the objections from residents they had decided to reduce the hours requested and to remove the request for 23:00-01:30 on New Years Eve.
- They would have no customers on the premises after 23:00, only staff to clear up, which they estimated would take approximately an hour.
- They had not currently undertaken a noise assessment for the residential area nearby but would consider doing so.
- They would be employing 4 staff with a small number of additional casual staff, who would be trained by themselves on company policies.
- They were a local company whose staff lived locally and they did not want to be a nuisance, prompting them to make changes to their application already following the representations received.

The main objections put forward by members of the public were:

- There was a potential for noise and anti-social behaviour relating to alcohol , consumption, and music;
- The potential proximity of a further licensed alcohol premises to the nearby School;
- Potential for noise breakout from the outside area.

The Licensing Sub-Committee carefully considered the Representations put forward by local residents and traders, and discussed concerns regarding the use of the outside area.

The Licensing Sub-Committee noted the close proximity to Sainsbury's. The Licensing Sub-Committee noted the very real concerns that the premises is located in a highly residential area. The Licensing Sub-Committee had regard to the effect that the premises would have on the local area particularly whether conditions were capable of addressing residents' concerns.

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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