

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 29 June 2018

Subject: Wimbledon Food & Wine, 226 Merton High Street, SW19 1AU

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.

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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 made by Allirajah Thamilselvan for a variation of the Premises Licence he holds in respect of Wimbledon Food & Wine at 226 Merton High Street, South Wimbledon SW19 1AU.

The application was for the extension of the licensable activity authorising the sale of alcohol (off sales) from 07:00 to 02:00 Monday to Sunday (instead of 07:00 - 23:00 Monday to Sunday on the existing Premises Licence).

At the meeting the applicant amended his application to reduce the opening hours sought to be 07:00-00:00 Monday to Wednesday, 07:00 – 02:00 Thursday to Saturday and with no changes to the current hours on a Sunday (07:00-23:00).

Representations were received from the Metropolitan Police, Public Health, one ward Councillor and 3 residents (including one on behalf of a residents association) against the application.

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

The amended application was partially granted subject to the hours and conditions as follows:

Licensable Activities

The Retail Sale of Alcohol (off sales only): 07:00 to 00:00 Monday to Saturday and 07:00-23:00 on Sundays.

For a period of 6 months a temporary extension to the hours on the Premises Licence is granted to allow the off-sale of alcohol from 07:00-01:00 on Fridays and Saturdays only. At the conclusion of this period the hours will revert to the original hours stated on the Premises Licence.

Conditions

One existing condition was amended as follows:

- Annexe 3 Condition 3 as stated on the current licence to be amended to read "No super-strength beer, lagers or ciders of 5.5% ABV (alcohol by volume) or above shall be sold at the premises except for Premium Craft beers.

The following additional conditions were imposed by the Committee:

1. There must be a minimum of 2 members of staff on duty and present in the shop after 11pm Monday to Saturday
2. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with any approved refuse storage arrangements by close of business.

The Licensing Sub-Committee also recommended that the premises dissuade anyone present from using the blue street furniture outside the premises and if concerned refer such behaviour to the Police.

Reasons

The Licensing Sub-Committee looked carefully at the application and its supporting papers, the representations contained in the agenda papers, and the oral evidence submitted at the hearing by all parties.

Mr Kanapathi, the Applicants' Representative stated that:

- The Applicant had over 20 years experience in retail and had taken over the premises in December 2017 and that the Premises Licence had been transferred in March 2018.
- The applicant was reducing the hours sought in his original application following consideration of the concerns raised by the responsible authorities and interested parties in their written representations.
- The premises was a very small shop and sold many other items
- The applicant was experienced and felt confidently able to refuse sales where required
- The shop was in a residential family area and the shop was used by families as well as young workers and those returning from the city.
- The premises had previously applied for 4 Temporary Event Notices to serve alcohol until 2am and this had been received positively by customers and no complaints had been received. This was confirmed by the Metropolitan Police.
- There had been discussions with the Police during the consultation period.
- The concerns raised were not directly linked to the premises, which would be run responsibly.

PC Russ Stevens, Metropolitan Police presented his representation stating:

- There were concerns regarding the location of the premises; in a highly residential area and on a length of road containing 11 premises with off-sales licences. All of these premises with the exception of 2 closed at 23:00.
- The premises are located ½ mile away from a Public House, outside of which there were issues of anti-social behaviour and street drinkers loitering. The Police expressed concerns that any premises open late would attract street drinkers.
- The assumption would be that any premises open after 23:00 would encounter customers who were underage or intoxicated wishing to be served, and 2 members of staff would be required on site to ensure they had the confidence to make those

refusals.

Dr Omer of Public Health presented the PH representation and stated:

- Whilst there had been no issues directly linked to the premises itself, there were a number of alcohol related issues in the area as documented in her representation and any additional premises in that area selling alcohol would be contributing to those trends. She considered that granting any extension to this premises would increase cumulative impact in this area.

Ward Councillor Nigel Benbow spoke on his representation stating:

- The terminal hour for sale of alcohol should be 23:00.
- There were already issues in the local area with drinking late outside at night, as well as littering and loitering.
- Cllr Benbow suggested an extension of the hours for a 6 month trial period.

The Licensing Sub-Committee gave the following reasons for its decision:

- The Licensing Sub-Committee were of the view that the Applicant had not had sufficient time managing the premises or during the Temporary Events to demonstrate that the premises could trade appropriately at those hours.
- The Licensing Sub-Committee expressed concern at the issues in the surrounding area and the effect that the extended hours would have.
- The Licensing Sub-Committee acknowledged the Temporary Event Notices had taken place without incident and also acknowledged that the Applicant had stated he has experience.
- The extension of the opening hours to midnight would not increase cumulative impact and would promote the licensing objectives.
- The Licensing Sub-Committee felt that there was a need for increased management and staff on site in later hours and so the condition requiring 2 members of staff on site after 23:00 was appropriate to ensure staff had support to refuse sales where required.

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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