

# **Merton Council**

## **Licensing Sub-Committee**

**13 August 2018**

### **Notice of Determination**

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 17 August 2018

**Subject:** MJMK Limited - “Diyynamic Festival” at Morden Park, London Road, Morden, SM4 5DX

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](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

MJMK Ltd sought a time limited Premises Licence for 8<sup>th</sup> September 2018 only, for a music festival for 9,999 people to be called “Diyynamic Festival” to be held in Morden Park, London Road, Morden, SM4 5DX.

16 representations were received from members of the public and one from a Local Councillor. There were no representations received from any of the Responsible Authorities.

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, have regard to the current Home Office Section 182 Guidance and the Council’s Statement of Licensing Policy, and comply with parameters provided by relevant case law.

The application was refused.

## Reasons

The Licensing Sub-Committee carefully considered the representations contained in the agenda papers, 3 supplemental agendas and the oral evidence submitted at the hearing by all parties.

The Applicant’s Barrister, Matthew Butt stated that:

- There had been several comparisons made to the recent Eastern Electrics festival, however this application was materially different as well as smaller; with a 10,000 capacity (Eastern Electrics festival had 20,000 on the Saturday), it was a one day event (EE was two days) and would have 2 stages, whereas EE had 8. It was conceded that issues that occurred at the Eastern Electrics event occurred on the Sunday when there was a capacity nearer 10,000 people.
- The application had been drafted in consultation with the Responsible Authorities and the Applicant had put forward a number of conditions to ensure the event could be held without disruption to residents. A number of further measures were proposed to address specific issues that arose at the Eastern Electrics festival.
- The proposed maximum noise level was 75 decibels over a 15 minute period within 1 metre of the nearest noise-sensitive property and the performances would not include amplified vocals. The Applicant stated they would be agreeable to a condition that the limit be agreed with and set by the Environmental Health Officer.
- Mr Easson of the Applicant had been present at the Eastern Electrics festival and had observed the issues and this had informed the Applicant’s preparations, including increasing the number of toilets on route, improved signage detailing the distance to the nearest toilets, waste receptacles to be provided and the number of stewards on the main ingress/egress route.
- The Applicant had held 2 well attended residents meetings which had identified further areas of consideration and planned resources had been increased accordingly.
- The event had been organised to take place at another location in north Greenwich and it was represented that a Premises Licence had been granted for that event. However, the property owner had cancelled all events at the location due to

construction works and therefore the applicant was applying for the event to take place at Morden Park, which they felt was an excellent location.

- The applicant had proposed a number of measures and conditions to minimise the impact on local residents and on the wedding ceremonies taking place on the same day.

Councillor Dennis Pearce raised concerns about safeguarding children who would be using the park at the same time as the event.

Clare Heath-Whyte, speaking on her representation and on behalf of David Heath-Whyte raised concerns that even with stewards from the church and the organisers at the Eastern Electrics festival they had witnessed public disorder, that the damage to the park had been quite severe and that local businesses had shut early, during or throughout the event. Mrs Heath-Whyte stated that during the Eastern Electrics festival, cars had been speeding down London Road and were stopping on the dual carriageway. She believed that attendees were incapable of normal behaviour and therefore would not read any signage that was placed along the access/egress route. Mrs Heath-Whyte expressed concern that despite assurances from the Eastern Electrics organisers that previous issues would not re-occur, they had done.

Andrew Palfreyman raised concerns about the social cost to a residential area and the affects the loud music had on the nursing home next door to the park, and the housing for military personnel opposite.

Katie Heath-Whyte advised that the lack of notice raised the likelihood of public nuisance and that the noise from the Eastern Electrics festival had been unbearable. Katie Heath-Whyte stated that the event would severely prohibit those arriving to and leaving from her wedding on that date and that this would also affect several others whose weddings were also taking place that day and whilst the offers of mitigation from the Dynamic applicants were appreciated, she felt there was not sufficient time to mitigate all the issues.

Susan Liang stated that the Eastern Electrics festival had seen anti-social behaviour including drug dealing moved to another location where staff and stewards were not present and questioned how the organisers of this event could ensure that toilets and bins on the access/egress routes were used as intended and how the crime and disorder issues would not reoccur.

David French expressed concern at the area of the park being fenced off for 10 days for the event and that the request was a serious departure from the historical use of the park.

Vivienne French noted that Dynamic Festival had not been held in the UK previously and that previous festivals had taken place in Istanbul, Barcelona and Amsterdam, in locations purpose-built for large events some distance from city or town centres with the appropriate infrastructure available. She believed that Morden Park was inappropriate for this event.

Elsbeth Clarke raised concern about letting out parks for inappropriate activities and taking the park out of public access during these events.

Summing up, the Applicant stated that there had been no representations made by the Responsible Authorities, that the applicant was a professional organiser with a good track record and that a number of conditions had been given and the organisers would not risk breaching these conditions.

The Licensing Sub-Committee carefully balanced the interests of all parties and discussed at length all aspects and merits of the application to make a proportionate and appropriate decision based on the evidence provided.

The case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008* was considered during deliberations.

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

- 1) The Licensing Sub-Committee were not persuaded that the various extra measures to be taken to combat issues that were experienced at the Eastern Electrics festival to make sure that they could not happen at this event (including new proposed noise attenuation measures, the outside security measures, the litter patrols, the wedding SIA door security and noise barrier, the increased toilet facilities and the notices to festival goers) would sufficiently improve the outcome for residents with this proposed event. The Licensing Sub-Committee did not consider it would promote the licensing objectives to grant this application at this time.
- 2) The Licensing Sub-Committee did not have confidence that similar issues to those experienced at the Eastern Electrics event would not be avoided even with this more experienced promoter with experience of larger venues. The Morden Park site is very close to a large number of residential properties and the area is almost exclusively residential.
- 3) The Eastern Electrics event of 4<sup>th</sup> and 5<sup>th</sup> August has unfortunately informed the Licensing Sub-Committee. The decibel setting for that event was 70-73 decibels and residents experienced vibration and noise in their homes and in the local area but also much further afield. The setting by the EHO of 70 or up to 75 decibels will result in similar public nuisance. The Licensing Sub-Committee could not consider any other conditions or measures to take to avoid public nuisance in these circumstances.

Various issues were raised by those making representations that were not considered relevant to the decision made by the Licensing Sub-Committee, as follows:

- The fact that the applicant's directors/shareholders were based in Germany;
- The fencing off of the park and its non-use for a period of time (where case law indicated that the Council has a power to enclose a park for the purposes of events *R (otao Friends of Finsbury Park) v Haringey LBC 2017*).
- The Council's website included a lead in time of 6 months for the use of the site but this related to the use and was not a matter for the Licensing Authority that had a statutory process involving 28 days' notice with a displayed notice and an advertisement of that notice (that the applicant had followed).

It is observed that the conditions proposed did not address what control the SAG would have if safety certificates or the preparation for the event were not to the required standard or involved some defect to those proposed in the proposed management plans. There was no condition that addressed the enforceability of the contents of the management plans. It is observed that if the planning for this event had been started before the alleged consultation in April and the application in July, it may have avoided the Registry Office being booked on the day of the event.

## **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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