

**Merton Council**  
**Licensing Sub-Committee**  
**3 August 2020**  
**Notice of Determination**

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 10 August 2020

**Subject:** PJ Star Ltd T/A Papa Johns Pizza, 413 Durnsford Road, Wimbledon Park, SW19 8EE

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 2018). 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](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 PJ Star Limited for a new premises licence for “Papa Johns Pizza” premises located at 413 Durnsford Road, Wimbledon Park, SW19 8EE.

The application sought a Premises Licence to authorise the licensable activity of Late Night Refreshment from Sunday to Thursday 23:00 to 01:00 the day following and Friday & Saturday 23:00 to 02:00 the day following with seasonal variations for New Year’s Eve and New Year’s Day from 23:00 to 03:00 the day following.

Twelve representations were received from local residents.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives especially in this case the prevention of Crime and Disorder and the prevention of public nuisance, 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 any relevant case law.

The application was refused.

## Licensing Sub-Committee Hearing

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

Mr Assad Mohammed, Store Manager, attending for the applicant, stated that:

- The premises was seeking longer hours to enable the store to meet 'customer demand'. However, Mr Mohammed stated that he would accept the extension of hours for a couple of days per week if the application was not granted in full.
- The delivery bikes used by the premises were brand new and so would create less noise than older models. The bike riders had a good safety record with no crashes within the last year.
- Mr Mohammed stated that the applicant had not received any complaints about noise. However he said that they would look into purchasing electric bikes which would be quieter, or calling an engineer to look at the extractor fan to fit a silencer on the fan.
- The premises is located on the main road and on a bus route. There were also currently some construction sites nearby. Mr Mohammed believed that the level of noise from these was more than the noise created by his premises. Mr Mohammed believed that 10% of deliveries from the premises were to local residents, others were to addresses further from the surrounding roads. Mr Mohammed believed that current customer demand was 70% during the weekend and 30% during the week.
- Mr Mohammed stated that the premises has a 5 star food hygiene rating and nothing was mentioned within that inspection report regarding any issues with waste management at the store.
- Mr Mohammed acknowledged there was an issue with empty bottles found outside the premises. However the premises itself does not sell alcohol and any drinks are sold in plastic bottles. Rubbish was also being dumped in the area outside of trading hours. Mr Mohammed stated that staff did clear up any waste outside that they saw.
- In relation to the use of drugs outside the premises, Mr Mohammed responded that the store had no control over people using drugs outside the premises.

Responding to questions from the Licensing Sub-Committee and Interested Parties, Mr Mohammed advised that they did not have a daily routine for clearing litter and waste outside the store and that the store was only open for collection and delivery with no restaurant area, that the last customers were collecting from the store at 11.00pm. Should the licence be granted, Mr Mohammed expected customers to be attending the store to collect until the closing times. Mr Mohammed felt he was part of the local community and stated that no one had contacted him with any issues about the premises other than in regards to waste management which the store felt had been resolved, by increasing the frequency of waste collections from the premises. Papa Johns had been trading from the premises for nine years. No market research had been undertaken on customer demand prior to the application being submitted.

The Licensing Sub-Committee and interested parties noted the absence of representations from any of the responsible authorities.

Helen Clark Bell, speaking to her representation stated:

- There had been reasons to raise issues over the past nine years and when these have arisen, no response had been received through twitter, emails or via going into the store and residents felt that any concerns had been dismissed or ignored.
- The complaints about the store related to the conduct and behaviour of drivers who were riding on the pavement, revving engines even late at night and speeding down the road and residents had experienced a number of near misses. There was also a large amount of detritus regularly left on the pavement, waste requirements were not being adhered to and no recycling took place at the premises.
- Whilst it was accepted that the area did experience issues with fly-tipping, the majority of the litter was waste from the store including cheese wrappers and pizza boxes. Longer trading hours would inevitably lead to the creation of more waste.
- No other local premises are open after 11.00pm at night in the locality and to grant the licence would set a dangerous precedent for others in the area and change the nature of the community.
- Ms Clark Bell questioned why the store was requesting to open until 1.00am during the week if the customer demand was only 30% during weekdays.

Emer Bellis spoke to her representation:

- Ms Bellis was concerned about noise pollution; living near to the premises she was suffering nuisance already as she could hear Papa John's extractor fan in her property. She was also regularly disturbed at night by delivery driver motorcycles revving their engines. Extending the trading hours would lead to a significant increase in noise at night.
- No other food outlets were located nearby and the premises was therefore likely to attract late night drinkers and lead to an increase in anti-social behaviour. Ms Bellis felt the extension would have a detrimental effect on the community.

Josephine Bew spoke to her representation:

- There are a number of young children who live in the area and who are often walking near to the premises. On one occasion a moped had sped onto the pavement in front of Ms Bew's child, narrowly avoiding injury. Riders connected to the applicant often drove fast over the nearby speed humps. Ms Bew queried whether the riders had received appropriate training and whether risk assessments had been completed.
- Extending the hours would lead to drunk persons and others walking down the street and creating more rubbish.
- There was strong smell of cannabis around the building and often a car parked outside the premises with someone smoking cannabis in the car. One of the residents had reported this to a manager but it had still continued. There was a risk to children of second hand smoke inhalation.

The Legal Advisor explained that in relation to the petition included within the supplemental agenda, whilst it would be considered by the Licensing Sub-Committee, it was noted that a number of the signatories did not live in the local

area, no comments were included with their signatures and the petition prayer did not appear on each page.

In summing up, Helen Clark Bell stated that all 4 licensing objectives were currently being breached by the applicant and there were no grounds to extend the hours.

Summing up, Mr Mohammed offered to produce an insurers report on the accidents by delivery riders over the past few years to show there was a good record and advised he would discuss the issues raised with the team.

### **Decision of the Licensing Sub-Committee**

The Licensing Sub-Committee decided to refuse the Premises Licence application.

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

1. To grant the licence would inevitably result in increased cumulative impact in the local area due to the much later hours sought.
2. Each of the four Licensing Objectives are currently being breached by the premises and this would continue with an increase in the hours. Examples of these breaches include:
  - a. Prevention of Crime and Disorder: Low level disorder relating to dangerous driving on the road and pavement by delivery drivers. The poor response to complaints made to the Head Office and directly to the Manager of the store. Staff smoking cannabis outside.
  - b. Prevention of Public Nuisance: Litter and detritus is being left outside the premises; issues with waste management at the premises and noise from delivery bikes, customers attending the premises for collections; noise emanating from the premises late at night; noise nuisance to local residents from deliveries or plant;
  - c. Promotion of Public Safety: The risk of injuries to residents on the pavement and to other vehicle users on the road by bike drivers
  - d. Protection of children from harm: the risk of inhalation of second-hand cannabis smoke, the risks to children walking on the pavement and crossing the roads from bikes driving dangerously;
3. The premises is located within a highly residential area and the proposed operation would not promote the licensing objectives;
4. The Licensing Sub-Committee considered the possible option available of granting the Premises Licence with reduced hours to those applied for. However, this was rejected because of the potential increase to cumulative impact and the Licensing Sub-Committee believed the store management would not be able to or would not address any concerns that could arise from the increased trading hours.
5. The various conditions that would have to be imposed to grant the Premises Licence would in the Licensing Sub-Committee's view be unlikely to be observed and it is likely any complaints would be ignored.
6. There were no other premises in the area open after 11.00pm and the grant of the Premises Licence which would be detrimental to the local area.

## **Annex B**

## **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2018).**

### **13. Appeals**

13.1 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**

13.2 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.

13.3 An appeal has to be commenced by the appellant giving 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.

13.4 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, the Home Office (Immigration Enforcement), 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.

13.5 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.

13.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

13.7 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.

All parties should be aware that the court may make an order for one party to pay another party's costs.



On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

## **Licensing policy statements and Section 182 guidance**

13.8 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.

13.9 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**

13.10 It is important that a licensing authority gives 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.

13.11 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

## **Implementing the determination of the magistrates' courts**

**13.12** 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**

13.13 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.

13.1 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.