

Merton Council
Licensing Sub-Committee
18 January 2021
Supplementary Agenda

5 Notice of Determination - McDonald's Restaurants Limited

1 - 12

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 25 January 2021

Subject: McDonald's Restaurants Limited, 1-3 The Broadway, London, SW19 1PS

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

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing>

Annex A

Determination

The Licensing Sub-Committee considered an application by McDonald's Restaurants Limited for a new Premises Licence for the premises located at 1-3 The Broadway, Wimbledon, London, SW19 1PS.

The application sought a Premises Licence to authorise the licensable activity of the provision of Late Night Refreshment (hot food and drink) from 23:00 to 05:00 seven days per week, therefore allowing the premises to supply hot food and drink twenty-four hours a day, seven days a week. The Applicant confirmed that a Premises Licence remained in force for the premises authorising Late Night Refreshment on Sunday to Thursday from 23.00 hours to 01.00 hours and on Friday and Saturday from 23.00 hours to 02.00 hours with opening times shown as Monday to Thursday and Sunday from 08.00 hours to 01.00 hours and Friday and Saturday as 08.00 to 02.00 hours.

Seven representations were received objecting to the application; one from the Metropolitan Police and six were received from local residents and residents' associations, including Friends of Wimbledon Town Centre, Love Wimbledon Business Improvement District, and Wimbledon East Hillside Residents Association (WEHRA).

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 any relevant case law.

The Premises Licence was granted by the Licensing Sub-Committee for the provision of Late Night Refreshment 23:00 – 01:00 Sunday to Thursday and 23:00 – 02:00 Friday to Saturday, with opening times of Sunday to Thursday 08.00 hours to 01.00 hours and Friday and Saturday 08.00 to 02.00 hours with a number of offered and imposed conditions placed on the Premises Licence.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, the agenda papers, the Representations contained therein and the evidence provided in the virtual meeting by all parties present.

Freddy Humphreys, Barrister, representing the Applicant introduced the application, stating:

- The application was by McDonald's Limited and not a franchisee, so would involve hands on management, although it was accepted that in due course after the pandemic a franchisee may be found. The premises currently had a Premises Licence held by Burger King which permitted the sale of hot food and drink until 1am and 2am on Friday and Saturday. Whilst the application was for a new Premises Licence, the application was effectively therefore requesting an extension of these hours until 5am 7 days a week.
- McDonald's were applying for a new Premises Licence rather than a transfer to allow the applicant to tailor the operating schedule to McDonald's working practices.
- McDonald's have 700 sites across the United Kingdom with Late Night Refreshment licences and had over 200 franchisees as well as 125,000 individuals employed in the UK and Ireland. In 2017, McDonald's contributed £3.36billion to the UK economy. McDonald's employ consultants to give advice and most recently in 2020 a review by Night-time Economy Solutions highlighted that McDonald's went over and above mandatory licensing requirements. Mr Humphreys stated this shows the company are able to operate premises of this nature properly with unparalleled experience.
- Two of the benefits of trading 24/7 were that staff were able to achieve a better work/life balance with shifts finishing at 6am rather than at 2.30am as well as being able to better access transport to travel home when they finished at 6am rather than earlier. It also enables the restaurant to reduce its' environmental impact as machinery does not have to be turned off overnight and restarted.
- There would usually be 6-10 members of staff on duty and a manager would be on site at all times when the premises was open.
- The restaurant at this site was currently not open and with the current Covid-19 pandemic an exact opening date was not yet known.
- The applicant was generally involved in numerous community projects.
- Mr Humphreys outlined the extensive training provided to staff including annual licensing training provided to business managers and franchisees, very extensive bespoke training courses, health and safety training, customer care training and an e-learning course on working at overnight premises. There was also a permanent helpdesk available to all staff by phone for advise on policies and procedures.

Mr Humphreys then spoke to address the Licensing Objectives:

The Prevention of Crime and Disorder

- Staff were given mandatory training including but not limited to, Major Incident Guidance, Acid attack guidance, Counter-Terrorism awareness and training of knife crime. Mr Humphreys stated this showed the corporation went above and beyond what was required and took these issues seriously.
- CCTV covers the entirety of the publicly accessible areas and is certified so that it could be used in court proceedings if required. The CCTV system is alarmed so if there are any failings within the system an alarm would alert staff to this. All shift managers are trained on the CCTV system.
- It was not proposed at this stage to have permanent security staff on site, but this would be updated reactively if required as the vast majority of stores with security staff do so on a voluntary basis (decided by store) themselves. This gives the flexibility to adapt to changing circumstances, based on operational experience and would be done on a risk assessment basis.

Public Safety

- In addition to the training previously mentioned, there is also specific training on health and safety issues such as customer expectations, crew roles for safety, usage of equipment, hygiene, litter patrols and all staff are trained on disability awareness.
- The premises is an alcohol-free premises.
- The toilets in the premises are freely accessible to the public at night.
- The store is well lit and offers a safe space at night; a benefit to patrons of the night time economy who can wait for a taxi etc within a safe area covered by CCTV.

The Prevention of Public Nuisance

- Training is given on specific and dedicated systems for anti-social behaviour as well as internal documents such as the ASB guide which provides advice and solutions to ASB issues and tools to deal with it.
- Other options are also available to the premises, such as playing classical music to relax the mood, the ability to cut off wifi in the premises if people are loitering to use it or staying there too long and not returning home or staff using body worn cameras if required.
- On noise nuisance – self closing doors are in place to keep in noise and an acoustic consultant is used if any issues are noted or brought to the applicant's attention by local residents.
- Litter – McDonald's staff will operate a litter patrol in the local area. If the premises Licence is granted as sought the litter patrols will take place 4 times a day and staff will pick up all litter they find including any litter not originating from McDonald's and this would improve the local situation.

Protection of Children from Harm

- Whilst it was not anticipated that schoolchildren would be on site at 3am, there were policies in place to protect children including updated CSE policies and a training package given to all staff with in-restaurant training sessions quarterly. McDonald's also operate a missing person's report scheme with NCA to help report and identify missing children.

Addressing the representations received, Mr Humphreys added:

- Having reviewed the Council's Licensing Policy and Cumulative Impact Assessment it was clear the evidence base for that identified the number of premises in the area with alcohol sales and those with hot food and drink. There were 7 premises in Wimbledon Town Centre with LNR only, of these 4 had a terminal hour of 2am, one 3am and one 4am and those premises already exist. Therefore, contrary to the Metropolitan Police position that the premises would act as a magnet for ASB, McDonald's would diversify the offer so there would be a reduction in congregation since there would now be more choice available rather than all in the area having to go to one location.
- McDonald's can manage the people in their premises which reduces the burden on the Police. Those who enter a McDonald's leave in a better state than they entered as they stay a while, eat and sober up so this would benefit the local area.
- McDonald's did not think they would add to crime and disorder as they have policies in place to deal with this.
- The addition of the free publicly accessible toilets would be a benefit as anyone could use these rather than urinating in the street or other areas.
- The opening would assist in staggering the closing of the late night economy in the area.

In response to questions from the Licensing Sub-Committee and Metropolitan Police, the Applicant's Fire Safety and Licensing Manager Mark Gallant advised that:

- There were 4 or 5 other McDonald's 24-hour trading premises already operating within a 5-10 mile radius of the Wimbledon premises. These were predominantly drive-thru although online orders now extended to deliveries from High street restaurants, with the delivery radius 2.5 miles from each restaurant.
- There was a dedicated waiting area for delivery drivers to wait for their orders.
- McDonald's currently had a commercial contract with Just Eat and Uber Eats. McDonald's had strong control over this and were able to be notified of any issues with noise or other issues by these drivers.
- Toilets were cleaned and checked regularly but would be locked with a keypad (with the code provided to customers on receipt if this became necessary due to them being abused). It was noted that out of 1400 restaurants this was in place at a maximum of 10 restaurants.
- The company model is franchising to take away the emphasis on a large corporate body and places someone local into the community. This was not happening currently due to the current climate but long term this location would likely be franchised. McDonald's ensure that franchisees keep to the high standards expected and had access to all the same training as non-franchised locations.

Horatio Waller, Barrister representing the Metropolitan Police spoke to their representation:

- The Metropolitan Police objected to the premises trading 24/7, but noted that, had the application been in line with the current Burger King licence, the Police would have withdrawn their objection.
- The premises were within a Cumulative Impact Zone, the evidence for which had been endorsed as recently as November 2020 and had been tested and found to be robust.

- There was no similar 24-hour takeaway restaurant operating within Wimbledon Town Centre and hadn't been within the last 10 years to their knowledge, this was therefore a novel and untested proposition. It was noted that there is a 24 hour McDonalds in Wandsworth (but there were no other licensed premises nearby and it was predominantly accessed by car).
- The Burger King Premises Licence had been drafted with the area in mind so that those leaving the nearby premises were not encouraged to remain in the town centre. The Police questioned whether anything had changed since the decision that would have been made in relation to the Burger King Premises Licence that justified a different approach to the McDonald's application.
- There are a number of alcohol-led premises in proximity to the location, with 5 public houses on The Broadway, the latest of which was open until 2am at the weekend. Two further public houses were also located nearby to the Broadway (The Alexandra and the Hand and Racket). Furthermore 3 bars were also located on The Broadway– Tunnel 267, CMYK and Tequila Mocking bird (which was a pop up premises over Christmas 2020) – the latest opening of those having a terminal hour of 3.30am.
- As train and tube services close at 00.30am, those who will be visiting the McDonald's in the early hours will be using bus or taxi services and it was likely that many ordering food would then be consuming it off-site on the highway or on their way home or at home.
- In regards to security staff, whilst it was not a condition on the previous Premises Licence, Burger King did have SIA Door Security staff on weekends or at least on occasion, in practice.
- The view of the Metropolitan Police was that McDonald's was a competent operator with responsible staff and robust policies and it was accepted that the company did run premises of this nature in other locations successfully. However the Police's concern was related to a 24/7 operation in this specific location.
- The Police suggested that two main types of crime would result based on their knowledge of the area – the 1st being the risk of those leaving the public houses and bars will, because of the proposal, remain in Wimbledon Town Centre eating and then engage in crime and disorder or public nuisance. The 2nd type is that because of drunken people in the town centre more gang and organised crime will be targeted within the town centre, for example muggings that could be focused upon those that remain in the town centre because of the proposal.
- The Metropolitan Police's representations provide a list of recent crime incidents in the area and it is notable that all of them involve patrons of the venue committing the relevant crime – assault, racial abuse, criminal damage, sexual harassment - comments left in the reports draw attention to those committing the crimes being under the influence of alcohol or drugs.
- The Metropolitan Police were also concerned about the effect of match days and where all match attendees would go to after the match.
- The proposed operation would delay dispersal from the town centre which would inevitably lead an increased degree of disturbance and anti-social behaviour to local neighbours.
- The Public highway was also a concern – the site was on a 2 lane road with a bus lane and it was likely the location would become a pinch point for congregation of patrons waiting for taxis and buses and could cause related highways problems.

Responding to questions from the Applicant's representative and the Licensing Sub-Committee, Mr Waller and PC O'Brien responded:

- Mr Humphreys submitted that there was no evidence in response to the Metropolitan Police's concerns about gangs. Mr Waller responded that Ms O'Brien's letter raised this concern and it was for the committee to apply common sense and decide whether the bag of cocaine referenced in the crime log was related to personal use or gang activity.
- The Police position was that the latest opening premises was Tequila Mocking Bird which closed at 3.30am. *Post meeting note: subsequent enquiries showed that this premises is no longer trading and had only traded for a short period as a pop up premises at Christmas 2020. However Tunnel 267 on the Broadway which remains on the Council's licensing register has a terminal hour of 3.30am. It is the only premises trading this late.*
- Before the pre-covid19 pandemic dispersal from Wimbledon Town Centre required a lot of work from emergency officers, often until 4am. This application would only serve to extend that period.

In their closing statement, the Applicant's representative submitted:

- The premises was not alcohol-led and the premises would support those visiting at all times of the day and would broaden the facilities available in the area.
- Having a premises open with appropriately trained staff can assist the police – Mr Humphreys cited the example of the drugs being found at Burger King by a staff member who took this to the Police.
- Only 2 of the crimes recorded took place during licensable hours and Mr Humphreys stated that record didn't demonstrate a problem during these hours.
- The applicant was happy for a condition to be added onto the Premises Licence regarding CCTV.
- McDonald's has high level commercial agreements with delivery companies and can identify problematic drivers and ensure they are not used in future.

Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the provision of Late Night Refreshment 23:00 – 01:00 Sunday to Thursday and 23:00 – 02:00 Friday to Saturday only, retaining the same hours as were in place on the previous premises licence at this location (held by Burger King).

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

1. There were no other premises in the area trading past 3.30am and no 24-hour premises in comparable locations locally. There was therefore no evidence of whether the premises could trade for these additional hours without an increase in crime and disorder or public nuisance and further cumulative impact. The staggered closing of premises throughout the town centre and the Police agreements and approaches to marshalling or managing such closures had been in place for some considerable time, even before the Licensing Act 2003. The Licensing Sub-Committee did not believe that sufficient conditions could be imposed on the Premises Licence to mitigate the increase in crime and disorder and cumulative impact that a 24/7 trading would allow at this time, for

example whether through SIA Door Security, access controls, or methods to disperse customers after attendance in the premises. The reference to 4am trading referred to in the banding for the Cumulative Impact Assessment was reflective of the 30 minutes closing down period of the only licenced premises that closed at 3.30am.

2. [this application was submitted before the Cumulative Impact Assessment] The premises is located within a Cumulative Impact Zone and in close proximity to local residents living in homes in surrounding streets, with direct links to Wimbledon Village and South Wimbledon. The CIZ and CIP (and CIA) instruct the Licensing Sub-Committee to refuse the application where it will cause added cumulative impact. In this case, the current Burger King Premises Licence has been operation and would mean that there would not be increased cumulative impact past those times for an operation that is similar in many ways
3. The Licensing Sub-Committee considered paragraph 2.1 of the Section182 guidance *“Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP)”*. The Licensing Sub-Committee shares the concerns of the Metropolitan Police that any premises trading at this location would add to cumulative impact (save for trading to the same hours as currently permitted).

The Licensing Sub-Committee imposed the following conditions to the licence:

1. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Metropolitan Police Licensing Team. 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.
2. All door supervisors, and other persons engaged at the premises, for the purpose of supervising or controlling queues or customers, must wear [high visibility jackets or vests or armbands]. Where SIA registered door supervisors are used at the premises, a record must be kept of their SIA registration number and the dates and times when they are on duty. At least (2) SIA licensed door supervisors shall be on duty at the entrance of the premises at all times whilst it is open for business on Thursday, Friday and Saturday nights from 21.00 to closing, pursuant to a risk assessment completed by McDonald’s Limited and door supervisors must remain on duty until the premises are closed and all the customers have left.. On any day that a Wimbledon AFC match or event with a crowd of over 1,000 to 9,000 in attendance, at least 2 SIA registered door supervisors must be on duty at the premises at the entrance to the premises and further provision of SIA registered Door Supervisors shall be risk assessed to protect the customers using the premises. Door supervisors must be provided with radios to enable them to contact each other and the duty manager at the premises.
3. 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 the surrounding area (up to 150metres in radius) shall be swept and or washed, and all present litter and sweepings shall be collected and stored in accordance with the approved refuse storage arrangements by close of business for earliest disposal.

The case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008* was applied and considered during deliberations as Councillors made their decision based on the evidence provided as well as their own local knowledge.

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.

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