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Merton Council

Licensing Sub-Committee

Membership

Councillors:

Stephen Alambritis MBE

John Dehaney

Janice Howard

A meeting of the Licensing Sub-Committee will be held on:

Date: 21 March 2022

Time: 3.30 pm

Venue: This will be a virtual meeting and therefore not held in a physical location

Agenda for this meeting

5 Notice of Determination

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Note on declarations of interest

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. For further advice please speak with the Managing Director, South London Legal Partnership.

This is a public meeting and attendance by the public is encouraged and welcomed. For more information about the agenda and the licensing decision making process contact democratic.services@merton.gov.uk or telephone 020 8545 3357.

Press enquiries: communications@merton.gov.uk or telephone 020 8545 3181

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Procedure to be followed at Licensing Hearing

1. The Chair will welcome all parties and all present will be introduced/introduce themselves
2. The Chair will confirm the sub-committee hearing procedures, a copy of which was included in the notice and agenda packs sent to all parties.
3. The Chair will ask the Legal Adviser to inform those present that the sub-committee had a briefing prior to the hearing to confirm the procedure and for clarification on any aspect of the application.
4. The Chair will ask Legal Adviser to confirm the process for questioning and whether there had been any requests for adjournments.
5. The Chair will ask the Licensing Officer if there are any technical issues they feel should be brought to their attention i.e. withdrawal of objector/agreed conditions (Note: If all objections are withdrawn then the Sub-Committee may go straight to point 14.
If all conditions are agreed by all parties then the Sub-Committee may go straight to point 14)
6. The Applicant will present their case. Questions can then be asked of the Applicant by the Responsible Authorities, the interested parties and members of the Sub-Committee.
7. The Responsible Authorities will present their case. Questions can then be asked of the Responsible Authorities by the Applicant, the interested parties, and members of the Sub-Committee.
8. Presentation by any interested party. Questions can then be asked of the interested party by the Applicants, the Responsible Authorities and members of the Sub-Committee.
9. The Chair will ask the Licensing Officer for any comments/ clarifications
10. The Chair will ask the Legal Adviser for any comments/clarifications
11. The Chair will invite closing statements by the responsible authorities
12. The Chair will invite closing statements by the interested parties
13. The Chair will invite closing statements by the Applicant
14. The Chair will announce that the Sub-Committee are retiring for private session. The Legal Officer and Clerk will be invited to also retire.
15. In closed session the Sub-Committee will make their decision. They may ask the Legal Officer for advice during this session.
16. The Sub Committee will return and re-open for public session.
17. The Chair will invite the Legal Officer to present the advice provided during private session.
18. The Sub-committee's decision will be read out either by the Chair or the Chair will invite the Legal Officer to do so.
19. The Chair will inform those present that all parties should receive a written copy of the decision notice within 5 working days, and then close the Hearing

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 28 March 2022

Subject: Counter Notice Following Police Objection to A Temporary Event Notice:
Andy Mills, Bandstand, Morden Park, SM4 5QU

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.

For enquiries about this matter please contact

Democratic Services
Civic Centre
London Road
Morden
Surrey
SM4 5DX

Telephone: 020 8545 3616

Email: democratic.services@merton.gov.uk

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

Counter Notice Following Police Objection To Temporary Event Notice. The London Borough of Merton Council, being a Licensing Authority, received an Objection Notice from the Chief Officer of Police dated 10 March 22 in relation to that given by Andy Mills otherwise known as Andreas Milios (the “Premises User”) for a Temporary Event to take place on 25th June 2022 at the Bandstand, Morden Park, SM4 5QU, between the hours of 17:00 hours and 23:00 hours pursuant to section 100A of the licensing Act 2003.

The Metropolitan Police issued an Objection Notice against the Temporary Event Notice under section 104 and 105 of the Licensing Act 2003 requiring a hearing before the Licensing Sub-Committee to consider the Objection Notice and whether it was appropriate for the promotion of the Licensing Objectives to issue a Counter Notice to prevent the event from taking place.

The Council now GIVES NOTICE that a hearing was held on 21st March 2022 to consider the Objection Notice and a decision was made to give a Counter Notice under section 105 of the Licensing Act 2003.

This Counter Notice stating the reasons has been supplied to the Premises User and the Chief Officer of Police.

The serving of a Counter Notice by the Licensing Authority means that this event cannot take place.

An appeal against this decision must be made to the Magistrates’ Court for the petty sessions area (or any such area) in which the premises concerned are situated within the period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against. But no appeal may be brought later than five working days before the day on which the event period specified in the temporary event notice begins.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the Temporary Event Notice Determination, its’ supporting papers and the Objection Notice received from the Metropolitan Police contained in the agenda papers and considered the oral evidence submitted at the hearing by all parties present.

The Licensing Officer advised that the Temporary Event Notice (TEN) had been received, stating that the event proposed would be a live music event at the Bandstand in Morden Park, with the intention to provide sale of alcohol at the site and regulated entertainment at the maximum capacity of 499, confirming that the Metropolitan Police had submitted an Objection Notice. The “Premises User” supplied further information in response to the Police Objection Notice, further evidence and verbal submissions. Environmental Health did not submit an Objection Notice in response to the TEN.

John McGann, representing the Metropolitan Police, advised that:

- The Metropolitan Police were concerned that under a TEN the maximum number of persons including staff on site must be a maximum of 499 persons and that the event had the potential to attract a greater number of people than this allowed limit.
- The Metropolitan Police were concerned that while the organiser may be able to control access within the fenced off area, they would not be able to control crowds gathering generally in the park, where the music would be audible.
- The Metropolitan Police had concerns over the perimeter of the event site being secured and that 18 security staff would not be sufficient to prevent a large group breaching the perimeter.
- The Metropolitan Police were concerned that similar events had brought with them incidents of crime and disorder and public nuisance, but with a TEN, the Council are not able to apply conditions as they might with a Premises Licence application.
- The Metropolitan Police felt that this event would be better suited to Premises Licence application, which would include measures to cover how the Licensing Objectives would be promoted, an event management plan covering any temporary structures, toilets (including disabled toilets), transport, site safety, electrical equipment, PA system, first aid, event control and emergency procedures, evacuation procedures, waste management or noise management policies, and a child safety policy.
- The Metropolitan Police was concerned that a detailed site plan had not been submitted, which would indicate the number and location of bars or food dispense areas, toilets, etc within the site, or an alcohol management plan with the number of Personal License holders present on site.
- The applicant is an experienced DJ with a large following, with previous involvement in organising events such as this. He has previously applied for a Premises Licence for a similar event in St Albans, which was refused.
- The Metropolitan Police are concerned that the applicant suggests he is planning to run this event as the sole act, from 5pm until 11pm, but they are not convinced that this is a credible assertion, and therefore are concerned that the event is not intended to be as described in the Notice.

In response to questions, PC McGann confirmed that a lot more work goes into a Premises Licence than a TEN and provides an opportunity to share concerns and find a way of working to alleviate concerns to allow events to go ahead - this can be done weeks or months in advance, with the support of a Safety Advisory Group of Responsible Authorities. PC McGann told the Licensing Sub-Committee that in the Metropolitan Police's experience, it is very hard to control the number of people trying to attend events in an open park, whereas in a licensed premises, it is easier to control the entrance and exit of customers through the doorway – in a park that isn't possible. Normally there is greater correspondence before a TEN is submitted, and the first contact in this case was after the Metropolitan Police had submitted their objection on receipt of the TEN.

Andy Mills, the applicant, presented the proposal:

- The applicant informed the Licensing Sub-Committee that he runs lots of events of this nature without problems - he runs a bi-monthly event in Clapham and a monthly event "Andy Mills and Friends", and wants to do the same event in the park.
- Typical attendance at the events organised by the applicant is up to 370 persons, managed by around 20 security staff with body-cams and K-9 dogs with searches and wands.
- The applicant wishes to work with the Met and Merton Licensing to move forward.
- The applicant told the Licensing Sub-Committee that he had been told, by the Metropolitan Police, that his application for the St Albans event had been very good. The reason it was refused was because the access road had been damaged, making the venue unsuitable.
- Mr Mills indicated that the map and the risk assessment had been submitted and he felt they were appropriate. He has conducted several site inspections. Safety is important to the success of the event.
- The site will be well lit, security will have body-cams, dogs, amnesty bins will be in place, paramedics on site. Bar staff will have refusal registers, bars will have CCTV, and CCTV on exits and entrances.
- The applicant has been in discussion with Mitcham Conservators for a larger event on Mitcham Common, which has been agreed in principle, with plans to do that event after this smaller event which he hopes will allow him to build a relationship with Merton Licensing.

In response to questions, Mr Mills assured the Licensing Sub-Committee that he had submitted a site plan with his original Notice. The applicant reiterated to the Licensing Sub-Committee that only 450 people would be permitted within the perimeter, his draw was usually limited to 280-300 people with a few walk-ups. He is not as popular as the Licensing Sub-Committee and the Metropolitan Police appear to think, he is happy to expand the fenced off area to a larger area with more security and dogs. The events where the applicant has had 4999-9999 guests are those where he was a production manager for other people's events rather than for himself.

The Licensing Officer reminded the Licensing Sub-Committee that it is not a legal requirement of the Temporary Event Notice to submit plans or risk assessments, though the Responsible Authorities can ask for them.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee gave the following reasons under Section 105 (3)(b) for their decision to issue Counter Notice:

- 1) A Temporary Event Notice does not allow for conditions and therefore there were no additional controls that could be put in place by the Licensing Sub-Committee to mitigate concerns raised by the Metropolitan Police or if incidents arose in respect of those comments and proposals made above.
- 2) The Licensing Sub-Committee had not been able subject any management plans to scrutiny under the Temporary Event Notice which would have been required under a Premises License application
- 3) Noise from music or persons attending in the evening and those leaving after 23.00, possibly loitering around at that time was a concern. Such noise would be actionable under separate noise pollution regimes, but could not be addressed with a TEN.
- 4) The Licensing Sub-Committee felt that the event was likely to attract numbers greater than the statutory limit of a Temporary Event Notice
- 5) Paragraph 2.1 of the Home Office section182 Guidance states “Licensing authorities should look to the police as the main source of advice on crime and disorder.” The views of the Police therefore must be considered by the Licensing Sub-Committee.

A Counter Notice was therefore issued by the Licensing Sub-Committee.

The Licensing Sub-Committee noted that there are controls and conditions permitted on a Premises Licence which are not permitted on a TEN which would mean that a premises licence application would be preferable.

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.