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Merton Council

Licensing Sub-Committee

13 April 2022

Supplementary agenda

5 Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 14 April 2022

Subject: Rosa's Thai Café, 54 Wimbledon Hill Road, London, SW19 7PA

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

Determination

The Licensing Authority received an application from Rosa's London Ltd for a new Premises Licence for Rosa's Thai Café located at 54 Wimbledon Hill Road, London, SW19 7PA

The application sought the following Licensable Activities and hours:

Late Refreshment 23.00 until 00.00 midnight, Monday to Sunday

The supply of alcohol (On Sales and Off Sales only as part of a pre-ordered meal for delivery to the customer's home)
Monday to Sunday from 11:00 to 23:30

Opening Hours
Monday to Sunday from 10:00 to 00:00

However, following representations, the applicant decided to amend their application to be as follows:

The supply of alcohol (On Sales and Off Sales only as part of a pre-ordered meal for delivery to the customer's home)
Monday to Saturday 11:00 to 23:00
Sunday 11:00 to 22:30

Opening Hours
Monday to Saturday from 10:00 to 23:30
Sunday from 10:00 to 23:00

Nine representations were received in relation to the application from local residents, including one from a Residents' Association. Agreement was also reached on a number of conditions with both the Metropolitan Police and the Council's Trading Standards Officer, who therefore withdrew their representations prior to the Licensing Sub-Committee meeting.

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, have regard to the London Borough of Merton Council's Statement of Licensing Policy, and comply with any relevant case law.

The Application was **granted** as now sought with the conditions offered in the application's Operating Schedule and those agreed with the Responsible Authorities the Metropolitan Police and the Council's Trading Standards Officer.

Licensing Sub-Committee Hearing

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

The Licensing Manager gave a brief overview of the Application. A supplementary agenda had been circulating including a very good map, though it shows trading hours, rather than licensed hours, which in some cases are less than licensed hours. The Legal Adviser advised that the Sub-Committee should be considering the application on its own merits and was not permitted to set hours based on the hours of premises surrounding the applicant premises.

Mr Craig Baylis, Solicitor representing the Applicant, presented the application:

- Rosa's have 28 restaurants across London, nearest in Tooting and Fulham, all premises are restaurants, there are no bar functions, no vertical drinking, no drinking without food
- All venues are waiter/waitress service
- After discussion with local residents, content to reduce hours applied for 23.00 Monday to Saturday and 22.30 on Sunday with half an hour drinking up time
- The concern of the residents seems to be that the other licensed premises in the area don't use all their permitted hours, which is not relevant to this application
- Neighbouring premises have licensing hours are until midnight, though the majority mirror that which they are now applying for.
- Rosa's have not had any issues with premises in their history.

In response to questions, the Applicant's solicitor confirmed that the restaurants are aimed at servicing the existing area, not to introduce more people into the area. It is not a destination location, it's an extra facility for the existing market.

The restaurant is all tabled seating, waiter/waitress service, with meet and greet, diners pre-book or dine speculatively if space permits. The restaurant will have 92 covers over two floors. Typical diners are local residents, families, young professionals, dining for one or two hours spending £25 including drinks over two to three courses.

Interested Parties raised the following concerns:

- This is a special policy area that needs to be taken account of, which has not been taken into account in the application [the Legal Adviser noted that the cumulative impact is of interest through promoting the licensing objectives, but the old policy has been superseded by the Cumulative Impact Assessment and that there is no longer a cumulative impact policy that says Premises Licences must be refused];
- Special condition 9 of the Licensing Policy puts the onus on the applicant to show in the operating schedule that it won't be adding to the cumulative impact. The applicant hasn't done that in the application. It's up to the council to give reasons if it's going to depart from its policy;
- That they believed that the premises when in operation would have a potential for disturbance to local residents,

- patrons often park in local residential roads, those surrounding the restaurant are controlled parking zones, all permit parking after 6.30pm in residential bays. The long hours give potential for extended disturbance;
- Delivery drivers may congregate in the area, potentially causing disturbance;
- Rosa's is the latest in a series of applications, and looking at the opening hours of other branches, the applied for hours are later and longer than in other locations;
- This gives rise to concerns about cumulative impact and the impact on residents which is a reason to reduce hours;
- There is a no loading/waiting zone being introduced and that will push more traffic onto neighbouring streets

In closing, Mr Baylis raised the following points:

- Cumulative Impact had not been raised by either the Police or the Council's Trading Standards, the conditions agreed with both those parties, there are therefore no Responsible Authority issues remaining;
- Parking isn't an issue that can be taken into account, if the restrictions lift after a certain time, that's the an entitlement to anyone to park there and does not impact on Rosa's application;
- The fact that other restaurants trade when they do, is not a consideration for Rosa's or the Licensing Sub-Committee. If there isn't trade, the restaurant will adjust its hours. What is requested is the opportunity to trade in line with other restaurants in the area.

The Chair announced that the Licensing Sub-Committee would retire to closed session and make their decision.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the application as sought with the following conditions imposed:

- Conditions that could be extracted from the operating schedule in the Application

1. The premises licence holder shall ensure that anyone utilised by them for the role of delivering alcohol orders ensures that the alcohol is delivered to the client who ordered the alcohol, or ensures that any 'safe place' as designated by the client where the delivery can be left must be in an area not visible to the general public and not where any minor can access the delivery.
2. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
3. A record of refusals shall be maintained which documents every instance that a sale of alcohol (and any other age-restricted product) is refused on the premises, indicating the date and time the refusal was made, and the member of staff making the refusal.

4. The record of refusals shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.
5. An effective methodology shall be in place at all points of sale to ensure staff undertake appropriate age checks on potential sales of alcohol (and any other age-restricted product).
6. All staff that undertake the sale or supply of alcohol (and any other age-restricted product) shall receive appropriate training in relation to undertaking appropriate age checks on such, before being allowed to sell or supply any alcohol (and any other age-restricted product). Refresher training will be carried out at least every three months.
7. Records of all staff training, relating to the sale or supply of alcohol (and any other age-restricted product), along with any training material used, will be kept and maintained by the Designated Premises Supervisor or the Premises Licence Holder.
8. Staff training records shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.
9. The CCTV system installed at the premises shall be maintained in effective working order, and shall be in operation at all times the premises is open to the public. All recordings made by the CCTV system shall be retained and stored in a suitable and secure manner for a minimum of 31 days, and shall be made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities. At all times the premises is open to the public a minimum of one member of staff on duty will be able to operate the CCTV system
10. An incident log shall be kept at the premises and made available on request to Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must be completed within 24 hours of the incident and will record the following;
 - a) All crimes reported to the venue.
 - b) All ejections of patrons.
 - c) All complaints received concerning crime and disorder.
 - d) Any incidents of disorder.
 - e) All seizures of drugs or offensive weapons.
 - f) Any refusal of the sale of alcohol.
 - g) Any visit by a relevant authority in relation to service

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

- a) The Licensing Sub-Committee had to make a decision that promoted the Licensing Objectives that was appropriate and proportionate. The conditions imposed addressed those concerns, including the potential for Cumulative Impact;

- b) The Licensing Sub-Committee had to make a decision on the application based on its own merits, and the opening hours/licensing hours of neighbouring premises could not be used to assess the application;
- c) The application was fundamentally for a sit down, waiter service led restaurant with alcohol ancillary to meals;
- d) The Licensing Sub-Committee noted that concerns with parking issues are subject to planning, not for consideration by the Licensing Sub-Committee, and parking bay usage may not be connected to specific operators. (Sommerfield case refers);
- e) With the grant of a new Premises Licence for this new premises, the Premises Licence would be subject to Review by the Licensing Sub-Committee if breaches occurred..

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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