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Merton Council

Licensing Sub-Committee

20 July 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: 25 July 2022

Subject: Travelodge, 27-29 Hartfield Road, Wimbledon SW19 3SG

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

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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 Authority received an application from Travelodge Ltd for a new Premises Licence for its "Travelodge" at 27-29 Hartfield Road, Wimbledon SW19 3SG. The application sought the following Licensable Activities and hours:

- a) Sale of alcohol to non residents of the hotel:

Monday to Thursday 10:00 until 23:00
Friday to Sunday 10:00 until 00:00 (midnight)
- b) Sale of alcohol to residents staying at the hotel

24 hours on all days
- c) Late Night Refreshment:

Friday to Sunday 23:00 to 00:00 (midnight)
Late Night Refreshment is not applied for on other days of the week.
- d) Opening Hours to the Public:

Monday to Thursday 06:00 to 23:30
Friday to Sunday 06:00 to 00:30
The Hotel to remain open to residents 24 hours a day

31 representations were received in relation to the application from local residents. Agreement was 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.

Mr Andrew Woods, of Woods Whur Solicitors, representing the Applicant, presented their submissions on the application:

- The application was for a Premises Licence for a café/bar within a hotel, which is due to open soon with 177 rooms
- There are seats for 90 people in the café/bar. The café/bar will not provide entertainment. Noise won't be an issue due to the bedrooms above and adjacent to the premises that will also be providing food.
- Conditions have been agreed by Travelodge with both Trading Standards and the Metropolitan Police.
- Non-residents are restricted (as per the hours agreed with Police) so that after 11pm Monday – Thursday and midnight on Friday to Sunday, non-residents will not be served, and will not have access to the hotel or café / bar.
- Alcohol sales are not significant, it's an essential offer for a hotel, but general sales would be well under 5% of turnover.
- The café/bar is not attractive to anyone not staying at the hotel
- The café/bar is on the first floor, the units on the ground floor are not part of this application

In response to questions from interested parties, Mr Woods and Mr Dangerfield confirmed that at the appropriate time, customers in the café/bar who were not able to produce an access card would be asked to leave or not served by bar/café staff. There are no off-sales outside of the hotel. The hotel entrance is closed to non-residents after 10pm and access is not available to those without a keycard.

Mr Woods on behalf of Travelodge explained to the Licensing Sub-Committee that hotels are exempt from requiring a Premises Licence for hot food supplied to residents after 11pm, in this case a light supper menu, such as pizzas. The Late Night Refreshment exemption for hotels is set out at section 1(5) and para 3 of Schedule 2 of Licensing Act 2003 and referred to at para 2.9 of the Home Office "Guidance on the Licensing of Late Night Refreshment".

The local resident, representing WEHRA raised the following points of concern

- The Travelodge lies within an area with a concentration of licenced premises,
- WEHRA does not object to the sale of alcohol on the premises to residents, but is concerned about the potential impact of sales of alcohol off the premises,
- As the applicant is not intending to sell alcohol off the premises, a condition could be applied to confirm this,
- A closing time of 11pm on a Sunday would be more appropriate,
- Conditions circulated are inconsistent and need fixing to clarify the difference between requirements and restrictions for on and off sales,
- The application refers to CCTV on the ground floor, this should be the first floor.

The Licensing Officer confirmed that the original application was for both 'on' and 'off' sales, but as we have heard the requirement is now only for 'on' sales. We have also confirmed that a licensable activity of Late Night Refreshment is not required for sales to hotel residents.

In closing, Mr Woods raised the following points:

- Travelodge agree to no 'off' sales,
- Travelodge agree to 11pm on Sunday for the end of sales to non-residents. The reality is that from 10.30pm non-residents would no longer have access to the café/bar,
- This is a restricted application - it's just for the café/bar on the first floor which is predominantly for the residents, and although the sales are expected to be low, it is an important facility for the hotel to be able to provide,
- The CCTV condition should be applied to the first floor, not the ground floor.

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:

1. A colour digital CCTV system will be installed and maintained to the satisfaction of the Police and licensing authority. Recordings from the installed CCTV are to be kept for 31 days. These recordings shall be immediately available for inspection and viewing on the premises by Police and/or licensing authority officers on request.
2. Hard copy recordings of CCTV footage in a playable format must be provided to Police and/or licensing authority officers within 48 hours of their request.
3. The premises must ensure the CCTV system is operating and recording 24 hours every day (save for the purpose of maintenance).
4. The licence holder shall ensure all members of staff are trained in the requirements of the Licensing Act and other relevant legislation.
5. The premises licence holder shall adopt a Challenge 25 scheme at the premises and display appropriate notices advising that the scheme is in place at the hotel.
6. Between the hours of 23:00 to 10:00 the following day the sale of alcohol will be restricted to hotel residents and bona fide guests of hotel residents.
7. After 23.00 access to the hotel is restricted to residents with a key card.
8. Notices shall be prominently displayed near all exits from the premises asking patrons to leave quietly with consideration for neighbours.

9. Persons under 16 years of age will be accompanied by an adult in the area where licensable activities take place.
10. 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.
11. 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.
12. An effective visual (and/or aural) reminder 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).
13. 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.
14. 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, shall be kept and maintained by the Designated Premises Supervisor or the Premises Licence Holder.
15. 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.
16. A closed-circuit television (CCTV) system shall be installed at the premises. 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.
17. 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.
18. 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.
19. CCTV shall cover the lift lobby entrances on all floors, all entrance and exit points, and the first floor licensed area.
20. The use of door staff shall be risk assessed on an ongoing basis by the Premises Licence holder or DPS.

21. 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 visit from a relevant authority.
 - g. Any complaints made by neighbouring residents.
22. There shall be a zero-tolerance policy in relation to drugs at the premises and there shall be regular checks by management to prevent the use of drugs by patrons.
23. Drugs which are seized shall be stored securely and handed to the Police.
24. Staff will receive training on matters concerning underage sales, drugs policies and operating procedures.
25. No films or videos of any description shall be shown so that they can be viewed by persons under the age of any Applicable BBFC/Local authority certification.
26. Children under the age of 16 shall not be permitted to enter the premises after 21:00 unless dining with an adult or attending a pre booked function or resident in the hotel.
27. There shall be adequate controls in place including staff training to safeguard against the sale of alcohol to persons under 18.
28. The premises shall remain open to permit the sale of alcohol to hotel residents 24 hours a day.
29. Any purchase of alcohol by a resident shall be permitted by presentation of a room card after 23:00 on weekdays and 00:00hrs on weekends.
30. Alcohol will only be sold by staff who have completed Licensing Act 2003 training with all records of training kept and available for inspection by the Police
31. The premises shall remain open 24 hours a day for hotel residents.
32. For non-residents, the premises will close 30 minutes after the end of the non-standard timings identified under the Supply of Alcohol.
33. The DPS/manager will attend local pub watch meetings.
34. All members of customer facing staff, including those involved in the sale or supply of alcohol shall be provided with basic Counter Terrorism Awareness Training by the Premises Licence Holder. Such training is available at

<https://www.gov.uk/government/news/act-awareness-elearning> or via the local Counter Terrorism Protect Officer (CTPO)

35. Duty managers will have access to the NaCTSO ACT App and / or PSO Shield App when on duty at the site. Both of which provide Counter Terrorism advice and guidance. See below links;

PSO London Shield App –

<https://apps.apple.com/gb/app/psolondon-shield/id1482303493>

NACTSO ACT App –

<https://www.gov.uk/government/news/new-act-app-launched>

36. All members of customer facing staff, including SIA (if employed) and those involved in the sale or supply of alcohol shall be provided with Welfare and Vulnerability Engagement (WAVE) training to provide those working in the licensed industry with an awareness of vulnerability and their responsibilities towards people visiting their premises. This training is available at <https://nbcc.police.uk/guidance/wave-presentation>

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 and that was appropriate and proportionate. The conditions imposed addressed those concerns, including the potential for Cumulative Impact; WEHRA's concern about 'off' sales was addressed as Travelodge no longer sought that authorisation. A condition was therefore not required, as the authorisation was not there. WEHRA's concern about the closing time on a Sunday of 11pm was not supported with evidence. The premises was self-contained in respect of noise escape or public nuisance, so concerns related to public nuisance were addressed;
- b) The Police and Trading Standards Officer agreed the conditions, with no ongoing concerns, and under the Guidance they are seen as 'the eyes and ears' of the Licensing Sub Committee;
- c) The Premises Licence is limited in scope;
- d) It was thought that this application will not be one which will cause cumulative impact and can therefore allow an exemption from the Cumulative Impact Assessment policy.

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.