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# **Merton Council**

## **Licensing Sub-Committee**

**13 October 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:** 21 October 2022

**Subject:** Southland Pavilion, All England Lawn Tennis Club, Church Road Wimbledon Village, SW19 5AG

Having considered relevant applications, notices and representations together with any other relevant information submitted to any Hearing held on this matter the Licensing Authority has made the determination set out in Annex A. Reasons for the determination are also set out in Annex A.

Parties to hearings have the right to appeal against decisions of the Licensing Authority. These rights are set out in Schedule 5 of the Licensing Act 2003 and Chapter 12 of the Amended Guidance issued by the Home Secretary (April 2018). Chapter 12 of the guidance is attached as Annex B to this notice.

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**Useful documents:**

**Licensing Act 2003**

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

**Guidance issued by the Home Secretary**

<http://www.homeoffice.gov.uk/>

**Regulations issued by the Secretary of State for Culture, Media and Sport**

[http://www.culture.gov.uk/alcohol\\_and\\_entertainment/lic\\_act\\_reg.htm](http://www.culture.gov.uk/alcohol_and_entertainment/lic_act_reg.htm)

**Merton's Statement of Licensing policy**

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

# Annex A

## Determination

The Licensing Authority received an application from the All England Lawn Tennis Club (AELTC) for a new Premises Licence for the Southland Pavilion at All England Lawn Tennis Club, Church Road Wimbledon Village, SW19 5AG. The application sought the following Licensable Activities and hours:

Sale of alcohol to members of AELTC and their bona fide guests for consumption on and off the premises between 9am and 11pm, Monday to Sunday

11 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, leaving no Representations from Responsible Authorities.

The applicant amended their application to the following

Sale of alcohol to members of AELTC and their bona fide guests for consumption on and off the premises between 11am and 8pm, Monday to Sunday, limited to 1 April to 31 October in each year.

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 and additional conditions imposed by the Licensing Sub-Committee as follows:

- No physical bar shall be installed in the Southland Pavilion;
- The number of persons permitted in the premises at any one-time (excluding staff) shall not exceed 50 persons.

## **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 Ben Williams of Kings Chambers, representing the Applicant, presented their submissions on the application:

- The application was for a Premises Licence to allow the serving of drinks to members and their bona fide guests after their croquet matches;
- It was not anticipated there would be any change in the operating hours or numbers or attendance of members at the Southland Pavilion from the current usage;
- Matches are usually attended by the 12 members on each team and a small number of spectators;
- Existing issues around noise by staff late at night would hopefully be addressed by the revised hours proposed in the application, but had nevertheless been addressed by AELTC and contact information provided to residents should they have any ongoing concerns.

In response to questions from interested parties, Mr Williams and Mr Cook (DPS) confirmed that the current usage of the pavilion for the use of croquet club members and their guests was not intended to change, they simply wished to be able to provide a limited range of alcoholic beverages to players and their guests after their matches. There would not be an increase in the number of matches or an anticipated increase in attendance. Members and guests were expected to continue parking at the club and access the pavilion by the same route as currently used. They were not expected to use neighbouring streets for parking or for taxi drop offs/collections.

In closing, Mr Williams reiterated that the application was not to change the current usage or usage level, but to be able to provide alcohol to the members after their matches.

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. The provision of licensable activities shall only be to members of the All England Lawn Tennis & Croquet Club and their bona fide guests other than during the Wimbledon Championships.
2. Access to the premises shall be controlled at all times by security.
3. CCTV shall be installed and maintained at the Premises.

4. 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 residents
5. All members of customer facing staff, including SIA (if employed) and those involved in the sale or supply of alcohol will 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>
6. All members of customer facing staff, including those involved in the sale or supply of alcohol will 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)
7. 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/pso-london-shield/id1482303493>  
  
NaCTSO ACT App -  
  
<https://www.gov.uk/government/news/new-act-app-launched>
8. Evidence of age in the form of photo identification shall be requested from any person appearing to those selling or supplying alcohol, to be under the age of 25 and attempting to buy alcohol. Examples of appropriate photo identification include a passport, driving licence, and the Proof of Age Standards Scheme (PASS) approved age card.
9. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
10. 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).

11. 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.
12. 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.
13. 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.
14. A physical bar will not be installed at the venue
15. The number of customers, members and guests, will not exceed 50 persons at any given time.

**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.
- b) The additional conditions applied by the Licensing Sub-Committee sought to reflect the stated intentions of the applicant and address the concerns of neighbouring residents. (Thwaites and RRO Fire Regulations considered)
- c) 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;
- d) Parking is outside the remit of the Licensing Sub-Committee, it is regulated by Planning (Blackwood)

## **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.