

Merton Council
Licensing Sub-Committee
19 December 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 December 2022

Subject: The Sushi Co Limited, 42 Wimbledon Hill Road, Wimbledon, 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

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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 The Sushi Co Limited (Company number 13681780) for a new Premises Licence for 42 Wimbledon Hill Road, Wimbledon, SW19 7PA. The application sought the following Licensable Activities and hours:

- a) plays, with performances both indoors and outdoors on Monday to Sunday from 11am to 12 midnight,
- b) recorded music from 11am to 12 midnight on Monday to Sunday, inside the premises,
- c) late night refreshment, delivery, takeaway and dine in on Monday to Sunday from 11am to 12 midnight.
- d) the supply of alcohol for consumption on the premises, Monday to Sunday from 11am to 12 midnight.

6 representations were received in relation to the application from local residents and a Ward Councillor.

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.

The applicant amended their application to the following

- a) late night refreshment, delivery, takeaway and dine in on Sunday to Wednesday from 11am to 11pm.
- b) late night refreshment, delivery, takeaway and dine on Thursday to Saturday from 11am to 12 midnight
- c) the supply of alcohol for consumption on the premises, Sunday to Wednesday from 11am to 11pm.
- d) the supply of alcohol for consumption on the premises, Thursday to Saturday from 11am to 12 midnight.

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** with the conditions offered in the application's Operating Schedule, the conditions agreed with the Metropolitan Police and the Council's Trading Standards Officer and additional conditions imposed by the Licensing Sub-Committee as follows:

- The supply of alcohol at the premises shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.;

- A direct telephone number for the manager/DPS at the premises shall be publicly available at all times the premises is open so that incidents can be addressed as they are occurring. This telephone number is to be made available to residents and businesses in the vicinity;
- No collections of waste, deliveries or recycling materials (including bottles) to/from the premises shall take place between 23.00 and 08.00 hours on the following day.;
- No waste or bottles shall be kept outside the premises awaiting collection other than within 30 minutes before collection;
- The rear door of the premises is only to be used as an emergency exit, no other routine access/egress or loitering outside the rear exit is permitted.

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.

The Applicant, presented their submissions on the application:

- The application was for a Premises Licence to allow the restaurant to serve drinks with meals to patrons dining in the establishment, and to provide take away collection and delivery of meals to customers until midnight.
- The Applicant wished to remove the request for licence to perform plays, this was an error on the application form.
- The Applicant wished to remove the request for recorded music, as only ambient music for diners would be played and this was not a licensable activity.
- This was a family business, keen to have a good relationship with their neighbours, who they hope will also become customers.
- The Applicant would like a licence that allows them to compete with nearby venues.
- It was not expected to attract already intoxicated customers, looking for a late venue, as the alcohol provision would be only to accompany meals.
- The rear exit would be an emergency exit only, the kitchen area would be open so customers can see the sushi being made, all stock deliveries, staff arrival and departure and refuse collection would be through the front entrance.
- There is a refuse collection service which they can order within 2 hour periods, that they expect to use.
- The business will employ 15 local people.
- The food is mostly cold food, so will not emit smells toward neighbouring properties.
- The venue has a no smoking policy within the immediate vicinity of the restaurant.
- Delivery drivers will be parking a short distance away. There are double yellow lines outside the restaurant, drivers will come to the front of the restaurant to collect takeaways
- The Applicant have agreed to the Police and Trading Standards conditions

In response to questions from interested parties, the Applicant confirmed that:

- The fish for the sushi was delivered pre-cut, frozen, and would create minimal waste. Any waste would be stored inside the premises until it was collected from the front of the premises. They could arrange for this to happen within the opening hours. Staff will not be expected to stay late after closing to hand over waste.
- It was intended only to serve alcohol with meals
- Any music played would be below conversation level, to allow patrons to talk over their meals, and would only be background music, and as such would not be licensable.
- 75%-80% of the business was expected to be dining-in custom in the first instance, though this may grow over time.

- Bottle waste will be stored inside and can be disposed of during the day, rather than after closing.
- The back door would only be used as an emergency exit. it would not be used for deliveries, for collection of food or for staff to come and go.
- Take away collection drivers would come through the front of the store, where the kitchen is, the back area of the restaurant is simply stock rooms and cold storage, it's not suitable for other purposes.
- Drivers collecting take aways are expected to use authorised parking bays across the road.
- The busiest periods are expected to be Thursday to Saturday evenings, after office hours.
- An acoustic ceiling has been installed to reduce noise interference in neighbouring properties especially above the premises.
- Neighbours could contact the Applicant by mobile telephone or email regarding any issues with the restaurant.
- The vent at the rear is for drawing in fresh air, it is not an extractor removing smells from the restaurant.
- The extractors internally recycle air, they don't emit air out of the restaurant.

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 with the following conditions imposed:

1. Notices shall be displayed advising customers to leave the premises quietly.
2. CCTV shall be maintained in effective working order and shall be in use at all times that the premises are open to the public. All recordings shall be retained and stored securely for a minimum of 31 days and shall be made available on request to the metropolitan police and other authorised officers.
3. At all times the premises is open to the public, a minimum of two members of staff on duty shall be able to operate the CCTV system.
4. Signage shall be displayed advising customers that a CCTV system is in operation at the premises.
5. An incident log shall be retained at the premises and made available to authorised officers of the police or local authority.
6. Regular litter patrols shall be in place to address litter created by customers from the premises.
7. Staff shall be trained to promote the four licensing objectives.
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. 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, will 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. The supply of alcohol at the premises shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal;
17. A direct telephone number for the manager/DPS at the premises shall be publicly available at all times the premises is open so that incidents can be addressed as they are occurring. This telephone number is to be made available to residents and businesses in the vicinity
18. No collections of waste, deliveries or recycling materials (including bottles) to/from the premises shall take place between 23.00 and 08.00 hours on the following day;
19. No waste or bottles to be kept outside the premises awaiting collection, other than within 30 minutes before collection.

20. The rear door of the premises is only to be used as an emergency exit, no other routine access/egress or loitering outside the rear exit is permitted.

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) This was a small restaurant of only 34 covers, and as such was not expected to add to Cumulative Impact in the Wimbledon Town Centre Cumulative Impact Area.
- c) 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.
- d) The Police and Trading Standards Officer agreed the conditions, with no ongoing concerns, their input assisted the Licensing Sub-Committee in reaching their decision. Under the Guidance the Police remain key enforcers of licensing law.

The Licensing Sub-Committee also noted that the Applicant had taken steps to address concerns about noise by installing noise attenuating measures during the fit out of the restaurant.

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.