

Merton Council
Licensing Sub-Committee
8 August 2023
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: 11 August 2023

Subject: Wider Interests of Football Ltd, AFC Wimbledon, Plough Lane Stadium, Plough Lane, Tooting, London, SW17 0NR

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 Wider Interests of Football Ltd, AFC Wimbledon, Plough Lane Stadium, Plough Lane, Tooting, London, SW17 0NR to vary their existing licence.

The applicant applied for:

- The Corporate Suites - The variation would standardise the supply of alcohol timings as follows: Monday to Thursday 9am to 00:30 the following day, Friday and Saturday 9am to 1am the following day and Sunday 9am to 11:30pm
Existing Corporate Suites hours were 10.00 - 00.00 Mondays to Thursdays and 10.00 - 01.00 Friday and Saturday and 10.00 – 23.30 Sunday.
- The Directors Boxes - The variation would increase the times for the supply of alcohol from Sunday to Thursday 11am to 11pm and on Friday from 10am to 11pm. There is currently no authorisation for the sale of alcohol on a Saturday. Increasing to Monday to Thursday 9am to 00:30am the following day, Friday and Saturday from 9am to 1am the following day and Sunday 9am to 11:30pm.
Existing Directors Boxes hours were 11.00 - 23.00 Mondays to Thursdays and Sunday and Thursdays and 10.00 - 23.00 Friday.
- The Main stadium - There is currently no authorisation for the sale of alcohol on Saturday. The variation application seeks to increase these to Monday to Sunday 9.00 to 23.00. Existing Directors Boxes sale of alcohol hours were currently Monday to Thursday 11am to 11pm, Friday 10am to 11pm and Sunday 11am to 9pm.
- Various conditions were to be amended to follow those changes and make the operation more uniform, they included:
 - Bar service instead of waiter/waitress service in corporate suites and directors suites;
 - Directors boxes to be available at all times not just match days;
 - Alcohol sales to be permitted for three hours before and 2 hours after a match, as opposed to 2 hours before and 2 hours afterwards.

Licensing Sub-Committee Hearing

Mr Richard Hemingway, representative of the applicant, set out the application and explained that the club is fan owned without a wealthy benefactor and is reliant on raising funds through the use of its facilities.

The aim of the application to vary the Premises Licence is to allow more flexible and efficient use of the ground and its facilities following operation under the existing conditions. The internal areas for consideration, the suites, are only accessible via the Cottonmill Road entrance into the West Stand and this is furthest from the residential areas adjacent to the ground.

In response to questions by the Licensing Sub-Committee, it was confirmed that:

- There had been some complaints about noise from the Silver suite over the summer, this was due to windows being open after 10pm, due to the heat. The club was installing improved air conditioning in the suites and was committed to keeping external doors and windows closed after 10pm. Otherwise the club had not received complaints from its neighbours.
- As the club is moving into League 2, the television deal affects the timings of football matches, so some games may start at 12.00, and in order to avoid seeking a specific Premises Licence each time, the club is seeking to vary the existing Premises Licence. Where there are earlier kick offs, this will mean that fans and guests will also leave the ground earlier.
- It is not yet known what kick off times will be, on which days, but the club would like the flexibility to hold cup games and other fixtures such as women's internationals and other tournaments, which would require the greater flexibility of the requested variations to the Premises Licence.
- There is limited car parking space at the ground during events, perhaps 30 cars.
- Security remain in contact with the police and agree required levels of security for all events and football matches

In closing, Mr Hemingway confirmed that the club agreed to the closing of windows and doors in the boxes and suites after 22.00, and that the requested extended hours were consistent with other venues in the area, though the ground was not intended to be a destination venue at this time. The requested variations were to allow flexibility in operations without the need for Temporary Event Notices per room and event, which wouldn't always be appropriate for a venue of their size.

The Decision of the Licensing Sub-Committee

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

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 and LB Merton's Statement of Licensing Policy, and comply with any relevant case law.

The Premises Licence was granted the variations sought with the imposition of the offered, agreed and imposed by the Licensing Sub-Committee, as detailed below in this notice.

The Licensing Sub-Committee imposed the offered further condition as follows:

- External windows and doors from the Directors Boxes and the Corporate Suites shall be closed, and remain closed after 22.00, save for access and egress.

All other conditions shall remain as set out in the existing Premise Licence.

Reasons

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

- 1) The Licensing Sub-Committee believed that public nuisance concerns were partly addressed by the offer to close external doors and windows to the suites after 22.00.
- 2) The Licensing Sub-Committee's overall concerns were addressed by the existing conditions and the additional condition offered during the meeting.
- 3) The residents were able to seek a Review of the Premises Licence should they experience breaches of the conditions or the hours of trading or public nuisance. In the first instance, if issues arose, residents were directed to pass their concerns to the Licensing Authority for investigation.

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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