

Merton Council
Licensing Sub-Committee
19 April 2024
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: 26 April 2024

Subject: The Casuarina Tree, 407 London Road, Mitcham, CR4 4BG

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 Premises Licence holders, Selvadurai Thevarajah and Vythilingam Nagulendran seeking to vary the Premises Licence by amending the licensing plans for The Casuarina Tree at 407 London Road, Mitcham, CR4 4BG.

The applicant applied:

- to vary the plan that the premises must conform to.
- to vary the layout of the rear garden incorporating the addition of a garden structure.
- to add additional conditions as listed in part M of the application form

The variation to the existing Premises Licence was granted with the imposition of the offered, agreed and imposed conditions, as detailed below in this notice.

Licensing Sub-Committee Hearing

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

Mr Ed Chaplin, representing the applicant, set out the application and noted that the Premises had been in operation as a bar, restaurant and hotel for some time without issue. There had not been any representations made by Responsible Authorities.

In response to the single representation, Mr Chaplin asked the Licensing Sub-Committee to note that:

- The changes to the external area would in fact reduce any noise leakage from the premises, the new structure had double glazing, 150mm of insulation, and would only be in use until 11pm, it had previously been an open area for smokers, customers who wished to sit outside and at one time a shisha area.
- The licensee were offering 27 conditions to address concerns, 14 specifically relating to the prevention of public nuisance. The proposed conditions are already being complied with by the Premises Licence holder.

In response to questions, Mr Chaplin confirmed to the Licensing Sub-Committee that the proposed conditions are already effectively in place and being complied with by the Premises Licence holder.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the application with the following licensable activities and opening hours:

Conditions proposed by the Applicant in the application operating schedule to be attached to the premises licence.

1. 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.
2. 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.
3. At all times the premises is open to the public a minimum of one member of staff on duty shall be able to operate the CCTV system.
4. Alcohol to be sold or supplied in the garden area (marked on the plan) shall only be to persons for consumption with a meal ordered at the same time, consumed with the meal and paid for together with the meal.
5. The maximum number of persons to be accommodated in the garden structure at any one time shall not exceed 60.
6. All external windows and doors to the garden structure must be kept shut at all times after 21:00. Doors may be opened for normal entrance and egress of people but must be shut immediately thereafter.
See condition 10. on the premises licence.
7. Amplified music in the garden structure shall only be played through the Licence Holder's installed system.
8. Music volume and bass levels in the garden structure will be controlled only by the premises manager on duty.
9. The music volume in the garden structure shall be turned off at 23:00h and customers will be asked to leave quietly.
See condition 9. on the premises licence.

Conditions agreed with the Metropolitan Police

Closed-circuit television

1. The premises shall install and maintain a comprehensive closed-circuit television system (CCTV). All recordings shall be stored for a minimum of 31 days with date and time stamping. Recordings shall be made available immediately upon

the request of Police or authorised officer throughout the preceding 31 day period.

2. The digital CCTV will cover all areas to where public have access.
3. CCTV will be recording at all times when premises is open, and the recordings will be of evidential quality in all lighting conditions and be of a sufficient quality to produce in court of hearing.
4. All images downloaded from the CCTV must be provided in a format which can be viewed on regularly available equipment without the need for specialist software.
5. 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.
6. The CCTV system shall be maintained in effective working order.
7. Suitable signage shall be displayed at the premises in a prominent position as customers enter the premises stating that CCTV is in operation.

Patrols

8. The outside area shall be monitored by staff whilst open for licensable activities to monitor intoxication levels, any crime/disorder and vulnerable customers. **See condition 6. on the premises licence. Condition 11. on the licence is regarding regulated entertainment.**

Welfare and Vulnerability Engagement Training

9. Customer facing staff 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 [Welfare and Vulnerability Engagement \(WAVE\) Resources \(nbcc.police.uk\)](https://nbcc.police.uk)

Security, incidents

10. An incident logbook shall be kept and maintained on the premises and made available on request to the Police or the Licensing Authority, which will record the following:
 - All crime reported to the venue
 - All ejections of patrons
 - Any complaints received
 - Any incidents of disorder

- Any refusals to the sale of alcohol
See condition 7. on the premises licence.

Dispersal

11. All staff will be trained to ask customers to leave quietly in the evening when necessary and make the request verbally where appropriate.
12. There will be appropriate signage at the premises requesting customers to leave the premises quietly. **See conditions 8. and 12. on the premises licence.**

Reasons

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

- 1) The Licensing Sub-Committee considered that the enclosed nature, double glazing and insulation of the new area would reduce sound escape from this area and represented an improvement on the current situation. It addressed the prevention of public nuisance Licensing Objective.
- 2) The Licensing Sub-Committee considered that lack of representation from the Metropolitan Police or other Responsible Authorities demonstrated the ability of the Premises Licence holders to uphold the Licensing Objectives.
- 3) There had been no complaints in the previous 18 years of trading (albeit that the person that made a Representation lodged a complaint during the consultation period of this application). Such a record indicated that if noise issues occurred, they would be addressed.
- 4) The Licensing Sub-Committee was acutely aware that an application for Review of the Premises Licence could be submitted by an aggrieved person or residents association or officers investigating noise complaints to seek to amend the Premises Licence, if issues did occur.
- 5) The existing, amended and added conditions addressed the concerns that the Licensing Sub-Committee had on noise escape and the operation of the premises.

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.