

Merton Council
Licensing Sub-Committee
30 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: 10 May 2024

Subject: Buteco Do Duda, 10 Watermill Way, Colliers Wood, London, SW19 2RD

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 Buteco Do Duda Ltd for a new Premises Licence for the premises known as Buteco Do Duda at 10 Watermill Way, Colliers Wood, London, SW19 2RD

The applicant applied for:

- Live music, recorded music, indoors from 12:00 to 01:00 the following morning Monday to Sunday.
- The provision of late night refreshment indoors from 23:00 to 01:00 the following morning Monday to Sunday
- The supply of alcohol for consumption both on and off the premises from 12:00 to 01:00 the following morning Monday to Sunday.

The Premises Licence was granted with the imposition of the offered, agreed and further 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 Manuel Rocha, representing the applicant, set out the application and submitted that the Business is a restaurant with entertainment, the application is to financially help the business, prices to the operator are going up and customers have less money to spend, the applicant had proposed measures to protect the licensing objectives and had agreed conditions with Metropolitan Police.

The applicant understood their neighbours concerns, about music. Since entertainment had been deregulated, the Premises Licence holder would only need a Premises Licence for an extra hour on Friday and Saturday evenings. The premises had not received a complaint from either the Merton Noise Team or their neighbours, including those closer to the premises than Mr Wildman.

The business was important to local community and helped make the area attractive, and was good for the economy. The applicant wants the best relationship with his neighbours and authorities, and if necessary can also install a sound limiter.

The venue employed 9 staff, and an extra hour would make a big difference to help support the business which also supports the local theatre.

In response to questions it was confirmed that:

- While there had been incidences of anti-social behaviour in the area, it could not be attributed to this premises. There were several venues in the area
- The Premises Licence applied for gave coverage for longer than the current music played; on Sundays, they did not play music after 9pm. Fridays and Saturdays they proposed to play music to midnight.

The Licensing Sub-Committee also heard from Mr Wildman, who explained that he lived close by, and was pleased to see the way the area is becoming more successful, and was generally supportive of the licensee. His only concern was about the late playing of music. He hadn't made any complaints so far, as he wanted the venue to do well, and occasional loud music had so far only been until 9pm.

The area is surrounded by residences with the closest being 60m. Over the road is the Eddie Katz site, which will add a further 100 houses. When the speakers face north, the sound carries along the river and noise approaches the units more loudly, Mr Wildman's concern was that if that were allowed to continue later after 9pm, any night of the week and at weekends, that would become a nuisance to him and his family.

There were no concerns about the sale of alcohol, but music later on was a concern as the premises was more of a shed than a building, and did not contain the noise.

Cllr Braithwaite also spoke to the Licensing Sub-Committee, highlighting that the structure is such that sound escapes easily, and while the premises may not have had any complaints, when activity had been infrequent, and finished at 9pm, there were reasonable concerns about noise at the later hour and for 7 days per week. If music ended by 9pm, perhaps the premises did not need Premises Licence later than that?

In response to questions it was confirmed that:

- The premises did not need a license to play music before 11pm.
- The premises could install a sound limiter to keep noise down and avoid upsetting neighbours
- The premises want to work with neighbours and welcome them to the venue
- When music ends, customers tend to leave and go to other venues, rather than stay and spend money at this premises
- The venue has been operating for one year without any complaints

In closing, Mr Rocha welcomed contact from neighbours and committed to seeking to address any complaints as they arose. He reiterated that the applicant wanted to work with and for the local community. The venue would install sound limiters, and can move speakers to face inwards, there's a lot of options that they can work on. The community would benefit from the venue, as well as the theatre where money will be invested. Mr Rochas invited Mr Wildman to come to the bar and committed to attending to any complaints from neighbours.

Mr Wildman reiterated his support for the bar, but remained concerned about sound leakage, and agreed to visit, and work together to prevent issues.

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 that could be extracted from the application operating schedule

CCTV

1. A Closed-Circuit Television (CCTV) system shall be installed at the premises covering all public areas and recording at all times that the premises is open for business. The CCTV system shall be maintained in an effective working order, with all images kept for a minimum of 31 days.
2. 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 and be able to provide the previous 31 days CCTV images to the Licensing Authority or Responsible Authorities without undue delay upon request.

Security incidents

3. 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 shall record the following;
 - a) All crimes reported to the premises.
 - b) All ejections of patrons.
 - c) All complaints received concerning crime and disorder.
 - d) All incidents of disorder.
 - e) All seizures of drugs or offensive weapons.
 - f) Any faults in the CCTV system.
 - g) Any visit by a relevant authority in relation to service.
 - h) Any complaints from nearby residents.

The prevention of public nuisance

4. Notices shall be displayed at all exits from the premises requesting customers leaving the premises late at night do so quietly and with consideration to nearby residents.
5. The Premises Licence Holder shall keep an accurate written record of all brands of bottled beer and cider sold for consumption off the premises. This record shall be made available to officers from the Police or Local Authority on request.
6. Any empty bottles or glasses, or food waste/packaging from customers of the premises shall be collected by staff without undue delay and disposed of.
7. There shall be no regulated entertainment outside after 2300hrs.
8. Doors and Windows shall be closed after 2200hrs during any performance of regulated entertainment, except for egress and ingress.

Underage sales

9. A challenge 25 policy shall be operated on the premises. Clear and visible Challenge 25 signage shall be displayed.
10. Evidence of age shall be requested from any person appearing to those selling or supplying alcohol to be under the age of 25 and who is attempting to buy alcohol.
Examples of appropriate ID include a passport, new style driving licence, and Proof of Age Standards Scheme (PASS) approved age cards.
11. A Refusals Log shall be kept and made available for inspection by the Local Authority and Police detailing all refusals of the sale of alcohol to children, drunks or for any other reason.
12. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
13. An effective visual reminder shall be in place at all points of sale to ensure staff undertake appropriate age checks on potential sales of alcohol.
14. All staff that undertake the sale or supply of alcohol shall receive appropriate training in relation to undertaking appropriate age checks on such, before being allowed to sell or supply any alcohol. Refresher training shall be carried out at least every 6 months.
15. 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.

Wave Training

16. 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/crimeprevention/safeguarding/welfare-and-vulnerability-engagement-wave-lesson-plan>

Counter Terrorism Awareness Training

17. All members of customer facing staff, 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)
18. Duty managers will have access to the ProtectUK App | ProtectUK when on duty at the site. Both of which provide Counter Terrorism advice and guidance.

Conditions agreed with the Metropolitan Police

1. No children shall be at the premises after 21:00hrs.

The Committee recommended that:

- Speakers be positioned facing into the premises and not facing residents properties nearby
- The applicant improve the structure of the premises to provide proper sound proofing, subject to any planning requirements
- A noise limiter be put in place with settings to assist in avoiding noise to local residents – the applicant should consult with the Council's Noise Officer in setting decibel levels and/or bass levels
- Public nuisance must be addressed by working with local residents to take measures to minimise disturbance to them and to avoid nuisance affecting their residences.

Reasons

The Licensing Sub-Committee carefully considered the evidence presented in the agenda papers and the submissions made to the Licensing Sub-Committee at the meeting (Thwaites). There was a lack of complaints and issues to limit the hours sought.

The Licensing Sub-Committee considered the concerns of objectors to the application but had to make a decision that was appropriate and proportionate.

The Licensing Sub-Committee considered that the conditions proposed addressed their main concerns and that the approach of the applicant appeared to be that he was going to work with local residents to resolve their issues (under challenging financial constraints).

The Licensing Sub-Committee considered was especially aware that any breach of the conditions or authorisation or any public nuisance could result in the Licensing Sub-Committee having to Review the Premises Licence and that may well lead to potentially suspension or revocation or reduction of hours or conditions to prohibit music after say 9pm. Such breaches could also lead to prosecution for each breach.

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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