

# **Merton Council**

## **Licensing sub-committee**

**2 June 2014**

### **Supplementary agenda**

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London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 3 June 2014

**Subject:** Cousins Fish Shop – 98 The Broadway, SW19 1RH

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 2012). 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>

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#### **Merton's Statement of Licensing policy**

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

# Annex A

## Determination

The Licensing Sub-Committee decided to grant the application for a Premises Licence for "Cousins Fish Shop" at 98 The Broadway, Wimbledon SW19 1RH made by CP&S (Solutions) Limited subject to the revised hours for Licensable Activities below and conditions offered and sought by the Police.

### Hours

Recorded Music (indoors) and Retail Sale of Alcohol (on sales only)

Sundays to Thursdays 12 noon - 23.00

Fridays and Saturdays 12 noon - 00.00 midnight

### Late Night Refreshment

Fridays and Saturdays 23.00 - 00.00 midnight

### Opening Hours

Sundays to Thursdays 12 noon - 23.30

Fridays and Saturdays 12 noon - 00.30am

### Conditions

The licence is granted with the following 15 conditions:

1. Alcohol shall only be served when accompanied by a substantial table meal. (Police condition 3)
2. There shall be no sales of alcohol for consumption off the premises. (Police condition 5)
3. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry and exit points shall be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period for 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorised Council officers for periods throughout the 31 day period. The CCTV system should be updated and maintained according to Police recommendations. (Police condition 1)
4. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. This member of staff must be able to show a Police or authorised Council officer recent data or footage with the absolute minimum of delay when requested. (Police condition 2)
5. An up to date incident book shall be kept on the premises.
6. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
7. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of

business.

8. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
9. Children shall be accompanied at all times on premises by a parent or guardian.
10. Alcohol shall be restricted to beer and wines only. (Police condition 4)
11. An incident book shall be kept on the premises, and made available on request to an authorised Council officer or the Police, which will record: (a) all crimes reported to the venue (b) all ejections of patrons (c) any complaints received (d) any incidents of disorder (e) any faults in the CCTV system (f) any refusal of the sale of alcohol (g) any visit by a relevant authority or emergency service. (Police condition 6)
12. Notices shall be prominently displayed at all exits confirming that CCTV is in operation at the premises.
13. After 8pm only 5 smokers shall be permitted outside at any one time, with notices inside and outside to confirm of that to customers.
14. The Premises licence holder shall keep the frontage tidy at all times.
15. The Premises licence holder shall provide a telephone number to residents so they may contact the manager of the premises in case of public nuisance or crime and disorder occurring.

## Reasons

It was felt that the application overcame the rebuttable presumption on the basis that the premises was a small business of only 36 covers, the premises would be providing alcohol with a meal only and there would be no off-sales or outside drinking.

The Licensing Sub-Committee were especially concerned about the hours of 11.30 – 12.30am weekdays originally proposed. The Licensing Sub-Committee considered that the grant of a licence for this period would cause an increase in cumulative impact, that could not be overcome through conditions or other steps.

Particular concern during this time were the nearby premises and cumulative impact arising from all these premises. For example, the nearby premises of Weatherspoons, the Pod Bar, and Poo Na Na etc, would see a large number of people coming out on to the street or arriving in the street at similar times, or being in the area at the same time.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2012).**

#### **12.Appeals**

12.1 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**

12.2 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.

12.3 An appeal has to be commenced by the appellant giving of 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.

12.4 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 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.

12.5 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.

12.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

12.7 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.

## **LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE**

12.8 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.

12.9 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**

12.10 It is important that a licensing authority should give 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.

## **IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES' COURTS**

12.11 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**

12.12 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.



London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 3 June 2014

**Subject:** Wimbledon Rugby Club, Barham Road, SW20 0ET

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 2012). Chapter 12 of the guidance is attached as Annex B to this notice.

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# Annex A

## Determination

The Licensing Sub-Committee decided to grant the Premises Licence application made by Urban Events Sports Ventures UK Limited for Wimbledon RFU for the “Legends Rugby Festival 2014” events at the Wimbledon RFU site at Barham Road, Wimbledon SW20 0ET to the hours as sought in the application, subject to the conditions offered and agreed with the Responsible Authorities as set out below for the period from Friday 11th July 2014 18:00 – 23:00 and Saturday 12th July 2014 10:00 – 00:00.

### Licensable Activities

Live Music, Recorded Music, Retail Sale of Alcohol

Friday 11<sup>th</sup> July 18:00 – 23:00

Saturday, 12<sup>th</sup> July 10:00 – 00:00

### Conditions

The licence is subject to the 14 conditions agreed with Environmental Health but with the insertion of 60 minute sound checking rather than 90 minutes in item 7. These conditions are:

- 1. The Licensee shall appoint a suitable, qualified and experienced noise control consultant, to the approval of the Licensing Authority, as soon as is practical prior to the event, the noise control consultant shall liaise between all parties including the licensee, promoter, sound system suppliers, sound engineers, and officers of the Councils Environmental Health Department.*
- 2. The noise control consultant shall carry out a survey to determine the background noise levels (as defined by the Code of Practice on Environmental Noise Control at Concerts) at appropriate locations. The information from this survey including designated monitoring positions to be made available to the Licensing Authority at least one week before the festival.*
- 3. A noise propagation test shall be undertaken prior to the performance in order to set appropriate control limits at the sound mixer positions. The sound system(s) shall be configured and operated in a similar manner as intended for the event. The sound source shall be similar in character to the music produced during the event.*
- 4. A detailed site plan including location of stage/s, tents where noise making equipment is sited, to be made available to the Licensing Authority at least one week before the festival and to be agreed by the Environmental Health team.*
- 5. The control limits set at the mixer positions shall be adequate to ensure the music noise level shall not at any noise sensitive premises exceed 65 dB(A) at the nearest external facade over a fifteen minute period throughout any rehearsal, sound check or performance. The sound engineer/consultant shall remain on location throughout the duration of performance and be in overall control over any artists' dedicated sound engineers.*
- 6. The Licensee shall ensure that the promoter, and all sound engineers are informed of the sound control limits and that instructions from the noise control consultant*

*regarding noise levels are implemented.*

- 7. The noise control consultant shall, at **60** minute intervals, monitor the noise levels at the designated positions and advise the sound engineer accordingly to ensure that the noise limits are not exceeded. Officers from the Council's Environmental Health team shall have access to the results of the noise monitoring.*
- 8. The Licensee shall ensure that all requests from the noise consultant and Councils Environmental Health officers are complied with.*
- 9. Announcements to be made at the end of the evenings' entertainment asking patrons to leave quietly.*
- 10. Details of a telephone number permanently manned during performances to be made available to the Councils Environmental Health Department prior to the event.*
- 11. At least one week prior to the event a leaflet drop is to be made to households in surrounding premises nearby. The addresses notified must be supplied to the Licensing and Environmental Health Department, and the leaflet to include the date and times of performances, a description of each performance, and a contact telephone number.*
- 12. The performers likely to be noisiest such as pop groups, singers, bands and choirs etc. shall be scheduled to perform so as to avoid the most sensitive times of late evening.*
- 13. Music must cease at 23.00pm*
- 14. The event shall end and members of the public shall vacate the event site no later than Midnight.*

The Licensing Sub-Committee noted that the Applicant and residents association have a good working relationship and that they will continue to discuss and agree any outstanding issues, which could include traffic issues etc, subject to proper authorisation (which is outside the remit of this determination). Accordingly, it is recommended that Wimbledon RFU agree hours, licensable activities and conditions for the residents and residents association so that they can submit a Premises Licence for this event without the need to revert to the Licensing Sub-Committee each year.

In terms of capacity, the Licensing Sub-Committee noted that neither the Police, nor Environmental Health nor the London Emergency Planning Authority had put in representations or considered the capacities mentioned in the agenda documents, and in these circumstances the panel cannot usefully consider the capacities proposed. It remains the licence holder's responsibility to have suitable door supervision (SIA) for those on site and not to exceed the capacity that the applicant's or Wimbledon RFU have assessed in their Risk Assessment for the site and the proposed events.

## Reasons

The reasons for this decision were that:

There was no proper evidence to indicate that nuisance occurred last year;

There was agreement between all parties that the event went well last year with the same proposed measures (with some minor amendments) being adopted again, that indicated that the event would mirror that last year;

It was accepted that nearly all issues had been agreed and there was a good working relationship between the management of the event and residents.

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