

**Merton Council**  
**Licensing Sub-Committee**  
**11 May 2016**  
**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:** 16 May 2016

**Subject:** Jimmy's World grill and Bar, Unit B, 122 The Broadway, London, 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.

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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](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 Sub-Committee considered an application by Park Regency Limited for a new Premises Licence for Unit B, 122 The Broadway, Wimbledon, SW19 1RH with the following licensable activities and opening hours:

Sale of alcohol on premises: 10.00 to 23:00 Mondays to Sundays

Opening Hours from 10.00 to 23:00 Mondays to Sundays.

The Licensing Sub-Committee, in reaching its decision, had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, that complied with the Licensing Act 2003 and its Regulations, have regard to the current Secretary of States' Home Office section 182 Guidance, have regard to the Council's Statement of Licensing Policy, and comply with parameters provided by relevant case law.

The Licensing Sub-Committee decided to grant the application with the following Licensable Activities and Hours:

Retail Sale of Alcohol 10.00 to 23:00 Mondays to Sundays

Opening Hours: 10.00 to 23:00 Mondays to Sundays.

Subject to the following Conditions imposed on the Premises Licence:

### Conditions agreed with Metropolitan Police:

1. 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 will 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 of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or an authorised officer throughout the preceding 31 day period. The CCTV system should be updated and maintained according to police recommendations.
2. 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 premise is open to the public. This staff member must be able to show a Police or authorized council officer recent data or footage with the absolute minimum of delay when requested.
3. A proof of age scheme, such as Challenge 21, shall be operated at the premises where the only acceptable forms of identification are (recognised photographic identification cards, such as a driving licence or passport / Holographically marked PASS scheme identification cards).
4. A log shall be kept detailing all refused sales of alcohol. The log should

include the date and time of the refused sale and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by the police or an authorised officer of the Council at all times whilst the premise is open.

5. An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police, which will record the following:
  - 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 or searching equipment or scanning equipment
  - f) any refusal of the sale of alcohol
  - g) any visit by a relevant authority or emergency service.
6. The sale and supply of alcohol shall only be as ancillary to a meal being taken at the restaurant.

Conditions agreed with LBM Public Health:

7. No super-strength beer, lagers or ciders, or spirit mixtures of 6.5% ABV (alcohol by volume) or above shall be sold at the premises.
8. Alcohol shall be sold to customers by waiter/waitress service only.
9. Alcohol shall only be sold to a person sitting down eating a meal and for consumption with that meal.
10. No sales for consumption off the premises permitted.
11. No drinks to be taken off the premises in open containers e.g. glasses or open bottles (preventing use of containers as weapons, and to prevent consumption of alcohol in surrounding streets after individuals have left the premises).
12. Drinkaware will be promoted through the business website and drinking sensibly and appropriately will feature on any menus and marketing literature.
13. Any promotional material online or elsewhere will adhere to the Portman Group Code of Practice (<http://www.portmangroup.org.uk/codes/alcohol-marketing/code-of-practice/code-of-practice>).
14. Refusals of alcohol sales shall be recorded in a log and made available for inspection by an authorised officer of the council or police when requested.
15. A proof of age policy such as Challenge 25 shall be operated at the premises whereby any individual suspected to be under age will be

required to provide a recognised form of photographic identification.

Conditions Offered by Applicant:

16. The sale and supply of intoxicating liquor shall only be as ancillary to a meal being taken at the restaurant.
17. Responsible management controls, for example capacity levels. Ongoing staff training including identification of anti-social or unusual behaviour. Training and supervision of all staff to adopt best practice, adhere to the Portman Group On Drinks strategy. Use of proof of age scheme, internal and external lighting checked regularly.
18. Prominent, clear and legible notices are displayed at all exits requesting customers to respect the needs of local residents and to leave the premises and the area quietly.
19. The placing of refuse - such as bottles - into receptacles outside the premises shall take place at times that will minimize the disturbance to nearby properties.

The Designated Premises Supervisor or his Assistant Manager or a Personal Licence Holder shall be present at all times the premises are open and trading.

Recommendations

1. The premises operates a 10pm cut off for access to the premises.
2. The premises closes the use of the outside area by customers at 10pm, save for smokers.
3. The premises operates the agreed Smoking area use and Smoking Policy.

## Reasons

The Licensing Sub-Committee gave the following reasons in granting the premises licence:

1. The Cumulative Impact Policy applied to this premises, as follows:
  - Paragraph 7.6 relating to Wimbledon Town Centre,
  - Paragraph 7.8 (“It will be for the applicants to show in their operating schedules that their proposals will not add to the cumulative impact already being experienced. Responsible authorities and/or interested parties will need to see the steps proposed by an applicant in order to decide whether to submit representations. The presumption will be that where proposed operations are material to the policy they will normally be refused, however, the process allows applicants to rebut the presumption in their applications, and to make the case before a licensing sub-committee. Where an application is material to the special policy the burden of proof lies on the applicant to rebut the presumption”), and
  - Paragraph 7.10 (“This special policy is not absolute. The circumstances of each application will be considered properly and it is possible for licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted. As a consequence of the presumption that underpins the special policy such cases are likely to be exceptional. Following receipt of representations in respect of a new application for or a variation of a licence or certificate, the Licensing Authority will consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case.”) and
  - Paragraph 7.13 “This special policy does not impose quotas – based on either the number of premises or the capacity of those premises – that restrict the consideration of any application on its individual merits or which seek to impose limitations on trading hours in particular areas. Quotas that indirectly have the effect of pre-determining the outcome of any application will not be used because they have no regard to the individual characteristics of the premises concerned. Public houses, night clubs, restaurants, hotels, theatres, concert halls and cinemas all could sell alcohol, serve food and provide entertainment but with contrasting styles and characteristics. Proper regard will be given to those differences and the differing impact they will have on the promotion of the licensing objectives”).

It was considered that the application sought to re-impose the terms of the lapsed Premises Licence and its hours, licensable activities and conditions.

This replacement of the existing Premises Licence would not see increased cumulative impact from the grant of the application, and together with the conditions offered, agreed, and imposed would address the rebuttable presumption.

The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008 was considered during deliberations and the Licensing Sub-Committee noted the evidence presented or amongst the representations and evidence presented to the Licensing Sub-Committee by the Interested Parties.

The reduction of the hours to end at 23:00 Mondays to Sundays addressed the concerns of the Licensing Sub-Committee and went some significant way to address the concerns of residents..

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (June 2014).**

#### **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.