

Merton Council

Licensing Sub-Committee

20 June 2016

Supplementary agenda

- 4 The Old Frizzle variation application
 Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 21 June 2016

Subject: The Old Frizzle, 74-78 The Broadway, SW19 1RQ

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.hmsso.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 Sub-Committee decided to grant the Premises Licence variation application, as amended, as follows:

- A. The start time for Licensable Activities and opening time on Sundays is amended to 10:00.
- B. The Licensable Activity of the Sale by Retail of Alcohol on Fridays and Saturday is amended to 09.00 to 00.00 with the imposition of a condition as follows: “The sale by retail for alcohol for consumption on the premises between the hours of 09:00 and 10:00 hours on Friday and Saturday shall be permitted to persons who have paid for and taken a substantial meal”.
- C. The Licensable Activity of the Sale by Retail of Alcohol shall be permitted off the premises, with the imposition of a condition as follows: “The sale by retail of alcohol off the premises shall only be permitted to persons who have paid for and taken a substantial table meal or who are residents of the accommodation at the premises in accordance with the days and times authorised on this premises licence for on sales”.
- D. The following existing conditions were removed from the Premises Licence:
 1. “Patrons under the age of 18 shall not be permitted into the premises.”
 2. “Any patron who appears to be under the age of 18 shall be asked for a form of ID before being allowed to remain on the premises.”
 3. “SIA registered door staff shall be on duty from 23:00 to 00:30 Thursday nights.”
- E. The following conditions were added to the Premises Licence:
 1. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirement of a Metropolitan Police Crime and 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 of 31 days with time and date stamp. Recordings shall be made available immediately upon the request of the Police or authorised officer throughout the preceding 31 day period. The CCTV system should be updated and maintained according to reasonable 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 premises is open to the public. The staff member must be able to show the Police or authorised Council Officer recent data or footage with the absolute minimum of delay when requested.
 3. 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 incidents or disorder
 - d) Any faults in the CCTV system
 - e) Any visits by the emergency services.
4. A proof of age scheme shall be operated by the premises where the only acceptable forms of identification are recognised photographic identification cards (such as driving licence or passport) or holographical marked pass scheme identification cards.
 5. 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 made available for inspection at the premises by the Police or authorised Officer at the Council at all times whilst the premises is open.
 6. Drinkaware will be promoted on the premises' website and drinking sensibly and appropriately will feature on new menus and marketing literature, which relates to the sale of alcohol.
 7. Any promotional material online or elsewhere will adhere to the Portman Group Code of Practice.

Reasons

The Licensing Sub-Committee gave the following reasons for granting the Premises Licence:

The Licensing Sub-Committee noted that, following amendment to the variation application, all representations from the Responsible Authorities and the majority of the Interested Parties were withdrawn prior to the meeting, except those from:

- Councillor Chirico
- Mr and Mrs Warner
- Mr/s Moussa

The Cumulative Impact Policy applied to this premises as it was located in the Wimbledon Town Centre (paragraph 7.6), and the Premises Licence holder was required to overcome the rebuttable presumption that the application would be refused by showing that the application would not increase cumulative impact. The following paragraphs of the Council's Statement of Licensing Policy applied to the application, 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”).

The Licensing Sub-Committee considered that the amended Premises Licence variation would not result in increased cumulative impact from the grant of the application, and the conditions offered, agreed, and imposed would also overcome the rebuttable presumption.

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.

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