

Merton Council

Licensing Sub-Committee

11 July 2016

Supplementary agenda

4 Chango, 12 High Street, London, SW19 5DX

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- Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 12 July 2016

Subject: Chango, 12 High Street, London, SW19 5DX

Having considered relevant applications, notices and representations together with any other relevant information submitted to the 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 (March 2015). 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

That that application be granted as follows:

- Sale of alcohol from 12:00 to 21:00 hours, Monday to Sunday.

Subject to the following conditions:

1. There shall be no sale of alcohol for consumption off the premises.
2. Alcohol shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such person as an accompaniment to a sit-down meal, to be consumed on the premises.
3. The sale of alcohol will be limited to the sale of wines produced in Argentina only.
4. The Premises Licence holder will adopt, promote (by prominent display of posters and other warnings at the premises) and enforce a Challenge 25 Policy for the sale of alcohol. Any person that appears to be under the age of 25 will be requested to produce approved Home office identification such as Passport/Driving licence, Military ID or through other PASS accredited identification scheme.
5. A CCTV system is to be installed and maintained on the premises, to cover all areas including the common entrance area. 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 retained for 30 days and shall be provided to a Police or authorised officer upon request. All recordings will display the correct date and time of the recording.
6. Staff shall ensure that patrons do not congregate outside the premises or in the communal entrance area.
7. No alcohol shall be taken off the premises and no person shall be allowed to leave the premises whilst in possession of any drinking vessel, or open glass bottle, whether empty or containing any alcohol.
8. All staff engaged or to be engaged in the sale of alcohol on the premises shall receive the following training in age restricted sales:
 - a) Induction training which must be completed and documented prior to the sale of alcohol by the staff member.
 - b) Refresher reinforcement training at intervals no more than six months.

Training records will be kept at the premises available for inspection by a Police officer or Council officer upon request.

9. All cashiers shall be trained to record refusals of sales of alcohol in a refusals register. The register will contain:
 - (a) Details of the time and date that the refusal was made;
 - (b) The identity of the staff member refusing the sale;
 - (c) Details of the alcohol the person attempted to purchase.

The register will be available for inspection by a Police or Council officer on request.

Reasons

The Sub-Committee carefully considered the representations contained in the Agenda papers and those submitted to it in the meeting. The Sub-Committee noted that there were six representations from members of the public, but no representation from any of the responsible authorities.

The Sub-Committee considered that the absence of representations from the responsible authorities should weigh heavily on its decision in accordance with the decision in *Daniel Thwaites Plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin)*.

The Sub-Committee had regard to Merton's Statement of Licensing Policy, and in particular to section 7 which deals with cumulative impact which applied to these premises as it was located within the Wimbledon Village Cumulative Impact Zone. The Sub-Committee noted paragraph 7.10 which outlines their duty to consider the circumstances of each application on its own individual merits.

In making their decision, the Sub-Committee took advice from the Legal Officer regarding the first instance decision in *Brewdog Bars Limited v Leeds City Council (6 September 2012, unreported)* and how an application for a new premises licence in a cumulative impact zone should be considered.

The Sub-Committee noted that the premises had been trading as food led operation specialising in Argentinian empanadas, that the Applicant intended to sell only Argentinian produced wine that would only be sold as part of, and ancillary to, a table meal.

The Sub-Committee considered that the proposed management of the premises and the application limiting sales of alcohol to on sales only and limited to the sale of a very limited range of alcoholic drinks, together with a prohibition on any alcohol being taken off the premises would not increase the cumulative impact.

The Sub-Committee considered that in the individual circumstances of the case and given the nature of the operation at, and intended to continue at, the premises, the Applicant had demonstrated that there would be no negative cumulative impact on one or more of the licensing objectives and that an exception to the Cumulative Impact policy applied. Accordingly, the Sub-Committee decided to depart from its special policy.

The Sub-Committee agreed that the conditions and revised hours for the sale of alcohol offered by the Applicant, together with the conditions imposed by the Sub-Committee were prudent to promote the licensing objectives and make sure that the predominantly food led operation would remain, despite the relaxation, and to make sure that vertical drinking does not replace seated consumption and to ensure that there would be no negative cumulative impact on one or more of the licensing objectives.

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.