

# **Merton Council**

## **Licensing Sub-Committee**

**17 July 2017**

### **Supplementary agenda**

6	Notice of Determination - Subway	1 - 8
7	Notice of Determination -Chango	9 - 14

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 24 July 2017

**Subject:** Subway, 6 Hartfield Road, Wimbledon, SW19 3TA

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 (March 2015). 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 VPSP Ltd, a franchisee of the Subway franchise, for a new Premises Licence for “Subway” at 6 Hartfield Road, Wimbledon, SW19 3TA to permit the licensable activity of the sale of Late Night Refreshment from 23.00 to 02.00 on Fridays and Saturdays.

Representations were received against the application from the Metropolitan Police, and the Wimbledon East Hillside Residents’ Association. The premises is located within the Wimbledon Town Cumulative Impact Zone and was subject to the Cumulative Impact Policy contained in the Council’s Licensing Policy. It required the applicant to overcome the rebuttable presumption that required refusal unless the applicant could show that there would be no increase in cumulative impact from the extension and operation proposed.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, that complied with the Licensing Act 2003 and its regulations and the licensing objectives, had regard to the current Home Office Section 182 Guidance, as well as to the London Borough of Merton’s Statement of Licensing Policy, and complied with any parameters provided by relevant case law.

The application was refused.

## Reasons

The Licensing Sub-Committee looked carefully at the application and its supporting papers, the representations contained in the agenda papers, and the oral evidence submitted at the hearing by all parties.

Mr Kadir, the applicant's manager, stated that

- a) He would not be selling alcohol, and that sales were mostly of salad with sandwiches heated up in a toaster or microwave, and that customers only stayed in the store for a short time and then would leave with their food.
- b) The store was monitored by Head Office, and that when he took over the management of the store a year previously, he was under the impression that there was a Premises Licence permitting Late Night Refreshment until 2am on the following Fridays and Saturdays was in place [the Police Licensing Officer approached the Head Office, who explained all licensing matters were the responsibility of its franchisees].
- c) There had been no incidents in the store, when the hours went up to 11pm.
- d) He would consider hiring security staff if the Licence was granted, but that he was concerned about the financial implications of having SIA door staff.
- e) There was 24/7 CCTV in the store.
- f) He believed the store being open would be of benefit to the local area and that any issues in the area were not due to his store.

The Metropolitan Police Borough Licensing Officer, PC Russ Stevens, objected to the application and sought the refusal of the application due to the saturation in the area of similar premises pursuant to the Cumulative Impact Policy for Wimbledon and made the following representations:

- 1) PC Stevens had visited the store on two occasions and found the premises selling hot food to customers after 11pm, and had requested that Mr Kadir contact him to discuss such unlawful unauthorised licensable activities, but this had not taken place.
- 2) The current saturation of licensed premises selling late night refreshment in the immediate vicinity of the premises was a cause for great concern and if added to would result in an increase cumulative impact. It involved the following:
  - a. The premises is next door to the Prince Regent Public House on one side and The Slug and Lettuce bar on the other;
  - b. KFC and Burger King are both located close by, and both have conditions on their licences regarding security staff;
  - c. After the pubs and bars closed at 11/midnight the footfall outside Subway was very high and it was important that those people returned home rather than being encouraged to stay in the area to avoid any disturbances;
- 3) PC Stevens advised the Licensing Sub-Committee that he was aware of 1 incident of an assault on a member of staff in Subway in March 2017. Mr Kadir responded that that was correct, but that this had happened during the daytime.
- 4) PC Stevens had contacted Subway Head Office and had been advised that the responsibility for individual stores was that of the owners of each store.
- 5) There had recently been an incident in Burger King nearby resulting in the assault of a Police Officer and any additional premises opening would further strain Police resources.
- 6) The section of Mr Kadir's application regarding promoting the Licensing

objectives or offering conditions to address Police or Licensing Sub-Committee concerns was left blank.

Ms Leigh Terrafranca for Wimbledon East Hillside Residents' Association (WEHRA) objected to the application and made the following representations:

- There were serious issues with the late night economy and saturation of premises trading late at night in the immediate area around the premises;
- She did not believe that anyone from the local area would be visiting Subway that late at night;
- Whilst she appreciated what Subway contributed to the local economy during the day, it is negative impact that would apply at night;
- It was a challenging location where glass is regularly smashed and there are known issues with drugs and alcohol, and therefore adding extra hours and having another premises trading late into the night would inevitably contribute to cumulative impact and see customers resorting to this premises and staying in the area late at night rather than returning home.

Mr Kadir stated that he did not have a shutter on his shop window and therefore the store needed to be open for Late Night Refreshment to ensure the security of the store, and reiterated his request that the Premises Licence be granted without conditions.

In view of the evidence in the Agenda papers and the presentations from the Metropolitan Police Licensing Officer and WEHRA about the Cumulative Impact on arising from the existing issues in the area and that would arise if granted the extension, the Licensing Sub-Committee decided that it would add to Cumulative Impact and the Premises Licence was therefore refused.

The Licensing Sub-Committee gave the following reasons for refusal:

- 1) Mr Kadir did not present any evidence to overcome the rebuttable presumption, and this proposed extension to opening hours would, in the Committees' view, add to cumulative impact.
- 2) The conditions proposed in respect of SIA door supervisors would not address the very serious saturation issues that occur in the specific area of the central location between the train station and the pubs, bars and restaurants in the immediate area.
- 3) The Licensing Sub-Committee is there to promote the Licensing objectives (the prevention of crime and disorder, the Promotion of public safety, the prevention of public nuisance, and the protection of children from harm), not to consider the financial viability of the applicant's operation, not to apply justification of the grant of a Licence purely to secure windows (!) or an argument (that contradicts known research) that late night food only operations reduce cumulative impact.
- 4) The Licensing Sub-Committee considered that the proposed extension of hours from 11pm – 2am would attract and lead to further issues for the Police to deal with late at night.

The Licensing Sub-Committee noted the concerns of WEHRA and appreciated their input.

## **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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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 24 July 2017

**Subject:** Chango, 12 High Street, Wimbledon, SW19 5DX

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 (March 2015). Chapter 12 of the guidance is attached as Annex B to this notice.

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# Annex A

## Determination

The Licensing Sub-Committee considered an application by Empanadas Tucumanas Ltd T/A Chango in respect of Chango Restaurant at 12 High Street, Wimbledon, SW19 5DX for a variation of its Premises Licence.

The applicant applied for the following amendment of its licensable activities and hours:

- alcohol sales on and off the premises from 10:30 to 22:30 Sundays to Thursdays, and 10:30 to 23:30 on Fridays and Saturdays;
- provision of recorded music from 10:30 to 22:30 Sundays to Thursdays, and 10:30 to 23:30 on Fridays and Saturdays (low level background ambient music).

Representations were received from local residents.

The Licence was granted subject to the following hours, licensable activities, and conditions:

### Licensable Activities:

Retail Sale of Alcohol (on sales only) 10:30 to 22:30 Sundays to Thursdays and 10:30 to 22:30 Fridays and Saturdays;

The Opening Hours to remain the same (10:30-23:00 Monday to Sunday);

In relation to Off-sales, Condition 1, Annexe 3 is to be amended to read "There should be no sales of alcohol for consumption off the premises, save for with or ancillary to takeaway deliveries of meals".

The following conditions were offered by the applicant and imposed by the Licensing Sub-Committee:

### Offered Conditions:

1. There will be no drink promotions and no alcohol will be served without the purchase of food.
2. A Challenge 25 proof of age scheme shall be operated at the premises.
3. There shall be a monthly liaison with the local police licensing officer to monitor issues and take advice on improvements.
4. The premises shall only allow entry to those it is capable of seating. Anyone else allowed entry will be limited to those waiting for seating or buying food from the premises.
5. No children shall be on the premises after 7:30pm

## Reasons

The Licensing Sub-Committee carefully considered the Agenda papers (including the application and representations) and the oral evidence submitted at the hearing by all parties.

The Applicant stated that:

- He had owned the premises for 2 years and an alcohol licence had been held since 2016. The Applicant had also been granted 6 Temporary Event Notices and had not experienced any issues of any sort at the premises in this time.
- The Applicant had applied for the variation to enable him to have a second sitting in the restaurant. An extension to the Premises Licence to allow alcohol to be sold to customers served a drink during or after their meal would allow later sittings, after the current stop time of 9pm. The Applicant was given advice from the Legal Officer to ensure that no food was served after 11pm as this would require a licence for Late Night Refreshment (where there was not permission in place).
- The Applicant advised that he was flexible and was happy to modify the time to 22:30 as suggested by the residents making representations.

The main objections put forward by local residents were that:

- The premises is situated within the Wimbledon Village CIZ (Cumulative Impact Zone) and conditions had been put on the original licence for this reason.
- Whilst they understood the business' desire to expand a balance needed to be struck with the Local Community.
- Residents were concerned about the request for off-sales of alcohol, and did not want to present the risk of customers purchasing alcohol and consuming it outside the premises or on their journey home.
- Residents requested that off sales be limited to deliveries of alcohol with food / meals as part of a takeaway package only.

In making their decision, the Licensing Sub-Committee felt that the proposals were proportionate and appropriate.

The Licensing Sub-Committee noted that the Licence holder had complied with the existing conditions and hours on the Premises Licence and there had been no issues of public nuisance or disorder that responsible authorities had reported.

The Licensing Sub-Committee advised in closing that the communication and co-operation with the local community had been good in this application.

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