

Merton Council
Licensing Sub-Committee
31 July 2017
Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 4 August 2017

Subject: 14 Leopold Road, London, SW19 7BD

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.

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

The Licensing Sub-Committee considered an application by Ersan Ozdemir, Ramadan Ozdemir, Enver Ozdemir and Hasan Ozdemir in respect of 14 Leopold Road, nr Wimbledon, London SW19 7BD for a new Premises Licence.

The applicants applied for the following hours and licensable activities:

Retail sale of Alcohol:

10:00 to 23:00 Mondays to Saturdays, and

10:00 to 22:30 on Sundays.

Opening Hours:

10:00 – 00:00 Monday to Saturday and

10:00 – 23:30 on Sundays.

A Responsible Authority Representation was received from the Public Health Department, whose representation was withdrawn after agreement on conditions. A Representation was received from WEHRA (Wimbledon East Hillside Residents' Association).

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

Licensable Activities:

Retail Sale of Alcohol (on sales only)

10:00 to 23:00 Mondays to Saturdays and

10:00-22:30 on Sundays.

Opening Hours:

10:00 to 23:00 Mondays to Thursday

10:00 to 23:30 Friday and Saturday

10:00 to 22:30 on Sunday

Conditions:

The Premises Licence was subject to the following Conditions:

Offered Conditions:

1. All staff involved in the sale of alcohol shall be trained in the responsible retailing of alcohol. A record of their training, including the dates that each member of staff is trained, shall be available for inspection at the premises on request by the council's authorised officers or the police.
2. If a pub watch is in operation in the local area, management of the premises will join the pub watch and implement any initiatives that pub watch recommends.
3. The premises will operate a zero tolerance approach to drugs. Drugs will not be permitted into the premises. Any detection of drug use within the premises will be reported to the police and recorded in the premises incident record log book.

4. The supply of alcohol at the premises shall only be to a person taking a table meal there and for consumption by such a person ancillary to their meal.
5. Children under 18 will only be permitted onto the premises under the supervision of an adult.
6. A duty managers' mobile number/email will be visible and on display to members of the public/patrons to raise any complaints in relation to the operation of the premises.
7. There shall be no movement of commercial waste (to include bins, bottles, or rubbish) at the premises between the hours of 21:30 until 08:00 the following day.
8. At the end of the terminal hour of licensable activities at the premises, staff will carry out a check of the exterior of the premises and sweep up and collect any discarded litter attributable to the operation of the premises.
9. Notices regarding noise nuisance shall be displayed at prominent and visible locations within the premises.
10. The licensee shall ensure that no noise or vibration associated with any licensable activities emanating from the licensed premises is perceptible at or within the site boundary of any adjoining residential accommodation.
11. The Licensee shall arrange, using all reasonable endeavours, at least 1 meeting each calendar year with local residents and residents' associations in the immediate vicinity of the premises (at their own expense) to discuss matters of mutual concern. The minutes of these meetings shall be circulated to all those attending.

Conditions Offered in the Operating Schedule of the Application:

12. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Police Licensing 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. Viewing of recordings shall be made available immediately upon the request of Police or authorised council officer throughout the entire 31 day period.

Conditions agreed with Public Health and imposed by the Licensing Sub-Committee:

13. Drinkaware will be promoted through the business website and drinking sensibly and appropriately will feature on any menus and marketing literature.
14. A log shall be kept at the premises and record all refused sales of alcohol for reasons that the person is, or appears to be, under 18 years of age or the person is intoxicated. The log shall record the date and time of the refusal and name of the

member of staff who refused the sale. The log will be made available on request by the Police or an authorised officer of the local authority.

15. A 'Challenge 25' Scheme shall operate to ensure that any person attempting to purchase alcohol who appears to be under the age of 25 shall provide documented proof that he/she is over 18+ years of age.
16. The Premises Licence Holder shall ensure that full training is provided to staff on commencement of employment on their Challenge 25 policy and the law relating to the sale of alcoholic products and any system or procedures that they are expected to follow in the course of dealing with these goods.

Conditions imposed by the Licensing Sub-Committee:

17. The rear garden area shall close to customers at 21:00 each night. The premises licence holder shall ensure that any patrons eating, drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance.
18. A box for disposal of cigarette ends will be installed outside the entrances / exits to premises.

Reasons

The Licensing Sub-Committee carefully considered the Agenda and Supplemental Agendas (including the application, its supporting papers, additional correspondence between the parties and the Representations) and the oral evidence submitted at the hearing by the parties, including additional material submitted on the day by the Applicant.

The Applicant stated that:

- The premises would be a new family run restaurant/bar, serving food and alcohol.
- The Applicant felt that they had provided conditions robust enough to mitigate any potential issues, and these had been proposed following discussions with WEHRA and Public Health (as well as the Police in pre-application discussions).
- The Applicants were responsible operators who were part of the community, were an independent business, and confirmed that they were entirely independent from any other local businesses.
- They intended to use the rear outside area for smokers to avoid any litter or disruption from smokers congregating at the front of the premises
- The Applicant asked the Licensing Sub-Committee 30minutes to allow for dispersal, as they felt this would be preferable to all patrons in the parade leaving the premises together at once.

The main objections put forward by WEHRA were:

- The area is a residential area with many families with young children living nearby, who would be woken up by noise and disturbance late in the evening.
- That alcohol sales should be ancillary to food to prevent patrons entering the premises only to drink, which could cause displacement of drinkers from the Town Centre.
- There was a potential for noise breakout and the travel of cigarette smoke from the outside area to close by residential properties.

The Licensing Sub-Committee carefully considered the Representations put forward by local residents, and discussed their concerns.

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

The Licensing Sub-Committee noted that the premises is located in a highly residential area with residential properties backing onto the rear garden of the premises.

The Licensing Sub-Committee considered the case of Thwaites and were persuaded that the hours imposed considered the needs of local families.

The Licensing Sub-Committee noted that most of the evidence of WEHRA concerns submitted were Planning orientated and therefore would be enforcement issues that should be considered by the appropriate Council Planning Enforcement Officers. It was not for the Licensing Sub-Committee to consider planning matters / issues (Blackwood). If there were any issues once the premises was operational, then that should be brought to the attention of officers or through a Review to the Licensing Sub-Committee.

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.