

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 12 May 2017

Subject: "Eastern Electrics Festival" at Morden Park, London Road, Morden, SM4 5QU

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

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing/>

Annex A

Determination

We Are The Fair Ltd sought a time limited Premises Licence for 5th August 2017 only for the “Eastern Electrics Festival” to be held in Morden Park, London Road, Morden, SM4 5QU. Responsible Authority representations were received from the Metropolitan Police (including the Police Licensing Officer Sgt Russ Stevens, the Borough Commander, and the Police’s London Licensing Unit), the London Borough of Merton’s Licensing Authority (Barry Croft, the Licensing Manager), the London Fire Brigade (LFEP), London Borough of Merton Public Health Department, and the London Borough of Merton Environmental Health EH Pollution Manager.

The application was granted to the hours of licensable activities sought by the Applicant limited to the single event on 5th August 2017 for the following licensable activities and hours:

- Licensable Activities: live music, recorded music, performance of dance, anything of similar description to live music, recorded music, performance of dance and the retail sale of alcohol (on sales only) 11:00 – 22:00.
- Opening Hours: The site will be open between 11:00 until 23:00.

The capacity for festival goers, guests, VIP guests, performers and staff will be limited to 17,000. The Licensing Sub-Committee considered that this event can be managed by the Applicant because of their track record in recent years of managing 12,000 in 2014, 15,000 in 2015, 17,000 in 2016. The Licensing Sub-Committee took note of the concerns of the Police and the Licensing Authority and the evidence they supplied specifically on capacity.

The Premises Licence is subject to the following conditions:

A. Agreed Conditions: Conditions as offered, agreed and extracted from the Applicant’s Operating Schedule in their Premises Licence Application (pages 87-98 of the Agenda).

B. Metropolitan Police Conditions:

1. The Event Safety Management Plan must be signed off by the Safety Advisory Group earlier than 6 weeks prior to the event.
2. The Alcohol Management Plan must be signed off by the Safety Advisory Group earlier than 6 weeks prior to the event.
3. The Traffic Management Plan must be signed off by the Safety Advisory Group earlier than 6 weeks prior to the event.

C. Licensing Authority Conditions:

1. All licensable activities (sale by retail of alcohol and regulated entertainment) shall finish at 22:00 hours.

2. The event site shall be closed and clear of patrons / members of the public by 23:00 hours.

4. An Event Safety Management Plan shall be submitted for the approval of the London Borough of Merton's Safety Advisory Group no later than six weeks prior to the date of the event.

5. An Alcohol Management Plan shall be submitted for the approval of the London Borough of Merton's Safety Advisory Group no later than six weeks prior to the date of the event.

6. A Traffic Management Plan shall be submitted for the approval of the London Borough of Merton's Safety Advisory Group no later than six weeks prior to the date of the event.

D. Noise Pollution Conditions:

1. A qualified and suitably experienced noise management consultancy will be appointed to produce a noise management plan for the event. This noise management plan will be submitted 6 weeks prior to the event for approval by the Council's Pollution Team and include; target noise levels at agreed receptor points, noise mitigation and control measures for the event, during event monitoring arrangements, a process for dealing with complaints and compliance arrangements to ensure target noise levels are adhered to.

2. Noisy activities associated with the event will be carried out within the Council's standard Code of Practice for Construction Sites.

E. London Fire Brigade (LFEPA) Conditions:

The Applicant agreed to amend the Event Fire Risk assessment as detailed in the London Fire Brigade letter dated 13 April 2017 to the Licensing Dept, to address:

1. Access and egress to the site for emergency vehicles to provide sufficient detail to cover the risk and reduce exposure and risk to the public.
2. Secure marshalling points for multiple vehicles in the event of a larger scale incident and potential use of the main car park.
3. PFB co-responding arrangements to be added and disseminated to control and marshalling staff and onsite staff management of access for emergency situations, especially cardiac or respiratory emergencies.

F. The G4S Crowd Management Plan, the Noise Management Strategy Plan, the Bar and Alcohol Management Plan and the Egress Plan must be signed off by the Safety Advisory Group six weeks prior to the event.

G. ID scanning shall be included within the Event Safety Management Plan and will need to be agreed between the SAG and Premises Licence holders. For the avoidance of doubt a reasonable level of random ID scans should be

provided (1 in 20 is too low, whereas ID scans of all attendees appears to be unmanageable).

H. In the Traffic Management Plan, the issue of the potential closure of part of London Road must be addressed.

I. In the Noise Management Strategy Plan, if weddings are held that day, the issue of a noise shield for the Registry Office or other attenuation should be considered.

J. The Noise Management Strategy Plan will consider staggering use of stages by the Premises Licence holders or operators of those stages to reduce noise when weddings are in progress.

It was the Licensing Sub-Committees' understanding that the Safety Advisory Group includes those Responsible Authorities objecting to the Application.

Reasons

The Licensing Sub-Committee carefully considered the representations contained in the agenda papers, supplemental agenda and additional papers submitted before the meeting and the oral evidence submitted at the hearing by all parties.

The Licensing Sub-Committee carefully balanced the interests of all parties and discussed at length all aspects and merits of the application to make a proportionate and appropriate decision based on the evidence provided.

The Licensing Sub-Committee noted the concerns of both the Metropolitan Police and the Licensing Authority in relation to numbers in what was an untested and untried venue, and agreed that the Applicant's suggested limit of 20,000 should be reduced on the basis that the Applicant had not held the Eastern Electrics Festival in the sort of environment proposed other than to up to 17,000 attendees in a similar park venue last year, where the Responsible Authorities accepted that they could manage such numbers and that they were responsible operators. It was considered that the representations from the Police and Licensing Authority in respect of capacity being set at 10,000 persons required more detail as opposed to the detail provided in the prevention of public nuisance section of the Police Representation dated 21st December 2016 or the Licensing Authority letter dated 14th April 2017, pursuant to the case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008*.

The Licensing Sub-Committee considered that the various conditions imposed to address concerns relating to the Licensing Objectives of the prevention of crime and disorder, promotion of public safety, and prevention of public nuisance, were appropriate and proportionate as required by the Licensing Act 2003, its Regulations, s182 Guidance and relevant case law. The linking of management plans for the authorisation and agreement of the SAG allows for the professional advisors, the specialist consultants and expert officers to agree on the reasonable parameters for the event to run to provide for a safe, secure and successful festival.

The Licensing Sub-Committee felt that there were insufficient grounds to refuse the time limited Premises Licence application, and the Management Plans would, once agreed with the SAG, address the concerns of crime and disorder / disruption / nuisance on the event day. The Licensing Sub-Committee noted that there had been

no formal representations against the application from local residents or resident's associations, albeit that the SAG was working hard to achieve a balance to cover their interests.

The case of *Luminar Leisure Ltd v Wakefield Magistrates' Court & Brooke Leisure Ltd, Classic Properties Ltd, Wakefield MDC 2008* was considered during deliberations in so far as the Licensing Sub-Committee considered ingress and egress to and from the event in respect of areas beyond the licensee's control, it being for the SAG to address this in the relevant Management Plans and the operators to minimise crime and disorder, public nuisance and safeguard public safety as festival goers arrive at and leave the festival and are dispersed from Morden within the various Management Plans.

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.