

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 29 October 2018

**Subject:** London Scottish Golf Club, Windmill Enclosure, Wimbledon Common, London, SW19 5NQ

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 2018). Chapter 12 of the guidance is attached as Annex B to this notice.

### **For enquiries about this matter please contact**

Democratic Services  
Civic Centre  
London Road  
Morden  
Surrey  
SM4 5DX

**Telephone:** 020 8545 3357

**Fax:** 020 8545 3226 (**Please telephone 020 8545 3616 to notify faxes sent**)

**Email:** [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk)

### **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 London Scottish Club for a new Premises Licence at Windmill Enclosure, Wimbledon Common, SW19 5NQ to permit the licensable activity of the supply of alcohol (on and off sales) and regulated entertainment from 08.00 to 23.00 Monday to Thursday, 08:00-01:00 on Friday and Saturday and 08:00-22:30 on Sundays, with Late Night Refreshment on Friday and Saturday 23:00 – 01:00.

One representation was received against the application from Wimbledon and Putney Commons Conservators (WPCC).

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 LB Merton's Statement of Licensing Policy, and complied with any parameters provided by relevant case law.

The application for a Premises Licence was granted, subject to the following Hours and Conditions:

- 1) On-sales of Alcohol, Live Music and Recorded music are permitted between 08:00 – 23:00 Monday to Saturday and 08:00 – 22:30 on Sundays subject to the below:
  - Permitted licensable activities may be carried on until 01:00 on Friday (into Saturday) or Saturday (into Sunday) nights only at pre-booked and bona fide private functions or events to which members of the public are not permitted.
- 2) During the aforementioned private functions or events, the Premises will be subject to a 01:15 close time, with the gates closing at a maximum time of 01:45am. The Designated Premises Supervisor will be responsible for locking the gates at this time as well as and opening the gates 1 hour prior to the start of any pre-booked event.
- 3) Off-sales are permitted between 08:00 to 21:00 Monday to Sunday only.
- 4) All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
- 5) No live or recorded music to take place outdoors after 23:00 on any day.
- 6) A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service, so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of officers from the Environmental Health Service and access shall only be by persons authorised by the Premises Licence holder. The limiter shall not be altered without prior agreement with the Environmental Health Service. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised Officer of the Environmental Health Service. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.

- 7) The Premises Licence Holder to use their best endeavours to ensure customers do not take any open containers of alcohol off the premises.
- 8) All conditions offered in the Operating Schedule as stated at Page 21 of the agenda pack were imposed by the Licensing Sub-Committee.

## Reasons

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

Grant Convey, DPS stated:

- a) The Club has existed since 1865 and has a unique history.
- b) The organisation is not for profit and re-invests any additional income into the common.
- c) The Premises currently holds a Club Premises Certificate.
- d) The application was to allow increased use of the clubhouse for events and functions for non-members.
- e) Off-sales of alcohol had been requested to enable members and non-members to buy for example, a bottle of wine to take home as well as to facilitate open days for local residents and users of the Common.
- f) The application for licensable activities until 01:00 was only to be applicable for pre-booked events and functions. Mr Convey stated that these events happened once or twice a month. On all other dates the club would close at dusk once all golfing activities had ceased and the Club was happy to accept a condition to this effect. There is no intention to turn the Club into a public house.

Stephen Bound, representing WPCO objected to the application and made the following representations:

- 1) The Common had been protected since 1871, was located within a conservation area and was an area for quiet recreation for the public.
- 2) Two main concerns were noise disturbance and car parking. Mr Bound explained that in an open area it is very difficult to know where people are and questioned who would work to prevent anti-social behaviour in the car park if the gates were left unlocked for events to take place. For this reason Mr Bound explained, the gates were usually locked and only opened when users were leaving or arriving, however Mr Bound stated that he receives phone calls to open the gates on occasions when patrons have been locked into the car park. Mr Convey offered in response that his number could be given so calls were directed to him in those instances.
- 3) There had been occasional late night use of the premises and one complaint had been received several months prior to the Licensing Sub-Committee meeting regarding noise. Mr Convey offered in response that a digital limiter could be used.
- 4) The 1am finish time was a concern.

The Licensing Sub-Committee gave the following reasons for their decision:

- 1) The Licensing Sub-Committee took into account the history of the premises as that it had been well run for a substantial length of time.
- 2) The Licensing Sub-Committee were of the view that the Applicant was an experienced operator and were therefore confident that the Club would comply with any conditions imposed by the Licensing Sub-Committee and uphold the Licensing objectives.

- 3) The Licensing Sub-Committee wanted to ensure a balance between the commercial reality of a not-for-profit organisation and the contribution to the upkeep of the Common.
- 4) The Licensing Sub-Committee noted the Applicant's submission that the Club would like the facility to be open to other users of the Common and residents as well as its own members and that the late night licence was only required for pre booked functions..
- 5) The Licensing Sub-Committee noted that the Applicant was willing to work constructively with the Conservators and had offered additional conditions during the meeting to meet their concerns.

The application was therefore granted with a number of conditions imposed by the Licensing Sub-Committee.

The Licensing Sub-Committee was satisfied that the decision and conditions imposed are appropriate and proportionate to promote the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2018).**

#### **13. Appeals**

13.1 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**

13.2 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.

13.3 An appeal has to be commenced by the appellant giving 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.

13.4 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, the Home Office (Immigration Enforcement), 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.

13.5 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.

13.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

13.7 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.

All parties should be aware that the court may make an order for one party to pay another party's costs.

On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

## **Licensing policy statements and Section 182 guidance**

13.8 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.

13.9 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**

13.10 It is important that a licensing authority gives 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.

13.11 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

## **Implementing the determination of the magistrates' courts**

**13.12** 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**

**13.13** 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.

**13.1** 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.