

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 22 June 2021

**Subject:** Raynes Park Vale Football Club, Prince Georges Playing Fields, Grand Drive, Raynes Park, SW20 9NB

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.

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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 Raynes Park Vale Football Club for a new Premises Licence at the premises located at Prince Georges Playing Fields, Grand Drive, Raynes Park SW20 9DZ. The premises have a Club Premises Certificate in force at the time of the application which permits the club to supply of alcohol and recorded music from 11am to 11pm Monday to Sunday.

The application sought a Premises Licence to authorise the following licensable activities:

- Exhibition of Films (inside and outside) – for ticket only events
- Wednesdays to Saturdays 11.00 - 22:30 and
- Sundays 11.00 to 22.00.
  
- Live Music (inside and outside)
- Mondays to Saturdays 11.00 - 23.00 and
- Sundays 11.00 - 22.00.
  
- Recorded Music (inside and outside)
- Mondays to Sundays 11.00 - 23.00.
- On New Year's Eve until 1:30am the following day.
  
- Late Night Refreshment (indoors only)
- Fridays and Saturdays from 23.00 - 00.00 midnight
  
- Supply of Alcohol (on and off sales)
- Mondays to Thursdays from 10am to 23.00,
- Fridays and Saturdays from 10am to 00.00 midnight and
- Sunday from 10.00 to 22.30.
- On Christmas Eve 10.00- 00.00 midnight
- New Year's Eve 10.00- 02.30 the following day(subsequently amended to 02.00 the day following)..
- The supply of alcohol in the decked area to be restricted to Sunday to Thursday from 10.00 to 22.00, and Friday and Saturday from 10.00 to 22.30.

## Opening Hours:

Mondays to Thursdays from 08.00 - 00.00 midnight,  
Fridays and Saturdays from 08.00 - 00:30 the day following and  
Sundays from 08.00 - 23.00.

If Christmas Eve falls on a Weekday then 10.00 - 01.00 the following day.

New Year's Eve 10.00 – 04.00 New Year's Day (subsequently amended to 02.00 the day following).

During the Course of the meeting, the Applicant amended the proposed hours of trading so that the premises was proposed to trade from 11.00 – 23.00 but occasionally would operate to 00.00 on weekends for private functions, whilst proposing that no

drinks would be taken out onto the terrace after 21.30 thought it was also suggested during the meeting that the decking area would only open between 11.00 and 22.00. It was also proposed that there would be no marquee outside, that there would be no consumption of alcohol in the grounds

101 representations were received on the Application including 29 in support. The Applicant had agreed a number of conditions prior to the hearing with both the Metropolitan Police and the London Borough of Merton Council Trading Standards.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, comply with the Licensing Act 2003 and its regulations, have regard to the current Home Office Section 182 Guidance and LB Merton's Statement of Licensing Policy, and comply with any relevant case law.

The Premises Licence application was refused.

### **Licensing Sub-Committee Hearing**

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

At the start of the hearing, Leo Charalambides, Barrister representing two of the interested parties, noted that the premises plan submitted with the application made reference to the potential outdoor bar, an adhoc outdoor film area and a marquee, but noted that these were not included within the plan submitted and therefore Mr Charalambides submitted that the application was defective under Regulation 23 of the The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 and therefore that the application should be refused without a hearing.

In response, the Applicant stated that the outside bar was a mobile bar on wheels which could be situated anywhere but would be situated within the area marked terrace (as set out within the proposed licensing plans), there would be no marquees anywhere on the premises and films would only be played inside the premises as it had become clear following discussions with local residents that outdoor films would cause disturbance.

On this basis and with these points addressed, the hearing was able to proceed.

The Applicant (represented by Justin Whitehead) presented this application stating:

- Whilst the current Club Premises Certificate (CPC) permits the sale of alcohol to members and their bona fide guests from 11.00 to 23.00 7 days per week, it didn't include a number of other conditions, for example there was no requirement to have CCTV or sufficient lighting, and the applicant felt that as a responsible business they wanted to have these included on their licence.
- This application was to open 11am to 11pm Monday to Saturday and 12noon to 10.30pm on Sundays. Mr Whitehead explained that the reason for requesting the

additional hour to midnight on Friday and Saturdays was to allow flexibility in the event that the venue was being used for weddings or parties booked by non-members or members and their guests that could not comply with the CPC.

- The decking area would have strict opening and closing times and no persons would be permitted on the decking after 22.00 each night.
- The Applicant had appointed a team of volunteer gardeners who were planting in the vicinity and, since opening the coffee van, crime in the area had reduced.

In response to questions from the Interested Parties and the Licensing Sub-Committee, the Applicant responded:

- The Licensing hours sought (as opposed to the opening hours) were Monday to Thursday 10.00-23.00, with Friday and Saturday having an extension of 10.00 until 00.00 midnight and Sunday 11.00 to 23.00.
- Two SIA registered security officers would be present on Friday and Saturday evenings until every guest had left the premises.
- The capacity of the venue is 120 people for weddings or events or parties in one room and seated(5 per table) and a capacity for standing guests of 200 people.
- Alcohol would not be permitted anywhere outside of the licensed premises and drinks would be served in polycarbonate glasses for outside service.
- Staff were under very clear expectations not to make any noise when leaving the premises and signage to this effect had been printed.
- There would be no amplified music outside and 1 inch soundproofing had been purchased for inside the premises as well as a decibel meter to measure impact.
- The car parking on site is for match days and not for the use of the licensed premises.

Councillor Hina Bokhari spoke to her representation:

- Lots of concerns had been raised by young families concerned about the noise and pollution that could be caused by the application.
- The premises is located on Metropolitan Open Land.
- Councillor Bokhari and Councillor Bailey had written to the applicant to discuss the application but received no response.
- Many residents had written to Councillor Bokhari about the application but none had been in support of it.

Mary-Jane Jeanes spoke on behalf of the Friends of Cannon Hill Common:

- A large number of people exercise in the area and this would be curtailed by a public house with associated noise and would create public nuisance.
- The coffee and food stall and market had increased littering.
- The lighting would have a negative effect on bats and owls.
- It was a public safety concern having a public house located so far from the public highway in a low PTAL area.

John Elvidge speaking on behalf of Raynes Park and West Barnes Residents Association:

- The location, in the middle of the playing fields, on a geographically isolated site is unsuitable for a public house and has no lighting on exit routes and limited parking.
- The current Club Premises Certificate allows alcohol sales to members, whereas the new application does not contain information about increase in toilet facilities or other areas to facilitate the 200 person capacity.

Andrew Barwick spoke to his representation stating:

- The security and other measures would not cover other local areas such as the junction of Grand Drive and the access road where visitors to the site congregate after closing time near to the bus stop.

David Brum spoke to re-iterate concerns about the lack of communication between the applicant and local residents, noting that he had requested a meeting with the applicant but had not received a response.

Holly Smith raised concerns that the gates are currently closed at 8pm but would now be left open and that the music and light would disturb young children living locally.

Leo Charalambides representing Jemma Watson and Edward Reeve stated:

- Under paragraph 9.38 of the Home Office Section 182 Guidance, decisions should be made in the interests of the overall local community and not the narrow interests of the operator.
- Mr Charalambides felt the application was poorly drafted, with amendments being made in response to questions.
- Under paragraphs 8.41-8.49 of the Home Office Section 182 Guidance requires the Applicant to make their own enquiries of the area, but local residents and local councillors had stated they had been ignored by the applicant.
- No noise management plan had been provided and whilst a noise decibel meter had been mentioned there had been no mention of the limits that would be imposed or how this would be monitored.
- Stating that music would be kept at a reasonable level is unenforceable.
- There had been no mention of smokers and how and where they would be managed.
- There is no dance floor and no kitchen shown on the plan and it is therefore not clear where food would be prepared.
- It is not clear how the car park will be used – if it is not for use by wedding guests how will they access the premises?
- Under the Wildlife and Countryside Act bats are a protected species and they would be affected by the light and noise from the premises.
- Children living locally could be exposed to expletives from those using or leaving the premises.
- The Application had not been risk assessed and did not follow the 4 Licensing Objectives or the Home Office Section 182 Guidance.

In summing up, the Applicant stated that he had been honest and had made changes at the request of and following feedback from local residents and in the meeting to address concerns raised by those speaking to their representations.

### **Decision of the Licensing Sub-Committee**

The Licensing Sub-Committee decided to refuse the application.

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

1. There were a number of variables that had not been addressed by the Applicant for the application to address the issues of concern. The Licensing Sub-Committee were concerned that no conditions could address those concerns the Licensing Sub-Committee still had. Examples of them were:
  - (a) Conditions to address noise management for those accessing, exiting from, smoking at, parking at or not, and the policy for operation of parties booked by third parties or members for their friends/non-members (private events);
  - (b) Management of the 'wilding' or grass land use and exclusion for drinking when used for picnicking and whether that was in the Premises Licence;
  - (c) Marquees for private events and whether that would be by TEN or conditions to manage that use;
  - (d) Extent of the licensing plans and outside use;
  - (e) Access to the premises, and whether the gate would be locked for private events, management of those leaving the site to access Grand Drive and bus stops or taxis, whether with SIA door supervisors;
  - (f) Outside use related to the Terrace or decking area and/or the café van;
  - (g) Parking access for football days and noise management to opening when the football was taking place, especially in respect of the terrace and the noise potentially reaching local residents.
2. The Licensing Sub-Committee were concerned that the plans still didn't address the issue of the coffee van and films, the omission of the dance floor, the extent of the area for dancing or the bar or drinking areas in sufficient detail, and the kitchen from the plans.
3. There was no clear plan for or mention of smokers and how these would be managed, particularly after 22.00 when the applicant stated no persons would be permitted to be outside on the decking area.
4. The Licensing Sub-Committee were concerned that in relation to the separate uses of the premises proposed that there was no a Dispersal Plan and no Noise Management Plan for private events or football events and noted that the application required additional work.

The case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008* was applied and considered during deliberations as Councillors made their decision based on the evidence provided as well as influenced by their own basic local knowledge.

## **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.