

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 30 March 2022

Subject: Gigi's Food Limited, 28 High Street, Wimbledon Village SW19 5BY

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

Merton's Statement of Licensing policy

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

Annex A

Determination

The Licensing Authority received an application from Gigi's Food Limited for a new Premises Licence for Gigi's Organic located at 28 High Street, Wimbledon Village SW19 5BY.

The application sought the following Licensable Activities and hours:

The supply of alcohol (On and Off Sales)

Monday to Saturday from 11:00 to 23:00 and Sunday from 11:00 to 20:00

Opening Hours

Monday to Saturday from 08:00 to 23:00 and Sunday from 09:00 to 20:00

Two representations were received in relation to the application from the Parkside Residents' Association and the Belvedere Residents' Association. Agreement was reached on a number of conditions with the Council's Trading Standards Officer, and the Metropolitan Police who therefore withdrew or did not submit representations prior to the Licensing Sub-Committee meeting.

The Parkside Residents' Association helpfully explained in their Representation (page 37 of the Agenda pack) that:

"The Premises were previously operated for many years as a shop selling clothing and accessories. The applicant began trading in May 2021 selling organic, plant based and natural products, including food, coffee, hot chocolate and non-alcoholic drinks. A delivery service is also offered. More recently a chef has been employed, more tables and chairs have been added, there is a more extensive menu with a variety of meals and the website is now promoting the Premises as "a vibrant brunch destination". In addition, "cooking classes for adults and baking classes for kids" are advertised. The premises are child and family friendly with an area with displays and soft toys for children. Immediately in front of the premises and adjoining the pavement is an open outdoor space where tables and chairs have been set up to extend the trading area; this outdoor space is fully covered by the overhang of the building's first floor above so offers some protection from the weather".

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 have regard to the London Borough of Merton Council's Statement of Licensing Policy, and comply with any relevant case law.

The Application was **granted** as sought with the conditions offered in the application's Operating Schedule and agreed with Responsible Authorities as set out below.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, its supporting agenda papers and the oral evidence submitted at the hearing by all parties present. The Licensing Manager gave a brief overview of the Application.

Ms Noemi Majlinger, of Gigi's Food Limited, presented the application:

- The business has gone through some transformation over the last few years.
- The pandemic forced the business into the delivery of groceries, the lifting of restrictions has led to a change in the expectations of customers and a requirement to broaden the range of products on offer.
- The intention is not to run a nightclub or wine bar, only to expand the offer to the existing customer base.

The Licensing Sub-Committee noted that the premises is permitted to sell food up to 11pm already without any Premises Licence and the application just sees the addition of alcohol to the existing offer.

Ms Susan Cooke spoke on behalf of both Residents' Associations:

- The Residents' Associations were concerned that the application would allow for further change of usage of the premises and is more in line with a wine bar than a small restaurant
- The conditions that they have suggested should be applied to ensure that the premises does not become a nuisance to the area
- There are businesses nearby, Vallebona and Collette, which have shorter licensing hours than those applied for by Gigi's Food Limited.

The Licensing Sub-Committee were concerned that the premises, Vallebona and Collette, were not comparators to the proposed operation and of course could not consider how other premises operated, as the application had to be considered on its own merits.

The Chair announced that the Licensing Sub-Committee would retire to closed session and make their decision.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the application as sought with the following conditions imposed:

- Conditions agreed with Metropolitan Police

1. The CCTV system installed at the premises shall be maintained in effective working order, and shall be in operation at all times the premises is open to the public.
2. All recordings made by the CCTV system shall be retained and stored in a suitable and secure manner for a minimum of 31 days, and shall be made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities.

3. At all times the premises is open to the public a minimum of one member of staff on duty will be able to operate the CCTV system "
4. An incident log shall be kept at the premises and made available on request to Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must be completed within 24 hours of the incident and will record the following
 - (a) All crimes reported to the venue.
 - (b) All ejections of patrons
 - (c) All complaints received concerning crime and disorder.
 - (d) Any incidents of disorder.
 - (e) All seizures of drugs or offensive weapons.
 - (f) Any refusal of the sale of alcohol.
 - (g) Any visit by a relevant authority in relation to service

Conditions agreed with Trading Standards

5. Evidence of age in the form of photo identification shall be requested from any person appearing to those selling or supplying alcohol, to be under the age of 25 and attempting to buy alcohol. Examples of appropriate photo identification include a passport, driving licence, and the Proof of Age Standards Scheme (PASS) approved age card.
6. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
7. A record of refusals shall be maintained which documents every instance that a sale of alcohol (and any other age-restricted product) is refused on the premises, indicating the date and time the refusal was made, and the member of staff making the refusal.
8. The record of refusals shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.
9. An effective visual (and/or aural) reminder shall be in place at all points of sale to ensure staff undertake appropriate age checks on potential sales of alcohol (and any other age-restricted product).
10. All staff that undertake the sale or supply of alcohol (and any other age-restricted product) shall receive appropriate training in relation to undertaking appropriate age checks on such, before being allowed to sell or supply any alcohol (and any other age-restricted product). Refresher training will be carried out at least every three months.
11. Records of all staff training, relating to the sale or supply of alcohol (and any other age-restricted product), along with any training material used, will be kept and maintained by the Designated Premises Supervisor or the Premises Licence Holder.

12. Staff training records shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.

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

- a) The Licensing Sub-Committee had to make a decision that promoted the Licensing Objectives and that was appropriate and proportionate. The Licensing Sub-Committee considered that the conditions offered and agreed with the Metropolitan Police and the Council's Trading Standards addressed those concerns, whereas the conditions proposed by the Residents' Associations were not appropriate or proportionate and appeared to be onerous to the operation proposed (Thwaites applied);
- b) The Licensing Sub-Committee considered that the Premises Licence could be Reviewed, should there be breach of any conditions or where public nuisance or crime and disorder etc may occur. This would apply to a potential new Premises Licence or operator of the business should the premises licence be transferred to another person;
- c) Some of the conditions proposed by the Residents Association, such as requests to limit the number of covers, were outside the remit of the Licensing Sub-Committee, and would fall under Planning or Fire Regulations, which were outside licensing issues and covered by other legislation where enforcement would apply under those regimes (Sommerfield applied);
- d) There have not been any recorded incidents in association with this business or location that would give the Licensing Sub-Committee cause for concern, or evidence of risks that would require further conditions to be applied;
- e) The premises is a small operation which had been trading as proposed for some time (albeit without alcohol), so the proposed addition of alcohol to its ongoing provision, did not mean an increase of cumulative impact would arise.

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.

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