

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 15 November 2023

Subject: Star Pubs and Bars Ltd, in respect of 'Tiger Lily' 1A Lilian Road, Streatham, SW16 5HN

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 Star Pubs and Bars Ltd, in respect of 1A Lilian Road, Streatham, SW16 5HN for a new Premises Licence.

The applicant applied for:

- Supply of alcohol for consumption on and off the premises
11.00 - 23.00 Monday to Sunday.
- The Opening Hours of the premises
08.00 – 23.30 Monday to Sunday.

The Premises Licence was granted with the imposition of the offered, agreed and imposed conditions, as detailed below in this notice.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, the agenda papers and the oral evidence submitted at the hearing by the parties present.

Mr Domleo, representing the applicant, set out the application and drew the Licensing Sub-Committee's attention to their clients recognition of and apologies for events that had taken place at the premises previously, which had led to their tenant's and the previous licensee's Premises Licence being revoked.

Star Pubs and Bars Ltd had commenced local consultation in August 2022, spoken with police, held residents meetings on site and been in consultation with the Licensing Officer.

The next nearest pub was the Railway Inn, half a mile away by Streatham Common Station, which had also had a troubled past, but managed to turn things around, and Star Pubs and Bars expected to have similar success here.

Mr Domleo asked the Licensing Sub-Committee to note that none of the Responsible Authorities had objected to the application, and it was not unreasonable for the Licensing Sub-Committee to share the views of the Responsible Authorities.

Star Pubs and Bars Ltd were offering a different operating model to that which had taken place previously, the 'Just Add Talent' model was more akin to a managed house than a tenanted pub, with more responsibility and control for Star Pubs and Bars Ltd. Under a tenancy agreement, all decision lay with the tenant, under 'Just Add Talent', Star Pubs and Bars Ltd would retain responsibility for determining all food, entertainment, management staffing, full control and scrutiny of management and processes in place.

Representations received raised concerns about vandalism and litter, which had arisen since the pub had closed, this is common when premises are closed, and re-opening would allow staff to move on undesirable elements and clean up on a daily

basis. Keeping the pub closed would likely maintain the current status with increased litter and vandalism. With local community support it was believed that the pub could return to its previous good footing.

The opening hours from 8am would allow the premises to serve coffee, and cater to parents dropping off children at the nearby nursery. If the local community don't use the pub, it won't survive.

Residents who attended the public meeting were enthusiastic, Star Pubs and Bars Ltd intends to invest significantly in the premises and run it for years to come.

In response to questions Mr Domleo confirmed that:

- The pricing structure was aimed to deter undesirable customers from attending the pub, minimum £5 for a pint. There would be increased furniture to encourage more seated drinking and developing a family/community hub vibe.
- Over a dozen local residents attended each of the community meetings
- Star Pubs and Bars Ltd was actively seeking the right manager for the premises, recruitment was underway, and they were looking for someone with a firm but friendly approach.
- Star Pubs and Bars Ltd are liaising with police for input, and will have door staff when necessary,
- At the first residents meeting, attendees were keen to understand the difference between the future plans and how things had been done in the past. It was clear that residents wanted a local pub, that was safe for them to attend. Those who attended the meetings had not objected or made representations.
- Any troublemakers will be barred from the premises and the police kept abreast of any developments in this regard
- Star Pubs and Bars Ltd are keen to find the right price point, to deter undesirables without excluding the local community, and entry level lager would be £5.20, similar to the Railway Inn down the road, up to £6.65 for premium pints. Residents have welcomed the premium-isation to keep out undesirable elements. Star Pubs and Bars Ltd want the premises to be welcoming for parents to have coffee/cake after dropping off children at the neighbouring nursery, and a safe space for female drinkers to enjoy a prosecco in the evening.
- The distance of the pub from the station should reduce the likelihood of the clientele being dominated from those outside the area with little interest in preserving the local environment. It is hoped that the overwhelming majority of customers will be from within the neighbouring area.
- With the right DPS and doorstaff in place, creating a friendly atmosphere, with CCTV in place, it was hoped that undesirable elements would be deterred.

Mr Rouse withdrew his representation. His partner would do the same, but was not in attendance to be able to do so at the hearing.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the application with the following licensable activities and opening hours:

- Supply of alcohol for consumption on and off the premises
11.00 - 23.00 Monday to Sunday.
- The Opening Hours of the premises
08.00 – 23.30 Monday to Sunday.

The Licensing Sub-Committee imposed the conditions extracted from the Operating Schedule in the Application as follows:

1. Evidence of age in the form of photographic identification (ID) shall be requested from any person appearing to those selling or supplying alcohol to be under the age of 25 and who is attempting to buy alcohol. Examples of appropriate ID include a passport, photographic driving licence and the Proof of Age Standards Scheme (PASS) approved age cards.
2. Notices shall be placed at the premises' entrance and at all points of sale detailing the restrictions on sales of alcohol to children.
3. 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.
4. 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.
5. An effective methodology shall be in place at all points of sale to ensure staff undertake appropriate age checks on potential sales of alcohol.
6. All staff that undertake the sale or supply of alcohol shall receive appropriate training in relation to undertaking appropriate age checks on such, before being allowed to sell or supply any alcohol. Refresher training will be carried out at least every three months.
7. Records of Staff training, relating to the sale or supply of alcohol, along with any training material used, shall be kept and maintained by the Designated Premises Supervisor or the Premises Licence Holder.
8. 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.
9. The premises shall be a member of Pubwatch where such a scheme exists.
10. No customers carrying open or sealed bottles shall be admitted to the premises at any time that the premises are open to the public.

11. A closed-circuit television (CCTV) system shall be installed at the premises. 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.
12. The CCTV shall cover all public areas including entrances and exits.
13. The CCTV shall cover all internal and external areas of the premises.
14. 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.
15. At all times the premises is open to the public a minimum of one member of staff on duty shall be able to operate the CCTV system.
16. An incident logbook to record every instance of crime and disorder shall be maintained and available for inspection at reasonable times.
17. Door supervisors to be in place after 8pm until close on Thursday, Friday and Saturday evenings, for the first six months of opening. The need for door supervisors at other times and after six months shall be assessed by way of a risk assessment carried out by the Designated Premises Supervisor and cognisance will be taken of any Police advice.
18. Where SIA registered door supervisors are in use at the premises, a record must be kept of their SIA registration number and the dates and times when they are on duty.
19. Local residents shall be invited to quarterly resident's meetings held at the premises to resolve any problems associated with the carrying on of licensable activities at the premises.
20. The premises shall ensure that no noise shall emanate from the premises nor vibration be transmitted through the structure of the premises, which gives rise to a nuisance.
21. Clear legible notices shall be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.
22. The premises shall take all reasonable steps to ensure that any customers loitering outside the premises disperse quickly and do not congregate.
23. Staff shall ensure, as far as reasonably practicable, that customers in the external area behave in an orderly, neighbourly and considerate manner.

24. Notices shall be placed in the external area reminding customers to respect neighbours and to use the area quietly.
25. The rear external area shall be cleared of customers by 22:00 hours and persons smoking shall do so outside the front of the premises
26. A direct telephone number for the manager of the premises shall be available upon request to resident in the vicinity, to call at all times the premises are open.
27. Unaccompanied children shall not be permitted on the premises at any time
28. No private promoted third-party events will take place at the premises. If any parties/functions arranged by the premises are to be held a minimum of two SIA registered door staff will be on duty, risk assessment to be carried out by DPS to identify if any more needed.
29. The premises will not be sublet with overall control and responsibility for upholding the licencing objectives passed to a third party.

Recommendations/Observations

The incidents of ABH and common assault and fights and noise previously experienced, could not happen again. The use of door staff initially in the evenings on weekends may assist to deter such potential customers from attending the premises and to dissuade such behaviour. The Licensing Sub-Committee were close to considering the imposition of such conditions, but whilst Review would be the appropriate and propionate response, prosecution would be seriously considered. There was a feeling that Star Pubs and Bars Ltd should have stepped in earlier to avoid what happened in the past in their role as landlord. The investment suggested an intention to turn the premises around, but the actions of Star Pubs and Bars Ltd would demonstrate their commitment to abide by the Premises Licence, conditions and promotion of the Licensing objectives.

A concern was expressed that high prices may attract non-residents with little interest in addressing public nuisance they may cause at the premises and its surrounding area. The Licensing Sub-Committee recommended to Star Pubs and Bars Ltd that they closely consider the pricing structure to ensure the local community is not priced out of attending the premises, leaving only customers from outside the area with little interest in preventing crime and disorder.

Legal Advice

The Licensing Sub-Committee consider the evidence accompanying the application and were fully aware of the previous tenant's failure to observe the conditions of their authorisation (Daniel Thwaites v Wirral Borough Magistrates' Court (2008) considered).

The Licensing Sub-Committee considered the position of Star Bars and Pubs Ltd as landlord to the previous tenants and their role in the previous reviews (Hall & Woodhouse Ltd v Poole Borough Council 2009 considered).

Reasons

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

- 1) The Licensing Sub-Committee considered that the community would benefit from a family friendly pub, with strong conditions applied, to keep out undesirable elements, while protecting residents from potential disorder, crime and nuisance that has occurred before.
- 2) The Licensing Sub-Committee had strengthened conditions around smoking areas after 10pm, allocation of door staff at peak periods and restriction on sub-letting to assist with ensuring the licensing objectives were upheld.
- 3) The Licensing Sub-Committee considered that the conditions, the authorisation and hours addressed their requirement to promote the Licensing Objectives.

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.