

Merton Council

Licensing Sub-Committee

30 January 2018

Notice of Determination

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Space, London Road, SM4 5QU

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 1 February 2018

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

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.

For enquiries about this matter please contact

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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 4th and 5th August 2018 only, for the “Eastern Electrics Festival” to be held in Morden Park, London Road, Morden, SM4 5DX. 10 representations were received from members of the public. There were no representations received from any of the Responsible Authorities.

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, had regard to the current Home Office Section 182 Guidance, as well as to LB Merton’s Statement of Licensing Policy, and complied with parameters provided by relevant case law.

The application was granted to the hours of licensable activities sought by the Applicant limited to the single event on 4th and 5th August 2018 for the following licensable activities and hours:

- Licensable Activities: exhibition of films (indoors and outdoors), live music, recorded music, performance of dance, anything of similar description to live music, recorded music, performance of dance 11:00-22:30 on Saturday and 11:00-22:00 on Sunday. The retail sale of alcohol (on sales only) 11:00 – 22:00 on Saturday and 11:00 – 21:30 on Sunday.
- Opening Hours: The site will be open between 11:00 until 23:30 on Saturday and 11:00-23:00 on Sunday.

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 22-25 of the Agenda).
- B. Imposed Conditions: That the Applicant continues to liaise with the local community to address the concerns that have been raised regarding the event.

Reasons

The Licensing Sub-Committee carefully considered the representations contained in the agenda papers, 2 supplemental agendas, video evidence and the oral evidence submitted at the hearing by all parties.

The Applicant's Solicitor, Matthew Phipps stated that:

- This was the second application for this event at Morden Park and the 7th overall for the Eastern Electrics event.
- It was the Applicant's belief that the event in 2017 had passed off satisfactorily and this was evidenced by the absence of representations from the Responsible Authorities.
- The SAG (Safety Advisory Group) had been debriefed after the event in 2017 and this dialogue was continuing and had continued during the planning and pre-application consultations for this application.
- The Applicant noted the absence of any representation from the Registry Office and stated that they had worked hard in 2017 to ensure the weddings were not disturbed.
- All the conditions offered had been discussed and agreed with the Responsible Authorities
- The Applicant was aware of issues from 2017 which they would be learning from this year and would be making improvements particularly in the following areas:
 - 1) Queuing on entry – The queuing system would be enhanced this year with split queues and an additional VIP queue to reduce the queueing times.
 - 2) Litter and Waste Management – More bins would be installed and there would be further response teams and litter patrols.
 - 3) More portaloos would be provided outside the venue.
- The Applicant had noted the concerns raised by residents in relation to noise, groundworks/reinstatement of the park, traffic, the Church, litter and Anti-Social Behaviour and addressed those points as follows:
 - Noise – There had been complete compliance with the noise regulations and the noise levels agreed in the noise management plan in 2017 and monitoring points had been located nearer to the event than any residential property. This would continue in 2018 and a Complaint Hotline would be available as in 2017. The Applicant stated that hearing the event did not confirm that it was creating a noise nuisance.
 - Church – The Applicant stated they would work hard to ensure that they were not adversely disturbed and had a meeting booked with the Church in February to discuss issues such as access. The Applicant undertook to ensure fair access to the Church was provided. Specific security was planned for the Church including more supervision and more litter patrols.
 - The Park – The Applicant advised that £7500 was provided to the Local Authority last year to put the park back into good order, and £4500 of that was returned.
 - Traffic – The Applicant advised that there would be an enhanced facility off-site for Taxi/Uber Pickup/Drop-offs and there would be more litter patrols and stewards to give directions to the volume of pedestrians departing from the site.
 - Litter – Dialogue was ongoing and there was a Waste Management Plan

being developed.

- ASB/Conduct of Attendees – The Applicant advised there was an alcohol policy in place and a refusals register and there would be more staff to monitor arrivals and those in the queue. The Applicant advised that attendees would be refused entry if required and that they were satisfied that all alcohol on site was sold responsibly.
- The Applicant believed that the 2017 event had been a success and had been well delivered.
 - There were 12 complaints last year to the Noise Complaints Hotline.
 - The application was for 19,999 attendees on both days, though less were expected to attend on the Sunday and the Applicant believed these figures were properly set.

In response to questions from the Sub-Committee, the Applicant advised that the organisers had previously successfully run a number of other 2 day events and a 3 day event, that the site would be closed and swept of customers on the Saturday night so there would be no occurrence of attendees sleeping in the park overnight between the two events and that there would be sound tests at around 10am on the morning of the events which were necessary to ensure the delivery of the noise management plan. In response to questions about drug use at the event, the Applicant advised that there was a drugs policy in place which they believed had worked well and that metal detectors on entry would have identified any gas canisters being brought into the site.

Elsbeth Clarke raised concerns about noise levels and the Applicant responded that whilst the agreed noise levels would not be reduced, the applicant was happy to assess the monitoring locations and could consider alternative locations. Ms Clarke also advised that the communication with residents needed to be better this year than last year and asked whether it would be possible to have a more family friendly event which she felt would be more appropriate for that location. The Applicant responded that they were very happy to ensure more comprehensive liaison with residents and had no resistance to dialogue concerning other events.

Robert Whitfield also raised concerns about noise levels and also the use of opposite gender searches by security staff at the 2017 event. The Applicant had included a condition in the 2018 application to use same-gender SIA staff for searches.

The Applicant offered to include a condition regarding dialogue with residents and advised they would be happy to include this should the Committee wish to impose that as a condition on the Licence.

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 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 Licensing Sub-Committee felt that there were insufficient grounds to refuse the time limited Premises Licence application, and the conditions offered and the policies and Management Plans in place would, once completed and agreed, address the concerns of crime and disorder / disruption / nuisance on the event day.

The Licensing Sub-Committee noted that there had been no representations received

from any of the Responsible Authorities and also the timing of the application.

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.