

Merton Council
Licensing Sub-Committee
26 March 2018
Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 29 March 2018

Subject: Premier Inn, 153-161 The Broadway, Wimbledon, SW19 1NE

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

Democratic Services
Civic Centre
London Road
Morden
Surrey
SM4 5DX

Telephone: 020 8545 3616

Email: 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

Merton's Statement of Licensing policy

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

Annex A

Determination

The Licensing Sub-Committee considered an application made by Whitbread Group PLC for a new Premises Licence for the Premier Inn at 153-161 The Broadway, Wimbledon, SW19 1NE. The application was for the following licensable activities and hours:

- Exhibition of a film (indoors)
 - o 10:00-23:00 Monday to Thursday and
 - o 10:00 – 00:00 Friday to Sunday
- Supply of alcohol (on and off sales)
 - o 10:00 – 23:00 Monday to Thursday and
 - o 10:00 – 00:00 Friday to Sundays.
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- Late Night Refreshment
23:00 – 00:00 Friday to Sunday only.
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- Opening Hours
- 06:00 – 23:00 Monday to Thursday and
- 06:00 – 00:00 Friday to Sunday.

This was a 176 room hotel with eight hotel floors and a ground floor reception with a food and beverage provision by way of a bar and a restaurant operation called “Bar and Block Steakhouse”. Objections were received by 3 local residents and 1 residents’ association.

The Premises Licence was granted subject to imposition of the following conditions:

Offered Conditions

Those Conditions, as set out within the operating schedule within the Application (extracted at pages 17-18 of the agenda pack) offered by the Applicant, subject to the removal of the “All Saints Days” exemption within the alcohol exemptions for bank holiday weekends, Christmas Eve, Boxing Day, and New Year’s Day that allow an extra 30 minutes for the sale of alcohol and regulate entertainment.

Imposed Conditions

Those Conditions imposed by the Licensing Sub-Committee on hearing the application:

1. Any purchase of alcohol by a resident shall be permitted by presentation of a room card after 23:00 on weekdays and 00:00 on weekends.

Those Conditions imposed by the Licensing Sub-Committee at the request of and agreed by the Applicant with the Metropolitan Police as follows:

1. There shall be no overt signage of the proposed Bar and Block Steakhouse or ground floor restaurant and bar unit, save for one discreet sign adjacent to the entrance.
2. There shall be a minimum number of covers representing not less than 70% of the overall occupancy for the Ground Floor licensed food and bar area.

3. Food and beverage provision shall be substantially food led and ancillary to the principal operation of the premises as a hotel.
4. No admission or re-admission at weekends after 11.00pm save for hotel residents and their bona fide guests.
5. A personal licence holder shall be on duty after 7.00pm Thursdays – Saturdays whilst the premises are open to non-residents.
6. CCTV shall cover the lift lobby entrances on all floors, all entrance and exit points, and the ground floor licensed area. Footage shall be retained for 31 days with images to be made available on request including when the premises are open to non-residents.

Reasons

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

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 that promoted the Licensing Objectives based on the evidence provided in compliance with any relevant case law.

The Applicant stated that:

- The opening hours sought mirrored the Planning Application for the premises.
- The exhibition of film was in relation to non-live television in the bar area.
- The Premier Inn brand is well known and well regarded with over 760 hotels nationally and the development proposed was significant with a £25m investment which would create 95 jobs once the hotel was open.
- There was a current licence at the premises for Henry J Beans which would be surrendered if the Licence sought was granted.
- The “good night guarantee” was a genuine offer and the hotel would seek to ensure minimal disruption to hotel residents and the wider community.
- The “Bar and Block” area would be food led and last orders would be at 10pm.
- There were 4 other similar premises trading with the “Bar and Block” operation nationally.
- The food and drink would be at premium prices.
- There had been no objections by any of the Responsible Authorities and discussions had been undertaken with the Police prior to the application being submitted.
- The off-sales of alcohol only related to hotel residents purchasing alcohol to take to and to consume in their bedrooms.
- 24 hour sale of alcohol was a usual feature of hotels
- There would be no mini-bars in any of the hotel rooms.
- Many other hotels run by the Whitbread Group were in Cumulative Impact Areas and ran without issue.
- The Whitbread Group are a responsible operator.
- The current licence for Henry J Beans had longer hours and was more extensive

therefore the new licence request would be more constrained and would therefore assist with the Cumulative Impact.

- Only hotel residents with a receipt for their room/room card would be served alcohol after 11pm or 00.00 on weekends.

Following a query from the Legal Advisor regarding the "All Saints Days" exemption, the Applicant advised this would be removed from the application.

The main objections raised by local residents were:

- A budget hotel was inappropriate for that location.
- The Cumulative Impact Zone was already saturated.
- There were already issues with street cleansing in the area which residents did not want added to.
- The area was highly residential with working families with children who could be disturbed.
- There were issues with parking in the area and the hotel would not be providing parking for its' guests.
- There are rats in the area and residents wanted an assurance that waste would be dealt with properly.
- The details provided about the restaurant differed from those provided during the Planning application process.
- The potential for an increase in anti-social behaviour and noise from hotel residents.

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

- The Application had overcome the rebuttable presumption based on the hours the premises would be open to the public for the ground floor bar and restaurant and the nature of the residential operation that were proposed.
- The existing Premises Licence was mentioned by the Applicant on the basis that the proposed Premier Inn operation would be an operation that would cause much less cumulative impact than the Henry J Beans operation permitted under the existing though not operational Premises Licence.
- This is assisted on the basis that hours are restricted to the public in terms of access, the operation being to usual restaurant hours on the weekends for the public and that off sales are prohibited to all but residents.

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.

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