

Merton Council

Licensing Sub-Committee

12 July 2018

Notice of Determination

11 Determination Notice - Subway Wimbledon, 5 Hartfield Road,
SW19 3TA

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 19 July 2018

Subject: Subway, 6 Hartfield Road, Wimbledon, SW19 3TA

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

The Licensing Sub-Committee considered an application by VPSP Ltd, a franchisee of the Subway franchise, for a new Premises Licence for “Subway” at 6 Hartfield Road, Wimbledon, SW19 3TA to permit the licensable activity of the sale of Late Night Refreshment from 23.00 to 02.00 on Fridays and Saturdays.

Representations were received against the application from the Metropolitan Police, and the Licensing Authority. The premises is located within the Wimbledon Town Cumulative Impact Zone and was subject to the Cumulative Impact Policy contained in the Council’s Licensing Policy. It required the applicant to overcome the rebuttable presumption that required refusal unless the applicant could show that there would be no increase in cumulative impact from the extension and operation proposed.

The Applicant was not present at the hearing.

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 and the licensing objectives, have regard to the current Home Office Section 182 Guidance, as well as to the London Borough of Merton’s Statement of Licensing Policy, and comply with any parameters provided by relevant case law.

The application was refused.

Reasons

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

The Metropolitan Police Borough Licensing Officer, PC Russ Stevens, objected to the application and sought the refusal of the application due to the saturation in the area of similar premises pursuant to the Cumulative Impact Policy for Wimbledon. PC Russ Stevens made the following representations:

- 1) The premises was located in the middle of the Town Centre and between two of the busiest pubs in the area as well as being nearby to Burger King which was open until 02.00. The premises was also located on a thoroughfare en route towards the train station or into the town centre which could only provide a facility for those leaving licenced premises to loiter in the area / town centre.
- 2) PC Stevens stated that his research and experience showed that issues arose when there was loitering and alcohol related crimes occurred 3 times more often after 11pm.
- 3) PC Stevens gave evidence of statistics from the area where the premises is located, advising that there had been a total of 25 offences over the last year after 11pm, with only 9 similar reports taking place in the same period between 7 and 10pm.
- 4) PC Stevens noted that whilst the premises had a previous good history and there had been no issues thus far, the premises was only open until 11pm, whereas Burger King which was open until later, had 11/12 offences attributed to it over the previous year.
- 5) It was PC Steven's belief that if the licence were to be granted, this would cause further issues in the area.
- 6) PC Stevens stated that the application had failed to address the Cumulative Impact Policy.

Barry Croft, Licensing Manager, speaking to his representation on behalf of the Licensing Authority, stated that:

- 1) The Applicant had failed to address the Cumulative Impact Policy and the Licensing Authority had concerns with the failure to address this policy.
- 2) The Applicant had failed to overcome the rebuttable presumption.

In view of the evidence in the Agenda papers and the presentations from the Metropolitan Police Licensing Officer and Licensing Authority about the Cumulative Impact arising from the existing issues in the area and that would arise if granted the extension, the Licensing Sub-Committee decided that granting the licence would add to Cumulative Impact and the Premises Licence was therefore refused.

The Licensing Sub-Committee gave the following reasons for refusal:

- 1) The Applicant did not address the rebuttable presumption to explain how cumulative impact would not arise from the proposed operation under the proposed premises licence.
- 2) The conditions offered in respect of SIA door supervisors as drafted was unenforceable and the Sub-Committee did not consider there was any amendment it could make to such conditions to address Cumulative Impact.

- 3) The premises was located in a saturated area within the Wimbledon CIZ and had evidenced issues of Cumulative Impact problems.

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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