

Merton Council
Licensing Sub-Committee
20 November 2018
Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 26 November 2018

Subject: Tasoo Ltd, CMYK (aka The Pod Bar), 105/109 The Broadway, London, SW19 1QG

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 Sub-Committee considered an application by Tasoo Ltd for a variation of the Premises Licence at “The Pod Bar”, 105/109 The Broadway, London, SW19 1QG.

The Premises Licence holder applied to vary the Licence as follows:

- To amend the name of the premises to “CMYK”
- To extend the permitted hours for all authorised licensed activities to 02:30 the following day from Monday to Saturday. There were no changes requested for Sunday.
- To remove conditions 1, 6 and 8 from the annex of the current licence as detailed on page 34 of the agenda pack
- To remove Annex 3 conditions 1, 2 and 4
- To replace the current CCTV condition as detailed on condition 3 on page 33 to state “The premises must maintain a good quality digital CCTV system covering areas of the premises as advised by the Police Licensing Officer. Footage must be kept for a minimum of 28 days at the premises and made available to police without delay on request. There must be a member of staff fully conversant with the operation of the CCTV system on the premises at all times that it is open to the public.
- To add the following condition “All door supervisors employed at the premises must wear body worn video cameras whilst on duty. Footage must be retained for a minimum of 28 days at the premises, and must be made available to the police on request.
- To add to the licence that on New Year’s Eve the permitted hours for all authorised licenced activities are extended from the terminal hour on New Year’s Eve until the commencement of permitted hours on New Year’s Day.
- To amend conditions at Annex 3 of the premises licence as follows:
 - Condition 5 amended to “On Sunday and Thursday nights the premises must employ at least two (2) SIA Licensed Door Supervisors from 21.00
 - Condition 6 amended to “On Monday to Wednesday nights the premises must employ at least one (1) SIA Licensed Door Supervisor from 21.00
 - Condition 7 amended to “On Friday and Saturday nights the premises must employ at least two (2) SIA licensed door supervisors from 21.00 and at least four (4) from 22.00
 - Condition 9 amended to “The premises must employ dedicated toilet attendants to supervise both the male and female toilets at all times after 22.00 on Friday, Saturday and Sunday nights when the premises is open to the public”.

There were no amendments applied for to the Licensing Plan and all other conditions not mentioned above would remain as on the current licence.

The applicant also agreed to add a proposed condition from WEHRA “to sweep the front of the premises at 105-109 The Broadway and to keep the vicinity of the premises clean and tidy”.

Nine representations were received against the application from local residents, including one from a residents' association. A representation was received in support of the application from Love Wimbledon. The Metropolitan Police withdrew their representation at the start of the Licensing Sub-Committee meeting, but stated that they were not objecting to the application.

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

The application was granted as sought. The Licensing Sub-Committee amended the wording of the final condition agreed with the Police to state "If the variation is granted it shall not come into effect or be used until such time as the substantial refurbishment of the premises has been undertaken and completed and the premises is being promoted as an LGBT friendly venue to the satisfaction of the Police Licensing Officer and/or the Local Authority Licensing Officer".

Reasons

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

Graham Hopkins (GT Licensing Consultants), representing the Applicant stated:

- 1) The venue would become a family and LGBT friendly (but not exclusive) premises and it wanted to be a safe and welcoming inclusive environment.
- 2) There had been no objections from any of the Responsible Authorities and there had been no objections from any interested parties to the proposed changes to the licence conditions.
- 3) The application, if granted, would not add to cumulative impact as the proposal was for a completely different venue and clientele from the current premises. The later closing time requested would be to assist with staggering dispersal of patrons to encourage them to stay in the venue and to go straight home, not to another drinking establishment. This would reduce dispersal and reduce the impact on local residents.
- 4) Damien Killeen who would be managing the premises was highly experienced and had managed similar venues in Clapham and Leicester Square.
- 5) The premises would be open from 17.00 and would therefore also appeal to the post-work patrons.
- 6) The applicants felt strongly that this type of venue was needed to give women and LGBT people a safe environment and the venue would be inclusive and welcoming to all who respected that.
- 7) The applicant was willing to participate in Pub watch and other local initiatives.
- 8) The applicants were local businesspeople and wanted to contribute to and maintain the area.

Helen Clark Bell, Chief Executive of Love Wimbledon, spoke in support of the application and made the following representations:

- 1) Ms Clark Bell supported the total refurbishment of the venue and felt that it would have a positive effect on dispersal.

Leigh Terrafranca, objecting to the application, made the following representations:

- 1) Ms Terrafranca felt that Wimbledon was a diverse community with traditional values and the venue was more of an urban concept, which was not suitable for a residential community with young families.
- 2) Ms Terrafranca felt that Wimbledon needed more sustainable models.
- 3) Ms Terrafranca felt that further daytime use should be considered for pre-theatre patrons.
- 4) Ms Terrafranca noted that the majority of crimes happen after 00.00am and the premises was located within the Wimbledon Cumulative Impact Zone.

The Licensing Sub-Committee decided to grant the Premises Licence variation as sought. The Licensing Sub-Committee was satisfied that the decision and conditions agreed are appropriate and proportionate to promote the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm. The Licensing Sub-Committee gave the following reasons for their decision:

- a) The Licensing Sub-Committee were satisfied that granting the application would not going to increase cumulative impact and could possibly reduce it.
- b) The Licensing Sub-Committee felt that it would have a positive effect on the staggering of dispersal in this particular area.
- c) The Licensing Sub-Committee noted the positive application to increase numbers of door supervisors which would increase safety provision in the premises as well as within the surrounding vicinity of the premises.
- d) The Licensing Sub-Committee felt that the concept was good, noted that the manager was an experienced operator, and that the proposal would contribute to Wimbledon's diversity.

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.