

Merton Council
Licensing Sub-Committee
7 May 2019
Supplementary agenda

6 Notice of Determination

1 - 12

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 17th May 2019

Subject: Southey Bowling Club, 72 Lower Downs Road, Raynes Park, SW20 8QQ

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.

For enquiries about this matter please contact

Democratic Services
Civic Centre
London Road
Morden
Surrey
SM4 5DX

Telephone: 020 8545 3357

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

Initial Application

Southey Bowling Club applied for a new Club Premises Certificate. The application sought a Club Premises Certificate for the following licensable activities:

- Indoor Sporting Events:
17:00 – 23:30 Monday to Thursday, 17:00 – 00:00 on Fridays, 17:00 – 01:00 Saturday and 12:00 – 23:00 on Sundays
- Live Music:
19:00 – 23:30 on Friday, and 19:00 – 00:30 Saturday.
- Recorded Music:
17:00 – 23:00 Monday to Thursday, 17:00 – 23:30 on Fridays, 10:00 – 00:30 on Saturday and 12:00 – 22:30 on Sunday.
- Anything of a similar description:
11:00 – 21:00 Monday to Friday, 10:00 – 21:00 Saturday and 12:00 – 20:00 Sunday
- Supply of Alcohol:
17:00 – 23:30 Monday to Thursday, 17:00 – 00:00 Friday, 11:00 – 01:00 Saturday and 12:00 – 23:30 on Sunday
- Opening Hours:
11:00 – 23:30 Monday to Thursday, 11:00 – 00:00 on Friday, 10:00 – 01:00 on Saturday and 12:00 – 23:00 on Sunday.

There were a number of non-standard timings also requested as follows:

- Live Music:
Christmas Eve 19:00 – 00:00
New Year's Eve/Presidents Day (on a Saturday) 19:00 – 01:00
Open 4 Day (on a Saturday) 20:00 – 01:00
Club Presentation Night (on a Friday or Saturday) 20:00 – 01:00
- Recorded Music:
Christmas Eve 19:00 – 00:30
New Year's Eve/Presidents Day 19:00 – 01:00
Open 4 Day 20:00 – 01:00
Club Presentation Night (on a Friday or Saturday) 19:00 – 01:00
- Supply of Alcohol:
Christmas Eve (where it falls on a weekday) 11:00 – 01:00
Christmas Day 12:00 – 15:00
New Year's Eve 11:00 – 01:00
- Premises Opening Hours:
Christmas Day (where it falls on a weekday) 12:00 – 15:00
Christmas Eve (where it falls on a weekday) 11:00 – 01:00
New Year's Eve (where it falls on a weekday) 11:00 – 01:00
New Year's Day 11:00 – 01:00

Representations

43 Representations were received to the application; 2 from ward Councillors and 41 from local residents. No representations were received from Responsible Authorities.

Licensing Sub-Committee Hearing

Revised Application

Following receipt of representations, the applicant stated at the start of the Licensing Sub-Committee meeting that they had amended the application to reduce the hours sought.

The revised Application considered by the Licensing Sub-Committee was as follows:

- Sale of Alcohol until 00:00 on a Saturday only
- Live and Recorded music to cease at 23:30 Friday and Saturday

The Applicant felt that this was a modest extension of one hour for supply of alcohol and thirty minutes for regulated entertainment.

The remainder of the application was unchanged. The Applicant also proposed five conditions relating to a noise limiting device, outside use of the premises and the use of blinds on windows during regulated entertainment.

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

The Applicant's Barrister, Matthew Butt, stated that:

- As the premises was applying for a Club Certificate and not a Premises Licence, the premises could only be used by members of the club and their bona fide guests, who could hire and attend functions but confirmed that it was not open to the general public.
- The club was founded in 1886 and had a significant history in the area, with all members of the club living locally.
- The application was for the new clubhouse which had recently been built to replace the old building. The new building was purpose built with noise insulation, better CCTV and better lighting.
- The hours sought were longer than the hours agreed under the Planning Permission for the building. It was noted that the applicant would only be able to trade until the earlier hours i.e. those stated in the Planning Permission.
- No representations were received from any Responsible Authorities and there was no history of enforcement at the premises.

- Addressing the email from Mr E Ash regarding the event on 27 April 2019, the applicant apologised that the function held on that evening overran and assured all present that this would not be repeated.

Responding to questions from Interested Parties, the Applicant advised that:

- Licensing conditions often might duplicate Planning conditions, but it was suggested that Licensing conditions are easier and quicker to enforce than Planning conditions.
- If the Club Premises Certificate was granted, the Applicant intended to apply to vary the planning consent.
- The capacity of the new building was 150-160. The capacity is not a licensing issue as it is dealt with by fire regulations. However, the club would be unlikely to reach this capacity and not all members and guests would be leaving the premises at the exact same time.
- The new building has a lobby entrance, which would assist with reducing noise breakout.
- In relation to enforcement of conditions relating to the outside area, the premises was well staffed and the members are all known to the staff who would be supervising this area.
- It was the responsibility of the staff and members to ensure that all conditions on the certificate were complied with. Failure to do this would be a criminal offence.
- The premises could not be hired by non-members.
- The application was to give the premises some flexibility at the weekends, and the applicant did not feel this was unreasonable.

Following questions from the Licensing Sub-Committee, the Applicant stated that:

- At least two members would be on site to supervise and ensure compliance at all times. Should the number of members/guests increase this level of supervision would be increased to four members.
- The club was currently used by approximately 10-20 people per evening, with the occasional function. The club wanted to increase the number of members but also to explore the possibility of using the premises for coffee mornings, exercise classes and similar instances in the future
- The outside area would be patrolled as well as the inside area. The premises had a secure access and anyone on site would need to be invited to any function being held.

Councillor Anthony Fairclough, speaking to his representation stated:

- The premises was located in a quiet family area, close to residential properties and a change to the Club Premises Certificate would cause further issues.
- A higher number of people on site, at later hours of the evening would cause more noise.
- More regular use of the alleyways at the back of resident's homes by members of the club would make it more difficult for residents to spot

suspicious behaviour in relation to crime and disorder by other persons in the area.

- Daytime use of the premises for the community should be encouraged
- A new 2 storey building in a different location on the site had more potential to cause issues

Councillor Simon McGrath, speaking to his representation, stated that:

- The applicant had given a number of concessions following receipt of representations, but these concessions were already contained within the Planning conditions and therefore did not appear to be concessions
- The acoustic report was based on incorrect assumptions about opening hours and had not accounted for the larger capacity of up to 160 people
- He felt that if the Club Premises Certificate was granted, it should be to the existing hours

Councillor David Dean, representing a number of interested parties, stated that:

- The majority of local Bowling Clubs close at 10:30pm
- The Premises was located within 10 metres of approximately 30 households and he queried whether the applicant could control a larger premises for longer hours
- Bowling is a daytime activity but the application is really not related to bowling
- He felt that if the Club Premises Certificate was granted it should be to the existing hours

Edward Ash speaking to his representation, stated:

- The club had been solicited online by an external party as a location for parties to take place.

Stephanie Nailon speaking to her representation, stated:

- She was not opposed to the Club Premises Certificate being granted to the same hours as the previous clubhouse,
- Bowling is a daytime sport and she therefore struggled to see why an extended Club Premises Certificate was necessary.

In closing, Matthew Butt, stated that:

- The hours proposed were in line with framework hours and with the Council's Statement of Licensing Policy
- The premises was well run with no evidence of any previous issues with the Police or Environmental Health
- The Applicant understood the concerns expressed by residents and Councillors and if any issues occurred the Club Premises Certificate could be brought to a Review hearing before the Licensing Sub-Committee.

Determination

The Licensing Sub-Committee granted the application for a Club Premises Certificate in line with the existing hours at the previous site. The Licensable Activities and hours subject to the conditions are as follows:

- Indoor Sporting Events/Recorded Music:
17:00 – 23:00 Monday to Friday
10:00 – 23:00 Saturday
12:00 – 22:30 Sunday
- Live Music:
19:00 – 23:00 Friday and Saturday
- Anything Similar:
11:00 – 21:00 Monday to Friday
10:00 – 21:00 Saturday
12:00 – 20:00 Sunday
- Supply of Alcohol:
17:00 – 23:00 Monday to Friday
11:00 – 23:00 Saturday
12:00 – 22:30 Sunday
- Premises Opening Hours:
11:00 – 23:00 Monday to Friday
10:00 – 23:00 Saturday
12:00 – 22:30 Sunday

Hours agreed for Christmas Eve, Presidents Day, Club Presentation Day, Christmas Day and New Year's Day – all licensable activities to cease at 00:00

New Year's Eve – all licensable activities to cease at 01:00

All Licensable activities are to cease at 23:00 Monday to Saturday and 22:30 on Sunday, all members and guests are to have left the site by 23:30 Monday to Saturday and 23:00 on Sunday.

Conditions imposed by the Licensing Sub-Committee

1. A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service, so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of officers from the Environmental Health Service and access shall only be by persons authorised by the Premises Licence holder. The limiter shall not be altered without prior agreement with the Environmental Health Service. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised Officer of the Environmental Health Service. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.
2. All outside use of the site shall stop at 22:00

3. No drinks to be taken outside after 22:00 including by smokers
4. The balcony area is to be cleared of members and guests by 21:00
5. At all times when the premises is in use, the blinds on both floors are to be lowered after 21:00.
6. No more than six smokers are to be outside after 21:00
7. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
8. Direct phone numbers of the Club Secretary and Committee Members responsible for functions and the facilities to be provided to residents to be used in the case of any nuisance or disturbance from the premises
9. A dispersal management plan shall be provided to and agreed with the Environmental Health Officer, including but not limited to car and pedestrian access and egress, light nuisance, noise nuisance for events in or outside the premises, safety measures, etc
10. Doors and windows shall be closed except for access/egress after 21:00 or for regulated entertainment events.
11. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Licensing Team. All entry and exit points will be covered enabling front identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised Council Officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
12. There shall be a 2 committee members on duty on the premises at all times when the premises are authorised to provide regulated entertainment.

Reasons

The Licensing Sub-Committee carefully considered the representations contained in the Agenda Pack, the Supplemental Agenda submitted before the meeting and all the oral evidence submitted at the hearing by all parties. 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 was very supportive of the club and acknowledged the club's value as a community asset, encouraging the club to further explore the options of using the premises as a community venue.

The Licensing Sub-Committee noted that the previous capacity of the old building was approximately 100 people with 20-30 people attending per night. In the new building, there was an increase in use and capacity with the potential for 160 persons to be in the Club at any one time. Given this increase, the Licensing Sub-Committee wished to see how that increased capacity would be managed by the applicant before it could consider any potential change in hours.

The Licensing Sub-Committee considered whether the issues could be addressed by the extensive conditions offered in the original application and additional conditions offered by the applicant. 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 case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008* was applied and considered during deliberations. The Licensing Sub-Committee felt that there was sufficient "proper evidence" presented by the Interested Parties present, and within the representations and evidence presented to the Licensing Sub-Committee, of existing issues involving public nuisance. The application was considered on its own merits and in respect of hour by reference to paragraph 13.3 of the Council's Statement of Licensing Policy.

It is noted that any member of any Responsible Authority, Councillor or member of the public is able to request a Review of the Club Premises Certificate by the Licensing Sub-Committee at any time, if issues occur. Interested Parties are reminded that such an application will involve 28 days' notice of the Review and 20 days by which the Licensing Authority must have held a hearing.

Mr Butt made representations to the Licensing Sub-Committee on the drinking up time permitted on the existing Club Premises Certificate, which the Licensing Sub-Committee included in the hours for licensable activities. Mr Butt made representations to the Licensing Sub-Committee regarding the hours during the day for the supply of alcohol, where the applicant had not included the 10am start in the application. The Licensing Sub-Committee was sympathetic but could not override or change the hours applied to avoid the consultation being challenged by other parties.

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.

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