

Merton Council
Licensing Sub-Committee
23 November 2020
Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 25 November 2020

Subject: We Play Golf Limited, 82 Durham Road, West Wimbledon, London, SW20 0TL

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 We Play Golf Limited (formerly Sinbads Limited) for a new premises licence for “We Play Golf” at the premises located at 82 Durham Road, West Wimbledon, London, SW20 0TL.

The application sought a Premises Licence to authorise the licensable activity of the sale of alcohol (on sales only) from Monday to Sunday 11:30 to 19:00, with premises opening hours of 08:00 – 19:00 Monday to Sunday.

Six representations were received from local residents.

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, have regard to the current Home Office Section 182 Guidance and LB Merton’s Statement of Licensing Policy, and comply with any relevant case law.

The application was refused.

Licensing Sub-Committee Hearing

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 all parties present.

The Applicants, represented at the hearing by Wesley Hurn & Amrish Patel, stated that:

- The application had been submitted to allow the premises to serve alcohol on the premises to members and people coming to the golf centre. A café is also on site for use of those coming to play golf and their guests.
- The applicant has taken on board the concerns of residents, and had drawn up ways to address those concerns to address public safety and public nuisance. The general approach would be:
 - The applicant would ensure health and safety is adhered to;
 - they had made special provision to adhere to the new Covid19 guidelines,
 - would have a first aider present on the premises,
 - would ensure disabled facilities were available and
 - would also have fire safety equipment on site.
- The proposals in respect of public nuisance and excess noise, would be:
 - the windows and doors would be kept closed during trading hours as far as possible.
 - There was a double door into the premises and at least one of these would be closed at all times to reduce noise.
 - Noise absorbing panels had also been installed within the booths.
 - The Applicant had made provision for notices to be placed at the premises entrance to remind customers to be aware of neighbours.
 - A challenge 21 policy would be in place.
 - The Applicant would have a discretionary policy but staff would be made aware that the use of strong language or derogatory remarks or other anti-social behaviour wouldn't be tolerated.

In response to questions from the Licensing Sub-Committee and Interested Parties, the Applicant advised that:

- The premises was not currently operating though had operated for 2 weeks prior to the second Covid-19 lockdown had been implemented.
- The Applicant previously ran a soft play centre and café on the site (known as Sinbads), with a capacity of up to 50 children plus parents/carers and had facilitated parties on the site. With the nature of the new operation, the maximum capacity would arise from there being 4 simulators with a maximum of 6 people per simulator, which would lead to a maximum of approximately 40 people on site. The Applicant stated that the previous soft play centre and café had worked well and they had a good relationship with the community, noting that the location was a family area.
- The Applicant was not initially clear on who would be permitted to access the premises, seeking initially that the premises would be open to anyone including members. The Applicant then explained that there would be three circumstances under which drinks would be able to be purchased, as follows:
 - if the customer was a member,
 - if they were a guest of a member or

- if they were using the golf facilities either as
 - a walk-in if a golfing slot was available or
 - a pre-booked golfing session.
- The current planning permission conditions restricted the hours of use to 7pm each day and therefore the applicant had applied to close at 7pm every day. However the Applicant was looking to apply to extend these hours, likely to be until 10.00pm each day.
- Smokers would use an outside area within the premises in front of the building, approximately 10 metres away from the pavement. Patrons would not be permitted to take alcoholic drinks outside, if smoking.
- There was no intention to use the roof terrace, with the exception of storing materials and to access for maintenance of plumbing and extraction equipment. The roof terrace did not form part of the premises and was not accessible from We Play Golf.
- The café on site had been running for 3-4 years and breakfast and coffee had continued to be provided and advertised to encourage prospective members.
- Mr Patel had been a licensee for 30 years including having owned the Olive Garden restaurant for over 20 years and having been a licensee in Southfields since 1992 with experience of running restaurants and cocktail bars.
- There was a proposed annual fee for membership and members would receive a membership card so they were identifiable as members. Members would be entitled to bring guests to the facility with them.

Jane Barnes, speaking to her representation expressed concerns that the area where the premises was located was all residential apart from a church. The properties adjoining and to the rear of the premises are residential. There are only 2 other licensed premises on Durham Road both of which are restaurants and only serve alcohol with meals, which is different to the offering proposed by We Play Golf. Ms Barnes expressed that she felt the lack of clarity from the applicant on the intention of the applicant added to the concerns of residents.

Mr Shah spoke to his representation, noting that his biggest concern was matters going under the radar and that the real intention of the application wasn't being made clear, with it having first been advertised as a restaurant. Mr Shah stated that having heard all the information provided during the hearing including the membership procedure, nothing gave him comfort that the premises won't be used as anything but a bar with some golfing facilities.

Ms Dasgupta spoke to her representation referring to her concerns about disruption to the residential area and the applicant's statement that further hours would be applied for. Residential properties located at the back of the establishment housed young children and any noise would cause disruption and with the application containing alcohol this was a concern for residents.

In their closing statement, the Applicant responded that they had explained what their intentions were and what they were going forward. The Applicants had taken careful consideration in ensuring they adhere to their responsibility if they were to be granted a Premises Licence.

Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to refuse the Premises Licence application.

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

1. The Licensing Sub-Committee were required to promote the Licensing Objectives and the premises is located within a primarily residential neighbourhood which would be affected by public nuisance from the proposed operation. The premises was surrounded by residential properties with a church opposite it.
2. The previous use of the premises as a soft play area and café used by mothers attending that facility did not involve alcohol and therefore the proposed operation was a departure from that type of operation in favour of an operation that would involve a very different style but would be an enhanced use of the premises that would generate public nuisance. .
3. The Licensing Sub-Committee had a number of concerns regarding the enforceability of the conditions and policies proposed by the applicant. For example, management of customers that may want to use the outside table and seating area, management of customers that may want to smoke outside, management of potential customers that that may come in off the street wanting to have a drink and not use the Golf simulators (even when they are prospective members). The Licensing Sub-Committee were not presented with or could not conceive of conditions that would address their concerns.
4. The advertising and flyers for the premises had previously given and continued to give the wrong impression of the actual use of the premises.
5. The Licensing Sub-Committee believed that the prime intention of the proposed operation was the sale of alcohol. The annual fee of £50 per member indicated that the income would be derived from the use of golf simulators, sales from the café/bar and alcohol sales, but it would be the latter that would attract golfing customers.
6. The Licensing Sub-Committee were of the view that there were no conditions that could be imposed to manage the effect on local residents.
7. Smoking within and the general use of the outside area would be impossible to manage and control.

The Legal Advisor referred the Licensing Sub-Committee to the Blackwood case (advising the Committee to ignore planning issues which had its own regime and must be distinct) and the Thwaites case (advising the Committee to consider the evidence before it).

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.