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Merton Council

Licensing Sub-Committee

23 March 2021

Supplementary agenda

5 Notice of Determination - Colette

1 - 12

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 1st April 2021

Subject: Colette Wimbledon Limited, 77 High Street, Wimbledon, SW19 5EG

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

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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 Colette Wimbledon Limited for a new premises licence at the premises to be located at 77 High Street Wimbledon, SW19 5EG.

The application sought a Premises Licence to authorise the licensable activity of the provision of sale of alcohol (both on and off sales) 8am to 10pm Mondays to Sundays, with opening hours of 8am to 10.30pm Mondays to Sundays.

The application was subsequently amended following discussions with responsible authorities and the Parkside Residents Association to amend the start time for the authorisation of on-sales from 8am to 10am.

Three conditions were also agreed with these parties prior to the hearing. These were as follows:

- Deliveries of alcohol to be to a business or residential address and not to any public/open spaces. – Metropolitan Police.
- No alcohol sales for consumption on the premises before 10am – Parkside Residents Association.
- Any alcohol sold for consumption on the premises shall be sold ancillary to a meal or as part of a pre-booked event, with all attendee's details being available to officers upon request. No more than 16 customers would be permitted at any one time to consume alcohol within the premises – Parkside Residents Association.

One representation was received objecting to the application from a local resident.

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 Premises Licence was granted by the Licensing Sub-Committee for the sale of alcohol (both on and off sales) 8am to 10pm Mondays to Sundays, with opening hours of 8am to 10.30pm Mondays to Sundays with a number of conditions imposed on the Premises Licence.

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.

Matthew Phipps, Solicitor representing the Applicant, introduced the application, stating:

- The application was the second premises opening for the applicant following a successful operation on Fulham Road which had been running for 18 months and the business now wanted to expand its operation into Wimbledon.
- The operation was predominantly a takeaway providing plated high end food including 3 course meals. The delicatessen element would sell ambient goods as well as wine, beer and a limited selection of spirits.
- The application had been amended with the start time for sale of alcohol now starting at 10am rather than 8am as original applied for, following discussions with the Parkside Residents Association and Belvedere Residents Association.
- There had been dialogue with both the Metropolitan Police and the Parkside Residents Association which had led to the agreement of 3 conditions to be added to the licence. There had been no representations received from any of the responsible authorities.
- Mr Phipps submitted that there had also been a comprehensive operating schedule included within the application which listed a large number of offered conditions to promote the licensing objectives of prevention of crime and disorder and prevention of public nuisance and the applicant was of the view that with this proposed operation based on the operating schedule, the operation of the premises would not undermine the licensing objectives.
- In relation to protection of children from harm, a Challenge 25 policy would be in place along with a number of other conditions.
- Mr Phipps stated that there appeared to be no objection from the interested party to the off-sales element of the application and that it was his view that the on-sales element had now been restricted with the additional conditions restricting the premises to 16 people and making alcohol ancillary to food sufficiently to mitigate any concerns to this element.
- There would be no tables or chairs proposed within the shop.

In response to questions from the Licensing Sub-Committee, Mr Phipps confirmed that there were no toilets, tables or chairs within the shop.

Speaking to her representation, Ms Millar and her husband Mr Williams stated:

- Ms Millar had concerns regarding the lack of toilets, tables and chairs at a premises where up to 16 people would be eating and drinking and that there were other premises which would be better suited to this type of operation.
- There were already a large number of licensed premises in the area, which was a highly residential area with no public toilets nearby and residents living above the premises.

The Legal Advisor to the Licensing Sub-Committee reminded those present that the Sub-Committee were only able to consider what had been contained within the original representation.

A Licensing Sub-Committee member and Ms Millar raised further concerns relating to the lack of toilets and apparent omission of any planning consent for change of use respectively. The Legal Advisor to the Licensing Sub-Committee responded that these matters came under the remit of the Planning Authority and Planning Enforcement and could not be considered by the Licensing Sub-Committee.

In closing, Mr Phipps responded for the Applicant:

- There was no objection from the interested party to the off-sales element of the application.
- The premises was not a wine bar and Mr Phipps invited the Licensing Sub-Committee to limit the timings or to moderate the permission if the toilets were a concern.
- Mr Phipps stated that his view was it could not fairly be said that there was anything within the application which could undermine the Licensing Objectives.

Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the amended Premises Licence as sought for the sale of alcohol (on and off sales) 8am to 10pm Mondays to Sundays, with opening hours of 8am to 10.30pm Mondays to Sundays and imposed the following conditions:

Conditions offered and extracted from the Operation Schedule (with those in blue as agreed with Metropolitan Police and Parkside Residents Association prior to the hearing):

1. General

- (a) A direct telephone number for the manager of the premises shall be publicly available at all times the premises is open. Telephone number to be made available to residents and businesses in the vicinity.
- (b) All deliveries of alcohol shall be to a business or residential address and not to any public/open spaces.

2. Prevention of Crime and Disorder

- (a) Any alcohol sold for consumption on the premises shall be sold as an ancillary to a meal or as part of a pre-booked event, with all attendees details being available to officers upon request.
- (b) No more than 16 customers would be permitted at any one time to consume alcohol within the premises.
- (c) CCTV will be installed operated and maintained. The system will enable frontal identification of every person entering the premises. The system will record in real time and operate whilst the premises are open for licensable activities. The recording shall be kept available for a minimum of 31 days. Recordings shall be made available immediately upon request to an

authorised officer or a police officer throughout the 31 day period following any incident.

- (d) A member of staff with knowledge of the CCTV system will be present on site while the premises are open to the public to aid any enquiry from a police officer or authorised officer requiring recent CCTV recordings with a minimum of delay, as requested.
- (e) The premises will have a security alarm fitted.
- (f) When placing an order, a customer will have to have an account opened and when ordering once the alcohol beverage section/page is selected it will pop up a tick box 'are you 18 years or older?' Once this box has been ticked it will allow the customer to put an alcoholic beverage in the basket. When they try and check out that basket the tick box will have already triggered the selection to only allow them to check out and pay if they have opened an account, they will not be allowed to check out as a guest. The account opening section will collect the following data:
 - Full name, address, telephone number, date of birth.
- (g) An incident log shall be kept at the premises and made available upon request to an authorised officer of the council or the police. It must be completed within 24 hours of any incident and will record the following;
 - a. All crimes reported to the venue
 - b. All ejections of patrons
 - c. Any complaints received concerning crime and disorder
 - d. Any incidents of disorder
 - e. Any refusal of the sale of alcohol
 - f. Any visit by a relevant authority or emergency service
- (h) The premises licence holder shall ensure that anyone utilised by them for the role of delivering alcohol orders ensures that the alcohol is delivered to the client who ordered the alcohol, or ensures that any 'safe place' as designated by the client where the delivery can be left, must be in an area not visible to the general public and not where any minor can access the delivery.

3. Public Safety

- (a) Fire safety measures will be installed and maintained.
- (b) Adequate and appropriate first aid equipment and materials will be kept on site, regularly checked and kept in an easily accessible place for staff.
- (c) Public areas will be maintained free from obstruction and trip hazards.
- (d) All exit routes will be kept unobstructed, with non-slippery and even surfaces, free of trip hazards and clearly signed.

4. Prevention of Public Nuisance

- (a) No alcohol sales for consumption on the premises are permitted before 10.00am.
- (b) Any alcohol sold for consumption on the premises shall be sold ancillary to a meal or as part of a pre-booked event, with all attendees details being available to officers upon request.
- (c) No more than 16 customers would be permitted at any one time to consume alcohol within the premises.
- (d) All highway and public spaces within the vicinity of the premises will be kept litter free to the satisfaction of the licensing authority.
- (e) Refuse such as bottles will be placed into receptacles outside the premise at times that will minimize the disturbance to nearby properties. No deliveries will take place between 10pm and 6am.
- (f) No collection, including refuse and recyclable food waste shall take place between 10pm and 6am.
- (g) A customer notice is to be displayed at all exits asking patrons to leave the premises quietly and respect the needs of the local residents.
- (h) No noise generated on the premises or by its associated plant or equipment shall emanate from the premises nor vibration will be transmitted through the structure of the premises which gives rise to a nuisance.
- (i) No fumes, steam or odours shall be emitted from the premises so as to cause a nuisance to any person living or carrying on business in the area where the premises are situated.
- (j) All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
- (k) Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
- (l) The premises licence holder shall ensure that any patrons drinking and or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure there is no public nuisance or disruption of the public highway.
- (m) During the hours of operation of the premises the Premises Licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises and that this area shall be swept and/or washed and litter and sweepings collected and stored in the accordance of the approved refuse storage arrangements by close of business.

- (n) There shall not be furniture for seating of customers within the premises.
- (o) No tables and chairs shall be permitted inside the premises for customers.
- (p) There shall be no access to the staff toilets for customers.
- (q) No tables and chairs shall be permitted outside.

Protection of Children from Harm

- (a) All staff shall be trained and aware of the law regarding the refusal of service to any person who is drunk or is underage and all shall be aware of how to seek ID from anyone who appears to be underage.
- (b) All staff that undertake the sale or supply of alcohol (and any other age-restricted product) shall receive appropriate refresher training in relation to undertaking appropriate age checks, at least every three months.
- (c) Records of all staff training, relating to the sale or supply of alcohol (and any other age-restricted product), along with any training material used, will be kept and maintained by the Designated Premises Supervisor or the Premises Licence Holder. Staff training records shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.
- (d) A Challenge 25 policy shall be adopted with proportionate and appropriate signage display.
- (e) A 'refusal to serve' log shall be maintained. The record of refusals shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police. This log shall include the date, time, name and signature of the staff member who refused the sale. This log will be countersigned by the DPS of the premises on a monthly basis.
- (f) An effective methodology shall be in place at all points of sale to ensure staff undertake appropriate age checks on potential sales of alcohol (and any other age-restricted product).
- (g) The premises licence holder shall have a return and refund policy for non-deliveries. Records of all customers purchasing deliveries (of alcohol) will be stored for a minimum of six months and such storage will allow for details to be provided to officers actively investigating allegations of underage sell purchases from the business
- (h) All delivery drivers shall be trained and empowered to refuse delivery of alcohol to those who appear to be under the influence of alcohol or underage (or those who appear to be acquiring alcohol for those who are underage).

- (i) Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.

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

- The premises had a low capacity with 16 persons only able to be accommodated.
- The Licensing Sub-Committee were of the view that the hours sought were reasonable.
- The size of the premises and the nature of the operation of the premises (largely as a shop or delicatessen) meant that it was unlikely to result in public nuisance or crime and disorder issues occurring.
- The operator is fully aware of the residents living above the premises and would have to take all precautions to avoid causing them public nuisance and to avoid potentially triggering a review of the premises licence by the Licensing Sub-committee in the future.
- The issues of planning and toilet provision are matters outside of the remit of the licensing sub-committee and arise under other legislation and case law such as Blackwood and Somerfield.

The Licensing Sub-Committee were advised during deliberations that in relation to concerns on toilet provisions this could not be considered as it was dealt with under separate legislation, namely Regulation 10 of the Workplace (Health, Safety and Welfare) Regulations 1992 (staff) and section 20 of the Local Government (Miscellaneous Provisions) Act 1976.

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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