

**Merton Council**  
**Licensing Sub-Committee**  
**24 March 2023**  
**Supplementary agenda**

5 Notice of Determination

1 - 10

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 6 April 2023

**Subject:** Berton Group UK Limited T/A EFES Premium, Hartfield Road, Wimbledon, SW19 3SG

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](mailto: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](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 Authority received an application from Berton Group UK Limited T/A EFES Premium for a Premises Licence at the restaurant premises located at Hartfield Road, Wimbledon, SW19 3SG.

The application sought

- Live music – indoors on Sunday to Thursday from 09:00 to 00:00 and on Friday and Saturday from 09:00 to 01:00.
- Recorded music – indoors on Sunday to Thursday from 09:00 to 00:00 and on Friday and Saturday from 09:00 to 01:00
- Performances of dance – indoors on Sunday to Thursday from 09:00 to 00:00 and on Friday and Saturday from 09:00 to 01:00
- Late night refreshment indoors and outdoors on Sunday to Thursday from 23:00 to 00:00 and Friday and Saturday from 23:00 to 01:00
- Supply of alcohol for consumption on and off the premises on Sunday to Thursday 09:00 to 00:00 and Friday and Saturday 09:00 to 01:00

The hours sought for the premises to be open to the public were Sunday to Thursday 09:00 to 00:00 and on Friday and Saturday from 09:00 to 01:00

Five representations were received in relation to the application, including a local Councillor and 3 local residents. A representation was also received from Trading Standards. Following agreement on conditions, the representation was withdrawn by Trading Standards. Conditions had also been agreed with the Metropolitan Police and these were included within the application.

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.

During the course of proceedings, the Applicant offered a reduction in the opening hours of the premises to the following:

- The opening hours of the premises to be reduced to 09:00 to 00:30 on Friday and Saturdays

The Applicant also confirmed that the application for the performance of dance as a licensable activity had been removed from the application.

The Premises Licence was granted to the reduced opening hours and revised list of licensable activities as offered, with the imposition of the agreed conditions from the Metropolitan Police, Trading Standards and an additional condition imposed by the Licensing Sub-Committee as detailed further on this notice.

## Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, the agenda papers and the oral evidence submitted at the hearing by all parties present.

Kevin Morris, agent representing the Applicant, spoke to present the application, stating:

- The premises was not a drinking establishment and would offer a fine dining experience as a restaurant.
- Alcohol would only be sold ancillary to a main meal consumed on or off the premises – a condition was contained within the operating schedule that any deliveries can only be provided to residential or business premises not to public or open areas.
- The Application requested the Licensable Activities of live and recorded music – this would be in the form of incidental background music with keyboard and woodwind instruments and the applicant had advised that this would only take place two or three times a month.
- Conditions had been agreed with the Metropolitan Police and with Trading Standards and these had been incorporated into the operating schedule.
- It was noted that an adjacent premises also within the Travelodge building had a Premises Licence granted by the Licensing sub-Committee to similar hours in December 2022.

In response to questions from the interested parties and the Licensing Sub-Committee, the Applicant responded:

- There is outdoor seating included within the applicant and associated plans and it had been agreed with the Metropolitan Police that for outdoor sales deliveries must be made to a residential or business premises, where these contained alcohol.
- All sales of alcohol would be ancillary to a main meal. Takeaway meals could be purchased with alcohol. However, alcohol could not be purchased in isolation without a meal. The premises would offer a fine dining experience with alcohol as an accompaniment to their meal, it would not be a drinkers establishment.
- The required notices were published at and nearby to the premises and within the local newspaper.
- The performance of dance had now been withdrawn from the application and there would be no dancing at the premises.
- The premises would trade with no open doors or windows.

Kate Turner, Interested Party spoke to her representation:

- The premises is located right next to residential housing as part of a long road with a number of families living within the road.
- Residents had already seen considerable noise disruption from the Travelodge premises with persons congregating by the flowerbeds at the side of the premises.
- There were already a large number of licensed premises within the area.
- Residents believed there was no necessity for a licence until 1am and believed this would lead to drunken persons congregating in the road.

- Residents had experienced disturbances from other local establishments and Kate Turner described vandalism and urination which had taken place in the road previously.
- The introduction of another licensed premises would, Kate Turner believed, affect the children living in the road and would affect the sleep of families in the area.

In response, Paul Marshall, Project Manager, advised on behalf of the Applicant that the premises were keen to work with the community and that there would be an extensive CCTV system with cameras facing outside and down both roads so there would be full coverage of any activity directly outside the premises. Mr Marshall noted that the premises staff would undergo training and that persons would not be served any further if the premises believed they had drunk too much, it being a criminal offence.

Mr Morris advised that he understood the concerns raised by Kate Turner. However Mr Morris responded that the premises was a fine dining experience and that premises were often frequented by staff from emergency services or workers who would dine late at night after their shifts or as a matter of choice. Mr Marshall did not expect the kitchen to be operating after 23.30. Mr Marshall offered that the application could be reduced to closing at 00.30 on Fridays and Saturdays.

In closing, Kate Turner asked the Licensing Sub-Committee to consider residents within the busy street.

In closing statements on behalf of the Applicant, Mr Morris advised that a slight reduction in hours had been agreed and reminded all present that all alcohol sales would be ancillary to a meal.

### **The Decision of the Licensing Sub-Committee**

The Licensing Sub-Committee decided to grant the application with the following licensable activities and opening hours:

- Live music – indoors on Sunday to Thursday from 09:00 to 00:00 and on Friday and Saturday from 09:00 to 00:30.
- Recorded music – indoors on Sunday to Thursday from 09:00 to 00:00 and on Friday and Saturday from 09:00 to 00:30
- Late night refreshment indoors and outdoors on Sunday to Thursday from 23:00 to 00:00 and Friday and Saturday from 23:00 to 00:30
- Supply of alcohol (on and off the premises) Sunday to Thursday 09:00 to 00:00 and Friday and Saturday 09:00 to 00:30
- Opening hours for the premises of Sunday to Thursday 09:00 to 00:00 and Friday and Saturday from 09:00 to 00:30

The Licensing Sub-Committee imposed a further condition as follows:

- That all use of the outdoor seating area of the premises shall cease at 22.30 seven days a week

The Licensing Sub-Committee imposed the conditions agreed with Trading Standards and the Metropolitan Police and those offered within the Operating Schedule as follows:

1. All staff shall receive appropriate induction training in relation to their responsibilities under the Licensing Act, this is to include the authorisations of the premises licence and sales of alcohol. Induction training documents shall be signed and dated and shall be made available to police and authorised officers of the Council on request. The records shall be retained for a minimum of 18 months.
2. The age at which the age verification policy required by the mandatory condition attached to this licence is set, shall be 25 years of age, in that anyone who appears to be aged 25 years or under shall be required to produce appropriate evidence as stated in the policy to prove they are 18 years of age or over.
3. A refusals log shall be kept at the premises to record details of all refusals to sell alcohol. This log shall contain the date and time of the incident, a description of the customer, the name of the staff member who refused the sale and the reason the sale was refused. The log shall be made available to police and authorised officers of the council on request.
4. The designated premises supervisor shall regularly check the refusals log to ensure it is being consistently used by staff.
5. Signs shall be placed in a prominent place at all exit points of the premises requesting patrons to respect the neighbours and leave quietly.
6. Deliveries to the premises shall be restricted to between the hours of 08:00 and 22:00.
7. No children shall be permitted on the premises unless accompanied by a responsible adult.

#### **Conditions requested by Trading Standards**

1. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
2. An effective visual (and/or aural) reminder 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).
3. 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 on such, at least every three months.

4. 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.
5. 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.

### **Conditions agreed with the Police**

1. A closed-circuit television (CCTV) system shall be installed at the premises. The CCTV system installed at the premises shall be maintained in effective working order, and shall be in operation at all times the premises is open to the public. All recordings made by the CCTV system shall be retained and stored in a suitable and secure manner for a minimum of 31 days, and shall be made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities. At all times the premises is open to the public a minimum of one member of staff on duty will be able to operate the CCTV system.
2. An incident log shall be kept at the premises and made available on request to Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must be completed within 24 hours of the incident and will record the following;
  - i. All crimes reported to the premises.
  - ii. All ejections of patrons.
  - iii. All complaints received concerning crime and disorder.
  - iv. All incidents of disorder.
  - v. All seizures of drugs or offensive weapons.
  - vi. Any faults in the CCTV system.
  - vii. Any visit by a relevant authority in relation to service.
  - viii. Any complaints from nearby residents.
3. A minimum of two (2) SIA approved door supervisors shall be on duty on any night when the premises is open beyond midnight for private functions or special events including when live music is played.
4. Where SIA registered supervisors are used at the premises, a record must be kept of their SIA registration number and the dates and times when they are on duty.
5. Alcohol shall only be sold as an ancillary to the purchase of a meal for consumption on and off the premises.
6. Alcohol deliveries ancillary to a take-away or delivery meal shall only to be made to business and/or private residences and not to any public/open spaces.



7. All members of customer facing staff, will be provided with Welfare and Vulnerability Engagement (WAVE) training to provide those working in the licensed industry with an awareness of vulnerability and their responsibilities towards people visiting their premises. This training is available at <https://nbcc.police.uk/guidance/wave-presentation>
8. All members of customer facing staff, will be provided with basic Counter Terrorism Awareness Training by the Premises Licence Holder. Such training is available at <https://www.gov.uk/government/news/act-awareness-elearning> or via the local Counter Terrorism Protect Officer (CTPO)
9. Duty managers will have access to the NaCTSO ACT App and / or PSO Shield App when on duty at the site.

PSO London Shield App

<https://apps.apple.com/gb/app/pso-london-shield/id1482303493>

NaCTSO ACT App

<https://www.gov.uk/government/news/new-act-app-launched>

## Reasons

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

- 1) The Licensing Sub-Committee did not believe, with the conditions proposed and the style and type of operation of the premises, that granting the application would cause an increase in cumulative impact. The Licensing Sub-Committee considered that as the premises proposed to trade with the doors and windows closed and is a restaurant which provides alcohol ancillary to food, that that informed their decision.
- 2) The Licensing Sub-Committee believed that the conditions proposed addressed the concerns the Licensing Sub-Committee had, with the exception of the use of the outdoor area. The Licensing Sub-Committee therefore imposed one further condition relating to the use of that area so that all usage ceased at 22.30pm every night.
- 3) The Licensing Sub-Committee accepted the Applicant's proposed amendment to the application in terms of reducing the terminal hour for Licensable activities and reducing the opening hours of the premises.

## 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.