

**Merton Council**  
**Licensing Sub-Committee**  
**2 October 2017**  
**Supplementary agenda**

5 Notice of Determination

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 4<sup>th</sup> October 2017

**Subject:** Aya Lebanese Takeaway, 72 The Broadway, Wimbledon, SW19 1RQ

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 (March 2015). 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](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 made by Ali Mahfouz for a variation of the Premises Licence held by Aya Lebanese Takeaway at 72 The Broadway, Wimbledon, London, SW19 1RQ.

The application was for the extension of the licensable activity authorising Late Night Refreshment from 23.00 to 05.00 Thursday to Saturday (instead of 23.00 - 03.00 Thursday to Saturday on the existing Premises Licence). There were no changes requested to the opening hours for Sunday to Wednesday (23:00 - 01:00 on the existing Premises Licence)

Representations were received from the Metropolitan Police and 4 residents against the application. The premises was located with the Wimbledon Cumulative Impact Zone and was subject to the Cumulative Impact Policy contained in the Council's Licensing Policy. It required the applicant to overcome the rebuttable presumption that required refusal unless the applicant could show that there would be no increase in cumulative impact.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, that complied with the Licensing Act 2003 and its regulations, had regard to the current Home Office Section 182 Guidance and LB Merton's Statement of Licensing Policy, and complied with parameters provided by any relevant case law.

The application was refused.

## Reasons

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

Mr Newman, the Applicants' Representative stated that:

- a) The Applicants owned 5 restaurants within the Borough, were local residents and had created employment in the area over the 8 years they had been operating.
- b) During the time the restaurant had been operating there had been no issues and there was no history of disturbances at any of the applicants' premises.
- c) The operation had a fast turnaround time with mainly wraps and soft drinks provided and these were packaged in napkins and not cartons or other packaging like other food outlets.
- d) The Applicants were happy to provide CCTV coverage; whilst there was an existing CCTV system in place this would require upgrading.
- e) Security guards were currently not needed. However they would be prepared to supply the Security guards as suggested by the Police Licensing Officer in his representation, if the Licensing Sub-Committee decided to grant the application. However, the Applicants' felt that it might be economically unviable to have the security in place for the whole 6 hour period (23:00-05:00).
- f) The Applicants were expecting 30-40 customers over the additional 2 hour period requested and these were expected to be some of those waiting for Mini Cabs from the Cab office next door to the premises and therefore there would not be any further disturbance caused as these customers were there already.
- g) In the alternative, the applicants requested a temporary licence to 'trial' the extended hours for a year in the event that the Committee did not wish to grant a full variation.

The Metropolitan Police Borough Licensing Officer, PC Russ Stevens, asked the Licensing Sub-Committee to reject the application due to the saturation in the area of late night premises pursuant to the Cumulative Impact Policy for Wimbledon town centre and made the following submissions:

- 1) Although PC Stevens advised that the premises appeared to be well operated, he submitted that the premises was located within the middle of the night time economy in the Town Centre and that by staying open longer the premises would be providing a facility for members of the public to loiter in the area.
- 2) The premises was located near to 2 nightclubs and several pubs and was the latest opening 'late night refreshment' venue in the area, which would provide a finishing point for people at the end of their evening, away from the main transport routes out of Wimbledon (it was some distance from the Tube / Train Station).
- 3) PC Stevens had searched Police records and advised that 22 assaults relevant to the night time economy in the immediate area outside the premises had taken place in the last year since August 2016.
- 4) Police resources were already stretched in that area particularly at that time of the morning.
- 5) Providing fast food slows the dispersal rate, and it was of concern to the Police

that granting a licence until 5am would allow the premises to continue to trade after those hours with no regulation.

Ms Leigh Terrafranca for Wimbledon East Hillside Residents' Association (WEHRA) objected to the application and made the following submissions:

- The premises is located next to a densely populated residential area off the Broadway, with many families who need to get up early for work and do not wish to be disturbed, especially late at night during the week.
- Residents have concerns about the litter, urine etc that results from the late night economy. If hours are extended then this does not leave the Street Cleansing Teams enough time to clear up before commuters start to leave for work.
- If this premises variation were granted then this would set a precedent for other nearby premises to also request extensions of their hours.

Taking into consideration the evidence in the Agenda papers, the submissions made by the Premises Licence holder in respect of the effect on cumulative impact, together with the input of the Metropolitan Police Licensing Officer and WEHRA, the Licensing Sub-Committee considered that there would be an increase in Cumulative Impact. There were already existing issues in the immediate area that would be exacerbated by the grant of the application. The variation of the Premises Licence was therefore refused.

The Licensing Sub-Committee gave the following reasons for refusal:

- 1) The Committee considered the Application on the basis of the Licensing Objectives of the prevention of Crime and Disorder and the prevention of Public Nuisance. The premises lie within a Cumulative Impact Zone. The Application before the Committee did not overcome the rebuttable presumption created by the Cumulative Impact Policy that this application would not add to Cumulative Impact.
- 2) The Section 182 Licensing Act 2003 Home Office Guidance (April 2017) states that "licensing authorities should look to the police as the main source of advice on crime and disorder" especially where there are hotspots of Cumulative Impact. The Committee noted that there were 22 assaults in the immediate vicinity of the premises over the past year. The Committee's view was that if the application to open between 03:00 and 05:00 were to be granted that would result in greater numbers of people remaining in the area and would in turn result in greater Cumulative Impact.
- 3) Whilst it is possible that people might book a taxi and then buy food whilst waiting, the Committee's consideration was that it was more likely that people would be loitering with food before choosing to book a taxi and thus loitering in this area and/or the town centre. The Committee considered that many customers that would be resorting to Aya would not be waiting for a taxi.
- 4) The Committee also considered whether conditions would assist in addressing the rebuttable presumption. Whilst two security guards on duty between 23:00 and 05:00 would address issues specific to the premises, they could not address other cumulative impact issues for this already saturated area.
- 5) It was noted by the Committee that the operation schedule on page 16 refers to the application being an indoor application only. It does not specify that the application relates to take away food.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (June 2014).**

#### **12.Appeals**

12.1 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**

12.2 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.

12.3 An appeal has to be commenced by the appellant giving of 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.

12.4 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 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.

12.5 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.

12.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

12.7 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.

## **LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE**

12.8 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.

12.9 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**

12.10 It is important that a licensing authority should give 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.

## **IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES' COURTS**

12.11 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**

12.12 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.

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