

Merton Council

Licensing Sub-Committee

23 January 2018

Notice of Determination

8 Notice of Determination - The Terrace, Unit 301, Centre Court, Wimbledon, SW19 8ND 1 - 8

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 29 January 2018

Subject: The Terrace, Unit 301, Centre Court, Wimbledon, London, SW19 8ND

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.

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 Darwin and Wallace Limited for a variation to the Premises Licence for The Terrace at Unit 301, Centre Court, Wimbledon, London, SW19 8ND.

Representations were received from 1 local resident and 1 residents' association. The premises were located within the Wimbledon Town Cumulative Impact Zone and was subject to the Cumulative Impact Policy contained at section 7 of the Council's Licensing Policy (especially under paragraphs 7.10 and 7.6). It required the applicant to overcome the rebuttable presumption that required refusal unless the applicant could show that there will be no increase in cumulative impact.

The applicant applied to vary the Premises Licence as follows:

- To amend the Licensing plans in accordance with the plan numbered 01D attached to the application including relocation of the bar counter into a dance area, removal of a whole tables and seating area, relocation of toilet facilities, insertion of two private dining areas, relocation of the kitchen into the tables and seating area and new fixed and loose seating arrangements throughout.
- Extension of the terminal hour for licensable activity on Thursdays from 23:00 to 00.00 Midnight, where the premises could remain open for other licensable activities until 2.30am already.
- Extension of the start time for on sale of alcohol from 09:00 every day (ancillary to food up to 11.00am) instead of opening from 11.00am.
- New opening time of 09:00 Monday to Sunday.

The variation of the Premises Licence was granted as sought.

The amendment of the licensing plan was approved.

Reasons

The Licensing Sub-Committee carefully considered the Agenda and Supplemental Agenda (including the application and all of the Representations and additional comments) and the oral evidence submitted at the hearing by the Applicant.

The Applicants' solicitor, Jeremy Bark, stated that:

- The Premises was unlikely to add to Cumulative Impact as it was an existing premises which the new Premises Licence holder would be refurbishing and improving. The Applicants' solicitor referred the Committee to section 7.10 of the London Borough of Merton Licensing Policy which states (regarding applications in Cumulative Impact Zones): *"....Notwithstanding the significance of the special policy the Licensing Sub-Committee must give reasons for any decision to refuse or grant an application. An exception may be made where the application proposes, for example: • To substitute one type of premises with another which is likely to have a lesser impact on the licensing objectives; • To make alterations to the premises that maintain the status quo or enhances the premises without negatively impacting on the licensing objectives"*. Mr Bark said that this was exactly the position here.
- There had been no objections from any of the Responsible Authorities and the Applicant had discussed the application with the Police at length and there had been no Police concerns, despite this premises' location at the heart of Wimbledon, next door to major transport hubs.
- The additional hour on a Thursday was proposed to reflect the opening hours in the Applicant's other premises and also the intention to have a more gradual change of hours into the weekend.
- The Applicants' Company had been running for 5 years and had a number of other sites including Pimlico, Clapham, Chiswick and Richmond and both the Applicant and the applicant's other premises had won a number of awards (Best Designed UK Pub (Pimlico) 2014, Best Pub (Richmond) 2016).
- A number of the Applicants' other premises had been granted licences within Cumulative Impact Zones.
- The Applicant would be spending approximately £1.5million to refurbish the premises and would have 35-40 staff including a management team of 5.
- The wet/dry split would be approximately 60/40, which the Applicant noted is higher than conventional "pub" premises which would be nearer 80/20.
- The Applicant had discussed the representations with the interested parties and reiterated during the hearing that the premises would not be run as a nightclub.
- There was no increase proposed in the size of the premises.
- The earlier start time for alcohol sales was to reflect flexible breakfast options for families and professionals and also to enable breakfast events.
- The need for door security would be risk assessed and footfall would be monitored.
- The existing CCTV would be replaced with new, more up-to-date equipment.
- The Applicant had been looking at more appropriate acoustic attenuation and would adjust any music levels if any issues were raised. Background music would be played during the day with only slightly higher levels at night. The Applicant noted that the nearest residential premises was some distance from premises which is located within a shopping centre.

The Applicant addressed the points raised in the WEHRA Representation and the

resident representation as follows:

- With regard to the WEHRA concern that the granting of the variation would set a precedent, the Applicant made reference to the S182 Guidance and Council's Statement of Licensing Policy that each application should be decided on its' own merits and therefore to grant their application would not set a precedent for future applications, as each one has be considered separately;
- The Applicant was content to include an ancillary to food condition for the period of 9.00-11.00 for the sale of alcohol, as this fitted the applicant's proposed approach to that period and the operation proposed;
- The proposed extension on Thursday was within ongoing operating hours, that allowed Late Night Refreshment at this time already, so there could be no increase in cumulative impact or increase in public nuisance as the premises was still already licensed to be open and operating at this time.
- The WEHRA concern on capacity was now subject to The Regulatory Reform (Fire Safety) Order 2005 requirement for Risk Assessments with enforcement by the Fire Authority and was not a matter for the Licensing Authority specifically to regulate.
- The reference to obesity ignored that the Licensing Sub-Committee was considering only the Licensing Objectives.
- With regard to the resident's representation, it occurs that this is a WEHRA member, that had made the original WEHRA representation addressed above, and was largely supportive.

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

- The Committee were satisfied that the premises would not add to the Cumulative Impact in the area.
- The existing stringent conditions would remain in place to manage the potential for crime and disorder and public nuisance licensing objectives at the premises and its late night operation.
- The premises already operated until 02:30 for Late Night Refreshment on Thursdays.

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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