

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 29 March 2018

**Subject:** Smash, 82 The Broadway, Wimbledon, SW19 1RH

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 by Barclub Trading Limited for a new Premises Licence for Smash at 82 The Broadway, Wimbledon SW19 1RH.

The application involved amendment to a limited number of conditions, which the Applicant decided to submit by a new Premises Licence rather than a Minor Variation or a Variation of the Premises Licence. The Premises Licence was granted as applied for simply amending the nightclub conditions. The existing Premises Licence will be surrendered on receipt of the new Premises Licence

Representations were received from 1 Councillor, 1 local resident and 1 residents' association. A letter of support was received from a local resident. The Metropolitan Police supported the removal/amendments to the conditions.

### Conditions offered and imposed:

1. All staff shall receive training on the Licensing Act 2003 and the licensing objectives on a regular basis.
2. Drinking water should be made proactively available (i.e not only on request) in all parts of the premises where alcohol is sold for consumption on the premises.
3. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirement of the Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or an authorised officer through the entire 31 day period.
4. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. The staff member must be able to provide the Police or authorised officer with copies of recent CCTV images or data with the absolute minimum delay when requested.
5. On Fridays and Saturdays from 21:00 hours until the premises closes, a minimum of two uniformed security staff must be present and responsible for the management of customers outside the venue.
6. An electronic identification scanning device must be available at the premises to be used at the discretion of the Premises Licence holder on Fridays and Saturdays after 21:00hours until the premises closes. Information recorded by the device must be available to Police on request and without unreasonable delay.
7. If the electronic scanning device fails, then the device will be replaced within five working days.
8. No drinks are to be taken off the premises in open containers (e.g. glasses or open bottles) preventing use of containers as weapons, and to prevent consumption of alcohol in surrounding streets after individuals have left the premises.
9. The Licensee (or his nominated manager of the premises) shall take all reasonable steps to ensure that the passageway leading to Kings Road, SW19 is clear of obstruction at all times that the premises is open to the public.

10. The premises shall not be used for the purpose of this licence if the rear passageway leading to Kings Road, SW19 is not available for the free and easy evacuation of persons from the premises.
11. No more than 15 persons shall be permitted to use the outside ground floor smoking area at any one time. The area must at all times be managed by a member of security staff.
12. Prominent signage shall be displayed at all exits from the premises, requesting that customers leave quietly.
13. The roof terrace shall close at 23:00 on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays and shall close at midnight on Fridays and Saturdays.
14. Acoustic attenuation measures shall be put in place for the rear fire exit door, to the satisfaction of the Environmental Health Pollution Control Manager.
15. The rear door shall be closed, save for emergency exit and egress, and an SIA door supervisor shall regularly monitor that the door is not open and that there are no customers located in the rear alleyway.
16. The speakers shall be isolated from the structure of the building to the satisfaction of the Environmental Health Pollution Control Manager.
17. A noise limiter shall be operated on the premises and its settings shall be assessed and approved by the Environmental Health Pollution Control Manager.
18. A litter pick and street cleansing shall take place outside the premises on Kings Road and The Broadway on a daily basis.
19. No person under the age of 18 shall be permitted on the premises after 20:00 hours.

## 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 and interested parties.

The Applicant 's solicitor stated that:

- The Premises had a current licence and whilst there were no changes proposed to the licensable activities or hours, the Applicant wished to remove a number of conditions from the licence which had remained on the licence from the previous Po Na Na nightclub business at that site. The Applicant advised that should the new premises licence be granted the current Premises Licence would be surrendered.
- The application had been submitted after consultation with and with the support of the Police.

The Metropolitan Police, speaking in support of the application stated:

- Wimbledon Town Centre was improving; there had been a 9% reduction in occurrences of non-domestic violence with injury in Merton, despite a 2% rise across London over the last 2 years. PC Stevens stated the vast majority of this statistic related to the Wimbledon night time economy.
- Smash was a real improvement on the previous premises Po Na Na.
- The Metropolitan Police had attended regular meetings with the Solicitor for the Applicant and the site manager.
- A number of the conditions on the licence were related to the time as they were necessary for the operation of the previous premises which as a nightclub was a different style of operation to Smash.
- The premises was encouraging others to improve.
- There had been no crimes reported attributed to the premises since it had opened.
- It was the view of the Police that the premises was having a positive impact on the Licensing objectives.

The main objections put forward by WEHRA were:

- The premises had only been operating in its current format for 6 months and the application was therefore premature.
- The street warden should be retained to ensure the cleanliness of the area and the frontage and rear access should be kept clear of waste.
- WEHRA believed that the terminal hours were still too late and needed to be restricted further.

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 and that the amendment of the conditions did not affect promotion of the Licensing objectives.

## **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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